



大成 DENTONS

Navigating the New Hurdles under Chinese Export Control Law

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1 General Information

1.1 Why is the Chinese export control important

The *Export Control Law (ECL)* is the first unified export control law and it changes the previous landscape of export control regime in China which is separately addressed in the *Foreign Trade Law*, the *Customs Law*, different regulations¹ and various catalogues. A comprehensive export control law can promote the fulfillment of international obligation related to export controls, such as non-proliferation. The ECL was enacted on 17 October 2020 and will be effective as of 1 December 2020.

Moreover, China has been over the years focusing on its economic structural transformation, which means large investment in the R&D activities and hi-tech sectors. Therefore, the legislation of export control law is put on the agenda as an essential measure to regulate the export activities.

1.2 Who should be concerned about export control in China

It is expected to witness a boom in the enforcement of the ECL in the following years. The consequence including high monetary fines and business prohibition orders that may damage the business and operations of the entities. It is important to comply with export controls **no matter the size of the business entities**.

Undoubtedly, the export business operators shall be concerned about the export control in China. Since the ECL covers the deemed export conducts, **the entities whose businesses involve a large amount of data transferred** shall not ignore the export control in China, such as the high-tech companies, universities and research institutions. Also, the provision of export control related information may be not allowed in some circumstances, even if the information is unrelated to the specifications or parameters of the controlled items.

The ECL stipulates the obligations not only for export business operators, but also for **third-parties service providers**, such as banks, freight forwarders, e-commerce platforms, etc. The liabilities for facilitating violations highlight the risks for companies who provide services to international trading or exporting business rather than directly doing exporting activities. It shall raise the concerns of many international logistic companies, who perform an essential part in the global supply chain to deliver the products made in China to every corner in the world. It is also emphasized to conduct a third-party compliance investigation into the counterparties, to prevent the risk of knowingly facilitating illegal transactions or trading with the parties in the blacklist.

The **third-party services providers** shall also notice that the information on the

¹ Mainly refer to *Regulations on the Import and Export of Goods*, *Regulations on the Administration of Controlled Chemicals*, *Nuclear Export Control Regulations*, *Regulations on Administration of Arms Export*, *Regulations on Export Control of Nuclear Dual-Use Items and Related Technologies*, *Regulations on Export Control of Missiles and Missile-related Items and Technologies*, and *Regulations on Export Control of Dual-Use Biological Agents and Related Equipment and Technologies*.

services provided to the controlled item exports may also constitute the export control related information which is subject to some restriction.

At an individual level, **responsible stakeholders** within a business may include managers and staff within the Marketing & Sales, System / Product Development, Accounting, Procurement, Legal, Program / Contract Management, Production, Customer Support, Logistics and Shipping departments. In a smaller organization, these roles may be combined into a limited number of individuals. Especially, those directly dealing certain transactions or exports, and the executive managers, who are responsible for the business may be sentenced in criminal cases.

1.3 Who is in charge of export control in China

The Export Control Administration Authorities are competent authorities to take charge of the export control tasks. The authorities consist of the Ministry of Commerce (MOFCOM), Ministry of Industry and Information Technology (MIIT) and Central Military Commission. There is a coordination mechanism at the state level to manage the export control tasks among the Export Control Administration Authorities. The Customs is an important authority to spot violation threads in the clearance procedure and verification of the export license.

1.4 What are the most challenging tasks for export control in China

Potential enforcement highlight the compliance program As mentioned above, the ECL is the first comprehensive legislation in export control regime in China. Also, considering the legislative purpose contains the national security and national interests, it is hard to predict which industry or what kind of entities subject to the ECL will be the first focus in the enforcement activities. It is advised that all the entities involving exporting activities or items subject to the ECL shall develop a proper export compliance program.

Proactive communication with authorities It is expected that the implementing regulations and guidelines will be soon promulgated in the near future. For entities, it is also advised to keep positive liaisons with the Export Control Administration Authorities, which may contribute to the designing and operation of the compliance program.

Risk assessment specified to China As we can see, although the ECL of China has some in common with the international norms of export control, it differs from the export control of other jurisdictions in the scope of controlled items and conducts, licensing applications, etc. A risk assessment shall be conducted according to the specific requirements under the Chinese regime. Attentions shall be paid to the direct transferring of compliance program used by entity branches in other jurisdictions.

2 Definition of Key Doctrines

2.1 What are controlled items in China

The items controlled under the ECL could be divided into three categories according to the purpose as illustrated below, i.e. Dual-use items, Military items, and Nuclear items. In addition, a catch-all provision could be found in Article 2 and Article 12 to cover other items related to fulfilling international obligations and protecting national security and national interests of China which may not belong to any categories mentioned. The items controlled cover the goods, technologies, services and data such as the item-related technical documents.

Dual-use items: goods, technologies and services that have both civil and military uses or can help to increase military potential, especially those that can be used to design, develop, produce, or use weapons of mass destruction or the transporting vehicles.

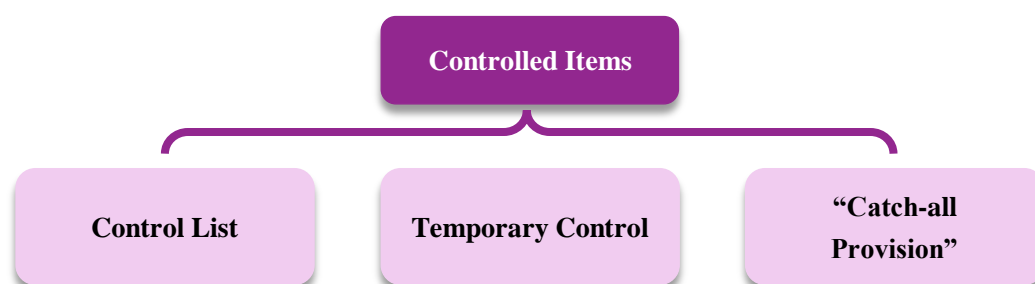
Military items: equipment and specialized production equipment for military use, and other related goods, technologies, and services.

Nuclear items: nuclear materials, nuclear equipment, non-nuclear materials used in reactors, and related technologies and services.

Other goods, technologies and services related to fulfilling international obligations such as non-proliferation and protecting national security and interests. (*Catch-all Provision*)

Most of controlled items are listed From the practical perspective, most of controlled items could be found in the control list or the temporary control orders. However, due to the catch-all provision, the items not included in the control list and temporary control orders can also fall under the scope of controlled items (as explained below).

Official item determination In order to address the uncertainty brought by the catch-all provision, if an exporter is unable to determine whether the goods, technologies, or services fall under the scope of the controlled items, the exporter is allowed to consult with the Export Control Administration Authorities. The Export Control Administration Authorities shall respond in a timely manner.

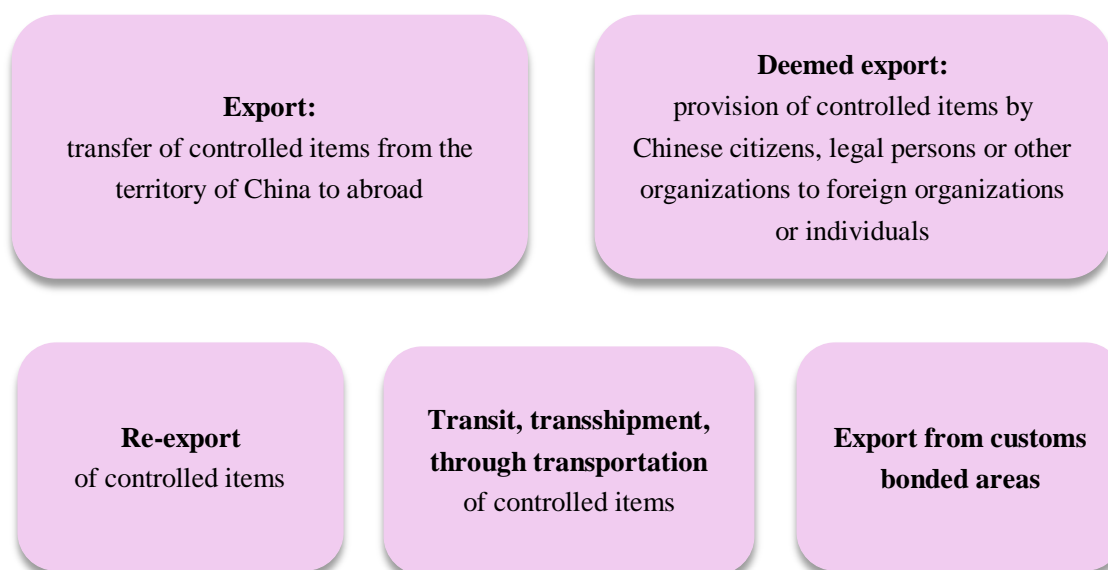


- **Control list** is a group of lists of controlled items that is formulated, announced and amended by the Export Control Administration Authorities under Article 9. The lists will include dual-use items, military products, nuclear items or non-nuclear items for reaction, the lists of which were issued under the previous export control system. Furthermore, it is possible for items controlled for the purpose of national security and interests to be listed in a separate list. Although it is under the scope of catch-all provision, the Export Control Administration Authorities may draw a list of certain items which are highly sensitive for national security or interests. Unlike items under temporary control, the control list will continue to apply on a lasting basis.
- **Temporary control** can be imposed on goods, technologies, or services that are not on the control list by the Export Control Administration Authorities with the approval of the State Council or with the approval of the State Council and the Central Military Commission according to Article 9. Temporary control orders will also be announced. The duration of temporary control shall **not exceed two years**. Upon the expiration of a temporary control order, the Export Control Administration Authorities will review the temporary control order and decide whether to: (i) **cancel** the temporary control; (ii) **extend** the temporary control; or (iii) **add into the control list** the items temporarily controlled.
- A **catch-all provision** is provided in Article 12 to cover items outside the control list or the temporary control, if an exporter knows, should have known or is notified by the authority that the export of such items may: (i) endanger national security and interests; (ii) be used to design, develop, produce or use weapons of mass destruction or their transportation vehicles; or (iii) be used for terrorism purposes. The catch-all provision brings uncertainty as to whether the controlled items would be over-broad, but a consultation process with the Export Control Administration Authority is provided to reduce such uncertainty. According to Article 12, the Export Control Administration Authorities shall response to the consultation in a timely manner. It is expected that further rules will be provided for the consultation process.

2.2 What is or could be a controlled export in China

The conducts subject to the ECL are defined to include:

- (i) **Export:** a transfer of controlled items from the territory of China;
- (ii) **Deemed export:** a provision of controlled items by Chinese citizens, legal persons or other entities to foreign organizations or individuals, no matter within or outside the territory of the P.R.C.
- (iii) **Re-export:** the notion of re-export has not been clearly defined in the ECL and may be further clarified in the implementing regulations. From our experience, the re-export will at least include the exports of same items from one foreign country to another foreign country. It remains to be further clarified whether the foreign-made products with Chinese controlled content are subject to the re-export notion.
- (iv) **Transit, transshipment, through transportation:** According to Article 100 of the *Customs Law of the PRC*, transit, transshipment and through transportation all refer to the transferring which start from a foreign territory, pass through China en route, and to another foreign territory. As for transit, the items will be transported by land within the territory of China. Transshipment and through transportation will not involve inland transportation. Transshipment means to transfer the items from one transportation to another transportation in the customs areas. Through transportation means that the items will be carried into Chinese territory and out of Chinese territory by the same vessel or aircraft.
- (v) **Export from special areas under special supervision by the customs,** such as free-trade zone, export processing zone, bonded logistics center, etc.



2.3 Who are subject to the Export Control Law in China

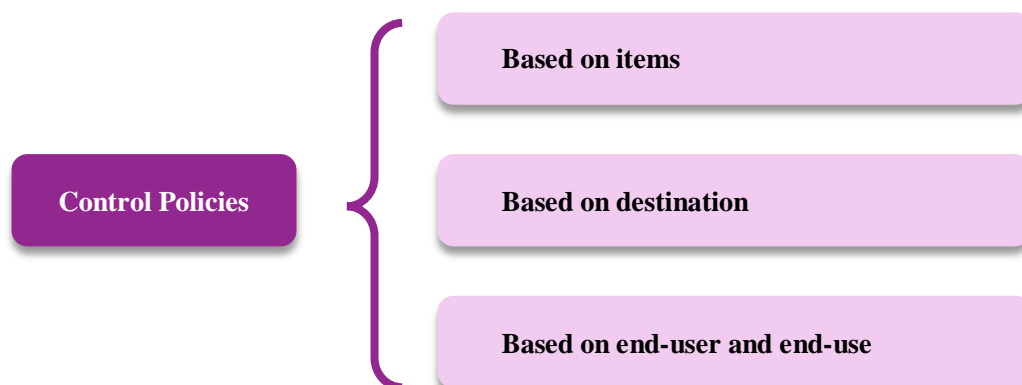
Export business operators in a broad sense The ECL applies to the “export business operators” that engage in the export of controlled items according to Article 11. The definition of “export business operators” is not provided and should be interpreted broadly. Due to the control over the deemed export, many institutions, universities and for-profit R&D centers could also become the exporters under the ECL in releasing

controlled technologies or information to foreign individuals or organizations.

Foreign individuals and organizations The ECL also includes a provision on extra-territorial jurisdiction. Article 44 provides that any organizations or individuals located outside the territory of China that violate the ECL, threaten the national security and interests of China, and impede the fulfillment of international obligations such as non-proliferation will be held liable under the law.

Also, a very special provision could be found in Article 48. It stipulates that the State could take reciprocal measures against foreign countries or regions which abuse their export control measures to endanger the national security or interests of the People's Republic of China.

3 Control Policies and Measures



3.1 Control policies: based on the items

Generally, according to Article 4 of the ECL, a unified export control system will be applied under the ECL, by export control lists, the application of export license system, etc.

The export of controlled items may be prohibited completely or require a case-by-case license in accordance with the authority's orders, based on the different sensitivity of the controlled items.

According to Article 10, the Export Control Administration Authorities can **prohibit the export** of certain controlled items with the approval of the State Council or with the approval of the State Council and the Central Military Commission. The Export Control Administration Authorities will publish a list of controlled items. It is believed that the list will at least designate the items prohibited from exports and the items subject to the license system.

In addition, the temporary control order will also clearly point out the items are prohibited from export outright or can export by a license. Other than the items designated in the list and temporary control orders, an export licensing system also applies to the items that fall under the catch-all provision, provided in Article 12.

The exporters shall apply for an export license to the Export Control Administration Authorities. According to Article 13, **the reviewing and granting of a license application will consider the following factors:**

- (i) National security and national interests;
- (ii) International obligations and commitment made by China;
- (iii) Type of export;
- (iv) Sensitivity of the controlled items;
- (v) Destination country or territory;
- (vi) End-user and end-use;
- (vii) Relevant credit recordings of the exporter²;

² China's Corporate Social Credit System (CSCS) is a comprehensive system created by the government t

(viii) Other factors stipulated in laws and regulations.

The sensitivity of the controlled items is an important factor to evaluate whether to grant the license or not. It is possible that the items controlled will be further classified by their sensitivity in practice and will then be subject to different license policies, such as deemed denial, case-by-case review, etc.

3.2 Controlling based on the destination

Article 8, Paragraph 2 provides that the Export Control Administration Authorities can evaluate the countries or territories to which the controlled items will be exported, determine the risk level, and take corresponding control measures.

Based on the risk evaluation, the Export Control Administration Authorities can prohibit all or certain controlled items to export to specific countries or territories, provided in Article 10. Besides, the risk level of destination country or territories is also one of the factors that the Export Control Administration Authorities will consider in reviewing the export license applications according to Article 13.

3.3 Control policies: based on the end-user and end-use

The controlling based on the end-user and end-use is the essential measure to prevent the controlled items from being exported to certain end-users where it is feared they may be used for activities that contradict to the national security, national interests and international obligation of China. In this regard, according to Article 17, a **risk management system** of end-user and end-use will be established.

Blacklisting certain end-uses and end-users

Certain end-users and end-uses will be prohibited from receiving the items controlled under the ECL. According to Article 10, the Export Control Administration Authorities can prohibit the export of controlled items to certain organizations and individuals. **These prohibited end-users will be included into a blacklist of entities**, which will be imposed a restriction or ban on any transactions or export of controlled items, unless a special license issued by the Export Control Administration Authorities.

As for **prohibited end-uses**, it has not been stipulated in the ECL, but can be referred to the implementing regulations. For example, the *Regulations on the Control of Nuclear Export* (《中华人民共和国核出口管制条例》, “**Nuclear Export Regulations**”) provided that nuclear explosion and the production of the enriched

o record all the behaviour of market participants. The CSCS assesses the behaviour of companies through regulatory recordings such as tax, customs, environmental protection, product quality, etc. and administrative cases, such as anti-monopoly cases, bribery cases, data transfers, pricing, advertising, etc. The system covers virtually all aspects

of a company's business in China. The Customs has established its credit ratio system, and at the early stage, the relevant credit recordings herein may refer to the credit recordings concerning the export activities only. However, it is possible that the relevant credit recordings in the export licensing reviewing may further include other recordings as the full implementation of the CSCS.

See *Measures on Customs Enterprise Credit* https://www.creditchina.gov.cn/zhengcefagui/zhengcefagui/zhongyangzhengcefagui1/201803/t20180313_110533.html

uranium with an enrichment degree higher than 20% are both prohibited end-uses. Besides, from the existing regulations concerning the military and other dual-use items, the prohibited end-uses also include the use for nuclear terrorism, nuclear fuel cycle, biological weapons, chemical weapons, narcotics, transportation of mass destruction weapons, etc.

According to Article 13 , 15 and 17, the end-user and end-use of the controlled items shall be **reported via certificate documents issued by the end-user or by the government agency of the territory where the end-user is located**, and will **then be assessed and verified by the Export Control Administration Authorities**. And end-user and end-use are both factors that will be considered by the Export Control Administration Authorities in reviewing the export license applications according to Article 13.

End-use commitment made by end-users

In addition, to enhance the oversight of the end-user and end-use, the end-users of controlled items **must undertake that they will not change the end-use of the controlled items or transfer them to any third party** without the prior permission of the Export Control Administration Authorities according to Article 16. If an exporter or importer finds out that the end-user or end-use may change, it shall immediately report to the Export Control Administration Authorities.

Additionally, the Export Control Administration Authorities will **maintain a blacklist of importers and end-users**: (i) who violate the end-user or end-use commitment, (ii) who is likely to endanger national security and interests, or (iii) who use the controlled items for terrorism. It is the same blacklist of entities mentioned above. The entities in the blacklist may be prohibited, restricted, or suspended from involving any transactions related to the controlled items. It means that any exporters shall not trade with the entities in the blacklist. If it is necessary for the exporters to transact with the entities in the blacklist, the exporters could submit the application to the Export Control Administration Authorities. Therefore, it is technically possible to transact with the entities in the blacklist.

Paragraph 3 of Article 18 also provides the removal system for the entities blacklisted. If those included in the blacklist has adopted some measures and has not been in any situation mentioned above, the entities could apply to the Export Control Administration Authorities for a removal process. The Export Control Administration Authorities will consider whether to remove the entities from the blacklist on its discretion.

3.4 Respective management on military items and dual-use items

The ECL has a specific section for the management of military items. The export business of military items is a franchise that should be granted by the military products Export Control Administration Authorities under Article 23. The launch of project, the

contents of project, and the contracts related to military products export all require the approval of the authority and, depending on the significance of the project, may require approval from the State Council and the Central Military Commission. The transportation of military products export and the participation in international military exhibitions will both have to go through specialized approval proceedings.

The ECL also has a specific section for the management of dual-use items. But it only includes two articles (Article 21 and Article 22), which stipulates the special administration authority for dual-use items and the export license application procedure of dual-use items with the authority.

3.5 Prohibition on third-party service providers

The ECL provides in Article 20 the obligations of the intermediary services providers, i.e. any organization or individual may not provide agency, freight transport, delivery, customs declarations, third-party e-commerce trading platforms, or financial services for exporters engaged in export control violations. And there will be liabilities for such intermediary services providers, as detailed in *Section [5]*.

4 Who Administers and Enforces Chinese Export Control

4.1 Export control administration authority

According to Article 5, the competent agencies under the State Council and Central Military Commission will be responsible for the export control tasks, and will be collectively referred to as the “Export Control Administration Authorities”. The competent authorities at the province level will be responsible for the export control tasks within its administrative area, which will refer to the corresponding provincial authorities of the Export Control Administration Authorities.

The existing authorities in charge of export control in China mainly consist of MOFCOM, MIIT and Central Military Commission. The export control responsibilities are divided among these authorities according to the certain items. *See Chart 1.*

Items	Competent Authorities
Military Items	State Administration of Science, Technology and Industry for National Defence (SASTIND, 国家国防科技工业局) ³ and Central Military Commission
Monitored and Controlled Chemicals	MIIT
Other Chemicals	MOFCOM
Nuclear Export	SASTIND and China Atomic Energy Authority (CAEA) ⁴
Dual-Use items ⁵	MOFCOM

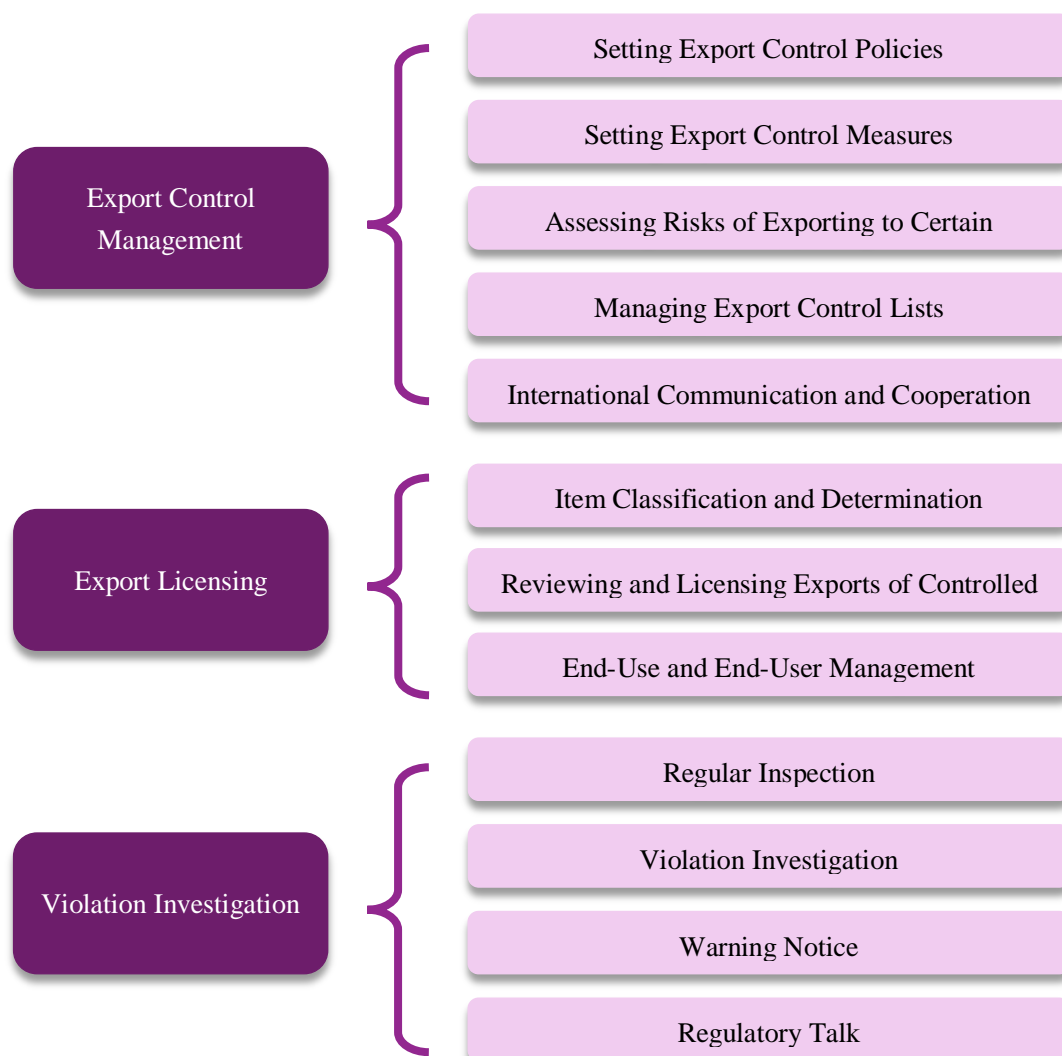
Chart 1

The ECL clearly provides the Export Control Administration Authorities with power to undertake the export control functions in China, which could be divided into three categories, i.e. export control management, export licensing, and violation handling. This part will illustrate the main functions and authorities of the Export Control Administration Authorities in detail.

³ SASTIND is a separate national bureau administered by MIIT.

⁴ CAEA was also a separate national bureau. Currently, CAEA is completely consolidated into the MIIT but the brand of CAEA is retained by MIIT in the external interaction.

⁵ Including the dual use items covering nuclear, biologicals, chemicals, precursor chemicals, missiles and dredgers.



Export Control Management The Export Control Administration Authorities are responsible for making the specific export control policies and control measures, such as the prohibition of certain exports. The authorities are entitled to assess the export control risks of destination countries or territories and adopt different control measures accordingly. The lists and temporary control orders are also published and maintained by the Export Control Administration Authorities. In addition to the management of controlled items, the Export Control Administration Authorities will also manage a blacklist of entities and decide specific control policies towards those listed entities. Furthermore, the Export Control Administration Authorities shall also undertake the international communications and cooperation concerning export control.

Export Licensing A licensing mechanism is implemented on the exports of controlled items by the Export Control Administration Authorities in China. The authorities shall deal with the consultation regarding the item determination timely. It is also on the discretion of the Export Control Administration Authorities to impose licensing requirement on certain exports of unlisted items by special notices. In terms of the

license applications submitted, the Export Control Administration Authorities are the competent authorities to review and to decide whether to grant the export license or export facilitation measures. After the licensing, the Export Control Administration Authorities are also responsible for the end-use and end-user management including the evaluation and verification of end-use and end-user, and monitoring the change of end-use and end-user.

Violation Handling⁶ The Export Control Administration Authorities can conduct regular inspections to spot any violation thread. The Export Control Administration Authorities are able to adopt the following measures to proceed the investigation:

- Enter the business premises of the respondent or other relevant places for inspection;
- Inquire the respondents, stakeholders, and other relevant organizations or individuals, and require them to deliver the explanation of the matters in relevant to the case under the investigation;
- Check and copy any relevant documents or materials of the respondent, stakeholders, and other relevant organizations or individuals, including but not limited to trade documents, agreements, accounting books, business correspondence, etc.;
- Inspect the transportation used for export, cease the loading of any suspicious items for exporting, and order to return any items exported illegally;
- Seal up and seize any related items;
- Check the bank account information of the respondents;
- Deliver regulatory talk and issue warning notice to prevent the export control violation risks;
- Request other agencies of the State Council and local government for assistance.

4.2 The customs

Limited Power to Investigate and Punish Violations Due to the customs clearance procedure and other regular customs supervision activities, the Customs will become one of the most important authorities to spot any violations and conduct the preliminary investigations on the front line, but the Customs is a standalone authority distinguished from the Export Control Administration Authorities. Article 40 of the ECL provides that the export control violations shall be generally investigated and punished by the Export Control Administration Authorities, unless laws or regulations stipulates certain violations can be investigated and punished by the Customs. It remains to be clarified in further laws or implementing regulations what kind of cases will be investigated and decided by the Customs.

Examine the License of Controlled Exports Submitted According to Article 19 and Article 25 of the ECL, the consignor or the customs broker shall submit the export

⁶ The punishment of the violation will be elaborated in **5 Legal liabilities for Non-Compliance**. This part will focus on the measures the Export Control Administration Authorities could adopt to investigate the violation.

license get from the Export Control Administration Authorities to the Customs. The Customs has the power to authenticate the export license submitted. In this procedure, the Customs can find out many red flags such as the exports beyond the scope of license, the inconsistency in stated and real end-use or end-users, etc.

Inquire into suspicious items to export The ECL provide the Customs with the power to challenge the clearance of the goods to export when the Customs has the proof that the goods to export may fall under the scope of controlled items and the consignors or custom brokers have not submitted any export license. In this regard, the power of the Customs is limited to challenging and suspension of the clearance procedure during the challenging period. The Customs cannot make an immediate decision on whether the goods are controlled, which is under the jurisdiction of the Export Control Administration Authorities. The Customs may apply to the Export Control Administration Authorities for a determination procedure. However, the application for a determination procedure is not a must for the challenging process of the Customs. The consignors or custom brokers may have to apply for the determination procedure proactively to accelerate the clearance.

Overall, the Customs will become a significant source of violation tracks. In principle, the Customs will assist the Export Control Administration Authorities in investigation, and only has power to self-investigate according to the special stipulations.

4.3 A coordination mechanism and an advisory panel

A coordination mechanism will be set up at the state level to coordinate significant matters on export control. The coordination mechanism will also help the cooperation and information exchange among the Export Control Administration Authorities and other relevant agencies under the State Council. The other relevant agencies under the State Council herein are believed to at least include the Customs and Ministry of Foreign Affairs. The coordination mechanism is expected to clarify the allocation of the export control burden among the authorities and give a clearer guidance on the export control for the business.

In addition, **an advisory panel** will be introduced by the Export Control Administration Authorities. The Export Control Administration Authorities will consult with experts concerning the export control together with other relevant agencies.

5 Legal Liabilities for Non-Compliance

5.1 Administrative liabilities

The ECL stipulates detailed administrative liabilities for different kinds of violations of this Law, and provides the potential penalty of suspending/revoking an exporter's business license for "serious" violations, although the ECL does not specify what would constitute a "serious" violation.

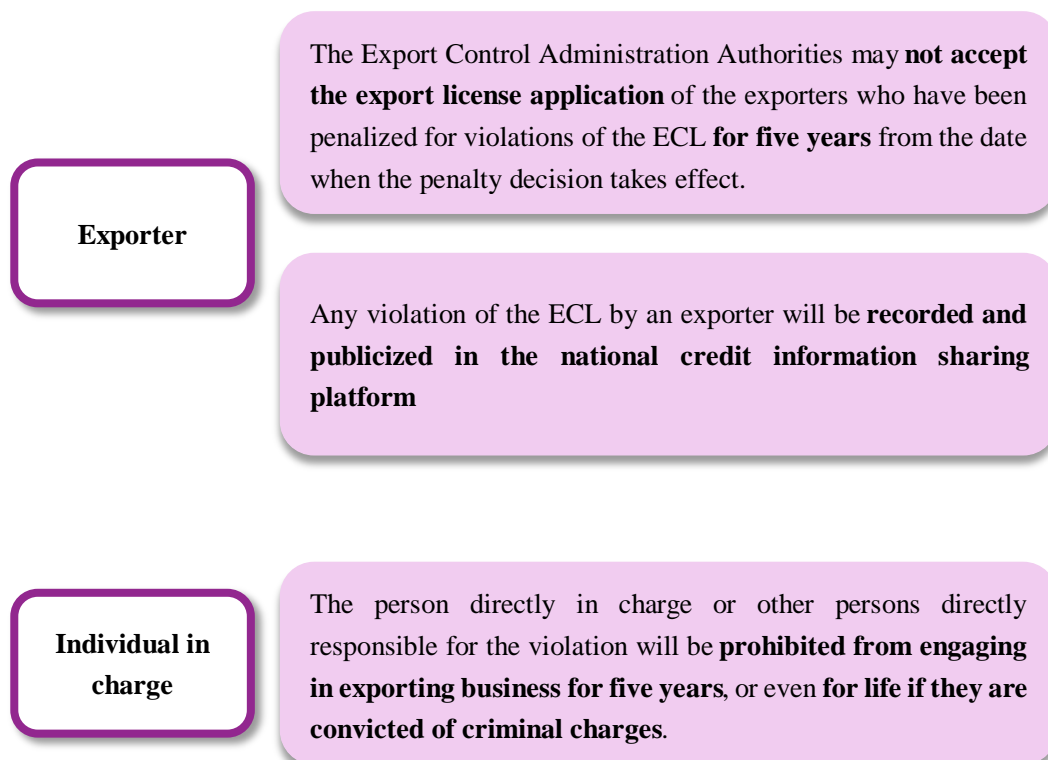
Violation	Penalty
Exporting without obtaining export business qualifications	<ul style="list-style-type: none"> • Confiscation of illegal gain • Where illegal revenue is CNY 500,000 (approx. USD 71,000) or above, a fine of no less than five times, but no more than ten times, of the illegal revenue • Where illegal revenue is below CNY 500,000 (approx. USD 71,000), a fine between CNY 500,000 (approx. USD 71,000) and 5,000,000 (approx. USD 710,000)
Exporting without a license	<ul style="list-style-type: none"> • Confiscation of illegal gain • Where illegal revenue is CNY 500,000 (approx. USD 71,000) or above, a fine of no less than five times, but no more than ten times, of the illegal revenue
Exporting beyond the scope of a license	
Exporting items that are prohibited from being exported	<ul style="list-style-type: none"> • Where illegal revenue is below CNY 500,000 (approx. USD 71,000), a fine between CNY 500,000 (approx. USD 71,000) and 5,000,000 (approx. USD 710,000) • Where the violation is "serious," an additional order to suspend business or even ultimately to revoke the exporting business qualifications
Obtaining an export license via fraud, bribery, or other improper means; or illegal transferring an export license	<ul style="list-style-type: none"> • Revocation of export license • Confiscation of illegal gain • Where illegal revenue is CNY 200,000 (approx. USD 28,000) or above, a fine of no less than five times, but no more than ten times, of the illegal revenue • Where illegal revenue is below CNY 200,000 (approx. USD 28,000), a fine

	<p>between CNY 200,000 (approx. USD 28,000) and 2,000,000 (approx. USD 280,000)</p>
Falsifying, altering or buying/selling an export license	<ul style="list-style-type: none"> • Confiscation of illegal gain • Where illegal revenue is CNY 50,000 (approx. USD 7,000) or above, a fine of no less than five times, but no more than ten times, of the illegal revenue • Where illegal revenue is below CNY 50,000 (approx. USD 7,000), a fine between CNY 50,000 (approx. USD 7,000) and 500,000 (approx. USD 71,000)
Facilitation of another's violation (by providing agency, freight transport, delivery, customs declarations, third-party e-commerce trading platforms, or financial services, etc.)	<ul style="list-style-type: none"> • Confiscation of illegal gain • Where illegal revenue is CNY 100,000 (approx. USD 14,000) or above, a fine of no less than three times, but no more than five times, of the illegal revenue • Where illegal revenue is below CNY 100,000 (approx. USD 14,000), a fine between CNY 100,000 (approx. USD 14,000) and 500,000 (approx. USD 71,000)
Transacting with importers or end-users in the blacklist	<ul style="list-style-type: none"> • Confiscation of illegal gain • Where illegal revenue is CNY 500,000 (approx. USD 71,000) or above, a fine of no less than ten times, but no more than twenty times, of the illegal revenue • Where illegal revenue is below CNY 500,000 (approx. USD 71,000), a fine between CNY 500,000 (approx. USD 71,000) and 5,000,000 (approx. USD 710,000) • Where the violation is "serious," an additional order to suspend business or even ultimately to revoke the exporting business qualifications
Obstruction of government inspection	<ul style="list-style-type: none"> • A fine between CNY 100,000 (approx. USD 14,000) and 300,000 (approx. USD 42,000) • Where the violation is "serious," an additional order to suspend business or

even ultimately to revoke the exporting business qualifications

Chart 2

Apart from the monetary penalties, the exporter or for the person in charge within the exporter will also face other legal consequence such as the business ban, denial of license application, and credit recordings, etc.



Those who violated the ECL and has endangered the national security and interests, in addition to the punishment under the ECL, will also be held liable under the other laws or administrative regulations, such as *National Security Law* or others.

5.2 Criminal liabilities

It is stipulated in Paragraph 2 Article 43, the export of controlled items which are prohibited to export or the export of controlled items without the corresponding license, shall be prosecuted for criminal liabilities.

The illegal export of controlled items will constitute smuggling, and the criminal liability will be pursued in accordance with the *Criminal Law*. According to Article 151 and Article 155 of the *Criminal Law*, smuggling other articles the export of which is prohibited can result in a criminal fine, which will be ranging from one to five times of the illegal gains and will result in a confiscation of property in a serious case. In addition to smuggling, the illegal export of controlled items may also constitute a crime of illegal

business. In both cases, the principle directly in charge or other persons directly responsible for the conduct will be sentenced for up to 5 years in prison, and even more than 5 years in a serious case.

The violation of the ECL may also raise the criminal risks on the crime of divulging state secrets, the crime of forging, altering, buying and selling official documents, license or seals of state authorities, etc.

6 How to Export Controlled Items

Here is the roadmap on how to export controlled items.

Step 1: Self-determine whether the items to be exported are listed, temporary controlled or fall under the catch-all scope? (Article 9 & 12) *see Section 2.1*

Step 2: Apply for a consultation process with the Export Control Administration Authorities (Article 12) *see Section 2.1*

Step 3: Apply for export qualification (Article 11 & 23) *see Section 6.2*

Step 4: Apply for export license (Article 12) *See Section 6.3*

Step 5: Submit the export license to the Customs in clearance process (Article 19)

Step 6: Monitor the end-use and end-user and timely report any changes (Article 16)

6.1 Item determination

The starting point of a compliance export is the item classification. It is important to determine whether the items involved are controlled under the ECL. As mentioned in *Section 2.1*, when the exporters are not sure about the item, they can seek a formal determination from the Export Control Administration Authorities.

6.2 Exporting qualification for specific items

Once it has been determined that the items are controlled, the exporters will need to apply for a preliminary qualification for specific items. It is a different procedure from the license application in *section 6.3*. Article 23 emphasized that it is required to get a particular qualification for the export of military items. As we know, the export of nuclear items also requires a particular qualification. In addition, for all sensitive items, it is necessary to register with MOFCOM as an operator of sensitive items currently.

Export qualification for military items According to Article 11, if the export of certain items require a specific exporting qualification, it is necessary for the exporters to get a qualification before engaging in any exporting activities of the specific items given by relevant laws or regulations. However, in the ECL, we can only find the qualification requirement for the exports of military items in *Section 3 Military Item*

Export Management of Chapter II. It is provided that the exporters of military items shall apply for a special qualification of military item exports and can only engage in the exports within the approved scope stated in the qualification.

Export qualification for nuclear items In addition, according to *the Nuclear Export Regulations*, the exports of nuclear items (except dual-use items) also has a very strict qualification system. It is provided in Article 6 of the *Nuclear Export Regulation* that the exports of nuclear items shall only be conducted by the entities designated by the State Council, and any other individuals and entities are prohibited from the exports of nuclear items.

Registration requirement for all sensitive item exporters As for dual-use items, the final version of the ECL deleted the filing or registration requirements for the dual-use exporters mentioned in the draft. However, *Measures of the People's Republic of China for the Administration of the Export Registration of Sensitive Items and Technologies* (《中华人民共和国敏感物项和技术出口经营登记管理办法》, ***Export Sensitive Items and Technologies Measures***) stipulated the registration requirements for the exporters of all sensitive items, including the dual-use items, nuclear items, military items, missile items, controlled chemicals and biologicals. It is believed that all the exporters of items controlled under the ECL shall perform the registration procedure. The registration application could be submitted to local administration of commerce, which will transfer it to MOFCOM. The *Measures* provides the requirements to get registration as an export operator of sensitive items or technologies as follows:

- (1) Approval of import or export business by MOFCOM, and a business license issued by the administration for market regulation;
- (2) Having passed the annual inspections of local administration of commerce and administration for market regulation;
- (3) No record of criminal sanctions or administrative penalties for engagement in illegal business operations within the recent three years;
- (4) Having knowledge of the performance, indices and main usage of the items or technologies that it applies for operation;
- (5) Having an internal department that takes charge of the export and after-sales tracking services

6.3 License application

For those controlled items, the exporters shall apply to the Export Control Administration Authorities for a license to certain exports. Probably, the application receiving authorities will be the MOFCOM and local administration of commerce. The materials and documents for license may vary in items. At least, according to the ECL, the followings are necessary:

- (1) the certificate documents for end-use and end-user, and
- (2) the commitment made by the end-users.

In addition, from our experience on the license application for controlled items, the following materials are also required:

- (3) the identification of the exporters and persons in charge, such as the business license, the registration certificate, personal I.D., appointment certificate, etc.,
- (4) the transaction documents,
- (5) the description and documents of the controlled items to export.

After submitting the license application, the receiving authorities will together with other relevant Export Control Administration Authorities, review and make a decision on approval or disapproval within the statutory time limit. The reviewing and decision period may also vary in items. As to military items, before the license application, the exporter shall apply for both approval for the export project and contract.

For the controlled technologies, the exporters shall get an approval and letter of intent for technology export licensing on the exports of certain technologies. Only when the exporters get the letter of intent, they can start the substantial negotiation on the technology exports. After the signing of the technology export agreement, the exporters shall apply for the technology export license separately. The technology export agreement shall take effect from the date of the issuing of the technology export license. There will be further detailed requirements for the export license application varies from nuclear, chemical, biological technologies, etc.

6.4 Exporting with a license

The exports of any controlled items shall be performed with a corresponding license and under the scope of the license. Any exports without a license, with a license but beyond the scope of the license, with an invalid, expired or even forged license constitute a violation under the ECL.

For the export of tangible goods which shall be cleared by the Customs, the exporters or custom brokers shall **proactively submit the license to the Customs** for verifying.

For the intangible items, such as technologies and information, the exporters shall present the export license when completing relevant formalities relating to **foreign exchange, banking, taxation and customs**, etc.

6.5 Exporting facilitation measures

According to Article 14, exporting facilitation measures such as general license could be granted by the Export Control Administration Authorities. The Export Control Administration Authorities will promulgate the implementing measures in this regard. There may be other kinds of facilitation measures for exporters.

General license

Previously, the general license only applies to the exports of dual-use items. From our understanding, the applicable scope of items is unlikely to be extended to nuclear, military, and other controlled items with a high sensitivity. The general license will indicate the scope and valid period. The exporters can save the time to apply for licenses

case by case.

Requirement

The ECL stipulated that when the exporter shall establish an internal compliance program specific in export control, and the internal compliance program shall work effectively, the authorities can grant the exporting facilitation measures. Considering the general license is listed as one of the measures, it is highly likely that the exporters shall submit the materials and documents of the internal compliance program and the operations to proactively apply for the facilitation measures.

6.6 Official guidelines

According to Article 5 Paragraph 4, the Export Control Administration Authorities will issue official guidelines on export control for various industries in due course, which will be a good reference for the exporters and relevant business operators about how to operate in compliance with the export control regime in China. In addition, some self-discipline organizations such as chambers of commerce and industry associations will be another good source to know how to operate under the export control regime.

7 International Cooperation and Assistance

7.1 International communications and cooperation

According to Article 6, China will enhance the international cooperation in export control and participate in the international rulemaking related to export control. The international cooperation and communication shall be conducted under the treaties China concluded or acceded to, or under the principle of equality and reciprocity.

7.2 Restriction on providing export control related information abroad

Article 32 provides that the “export control related information” shall be provided abroad in accordance with the laws and regulations, and such provision is not allowed when it may endanger the national security and national interests.

However, the article does not make it clear what kind of information is export control related, and whether the information related to export control regime of foreign jurisdictions is covered. It remains to be clarified in the implementing regulations. **What is clear, is that special attention shall be paid to any cross-border data transferring, especially for those industries involving controlled items and export activities.**

8 Best Practice: Export Compliance Program in China

8.1 Internal export compliance program

As an important consideration when granting facilitation measures, the companies involving the exporting activities subject to the ECL are strongly advised to develop a well-rounded export control compliance program. Other companies and organizations can decide what compliance measures are appropriate. For example, some companies choose to designate a single employee responsible for all compliance responsibilities, while other companies may arrange a separate department to handle. How to structure the export compliance program will depend on the organization's operations. The universities or research institution shall focus on the deemed exports and information releases which may not be the case for the international trading companies.

Official guidelines will be issued in near future, which can be a useful reference for relevant parties and individuals. However, preparation at an early stage is a better choice. The export control compliance program or policies shall be fully integrated into the quality management system, investing decision procedure, and R&D planning. Therefore, before writing the handbook or policies, the first step is to **gather detailed information and discuss approach and procedure with experts** as well as others in the companies or organizations who hold key information, such as technical staff, stakeholders, etc.

Then, a proper compliance program and policies shall be developed based on the knowledge of the organizations and business. The basic components of an export compliance program shall not deviate from other internal compliance programs. A well-designed export compliance program shall include the following essential components: (1) management commitment; (2) risk assessment; (3) due policies and procedure; (4) training; (5) testing and auditing; (6) violation handling and corrective actions.

8.2 Risk assessment

The risk assessment is based on the information gathering. It helps the organization in identifying high risks in daily operations and the compliance requirements, and then designing the compliance program accordingly.

8.3 Physical security and IT security

For those companies who are running the business of controlled items, the physical security arrangements at all facilities and officials are to include:

- Locking devices for external and internal doors, windows, gates;
- Monitoring systems and cameras to deter and detect unauthorized entering and observations;
- Positive identification, recording, and tracking of all employees and visitors;
- The visitors shall wear badges and be accompanied by the staffs throughout the visit;
- All the material shall be physically shielded from observation;

- For all relevant information or data, access control shall be applied, and access logs shall be kept.

8.4 Supply chain management

- **Identifying controlled items before placing an order** All controlled items on receipt should be identified with the export control classification and any relevant license or other documents. An internal file can be established at the time of soliciting quotations from potential suppliers, which could also help assessing the risks and seek for alternative suppliers if necessary.
- **Tracking all the actions in warehouse and inventory** The examining, quarantining, transferring between warehouses or inventories shall be strictly documented, and the items shall be stored with restrictive access.

8.5 Sales management

- **Marketing activities** shall be limited to the information approved. For example, as to the controlled technologies, the companies cannot start negotiation on the export agreements before getting a letter of intent on technology exports from the authorities;
- Combined with the supply chain management, any outbound sales of controlled items shall be **tracked**;
- It may be worthwhile developing a **business checklist** to ensure the transaction has passed the critical consideration in the export compliance program at the beginning of a proposal activity including approval to access technical data for quotation purposes;
- Check the consignee, shipping documents, and develop a monitoring system of the end-use and end-user.

8.6 R&D management

Companies shall review the R&D schemes to determine whether they fall into the controlled scope firstly. The process may be time-consuming and will come across some confusions due to the catch-all provisions. The companies are allowed to make an inquiry to the Export Control Administration Authorities when they are unable to determine by themselves.

Then, for those items covered, it is advised that the R&D companies shall pay more attention to the **deemed export regime**, i.e. the release of controlled technologies to a foreign persons or entity within the territory of China in a **joint R&D project** or when the project hires a **foreign R&D personnel**.

8.7 Human resource management

Considering the compliance requirement on deemed export, the human resource management shall cover the due diligence on nationality and citizenship of employees, especially technical staffs and managers.

8.8 Training

A good training program is critical to having an effective compliance program. The training shall be designed to fit the different position of the employees. Specifically, the employees in management team, in business unit, in supply chain management hold different responsibility on export control compliance and shall deal with totally different situations may involving export violations or non-compliance, the training for them shall be **job-specific**.

The export compliance responsibilities shall be communicated to every employee via the training, and the training could also help foster the export compliance culture. The training shall also include proper assessments or tests to hold employees accountable.

8.9 Record-keeping and auditing

Delineate the scope of documents for record-keeping Some documents are required to keep under the ECL and relevant regulations, such as the end-use and end-user certificate, monitoring records about the end-use and end-users, etc., while other documents that may not be required by regulation but it may be in organization's best interest to maintain. The organizations shall decide the scope of document to keep depending on its operation. Therefore, it is necessary to analyze the day-to-day activities that involve exports, deemed export, and re-export activities and create a list of documents that must be kept. In addition, the compliance program shall also be taken into consideration in record-keeping to help prove the effective operation of the compliance efforts and due diligence.

The documents and information could include but not limited to the following:

- Internal documentation that describes the technical decision to classify one of your items;
- Warehousing and inventory management information to track history up to current location or disposal;
- Licenses or other forms of authorization or approval issued by the competent authorities;
- disputes of due diligence between you and your freight forwarder or screening that was conducted for your customers.

Create a system to manage records Records generated in the exporting activities subject to the ECL and export control compliance program shall be stored in a logical basis for indexing. The recordings and documents kept shall fall under the scope of export control related information, which cannot be transferred abroad freely. The standard policies shall be developed, and the following factors shall be clarified:

- how long to retain records;
- how will the documents be kept;
- who is in charge of the record-keeping tasks;
- the checking process for completeness, accuracy and quality of the records;
- the providing process of any records, especially cross-border transferring process.

Audits and Compliance Program Improvement Audits shall be scheduled at least on an annual basis on the overall export control compliance program. It can help the organizations test the program, identify the deficiencies, potential risks, and then improve by adjustments in the compliance program or operating procedure. The audit recording and report can also be a strong proof of the well-designed and effective export control compliance program.

8.10 Violation handling

A clear guidance shall be provided to employees on what kind of actions shall be taken when facing with any suspected violations or non-compliance, and how the organizations will treat the suspected violations or non-compliance:

- (1) Internal and external reporting procedures for suspected violations or non-compliance;
- (2) Corrective actions in detail, and the guidance could design different actions for employees in different positions;
- (3) Internal investigation procedure and the conclusion disclosure procedure;
- (4) Disciplinary actions responding to the violations or non-compliance.

8.11 Public relations

The risks in export compliance can negatively affect the goodwill and social image of the organizations. Any administrative penalties will be recorded in the social credit system in China. It will not only influence the decision-making in license application, and will also lead to other un-expected outcomes, such as the organizations may be viewed as unqualified for government bidding, tax incentives, preferential policies in many areas.

The export control compliance is also a hot topic in China. Any non-compliance case or penalty decision may raise great public concern, which will lead to a non-compliance image of the organization. It is important for the organization involved in any investigations to manage the public relations properly. For example, it is feasible to require employees to refuse any comments on the case.

Appendix: PRC Export Control Law

出口管制法	Export Control Law
第一章 总 则	Chapter I General Principle
第一条	Article 1
为了维护国家安全和利益，履行防扩散等国际义务，加强和规范出口管制，制定本法。	This Law is formulated for the purpose of safeguarding national security and interests, performing international obligations such as nonproliferation, and strengthening and regulating the export control.
第二条	Article 2
国家对两用物项、军品、核以及其他与维护国家安全和利益、履行防扩散等国际义务相关的货物、技术、服务等物项(以下统称管制物项)的出口管制，适用本法。	This Law shall apply to the export control by the State over dual use items, military items, nuclear items, and other items, i.e. the goods, technologies, or services which are in relation with the fulfillment of international obligations such as maintenance of national security and interests and nonproliferation, (hereinafter collectively referred to as the “controlled items”).
前款所称管制物项，包括物项相关的技术资料等数据。	The term “controlled items” as mentioned in the preceding paragraph shall include technical data and other data related to the items.
本法所称出口管制，是指国家对从中华人民共和国境内向境外转移管制物项，以及中华人民共和国公民、法人和非法人组织向外国组织和个人提供管制物项，采取禁止或者限制性措施。	For the purpose of this Law, “export control” refers to prohibitive or restrictive measures taken by the State against the transfer of controlled items from the territory of the People’s Republic of China to overseas, and the provision of controlled items by citizens, legal persons and other organizations of the People’s Republic of China to foreign organizations and individuals.
本法所称两用物项，是指既有民事用途，又有军事用途或者有助于提升军事潜力，特别是可以用于设计、开发、生产或者使用大规模杀伤性武器及其运载工具的货物、技术和服务。	For the purpose of the Law, “dual use items” refers to goods, technologies or services that can be used for both civil and military purposes or are conducive to enhancing military
本法所称军品，是指用于军事目的的装备、专用生产设	

备以及其他相关货物、技术和服

本法所称核，是指核材料、核设备、反应堆用非核材料以及相关技术和服

第三条

出口管制工作应当坚持总体国家安全观，维护国际和平，统筹安全和发展，完善出口管制管理和服务。

第四条

国家实行统一的出口管制制度，通过制定管制清单、名录或者目录（以下统称管制清单）、实施出口许可等方式进行管理。

第五条

国务院、中央军事委员会承担出口管制职能的部门(以下统称国家出口管制管理部门)按照职责分工负责出口管制工作。国务院、中央军事委员会其他有关部门按照职责分工负责出口管制有关工作。

国家建立出口管制工作协调机制，统筹协调出口管制工作重大事项。国家出口管制管理部门和国务院有关部门应当密切配合，加强信息共享。

potential, especially those that can be used to design, develop, produce or use weapons of mass destruction and their means of delivery.

For the purpose of the Law, “military goods” refers to equipment, special production equipment and other related goods, technologies or services used for military purposes.

For the purpose of this Law, “nuclear” refers to nuclear materials, nuclear equipment, non-nuclear materials used for reactors, and their related technologies or services.

Article 3 Export control work shall adhere to a holistic concept of national security, maintain international peace, coordinate security and development, and improve upon administration and services for export control.

Article 4 The State adopts a unified Export Control System, and administers through the formulation of control lists, catalogues or categories (hereinafter collectively referred to as the “control lists”)、the implementation of export licensing, and other means.

Article 5 The departments of the State Council and the Central Military Commission that assume the function of export control (hereinafter collectively referred to as the “State Export Control Administration Authority”) shall be responsible for export control work based on the division of duties. Other relevant departments of the State Council and the Central Military Commission shall, according to their respective functions and duties, be responsible for work related to export control.

The State establishes a work coordination

国家出口管制管理部门会同有关部门建立出口管制专家咨询机制，为出口管制工作提供咨询意见。

国家出口管制管理部门适时发布有关行业出口管制指南，引导出口经营者建立健全出口管制内部合规制度，规范经营。

省、自治区、直辖市人民政府有关部门依照法律、行政法规的规定负责出口管制有关工作。

第六条

国家加强出口管制国际合作，参与出口管制有关国际规则的制定。

第七条

出口经营者可以依法成立和参加有关的商会、协会等行业自律组织。

有关商会、协会等行业自律组织应当遵守法律、行政法规，按照章程对其成员提供与出口管制有关的服务，发挥协调和自

mechanism for export control to make overall arrangements for and coordinate major export control matters. The State Export Control Authority and other relevant departments of the State Council shall cooperate closely and strengthen information sharing.

The State Export Control Authority shall, in concert with the relevant authorities, establish an expert advisory mechanism for export control, to provide advisory opinions for export control work.

The State Export Control Authority shall promulgate export control guidelines for the relevant industries at appropriate timings to guide exporters to establish and improve an internal compliance system for export control and operate in compliance.

The relevant departments of people's governments of provinces, autonomous regions and centrally administered municipalities shall be responsible for export control work pursuant to the provisions of laws and administrative regulations.

Article 6 The State Export Control Administration Authority shall strengthen international cooperation in export control and participate in the formulation of international rules related to export control.

Article 7 Exporters may establish or join the relevant chambers of commerce, associations or other industrial self-disciplinary organizations in accordance with the law.

Relevant chambers of commerce, associations and other industrial self-disciplinary organizations shall abide by laws and administrative regulations, provide services relating to export control to their

律作用。

members according to their bylaws, and play their role in coordination and self-discipline.

第二章 管制政策、管制清单和管制措施

Chapter II Control Policies, Control Lists and Control Measures

第一节 一般规定

Section 1 General Provisions

第八条

Article 8 The State Export Control Administration Authority shall, in concert with relevant departments, formulate export control policies, of which the major ones shall be reported to the State Council or to both the State Council and the Central Military Commission for approval.

国家出口管制管理部门会同有关部门制定出口管制政策，其中重大政策应当报国务院批准，或者报国务院、中央军事委员会批准。

The State Export Control Administration Authority may assess the destination country or region of controlled items to export, determine the grade of risks, and take corresponding control measures.

国家出口管制管理部门可以对管制物项出口目的国家和地区进行评估，确定风险等级，采取相应的管制措施。

第九条

Article 9 The State Export Control Administration Authority shall, in accordance with the provisions of this Law and relevant laws and administrative regulations, according to the export control policies and the prescribed procedures, in concert with other relevant departments, formulate and administer the export control list which enumerates the controlled items and shall make it public in a timely manner.

国家出口管制管理部门依据本法和有关法律、行政法规的规定，根据出口管制政策，按照规定程序会同有关部门制定、调整管制物项出口管制清单，并及时公布。

According to the needs to maintain the national security and interests, and fulfill international obligations such as nonproliferation, the State Export Control Administration Authority may, upon the approval by the State Council or the State Council and the Central Military Commission, impose temporary control over goods, technologies and services not enumerated in the export control list, and make it public. The duration of temporary control shall not exceed two years. Before the

根据维护国家安全和利益、履行防扩散等国际义务的需要，经国务院批准，或者经国务院、中央军事委员会批准，国家出口管制管理部门可以对出口管制清单以外的货物、技术和服务实施临时管制，并予以公告。临时管制的实施期限不超过二年。临时管制实施期限届满前应当及时进行评估，根据评估结果决定取消临时管制、延长临时管制或者将临时管制物项列入出

口管制清单。

第十条

根据维护国家安全和利益、履行防扩散等国际义务的需要，经国务院批准，或者经国务院、中央军事委员会批准，国家出口管制管理部门会同有关部门可以禁止相关管制物项的出口，或者禁止相关管制物项向特定目的国家和地区、特定组织和个人出口。

第十一条

出口经营者从事管制物项出口，应当遵守本法和有关法律、行政法规的规定；依法需要取得相关管制物项出口经营资格的，应当取得相应的资格。

第十二条

国家对管制物项的出口实行许可制度。

出口管制清单所列管制物项或者临时管制物项，出口经营者应当向国家出口管制管理部门申请许可。

出口管制清单所列管制物项以及临时管制物项之外的货物、技术和服务，出口经营者知道或者应当知道，或者得到国家出口管制管理部门

expiration of the temporary control period, a review shall be conducted in a timely manner, and decisions shall be made to cancel, to extend the temporary control or to include the items under temporary control into the export control list according to the review outcomes.

Article 10 According to the needs to maintain the national security and interests, and fulfill international obligations such as nonproliferation, the State Export Control Administration Authority may, in concert with relevant departments, upon the approval by the State Council or the State Council and the Central Military Commission, prohibit the export of certain controlled items, or prohibit the export of certain controlled items to specific destination countries and regions, or to specific organizations and individuals.

Article 11 Exporters shall engage in the export of controlled items in accordance with the provisions of this Law and relevant laws and administrative regulations; if it is required by law to obtain the export qualification for relevant controlled items, such exporter shall obtain the corresponding qualification.

Article 12 The State implements a licensing system for the export of controlled items.

For the controlled items enumerated in the export control list or under temporary control, the exporters shall apply to the State Export Control Administration Authority for a license.

Where an exporter knows, should know or is informed by the State Export Control Administration Authority that relevant goods, technologies or services not included in the export control list or under temporary control may be exposed to any of the following risks, shall apply to the State Export Control

通知，相关货物、技术和服务可能存在以下风险的，应当向国家出口管制管理部门申请许可：

(一)危害国家安全和利益；

(二)被用于设计、开发、生产或者使用大规模杀伤性武器及其运载工具；

(三)被用于恐怖主义目的。

出口经营者无法确定拟出口的货物、技术和服务是否属于本法规定的管制物项，向国家出口管制管理部门提出咨询的，国家出口管制管理部门应当及时答复。

第十三条

国家出口管制管理部门综合考虑下列因素，对出口经营者出口管制物项的申请进行审查，作出准予或者不予许可的决定：

(一)国家安全和利益；

(二)国际义务和对外承诺；

(三)出口类型；

(四)管制物项敏感程度；

(五)出口目的国家或者地区；

(六)最终用户和最终用途；

(七)出口经营者的相关信用记录；

(八)法律、行政法规规定

Administration Authority for a license:

(I) Endangering national security and interests;

(II) Being used to design, develop, produce or use weapons of mass destruction and their means of delivery; or

(III) Being used for the purposes of terrorism.

Where an exporter is unable to determine whether the goods, technologies and services to export fall under the scope of controlled items regulated in this Law, and makes an enquiry to the State Export Control Administration Authority, the said authority shall promptly reply to it.

Article 13 The State Export Control Administration Authority shall take a comprehensive consideration of the following factors to review the license applications filed by exporters for exporting controlled items, and make decisions as to approve or disapprove the applications:

(I) National security and interests;

(II) International obligations and commitments;

(III) Type of export;

(IV) Sensitivity of controlled items;

(V) Exporting destination country or region;

(VI) End users and end uses;

(VII) Relevant credit records of the exporter; and

(VIII) Other factors stipulated in other laws or administrative regulations.

的其他因素。

第十四条

出口经营者建立出口管制内部合规制度，且运行情况良好的，国家出口管制管理部门可以对其出口有关管制物项给予通用许可等许可便利措施。具体办法由国家出口管制管理部门规定。

Article 14 Where the exporters establish an internal compliance system for export control, and it operates well, the State Export Control Administration Authority may grant export license facilitation measures such as a general license to the export of relevant controlled items by such exporters. The specific implementing measures shall be formulated by the State Export Control Administration Authority.

第十五条

出口经营者应当向国家出口管制管理部门提交管制物项的最终用户和最终用途证明文件，有关证明文件由最终用户或者最终用户所在国家和地区政府机构出具。

Article 15 Exporters shall submit end use and end user credentials of controlled items to the State Export Control Administration Authority, and such credentials shall be issued by the end users or the government of the country or region where the end users are located.

第十六条

管制物项的最终用户应当承诺，未经国家出口管制管理部门允许，不得擅自改变相关管制物项的最终用途或者向任何第三方转让。

Article 16 The end users of controlled items shall undertake not to change the end uses of the controlled items or transfer such items to any third party without the permission of the State Export Control Administration Authority.

Where exporters or importers detect that there is probably a change in end user or end use, they shall report to the State Export Control Administration Authority immediately according to the relevant provisions.

出口经营者、进口商发现最终用户或者最终用途有可能改变的，应当按照规定立即报告国家出口管制管理部门。

第十七条

国家出口管制管理部门建立管制物项最终用户和最终用途风险管理制度，对管制物项的最终用户和最终用途进行评估、核查，加强最终用户和最终用途管理。

Article 17 The State Export Control Administration Authority shall establish an End User and End Use Risk Management System of controlled items, which evaluates and verifies the end user and end use of controlled items, and enhances the management of the end user and end use.

第十八条

Article 18 The State Export Control

国家出口管制管理部门对有下列情形之一的进口商和最终用户，建立管控名单：

(一)违反最终用户或者最终用途管理要求的；

(二)可能危害国家安全和利益的；

(三)将管制物项用于恐怖主义目的的。

对列入管控名单的进口商和最终用户，国家出口管制管理部门可以采取禁止、限制有关管制物项交易，责令中止有关管制物项出口等必要的措施。

出口经营者不得违反规定与列入管控名单的进口商、最终用户进行交易。出口经营者在特殊情况下确需与列入管控名单的进口商、最终用户进行交易的，可以向国家出口管制管理部门提出申请。

列入管控名单的进口商、最终用户经采取措施，不再有第一款规定情形的，可以向国家出口管制管理部门申请移出管控名单；国家出口管制管理部门可以根据实际情况，决定将列入管控名单的进口商、最终用户移出管控名单。

Administration Authority shall establish a control list of importers and end users that fall under any of the following circumstances:

(I) Breach of management requirements on end user and end use;

(II) Being likely to endanger national security and interests; or

(III) Using controlled items for any purpose of terrorism.

For the importers and end users designated in the control list, the State Export Control Administration Authority may adopt necessary measures, such as prohibiting and restricting the transaction of the controlled items, ordering to suspend the export of relevant controlled items and other measures.

Exporters shall not transact with importers and end users designated in the control list in violation of regulations. In the particular circumstances that it is necessary for an exporter to transact with the importers or end users designated in the control list, the exporter may apply to the State Export Control Administration Authority.

Importers and end users included in the control lists may apply to the State Export Control Administration Authority for removal from the control lists if they no longer have the circumstances specified in the first paragraph after taking measures; The State Export Control Administration Authority may, in light of the actual situation, decide to remove the designated importers and end users from the control lists.

第十九条

出口货物的发货人或者代理报关企业出口管制货物时，应当向海关交验由国家出口管制管理部门颁发的许可证件，并按照国家有关规定办理报关手续。

出口货物的发货人未向海关交验由国家出口管制管理部门颁发的许可证件，海关有证据表明出口货物可能属于出口管制范围的，应当向出口货物发货人提出质疑；海关可以向国家出口管制管理部门提出组织鉴别，并根据国家出口管制管理部门作出的鉴别结论依法处置。在鉴别或者质疑期间，海关对出口货物不予放行。

第二十条

任何组织和个人不得为出口经营者从事出口管制违法行为提供代理、货运、寄递、报关、第三方电子商务交易平台和金融等服务。

第二节 两用物项出口管理

第二十一条

出口经营者向国家两用物项出口管制管理部门申请出口两用物项时，应当依照法律、行政法规的规定如实提交

Article 19 When exporting the controlled goods, the consignors of exported goods or customs agents shall submit the license issued by the State Export Control Administration Authority to the Customs for verification, and shall complete the customs formalities according to relevant state regulations.

Where the consignor of exports has not submitted the license issued by the State Export Control Administration Authority to the Customs for verification, and the Customs has the evidence to indicate that the goods to export may fall under the scope of export control, the Customs shall query the consignor of the export; the Customs may apply to the State Export Control Administration Authority for a determination procedure, and deal with the matter pursuant to the law in response to the determination conclusion from the State Export Control Administration Authority. The Customs shall suspend the clearance of goods during the determination or query period.

Article 20 No organization or individual may provide agency, freight, delivery, customs declaration, third party e-commerce trading platform, financing or other services for the exporters to engage in illegal export control activities.

Section 2 Export Administration of Dual-Use Items

Article 21 Exporters shall submit relevant authentic documents in accordance with the provisions of laws and administrative regulations to the State Export Control Administration Authority for dual-use items when applying for a license to export dual-use

相关材料。

items.

第二十二条

国家两用物项出口管制管理部门受理两用物项出口申请，单独或者会同有关部门依照本法和有关法律、行政法规的规定对两用物项出口申请进行审查，并在法定期限内作出准予或者不予许可的决定。作出准予许可决定的，由发证机关统一颁发出出口许可证。

Article 22 The State Export Control Administration Authority for dual-use items shall, after accepting a license application for the export of dual-use items, decide on whether or not to grant a license by itself or in concert with other relevant departments within the statutory time period according to the provisions of this Law, other relevant laws and administrative regulations. If a license is granted, the license issuing authority shall issue the export license uniformly.

第三节 军品出口管理

Section 3 Export Administration of Military Items

第二十三条

国家实行军品出口专营制度。从事军品出口的经营 者，应当获得军品出口专营 资格并在核定的经营范围内 从事军品出口经营活动。

Article 23 The State adopts a special system for the export of military items. Operators engaging in export of military items shall obtain the monopoly qualification for the export of military items and engage in relevant business activities within the approved business scope.

军品出口专营资格由国家军品出口管制管理部门审查批准。

The monopoly qualification for the export of military items shall be examined and approved by the State Export Control Administration Authority for military items.

第二十四条

军品出口经营者应当根据管制政策和产品属性，向国家军品出口管制管理部门申请办理军品出口立项、军品出口项目、军品出口合同审查批准手续。

Article 24 Exporters of military items shall, in accordance with the control policies and the nature of the products, go through formalities with the State Export Control Administration Authority for military items for initiation for the project of the export of military products, examination and approval for the project of the export of military items and the contract for the

重大军品出口立项、重大军品出口项目、重大军品出口合同，应当经国家军品出口管制管理部门会同有关部门审查，报国务院、中央军事委员会批准。

第二十五条

军品出口经营者在出口军品前，应当向国家军品出口管制管理部门申请领取军品出口许可证。

军品出口经营者出口军品时，应当向海关交验由国家军品出口管制管理部门颁发的许可证件，并按照国家有关规定办理报关手续。

第二十六条

军品出口经营者应当委托经批准的军品出口运输企业办理军品出口运输及相关业务。具体办法由国家军品出口管制管理部门会同有关部门规定。

第二十七条

军品出口经营者或者科研生产单位参加国际性军品展览，应当按照程序向国家军品出口管制管理部门办理审批手续。

export of military items.

Projects to be initiated for the export of important military items, projects and contracts for the export of important military items shall be reviewed by the State Export Control Administration Authority for military items in concert with the relevant departments, and these shall also be reported to the State Council and the Central Military Commission for approval.

Article 25 Exporters of military items shall apply to the State Export Control Administration Authority for military items for an export license for military items before the export.

When exporting military items, an exporter shall present its license issued by the State Export Control Administration Authority for military items to the Customs for examination and go through the procedures for Customs declaration in accordance with the relevant provisions of the State.

Article 26 Exporters of military items shall entrust an approved transportation enterprise for export of military items with the transportation of military items for export and related business matters. Specific measures shall be formulated by the State Export Control Administration Authority for military items in concert with the relevant departments.

Article 27 When participating in any international exhibition of military items, exporters of military items or entities engaged in the scientific research and production of military items shall go through the examination and approval formalities with the State Export Control Administration Authority for military items under the procedures.

第三章 监督管理

Chapter III Supervision and Administration

第二十八条

国家出口管制管理部门依法对管制物项出口活动进行监督检查。

Article 28 The State Export Control Administration Authority shall supervise and inspect export activities of controlled items.

国家出口管制管理部门对涉嫌违反本法规定的行为进行调查，可以采取下列措施：

The State Export Control Administration Authority may take the following measures when investigating any suspected violation of this Law herein:

（一）进入被调查者营业场所或者其他有关场所进行检查；

(I) Enter the business premises of the respondent or other relevant places for inspection;

（二）询问被调查者、利害关系人以及其他有关组织或者个人，要求其对与调查事件有关的事项作出说明；

(II) Inquire the respondents, stakeholders, and other relevant organizations or individuals, and require them to deliver the explanation of the matters in relevant to the case under the investigation;

（三）查阅、复制被调查者、利害关系人以及其他有关组织或者个人的有关单证、协议、会计账簿、业务函电等文件、资料；

(III) Check and copy any relevant documents or materials of the respondents, stakeholders, and other relevant organizations or individuals, including but not limited to trade documents, agreements, accounting books, business correspondence, etc.;

（四）检查用于出口的运输工具，制止装载可疑的出口物项，责令运回非法出口的物项；

(IV) Inspect the transportation used for export, cease the loading of any suspicious items for exporting, and order to return any items exported illegally;

（五）查封、扣押相关涉案物项；

(V) Seal up and seize any related items;

（六）查询被调查者的银行账户。

(VI) Check the bank account information of the respondents;

采取前款第五项、第六项措施，应当经国家出口管制管理部门负责人书面批准。

Adoption of the measures in Items (V) and (VI) of the preceding paragraph shall be subject to the written approval of the principal of the State Export Control Administration Authority.

第二十九条

Article 29 the State Export Control

国家出口管制管理部门依法履行职责，国务院有关部门、地方人民政府及其有关部门应当予以协助。

国家出口管制管理部门单独或者会同有关部门依法开展监督检查和调查工作，有关组织和个人应当予以配合，不得拒绝、阻碍。

有关国家机关及其工作人员对调查中知悉的国家秘密、商业秘密、个人隐私和个人信息依法负有保密义务。

第三十条

为加强管制物项出口管理，防范管制物项出口违法风险，国家出口管制管理部门可以采取监管谈话、出具警示函等措施。

第三十一条

对涉嫌违反本法规定的行为，任何组织和个人有权向国家出口管制管理部门举报，国家出口管制管理部门接到举报后应当依法及时处理，并为举报人保密。

第三十二条

国家出口管制管理部门根据缔结或者参加的国际条约，或者按照平等互惠原则，与其他国家或者地区、

Administration Authority shall perform its duties in accordance with the law, and the relevant departments of the State Council, local governments and relevant departments shall assist.

The State Export Control Administration Authority shall carry out supervision, inspection and investigation work in accordance with the law independently, or in concert with other relevant departments. Organizations or individuals shall cooperate and shall not refuse or hinder.

Relevant state authorities and their officials have the confidentiality obligation of on the state secrets, business secrets, personal privacy and personal information obtained in the investigation.

Article 30 In order to enhance the export management of controlled items and prevent the risks of illegal export of controlled items, the State Export Control Administration Authority may deliver regulatory talk, warning letters, or other measures.

Article 31 In the case of any act suspected of violating this Law herein, any organizations or individuals shall have the right to report to the State Export Control Administration Authority, and the authority shall respond to such report in a timely manner according to the law, and maintain the confidentiality of the whistle blower.

Article 32 The State Export Control Administration Authority shall carry out export control cooperation and communication with countries or regions, international organizations, etc. in accordance with international treaties concluded or participated in, or in accordance with the principle of

国际组织等开展出口管制合作与交流。

中华人民共和国境内的组织和个人向境外提供出口管制相关信息，应当依法进行；可能危害国家安全和利益的，不得提供。

第四章 法律责任

第三十三条

出口经营者未取得相关管制物项的出口经营资格从事有关管制物项出口的，给予警告，责令停止违法行为，没收违法所得，违法经营额五十万元以上的，并处违法经营额五倍以上十倍以下罚款；没有违法经营额或者违法经营额不足五十万元的，并处五十万元以上五百万元以下罚款。

第三十四条

出口经营者有下列行为之一的，责令停止违法行为，没收违法所得，违法经营额五十万元以上的，并处违法经营额五倍以上十倍以下罚款；没有违法经营额或者违法经营额不足五十万元的，并处五十万元以上五百万元以下罚款；情节严重的，责令停业整顿，直至吊销相关管制物项出口经营资格：

（一）未经许可擅自出口管制物项；

equality and reciprocity.

Organizations and individuals within the territory of the People's Republic of China shall provide information related to export control outside the country in accordance with the law; They shall not provide information that may endanger national security and interests.

Chapter IV Legal Liability

Article 33 Exporters who export controlled items without the corresponding export business qualification of the relevant controlled items, shall be given a warning, be ordered to stop the illegal act, and illegal gains shall be confiscated; where the illegal turnover is CNY 500,000 or above, a fine ranging from 5 to 10 times the amount of the illegal turnover shall be imposed; where there is no illegal turnover or the illegal turnover is less than CNY 500,000, a fine ranging from CNY 500,000 to CNY 5 million shall be imposed.

Article 34 Where an exporter commits any of the following acts, the exporter shall be ordered to stop the illegal act, confiscate illegal gains; where the illegal turnover is CNY 500,000 or above, a fine ranging from 5 to 10 times the amount of the illegal turnover shall be imposed; where there is no illegal turnover or the illegal turnover is less than CNY 500,000, a fine ranging from CNY 500,000 to CNY 5 million shall be imposed; In the cases of gross violation, the exporters will be ordered to suspend business and rectify, and the export business qualification of the relevant controlled items will even be revoked.

(I) Exporting controlled items without the relevant license;

(二) 超出出口许可证件规定的许可范围出口管制物项;

(三) 出口禁止出口的管制物项。

第三十五条

以欺骗、贿赂等不正当手段获取管制物项出口许可证件, 或者非法转让管制物项出口许可证件的, 撤销许可, 收缴出口许可证, 没收违法所得, 违法经营额二十万元以上的, 并处违法经营额五倍以上十倍以下罚款; 没有违法经营额或者违法经营额不足二十万元的, 并处二十万元以上二百万元以下罚款。

伪造、变造、买卖管制物项出口许可证件的, 没收违法所得, 违法经营额五万元以上的, 并处违法经营额五倍以上十倍以下罚款; 没有违法经营额或者违法经营额不足五万元的, 并处五万元以上五十万元以下罚款。

第三十六条

明知出口经营者从事出口管制违法行为仍为其提供代理、货运、寄递、报关、第三方电子商务交易平台和金融等服务的, 给予警告, 责令停止违法行为, 没收违法所得, 违法经营额十万元以上的, 并处违法经营额三倍以上五倍以下罚款; 没有

(II) Exporting controlled items beyond the licensed scope on the export license;

(III) Exporting controlled items which is prohibited.

Article 35 Where the export license of controlled items is obtained by unlawful means such as fraud and bribery or other illegal means, or the export license of controlled items is illegally transferred, the licensing shall be revoked, the export license shall be confiscated, and illegal turnover shall be confiscated; where the illegal turnover is CNY 200,000 or above, a fine ranging from 5 to 10 times the amount of the illegal turnover shall be imposed; where there is no illegal turnover or the illegal turnover is less than CNY 200,000, a fine ranging from CNY 200,000 to CNY 2 million shall be imposed.

Where the export license of controlled items is forged, altered, or traded, the illegal gains shall be confiscated; where the illegal turnover is CNY 50,000 or above, a fine ranging from 5 to 10 times the amount of the illegal turnover shall be imposed; where there is no illegal turnover or the illegal turnover is less than CNY 50,000, a fine ranging from CNY 50,000 to CNY 500,000 shall be imposed.

Article 36 Those who know that the exporters is engaged in illegal export control and still provides services such as agency, freight, delivery, customs declarations, third-party e-commerce transaction platforms, and financial services, a warning shall be given, the illegal acts shall be ordered to stop, and the illegal gains shall be confiscated; where the illegal turnover is CNY 100,000 or above, a fine ranging from 3 to 5 times the amount of the

违法经营额或者违法经营额不足十万元的，并处十万元以上五十万元以下罚款。

illegal turnover shall be imposed; where there is no illegal turnover or the illegal turnover is less than CNY 100,000, a fine ranging from CNY 100,000 to CNY 500,000 shall be imposed.

第三十七条

出口经营者违反本法规定与列入管控名单的进口商、最终用户进行交易的，给予警告，责令停止违法行为，没收违法所得，违法经营额五十万元以上的，并处违法经营额十倍以上二十倍以下罚款；没有违法经营额或者违法经营额不足五十万元的，并处五十万元以上五百万元以下罚款；情节严重的，责令停业整顿，直至吊销相关管制物项出口经营资格。

Article 37 Exporters who violate the requirements stipulated in this Law conducting business with importers or end-users in the controlled lists shall be given a warning, be ordered to stop the illegal act, and the illegal gains shall be confiscated; where the illegal turnover is CNY 500,000 or above, a fine ranging from 10 to 20 times the amount of the illegal turnover shall be imposed; where there is no illegal turnover or the illegal turnover is less than CNY 500,000, a fine ranging from CNY 500,000 to CNY 5 million shall be imposed; In the cases of gross violation, the exporters will be ordered to suspend business and rectify, and the export business qualification of the relevant controlled items will even be revoked.

第三十八条

出口经营者拒绝、阻碍监督检查的，给予警告，并处十万元以上三十万元以下罚款；情节严重的，责令停业整顿，直至吊销相关管制物项出口经营资格。

Article 38 Exporters who refuse or hinder the supervision and inspection will be issued a warning, and be subjected to a fine ranging from CNY 100,000 to CNY 300,000; In the cases of gross violation, the exporters will be ordered to suspend business and rectify, and the export business qualification of the relevant controlled items will even be revoked.

第三十九条

违反本法规定受到处罚的出口经营者，自处罚决定生效之日起，国家出口管制管理部门可以在五年内不予受理其提出的出口许可申请；对其直接负责的主管人员和其他直接责任人员，可以禁止其在五年内从事有关出口

Article 39 For an exporter subject to punishment for violation of the provisions of this Law, the State Export Control Administration Authority may refuse to accept applications filed by such exporter for the export license within five years from the date when the punishment decision takes effect; and may prohibit the exporter's principal directly in charge and other persons directly liable from engaging in the relevant export business

经营活动，因出口管制违法行为受到刑事处罚的，终身不得从事有关出口经营活动。

国家出口管制管理部门依法将出口经营者违反本法的情况纳入信用记录。

第四十条

本法规定的出口管制违法行为，由国家出口管制管理部门进行处罚；法律、行政法规规定由海关处罚的，由其依照本法进行处罚。

第四十一条

有关组织或者个人对国家出口管制管理部门的不予许可决定不服的，可以依法申请行政复议。行政复议决定为最终裁决。

第四十二条

从事出口管制管理的国家工作人员玩忽职守、徇私舞弊、滥用职权的，依法给予处分。

第四十三条

违反本法有关出口管制管理规定，危害国家安全和利益的，除依照本法规定处罚外，还应当依照有关法律、行政法规的规定进行处理和处罚。

违反本法规定，出口国家禁止出口的管制物项或者未经许可出口管制物项的，依法

activities within five years, and ban them from engaging in the relevant export business activities for life if they are imposed with criminal punishments due to violations of the export control.

The State Export Control Administration Authority shall include the exporters' violations of this Law in their credit records in accordance with the law.

Article 40 The export control violations stipulated in this Law shall be punished by the State Export Control Administration Authority; If laws and administrative regulations stipulate the violations shall be punished by the Customs, Customs shall conduct the punishment in accordance with this Law.

Article 41 Relevant organization or individual that refuses to accept the disapproval decision made by the State Export Control Administration Authority may apply for administrative reconsideration in accordance with law. The administrative reconsideration decision will be the final ruling.

Article 42 If the state functionaries in charge of the export control administration involving dereliction of duty, malpractice, or abuse their powers, they shall be punished according to law.

Article 43 Those who violate the relevant provisions of this Law on the administration of export control and endanger the national security and interests shall, in addition to being punished in accordance with the provisions of this Law, be punished in accordance with other relevant laws and administrative regulations. Those who, in violation of this Law, export controlled items which are prohibited to export or export controlled items without

追究刑事责任。

corresponding licenses shall be prosecuted for criminal liabilities according to law.

第四十四条

中华人民共和国境外的组织和个人，违反本法有关出口管制管理规定，危害中华人民共和国国家安全和利益，妨碍履行防扩散等国际义务的，依法处理并追究其法律责任。

Article 44 Organizations and individuals outside the People's Republic of China that violate the relevant export control provisions of this Law, endanger the national security and interests of the People's Republic of China, or obstruct the fulfillment of international obligations such as non-proliferation, shall be held liable according to the law.

第五章 附 则

Chapter V Supplementary Provisions

第四十五条

管制物项的过境、转运、通运、再出口或者从保税区、出口加工区等海关特殊监管区域和出口监管仓库、保税物流中心等保税监管场所向境外出口，依照本法的有关规定执行。

Article 45 The transit, transshipment, thorough transportation, and re-export of the controlled items, or the export of controlled items from areas under special supervision by the Customs such as bonded zones and export processing zones, or bonded supervision places such as export supervision warehouses and bonded logistics centers, shall be implemented in accordance with the relevant provisions of this Law.

第四十六条

核以及其他管制物项的出口，本法未作规定的，依照有关法律、行政法规的规定执行。

Article 46 In the absence of provisions in this Law, with regard to the export of nuclear and other controlled items, the provisions of the relevant laws and administrative regulations shall apply.

第四十七条

用于武装力量海外运用、对外军事交流、军事援助等的军品出口，依照有关法律法规的规定执行。

Article 47 The export of military items for overseas use of the armed forces, outbound military exchange and military assistance shall be carried out in accordance with the provisions of the relevant laws and regulations.

第四十八条

Article 48 Where any country or region misuses the export control measures to endanger the

任何国家或者地区滥用出口管制措施危害中华人民共和国国家安全和利益的，中华人民共和国可以根据实际情况对该国家或者地区对等采取措施

第四十九条

本法自 2020 年 12 月 1 日起施行。

national security and interests of the People's Republic of China, the State may, in light of the actual situation, take reciprocal measures against such a country or region.

Article 49 This Law shall be effective as of the date December 1, 2020.

