

RA 10697

The Strategic Trade
Management Act (STMA)

Proposed Registration &
Licensing Requirements

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Mandate

Article II Sec. 8 of Philippine Constitution – The Philippines, adopts and pursues a policy of freedom from nuclear weapons in its territory.



UN SCR 1540

- ▶ all States shall
 - adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;
 - take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:



Purpose

- ▶ the State shall manage the trade of strategic goods and provision of related services in accordance with international standards and best practices



What are Strategic Goods?

- ▶ Products that, for security reasons or due to international agreements, are considered to be of such military importance that their export is either prohibited altogether or subject to specific conditions.
- ▶ Listed in the National Strategic Goods List
- ▶ Military goods – Annex 1
- ▶ Dual use goods – Annex 2
- ▶ Nationally Controlled goods – Annex 3




National Strategic Goods List

- ▶ A list that describes with specificity the strategic goods subject to authorization.
- ▶ It shall be in conformity with international commitments and nonproliferation obligations pursuant to bilateral and multilateral treaties, international conventions and international nonproliferation regimes.



Types of Strategic Goods

- a) Military goods - items, software, and technology that are specifically designed, developed, configured, adapted, or modified for a military end use;
 - b) Dual Use goods - items, software, and technology which can be used for both civil and military end use for WMD;
 - c) Nationally controlled goods - strategic goods placed under unilateral controls for reasons of national security, foreign policy, anti-terrorism, crime control or public safety;
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Dual Use Goods – EU Control List

- ▶ Category 0 Nuclear materials, facilities and equipment
- ▶ Category 1 Materials, chemicals, "microorganisms" and "toxins"
- ▶ Category 2 Materials Processing
- ▶ Category 3 Electronics



EU Dual Use

- ▶ Category 4 Computers
- ▶ Category 5 Telecommunications and "information security"
- ▶ Category 6 Sensors and lasers
- ▶ Category 7 Navigation and avionics
- ▶ Category 8 Marine
- ▶ Category 9 Aerospace and Propulsion



Who are covered?

- ▶ Any person
 - operating within the Philippines who intends to engage in the
 - export, import, transit and transshipment of strategic goods; or
 - provision of related services; and
 - Re-export or reassignment of strategic goods



Acts Covered

- ▶ *Export* -
 - shipment of strategic goods out of the Philippines; or
 - transmission of software and technology by electronic media, or any other electronic means outside the Philippines;
 - includes making available in electronic form such software and technology to persons outside the Philippines.
 - applies to non-electronic reassignments of software or technology through face-to-face communication, personal demonstration, or handing over material or information to a foreign person wherever located.



Acts Covered


- ▶ *Import* - shipment of strategic goods or transmission of software or technology by any means from a foreign country into the Philippines;
 - ▶ *Re-export* - export to a foreign country of strategic goods previously imported to or exported from the Philippines
 - ▶ *Reassignment* - reallocation of strategic goods previously exported from the Philippines from one person to another person within a single foreign country.
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Acts Covered

- ▶ *Transit* - shipment of strategic goods within the Philippines and those entering and passing through Philippine territory with an ultimate destination outside the Philippines and the goods remain at all times on the same carrier;
- ▶ *Transshipment* - mode of shipping a good on a carrier which enters the territory of the Philippines, where the good is unloaded from the carrier and reloaded in the same or on another carrier bound for an ultimate destination outside the Philippines.



Related services


- ▶ Brokering - activities such as
 - (a) negotiating or arranging transactions involving the shipment of strategic goods from a foreign country to any other foreign country; or
 - (b) selling or buying with the intent to move strategic goods that are in a broker's possession or control from a foreign country to any other foreign country.
 - ▶ Financing - making available or providing funds to facilitate the movement of
 - (a) strategic goods and/or related service if this contributes to weapons of mass destruction or their means of delivery, or
 - (b) military goods if destined for a destination subject to a UN Security Council embargo or to prohibited/restricted end users.
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Related services

- ▶ Transporting –
 - act of moving the strategic goods or agreeing to move them,
 - any supporting services being provided to the transport provider, and
 - any act calculated to promote supply or delivery if such contributes to
 - WMD or means of their delivery, or
 - military goods if destined to an embargoed destination subject to a UN Security Council embargo, or to prohibited/restricted end users.



Complementing and support agencies and bureaus

- ▶ Bureau of Customs (DOF-BOC)
 - ▶ Bureau of Animal Industry (DA-BAI)
 - ▶ Food and Drug Administration (DOH-FDA)
 - ▶ Bureau of Quarantine (DOH-BOQ)
 - ▶ Philippine Nuclear Research Institute (DOST-PNRI)
 - ▶ Information and Communication Technology Office (DOST-ICTO)
 - ▶ Armed Forces of the Philippines (AFP)
 - ▶ Philippine National Police (PNP)
 - ▶ Philippine Coast Guard (PCG)
 - ▶ Office of Transport Security (DOTC-OTS)
 - ▶ National Bureau of Investigation (DOJ-NBI)
 - ▶ Presidential Legislative Liaison Office (OP-PLLO)
 - ▶ Office of the Special Envoy on Transnational Crime (OSETC)
 - ▶ Such other offices, agencies, or units as necessary
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Powers and Functions of the NSC–STMCom

- ▶ Formulate strategies, policies and guidelines;
- ▶ Establish, publish, review and update the NSGL;
- ▶ Monitor the STMO;
- ▶ Decide appeals on decisions of the STMO;
- ▶ Establish exemptions from authorization;



Strategic Trade Management Office (STMO)

- ▶ A Bureau under DTI
- ▶ Serves as executive and technical agency for the establishment of the management systems for the trade in strategic goods;



Powers and Functions of the STMO

- ▶ Implement strategies, policies and guidelines of NSC-STMCom;
- ▶ Develop and maintain registry of persons engaged in strategic goods trade
- ▶ Carry out registration;
- ▶ Establish and maintain database on strategic goods and on persons engaged in strategic goods trade;
- ▶ Issue or deny issuance of authorizations;
- ▶ Ensure and operate end-use/end-user controls;
- ▶ End use/end-user controls;



Powers and Functions of the STMO

- ▶ Conduct investigation on violations of the Act;
- ▶ Undertake enforcement of provisions of the Act;
- ▶ Coordinate, cooperate, provide assistance and share information with ATC and other agencies;
- ▶ Conduct capacity building;
- ▶ Coordinate with industry and the public;
- ▶ Encourage and facilitate international cooperation;



Authorization

- ▶ Prior to export, import, re-export, reassignment, transit, transshipment of strategic goods, or provision of technical assistance or related services;
- ▶ STMO is authorized to collect fees to cover the cost of processing applications;
- ▶ Deny, issue with or without conditions, modify, limit, suspend, revoke, or annul authorization;



Exemption from Authorization Requirement

- ▶ import of strategic goods by the Government for the Philippine military or police;
- ▶ temporary export of strategic goods by the Government for the Philippine military or police assigned outside the Philippines;
- ▶ export, transit, and transshipment of strategic goods in connection with a military, peacekeeping, or government humanitarian mission;
- ▶ export, import, transit and transshipment of strategic goods by the Government in connection with law enforcement activities; and
- ▶ any other circumstances pursuant to this Act.



End Use Controls

- ▶ Strategic goods not on the NSGL (unlisted goods) and related services
 - individual license
 - export, re-export, reassignment, transit and transshipment of unlisted goods;
 - purchasing country or destination or person is subject to sanction or arms embargo imposed the UNSC;



End Use Controls

- exporter is informed by STMO that the goods may be used as components of military items under the NSGL, exported from the Philippines without license or in violation of a license; and
- exporter has knowledge or suspects that unlisted goods for export may be used for WMD or related activities or the purchasing country/country of destination is subject to an arms embargo;
- The STMO certifies the end use of strategic goods



Administrative Appeals

- ▶ Any person
 - whose registration or authorization has been denied, suspended, modified, limited, revoked, or annulled, or
 - upon whom administrative penalties have been imposed
 - shall have the right to appeal in accordance with the IRR
 - decision is final and executory.



Liability Limitation

- ▶ STMO shall not be liable for damages caused by
 - denial, suspension, limitation, revocation or
 - annulment of authorization or registration.



Confidentiality of Business Proprietary Information

- ▶ Information obtained under this Act
- ▶ marked as confidential business information
- ▶ shall not be disclosed to any other party
- ▶ except in the furtherance of justice and law enforcement, national security or foreign policy interest,
- ▶ as determined by the STMO,
- ▶ unless the party providing information consented to the disclosure.



Administrative Penalties

- ▶ Limitation, revocation or annulment of any authorization and/or registration;
- ▶ Fines of up to PhP 250,000.00 or twice the value of the strategic good or related service under the contract or as assessed by the STMO; and
- ▶ Cancellation or suspension of the registration and authorization/license to operate of the partnership, corporation, association and other juridical entity
- ▶ Penalty shall be without prejudice to the filing of criminal charges against persons responsible.



Unlawful Acts and Penalties

- ▶ Any person who willfully and intentionally
 - engages in any regulated or prohibited activity
 - Failure to register
 - Acts without authorization
 - Acts in breach of the conditions of authorization or governmental end-use assurances
 - Makes false or misleading representations or
 - Conceals any material fact
 - Engages in any activity prohibited by the NSC-STMCom
 - Conspires or acts in concert with one or more persons in any manner that constitutes a violation of the Act



Unlawful Acts and Penalties

- Forges or alters any authorization, registration, certificate or any other documents issued under the provisions of the Act
- Obstructs or hinders the NSC-STMCom in the execution of its powers under the Act
- Induces a violation of the Act
- ▶ Imprisonment of 6 years and 1 day to 12 years and
- ▶ Fine of P1 million to P5 million



Unlawful Acts and Penalties

- ▶ Any person found guilty of
 - Failure to
 - report or notify the STMO as required under the Act;
 - Comply with record keeping requirements
 - Engaging in any activity with intent to evade the Act or any order, regulation, or authorization
- ▶ Imprisonment of 6 months and 1 day to 6 years
- ▶ Fine of P100 thousand to P1 million

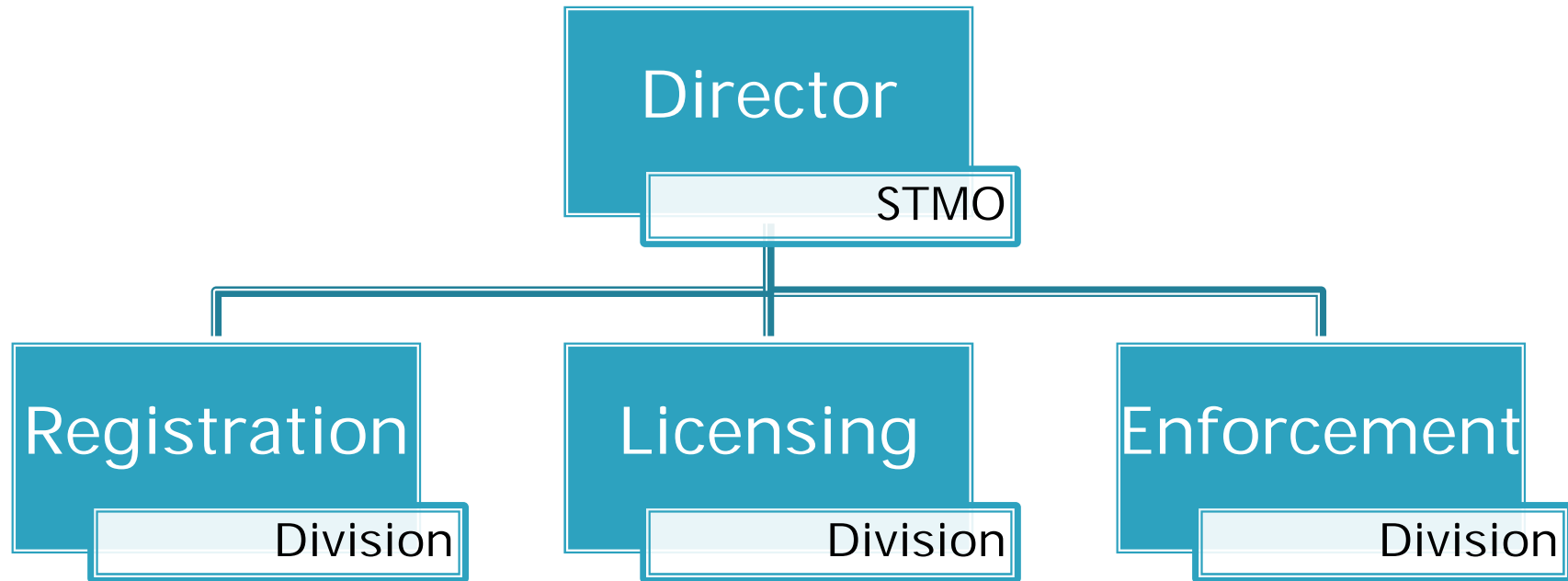


Unlawful Acts and Penalties

- ▶ Attempts to commit violations
- ▶ Imprisonment of 6 months and 1 day to 6 years
- ▶ Fine of P100 thousand to P1 million



Proposed STMO Organization Structure



Draft Registration and Licensing Procedures



Registration

- ▶ Filing of application
 - Description of relevant strategic trade commercial activities;
 - Appointment of senior manager as responsible person;
 - List of natural persons engaged in providing services related to strategic goods
 - Other related supplemental information
- ▶ Provisional/interim registration



Licensing

- ▶ Filing of application
 - Personally signed by applicant, if electronic with digital signature;
 - Will inform STMO of information concerning use of goods in an embargoed destination or for purposes endangering national security;
- ▶ Transit/transshipment applications – prior to loading
- ▶ End-use assurance document will comply with the terms and conditions specified in the document and/or by the STMO



Licensing

- Transit authorization from the next country in the shipment route;
- Dangerous or hazardous items authorization;
- ▶ **Brokering**
 - Technical specification of items;
 - Relevant commercial documents;
 - End-use documents;
 - Authorizations for export, import, transit



Licensing

- ▶ Import
 - Technical specifications of the items;
 - Relevant commercial documents;
 - Additional authorizations, if any;
- ▶ Technical assistance
 - Relevant commercial documents;
 - Original end-use certificate;
 - Additional authorizations, if any;



Licensing

- ▶ Financing
 - Relevant commercial documents
 - End-use documents



Issuance of Licenses

- ▶ Authorizes a specific transaction or series of transactions;
- ▶ Approval may be:
 - in whole or in part
 - limited by conditions or
 - other restrictions
- ▶ License contains a seal, validation date, expiry date & other relevant information;
- ▶ Attachments will also be validated with the STMO seal




Considerations for Grant of License

- ▶ National security or foreign policy interests of the country;
- ▶ Preservation of regional peace, security and stability;
- ▶ Internal tensions or armed conflict in the destination country;
- ▶ Human rights and international humanitarian law;
- ▶ Terrorism or organized criminal activities;



Considerations for Grant of License

- ▶ Security interests of an ally country;
 - ▶ Risk of
 - Illegal end-use or by restricted party;
 - Diversion to an authorized end-user or end-use;
 - ▶ Technical capacity of recipient country;
 - ▶ Submission of false documents, misleading representations or concealment of material facts in the application;
 - ▶ Violations for the past 5 years of the STMA, its IRRs or any other law on state security;
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Considerations for Grant of License

- ▶ Commencement of criminal/civil proceedings related to national security against the applicant;
- ▶ Goods subject of application for license are under police investigation or court proceedings;
- ▶ Other relevant national security or foreign policy reasons.



Grounds for Refusal

- ▶ Failure to fulfill conditions/requirements established under the STMA & its IRRs;
- ▶ Goods are exported, transited, trashipped, re-exported, re-assigned or related services provided in breach of UN SCR sanctions or embargoes;
- ▶ Proposed transaction will impede fulfillment of Phil international commitments/obligations



Grounds for Refusal

- ▶ Credible information that the transaction will
 - endanger national/international security, regional stability, or contribute to terrorist acts;
 - Result in the diversion of strategic goods to an unauthorized end-user or end-use



Types and Term of Licenses/ End-use Assurances

- ▶ Individual – 2 years;
- ▶ Global – up to 5 years;
- ▶ Individual for transit/transshipment – 6 months;
- ▶ License deemed null and void once customs formalities specified are completed;



Extension of Licenses

- ▶ Applicant not later than 10 working days before license expires;
- ▶ If approved, amended license to be issued based on the same considerations previously mentioned;



Labelling Requirement

- ▶ Commercial documents related to export, re-export, transit, transshipment shall indicate that goods covered are subject to controls



Next Steps?

- ▶ Issuance of IRRs;
- ▶ Creation of the STMO
 - Submission to and endorsement by NSC-STMCom of proposed organization structure, budget to and approval by DBM;
- ▶ Inventory of goods regulated under the STMA and currently regulated by other agencies
 - Maintain status quo i.e. dual/multiple regulation or adopt a single licensing procedure?
- ▶ Hiring of and capacity building for STMO personnel.



Thank you!
Q & A

