

Registration under the Controlled Goods Program

Fall 2014

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ITAR: International Traffic in Arms Regulations

CGP: Controlled Goods Program

ECL: Export Control List

CGR: Controlled Goods Regulations

A BRIEF HISTORY OF THE CONTROLLED GOODS PROGRAM

Prior to 1999, Canada had enjoyed an exemption to the United States' *International Traffic in Arms Regulations* ("**ITAR**") which allowed the importation of certain controlled goods without a license. The United States' State Department removed Canada's exempt status over their concerns regarding the potential for such goods to be obtained by criminals or terrorists. Canada's response was to create the Controlled Goods Program ("**CGP**") which regulates access to controlled goods and technologies, including ITAR-controlled goods. As a result of implementing the CGP, Canada is once again able to rely on an exemption to ITAR.

For the purposes of the CGP, a "controlled good" is an item listed in the schedule to the *Defence Production Act* (the "**Schedule**"). However, the Schedule largely captures goods by reference to (i) specific goods that are identified on the Export Control List ("**ECL**"), published by the Department of Foreign Affairs, Trade and Development, that are controlled for export from Canada to other countries and (ii) generally, goods that are "defense articles" as defined in ITAR.

WHO NEEDS TO REGISTER

The requirements for registration under the CGP are prescribed in the *Controlled Goods Regulations* ("**CGR**") which are regulations made pursuant to the *Defence Production Act*. Individuals and/or businesses are required to register with the CGP if they examine, possess or transfer controlled goods in Canada. Registration is also required for anyone who wishes to export controlled goods from Canada and is applying for a permit from the Department of Foreign Affairs, Trade and Development. To be eligible for registration, an individual must (i) be a Canadian citizen, or permanent resident ordinarily resident in Canada; (ii) be carrying on business in Canada; and (iii) consent to a security assessment. Corporations are also eligible provided that they are incorporated under a federal, provincial or territorial statute or are authorized by federal, provincial or territorial laws to carry on business in Canada.

The CGP requires that each applicant for registration identify, at a minimum, one Designated Official, the company's authorized individual, if they will be accessing controlled goods, and any owner of the company holding more than 20% of the outstanding voting shares or interests of the business (an "**Owner**"). If one person holds two or more of these positions, only one security assessment application will be required (for example, a Designated Official may also be an owner and an authorized individual, in which case they would submit one application noting all responsibilities).

The CGP requires a registered person to establish and implement a security plan in respect of each place of business in Canada where controlled goods are kept. An applicant for registration must also have a Designated Official responsible for the designated secure site. An applicant for registration may propose to appoint, as a Designated Official, only an employee of the person who consents to a security assessment and who is either (a) a Canadian citizen ordinarily resident in Canada; or (b) a permanent resident ordinarily resident in Canada.

The failure to register under the CGP by a person required to do so may lead to criminal prosecution.

HOW TO REGISTER

Applicants for registration must complete and submit an Application for Registration and Security Assessment Applications for Designated Officials, Authorized Individuals and Owners, as applicable. Part of the Application for Registration requires the applicant to justify the need for registration by providing evidence that he, she or it will examine, possess or transfer controlled goods. Applicants must provide the following information:

- A brief description of the organization's business activities relating to the examination, possession or transfer of controlled goods;
- A detailed description of the controlled goods the applicant will examine, possess or transfer;
- A description of the requirement that exists with a registered company (i.e. contractual information for the supply of services, registration for bidding purposes, purchase orders, ITAR requirements, etc.);
- If the applicant is providing a contract as justification, he, she or it should include contract information (i.e. name of the company the controlled goods contract is with, length of the contract (start/end date) and a contact person's name, e-mail and telephone number);
- Details of any other requirements such as an exemption under ITAR or an export permit; and
- Details of where the organization's personnel will examine, possess or transfer controlled goods, i.e. at its primary location or elsewhere.

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The CGR provides that, in deciding whether to register a person, the Minister of Public Works and Government Services (the "**Minister**") shall consider, based on a security assessment, the extent to which the applicant poses a risk of transferring a controlled good to a person who is not registered or exempt from registration under the CGP.

Applicants for registration may submit the completed forms and any supporting documentation by email, mail or fax. After receipt of a completed Application for Registration, the processing time is up to 45 days. The maximum length of a registration is 4.5 years, after which the registration will need to be renewed. However, a registration may be granted for a short period of time depending on the justification for registration.