



Dewey & LeBoeuf

Defense Regulatory Practice Group



Defense Regulatory
Practice Group

4

Continents

15

Countries

1,100

Lawyers

Defense Regulatory Practice Group

About Dewey & LeBoeuf

Dewey & LeBoeuf is a full-service law firm providing counsel throughout the Americas, Europe, Russia/CIS, the Middle East, Asia and Africa. With more than 1,100 lawyers in major financial and commercial centers, the firm represents national and global corporations, financial institutions and government agencies in their most complex legal matters.

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Overview

Dewey & LeBoeuf's Defense Regulatory Practice Group is comprised of lawyers and other professionals in the firm's Washington, DC office. It is led by W. Clark McFadden II, former general counsel, Senate Armed Services Committee.

For 30 years, the group has worked with major multinational companies on the expanse of laws and regulations bearing on defense and security issues and related matters. These include:

- The "Exon Florio" Amendment (security reviews of foreign investment transactions);
- Military and "dual use" export controls;
- Defense industrial security requirements (policies regarding safeguarding of classified information);
- Government contracting regulations;
- Foreign Military Sales rules;
- Antiboycott measures (laws and regulations that address cooperation with the Arab League boycott of Israel);
- Economic sanctions administered by the U.S. Treasury Department, and
- The Foreign Corrupt Practices Act and related antibribery measures.

The group has long worked closely with segments of the US government that make and implement defense regulatory policies, including:

Congress (particularly defense committees); the Defense Department; the State Department's Bureau of Political-Military Affairs; the Commerce Department's Bureau of Industry and Security; the National Security Council and other White House offices; and intelligence agencies.

The group assists defense firms and similarly situated companies in:

Negotiating legal and policy considerations as needed to facilitate mergers and acquisitions (see next page);

- Investigating and addressing particular issues regarding compliance with defense regulatory requirements;
- Defending against enforcement actions by government authorities;
- Obtaining licenses and other government approvals and official determinations regarding application of legal requirements, and
- Pursuing legislative and regulatory policy goals with US officials.



Defense Regulatory Practice Group (cont'd)

Assistance with Corporate Transactions

The group specializes in addressing regulatory issues in the context of mergers and acquisitions in the defense sector.

For example, the group is a leader in helping defense firms complete “Exon-Florio” security reviews. The Exon-Florio Amendment authorizes the president to block foreign acquisitions that are found to threaten national security. The reviews are administered by the interagency Committee on Foreign Investment in the United States (CFIUS). Successfully working through the Exon-Florio process requires extensive experience with the legal and policy views of CFIUS members such as the Defense Department, the State Department and various White House offices. The firm has led prosecution of some of the most challenging and high-profile Exon-Florio cases.

The group also has extensive experience resolving other regulatory issues that bear on defense mergers and acquisitions. Other relevant requirements include:

- Industrial security rules regarding foreign ownership, control and influence;

- International Traffic in Arms Regulations licensing and registration, and

- Government contracting requirements that can impede corporate transactions.

The group provides the following services:

- Counsels on transaction structure and other threshold issues presented by potential mergers and acquisitions;
- Completes due diligence as appropriate to address defense regulatory issues;
- Develops letter of intent and contract provisions as appropriate to address defense regulatory issues;
- Negotiates review proceedings, such as the Exon-Florio process, and
- Works with regulators to forestall regulatory impediments to closure, either by establishing that regulatory limitations do not apply or by obtaining needed approvals.

Example Client Matters

The firm has helped facilitate major defense-related mergers and acquisitions, including:

- A Dutch acquisition of a US microelectronics firm that involved a groundbreaking Exon-Florio review and export control and industrial security issues;
- A Luxembourg acquisition of a \$5 billion US satellite services company that involved an Exon-Florio review and critical export control, industrial security and intelligence, and law enforcement regulatory issues, and
- A leveraged buyout of a major US defense contractor that involved an Exon-Florio review and export control and industrial security issues.

Other efforts by the Dewey & LeBoeuf Defense Regulatory Practice Group include:

- Assisting leading light-armored vehicle and aircraft engine manufacturers with technology transfer compliance issues and voluntary disclosures under the International Traffic in Arms Regulations;

- Assisting a leading satellite manufacturer with prosecution and related legislative proceedings regarding alleged violations of the International Traffic in Arms Regulations;

- Designing and preparing a proposal for a multibillion-dollar nuclear waste remediation project with an unusual project finance funding structure;

- Successfully defending government contract cost-recovery positions adopted by a nuclear engineering firm;

- Obtaining a highly favorable export control classification determination from the State Department regarding satellite communications;

- Resolving issues of regulatory interpretation relating to payments of fees and commissions in connection with foreign military sales, and

- Achieving landmark liberalization of semiconductor export controls in 2002.



Lawyer Bios



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W. Clark McFadden II

Partner

Mr. McFadden has been active in defense legal issues since he was general counsel to the Senate Armed Service Committee from 1973 to 1976. He has a broad background in foreign affairs and international trade, having experience with Congressional committees, the U.S. Department of Defense and the National Security Council. In 1986, he was appointed general counsel, President's Special Review Board (Tower Commission), to investigate the National Security Council system and the Iran-Contra Affair. In 1979, Mr. McFadden served as special counsel to the Senate Foreign Relations Committee on the Strategic Arms Limitations Treaty.



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Partner

Mr. Schwechter represents clients before the U.S. Department of Commerce, the U.S. Department of State, the Office of Foreign Assets Control, U.S. Customs and Border Protection and other agencies on all types of import and export-related matters, including audits, investigations, penalty proceedings, prior and voluntary disclosures of violations, export licensing of military and "dual use" products and technology, technical assistance and manufacturing license agreements, trade sanctions and embargoes, rulings and commodity jurisdiction determinations, the classification and valuation of merchandise, marking and country of origin issues, NAFTA and other free-trade agreements, foreign trade zones, drawback and other duty savings mechanisms, unfair trade practice proceedings, and related administrative actions. Mr. Schwechter frequently conducts import/export self assessments for clients, helps them establish compliance and recordkeeping programs, and provides import/export training. He is the immediate past president of the Customs and International Trade Bar Association – the leading bar association in this area of practice.



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Partner

Mr. Clark counsels major companies and industry associations on a variety of trade and investment rules. He has extensive experience on US legal regimes such as military and “dual use” export control regulations, economic sanctions administered by the U.S. Treasury Department, the Foreign Corrupt Practices Act, anti-money-laundering rules, antiboycott requirements, defense industrial security requirements and government contracting regulations. Apart from providing guidance on regulatory compliance, Mr. Clark has assisted clients through internal corporate investigations regarding trade and investment rules and advised clients on such rules in the context of corporate transactions. Mr. Clark has represented acquiring and acquired businesses with regard to numerous Exon-Florio examinations and related proceedings. He also works with the American Petroleum Institute on development of Exon-Florio regulations.

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