

F. No.1(10)/2018-D(EPC)
Government of India
Ministry of Defence
Department of Defence Production
D (Export Promotion Cell)

10th May, 2024

NOTIFICATION

Subject: Open General Export License for Intra-company Transfer of Technology- Reg

The Department of Defence Production, Ministry of Defence, pursuant to the authority granted to it by the Directorate General of Foreign Trade, vide Public Notice No. 4/2015-20, dated 24th April 2017, and in supersession of the Notification dated 14th June 2022, hereby notifies issuance of Open General Export License (OGEL) for Transfer of Technology related to SCOMET Category 6 items subject to conditions (a) to (e) below:

- a. **Intra-company transfer** of software or technology of the items listed in Section II from India to any of the countries listed in Section III of this Notification is permissible in accordance with the provisions contained in Part F of the SOP dated 10th May, 2024 and revised from time to time.
- b. The items/software/technology to be exported by Indian subsidiary, have been imported from the country of the parent company abroad or from subsidiaries of the parent company abroad.
- c. The items / software/technology to be exported is based on a Master Service Agreement/Contract between the parent company and the Indian subsidiary for carrying out certain services including design/encryption/research/development/delivery/validation/testing

Note: As a result of the service carried out by the Indian exporter, the items/software/technology should not undergo change in functionality and classification.

- d. These items/software/technology is/are to be exported to the foreign parent company and /or subsidiaries of foreign parent company;
- e. The applicant exporter declares that the exported items would be used for the purposes for which it is intended by the parent company and /or its subsidiaries.



2. The OGEL will be applicable for export to the countries mentioned in Section III of this Notification.
3. The procedure for grant of OGEL by DDP shall be in accordance with the provisions of Standard Operating Procedure dated 10th May, 2024 and revised from time to time.
4. Online Application for grant of OGEL shall be filed by an Exporter on **defenceexim.gov.in**.

Section I - Purpose

(1) Allow exporter intra-company transfer of technology related to SCOMET Category 6 of items mentioned in Section II below from India to any of the countries listed in Section III of this license subject to the terms & conditions mentioned in the succeeding Sections.

(2) Application for grant of OGEL, shall be considered by DDP on case to case basis, subject to the following:

- i. The applicant exporter should have a valid IE Certificate.
- ii. The applicant Exporter should have established an appropriate/certified approved Internal Compliance Programme (ICP) or Export Compliance Programme of its own, or should be compliant with an ICP of its subsidiary/principal abroad to which the items will be exported. This could be self-certified by the Compliance Manager of the exporter or could be a Government certification pertaining to supply chain, security and trade of items like the Authorized Economic Operator (AEO) Scheme.
- iii. The exporter agrees to receive an on-site inspection by DDP or relevant Government Agency or its authorized representative, whenever desired for the auditing/verification of ICP.
- iv. The exporter must comply with post shipment reporting documents, which must include submission of annual report to Export Promotion Cell of DDP, latest by 15th April of every year, in respect of the exports made against a specific OGEL, in the prescribed format, providing details of the SCOMET items (category/sub-category number) exported along with complete details of all consignees, end users, technical specification of the items and destination countries, in respect of each export consignment.
- v. The quarterly & end of the year reports on all the transaction done under this OGEL, shall be submitted to DDP for examination and post-export verification.
- vi. The exporter shall submit a declaration to the effect that they have internal controls in place to prevent transfer of goods to countries/ entities facing UNSC sanctions or arms embargo.

- vii. The exporter shall submit a declaration that the end user will allow for further checks, if necessary, by the authorized representatives of Government of India.
- viii. Once an application is made, DDP would examine the same and provide authorization under this OGEL after consultation with the relevant stakeholders at the initial stage only.
- ix. While the OGEL will be normally allowed for the countries/ destinations specified in Section III, however, based on the inputs of stakeholders, DDP reserves the right to amend the list of countries/ destinations under OGEL at the time of initial assessment of the license application or at a later stage based on factors specified in para 10.06 of the Handbook of Procedures under India's Foreign Trade Policy.

(3) The Competent Authority reserves the right to audit and to ensure correct usage of the OGEL.

(4) Failure to use the OGEL correctly may lead to suspension or withdrawal of authorization by DDP.

Section II - Items that can be exported or transferred under this license

- (1) The description of the Items listed in the table below has the same meaning as those described in Appendix 3 of ITC (HS) Schedule 2, Export Licensing Schedule, Table A (i.e., list of SCOMET items), Category 6.

Control list classification	Technologies or software related to items listed categories
6A021 and 6A022	Components of ammunition & fuze setting device without energetic and explosives material listed in Category 6A003a & 6A003c
	All goods of category 6A005.
	All goods under category 6A006 <u>except</u> complete systems
	All goods under category 6A009 <u>except</u> complete systems.
	All goods under category 6A010, <u>except</u> : <ul style="list-style-type: none"> • complete aircraft; or • complete unmanned aerial vehicles (UAVs) and any components specially designed or modified for UAVs.
	All goods under category 6A013.
	Category 6A014 Simulators only
	All goods under category 6A015.

Section III - Countries or destinations normally allowed under this license

- (i) Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Ukraine, the United Kingdom and USA.
- (ii) Export or transfer of the above Items to a '**Special Economic Zone**' is not permitted. (A '**Special Economic Zone**' is a part of the territory of a country where any goods introduced are generally regarded, as far as import duties and taxes are concerned, as being outside the customs territory of that country, and so the usual customs controls do not apply).

Section IV - Other restrictions that apply

- (1) With regard to the export of any Items that are deemed "restricted", "confidential", "secret" or "top secret", any entity that is engaged in the production of Defence products and that have been issued a license by the Department of Industrial Policy and Promotion must abide by the requirements delineated in the Security Manual for Licensed Defence Industries: <http://ddpmod.gov.in/sites/default/files/1403158012.pdf>.
- (2) The exporter must only transfer technologies or software
 - (i) to their parent/subsidiary companies as long as they are based in one of the countries listed in Section III.
 - (ii) related to items as mentioned in Section II above.
- (3) The exporter must not transfer technologies or software
 - (i) related to items which is not mentioned in Section II above.
 - (ii) related to munitions list which are deemed "restricted", "confidential", "secret" or "top secret".

(4) Re-export/re-transfer of technology by the foreign parent company/foreign subsidiary in other countries shall be permissible, subject to compliance with the export control regulations of the country of the foreign parent company/ foreign subsidiary.

(5) Weapons of Mass Destruction (WMD)

It may be ensured that no export or transfer of the items specified in Section II is done if the company is aware or suspects that these items may be used, in whole or in part, for WMD or their means of delivery.

(6) A comprehensive set of internal controls should be in place to ensure that the company does not export, transfer or share any items without the necessary authorizations, including procedures requiring:

- (i) that the items are properly classified and marked prior to export,
- (ii) that the items are not transferred to or shared with a denied party in contravention of any embargo, sanction, debarment or denied party designation maintained by any government or union of states (e.g. European Union); and
- (iii) that robust access controls are in place to protect the items from unauthorized access.

(7) The DDP has the power to vary or withdraw authorization at any time based on the inputs of the stakeholders.

(8) The authorization under this OGEL will be valid for a period of 2 years from the date of issue.

(9) Where the exporter senses that items could be covered under catch-all, then they should follow regular procedure of SCOMET to get export authorization

Section V - Actions to be taken before exporting or transferring Items under this licence

- (1) Register with the Department of Defence Production on www.defenceexim.gov.in and take authorization from DDP for using this OGEL.
- (2) The company must be satisfied that the Items proposed to be exported or transferred can meet all the requirements set out in this license.
- (3) The Company has in place a system for keeping records of the exports or transfers for inspection by the Government of India or any authorized person.
- (4) The Company must ensure that:

- a. it has an original End User Certificate in the prescribed format;
- b. it has an original purchase order, excerpt of contract from the person or entity (consignee) receiving the Items which states the export is for a permitted use;
- c. the documents include the name & contact number and email id of the authority signing the EUC;
- d. the destination of the goods, software or technology is not a UN embargoed destination.

Section VI - Actions to be taken when exporting or transferring Items under this licence

(1) For all physical exports of Items mentioned in Section II of this OGEL, the Company must make sure that the commercial documents that go with the Items include a declaration stating that 'the Items are being exported under the OGEL No. ----- dt. ----- (Military Goods and items intended for a military use)'

(2) The Company should present the documents to Indian Customs or other competent Indian authority when asked, together with the information and documents listed in Section VII(1) below.

(3) The Company must submit a quarterly & end of the year usage report as per **Appendix 1**, for all exports or transfers carried out under this OGEL within a Financial Year. The report must be submitted within 15 days of the deadline as expressed above.

Section VII - Records to keep

(1) Pursuant to sub para 2.73(c) of the Handbook of Procedures, 2015-20 (re: Maintenance of Records), the following records must be kept, manually or electronically, relating to export under this license for five (5) years and make them available for any person authorized by the Government of India to inspect:-

1. The date and destination of export or transfer.
2. The name and address of the person or entity (the consignee) you are exporting or transferring the software and technology to.
3. A description of the goods.

4. The original undertaking from the person or entity (consignee) receiving the software /technology or documents described in Section V (4) above.
5. The classification in Appendix 3 of ITC (HS) Schedule 2, Export Licensing Schedule, Table A (i.e., list of SCOMET items), Category 6.
6. Documents referred to in section V & VI above.
7. All other records as required by sub para 2.73(c) of the Handbook of Procedures, 2015-20 (re: Maintenance of Records).
8. Quantity and value of export.

Section VIII - Other legal requirements

- (1) The Company must comply with all requests for information received before an audit visit by the Government of India and return it by the stipulated date.
- (2) The Company must not transfer software & technology, if their use would be inconsistent with the terms of a United Nations (UN) arms embargo or any other arms embargo.
- (3) In addition to the requirements of this licence, the Company must adhere to any other relevant laws and acts in force at the time of export.

Section IX - Responsibilities of OGEL holder

As OGEL holder, an exporter should comply with the following:

- a. Notify DDP of any changes in the ICP, company structure, internal process or trade compliance team, within 15 days of the change;
- b. Ensure that all transactions made under the OGEL are within the scope of approval;
- c. Make reasonable enquiries to ensure that the technology or software to be exported, re-exported, trans-shipped or transmitted under the OGEL are not intended or likely to be used, wholly or in part, for or in connection with a WMD and their delivery system;
- d. Ensure that any technology / software transferred under the OGEL is not transferred to UNSC-sanctioned countries or other disapproved entities/countries;
- e. Maintain records as specified in Section VII.

Section X - Recall/Revocation

1. The authorization under this OGEL shall be liable for recall/termination by the DDP on receipt of an adverse report in respect of any of the export consignments or for non-submission of mandatory annual reports or for non-compliance with the conditions for grant of global authorization or assessment of proliferation concerns;
2. Failure to comply with the terms and conditions of OGEL may lead to cancellation of IEC, imposition of financial penalties and initiation of criminal prosecution as per the extant provisions of FTDR Act 1962 as amended, Customs Act 1962 and any other act that may be applicable.

Glossary

Expressions used in this license have the same meaning here as they do under Indian laws. The legislation referred to in this license is updated from time to time and you will need to check that you have the most up-to-date version when using this license.

For the legislation that applies to Indian exports, please visit: <http://dgft.gov.in/>

The following terms and acronyms used in this license have the following meanings.

1. 'Competent authority' means DDP, or other stakeholder(s) as delineated in Paragraph 6 of the DDP's Standard Operating Procedures or any other body acting under the authority of one of these bodies / agencies.
2. A 'consignee' may be a company or a government.
3. 'Declaration' means a commercial document completed for an official of the Government of India which meets the conditions set out in section VI(1).
4. 'Government' as it relates to a contract includes direct contracts with governments, armed forces of a government, government agencies and companies working on behalf of government (and there is evidence of them doing so).
5. An 'original EUC' means one that has a person's original signature and has not been copied, faxed or converted into an electronic format. An undertaking template is available on ddpmod.gov.in.

6. 'Permitted use' means use of the items specified in section II of this license, by a company in a destination specified in section III and which meets the conditions set out in this license.

APPENDIX 1

OGEL Registration Number	Destination	End User Type	Importer	Software/ Technology	Value	Purpose of export	Remarks

Note: Purpose of export should be declared as (i) actual export or (ii) For exhibition or (iii) For demonstration, testing and evaluation or (iv) For tender participation, whichever is applicable.

(Gulshan Kumar)

Under Secretary to the Govt of India