

F.No. 19(11)/2016-D(EPC)
Government of India
Ministry of Defence
Department of Defence Production
D(EPC)

Room No.9A, South Block,
New Delhi, dated the 14th March, 2018

Subject:- Guidelines for counter-signing of End User Certificate by Ministry of Defence for import of defence item(s)/technolog(ies) by Indian private companies for the purpose of design, development and manufacturing of spare parts/components of Russian origin platforms from Russian Industry.

.

Background

The issue of maintenance and lifecycle support of major Russian origin defence platforms in use with Indian Defence forces has been a long pending issue in Indo-Russia cooperation. Indian and Russian Companies have been deliberating on the matter for a long time. During various interaction with Russian side, they have shown apprehensions for transfer of technology and know-how due to IPR protection/Technology security issues while dealing with Indian private companies. The Russian side seeks some kind of guarantee/assurance from Government of India for protection of technology which they wish to transfer while dealing with Indian private companies. In order to address this issue, the following guidelines are framed: -

1. While seeking the approval of the Government on the issue, the Indian Industry is required to submit an application alongwith End User Certificate as per the requirement of the Russian Side, with detailed justification and the intended end use of items /technologies.
2. The application for counter-signing of EUC by MoD shall be made by the applicant company as per the proforma placed at Annexure-I.
3. The applicant company shall also given an undertaking as per the proforma annexed with the application i.e. Annexure-I.

4. The Company shall undertake to abide by instructions/guidelines issued in this regard from time to time by Ministry of Defence.
5. The Company shall furnish annual return for utilization of the item(s)/technology(ies) so imported in the proforma prescribed by Ministry of Defence as on 31st March every year within one month i.e. by 30th April each year.
6. The Company shall put in place a robust Internal Compliance Program (ICP) and also designate an Internal Compliance Officer to monitor ICP requirements etc. In this regard, companies are encouraged to take into account the Wassenaar Arrangement document (published on their website from time to time) titled “Best Practice Guidelines on Internal Compliance Programmes for Dual-Use Goods and Technologies (Annexure-II)”.
7. The application shall be submitted as per Annexure-I along with requisite documents to Under Secretary (EPC), Department of Defence Production, Ministry of Defence, South Block, New Delhi-110011.
8. The application shall be examined on case-to-case basis for the Approval of competent authority i.e. Secretary, Defence Production.
9. On obtaining approval of competent authority, Joint Secretary (DIP) in the Department of Defence Production, Ministry of Defence shall counter-sign the End Use Certificate to be furnished by the Company along with application duly signed and stamped by the CEO/Competent Authority of the Company as per the requirement of foreign country in the prescribed format specifically mentioning the End use of item.
10. Such approvals shall be issued within 15 days of receipt of application complete in all respect in this Ministry.

Application for counter-signing of EUC for import of item(s)/technology (ies) of defence use for the purpose of design, development and manufacturing of spare parts/components of Russian origin platforms from Russian Industry.

1. Particulars of the Applicant Company (Importer):
 - (a) Name of the company:
 - (b) Address of company along with address of registered Office:
 - (c) Web address:
 - (d) Contact No./Fax No.:
 - (e) Particulars of the contract person, designation, Mobile no. & email id:

 2. Particulars of the Exporter:
 - (a) Name of the company:
 - (b) Address of company along with address of registered Office:
 - (c) Web address:
 - (d) Contact No./Fax No.:
 - (e) Particulars of the contract person, designation, Mobile no. & email id:

 3. Details of items(s)/technology(ies) to be imported with all technical details/specifications (if required additional sheets may be used):
-
4. The use of items(s)/technology(ies)/purpose_____

 5. Whether the Company has a confirm supply order/Memorandum of Understanding (MoU) signed/demand etc. from India MoD or from any other source i.e. Indian or foreign companies, if so, details thereof;

(Authorized signatory on behalf of the Applicant Company)

UNDERTAKING

To

Ministry of Defence
Department of Defence Production
[Kind Attn: Under Secretary; (EPC)]
Room No. 9-A, South Block,
Government of India,
New Delhi.

We, (the name of the Indian company), _____ wish to import item(s)/technology(ies), _____ for the End use of (specify end use i.e. Design/ Development/ Manufacturing/ Proto-type development etc.) _____ from (the name of the Exporting company), _____ under the agreement (enclosed copy of such agreement/supply order/ purchase order/MoU etc.).

In connection with the above, we hereby declare and undertake as follows:-

1. That, we (the name of the Indian company), _____ undertake to intimate that the item(s) /technology(ies) under description mentioned above shall be for the sole purpose of (as per declaration in the End Use Certificate submitted for countersigning of Ministry of Defence) _____

2. We hereby declare/certify that:-

- (a) The item(s)/technology(ies) imported will not be used for other than the stated purpose mentioned at point 1 above/declared in EUC.
- (b) The item(s) /technologies would not be subsequently transferred/re-exported without the prior authorization of the original exporting Government and Ministry of Defence, Government of India.
- (c) The item(s)/technology(ies) will not be diverted, sold or transferred to any third party without the prior authorization of the original exporting Government and Ministry of Defence, Government of India.

- (d) The Government reserves the right to verify the item(s)/technology(ies) imported and check its utilization based on the stated purpose of end use.
 - (e) The item(s) /technology(ies) imported shall not be used for any purpose that relates to weapons of mass destruction and their delivery systems.
3. We shall abide by instructions/guidelines issued in this regard from time to time by Ministry of Defence.
 4. We are aware that the authorization hereby applied for, if granted to us shall be non-transferable and non-assignable and we shall neither transfer nor assign the same to any person or entity.
 5. We shall ensure and provide, if needed, adequate physical security and traceability of the items so imported.
 6. We shall not provide access to any information/data whatsoever about or details of the item (s) /technology (ies) to any third person/entity without the prior authorization of the original exporting Government and Ministry of Defence, Government of India.
 7. We undertake all liabilities, contractual, commercial, monetary covered under any Indian or international laws and /or jurisdiction that arise from misuse/diversion of the item(s)/ technology (ies) either voluntarily or involuntarily while in my/our possession or use of the said item(s)/technology (ies). Further that the Government of India (GoI) shall not have/share any liability in this regard.
 8. We shall furnish annual return of utilization of the item(s)/technology (ies) so imported in the proforma prescribed by Ministry of Defence as on 31st March every year within one month i.e. by 30th April each year.
 9. We have put in place a robust Internal Compliance Program (ICP) as per the “Best Practice Guidelines on ICP for Dual-Use Goods and Technologies” of Wassenaar Arrangement (published on their website from time to time) in our company/organization and we shall comply with that.

10. Particulars of Internal Compliance Officer of our organization as follows:-
- a. Name with designation _____
 - b. Address: _____
 - c. Contact Numbers (Tel/Fax/Mob.No.): _____
 - d. E Mail ID: _____

11. I, further, undertake that the information furnished by me is true and correct. In case of any false representation of information and violation of conditions of EUC counter signed by Government of India, the government reserves right to initiate penal actions against person(s)/entity(ies) as per applicable provisions of various laws/acts of GOI.

(Authorized signatory on behalf of the Applicant Company)

Best Practice Guidelines on Internal Compliance Programmes for Dual-Use Goods and Technologies

(Agreed at the 2011 Plenary)

Participating States of the Wassenaar Arrangement,

Taking into account that development and implementation of Internal Compliance Programmes (ICP) by enterprises and academic institutions (hereinafter called “exporter”), though not legally binding, are recommended for their internal management of transfers of dual-use goods and technologies,

Recognizing that each Participating State has a national export control system that must be complied with, and in an effort to assist exporters to meet these controls,

Recognizing that export control on dual-use items is mainly implemented by the competent authorities of each Participating States, and cooperation between domestic export control authorities and exporters is essential for effective export control systems,

Bearing in mind the Initial Elements of the Wassenaar Arrangement (WA), in particular the overall aim of preventing destabilizing accumulations of conventional arms by, i.a. promoting greater responsibility in transfers of dual-use items, and recalling the following WA documents which refer to an ICP:

- the Best Practices for Effective Enforcement (agreed at the 2000 Plenary);
- the Best Practices for Implementing Intangible Transfer of Technology Controls (agreed at the 2006 Plenary);
- the Best Practice Guidelines for the Licensing of Items on the Basic List and Sensitive List of Dual-Use Goods and Technologies (agreed at the 2006 Plenary); and,
- the Statement of Understanding on Implementation of End-Use Controls for Dual-Use Items (agreed at the 2007 Plenary),

Affirming that establishment of ICPs can help exporters to understand and take full account of domestic export control legislation and procedures, and reduce the risks of their involvement in ineligible exports that contravene the purposes of the WA, by supplying to unauthorized end-users such as terrorists and countries of concern;

Bearing in mind that the method in which ICPs are developed and implemented will depend on the size, organizational structure, and other circumstances of exporters,

Agree that:

1. Each Participating State should encourage, where appropriate, its exporters to develop and implement ICPs, and may assist such endeavours by such means as providing expertise and guidance material on ICPs in any relevant form, including discussion of ICPs in export control seminars and providing exporters with opportunities to consult on the form and content of their ICPs;

2. Participating States may also consider, as far as their domestic laws and regulations permit, measures and stimuli that would encourage exporters to introduce ICPs (e.g. taking the development and implementation of an ICP into account when considering applications for licences and revoking existing licences, or making an ICP a condition for the granting of a general licence for an exporter.);
3. Elements for effective ICPs are as set out in the Reference List in the Annex. This is neither exhaustive nor binding. Exporters may combine basic and additional elements from the List as appropriate to develop an ICP which is most applicable to their circumstances;
4. The competent authorities of the Participating States should as appropriate, and in accordance with their domestic legislation and practice, encourage exporters to submit their draft ICPs for examination and comment, for example in the case where ICP is a precondition for any privileged licence procedures. They should also take steps to assess an exporter's compliance with domestic export control laws and regulations, as appropriate, which may involve face-to-face consultations and/or inspection visits.

Annex

Elements of Internal Compliance Programmes For Dual-Use Items (Reference List)

Domestic export control authorities should, where appropriate, encourage their exporters to develop and implement Internal Compliance Programme (ICP), which may include the following elements.

An exporter may combine, the following basic and additional elements, as appropriate, to develop an ICP applicable to its structure, size, and other specific circumstances.

Basic Elements	Additional Elements	Notes
<u>1.</u> Commitment to Compliance	<u>1.</u> Commitment to Compliance	
<u>1.1.</u> Written statement by a senior representative, such as the CEO, that the exporter is aware of all domestic Export control laws and regulations, and complies with them.		
<u>1.2.</u> To make all employees and officers aware of the statement provided in para 1.1.		
<u>2.</u> Structure and Responsibility	<u>2.</u> Structure and Responsibility	
<u>2.1.</u> Establish an internal organizational structure, responsible for export control, either as a stand-alone unit or as an additional task for an appropriate unit.	<u>2.1.</u> It should be independent from the sales department or any other export oriented units.	
<u>2.1.1.</u> Nomination of a senior representative director, or other individual of corresponding status, as the Chief Export Control Officer (CECO)	<u>2.1.1.</u> Competent authorities may establish a set of criteria for such nominations.	<ul style="list-style-type: none"> • CECO should acquire appropriate knowledge for his/her responsibility.
<u>2.1.2.</u> CECO's Duties - The CECO is responsible for: <ol style="list-style-type: none"> a. development and revision of the ICP; b. development and revision of operation procedures; c. staying up-to-date with changes to relevant regulations and with any directions or guidance issued by the competent authorities; d. classification/identification, screening and approval of business transactions; 	<u>2.1.2.</u> CECO's Duties - The CECO is responsible for: <ol style="list-style-type: none"> h. guidance to subsidiaries and affiliates. - Distribution of an organizational chart to all employees that clearly shows the internal structures and responsibilities for export control within the exporter.	

Basic Elements	Additional Elements	Notes
<ul style="list-style-type: none"> e. general export control management, throughout the exporter, including direction and communication; f. assignment of personnel in charge of auditing; and g. training. 		
	<p><u>2.2.</u> Appointment of an Export Control Manager (ECM) and establishment of an Export Control Unit reporting to the ECM.</p> <ul style="list-style-type: none"> - Making the ECM known within the organization - The ECM carries out the export control operations under the directions of the CECO. 	<ul style="list-style-type: none"> • The ECM and Export Control Unit are normally to be found in larger organizations. Their duties and responsibilities mirror those of the CECO.
	<p><u>2.3.</u> Appointment of an export control officer (ECO) in each business unit.</p> <ul style="list-style-type: none"> - An ECO is responsible for the following activities; <ul style="list-style-type: none"> a. making the instructions and requirements of the ECM known within the business unit b. promotion of export control operating procedures; and c. training 	
<p><u>3.</u> Export Screening Procedures</p>	<p><u>3.</u> Export Screening Procedures</p>	
<p><u>3.1.</u> Classification/Identification Procedure</p> <ul style="list-style-type: none"> - Establish whether the goods and/or technologies to be transferred require an export licence under applicable control lists. - Consult with competent authorities and other relevant bodies, where appropriate. 		<ul style="list-style-type: none"> • Where the items to be exported are designed and developed by the exporter, persons in charge of technical affairs and the CECO/ECM should be involved in the rating of items under applicable control lists. • Where items to be exported have been externally sourced the original supplier should be asked for technical specifications and an assessment of classification/identification under applicable control lists.

Basic Elements	Additional Elements	Notes
		<ul style="list-style-type: none"> • “Other relevant bodies” may include organizations approved or certified by the competent authorities for providing classification/ identification services.
<p><u>3.2.</u> End-Use Screening</p> <ul style="list-style-type: none"> - Verify that the items to be exported will not be used for purposes other than the declared use - Ensure that any non-listed dual-use items for a destination subject to a binding UN arms embargo, or any relevant regional arms embargo, are not intended for a “military end-use” 		<ul style="list-style-type: none"> • CECO/ECM should consult with the domestic authorities, when any question arises concerning export control. • cf. “End-User Assurances Commonly Used Consolidated Indicative List” (agreed at the 1999 Plenary, amended at the 2005 Plenary).
<p><u>3.3.</u> Customer / End-user Screening</p> <ul style="list-style-type: none"> - Verify whether the end-users / customers are identified with “red-flags” or other early warning systems 		<ul style="list-style-type: none"> • cf. “Statement of Understanding on Implementation of End-Use Controls for Dual-Use Items” (agreed at the 2007 Plenary)
<p><u>3.4.</u> Information by the competent authorities</p> <ul style="list-style-type: none"> - Verify whether the competent authorities inform that export or transfer of the non-listed items is subject to the submission of a licence application. 		<ul style="list-style-type: none"> • cf. “Statement of Understanding on Control of Non-Listed Dual-Use Items” (agreed at the 2003 Plenary) • List of Advisory Questions for Industry (agreed at the 2003 Plenary)
<p><u>3.5.</u> Transaction Screening Procedures</p> <ul style="list-style-type: none"> - Implement procedures to help prevent diversion of the export/transfer to unauthorized end-users or end-uses. 		<ul style="list-style-type: none"> • Implementation of electronic data processing (EDP) supported by order processing systems may assist these endeavours. • In order to systematize and facilitate the implementation of procedures through 3.1 to 3.4, introduction of check list is recommended.

Basic Elements	Additional Elements	Notes
<p><u>3.6.</u> Where necessary ensure that licences are applied for according to domestic licence application procedures.</p>		<ul style="list-style-type: none"> The exporter needs to apply for licences, in cases where screening detects that non-listed items may be used for purposes covered by end-use oriented controls or where it is determined that the transfer of a listed item to a particular destination/end-user would not be covered by an existing individual, global or general licence or the conditions attached to the use of that licence.
<p><u>4.</u> Shipment Control</p>	<p><u>4.</u> Shipment Control</p>	
<p><u>4.1.</u> Confirm before shipment/ transfer that:</p> <ul style="list-style-type: none"> - Classification/Identification and Transaction Screenings are completed; - Goods and/or technologies and their quantities correspond to the descriptions set out in export instruction documents and/or export licences. 		
<p><u>5.</u> Performance review</p>	<p><u>5.</u> Performance review</p>	
<p><u>5.1.</u> Establish a regular performance review system to confirm that the export control operation is implemented appropriately according to the ICP and the operational procedures and is compliant with all relevant domestic laws and regulations</p>		<ul style="list-style-type: none"> It is recommended that a performance review is carried out by a unit separated from sales or by an outside specialist, as the structure, size and other circumstances of the exporter permit. Performance reviews could be carried out annually.
<p><u>6.</u> Training</p>	<p><u>6.</u> Training</p>	
<p><u>6.1.</u> Training and education of officers and employees</p> <ul style="list-style-type: none"> - Ensure that staffs are aware of all domestic export control laws, regulations, policies and control lists and all amendments to them as soon as they are made public. 	<p><u>6.1.</u> Training and education of officers and employees</p> <ul style="list-style-type: none"> - Archive internal training records including staff participation in external events. 	<ul style="list-style-type: none"> Training and continued education should be carried out for employees at all levels, especially new staff, persons who work in sales, export related units, or are involved in technology transfer. Provision of at desk training using electronic media, such as the internet and CD / DVDs, may be useful to supplement and reinforce formal training sessions.

Basic Elements	Additional Elements	Notes
<u>7.</u> Record Keeping	<u>7.</u> Record Keeping	
<p><u>7.1.</u> Archive export-related documents for an appropriate period according to the requirements of domestic export control regulations</p>		<ul style="list-style-type: none"> • Export-related documents may include export licences, end-use assurances, commercial invoices, clearance documents, product classification/identification sheets, and records of electronic transfers.
	<p><u>7.2.</u> The exporter's practices and procedures for archiving material should be known by all relevant staff.</p>	<ul style="list-style-type: none"> • Archived records should be traceable.
<u>8.</u> Reporting and Corrective Action	<u>8.</u> Reporting and Corrective Action	
<p><u>8.1.</u> A prompt report should be made to the CECO/ECM of any violations or suspected violations of export control regulations or ICP procedures.</p>		
<p><u>8.2.</u> A prompt report should be made to the competent authorities if the CECO/ECM confirms a violation of export control laws and regulations.</p>		<p>Violations of export control laws and regulations should be investigated by competent domestic authorities. The violators could be punished according to domestic legal procedures.</p>
<p><u>8.3.</u> Ensure any corrective actions necessary are implemented so that similar violations do not recur.</p>		<p>Implement, as appropriate, disciplinary procedures against any member of staff responsible for confirmed violations of export control regulations or ICP procedures.</p>