



## Customs Alert Thailand

### Export Control on Dual-use Items update

#### Introduction

The *Trade Controls of Weapons of Mass Destruction Act* ("TCWMD Act") was passed in the National Legislative Assembly ("NLA") earlier this year and recently received the approval of his Majesty the King. The Act will now certainly enter into force on 1 January 2020.

The purpose of this Act is to provide regulation on the export control of weapons of mass destruction ("WMD") and dual-use items ("DUI").

#### What to know?

The NLA approved the draft TCWMD Act in February 2019 and it was officially published on 30 April 2019 in the Royal Gazette announcing entry into force on 1 January 2020.

According to the latest version of the draft Act approved by the NLA, a few key changes have been made from the previous published version, as follows:-

	Previous draft Act	NLA approved draft Act
Civil Liability	<ul style="list-style-type: none"><li>An exporter who violates the rules under this Act, to the extent that such illegally exported goods are used as part of WMD which is the cause of death/ harm/ damage, will be responsible</li></ul>	<ul style="list-style-type: none"><li>An exporter who violates the rules under this Act by knowing that the goods will be used for illegal purposes by the end user which will cause danger to life or body of others, will be responsible</li></ul>

	<ul style="list-style-type: none"> <li>▪ for paying victims' compensation;</li> </ul> <ul style="list-style-type: none"> <li>▪ Apart from actual damages, the court has the power to determine compensation for mental distress.</li> </ul>	<ul style="list-style-type: none"> <li>▪ for paying victims' compensation;</li> </ul> <ul style="list-style-type: none"> <li>▪ The clause on compensation for mental distress has been removed.</li> </ul>
<b>Criminal Charges</b>	<ul style="list-style-type: none"> <li>▪ For violating license provision (e.g. export without proper license, etc.), such exporter would be subject to imprisonment not exceeding 10 years, or fine not exceeding 10 million THB, or both;</li> <li>▪ If such violation leads to use of DUI as part of WMD, or use in design/development/modification/delivery/storage of WMD, which causes danger to others, such exporter would be subject to imprisonment not exceeding 20 years, or fine not exceeding 20 million THB, or both;</li> <li>▪ If such violation leads to use of DUI as part of WMD which causes death, such exporter would be subject to imprisonment not exceeding 30 years, or fine not exceeding 30 million THB, or both.</li> <li>▪ Provide false statement to authority or conceal any facts that should be informed to the authority in order to issue the license, such exporter would be subject to imprisonment not exceeding 1 year, or fine not exceeding 1 million THB, or both.</li> </ul>	<ul style="list-style-type: none"> <li>▪ For violating license provision (e.g. export without proper license, etc.), such exporter would be subject to imprisonment not exceeding 2 years, or fine not exceeding 200,000 THB, or both;</li> <li>▪ If such violation leads to use of DUI as part of WMD, or use in design/development/modification/delivery/storage of WMD, which causes danger to others, such exporter would be subject to imprisonment not exceeding 10 years, or fine not exceeding 1 million THB, or both;</li> <li>▪ The clause on violation of license provision which leads to use of DUI as part of WMD which causes death has been removed.</li> <li>▪ Provide false statement to authority or conceal any facts that should be informed to the authority in order to issue the license, such exporter would be subject to imprisonment not exceeding 1 year, or fine not exceeding 100,000 THB, or both.</li> </ul>

Apart from civil liabilities and criminal charges under the TCWMD Act, exporting goods without proper license may lead to criminal charges under Customs Act B.E. 2560. Such exporter may be subject to imprisonment not exceeding 10 years or fine not exceeding 500,000 Baht, or both, according to Section 244 of Customs Act B.E. 2560.

Even though the draft Act has been passed by the NLA, the updated list of controlled goods under this Act has not been released yet. It is expected that the updated list of controlled goods, including relevant regulations under TCWMD Act, will be announced before the Act comes into force.

In summary, based on the draft TCWMD Act and information previously provided by the Department of Foreign Trade ("DFT"), Thailand's Export Control on Dual-use Items regime would be as follows:-

- There will be 3 lists of controlled goods; DUI List, HS Code List (Self-certification List), and Military List;
- Prior to exportation of goods under the DUI List, the exporter will be required to obtain a license issued by DFT or other certain authority (e.g. Ministry of Public Health, Ministry of Defense, etc.) ;

- In exporting goods under HS Code List, the exporter will need to self-certify that such goods are not DUI and obtain a certificate before exportation;
- Goods under the Military List may also require approval from a Government authority before export out of Thailand. , However details on the procedure and issuing authority have not been confirmed yet;
- DFT has introduced an e-TCWMD system, which is a system designed to support the exporter in classifying the controlled goods, including facilitating issuance of licenses and certificates for controlled goods;
- Thailand will also impose catch-all controls. Even if goods destined for export are not specifically mentioned in any of the three lists, they can still be subject to control, if authorities suspect that they will be used in making WMD or are for terrorism purposes. The catch-all control obliges exporters to always perform sufficient due diligence on its exports concerning the final use of the goods, the destination, and the recipient. As an exporter, you are required to prove that the goods will not be used for any of the suspected reasons;
- There are 2 type of licenses; license per shipment and annual license;
- Exporters who operate the Internal Compliance Program (ICP), a program for self-screening and monitoring trade transactions, can apply for an annual export license;
- In case of non-compliance with the Act, authorities can impose both criminal charges and civil liabilities on the exporter as mentioned above.

As the regulations under TCWMD Act have not yet been announced, there is a possibility that the abovementioned provisions/procedures related to Export Control on DUI regime might change.

### **What to do?**

Companies should start reviewing their process, business partners, and end-use of their products in the destination countries.

Considering goods to be exported overseas, companies may perform a preliminary classification of the goods as to whether they are under controlled lists by using the beta version of e-TCWMD system (<http://test1.dft.go.th>). The lists under current e-TCWMD system are based on the lists announced in 2015 which have not been updated yet, but a preliminary classification of the goods will help companies in determining if the goods are likely to be controlled by this Act or not.

The possible benefits of acquiring an annual license should be considered for companies which export significant quantities of goods under controlled lists. If this option is worthwhile, the company may start reviewing its ICP and preparing annual license application as the application process may be administratively burdensome.

As export control on DUI is new to Thailand, raising employees' awareness on export control of DUI and how it impacts the company's business might be needed for some companies. Deloitte

can provide bespoke training for commercial, logistics and supply chain functions of any company to make them aware of Thailand's export control regime and its impact on your business processes and procedures.

## Contact

Deloitte Customs & Global Trade Advisory has a team of export control specialists that have experience in multiple jurisdictions. To ensure compliance within your company and avoid penalties, we offer a number of tailor made services to assist you in preparation process before the export control regime comes into force.

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