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Adv. Gill Nadel, Chair of the firm's Import, Export and International Trade Law Practice, Tax Department

Will the Recent Amendment of the Defense Export Control Law Ease the Licensing Process?

Adv. Gill Nadel, Adv. Or Cohen-Sasson

Recently, the Knesset (the Israeli Parliament) approved the Amendment of the Defense Export Control Law, 2016, thus establishing it as an inseparable part of the Defense Export Control Law. In the following article we will review the main changes resulting from the amendment which may impact those who deal with defense export.

The amendment basically includes two main subjects: (1) exemption from export licensing obligations under certain circumstances; (2) authorizing an additional entity in the Ministry of Defense to grant export license.

Background:

The Defense Export Control Law, 2007, regulates the export control of defense related equipment, knowledge and services. The intent behind the law is to regulate defense export on the grounds of national security, foreign policy, international commitments and other crucial interests of the State of Israel.

As part of the export control efforts, defense exporters are required to obtain a marketing license and export license for the goods they trade in (for further information on these licenses, please see links below). This license was approved by one of two entities: the Director-General of the Ministry of Defense, or the Head of the Defense Export Controls Agency (DECA).

The Amendment:

Exemption from export licensing obligations:

Before the amendment came into effect, any defense exporter who wished to market and / or export a defense product (as defined by law) was required to apply to the DECA for approval. The exporter

was required to obtain approval even if he reached the conclusion that the act he wished to perform did not require a license.

We feel that this created an absurd situation by which even defense exporters who were certain that the commercial activity they plan to engage in does not require a license, still had to apply for exemption from the DECA. This of course harmed the defense exporters, which were forced to wait for the DECA's exemption, while (in many cases) their clients turn to alternative suppliers.

The amendment suggests that the Minister of Defense will decree by ordinance specific cases in which there is an exemption from the licensing requirement. In these cases, the need for submitting an exemption request will be nullified, which will save the exporters a lot of time and effort.

Authorizing an additional entity to grant export license:

Prior to the amendment, there were only two (!) entities in Israel authorized to grant a marketing or export license: the Director-General of the Ministry of Defense, or the Head of the Defense Export Controls Agency (DECA). This obviously hampered the work of the defense exporters, as well as the DECA and Defense Ministry, with the licensing process at times taking many months from request to approval, which was a severe blow to the Israeli defense industry.

In light of the above, it was decided as part of the amendment that the Director-General of the Defense Ministry will delegate his authority to an additional senior DECA official, authorizing him to sign marketing and export licenses. This will hopefully reduce the work load and the wait time for license approval.

Summary and Notes:

The amendment was passed by the Knesset (the Israeli Parliament) on 29.3.16, and is therefore an inseparable part of the law.

Although it seems the amendment will ease the procedural aspect of obtaining marketing and export licenses, it is still too early to determine how and if the amendment will be practically implemented.

The "exemption list", which is supposed to be formed by the Minister of Defense, may greatly aid the industry, but until he does so, the situation remains as it was.

In addition, we believe additional steps should be taken in order to shorten the time period it takes to obtain a license. Even though an additional DECA entity will soon be authorized to grant licenses, it remains obvious that with only three entities responsible for all the defense licenses in Israel, they

will not be able to handle them all in a reasonable time period. We feel it prudent to authorize additional entities to grant licenses.

It is important to note that the article only reviewed the main aspects of the amendment, not all changes presented by the amendment. We recommend examining the full amendment, which can be found [here](#) (in Hebrew).

For previous articles on dual-use goods export control, please see:

http://www.goldfarb.com/pdf1/The_Wassenaar_Arrangement.pdf

http://www.goldfarb.com/pdf1/Dual_Use_Equipment.pdf

<http://www.goldfarb.com/pdf1/Supervision%20of%20the%20Export%20of%20Dual-Use%20Equipment.pdf>

For previous articles on defense export control, please see:

http://www.goldfarb.com/pdf1/First_Criminal_Trial_Ruling.pdf

http://www.goldfarb.com/pdf1/Obtaining_an_Export_License_Part_2.pdf

<http://www.goldfarb.com/pdf1/The%20Fundamentals%20of%20Defense%20Export%20Supervision%20-%20Obtaining%20an%20Export%20License%20-Part%201.pdf>

<http://www.goldfarb.com/pdf1/The%20Fundamentals%20of%20Defense%20Export%20Supervision%20-%20Obtaining%20a%20Marketing%20License.pdf>

<http://www.goldfarb.com/pdf1/The%20Fundamentals%20of%20the%20Supervision%20of%20Defense%20Export%20-%20Part%201.pdf>

<http://www.goldfarb.com/pdf1/Important%20Things%20to%20Know%20About%20Encryption%20Items%20-%20Part%20I.pdf>

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The above review is a summary. The information presented is for informative purposes only, and does not constitute legal advice.

For more information, please contact Adv. Gill Nadel, Chair of the Import, Export and Trade Law Practice

Email: Gill.Nadel@goldfarb.com Phone: 03-6089979.