



Goldfarb Seligman
Law Offices | Established 1930

Issue 2

Customs & Trade in Israel

A Legal Newsletter

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

The Fundamentals of Defense Export Supervision - Obtaining a Marketing License

Adv. Gill Nadel, Adv. Or Cohen-Sasson

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.

As discussed in previous articles, determining the answer to the question whether a particular exporter's activity enters the category of "defense exportation" is critical. Determining this in advance can save the exporter a great deal of time and money, since if the law does not apply to him it would be a shame to invest time and money for naught. On the other hand, if an exporter does not follow the law in a case where it does apply to him, he runs the risk of committing a criminal offense.

This article will cover the stage of obtaining a marketing license. We emphasize that obtaining a defense marketing license is a necessary step required by law, in addition to registering the exporter and registering the product.

What is a marketing license?

The law requires a defense exporter to obtain a marketing license from the Defense Export Controls Agency (DECA) in order to engage in the export of defense equipment, know-how or services. The obligation to obtain a license applies to any individual / company engaging in defense exportation, as well as any intermediary / representative agent that conducts negotiations for the sale of defense equipment, know-how or services.

Although it is called a "marketing" license, it is required for additional activities besides marketing, such as conducting negotiations or preliminary proceedings for the advancement of a deal (even before signing a contract or drafting a memorandum) in connection with goods that belong to the category of defense exports. In other words, a marketing license must be obtained at very early stages, before the deal comes together, such as: offering a product, developing, consulting, training, negotiating, etc.

How is a marketing license obtained?

In order to obtain a defense marketing license, the exporter must file an application with the Defense Export Controls Agency (DECA) and request a marketing license. Without exhausting the issue, we note that there are sub-categories of defense exports, for which it is necessary to attach additional documents to the application for a marketing license [this is the case, for instance, in the sub-categories of the MTCR (software and missile technology), the TSWG (a framework for US-Israel cooperation in the defense field), counterterrorism, security, guerrilla warfare, and more].

For how long does a marketing license remain valid?

If the exporter's application is approved by the DECA, the head of the DECA can grant a marketing license that is valid for up to three years. Three months prior to the expiration of the license's validity, the exporter is required to apply to the DECA for a renewal of the marketing license. Since the process of granting a marketing license involves extensive and comprehensive examinations by the DECA, the process can take not a short amount of time. Therefore, it is recommended that exporters plan their moves wisely and leave a sufficient amount of time before their license becomes invalid.

Are there differences between different exporters' marketing licenses?

Yes. Marketing licenses can differ from exporter to exporter: the DECA has the authority to grant a license while adding stipulations regarding its validity, which place certain restrictions on the exporter, in accordance with the law and the defense export control orders, and at the DECA's discretion. These stipulations may include restrictions on the marketing of certain products or on marketing to certain countries, a shorter period of validity for the license, and so on.

What is the difference between a marketing license for equipment and a marketing license for transferring know-how?

It is important to distinguish between two types of marketing licenses: the first is intended for the marketing of defense equipment, and the second is intended for the marketing of defense know-how. The first type is the 'classic' license an individual or entity that wishes to market defense equipment will need, while the second type is for cases where defense know-how is transferred. For instance, a license of the second type will be required for production training or in a case where the exporting entity operates instruction teams that transfer defense know-how.

Often, an exporter will need two licenses - one for marketing equipment and the other for transferring know-how, and either one of these licenses is not sufficient for the other type of activity. Many exporters may believe, mistakenly, that obtaining a license that relates to certain equipment allows them also to engage in the transfer of know-how (such as training) related to that same equipment, but this is not so. In such a case, the exporter must obtain a separate license for each type of activity. This is true in the opposite case as well - if the training involves the "sale" of know-how to the trainee, a license for the transfer of defense know-how is insufficient and the exporter must obtain a marketing license for the know-how he intends to market.

What is the importance of the marketing license?

It is important to make clear that the marketing license is a necessary precondition for the defense exporter, since without a valid marketing license he will not be able to obtain an export license for the goods and/or the know-how.

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