

The Enactment of China's Export Control Law: Welcoming a New Era of Export Control

1. Introduction

Since December 2019, after three deliberations, the 22nd meeting of the Standing Committee of the 13th National People's Congress promulgated the Export Control Law of the People's Republic of China (the **Export Control Law**) on October 17, 2020. This means that China has enacted its first comprehensive and unified legislation in the field of export control, which will better promote and lead China's export control administration and safeguard China's national security and interests. The Export Control Law will enter into effect on December 1, 2020, therefore there for businesses to self-check and comply with the new law beforehand.

Since the first announcement of the Export Control Law (Draft for Comment) by the Ministry of Commerce ("MOFCOM") on June 16, 2017, we have been continuing monitor the legislative process and developments of the Export Control Law and conducted a lot of in-depth research. In the process of legislation, we were invited by the MOFCOM to participate in the legislative consultation meeting of the Export Control Law Draft (First Review Draft), and provided our legislative suggestions to the legislature. A number of our suggestions were finally adopted by the formal legislature.

If the U.S. Export Control Law is known as an extremely aggressive trade law with extraterritorial effects, then China's Export Control Law can be characterized by its moderate and resolute attitude in export control. The so-called moderation is mainly reflected in the fact that China has not adopted the de minimis principle, the foreign direct product rule or other rules to strictly control exports. Instead, China has adopted an export control regime comparable to that of the European Union or Russia, that is, to manage and control items and transactions in a restrained manner, which shows that China has never had intentions to use its legal policy tools to obtain or control benefits. The resolute nature embodied in the Export Control Law can be reflected by its consistent emphasis of the legislative purpose of safeguarding national security and interests. On this basis, principles of countermeasures with extraterritorial effects are enacted, which reflects China's determination to resolutely safeguard its national security and interests in export control.

This article will introduce the legislative process of the Export Control Law, sort out the major revisions between the officially effective text and the draft of the Export Control Law, and introduce the compliance key points of China's Export Control Law, as well as its potential impact on businesses and corresponding solutions. We hope that this article can provide valuable practical advice for Chinese and foreign businesses to establish and improve internal export control compliance mechanisms.

2. Throwback to the Legislative Process of the Export Control Law

On June 16, 2017, the MOFCOM took the lead in drafting the Export Control Law of the People's Republic of China (Draft for Comment) and publicly solicited comments from the general public (the "**Exposure Draft**"). The Ministry of Justice hereafter further consulted with relevant departments, local governments, enterprises and industry associations and promulgated the "Export Control Law of the People's Republic of China (Draft)" (the "**First Review Draft**") on December 28, 2019.

According to the 58th Meeting of Chairmen of the Standing Committee of the 13th National People's Congress on June 1, 2020, the Export Control Law was included in the National People's Congress Standing Committee's 2020 legislative work plan. On June 28, 2020, the Export Control Law of the People's Republic of China (the "**Second Review Draft**") was submitted to the 20th meeting of the 13th National People's Congress Standing Committee for deliberation.

On October 17, 2020, the 22nd Meeting of the Standing Committee of the 13th National People's Congress voted on and promulgated the Export Control Law of China.

From the Exposure Draft, the First Review Draft to the Second Review Draft, the continuous efforts of the legislature and all sectors of society actively to promote the official implementation of China's Export Control Law finally led to its final enactment.

3. Interpretation of the major revisions of the Export Control Law

The Export Control Law consist of 49 articles five chapters, including General Provisions, Control Policies, Control Lists and Control Measures, Supervision and Administration, Legal Liabilities, and Supplementary Provisions. Compared to the Second Review Draft that was formed on June 28, 2020, the Export Control Law does not have substantive amendments, but has elaborated regulations on d the scope of controlled items, the connotation of the control list, the control blacklist system, and legal responsibilities.

We have sorted out the main points of major revisions with our interpretation below. The comparison of the specific provisions of the Export Control Law with the First Review Draft and Second Review Draft are detailed in the table after the text.

3.1 The alignment of order adjustment of legislative value

The legislative value of the Export Control Law includes safeguarding national security and interests and fulfilling international obligations such as non-proliferation. Article 1 of the Second Review Draft has clearly adjusted the order of legislative value, placing the legislative goal of safeguarding national security and interests before the legislative goal of fulfilling international obligations such as non-proliferation. In the final version of the Export Control Law, the order of legislative value were adjusted in other articles to be consistent with the legislative purpose of Article 1. This unified adjustment is reflected in Articles 2, Article 9, Article 10, Article 13, Article 18, Article 32, Article 44 of the Export Control Law. Consistent with the common practices of the United States, the European Union and other countries in the world, the primary purpose of export control should be to safeguard the national security and interests of the country, which also laid the tone for the overall legislation of the Export Control Law. When interpreting some other provisions, it also indicates that the primary legislative value of "maintaining national security and interests" is the main focus.

3.2 Clarification that the scope of controlled items includes technical documentation and data

An important revision of the Export Control Law is to clearly indicate that the scope of controlled items includes technical documentation and other data. Article 2 of the Export Control Law states that "this law applies to the export control of dual-use items, military items, nuclear, and other goods, technologies, and services related to the maintenance of national security and interests, and the fulfillment of non-proliferation and other international obligations (hereinafter collectively referred to as the "controlled items"). The term controlled items referred to in the preceding paragraph includes technical documentation and other data related to the controlled items". In other words, controlled items include "dual-use items, military items, nuclear, and other goods, technologies, and services related to the maintenance of national

security and interests, and the fulfillment of non-proliferation and other international obligations”, as well as the technical documentation and other data of these items. This revision completes the scope of the controlled items, ensures that the controlled items themselves and their technical documentation and other data shall not be illegally exported, and also fills in the current legislative gap for the export of technical documentation and data.

According to current legislation, military items, nuclear and nuclear dual-use items and related technologies, monitored chemicals, missiles and related items, nuclear technology, biological dual-use items, related chemicals, precursor chemicals, radioisotopes and radiation devices and technologies are all within the scope of export control. The scope of control covers the goods, technologies and services of these items, but does not explicitly mention the exports of related documentation and data. According to the Regulations of the People’s Republic of China on the Administration of Technology Import and Export, technology import and export is often understood as the transfer of patent rights, the transfer of patent application rights, the licensing of patent implementation, the transfer of technology secrets, technical services and other methods of technology transfer. The focus of supervision is often on patents, technical secrets, and technical services, while the technical documentation of dual-use items are not covered technology import and export management. Although the PRC Cybersecurity Law provides for the export of data, its regulatory objectives are mainly personal information and important data, and cannot meet the regulatory requirements for export of dual-use items documentation and data. Therefore, no matter at the legal level or the regulatory level, there is a blank area in the supervision of the export of technical documentation and other data, which may result in that exporters do not apply for export licenses for the technical documentation and data of dual-use items restricted from exports, causing losses to national security and interests.

Today, when forms of competitions between nations has gradually changed from military warfare to technological warfare, the protection of technical documentation and data will become the core content of national security. Therefore, we believe that this amendment is of great significance to China’s realization of the legislative objective of export control. For businesses, when it comes to controlled items, even if related equipment and products have not left China, they should also pay attention to the risk of related technical documentation being carried out of the country by business personnel in violation of regulations.

3.3 Completing the concept of control lists

Article 4 of the Export Control Law stipulates that the State shall adopt an unified export control system, and oversee the system by formulating control lists, directories, and catalogues (hereinafter collectively referred to as the “control lists”), and implementing export licensing and so on. The amendment defined the control lists, which scope includes control lists, directories, and catalogues.

At present, China implements control lists on goods, technologies and services that are restricted and prohibited from exports. There are currently 9 effective control lists, directories, and catalogues, as follows:

No	Control lists, directories, and catalogues	Effective Date
1.	Military items Export Control List	2002.11.15
2.	Nuclear Export Control List	2018.10.1
3.	Export Control List of Nuclear Dual-use Items and Related Technologies	2018.01.01
4.	Export Control List of Missiles and Missile-Related Items and Technologies	2002.08.22
5.	Export Control List of Relevant Chemicals and Related Equipment and Technologies	2002.11.19

6.	Directory of Various Controlled Chemicals	2020.06.03
7.	Export Control List of Dual-use Biological Items and Related Equipment and Technologies	2006.07.27
8.	Catalogue of Dual-use Items and Technologies Subject to the Administration of Import/ Export License	2020.01.01
9.	Catalogue of Technologies Prohibited or Restricted from Export in China	2008.11.01

As shown above, the current control lists have different naming, including lists, catalogues and directories. Therefore, after the previously First Review Draft and the Second Review Draft were issued, there were certain doubts from the public regarding the control lists that the drafts refer to. There was an assumption that a unified control list for the controlled items would probably promulgate. In the final legislation, through the definition of the control list, the new law is connected to the current legislation, which addressed the doubts from the public to a certain extent. That is, after China's Export Control Law takes effect, the regulatory agencies will most likely continue to use the current control lists, directories and catalogues.

3.4 Reiterate the attitude towards the internal compliance system of export control: guiding and encouraging

Regarding the establishment of an internal compliance system for export control by export operators, the attitude of the legislature has fluctuated significantly in previous drafts. In the Exposure Draft, operators are encouraged to establish an internal compliance mechanism for export control. The First Review Draft incorporates the establishment of an internal compliance review system by export operators into the legal obligations of export operators. But in the Second Review Draft, the establishment of an internal compliance review system for export control is no longer a mandatory obligation of export operators, but one of the conditions for obtaining licensing facilitation (Article 14). The final law finally adopted the Second Review Draft's approach, reiterating the State's export control authority's attitude to guide and encourage export operators to establish and improve internal export control compliance systems. Article 5 of the Export Control Law states that the State's export control authority shall timely release export control guidelines to guide export operators in establishing a sound export control internal compliance system and in standardizing operations".

According to current legislation, operators engaged in the export of nuclear dual-use items and related technologies shall establish an internal control mechanism. Article 18 of the Regulations on the Export Control of Nuclear Dual-use Items and Related Technologies stipulates that exporters shall establish and improve the internal control mechanism for the export of nuclear dual-use items and related technologies, and properly keep relevant contracts, invoices, documents, business correspondence and other documentation for no less than 5 years. The Ministry of Commerce may consult and copy relevant materials. Besides, export operators engaged in other controlled items have no such obligation. As the competent supervising authority for import and export control of dual-use items, the MOFCOM encourages operators of dual-use items to establish export control compliance mechanisms. The Announcement No. 69 of MOFCOM in 2007, the Guidance on the Establishment of Internal Export Control Mechanisms for Enterprises, provides guidance for export control enterprises to establish export control compliance systems. Based on the new law, we speculate that the MOFCOM may subsequently issue or update guidelines and advisories for businesses to establish internal export control mechanisms.

3.5 Completing the regulations of the control blacklist

Article 18 of the Export Control Law adds an exception permission procedure for transactions with the importers and end users included in the control blacklist, and a procedure for the removing from the control blacklist. Article 18 states that exporters shall not conduct transactions with importers and end users listed on the control blacklist in violation of the regulations. Under special circumstances, if an exporter

indeed needs to enter into a transaction with an importer or end user on the control blacklist, it can submit an application to the State's export control authority. For the importers and end users that are included on the control blacklist, if the circumstances referred to in paragraph (1) are eliminated upon implementation of relevant measures, they may submit an application to State's export control authority to remove them from the control blacklist. The State's export control authority may remove such importers and end users from the control blacklist depending on the actual situation.

This amendment means that the Export Control Law: 1) does not completely prohibit export operators (Chinese businesses) from conducting transactions with importers and end users included in the control blacklist, and they can apply for transaction license if indeed necessary; 2) stipulated a removal procedure on the control blacklists, and the basis of removal is by eliminating the reasons for being included in the control blacklist after taking remedial measures (that is, violating end-user or end-use management requirements or; endangering national security and interests, or using controlled items for terrorist purposes).

Regarding the revision of the control blacklist, we have made suggestions in the legislative consultation conference of the First Review Draft, including the adding of the removal procedures to the provisions of the control blacklist, to provide authorization for law enforcement by the supervisory authority, and to leave a good link for the promulgation of future implementation regulations; and there should be no "one size fits all" control approach for transactions related to the control blacklist, that export operators should be allowed to apply for permission. We are very pleased that the relevant recommendations above have been adopted in the final version.

In addition, the revision of the control blacklist is similar to the Provisions on the Unreliable Entity List that came into effect just last month. It can be seen that the legislature may reference the relevant arrangements of the Unreliable Entities List regime.

On September 19, 2020, with the approval of the State Council, the Ministry of Commerce announced the Provisions on the Unreliable Entity List (Ministry of Commerce Order No. 4, 2020), which came into effect immediately. China has established an unreliable entity list system to take sanction measures against certain specific actions of foreign entities in international economic and trade and related activities. Specifically, if the functioning mechanism finds or determines through investigation that a certain foreign entity has conducted certain activities, the working mechanism may include the foreign entity in the Unreliable Entity List. Those listed on the Unreliable Entity List may be subject to one or more measures, including being restricted or prohibited from engaging in import and export activities related to China. However, under special circumstances, if Chinese businesses, other organizations or individuals authentically indeed need to conduct transactions with foreign entities that are restricted or prohibited from engaging in import and export activities related to China in the Regulations, they may apply to the working mechanism. Only after approval may transactions with such foreign entity be conducted. The Unreliable Entity List system also provides for removal procedures. If the relevant foreign entity corrects its behavior within the prescribed correction period and takes remedial measures to eliminate its consequences, the working mechanism shall make a decision to remove it from the Unreliable Entity List.

Similarly, there is also a formal removal procedure in the management of the Entity List and sanctions blacklists under U.S. law. When the relevant facts show that there is an error or the business has corrected the violation, the business may apply to the U.S. Department of Commerce or the Office of Foreign Assets Control under the Treasury Department for removal from the list. For the entities listed on the Entity List by the United States, specific import and export transactions can still be carried out. Entries on the Entity List usually state specific export rules for specific entities. For example, certain license exceptions for goods in transit may still apply, and a case-by-case export license review policy may apply to specific humanitarian supplies.

3.6 Refining the liabilities of revocation of export business qualifications

Regarding the suspension penalties for export operators in violation of relevant export control regulations, the Export Control Law has perfected provisions, that is, those who violate the regulations will no longer

directly be revoked of their export business qualifications, but only be revoked of the export business qualifications of related controlled items. Such revision is embodied in Article 34, Article 37, and Article 38 of the Export Control Law. This revision reflects the pertinence of penalties, which is a good thing for export operators. For export operators who violate relevant export control regulations, if a certain type of controlled item is exported in violation of the regulations, the export business qualification of such related controlled item will be revoked, and the export activities of other controlled items will not be affected.

3.7 Clear Criminal liabilities for violation of export control

Article 43 of the Export Control Law states that Those who violate the relevant export control regulations of this Law and endangers national security and interests, shall be dealt with and punished in accordance with relevant laws and administrative regulations in addition to the punishment contained in this Law. Those who violate the provisions of this Law and export prohibited controlled items or export controlled items without a license, shall be investigated for criminal liabilities in accordance with the law.”

This revision reflects the legislature’s emphasis on criminal liabilities for illegal export activities. The Second Review Draft states that “if the violation of this law constitutes a crime, criminal liabilities shall be investigated in accordance with law”. In the final text, the export of controlled items prohibited by the exporting country or the unlicensed export of controlled items clearly results in criminal liabilities. According to the provisions of the current Criminal Law, the export of export-prohibited controlled items or unauthorized export of controlled items may constitute a crime of smuggling, leaking state secrets or other crimes, which will be investigated for criminal liabilities in accordance with the law, and will be investigated by the customs for administrative liabilities.

3.8 Adding provisions for countermeasures

Article 48 of the Export Control Law states that if any country or region abuses export control measures to endanger the national security and interests of the People’s Republic of China, the People’s Republic of China may take reciprocal measures against that country or region depending on the circumstances. The provisions on reciprocal measures were first introduced in the first edition of the Exposure Draft. Article 9 of the Exposure Draft states that if any country (region) adopts discriminatory export control measures against the People’s Republic of China, the People’s Republic of China may take corresponding measures against that country (region). However, in the First Review Draft and the Second Review Draft, this article was deleted, and was finally added to the final version. This provision is consistent with the principle of reciprocity upheld by the Foreign Trade Law, and also reflects the strong attitude of the legislature to protect China’s national security and interests, and the status of the Export Control Law as a trade law.

4. What businesses need to know about the China's Export Control Law

In addition to the above-mentioned amendments, the Export Control Law of China has a comprehensive and coordinated significance for the current export control tasks. Many important revisions have been formed in the Second Review Draft and reflected in the final version. We have sorted out the important mechanisms of the Export Control Law of China to help businesses understand which items are subject to control, which transaction links need attention, and how to apply for export licenses and other regulations of the Export Control Law, before the new law comes into effect in December, and to comply with regulations in advance.

4.1 Controlled items

According to Article 2 of the Export Control Law, the following items are subject to control:

- a Dual-use items: goods, technologies and services that can be used for both civil and military purposes or to enhance military potential, especially for the design, development, production or use of weapons of mass destruction;
- b Military items: refers to equipment, special production equipment used for military purposes and other related goods, technologies and services;
- c Nuclear: refers to relevant nuclear materials, nuclear equipment, non-nuclear materials used in reactors, and related technologies and services;
- d Other goods, technologies, and services related to fulfilling non-proliferation and other international obligations and maintenance national security; and
- e Technical information and other data related to the above items.

As mentioned above, the technical documentation and data are newly added, and through the fourth paragraph that the general expression also covers "other goods, technologies, and services related to the performance of non-proliferation and international obligations and maintenance of national security", the Export Control Law not only covers the items currently under control, but also maintains convergence with the comprehensive control and temporary control mechanism. It should be noted that, even if an item meets the above definition, it does not necessarily mean that it will be subject to China's export control. The scope of controlled items should be interpreted on the basis of the above definition in combination with the control list, comprehensive control and temporary control.

4.2 Controlled activities

According to Articles 16 to 19 of the Foreign Trade Law and Article 35 of the Regulations on the Administration of Import and Export Goods, controlled activities include not only paid transactions conducted by means of transfers and licensing, but also foreign gifts and exhibitions, scientific and technological cooperation, assistance, service, and investment. Re-export and provision (deemed export) are not within the scope of the existing laws and regulations.

According to Article 2 of the Export Control Law, the following trading activities related to controlled items are subject to control:

- a Export: transfer of controlled items from the territory of the People's Republic of China to abroad;
- b Provision: provision of controlled items by citizens, legal persons and unincorporated organizations of the People's Republic of China, to foreign organizations and individuals; and
- c Transit, transshipment, express shipment and re-export: transit, transshipment, express shipment, re-export, or export from bonded areas, export processing zones and other special customs supervision areas and export supervised warehouses, bonded logistics centers and other bonded supervision places to abroad.

On the basis of the existing legislation, the supervision of provision and re-export is added. We may see that the Export Control Law has improved and strengthened the control of export behaviors at the

legislative level. At the same time, we have noticed that the current legislation provides some exceptions to controlled activities. For example, Article 9 of the Export Control of Nuclear Dual-use Items and Related Technologies, where the nuclear dual-use items and related technologies are exported for the purpose of exhibition abroad, self-use by the Chinese party abroad or inspection and maintenance abroad and will be transported back to the Chinese territory within the prescribed time limit, or they are transported into the Chinese territory for inspection and maintenance and will be transported out of the Chinese territory, or they are exported under any other circumstances prescribed by the Ministry of Commerce, the exporter may, upon the examination and approval of its application, be exempted from the submission of relevant export application documents. The relevant exceptions do not conflict with the new law and should continue to apply after the new law becomes effective.

4.3 Control lists

Article 9 of the Export Control Law states that “state’s export control authority shall, in accordance with the provisions of this law and relevant laws and administrative regulations as well as export control policies and the prescribed procedures, consult with relevant departments to formulate and adjust the export control list of controlled items and publish them in a timely manner”. As mentioned above, China currently implements control lists of goods, technologies and services that are restricted and prohibited from exporting, and related lists, catalogues and directories are basically in line with international standards, covering the Zangger Committee and the Nuclear Suppliers Group control list that China has participated in, and they also highly align with the “Australia Group” list of international organizations or treaties that prevent the proliferation of biological and chemical weapons. Enterprises shall pay attention to various control catalogues or lists to determine whether specific export business is feasible.

Compared with the U.S. export control law which excludes the non-controlled items (all U.S. items except for U.S. technology, software, products and other items that are specifically excluded by the EAR are subject to the control of EAR), the Chinese export control law adopts a more conservative enumeration mechanism. That is to say, except for the items specified in the export control lists, unless they are also subject to comprehensive control or temporary control, the other items are not subject to China’s export control law. This enumeration mechanism inherits the method used in Catalogue of Dual-use Items and Technologies Subject to the Administration of Import/ Export License, which is currently effective

For comparison, we hereby list the scope of the controlled items of the EAR: In essence, the export, re-export, and transfer (in-country) of all items other than items under the exclusive control of other agencies of the United States government or items excluded from Article 734.3(b) of the EAR, are subject to EAR control. According to section 734.3(a) of the EAR, items subject to the EAR include:

- a All items within the territory of the United States (including commodities, technology and software, the same below), including items within the U.S. foreign trade zone and items transshipped from the United States;
- b All items originated from the United States, no matter where they are located;
- c Foreign items incorporating U.S.-origin items, bundled with U.S.-origin software, foreign software commingled with U.S.-origin software or the foreign technology commingled with U.S.-origin technology. For items described in 734.4(a), there is no requirement for the level of U.S.-origin components. For items described in 734.4(c) and 734.4(d), the level of U.S.-origin components must exceed the de minimis level (25% for Mainland China);
- d Specific “direct products” produced by foreign countries using specific technologies or software of origin in the United States. “Direct products” refer to items (including technological processes and services) that are directly produced using technology or software. It is worth noting that after the US-origin encrypted items are exported under the ENC license exception (encrypted items), specific items developed or produced by foreign countries are subject to EAR control; and

- e Commodities produced by any large-scale equipment or its main components located outside the United States, provided that the large-scale equipment or main components are “direct products” of specific U.S.-origin technology or software.

The regulated items under the currently effective 2019 Catalogue of Dual-use Items and Technologies Subject to the Administration of Import/ Export License (for more details, please visit <http://www.mofcom.gov.cn/article/b/e/201912/20191202927099.shtml>) include:

- a Chemicals that can be used to produce chemical weapons;
- b Precursor chemicals;
- c Radioisotope;
- d Nuclear export control items;
- e Nuclear dual-use items;
- f Biological dual-use items;
- g Items related to specific chemicals;
- h Missile-related items;
- i **Specific dual-use items and civilian items.**

In this list, most of the items are related to chemicals, nuclear products, biological products, and missile products, and there are only 11 items in total for specific dual-use items and civilian items:

Nr.	Commodity Name	Description	HS Code
1	Unmanned aerial vehicle or unmanned airship	<p>Capable of controlled flight beyond the operator’s natural visual range and having any of the following characteristics:</p> <ol style="list-style-type: none"> 1. The maximum battery life is greater than or equal to 30 minutes and less than 1 hour, and has a take-off capability and a stable and controllable flight capability under gust conditions of greater than or equal to 46.3 km/h (25 knots); 2. The maximum battery life is greater than or equal to 1 hour. <p>Technical Description: “Operator” means a person who controls an unmanned aerial vehicle or an unmanned airship; “Battery life” means the duration of continuous flight under the condition of zero wind at sea level when converted to the international standard atmospheric environment conditions (ISO2533:1975); “Natural visual range” means the visual acuity of a person without any auxiliary means, with or without vision correction. Note: not applicable to model aircraft or model airship.</p>	<p>8802200011 8801009010</p>
2	Equipment and components specially designed for converting manned aircraft and manned airships into unmanned aerial vehicles and unmanned airships listed in item 1 above	<p>Note: not applicable to model aircraft or model airship.</p>	

3	Designed or modified suction piston or rotor internal combustion engine for unmanned aerial vehicles and unmanned airships flying at altitudes above 15420 meters (50,000 feet)	Note: not applicable to model aircraft or model airship.	8407102010
4	Digital computer with "Adjusted Peak Performance (APP)" greater than 8.0 weighted TeraFLOPS		8471411010 8471491010 8471501010
5	Electronic components specially designed or modified using processor aggregation to enable aggregated "adjusted peak performance (APP)" to be greater than 8.0 weighted TeraFLOPS		
6	External interconnection equipment specially designed to aggregate digital computer performance	Its single link unidirectional communication rate exceeds 2.0Gbyte/s, but it is not suitable for internal interconnection devices (such as backplanes, buses), passive interconnection devices, network access controllers or communication channel controllers	8517623710 8517623910
7	Trailing suction dredger	1. The capacity is greater than or equal to 1500 cubic meters; 2. The digging depth is greater than or equal to 15 meters. 3. With bow blowing function and device.	8905100010
8	Cutter suction dredger	1. Reamer power is greater than or equal to 500 kW; 2. The digging depth is greater than or equal to 15 meters; 3. The total installed power is greater than or equal to 2000 kW.	
9	Bucket dredger	1. The bucket capacity is greater than or equal to 4 cubic meters; 2. The digging depth is greater than or equal to 15 meters.	
10	Sand suction ship	1. The cabin capacity is greater than or equal to 500 cubic meters; 2. The total installed power is greater than or equal to 1000 kW.	
11	Self-propelled and self-unloading mud barge	1. The cabin capacity is greater than or equal to 1000 cubic meters; 2. With bow blowing function and self-unloading device.	8901904110

Since the export control list of controlled items still follows the legislative approach of the Catalogue of Dual-use Items and Technologies Subject to the Administration of Import/ Export License, we infer that the future export control list of controlled items will still be mainly consisted of items related to chemicals, nuclear products, biological products, and missile products. The control over specific dual-use items and civilian items will increase, but it will not increase significantly.

In addition to the lists and directories listed above, enterprises should keep a close attention to the announcements issued by relevant state ministries and commissions from time to time, including the Ministry of Commerce, the Ministry of Industry and Information Technology, the National Atomic Energy Agency, the General Administration of Customs, and the State Administration for Science, Technology and Industry for National Defense. For example, the Ministry of Commerce, the Ministry of Industry and Information Technology, and the State Administration for Science, Technology and Industry for National Defense jointly announced the List of Dual-use Items and Technologies Prohibited from Exporting to North Korea in the form of Announcement No. 17 on February 5, 2018, and several other restrictions on North Korea were also issued in previous announcements. In 2017, the Ministry of Commerce¹ and the General Administration of Customs also issued a joint announcement to implement export control on large dredgers. In 2015, they also issued a joint announcement on the export control of some high-performance computers and unmanned aerial vehicles. As the list will be released publicly, any export or export declaration activities by business due to failure to view the list timely or due to misunderstanding of the list may be considered a violation.

4.4 Export license administration system

Both the current legislation and the Export Control Law state that China shall implement a licensing system for the export of controlled items and provide a comprehensive control system and a temporary control system for items beyond the control list. Article 12 of the Export Control Law stipulates the export license administration system and comprehensive control system, and clarifies the three types of conditions that require an export license:

- a The controlled items on the export control list;
- b Temporary controlled items;
- c Goods, technology and services not included in the items listed in the export control list and temporarily controlled items, where the exporter knows or should have known that the export of such goods, technologies or services may pose three types of risks: endangering national security; could be used to design, develop, produce, or for the use of weapons of mass destruction and their delivery vehicles; or could be used for terrorist purposes.

Therefore, businesses should follow the following steps to determine whether they need to apply for an export license:

- a Controlled items on the export control list: an export license is required;
- b Temporary controlled items: an export license is required. After the expiration of the temporary control period, if the period is extended or converted into an item on the export control list, a license is still required; if the temporary control is cancelled, it is necessary to determine whether the item has the above three types of comprehensive control risks; if it exists, a license is required.
- c Goods, technologies and services not included in the controlled items listed in the export control list and the temporary controlled items: If there is a comprehensive control risk of the above three types, a license is required.

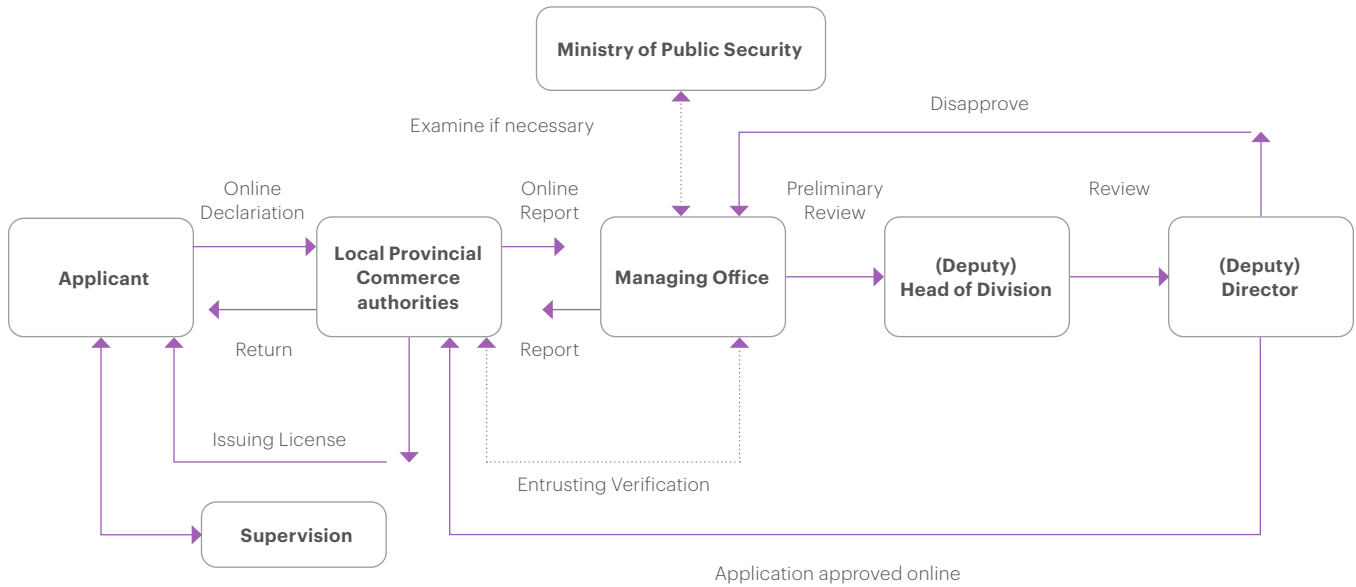
This means that the review obligations of export businesses include: self-determination of whether the items and technologies to be exported are included in the control list, whether they are under temporary control, and whether there is a risk of being used in weapons of mass destruction and their means of

1. Companies can check the latest control and ban list through the website of the Bureau of Industry, Security, Import and Export Control of Ministry of Commerce <http://cys.mofcom.gov.cn/article/glm/>

delivery (regardless of whether the item and technology are included in the control list).

It should be noted that **after the Export Control Law takes effect, in addition to direct export, export licenses are also required for the provision and re-export of controlled items.**

Reference: the review process of dual-use items and technology export license application and import and export license samples



中华人民共和国两用物项和技术进口许可证
IMPORT LICENCE FOR DUAL-USE ITEMS AND TECHNOLOGIES OF PRC

1. 进口商 Importer		2. 进口许可证号 Import licence No.	
3. 收货人 Consignee		4. 进口许可证有效截止日期 Import licence expiry date	
5. 贸易方式 Terms of trade		6. 进出口(地区) Country/Region of exportation	
7. 合同号 Contract No.		8. 付款方式 Payment	
9. 报关口岸 Place of clearance		10. 运输方式 Mode of transport	
11. 最终用途 End-use		12. 最终用户 End-user	
13. 外汇来源 Terms of foreign exchange		14. 原产地(地区) Country/Region of origin	
15. 商品名称 Description of goods		16. 商品编码 Code of goods	
17. 规格、型号 Specification	18. 单位 Unit	19. 数量 Quantity	20. 单价 (USD) Unit price
			21. 总值 (USD) Amount
			22. 总值 (美元) Amount in USD
23. 备注 Supplementary details		24. 发证机关章印 Issuing authority's stamp & signature	

中华人民共和国两用物项和技术出口许可证
EXPORT LICENCE FOR DUAL-USE ITEMS AND TECHNOLOGIES OF PRC

1. 出口商 Exporter		2. 出口许可证号 Export licence No.	
3. 发货人 Consignor		4. 出口许可证有效截止日期 Export licence expiry date	
5. 贸易方式 Terms of trade		6. 进出口(地区) Country/Region of purchase	
7. 合同号 Contract No.		8. 付款方式 Payment	
9. 报关口岸 Place of clearance		10. 运输方式 Mode of transport	
11. 收货人 Consignee		12. 最终用户 End-user	
13. 合同签订日期 Date of contract signed		14. 最终目的地(地区) Destination	
15. 商品名称 Description of goods		16. 商品编码 Code of goods	
17. 规格、型号 Specification	18. 单位 Unit	19. 数量 Quantity	20. 单价 (USD) Unit price
			21. 总值 (USD) Amount
			22. 总值 (美元) Amount in USD
23. 备注 Supplementary details		24. 发证机关章印 Issuing authority's stamp & signature	

4.5 Temporary Control and Embargo System

In order to better adapt to various special circumstances that may arise in export control, China has established an embargo and temporary control system, that is, based on the need to fulfill international obligations and maintain national security, the export control authorities may adopt the following measures:

- a Temporary Control: temporary control of goods, technologies and services not included in the export control list;
- b Embargo: the authorities may prohibit the export of relevant controlled items, or prohibit the export to a specific destination country or region and specific natural persons, legal persons or other organizations.

As a supplement to the control list, temporary control remains unclear both in the current legislation and in the First Review Draft. We noticed that there were enterprises questions how to deal with items subject to temporary control after the temporary control period expires. The Second Review Draft and Article 9 of the final version of the Export Control Law further improve the First Review Draft's stipulation that the implementation period of temporary control shall not exceed 2 years, they outlined that the implementation of the temporary control shall be evaluated in a timely manner before the expiration date, and either cancel, extend such temporary control or add the items into the export control lists accordingly. This provision not only strengthens the effectiveness of temporary control (the temporary control period can be extended for more than 2 years or change from the temporary control status to the control list status), but also grants the export management authority the ability to evaluate items before the temporary control period expires. This provides clear operation guidelines for enterprises.

4.6 Export operator qualification management

The People's Republic of China implements a franchise and filing system for export operators. Article 11 of the Export Control Law stipulates that "exporters engaged in the export of controlled items shall comply with the provisions of this Law and relevant laws and administrative regulations. Those who need to obtain the exporter qualifications for related controlled items shall obtain the corresponding qualifications". This means that the qualification management for export operators will follow the current law.

The military export franchise system. Operators engaged in the export of military items shall obtain franchise qualifications for the export of military items and engage in relevant business activities within the authorized business scope. Operators engaged in the export of sensitive items and technologies shall in accordance with the Administrative Measures for the Registration and Management of the Export of Sensitive Items and Technologies apply to the Ministry of Commerce for registration and obtain export qualifications. Without registration, no enterprise or individual may engage in the export of sensitive items and technologies. The registration certificate is valid for three years. For detailed procedures, please check the website of the Ministry of Commerce for more information. <http://exctrl.mofcom.gov.cn/>

In addition, operators engaged in the export of dual-use items and technologies other than sensitive items and technologies shall, in accordance with the Measures for the Record and Registration of Foreign Trade Operators, register with the Ministry of Commerce or an agency entrusted by the Ministry of Commerce.

4.7 End user and end use management

End-user and end-use management is part of China's export control system and is also a common practice in international export control legislation. The People's Republic of China implements a strict management over the end users and end uses of the controlled items. Exporter are obliged to provide supporting documents for end users and end uses, which shall not be changed without authorization. Any changes should be reported to the supervising authority in a timely manner.

Article 17 of the Export Control Law strengthens the management of end users and end uses of controlled items. Article 17 stipulates that "the state's export control authority shall establish a risk management system for end users and end uses of the controlled items, evaluate and verify the end users and end uses of the controlled items, and strengthen the management of the end users and end uses". The regulation requires

that the management of the end-user and end-use are not limited to the evaluation of the end-user and end-use supporting documents (i.e. letter of commitment), but also include verification. At the same time, it stipulates that the export management authority shall **strengthen the management of the end users and end uses**.

This regulation reflects the expansion of the management authority of the export control administration in terms of end users and end uses. In addition to the evaluation of the end user and end use supporting documents, export control authorities may verify end users and end uses through other means. This also is a hint for enterprises, that during the export process, they should strengthen their end user and end use verification.

4.8 Control Blacklist

As mentioned above, the Export Control Law adds a control blacklist system to the existing laws, adopting relevant prohibition or restrictive measures towards importers and end users who violate end users or end use commitments, who may endanger national security, or who use controlled items for terrorist purposes.

For importers and end users listed on the control blacklist, the State's export control authority may take necessary measures such as prohibiting, restricting the trade of related controlled items, and ordering the suspension of the export of related controlled items. Exporters shall not violate the regulations to conduct transactions with importers and end users listed on the control blacklist. There are exception permission procedures for transactions with entities included in the control blacklist, and the control blacklist also has a removal procedure, these have been explained above and we will not repeat it here.

The control blacklist system combines the effectiveness of the US Export Administration Regulations' three lists: the Denied Persons List (total rejection), the Entity List (application for permission) and the Unverified List (red flag). The new regulations distinguish the consequences of being included in the control blacklist. For export companies, they should pay attention to whether their business partners are included in the control blacklist, and the corresponding prohibitions or restrictive measures, so as to help them decide whether to suspend transactions or apply to the Ministry of Commerce for an exception permission. For foreign companies that are included in the control blacklist, they should actively communicate with the Ministry of Commerce of the People's Republic of China about the causes of their inclusion, and actively correct or eliminate the causes, and apply for a removal from the list.

4.9 Responsibilities of export agency service providers

Article 20 of the Export Control Law clearly stipulates that no organization or individual shall provide services such as agency, freight, postage, customs declaration, third-party e-commerce trading platform and financial services for exporter who engage in export control violations. The First Review Draft only regulated the legal liability for providing third-party agency services for export control violations (Article 37). This is a typical legislative flaw of "penalties with no obligations". Consequently, the legislature has added Article 20 in the Second Review Draft which stipulated the obligations of third-party agency service, that is, **no organization or individual shall provide services such as agency, freight, postage, customs declaration, and third-party e-commerce trading platforms and financial services for exporters engaged in export control violations**. This provided a source of obligation for the penal provision of Article 36. It is worth noting that the form of liability for third-party agency service providers to bear legal responsibility is apparent. Therefore, companies should request importers and end users to issue written commitments, statements and guarantees, and keep records of relevant business documents to avoid apparent risks.

4.10 Provisions that counteract the extraterritorial effects of other countries' Export Control Laws

Article 32 of the Export Control Law stipulates that "organizations and individuals within the People's Republic of China shall provide export control-related information abroad in accordance with the law. Information that may endanger national security and interests shall not be provided". This provision was not mentioned in the First Review Draft, but was added in the Second Review Draft. Based on our understanding, the phrase "providing export control-related information abroad" includes the following

situations: If an organization or individual within the People's Republic of China is requested by another government agency to provide relevant information on export control, the subject under investigation should comply with bilateral judicial assistance regulations, the Law on Guarding State Secrets, and the Cyber Security Law. They should only provide export control-related information in a limited manner and on the basis of not endangering national security. Based on the accelerated pace of Chinese enterprises going global, the risk of responding to lawsuits and investigations in foreign countries is increasing. In order to prevent and counter the extraterritorial jurisdiction of foreign countries, the addition of relevant regulations in the Export Control Law is necessary to safeguard China's national security.

4.11 Principles applicability outside the territory

Under U.S. law, although the EAR does not clearly stipulate that the provisions of the EAR are applicable to foreign entities, the EAR has granted U.S. identification to any item, software or technology that are subject to the EAR (within the U.S., produced using certain U.S. technology, containing specific proportion of U.S. contents, etc.). This results any foreign individual and company being subject to the EAR, as long as they participate in a transaction of items subject to the EAR. In the process of soliciting opinions on the legislation of the Export Control Law, whether China's Export Control Law should have extraterritorial effects is one of the controversial aspects of the legislation.

Article 44 of the Export Control Law is a principle with extraterritorial effects, it stipulates that "if organizations and individuals outside of the People's Republic of China violate the relevant export control regulations of this Law, impede the national security and interests of the People's Republic of China, and hinders the fulfilment of international obligations such as non-proliferation, they shall be subject to legal liabilities in accordance with the law". This provision expands the scope of the application of the Export Control Law from exporter within China, importers and end users outside of China to any entities outside of China that **participate in violation of the relevant export control regulations of this Law, impede the national security and interests of the People's Republic of China, and hinders the fulfilment of international obligations such as non-proliferation.**

We have pointed out during the legislative consultation on the First Review Draft that since import and export activities often involve multiple participants, and a violation involves multiple illegal entities, only penalizing exporters, end users and importers may be insufficient. Therefore, we suggest that the targets of punishment should be expanded from exporters to all entities that violate the Export Control Law, which would include importers, end users, overseas agencies and other entities in the scope of the standard, instead of only fining exporters, adding importers and end users to the control blacklist. The final effective version adopted our suggestions and enacted provisions on the punishment of extraterritorial illegal entities. We believe that the revision of this article is of great significance and reflects the flexible yet resolute nature of the Export Control Law.

Related to this article is Article 28 of the Export Control Law, the extent of the State's export control authority's ability to supervise and inspect the export activities of controlled items. However, how to carry out investigations, seizures, inquiries, and inspections against foreign entities that violate regulations in reality needs to be further clarified in practice.

4.12 Customs' supervision authority

As the country's entry and exit supervision and management agency, the customs bears the responsibility of supervising the entry and exit of goods. According to the current legislation, the customs has the right to require enterprises to provide export licenses or certificates issued by the Ministry of Commerce that waives the need to submit licenses. In short, when an enterprise declares for export without submitting a license, the customs may, in accordance with its administrative law enforcement power, require the enterprise to provide it with the necessary documents. If the enterprise thinks that it does not need to provide such documents, it needs to obtain a certificate from the Ministry of Commerce that the export commodity does not require a license.

For example, Article 16 of the Regulations on the Export Control of Nuclear Dual-use Items and Related Technologies stipulates that customs can question whether the exporter of equipment, materials, software and related technologies need to apply for export licenses for nuclear dual-use items and related technologies, and they can request the exporters to submit their supporting documents applied to the Ministry of Commerce for the determination that whether the export goods fall within the scope of the export control of nuclear dual-use items and related technologies. If they fall within the scope of the export control of nuclear dual-use items and related technologies, exporter shall apply, in accordance with the provisions of these regulations, for an export license for nuclear dual-use items and related technologies. The specific measures shall be formulated by the General Administration of Customs with the Ministry of Commerce.

The Export Control Law further clarifies the duties and powers of the customs in export control. In particular, if the consignor of exported goods fails to submit the license issued by the State's export control authority to the customs, and the customs has evidence that the exported goods may fall within the scope of export control, the customs shall question the consignor of the exported goods. The customs may request the state's export control authority to organize identification, and deal with the situation pursuant to the law and based on the identification conclusion drawn by the state's export control authority. **Customs shall not grant clearance for exports during the identification or query period.**

4.13 Legal Liabilities

According to the Export Control Law, the legal liabilities for violating export control regulations include:

- a Administrative fines:
 - i Exporter: if the illegal business income is more than 500,000 RMB, a fine of five to ten times the illegal business income shall be imposed. if there is no illegal business income or the illegal business income is less than 500,000 RMB, a fine of more than 500,000 RMB, and not exceeding 5 million RMB shall be imposed.
 - ii Third-party agency service providers: if the illegal business income is more than 100,000 RMB, a fine of three to five times the illegal business income shall be imposed. If there is no illegal business income or the illegal business income is less than 100,000 RMB, a penalty of more than 100,000 RMB, and not exceeding 500,000 RMB shall be imposed.
- b Administrative penalties: Confiscation of illegal income, suspension of business for rectification, and cancellation of export business qualifications of related controlled items.
- c **Market prohibition: Applications for export licenses submitted by exporters who violated the Export Control Law will not be accepted within five years, and the directly responsible supervisors and other directly responsible personnel must not engage in relevant export business activities within five years. If criminal liability is triggered, the market restriction is lifetime.**
- d Criminal liabilities: Those who violate the provisions of this Law, and the export of controlled items prohibited by the exporting country or the export of controlled items without permission shall be investigated for criminal responsibility in accordance with the law.
- e Other liabilities: Those who violate the relevant export control regulations of this Law and endanger national security and interests shall be dealt with and punished in accordance with relevant laws and administrative regulations in addition to penalties in accordance with this Law.

The final effective version's emphasis on criminal responsibility has been explained above, hence will not be repeated here.

5. How can companies establish a well functioning China's export control compliance system

The Export Control Law will come into effect on December 1, 2020, leaving less than one and a half months for companies to conduct self-inspection and compliance. During this period, it is recommended that entities engaged in import and export activities, including Chinese enterprises that export goods, foreign companies that act as importers and end users, and companies that provide relevant third-party agency services for export transactions to pay attention to legislative developments, to screen items, participants, and end users and end uses involved in the import and export transactions. This may help them discover potential risks in a timely manner, and improve their compliance system.

5.1 Paying attention to the release of control lists, control blacklists and subsequent implementation rules

The Export Control Law, as the upper-level law governing export control needs to be interpreted in conjunction with administrative regulations, rules, control lists, and control blacklists to determine the specific management requirements and corporate compliance requirements. Although the current control lists, catalogues and directories are still valid, enterprises should pay attention to whether the Ministry of Commerce and relevant departments update or release new control lists. In addition, with regard to the control blacklist added by the new law, because it directly affects the import and export activities of enterprises, enterprises should pay close attention to their developments. Furthermore, enterprises should pay attention to the legislative developments of the implementation rules of the Export Control Law, and put forward suggestions to the legislature through channels such as enterprises associations and industry associations.

5.2 Evaluation of controlled items and objects

Enterprises should determine whether the goods, technologies and services (including data such as technical information) exported by the enterprise are subject to the scope of the Export Control Law, whether they are included in the control list, whether they are subject to the state's export control department's temporary control, whether they are subject to the scope of comprehensive control, and whether the license has been obtained in accordance with the Export Control Law and other relevant laws and regulations.

Relevant companies should, in accordance with the type of export control corresponding to the relevant business, timely register or obtain qualifications for export franchise, apply for corresponding export licenses, and after obtaining the license, operate exports within the scope of the license. If the company's business involves non-controlled items that are beyond the export control lists and are not under temporary control, the company should regularly evaluate whether there are risks that its exporting product may endanger national security, be used to design, develop, produce or the use of weapons of mass destruction and their delivery vehicles, or be used for nuclear, biological, and chemical terrorism purposes. Moreover, the company should also conduct background investigation on foreign importers, end users, and end uses before export, and should timely follow up on whether the state's export control authority had published updated control blacklists.

For companies whose business do not involve direct export businesses, but provide exporters with agency services, freight services, postage services, customs declaration services, third-party e-commerce trading platform services or finance services, such as banks, logistics companies, customs clearance companies, etc., should pay close attention to preventing from the risks of providing services to illegal export activities. Intermediary service providers should require service purchasers to provide end-user and end-use certificates or commitments. When there is a risk of illegality they can prove that they have fulfilled their due diligence, and their subjectivity is not "knowingly", therefore, avoid being punished by law.

5.3 The Establishment of Internal Export Control System

According to the Ministry of Commerce Announcement No. 69 of 2007-Guidance Opinions on Establishing Internal Export Control Mechanisms for Companies Engaged in Dual-Use Item and Technology, the Ministry of Commerce has promoted the establishment of internal export control mechanism among companies engaged in research, development, production, import and export of dual-use items and technologies. Specifically, the company's export internal control mechanism shall include the following measures:

- a Establishing an organizational structure: The company should be responsible for the organizational structure of the export internal control mechanism and should clarify the responsibilities of the competent departments and personnel.
- b Formulation of a policy statement: The company shall formulate a policy statement in order to affirm that the company will strictly implement the State's export control policies and regulations as an important content of the development management strategy. The policy statement serves as a guiding principle for the export control mechanism internally, and plays a publicizing role externally.
- c Formulation of review procedures: The export review procedures should clarify which specific links in the operation of the company need the implementation of internal export controls. Through programmed and institutionalized management, the randomness of the export of controlled items and technologies could be eliminated.

For companies with large amounts of export businesses, we suggest such companies to establish a transaction verification system to deal with daily export transaction risks. The review process should be mainly implemented into the following phases of business: customer demand, inquiry of price, technical communication, customer record, project approval, contract signing, product manufacturing, delivery, transportation, transshipment and after-sales service.

The main points of the review process are: whether the exported items are controlled by the State's export control list; whether the export of items or technologies complies with the national export control policies and regulations; whether the receiving country is sanctioned by the United Nations or are recognized as sensitive countries; whether there are risks related to the end-users and end-uses; whether the customer's payment method conforms to general business practices; whether the export transportation route is reasonable, etc.

If a system alarm is triggered (control list, control blacklist, sensitive country or restricted end-use), the transaction should be automatically suspended, and the transaction needs to be transferred to the export control compliance department or an external consulting agency for manual identification; the transaction can continue only if it is identified that it is a false alarm or the company has later obtained the corresponding export or re-export control license. The system shall retain all transaction data for the investigation of the regulatory agency or for self-checking.

The screening subjects of the system shall include all goods, technologies or services that are transferred from the country to overseas, provided to foreign individuals or institutions (whether the provision takes place within or outside the country), or have specific end-uses, to determine whether a government export or re-export license is needed, and when needed, applied for.

- d Preparation of management manuals: Through the use of management manuals, the company should popularize state export control laws and regulations, as well as corporate's internal control systems among company staff, so that the staff could timely understand and effectively implement internal control systems.

The contents of management manuals may usually include: a summary of policies and regulations related to state export control; company policy statements, organizational structures, review procedures, controlled items or technologies the company engages in, items and technologies that may be controlled according to the principle of comprehensive administration, export control review points, various document forms required by export controls, consulting methods of the internal control mechanism, full-time (part-time)

personnel list and contact information, relevant state export control related departments and contact information, company's export control work publicity materials and training information, and other rules, regulations, information, etc. of the internal control mechanism.

- e Training of company staff: businesses should design a training plan based on the specific circumstances of such businesses and carry out training of staffs periodically to ensure that all staffs related to export activities receive the necessary training.

The training plan shall be aimed at making sure company staffs are able to timely understand the State export control policies and regulations, effectively implement the company's internal export control requirements, and properly solve export control related issues; the training can be conducted regularly or irregularly according to the specific situation of the company, and can take the form of online training; training activities can be carried out independently by the company's internal personnel, or by lectures from officials of the competent department of the government or experts and scholars; full-time (part-time) personnel of the company's internal control mechanism shall participate in various export control policies release conferences, training or seminar activities sponsored by the government regularly.

- f Preservation of data files: businesses shall preserve documents related to export controls completely and accurately. Such documents shall include: export records, communication records with governmental departments, customer information and transaction documents, license application documents, license approval documents, and implementation status of export projects. The records of contacts by telephone, fax, e-mail and other methods shall be kept, and the relevant trade document filing procedures and storage requirements shall be clarified. In addition, the company should combine the existing internal regulations to supervise the operation of the internal control mechanism and take corresponding punishment measures for violations to ensure the effective implementation of the internal control mechanism.