

China's Export Control Law Formally Enacted

中国正式颁布《出口管制法》

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TAKEAWAYS

概述

- ⑫ The new law establishes a unified export control system. "Export" governed by the law includes not only the transfer of controlled items from within the territory of the PRC to outside of the PRC but also the provision of controlled items by any PRC citizens, legal person or non-legal person organizations to any foreign organizations and individuals (similar to the "deemed export" concept under the US export control regulations but covers a broader scope of items).

新法实行统一的出口管制制度。受该法管辖的“出口”不仅包括从中国境内向境外转移管制物项，还包括任何中国公民、法人或非法人组织向任何外国组织和个人提供管制物项（类似于美国出口管理法规下的“视同出口”概念，但涵盖的物项范围更为广泛）。

- ⑫ The controlled items under the law include not only dual-use items, military items, and nuclear items, but also "other items related to the maintenance of national security and interests, and the performance of international obligations such as non-proliferation. "Goods, technology, services, etc." and data related to those items are all included in the controlled items.

《出口管制法》下规定的管制物项不仅包括两用物项、军品和核物项，还包括“与维护国家安全和利益以及履行防扩散等国际义务有关的其他物项”。“货物、技术、服务”等物项以及与这类物项相关的数据都属于管制物项。

- ⑫ While most of the penalties are imposed on exporters (including Chinese domestic and foreign invested enterprises incorporated in the PRC) that violate the law, the law also clearly provides that it will be applied extraterritorially to any foreign organization or individual outside of the territory of the PRC that violates the provisions of the law and empowers the enforcement authority of the law with the power to investigate the violation and hold the foreign violating party liable.

尽管《出口管制法》中的大多数处罚是针对违反法律的出口经营者（包括在中国注册成立的中资企业和外资企业）实施的，但该法还明确规定，该法将域外适用于任何在中国境外违反法律规定的外国组织或个人，并授权执法机构对违法行为进行调查并追究外国违法者的责任。

After submission for review and discussion at the 22nd session of the Standing Committee of the 13th National People's Congress of the People's Republic of China (PRC), the final version of the long-awaited Export Control Law of the PRC was passed and enacted on October 17, 2020, with an effective date of December 1, 2020.

2020年10月17日，经提交中华人民共和国（中国）第十三届全国人大常委会第二十二次会议审议讨论，期待已久的《中华人民共和国出口管制法》颁布，并将于2020年12月1日生效。

The first and second drafts of the Export Control Law were published for public comment in June 2017 and December 2019, respectively. In June 2020, a revised draft was submitted to the NPC Standing Committee for a second review. Within less than four months, the law was formally enacted after a third review.

《出口管制法》第一稿和第二稿草案分别于2017年6月和2019年12月公布征求公众意见。2020年6月，修订版草案提交给人大常委会进行第二次审查。在不到四个月的时间内，该法在第三次审查后正式颁布。

As compared to the latest draft published in June of 2020, the final law makes the following updates of note:

与2020年6月发布的草案比较，最终通过的法律作出了如下更新：

- The law further emphasizes the importance of safeguarding national security and interests of the PRC as a priority.
该法进一步强调了优先维护国家安全和利益的重要性。
- Those engaged in export-control violations will be subject to not only administrative penalty but also criminal responsibility.
涉及出口管制违法的行为不仅将受到行政处罚还将承担刑事责任。
- The law clarifies that technical data related to the items covered by the law is also subject to export control regulation.
该法明确了与其所涵盖物项相关的技术数据也将受到出口管制的监管。
- Exporters are encouraged to establish and improve internal export control compliance systems. Subsequent implementing rules and/or export control guidelines will be issued to guide exporters to comply with the law during operations.
鼓励出口经营者建立健全出口管制内部合规制度。后续也将发布实施细则和/或出口管制指南引导出口经营者在经营过程中遵守法律。
- Exporters may apply with the enforcement authorities if they have a special need to conduct transactions with importers and end-users listed in the control list.
如需与管控名单中的进口商和最终用户进行交易的，出口经营者可向执法机构提出申请。

This alert introduces the key points of the Export Control Law.

本文将介绍《出口管制法》的重要内容。

SCOPE OF THE LAW

《出口管制法》的管辖范围

1.1 Controlled Items 管制物项

The Export Control Law regulates "Controlled Items" defined as dual-use items, military items, nuclear items and other goods, technologies, services and items relating to the maintenance of national security and interests and performance of

anti-proliferation and other international obligations. Controlled Items also include technical data related to the above-described items.

《出口管制法》规定“管制物项”指两用物项、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。管制物项还包括前述物项相关的技术数据。

1.2 Controlled Export 受管制的出口

Export control under the law means the prohibitive or restrictive measures taken by the PRC State against (i) the transfer of any Controlled Items from within the territory of the PRC to outside of the PRC, and (ii) the provision of any Controlled Items by any citizens, legal persons or non-legal person organizations of the PRC to any foreign organizations and individuals. Item (ii) is similar to the concept of “deemed export” under the U.S. export control regime. This could affect information exchanges between Chinese employees and employees of foreign nationalities within the same entity. Further, it may cover any transfer of Controlled Items outside the territory of the PRC from a PRC citizen or entity to a foreign organization or individual.

该法项下的出口管制指中国对（i）从中华人民共和国境内向境外转移管制物项，以及（ii）向外国组织和个人提供任何管制物项的中国公民、法人和非法人组织所采取的禁止或者限制性措施。第（ii）项类似于美国出口管理法规定的“视同出口”。这可能会影响同一实体内的中国员工和外籍员工之间的信息交流。此外，该法还可能管制在中国境外由中国公民或实体向外国组织或个人转让任何管制物项。

Article 45 of the law also includes a general provision on “re-export” that the transit, transshipment and through shipment, re-export of any Controlled Items or the export of any Controlled Items from bonded areas, export processing zones and other areas specially regulated by the customs and regulated bonded places such as regulated export warehouses and bonded logistics centers shall be governed by the applicable provisions of this law. However, the Export Control Law does not include further explanations as to how this provision will be implemented. We anticipate this issue to be addressed in any implementing measures or guidelines to be formulated under the Export Control Law.

该法第 45 条还包含了有关“再出口”的一般规定，即管制物项的过境、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。然而，《出口管制法》没有进一步解释该项规定如何实施。我们预计这个问题将可能在根据《出口管制法》所制定的任何实施办法或实施细则中予以规定。

EXPORT CONTROL SYSTEM 出口管制制度

The Export Control Law establishes a unified export control system that consists of three key parts: control policy, control lists (including controlled item list and controlled party list), and control measures (e.g., export license).

《出口管制法》实行统一的出口管制制度，该制度由三个重要部分构成：管制政策、管制清单（包括管制物项出口管制清单和管控名单等）以及管制措施（如出口许可等）。

2.1 Control Policies 管制政策

Article 5 of the law provides that departments under the State Council and the Central Military Commission that perform export control functions will be the enforcement authorities and regulators (Regulators) of the export control system although the law does not identify the specific departments. We anticipate that Ministry of Commerce will play a leading role and the Regulators will also involve various ministries in charge of different key industries.

该法第五条规定国务院、中央军事委员会承担出口管制职能的部门将作为执法机构和监管部门（国家出口管制管理部门），尽管未明确具体的负责部门。我们预计商务部将会发挥主导作用，且国家出口管制管理部门将包括负责各个重点行业的部委。

The Regulators have the power to formulate export control policies with relevant government departments, among which, important policies shall be approved by the State Council or jointly by the State Council and the Central Military Commission.

国家出口管制管理部门有权会同政府有关部门制定出口管制政策，其中重大政策由国务院批准或由国务院和中央军事委员会批准。

2.2 Controlled Item List **管制物项清单**

Article 9 of the law provides that the Regulators shall work with the relevant departments pursuant to required procedures to establish and adjust export control list(s) for Controlled Items (Controlled Item List) and promptly publish such list(s) in accordance with the provisions of this law and relevant laws and administrative regulations, as well as export control policies.

该法第 9 条规定，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（管制物项清单），并及时公布。

The law empowers the Regulators to designate goods, technologies and services outside the Controlled Item List as a “Temporarily Controlled Item” for a period of up to two years, subject to approval by the State Council or joint approval by the State Council and the Central Military Commission. An assessment shall be conducted before the expiration of the temporary control period to determine whether the temporary control shall be cancelled or extended, or the Temporarily Controlled Item shall be listed in the Controlled Item List.

该法授权国家出口管制管理部门，经国务院批准，或者经国务院和中央军事委员会批准，可以对管制物项清单以外的“临时管制物项”实施不超过两年的临时管制。临时管制实施期限届满前应当及时进行评估，以决定取消临时管制、延长临时管制或者将临时管制物项列入出口管制清单。

In addition, the Regulators also have the power to work with other relevant departments to prohibit the export of the relevant Controlled Items, or prohibit the export of the relevant Controlled Items to specific destination countries and regions or specific organizations and individuals, subject to approval by the State Council or joint approval by the State Council and the Central Military Commission.

此外，经国务院批准或国务院和中央军事委员会批准，国家出口管制管理部门有权会同有关部门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。

2.3 Control Measures **管制措施**

The key control measures established under the Export Control Law are found in the export licensing system.

《出口管制法》的重要管制措施主要是出口许可制度。

Article 12 of the law provides that an “exporter” (also translated as “export operator”, “出口经营者” in Mandarin) must apply to the Regulators for a license for the export of Controlled Items and Temporarily Controlled Items.

该法第 12 条规定“出口经营者”应当向国家出口管制管理部门申请出口管制物项或者临时管制物项的许可。

For the export of goods, technologies and services that are not Controlled Items and Temporarily Controlled Items, an exporter must still apply for an export license if it knows or should know, or is notified by the Regulators that the export of such goods, technologies and services may pose the following risks:

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：

- (i) endangering national security and interests;
危害国家安全和利益；
- (ii) potentially used in the design, development, production or use of weapons of mass destruction and their delivery vehicles;
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；
- (iii) potentially used for terrorist purposes.
被用于恐怖主义目的。

The Regulators shall take all of the following factors into consideration in reviewing any application made by an exporter and making a decision to approve or not approve the application:

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：

- (i) national security and interests;
国家安全和利益；
- (ii) international obligations and commitments;
国际义务和对外承诺；
- (iii) type of export;
出口类型；
- (iv) sensitivity of the items;
管制物项敏感程度；
- (v) destination country or region of the export;
出口目的国家或者地区；
- (vi) end users and end use;
最终用户和最终用途；
- (vii) credit record of the exporter;
出口经营者的相关信用记录；
- (viii) other factors provided in laws and administrative regulations.
法律、行政法规规定的其他因素。

2.4 End-User and End-Use Risk Management **最终用户和最终用途风险管理**

Article 17 of the Export Control Law provides that the Regulators shall establish a risk management system for end-users and end uses of Controlled Items and evaluate and review end-users and end uses of Controlled Items to implement strict management of end-users and end uses.

《出口管制法》第 17 条规定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。

An exporter is required to submit documents certifying end-users and end uses as part of its application package, and the relevant certifying documents shall be issued by the end-user or a national or regional government agency where such end-users are located. If an exporter or importer becomes aware of any possible change to the reported end-users or end use, it shall immediately report to the Regulators.

出口商必须提交证明最终用户和最终用途的文件作为其申请内容的一部分，且相关证明文件应由最终用户或者最终用户所在国家和地区政府机构出具。如果出口经营者或进口商发现上报的最终用户或者最终用途有可能改变的，应当立即报告国家出口管制管理部门。

2.5 Controlled Party List 管控名单

The Regulators shall establish a “Controlled Party List” to include importers and end-users that:

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”：

- (i) violate the requirements regarding the management of end-users and end uses;
违反最终用户或者最终用途管理要求的；
- (ii) may endanger national security and interests; or
可能危害国家安全和利益的；
- (iii) use Controlled Items for terrorist purposes.
将管制物项用于恐怖主义目的的。

For importers and end users that are included in the Controlled Party List, the Regulators may take necessary measures such as prohibiting or restricting the relevant transactions relating to Controlled Items, ordering suspension of export of the relevant Controlled Items and other necessary measures. Such Controlled Party List is somewhat similar to the Entity List maintained by the U.S. Department of Commerce’s Bureau of Industry and Security.

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。该管控名单类似于有美国商务部工业和安全局的实体清单。

Exporters are prohibited from entering into any transactions with any importer or end-user that is designated to the Controlled Party List in violation of the rules. Exporters may apply with the regulators if they have a special need to conduct transactions with such designated importers and end-users. Any designated importers and end-users may apply with the Regulators to be removed from the Controlled Party List if none of the circumstances described under items (i) to (iii) above exist and the Regulators have the authority to make a decision based on actual circumstances.

出口经营者不得违反规定与列入管控名单的进口商或者最终用户进行交易。出口经营者在特殊情况下确需与列入管控名单的该等进口商、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。任何列入管控名单的进口商和最终用户经采取措施，不再有上述第 (i) 项至第 (iii) 项规定情形的，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作出决定。

ADMINISTRATION AND PENALTIES

管理和处罚

3.1 Administration 管理

The Export Control Law empowers the Regulators to take the following investigative measures against any suspected violation of any provisions of the law:

《出口管制法》授权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：

- (i) entering the business site or any other relevant site of the investigated person for inspection;
进入被调查者营业场所或者其他有关场所进行检查；
- (ii) interviewing the investigated person, interested parties, or other relevant organizations or individuals, and requesting them to provide explanations relating to the investigated matters;
询问被调查者、利害关系人以及其他有关组织或者个人，要求其对被调查事件有关的事项作出说明；
- (iii) examining and duplicating the relevant documents, agreements, accounting books, business correspondence and other documents and information of the investigated person, interested parties or other relevant organizations or individuals;
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；
- (iv) checking the delivery vehicles used for the export, preventing the loading of suspicious export items, and ordering the withdrawing of illegally exported items;
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；
- (v) confiscating and seizing the relevant items involved in the investigation; and
查封、扣押相关涉案物项；以及
- (vi) examining the bank accounts of the investigated person.
查询被调查者的银行账户。

Measures described under items (v) and (vi) above can only be taken with the written approval of the person in charge of the Regulators.

采取第五项、第六项措施，须经国家出口管制管理部门负责人书面批准后。

3.2 Penalties 处罚

Most of the penalties under the law are imposed upon the exporter and/or its responsible person for violating provisions of the Export Control Law. Depending on the specific violation, one of more of the following penalties could be imposed:

该法规定的大多数处罚是针对违反《出口管制法》的出口经营者和/或其负责人实施的。根据具体违规情况，可能会处以下一项或多项处罚：

- (i) warning;
警告；
- (ii) order to stop illegal activities;
责令停止违法行为；

- (iii) confiscation of illegal gain;
没收违法所得;
- (iv) monetary fine;
罚款;
- (v) suspension of business;
停业整顿;
- (vi) revocation of export business qualification;
吊销营业执照;
- (vii) revocation of export license.
吊销出口许可。

For an exporter that is punished for any violation of the Export Control Law, from the date when the penalty decision becomes effective, the Regulators may refuse to accept any export license application by such exporter within five years. Any person directly responsible for the violation or any other directly responsible persons may be prohibited from engaging in relevant export operation activities within five years. The Regulators shall include the exporter's violation in its credit record.

违反该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受理其提出的出口许可申请。任何对其直接负责的主管人员和任何其他直接责任人员，可被禁止在五年内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。

Article 43 of the law further provides that those who export Controlled Items that are prohibited from export or without a license in violation of this law will be investigated for criminal responsibility. Any person who receives any criminal penalty for any export control violation will be prohibited from engaging in relevant export operation activities during his/her lifetime.

该法第 43 条进一步规定：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，依法追究刑事责任。此外，任何因出口管制违法行为受到任何刑事处罚的个人，终身不得从事有关出口经营活动。

OTHER NOTEWORTHY POINTS

其他值得关注的规定

In addition to the above, below are a few other points worth noting about the Export Control Law.

除上述内容，以下为一些其他有关《出口管制法》值得关注的内容。

4.1 Internal Compliance Program **内部合规**

Exporters are encouraged to establish an internal audit system for export control compliance. If such system is established and functions well, the Regulators may grant licensing facilitation measures such as a general license for the export of the relevant Controlled Items by the exporter.

该法鼓励出口经营者建立出口管制内部合规制度。如该制度建立且运行情况良好的，国家出口管制管理部门可以对出口经营者出口有关管制物项给予便利措施，如通用许可。

4.2 Obligations of Intermediaries **中介责任**

Article 20 of the law provides that no organizations or individuals shall provide any agency, shipping, delivery, customs clearance, third-party e-commerce trading platform and financial services for any exporter engaging in export control violations.

该法第 20 条规定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。

If any person provides any such services for an exporter in the circumstances of knowing of said exporter's engagement in export control violations, the Regulators will issue a warning, order that the violation be stopped, confiscate any illegal income, and impose a fine.

如果任何个人明知出口经营者从事出口管制违法行为仍为其提供此类服务的，国家出口管制管理部门将对其给予警告，责令停止违法行为，没收违法所得及处以罚款。

4.3 Extraterritoriality 域外效力

Article 44 confirms the extraterritoriality of the Export Control Law, which provides that an organization or individual outside of the territory of the PRC that violates the provisions of the law in relation to administration of export control, endangers the national security and interests of the PRC, or hinders the performance of non-proliferation and other international obligations, shall be subject to investigation and legal liability.

该法第 44 条确认了《出口管制法》具有域外效力，本条规定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。

As noted above, the law also contains a general provision regarding “re-export” and provisions on end-user and end-use risk management which may be implemented extraterritorially in the future.

如上所述，《出口管制法》包含了有关“再出口”的一般规定以及有关最终用户和最终用途风险管理的规定，这类规定未来可能在域外实施。

CONCLUDING REMARKS

总结

China has been actively developing and enhancing its export control regime in the past year.

中国近一年来一直在积极发展和加强出口管制制度。

On August 28, 2020, PRC authorities released the updated Catalogue of China's Export Prohibited and Restricted Technologies (see our client alerts [here](#) and [here](#)) to add new restricted technology items (such as space materials to 3D printing, encryption and large-scale high-speed wind tunnel design) and revise control points and technical parameters of certain technology items.

2020 年 8 月 28 日，中国政府发布了最新的《中国出口禁止和限制技术目录》（请见我所文章 1 和文章 2），新增限制技术条目（如 3D 打印的空间材料、加密和大型高速风洞设计），并修订了某些技术条目的控制要点和技术参数。

On September 19, 2020, China's Ministry of Commerce published the Provisions on the Unreliable Entity List (see our client alert [here](#)) to provide the framework and working mechanism for the identification by the PRC government of foreign entities or individuals to be designated to the Unreliable Entity List.

2020年9月19日，中国商务部发布了《不可靠实体清单规定》（我所文章见此），为中国政府识别并将外国实体或个人列入不可靠实体清单提供了法律框架和工作机制。

The passing of the Export Control Law demonstrates the latest efforts of the PRC to enhance its export control regime and use export control as a tool to protect national security and interests. We anticipate that the formulation of new implementing measures and control lists and the adjustment of existing regulations and control catalogues will follow.

《出口管制法》的通过表明了中国为增强其出口管制制度和利用出口管制保护国家安全和利益所做出的最新努力。我们预计后续将制定新的实施办法和管制清单并对现有的相关规定和管制目录进行调整。

Chinese domestic companies and foreign invested companies in the PRC are encouraged to establish and improve their internal export control compliance policies and programs to better analyze their own products, services and technologies, review and filter business partners and end users, and establish internal export control reviews and reporting mechanisms and risk analyses and control systems. Further, training of employees on export control requirements is essential. Foreign companies and organizations that have business related to the PRC are recommended to follow the development and implementation of China's export control law and update their export control compliance policies to ensure compliance with the export control law of China.

在中国设立的内资企业和外商投资企业应建立和完善其内部出口管制合规政策和制度，以更好地分析自身的产品、服务和技术，审查和筛选业务伙伴和最终用户，并建立内部出口控制审查和报告机制以及风险分析和控制制度。此外，对员工进行出口管制要求的培训至关重要。建议与中国有业务往来的外国公司和组织关注中国出口管制法律的制定和实施，并更新其出口管制合规政策，以确保其遵守中国的出口管制法律。

We will closely follow the development of China's export control regime and advise our Chinese and foreign clients in a timely manner.

我们将持续关注中国出口管制制度的发展并及时向我所中国和海外客户提供更新。