

SUBSIDIARY LEGISLATION 365.13**MILITARY EQUIPMENT (EXPORT CONTROL)
REGULATIONS**

1st January, 2002

LEGAL NOTICE 269 of 2001, as amended by Legal Notice 376 of 2003.

1. The title of these regulations is the Military Equipment (Export Control) Regulations. Citation.

2. (1) In these regulations, unless the context otherwise requires: Interpretation.
*Amended by:
L.N. 376 of 2003.
Cap. 365.*

"Act" means the National Interest (Enabling Powers) Act;

"broker" means any natural or legal person engaged in brokering activities;

"brokering activities" means activities of persons and entities -

(a) negotiating or arranging transactions that may involve the transfer of items listed in the Manual from any country, including Malta, to any other country; or

(b) who buy, sell or arrange the transfer of such items that are in their ownership from any country, including Malta, to any other country;

"country" includes territory;

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

Provided that for the purposes of article 30(3) of the Customs Ordinance, the Minister or the Director shall act in consultation with the Minister responsible for Customs, or such other authority, head of department or person appointed for the purpose by such Minister; Cap. 37.

"export", unless the context otherwise requires, means export from Malta, and includes the transmission of software or technology by fax, telephone or other electronic media (except that oral transmission of technology by telephone is included only where the technology is contained in a document the relevant part of which is read out over the telephone, or is described over the telephone in such a way as to achieve substantially the same result as if it had been so read);

"export declaration" means the act whereby a person indicates in the prescribed form and manner the wish to place military equipment under an export procedure;

"exporter" means any natural or legal person on whose behalf an export declaration is made, that is to say the person who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory of Malta. If no

export contract has been concluded or if the holder of the contract does not act on its own behalf, the power for determining the sending of the item out of the customs territory of Malta shall be decisive;

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

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

"the Manual" means the manual entitled "List of Military Equipment" which is published in the Gazette and which may be subsequently amended as necessary from time to time by the Director by notice in the Gazette;

"military equipment" means any used or unused items, including software and technology, which are listed in the Manual;

"Minister" means the Minister responsible for trade;

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

"person" means any natural or legal person;

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

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

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

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

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

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

- 3.** (1) An authorization by the Director shall be required for the export of the items listed in the Manual. Granting and revocation etc., of authorizations.
- (2) Any authorization so granted by the Director in pursuance of these regulations may be:
- (a) limited so as to expire on a specified date unless renewed;
 - (b) subject to or without conditions, and any such condition may require or prohibit any act before or after the export of items under that authorization;
 - (c) annulled, suspended, modified or revoked by the Director.
- (3) When applying for an export authorization, exporters shall supply the Director with all the relevant information required for their applications. Applications shall be submitted on a form as set out in the Schedule.
- 4.** (1) Subject to the provisions of these regulations no person shall make any export of items specified in the Manual, to any destination except under and in accordance with an authorization as specified in regulation 3. Exports of military equipment.
- (2) These regulations apply also to items in transit.
- 4A.** (1) Prior to engaging in any brokering activities relating to the transfer of any item listed in the Manual, brokers must submit a written application to the Director for the issue of a licence to act as a broker, therein providing all the relevant information requested by the Director. Brokering activities.
Added by:
L.N. 376 of 2003.
- (2) No person shall engage himself in any brokering activity relating to the transfer from any country, including Malta, to any other country of any item listed in the Manual unless:
- (a) he is in possession of a licence issued by the Director to act as a broker; and
 - (b) an authorisation is granted by the Director for the transfer of such item.
- 5.** (1) These regulations do not apply to the exportation of any goods by the Armed Forces of Malta: Exceptions.
- (a) for use by an International United Nations Force in the course of its duties as such;
 - (b) for use in connection with EU-led Peace-Keeping Operations sanctioned by UN/OSCE;
 - (c) for use in connection with distress situations and other cases of an emergency nature;
 - (d) for the purpose of their being repaired, overhauled, refitted, modified, tested or maintained and returned to Malta;
 - (e) for the purpose of their being used at international military competitions, or
 - (f) for the purposes of testing of munitions.

- (2) Nothing in these regulations prohibits the export of:
- (a) any aircraft on a scheduled journey;
 - (b) any aircraft the immediately preceding import of which was on a scheduled journey and which is intended for further scheduled journeys;
 - (c) any vessel which is departing temporarily from Malta on trials;
 - (d) any vessel proceeding on a normal commercial journey.

Customs procedures.

6. When completing the formalities for the export of military equipment at the customs office responsible for handling the export declaration, the exporter shall furnish proof that any necessary export authorization has been obtained.

Misleading applications for authorisations etc.

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

- (a) make any statement or furnish any document or information which to that person's knowledge is false in a material particular; or
- (b) recklessly make any statement or furnish any document or information which is false in a material particular.

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

Registration and provision of information.

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

- (a) the name of the person; and
- (b) the address at which copies of the records referred to in regulation 9 may be inspected by any person authorized by the Minister under regulation 9.

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

Record keeping and inspection.

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

- (a) the description of the military equipment;
- (b) the quantity of the military equipment;
- (c) the name and address of the exporter and of the consignee;

(d) in so far as it is known to that person, the end use of the military equipment and the name and address of the end-user.

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

(3) Any person authorized by the Minister may, on producing if required to do so a duly authenticated document showing his authority, at any reasonable hour enter, for the purpose of subregulation (2), the premises of which the address has most recently been notified to the Director under regulation 8.

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

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

Penalties for failure to comply with these regulations.

(a) exports items from Malta by virtue of an authorization granted by the Director and fails to comply with any condition attaching to that authorization, or

(b) contravenes any of these regulations,

shall be guilty of an offence and shall be liable on conviction to a term of imprisonment not exceeding five years or to a fine (*multa*) not exceeding fifty thousand liri.

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

(a) the condition in question had been previously modified without that person's consent by the Director;

(b) the alleged failure to comply would not have been a failure had the authorization not been so modified, and

(c) that person proves that the items in relation to which he has failed to comply with the condition had, at the time the condition was modified, already been exported.

SCHEDULE

Export of Military Equipment
Authorization Application Form

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

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

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

Note: In part I of box 18, enter the quantity still available, and in part 2 of box 18 enter the quantity deducted on that occasion.			
17. Net quantity/value (Net mass/other unit with indication of unit)		20. Customs document (Type and number or extract number) and date of deduction	21. Name in blocks and signature of Customs Officer and stamp
18. In numbers	19. In words for quantity/value deducted		
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