

# DEFENSE SECURITY SERVICE

## FCL PROCESS AND JOINT VENTURES



May, 2018

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# Facility Clearances (FCLs) in the National Industrial Security Program (NISP)

A **facility clearance (FCL)** is an administrative determination that, from a national security standpoint, a company is eligible for access to classified information at the same or lower classification category as the clearance being granted.

## **Eligibility requirements** (NISPOM 2-102)

- Need access to classified information in connection with a legitimate government requirement.
- Lawfully organized and existing
- Have a reputation for integrity and lawful conduct
- Not under significant Foreign Ownership, Control, or Influence





# FCL Process Overview

The initial FCL process changed in 2014-2015 to increase transparency, improve communication of expectations, and streamline the FCL process. The improved process establishes specific deadlines a new company must meet in order to successfully complete the FCL process.

- **Phase 1 (by Day 20):** Submit complete business records in the e-FCL system (will be replaced by the National Industrial Security System - NISS)
- **Phase 2 (by Day 45):** Submit complete investigation requests via the Electronic Questionnaires for Investigations Processing (e-QIP) system for Key Management Personnel (including electronic fingerprints within 14 days of submission)





# e-FCL General Information

**A complete initial e-FCL package consists of two main sections:**

## **1. Uploading business records**

- Legal business records
- Documents required to identify KMPs
- Significant changes to business structure

## **2. Completing forms**

- SF-328; Certificate Pertaining to Foreign Interests
- Summary Data Sheet
- KMP List
- Tiered Parent List
- DD Form 441/DD Form 441-1
- Miscellaneous Documents
- Exclusion Resolutions





# Limited Liability Company (LLC)

- **BUSINESS DOCUMENTS REQUIRED**
  - Certificate/Articles of Organization
  - Operating Agreement
  - Meeting Minutes
  - Membership ledger
  - Legal Organization Chart
  
- **KMP IDENTIFICATION**
  - Members (if people)
  - \*Managers
  - Officers
  - \*FSO
  - \*ITPSO





## Key Management Personnel (KMP) General Information

- The term **KMP** encompasses the Facility Security Officer (FSO), the Insider Threat Program Senior Official (ITPSO), all owners (if people), officers, and members of the management or executive board (including the Chairman). All persons holding these positions, as described in the business records should be listed on the KMP list, regardless of whether they require a PCL or access to classified information.
- The **Senior Management Official (SMO)** is required to be cleared in connection with the FCL in accordance with NISPOM 2-104. The SMO is the person who is the senior management authority of the organization per the organization's business documents.
- The **FSO** is designated by the organization and is responsible for supervising and directing security measures necessary for implementing applicable requirements of the NISPOM.
- The **ITPSO** is the senior official responsible for establishing and executing the organization's insider threat program.





# Key Management Personnel (KMP) Exclusions

- Some non-SMO/FSO/ITPSO KMP positions must also be occupied by individuals who are cleared to the level of the FCL, while others may be occupied by individuals who are excluded in accordance with NISPOM 2-106.
- Generally, a KMP may be excluded when the organization's executive body affirms that the person in this position will not require or have access to classified information and does not occupy a position that would **enable** them to adversely affect the organization's policies or practices in performance of classified contracts.
- This must be supported by business documents describing the position responsibilities.





# Joint Ventures (JV)

- **Joint Venture (JV)**; a commercial enterprise undertaken jointly by two or more parties that otherwise retain their distinct identities
- **The type of legal entity utilized will determine who to clear in connection with the FCL**
- **JVs use other business structures to organize their association**
  - LLC most common
  - Could also be corporation or partnership







# Joint Ventures (JV)

- To be eligible for an FCL, the JV must be a registered **legal entity**
  - Those formed by contract only are not eligible for an FCL in accordance with NISPOM 2-102b (these are often “teaming agreements”)
    - Look for JV Agreement and business license
    - Should have normal certificates, articles, etc.
- The JV must be “**populated**,” meaning having employees
  - The SMO and FSO must be an employee of the JV
  - Doesn’t have to be W-2 employee
    - Employee: A person who works, part-time or full-time, under a contract of employment, written offer, or a corporate resolution
  - Directors on the board are not considered employees
- One or more of JV entities must require access to classified
  - DD-254 provides JV with security requirements





# Resources

- FCB Website: [http://www.dss.mil/isp/fac\\_clear/fac\\_clear.html](http://www.dss.mil/isp/fac_clear/fac_clear.html)
- DSS Improved FCL Process Webinar:  
[http://www.dss.mil/documents/isp/Gov\\_Industry\\_Webinar\\_Audio.pdf](http://www.dss.mil/documents/isp/Gov_Industry_Webinar_Audio.pdf)
- FCL Orientation Handbook: [http://www.dss.mil/documents/facility-clearances/FCL\\_Orientation\\_Handbook\\_18FEB15.pdf](http://www.dss.mil/documents/facility-clearances/FCL_Orientation_Handbook_18FEB15.pdf)
- e-FCL Submission Site User Guide:  
[http://www.dss.mil/documents/diss/e-FCL\\_Submission\\_Site\\_User\\_Guide.pdf](http://www.dss.mil/documents/diss/e-FCL_Submission_Site_User_Guide.pdf)
- E-FCL Submission Requirements Job Aid:  
[http://www.cdse.edu/documents/cdse/Understanding\\_FCL\\_Submission\\_Requirements\\_Final\\_Job\\_Aid.pdf](http://www.cdse.edu/documents/cdse/Understanding_FCL_Submission_Requirements_Final_Job_Aid.pdf)





# Questions?





## Contact Info

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