

# MINISTRY OF FOREIGN AFFAIRS OF THE RUSSIAN FEDERATION

**Department for Non-Proliferation and Arms Control** 

### Control of Intangible Technology Transfers

in the Russian Federation

27<sup>th</sup> Asian Export Control Seminar *February 2020* 

### Overview

- Introduction
- Legal basis for ITT controls
- Practical aspects of ITT controls
- Challenges and way forward

### Introduction

- Rapid advances in technologies, incl. ICT
- Intensification of scientific contacts
- Internationalization of research / production / trade
- Faster exchanges/technology transfers
- Emerging technologies

**INCREASE IN TRANSFERS OF SENSITIVE TECHNOLOGIES BY INTANGIBLE MEANS** 

**GROWING CHALLENGES TO EXPORT CONTROL SYSTEMS** 

### Introduction

### ITT include transfers via:

- Electronic means (e-mails, cloud, web-conferences, etc.)
- Technical assistance (training, instruction, consultation, etc.)
- Education (foreign students, universities abroad, seminars, conferences, etc.)
- Intra-company transfers (local branch of a foreign company, foreign employer of a local company, transnational companies, etc.)
- Other (telephone conversations, person-to-person contacts, etc.)

SUBJECT TO EXPORT CONTROLS REGULATIONS

#### **EXPORT CONTROL LAW**

Article 19: - Licensing of transfers of controlled goods and technologies
-Single or General licenses
-Temporary exports

Article 20: Catch-all

Article 22: Procedures for licensing

Presidential Decrees (control lists)

Government Regulations (practical aspects of export control)

Instructions/handbooks/guidelines of various agencies, e.g. the Federal Service for Technical and Export Control (FSTEC)

(more detailed practical aspects)

No definition of ITT

### but:

"...permit-based export of controlled goods and technologies... by any means (including by mail or via electronic means of communication)..."

(Government Regulation #1079 of 30.12.2008)

In terms of export controls implementation Russian legislation makes **no distinction** between tangible and intangible transfers of technology

"External economic operations involving transfer of controlled goods and technologies... to foreign nationals... are subject to licensing" (Article 19, Export Control Law)

# = same legal consequences in case of violations for tangible and intangible transfer of technology

**Difference**: intangible transfers are not subject to customs procedures

Export of controlled goods and technologies in the form of technical data..., <u>except for export of</u> technologies in the form of the technical data <u>by electronic means of communication</u>, are subject to customs procedures and custom control...

(para 32, Governmental Regulation #447 dated 7.06.2001)

Comprehensive approach to ITT controls:

ANY TECHNOLOGY TO BE TRANSFERRED TO A FOREIGN NATIONAL MUST GO THROUGH AN <u>EXPERTISE</u> (<u>IDENTIFICATION</u>) if it has export control features

(exception: General Technology Note - in the public domain, publicly available, etc.)

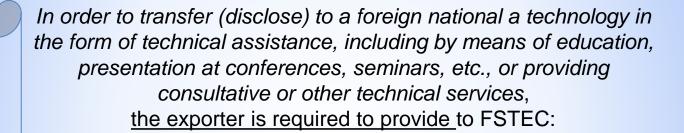


If the technology is subject to export control requirements, the exporter **must apply** for an export license (for listed technology) or permit (catch-all).

# ITT controls in Russia: practical aspects

### ITT as technical assistance:

In addition to the standard set of documents



- Information on the nature and content of the technology;
- Information on a <u>means</u>, <u>place and time of transfer (disclosure)</u> of the technology

(Government Regulation #691 dated 15.09.2008)

### ITT controls in Russia: practical aspects

### ITT as electronic transfers:

To apply for a license/permit for transfer of a sensitive/controlled technology by electronic means the exporter has to indicate:

- The size of transmitted information
- E-mail address of the sender
- E-mail address of the recipient



 Measures are to be taken to protect the information subject to export control so as to exclude access by third parties

(included as a special condition in the license)

The transfer is to be reported to FSTEC within 10 days

## ITT controls in Russia: practical aspects

### ITT as education:

There is a **requirement** to get a permit / identification statement:

- if a foreign student wants to obtain higher education on sensitive programmes ("open" analogues of the "closed" specializations)
  - two-layer approach:

control of both <u>study programmes</u> and specific <u>applicants</u>

- for post-graduate studies in sensitive areas
- if Russian professors go abroad to give lectures in the areas of science that are similar by sensitivity to controlled technologies

For <u>controlled</u> technology <u>license</u> is required

## Challenges

- Violations are hard to detect and hard to enforce
- Evolution of ITT methods
- Emerging technologies: civil or dual-use?
- Control vs. freedom of academic research
- Control of informal person-to-person contacts is very difficult

# Challenges: way forward

- Continuous adjustment of national export control systems (based on national experience and experience of others)
- Extensive outreach to industry and academia
- Guidance materials to industry and academia
- Training / targeted seminars
- ICPs: promotion and assistance
- Awareness-raising, incl. of legal consequences
- Dialogue with research community (incl. on emerging technologies)

**THANK YOU!**