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## **Customs & Trade in Israel**

### **A Legal Newsletter**

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#### **The Fundamentals of Defense Export Supervision - Part 1**

Adv. Gill Nadel

At the end of 2007, the Defense Export Control Law, 2007 [hereinafter: "**the law**"] came into effect. The law, the regulations and orders that were legislated under the law, replace the secondary legislation which existed until the law came into effect. The law regularizes in primary legislation the supervision of the exportation of defense equipment from Israel, the transfer of defense know-how and the provision of defense services. The law's purpose is to regularize the supervision of defense exports by reason of national security, foreign policy, international obligations, and maintaining other vital interests of the State of Israel.

Defense export is defined under the law as each one of the following:

- a. Export of defense equipment
- b. Transfer of defense know-how
- c. Provision of defense services

It is the responsibility of every exporter and every individual who handles marketing related to defense exports to know and be familiar with the meaning of the following terms; as well as with the products that he handles, in order to avoid being involved in defense exportation and/or marketing actions that require a license, without a proper license.

We will elaborate and clarify what is included in every category:

## **A. Export of Defense Equipment**

Four lists of items of defense equipment are listed in the orders legislated under the law:

- (1) List of Combat Equipment - this list is based on the Munitions List of the Wassenaar Arrangement, which includes 24 categories, among them: explosive devices, tanks, military armed vehicles, artillery, fighter jets, attack helicopters, warships, missiles and missile launchers, small arms and light weapons.
- (2) List of Dual-Use Equipment - the list of Dual-Use Goods and Technologies of the Wassenaar Arrangement, which includes 9 categories, among them: special materials and related equipment, material processing, electronics, computers, telecommunications, information security, sensors and lasers, navigation and avionics.
- (3) List of Missiles Equipment - the technical annex of the Missile Technology Control Regime (MTCR) - a voluntary association of countries that share the goals of non-proliferation of unmanned delivery systems capable of delivering weapons of mass destruction. Since September 1991, the State of Israel has taken upon itself to act according to the standards set by the MTCR.
- (4) List of Equipment to the Palestinian Authority - a list of dual-use items of which the transfer to the Palestinian Authority is supervised by the Coordinator of Government Activities in the Territories (COGAT).

## **B. Transfer of Defense Know-how**

Defense know-how is defined under the law as each of the following;

- (1) Information required for the development or manufacture of defense equipment or its use; information relating to planning, assembling, examining, improving, transforming, guiding, possessing, operating or repairing defense equipment or its care in any other manner, as well as technology included in the orders.
- (2) Knowledge relating to armed forces, including knowledge regarding their organization, assembly, operation, combat doctrine or methods of commanding and training or their methods of action, as well as knowledge regarding defense policy, counter-terrorism and security methods.

In this context it shall be noted that in contrast to the prohibition on defense equipment, it is also prohibited to transfer defense know-how to a foreign entity within the boundaries of the State of Israel.



### **C. Provision of Defense Services**

A service which requires supervision under the law is a service related to defense equipment provided by an Israeli civilian or an Israeli company to a foreigner outside the State of Israel and/or within the boundaries of the State of Israel; accordingly regarding its planning, development, manufacturing, assembling, examining, improving, transforming, repairing, possessing, operating and packaging; as well as guidance regarding equipment as stated, as well as services regarding defense know-how, including guidance, training, or consulting.

The supervision mechanism of defense export is a two stage mechanism; the individual who engages in defense export activities is required to have a defense marketing license which serves him in the marketing-negotiations stage with the potential client. In addition, the individual who engages in defense export activities is required to receive a defense export license in order to conduct the export activities.

In the following articles we will discuss the various licensing stages, the required procedure for obtaining marketing and/or export licenses, the licensed exporter's obligations and the various exemptions.

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