KPMG **SMART PRACTICE**

# The ITAR: common pitfalls and challenges

In the movies, the charismatic hero, while wearing his armored suit and helmet, stops one bad guy from selling high-end weapons systems to other bad guys. The world is saved from Armageddon. Hurrah! However, once the movie is over, and the popcorn is gone, we mere mortals in the real world have to manage the International Traffic in Arms Regulations[1] ("ITAR"). Hurrah?

If you are familiar with the ITAR, you know that defense articles, their technical data, and defense services typically require export licenses. To file for a license, registration with the US Directorate of Defense Trade Controls ("DDTC") is necessary. But it's not just for exporters. Specifically, 22 C.F.R. §§122.1 states, in part, "Any person [individual or company] who engages in the United States in the business of manufacturing or exporting or temporarily importing defense articles, or furnishing defense services, is required to register with the Directorate of Defense Trade Controls under §§122.2." In addition to registration requirements applying to exporters or manufacturers, in Part 129 of the ITAR brokers are required to register: according to 22 C.F.R. §129.2(b), "any action on behalf of another to facilitate the manufacture, export, permanent import, transfer, reexport, or retransfer of a U.S. or foreign defense article or defense service, regardless of its origin."

> A common theme across these challenges is that communicating business-critical information is essential.

While the requirement sounds straightforward, in practice there are a number of common pitfalls that create compliance challenges:

- **Understanding the registration requirement itself**
  Many companies assume that, if they do not export, they do not have a requirement to register. Although the regulatory language is clear, this requirement can be overlooked if the export compliance team does not have deep technical knowledge.

- **Understanding brokering requirements as they may pertain to your business activities and knowing when business activities are evolving**
  When sales strategies change, it may become necessary to append your registration to add brokering activities.

- **Updating registrations to align with business changes**
  Senior officers may change. Legal entity changes may occur. Either could trigger registration updates.

- **Expeditious payment processing**
  DDTC now offers various payment methods, including the use of credit cards. New registrations and registration renewals require payment be made at the time of filing. Navigating accounts payable approvals, including payment aging requirements (e.g., Net 60, Net 75, Net 90) may cause a delay in payment or cause your registration to become delinquent.

- **Updating registration in the mandatory time periods defined in the ITAR**
  Legal or Tax colleagues may make organizational changes to the legal structure of the organization without realizing the consequences of those changes for ITAR registration purposes.

A common theme across these challenges is that communicating business-critical information is essential. Managing your registration may not be a daily task, but it may require coordination with other departments during the annual registration period to ensure compliance. A good first step is helping colleagues understand the importance of registration to business operations. Further, working with colleagues in the legal department who manage corporate structures, including SEC filings, and accounting colleagues who manage corporate taxes can be excellent allies for identifying when a business change may impact your ITAR registration.

Successfully managing your ITAR registration for your organization still makes you a hero, even without the armored suit. ■


About the authors:

Steven Brotherton (San Francisco) is a Principal in the Global Export Controls & Sanctions practice of KPMG LLP and leader of the service line. sbrotherton@kpmg.com

Kim Canales (Dallas) is a Senior Manager in the Global Export Controls & Sanctions practice of KPMG LLP. kcanales@kpmg.com

Elizabeth Shingler (Richmond) is a Senior Manager in the Global Export Controls and Sanctions practice of KPMG LLP. eshingler@kpmg.com


[1] 22 C.F.R. §§120-130


**Reprinted with permission from the September 2022 issue of Export Compliance Manager.**
**www.exportcompliancemanager.com**