# -SCOMET

# SCOMET - Meaning Thereof

- SCOMET is an acronym for
- Special Chemicals,
- Organisms,
- Materials,
- Equipment, and
- Technologies,

### SCOMET - Need for Special Category

- This list contains goods which are considered as dual-use items,
- i.e., goods, technology, chemicals, organisms etc.
- which potentially have both,
- civil as well as military applications and
- are capable of being deployed as weapons of mass destruction.

## SCOMET - Background for Implementation

- Concern Over growing proliferation of Weapons of Mass Destruction
- Growing Co-operation between countries to develop WMD technologies
- Need for a Strategic Trade Control System (STC)
- Results into formation of SCOMET

# Components of STC (Strategic Trade Control System

- Legal:
- Licensing:
- Regulatory Framework
- Enforcement:

### Legal Framework for STC

- Sec. 3 (2) of the FTDR Act empowers the Central Government to prohibit, restrict, or otherwise regulate the import or export of goods or services or technology.
- Chapter IV A inserted by FTDR (Amendment) Act, 2010, provides that in regard to controls on export of specified goods, services and technology, the weapons of Mass Destruction and their Delivery Systems (Prohibition of unlawful Activities) Act, 2005 shall apply to export, transfer, re-transfer, brought in transit, transhipment of and brokering in specified goods, technology or services.

#### Section 14C – Catch All Controls

- No person shall export any material, equipment or technology knowing that such material, equipment or technology is intended to be used in the design or manufacture of a biological weapon, chemical weapon, nuclear weapon etc.
- Section 14 E of the Act makes provision in regard to offences and penalties for infringement.
- The penal provisions of the Act also include suspension or cancellation of IE Code of the person who imports or exports specified goods services or technology in contravention of any provision of the Act or any rule or orders made thereunder

# INDIA'S COMMITMENT TO EXPORT CONTROLS

- Multilateral export control regimes contribute to the goals of non-proliferation by issuing guidelines for export controls and lists of specific goods and technologies whose exports should be regulated.
- India's export control system takes into account the best practice guidelines and is harmonised with the control lists of all the export control regimes, including Nuclear Suppliers Group (NSG)
- India became a member of Missile Technology Control Regime (MTCR) in June 2016, Wassenaar Arrangement (WA) in December 2017 and Australia Group (AG) in January 2018.
- India's impeccable record on non-proliferation is a reflection of the efficacy of its export control system.

#### INDIA'S EXPORT POLICY

- The Directorate General of Foreign Trade (DGFT) provides the details of the Export policy in the Export Licensing Schedule – SCHEDULE 2
- Free goods: All goods other than specified in the export licensing schedule are freely exportable.
- 2. Prohibited goods: Not permitted / no license will be issued.
- 3. / Restricted goods: License is required. Procedures are to be followed.
- A. State Trading Enterprise (STE)
- 5. Restrictions on Trade with specified Countries

# WEAPONS OF MASS DESTRUCTION AND THEIR DELIVERY SYSTEMS (PROHIBITION OF UNLAWFUL ACTIVITIES) ACT, 2005

- Integrated and over-reaching legislation
- The WMD Act provides for:
- Regulation of export, transfer, re-transfer, trans-shipment and transit: Sections 5 and 13(1)
- Catch-all controls: Section 11
- Prohibition on Brokering: Section 12
- Restrictions on Transfer of Technology: Sections 13(2) and 13(3)

#### LEGAL FRAMEWORK FOR EXPORT CONTROLS

- Except as otherwise provided for against any item in the SCOMET List, means information (including information embodied in software) other than information in the public domain, that is capable of being used in:
- (i) the development, production or use of any goods or software;
- (ii) the development of, or the carrying out of, an industrial or commercial activity or the provision of a service of any kind.
- When technology is described wholly or partly by reference to the uses to which it (or the goods to which it relates) may be put, it shall include services which are provided or used, or which are capable of being used, in the development, production or use of such technology or goods

- The information takes the form of 'technical data' or 'technical assistance'.
- Technical data' may take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.
- 'Technical assistance' may take forms such as instruction, skills, training, working knowledge, consulting services. 'Technical assistance' may involve transfer of 'technical data'.
- Specified technology is defined in the General Technology Note to the SCOMET Category 8. Specified technology for the Munitions List is defined in 6A022

### Categories of SCOMET Items

The SCOMET items are classified under 9 distinct categories:

- Category 0:Nuclear materials, nuclear related other materials, equipment and technology
- Category 1:Toxic chemical agents and other chemicals
- Category 2:Micro-organisms, toxins
- Category 3:Materials, Materials Processing Equipment and related technologies
- Category 4:Nuclear-related other equipment and technology, not controlled under Category 0
- Category 5: Aerospace systems, equipment including production and test equipment,
   related technology and specially designed components and accessories thereof
- Category 6: Munitions list
- Category 7:Reserved
- Category 8:Special Materials and Related Equipment, Material Processing, Electronics, Computers, Telecommunications, Information Security, Sensors and Lasers, Navigation and Avionics, Marine, Aerospace and Propulsion.

#### **Table: SCOMET Categories and Licensing Jurisdiction**

	SCOMET Category	SCOMET items	Jurisdictional Licensing Authority	Remark
	0	Nuclear materials, nuclear-related other materials, equipment and technology	Department of Atomic Energy (DAE)	Including items mentioned in Note 2 of CIN of SCOMET List
	1	Toxic chemical agents and other chemicals	Directorate General of Foreign Trade (DGFT)	
	2	Micro-organisms, Toxins	DGFT	
	3	Materials, Materials Processing Equipment and related Technologies	DGFT	
	4	Nuclear-related other equipment and technology, not controlled under Category '0'	DGFT	
	5	Aerospace systems, equipment, including production and test equipment, and related Technology and specially designed components and accessories thereof.		
	6	Munitions List	Department of Defence Production (DDP)/ Ministry of Defence	Excluding those covered under Note 2 and 3 of CIN and Sub- category 6A007, 6A008
L	7	'Reserved'	DGFT	
	8	Special Materials and Related Equipment, Material Processing, Electronics, Computers, Telecommunications, Information Security, Sensors and Lasers, Navigation and Avionics, Marine, Aerospace and Propulsion.	DGFT	

CIN: Commodity Identification Note of SCOMET List

# Application and Documentation for SCOMET Authorisation

- An application in prescribed proforma to the DGFT (Hqrs) along with documents as prescribed.
- Such applications are mandatorily to be filed through online system on the website
  of DGFT.
- However, original End User Certificate(s) or Legal Undertaking for temporary exports is/are to be submitted in hard copy along with covering letter clearly besides electronic submission.
- Application shall be accompanied by an EUC
- The end-user certificate will indicate the requisite details like ...
- Government of India may also require additional formal assurances, as deemed appropriate

# Issue of export authorisation for "Stock and Sale" of SCOMET items

- Application for grant of authorisation for bulk export of SCOMET be considered by IMWG, on the following conditions:
- The exporter shall submit application in prescribed proforma (ANF-10B) along with following documents from the stockist:
- Documentary proof regarding corporate relationship between the Indian exporter and stockist;
- End-use/End-user Certificate from stockist entity abroad
- List of countries (in the EUC) to which the items imported from India would be exported by the stockist;
- Purchase Order(s)/Invoice(s) or a document in lieu thereof;
- Technical specifications of the product(s)

# Issue of authorisations for repair/replacement of defective SCOMET items

- An application for grant of an Authorisation for export/re-export of SCOMET items, as the case may be for
- (i) repair/replacement of imported item(s) abroad and return
- (ii) repair/replacement of indigenous SCOMET items
- (iii) return of items imported for repair at a repair facility in India and
- (iv) Authorisation for export of SCOMET items after repair in india (GAER)

shall be made in prescribed proforma [ANF 10A] through online SCOMET portal

# Issue of export authorisations for demo/exhibition of SCOMET items

- An application for grant of an Authorisation for
- export of indigenous/imported SCOMET item(s) for demo/display/exhibition/ purposes abroad; and
- export of SCOMET item(s) imported for participation in demo/display/exhibition in India,
- shall be made online at SCOMET portal in prescribed proforma

# Procedure for Processing of Applications for licence for export of SCOMET items

- All applications for licence for export of SCOMET items are considered on merits by an Inter-Ministerial Working Group (IMWG) in the DGFT under the Chairmanship of Additional Director General of Foreign Trade as per guidelines and criteria laid down in Handbook of Procedure.
- Once the case is approved by the IMWG, permission letter is issued to the exporter for obtaining export authorization from the concerned Zonal/Regional office of the DGFT.
- Applications for licences to export items or technology on SCOMET List are considered caseby-case, based inter alia on the following general criteria: -
- I. Following factors, among others, are taken into account in the evaluation of applications for export of items on SCOMET List:
- a. Credentials of end-user,
- credibility of declarations of end-use of the item or technology, integrity of chain of transmission of item from supplier to end user, and
- the potential of item or technology, including timing of its export, to contribute to end uses that are not in conformity with India's national security or foreign policy goals
- and objectives, objectives of global non-proliferation, or its obligations under treaties to which it is a State party.

- b. Assessed risk that exported items will fall into hands of terrorists, terrorist groups, and non-State actors;
- c. Export control measures instituted by recipient State;
- d. The capabilities and objectives of programmes of recipient State relating to weapons and their delivery;
- e. Assessment of end-uses of item(s);
- f. Applicability to an export licence application of relevant bilateral or multilateral agreements to which India is a party.

#### Enforcement of SCOMET Provisions

- Primary enforcement agency is customs.
- To make sure items being exported in accordance with Export Policy
- Prosecution for violation of export policy under Customs Act
- Violation, if any, reported to DGFT

#### ENFORCEMENT - DGFT

- Penal provisions under FT (D&R) Act for violation of Foreign Trade Policy and Export Control provisions.
- Suspension/cancellation of 'IE Code' Sec. 8
- Penalty up to 5 times the value of the goods exported Sec. 11
- Criminal prosecution for unauthorised export of SCOMET items

- Prohibition under WMD Act 2005
- on manufacture/possession/acquisition of WMD
- on export of material/technology which can be used for WMD
- on brokering in material/technology which can be used for WMD
- on transfer to non-State actors, terrorists

#### Penal Provisions

- Imprisonment from five years to extending up to life imprisonment
- Penalty of up to twenty lakh rupees for unauthorised export

# FEMA – Foreign Exchange Management Act 1999

### Meaning & Need of FEMA

- Meaning
- The FEMA is an act of the government that consolidated and modified the laws governing India's foreign exchange market.
- This FEMA Act's objective was to promote external payments, orderly development and the maintenance of the markets for foreign exchange in India.

#### Need OF FEMA

- Post liberalization (i.e. New Industrial policy of 1991) there was need to remove shackles of regulatory and legal provisions
- 2) to bring provisions of FERA in line with emerging trends of liberalization so as to facilitate inward flow of foreign exchange and foreign investment.

#### Structure of FEMA

- Applies to the whole of India and all branches, offices and agencies outside India which are owned or controlled by a person resident in India.
- FEMA has 49 sections of which 9 (section 1 to 9) are substantive and the rest are procedural/ administrative
- Sec 37A power to seize value equivalent Indian assets for overseas assets viz., foreign exchange, foreign security, immovable property outside India held in contravention of Sec 4
- Section 46 of FEMA grants power to Central Government to make rules to carry out the provision of FEMA
- Section 47 of FEMA grants power to RBI to make regulations to implement its provisions and the rules made there under
- RBI is entrusted with the administration and implementation of FEMA

### Grouping of FEMA Provisions

Regulation for Current Account Transaction

- Regulations Relating to Capital Account Transactions
- Regulations relating to export of goods and services

Other Regulations

#### Definitions:

- Foreign Exchange [Sec 2(n)] -
- foreign exchange means foreign currency and includes –
- i. deposits, credits and balances payable in any foreign currency,
- ii. Drafts, traveller's cheques, letter of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency.
- iii. Draft, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.

### Repatriate to India [Sec 2(y)]

- Repatriate to India means bringing into India the realised foreign exchange and –
- i. the selling of such foreign exchange to an authorised person in India in exchange for rupees, or
- ii. the holding of realized amount in an account with an authorized person in India to the extent notified by the reserve Bank

and includes use of the realised amount for discharge of a debt or a liability denominated in foreign exchange and the expression "repatriation" shall be construed accordingly.

#### Repatriation outside India

- means buying or drawing of foreign exchange from an authorized dealer in India and
- remitting it outside India through normal banking channels or
- crediting it to an account denominated in foreign currency or
- to an account in Indian currency maintained with an authorized dealer from which it can be converted in foreign currency.
- [Regulation 2(e) of Notification No. 21R]

#### Transfer [Sec 2(ze)] -

 includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien

#### Residential Status under FEMA

#### PERSON RESIDENT IN INDIA [Sec. 2(v)(i) of FEMA]:

Residing in India for > 182 days during the course of preceding F.Y. but doesn't include

#### going out of India or staying outside India

- for taking up employment
- for carrying business or vocation
- for any other purpose in such circumstances as would indicate his intention to stay outside India/for uncertain period

#### coming to India or staying in India otherwise than

- for taking up employment
- for carrying business or vocation
- for any other purpose in such circumstances as would indicate his intention to stay in India for uncertain period

- PERSON RESIDENT OUTSIDE INDIA: a person who is not resident in India.
- Person Resident but not permanently resident: Explanation to Schedule III of Current A/c Rules provides that
- ....., a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed 3 years, is considered to be a person resident but not permanently resident in India.

# Residential Status for Indian Students Studying Abroad

Indian students studying abroad may open, hold and maintain foreign currency account with bank outside India during their stay outside India.

An individual resident in India studying abroad may borrow up to USD 2,50,000 or such higher amount decided by RBI for the purpose of payment of education fees abroad and maintenance.

### Capital Account Transaction

- Section 2(e) Capital Account transaction means a transaction which alters assets or liabilities including contingent liabilities, outside India of person resident in India or assets and liabilities in India of persons resident outside India and includes transactions referred to in sub-section (3) of Section 6.
- Subject to the provisions of sub-section 6(2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.
- The RBI may, in consultation with the Central Government specify any class or classes of capital account transactions, involving debt instruments, which are permissible, the limit up to which FE shall be admissible for such transactions.

### Prohibited Capital Account Transaction

- Section 6(3) Lists the Capital Account Transactions that are prohibited, restricted or regulated by RBI
- a) Transfer or issue of any security by a person resident in India
- b) Transfer or issue of any security by a person resident outside India.
- c) Transfer or issue of any security or foreign security by any branch, office or agency in India to a person resident outside India.
- d) Any borrowing or lending in foreign exchange in whatever form or by whatever name called
- e) Any borrowing or lending in Indian rupees in whatever form or by whatever name called between person resident in India and a person resident outside India.
- f) Deposits between persons resident in India and persons resident outside India

- g) Export, import or holding of currency or currency notes.
- h) Transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident outside India
- i) Acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India.
- j) Giving of a guarantee or surety in respect of any debt, obligation or other liability incurred –
- By a person resident in India and owed to a person resident outside India;
- or
- By a person resident outside India.

#### Current Account Transaction

- Section 2(j) -
- Current Account transaction is transaction other than a capital account transaction and generally includes:
- Payments due in connection with foreign trade, Short term banking and credit facilities.
- Payment due as interest on loan and income from investment.
- Remittances for living expenses of parent, spouse and children residing abroad.
- Expenses in connection with foreign travel, education and medical care of parents, spouse and children.

# Schedules in Current Account Transactions Rules

- Schedule I Prohibited Transactions
- <u>Schedule II</u> Transactions requiring prior approval of Government
- of India
- <u>Schedule III</u> Transactions requiring prior approval of RBI

# Schedule I (Rule 3): Transactions which are prohibited

- Remittance out of lottery winnings (\*)
- Remittance of income from racing/riding etc., or any other hobby
- Remittance for purchase of lottery tickets, banned/prescribed magazines,
- football pools, sweepstakes etc.
- Payment of commission on exports made towards equity investment in JV/WOS
- abroad of Indian companies.
- Payment related to 'Call Back Services' of telephones
- Remittance of interest income of funds held in Non-resident Special Rupee Scheme A/c.

# Schedule II (Rule 4) Transactions requiring prior approval of Government:

Purpose of remittance	Approval required from Ministry/Department of Govt. of India
Cultural tours	Ministry of Human resources Development
Advertisement in foreign print media for purpose other than promotion of tourism, foreign investments and international bidding	Ministry of Finance
Payment of import [through ocean transport] by a Govt. department or a PSU on CIF basis	Ministry of Surface Transport
Remittance of hiring charges of transporters by TV channels, internet service providers	Ministry of Information and Broadcasting, Ministry of Communication and Information technology

### Schedule III (Rule 5): Prior Approval of RBI

- ► Facilities for Individuals Individuals can make remittance within limit of USD 2,50,000
- for following facilities. However, any additional remittance in excess of said limit shall
- require RBI approval.
- Private visits to any country (except Nepal and Bhutan)
- Gift or donation
- Going abroad for employment
- Emigration
- Maintenance of close relatives abroad
- Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check up abroad, or for accompanying as attendant to a patient gong abroad for medical treatment/check up.
- Expenses in connection with medical treatment abroad
- Studies abroad
- Any other current account transaction.

### Facilities for persons other than individuals

- Following remittances by persons other than individuals shall require prior approval of RBI
- Donations exceeding 1% of their foreign exchange earnings during the three financial years or USD 5,00,000 whichever is less.
- Commission per transaction to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or 5% of inward remittance whichever is more.
- Remittances exceeding USD 10 million per project for any consultancy services in respect of infrastructure projects and USD 1 million per project for other consultancy services procured from outside India.

#### Benefits of FEMA Act

- Facilitating external trade and payments
- Promoting orderly development and maintenance of the foreign exchange market
- Regulating capital account transactions
- Ensuring proper utilization of foreign exchange resources in India
- Conserving foreign exchange reserves in India
- Stopping illegal activities like money laundering and financing terrorism

### Mandatory compliances under FEMA

- Annual Return on Foreign Liabilities and Assets
- Annual Performance Report
- External Commercial Borrowings (ECB)
- Advance Remittance Form
- Form FC- GPR
- Form FC- TRS
- Form ODI