#### **Table of Contents**

## PART I. AN OVERVIEW OF SECURITY ASSISTANCE

## CHAPTER 1. DEVELOPMENT OF SECURITY ASSISTANCE LAW AND POLICY

#### I. HISTORY OF LEGAL AND POLICY DEVELOPMENT

§ 1:1 Introduction
--------------------

- § 1:2 Complex evolution of law and policy
- § 1:3 Effect of changing administrations on the security assistance policy climate
- § 1:4 —Carter administration
- § 1:5 —Reagan administration
- § 1:6 —G.H.W. Bush administration
- § 1:7 —Clinton administration
- § 1:8 ——Presidential Decision Directive 34
- § 1:9 —G.W. Bush administration
- § 1:10 —Obama administration
- § 1:11 ——Presidential Policy Directive 27
- § 1:12 —Trump administration
- § 1:13 —Biden administration
- § 1:14 Summary

## II. STATUTORY, REGULATORY, AND POLICY FRAMEWORK

- § 1:15 Overview
- § 1:16 Statutory framework
- § 1:17 —Authorizing legislation
- § 1:18 ——Foreign Assistance Act
- § 1:19 ——Arms Export Control Act
- § 1:20 ——Amendments
- § 1:21 —Appropriating legislation
- § 1:22 Regulations
- § 1:23 —Security Assistance Management Manual (SAMM)
- § 1:24 —FAR and DFARS
- § 1:25 —DOD Financial Management Regulation
- § 1:26 —International Traffic in Arms Regulation (ITAR)
- § 1:27 Policy restraints on foreign military sales

## CHAPTER 2. ROLE OF THE VARIOUS ELEMENTS OF GOVERNMENT

#### I. THE LEGISLATIVE BRANCH—ROLE OF CONGRESS

- § 2:1 Congressionally legislated policy and general guidelines
- § 2:2 Congressional controls over foreign arms sales
- § 2:3 —Congressional reporting
- § 2:4 —Congressional review of foreign military sales
- § 2:5 —Congressional review of direct commercial sales
- § 2:6 —Effect on U.S. contractors

#### II. THE JUDICIAL BRANCH

- § 2:7 Role and function
- § 2:8 Effect of judicial action on arms sales

#### III. THE EXECUTIVE BRANCH

- § 2:9 The President
- § 2:10 The Department of State
- § 2:11 The Department of Defense
- § 2:12 —Defense Security Cooperation Agency
- § 2:13 —Under Secretary of Defense (Policy) (USD (P))
- § 2:14 —Under Secretary of Defense Acquisition and Sustainment (A&S) (USD (A&S))
- § 2:15 —Under Secretary of Defense (Comptroller) (USD (C))
- § 2:16 —Military Departments (MILDEPS) and other Implementing Agencies (IAs)
- § 2:17 —Defense Logistics Agency (DLA)
- § 2:18 —Defense Contract Management Agency (DCMA)
- § 2:19 —Defense Contract Audit Agency (DCAA)
- § 2:20 —Defense Finance and Accounting Service (DFAS)
- § 2:21 —The Joint Chiefs of Staff (JCS)
- § 2:22 —Combatant Commands
- § 2:23 —Defense Security Service

## PART II. FOREIGN MILITARY SALES PROGRAM AND PROCESS

## CHAPTER 3. FOREIGN MILITARY SALES (FMS) OVERVIEW

#### I. OVERVIEW

- § 3:1 Relationships
- § 3:2 Process
- § 3:3 Execution

#### II. ELIGIBILITY OF CUSTOMERS

- § 3:4 Presidential determination
- § 3:5 Other factors determining eligibility
- § 3:6 Termination or suspension of eligibility

#### III. ELIGIBILITY OF PRODUCTS AND SERVICES

- § 3:7 Defense articles
- § 3:8 Defense services
- § 3:9 Design and construction
- § 3:10 Ineligible products and services

#### IV. SELECT FMS GENERAL AND FINANCIAL POLICIES

- § 3:11 Sales determinations
- § 3:12 Total Package Approach (TPA)
- § 3:13 Marketing
- § 3:14 Neutrality
- § 3:15 FMS-only determinations
- § 3:16 Direct commercial sales (DCS) preference
- § 3:17 Concurrent FMS and commercial negotiations
- § 3:18 Use of FAR and DFARS and sole source denials
- § 3:19 Recovery of cost
- § 3:20 Payment in U.S. dollars

#### V. AUTHORIZED TYPES OF FMS TRANSACTIONS

- § 3:21 Sales of defense articles
- § 3:22 —FMS stock sales
- § 3:23 —FMS procurement sales
- § 3:24 ——Dependable Undertakings, Risk Assessed Payment Schedules, and Credit Assured Payment Schedules
- § 3:25 ——Deferred payment sales
- § 3:26 Leases of defense articles to foreign customers

#### VI. AUTHORIZED GOVERNMENT-TO-GOVERNMENT FMS CASES

- § 3:27 Overview
- § 3:28 Defined order case
- § 3:29 Blanket order case
- § 3:30 Cooperative logistics supply support arrangement (CLSSA)

## CHAPTER 4. THE FOREIGN MILITARY SALES (FMS) CASE

#### I. INITIATING THE FMS CASE—LETTER OF REQUEST

- § 4:1 Submitting the Letter of Request (LOR)
- § 4:2 —Significant military equipment (SME)

	Foreign Military Sales I
§ 4:3	—Other FMS sales (non-SME)
§ 4:4	—LORs submitted by electronic mail; LORs funded with Foreign Military Financing (FMF); LORs for items managed by United States Special Operations Command (USSOCOM)
§ 4:5	—DOD components authorized to receive LORs
§ 4:6	—Exceptions
§ 4:7	LOR review and validation—Receipt and Acknowledgement
§ 4:8	LOR review and validation—LOR initiation and evaluation
§ 4:9	—LORs requiring advisory memoranda or unique review
§ 4:10	—DSCA and DOS LOR review
§ 4:11	LORs for FMS to non-MOD units
§ 4:12	Requests for other than full and open competition
§ 4:13	Responses to the LOR
§ 4:14	Responses to the Letter of Request—Negative responses
§ 4:15	—Preliminary data
§ 4:16	—Letter of Offer and Acceptance (LOA)
	ORMATION OF THE FMS CASE—LETTER OF FER AND ACCEPTANCE
§ 4:17 § 4:18	Processing the Letter of Offer and Acceptance (LOA) Processing the Letter of Offer and Acceptance—Information
8 4.10	Trocessing the Letter of Other and Acceptance—Information

- § 4:17 Processing the Letter of Offer and Acceptance (LOA)
  § 4:18 Processing the Letter of Offer and Acceptance—Information required in the LOA
  § 4:19 Terms and conditions
- § 4:20 ——Supplementary documents to accompany LOAs during coordination
- § 4:21 —Restatements and reactivations
- § 4:22 —Preparation, review, coordination and approval of LOAs
- § 4:23 —Congressional notification and review
- § 4:24 —DSCA countersignature
- § 4:25 Duration of offer (offer expiration date (OED))
- § 4:26 Acceptance of offer
- § 4:27 —Changes
- § 4:28 Notification of acceptance or rejection

#### III. AMENDMENTS AND MODIFICATIONS

- § 4:29 LOA amendments and modifications generally
- § 4:30 —Amendment to LOA
- § 4:31 —Modification of LOA
- § 4:32 Pen and ink changes

## CHAPTER 5. PRICING FMS CASES TO THE FOREIGN CUSTOMER

#### I. GENERAL PRICING AND DISCLOSURE POLICY

- § 5:1 Generally
- § 5:2 Stock sales
- § 5:3 Procurement sales

#### TABLE OF CONTENTS

TABLE (	OF CONTENTS
§ 5:4	—Contract component of the LOA price
§ 5:5	Use of estimated prices in LOAs
§ 5:6	Disclosure to foreign customer and approval of contingent fees
3 - 1 - 1	
II. I	NDIRECT AND DIRECT CHARGES
§ 5:7	Surcharges
§ 5:8	—Accessorial and administrative surcharges
§ 5:9	—Nonrecurring cost (NC) recoupment charges
§ 5:10	— —Historical background of nonrecurring cost (NC) recoupment charges
§ 5:11	——Current rule for application of nonrecurring cost (NC) recoupment charges
§ 5:12	
§ 5:13	
§ 5:14	Termination liability reserve
§ 5:15	Direct charges
§ 5:16	—Program management costs
§ 5:17	
III.	WAIVER OR REDUCTION OF INDIRECT CHARGES
§ 5:18	Waiver or reduction of surcharges
§ 5:19	—Waiver of FMS administrative surcharge
§ 5:20	—Waiver of contract administration services (CAS)
§ 5:21	—Waiver of nonrecurring cost (NC) recoupment charge
§ 5:22	—Waiver of tooling rental charges for use of DOD assets
TV .	OFFSETS
§ 5:23	
-	—Direct offsets
§ 5:25	
§ 5:26	1 0 0
§ 5:27	1 0
§ 5:28	Disclosure of offsets to purchaser
СНА	APTER 6. EXECUTION AND
	INISTRATION OF THE FMS CASE
I. T	ERMS OF SALE, PAYMENTS, AND COLLECTION
§ 6:1	Terms of sale
§ 6:2	Regular payment schedule
§ 6:3	Collection of FMS payments
§ 6:4	Trust fund accounts

#### II. EXECUTION OF FMS REQUIREMENTS

§ 6:7 General

Disbursements

Financial reviews

§ 6:5

§ 6:6

	1 OILEIGIV WILLIAMI DALES 1
§ 6:8	FMS stock sales
§ 6:9	FMS procurement sales
§ 6:10	—FMS procurement procedure
§ 6:11	-
§ 6:12	
§ 6:13	
§ 6:14	
§ 6:15	——Prior commercial sale to a foreign customer
§ 6:16	•
§ 6:17	-
§ 6:18	— — Certain ceiling limitations not applicable
§ 6:19	
§ 6:20	Agents' fees, sales commissions, and political contributions
§ 6:21	—Unallowability of political contributions
§ 6:22	—Allowability of contingent fees
§ 6:23	—Improper influence
§ 6:24	Independent research and development, bid and proposal (IR&D/B&P) costs
§ 6:25	—Historical perspective IR&D / B&P on FMS contracts
§ 6:26	—Current rule on allowability of IR&D / B&P for FMS contracts
§ 6:27	Taxes paid
§ 6:28	Offset arrangements
§ 6:29	—Allowability of offset costs
III.	DELIVERY OF FMS MATERIEL
§ 6:30	General delivery responsibility
§ 6:31	Title transfer and risk of loss
$\S 6:32$	Use of U.S. flag carriers
§ 6:33	Responsibilities of the U.S. Government—Seller
§ 6:34	Responsibilities of the foreign purchaser
§ 6:35	Responsibilities of the freight forwarder—Middleman
§ 6:36	Transportation of small parcel shipments
§ 6:37	Transportation by commercial bill of lading
§ 6:38	Transportation by Government bill of lading
§ 6:39	Transportation by Defense Transportation System
§ 6:40	Responsibility for discrepancies in quality or condition

#### IV. FOLLOW-ON SUPPLY SUPPORT

Diversion of requirements

§ 6:43 General requirement for follow-on supply support

Responsibility for filing claims and tracers

- § 6:44 —Excess defense articles
- § 6:45 —System support buy out

#### V. CASE CLOSURE

§ 6:46 General

§ 6:41

§ 6:42

#### Table of Contents

- § 6:47 Accelerated case closure
- § 6:48 Nonaccelerated case closure
- § 6:49 End Use Monitoring

## PART III. FOREIGN MILITARY FINANCING

## CHAPTER 7. FOREIGN MILITARY FINANCING OVERVIEW

#### I. INTRODUCTION

- § 7:1 General overview
- § 7:2 Background

#### II. TYPES OF PROCUREMENT FINANCING

- § 7:3 General policy
- § 7:4 Grants and nonrepayable FMF
- § 7:5 Loans
- § 7:6 —Direct loans
- § 7:7 —Guaranteed loans

## CHAPTER 8. FOREIGN MILITARY FINANCING OF FOREIGN MILITARY SALES

#### I. ELIGIBILITY FOR FOREIGN MILITARY FINANCING

- § 8:1 Eligibility standards
- § 8:2 —General eligibility
- § 8:3 —Specific eligibility prohibitions
- § 8:4 —Suspension or termination of eligibility
- § 8:5 Credit standards
- § 8:6 Defense items approved for purchase using foreign military financing

#### II. ANNUAL FMF FUNDING PROCESS

- § 8:7 Congressional Budget Justification (CBJ)
- § 8:8 Congressional authorization and appropriation
- § 8:9 Apportionment

## III. ISSUANCE OF FMF CREDITS AND COMMITMENT OF FUNDS

- § 8:10 General implementation
- § 8:11 Commitment
- § 8:12 Interest rates
- § 8:13 FMF funds disbursement

#### IV. SOURCE OF GOODS AND SERVICES

§ 8:14 Offshore procurement

#### V. TRANSPORTATION RESTRICTIONS

- § 8:15 General restrictions—U.S. flag vessels and carriers
- § 8:16 Waivers
- § 8:17 —General waiver
- § 8:18 —Nonavailability waiver
- § 8:19 —Security waiver

#### VI. REPAYMENTS OF FMF LOANS

- § 8:20 Due date and late repayment
- § 8:21 Sanctions for overdue loan repayments—Brooke Amendment

## CHAPTER 9. FOREIGN MILITARY FINANCING OF DIRECT COMMERCIAL MILITARY SALES

#### I. OVERVIEW

§ 9:1 Introduction

#### II. ELIGIBILITY

- § 9:2 Contractor eligibility
- § 9:3 Item eligibility
- § 9:4 U.S. and non-U.S. content

#### III. CONTRACTS

- § 9:5 Contract dollar thresholds and changes
- § 9:6 Competition
- § 9:7 Approval processing requirements and timing
- § 9:8 Contract financing limitations
- § 9:9 Required contract provisions

### IV. CONTRACTOR DISCLOSURES, CERTIFICATIONS AND AGREEMENTS

- § 9:10 General
- § 9:11 Disclosures
- § 9:12 Certifications and agreements

## V. MISCELLANEOUS REQUIREMENTS AND RESTRICTIONS

- § 9:13 Offsets
- § 9:14 Commissions or contingent fees
- § 9:15 Personnel travel
- § 9:16 Transportation

xxii

- § 9:17 Letters of credit and guarantees
- § 9:18 Refunds, penalties, liquidated damages, and draw downs

## VI. CONTRACT ADMINISTRATION, AUDIT, AND ACCOUNTING

- § 9:19 Preaward surveys
- § 9:20 Pricing reviews
- § 9:21 Contract administration and audit services
- § 9:22 U.S. Government audits
- § 9:23 Accounting principles
- § 9:24 Dispute resolution

#### PART IV. INTERNATIONAL TRAFFIC IN ARMS REGULATION, AGENTS' FEES AND COMMISSIONS, AND FOREIGN CORRUPT PRACTICES

## CHAPTER 10. SELECTED INTERNATIONAL TRAFFIC IN ARMS REQUIREMENTS

#### I. INTRODUCTION TO EXPORT CONTROL

- § 10:1 Overview
- § 10:2 Statutory and regulatory framework
- § 10:3 U.S. Munitions List (USML)
- § 10:4 Relation of the ITAR to the regulations of other agencies

## II. DEFINITION OF SIGNIFICANT EXPORT CONTROL TERMS

- § 10:5 Overview
- § 10:6 Defense article
- § 10:7 Defense service
- § 10:8 Technical data
- § 10:9 Export
- § 10:10 U.S. person
- § 10:11 Foreign person
- § 10:12 Public release data
- § 10:13 Re-exports, retransfers and temporary imports

## III. PROHIBITED EXPORTS (EMBARGOED DESTINATIONS)

- § 10:14 ITAR proscribed destinations
- § 10:15 United Nations embargoes
- § 10:16 U.S. policy implementation by Department of State

## IV. GENERAL PROCEDURAL MATTERS UNDER THE ITAR

- § 10:17 Registration
- § 10:18 Commodity jurisdiction procedure
- § 10:19 Advisory opinions and related authorizations

#### V. LICENSING AND APPROVAL REQUIREMENTS

- § 10:20 General
  § 10:21 Types of licenses and forms
  § 10:22 —Temporary export license
  § 10:23 —Temporary import license
- § 10:24 —Permanent export license
- § 10:25 —Classified defense articles and technical data
- § 10:26 Defense articles
- $\$  10:27 —Process and procedure
- § 10:28 ——Certification letter
- § 10:29 ——Country of destination
- § 10:30 ——Import certificate and delivery verification
- § 10:31 ——Filing licenses and shipping documents
- § 10:32 —Significant military equipment
- § 10:33 ——Non-transfer and use certificates
- § 10:34 ——Congressional notification
- § 10:35 ——Proposals and presentations relating to significant military equipment
- § 10:36 Defense services agreements and other authorizations
- § 10:37 —Manufacturing license agreements and technical assistance agreements
- § 10:38 —Approval procedure
- § 10:39 —Other authorizations for defense services
- § 10:40 ——Major project authorization
- § 10:41 ——Major program authorization
- § 10:42 ——Global project authorization
- § 10:43 ——Acquisition, teaming arrangement, merger, joint venture authorization
- § 10:44 —Offshore procurement
- § 10:45 Technical data
- § 10:46 —Controlled technical data
- § 10:47 —Uncontrolled information
- § 10:48 ——Material in the public domain
- § 10:49 ——Public release data
- § 10:50 ——General scientific principles
- § 10:51 —Activities constituting an export
- § 10:52 —Licensing requirements for technical data
- § 10:53 ——Classified information
- § 10:54 — Unclassified technical data
- § 10:55 Authority of the Directorate of Defense Trade Controls (DDTC)
- § 10:56 Involvement of other agencies

§ 10:57	Special licensing regime for COMSAT and associated		
	technical data		
§ 10:58	Denial of a license		
§ 10:59	—Reconsideration		

#### VI. EXPORTS EXEMPT FROM LICENSING

§ 10:60	General
§ 10:61	Exports under the FMS program
§ 10:62	—Transfers by a U.S. Government department or agency
§ 10:63	—FMS shipments on foreign military aircraft and naval vessels
§ 10:64	—FMS shipments by foreign country representatives or freight forwarders
§ 10:65	Exports by a person on behalf of a U.S. Government department or agency
§ 10:66	Canadian exemption and Treaties with Australia and United Kingdom
§ 10:67	Selected hardware exemptions
§ 10:68	—General hardware exemptions
§ 10:69	—In-transit exemption
§ 10:70	—Personal protective gear exemption
§ 10:71	—DOE, NRC controlled exemptions
§ 10:72	—U.S. locations exemption
§ 10:73	Defense Services exemptions
§ 10:74	—Training in basic operations and maintenance
§ 10:75	—Service as a member of regular military force
§ 10:76	—Maintenance and maintenance training to NATO, Japan, Australia, and Sweden
§ 10:77	Technical data exemptions
§ 10:78	—Canadian exemption for technical data
§ 10:79	—U.S. Government exemptions for technical data
§ 10:80	—Plant visit exemptions
§ 10:81	—General technical data exemptions
§ 10:82	Certification, marking, and record retention for use of export exemptions

#### VII. ENFORCEMENT UNDER THE ITAR

- § 10:83 Criminal and civil penalties and selected examples of export control enforcement
- § 10:84 Enforcement of reporting requirements

# CHAPTER 11. AGENTS' FEES AND COMMISSIONS AND POLITICAL CONTRIBUTIONS UNDER THE AECA, FAR, DFARS, AND ITAR

#### I. INTRODUCTION

§ 11:1 General

#### § 11:2 Government contract rules

## II. STATUTES AND REGULATIONS ADDRESSING AGENTS' FEES AND POLITICAL CONTRIBUTIONS IN THE ARMS SALES CONTEXT

§ 11:3	Allowability of ager	ts' fees	and	commissions	and	political
	contributions					

- § 11:4 —Political contributions
- § 11:5 —Contingent fees
- § 11:6 —Agents' fees and commissions in FMF funded direct commercial sales
- § 11:7 —Allowability restrictions imposed by customer countries
- § 11:8 Awareness of Foreign Corrupt Practices Act provisions

# III. REPORTING REQUIREMENTS FOR POLITICAL CONTRIBUTIONS AND AGENT'S FEES AND COMMISSIONS UNDER THE ITAR

- § 11:9 General
- § 11:10 Reporting of agents' fees and political contributions
- § 11:11 Information required to be reported
- § 11:12 Time for submission of report and supplementation
- § 11:13 Who must report
- § 11:14 Payments subject to the reporting requirements
- § 11:15 —Political contributions
- § 11:16 —Fees or commissions
- § 11:17 Information from vendors and recipients of fees and commissions
- § 11:18 —Timeliness of reporting by vendors
- § 11:19 Confidential business information
- § 11:20 Record-keeping

## CHAPTER 12. THE FOREIGN CORRUPT PRACTICES ACT

#### I. BACKGROUND

§ 12:1 Legislative history of the Foreign Corrupt Practices Act (FCPA)

#### II. ANTI-BRIBERY PROVISION OF THE FCPA

- § 12:2 Statutory prohibition of corrupt payments, promises, offers, or gifts
- § 12:3 —Corrupt payments, promises, offers, or gifts to foreign officials
- § 12:4 —Corrupt payments, promises, offers, or gifts to foreign political parties, party officials, and candidates
- § 12:5 —Corrupt payments, promises, offers, or gifts knowingly through an intermediary

#### Table of Contents

§ 12:6	Elements of a violation
§ 12:7	—Instrumentality of interstate commerce in furtherance of
	offer, payment, promise, or authorization of payment or gift
	to foreign official, party, or candidate
§ 12:8	—Corruptly
§ 12:9	—Obtain or retain business or direct business to any person
§ 12:10	Entities and individuals subject to the statute
§ 12:11	Foreign official, party, party official, or candidate
§ 12:12	Knowing
§ 12:13	Exceptions and defenses
§ 12:14	—Facilitating or expediting routine government action
	exception
§ 12:15	—Extortion payments exception
§ 12:16	—Affirmative defenses

## III. THE ACCOUNTING, BOOKS, AND RECORDS PROVISIONS

§ 12:17	Accounting, books, and records requirements
§ 12:18	—Liability standards and penalties
§ 12:19	—SEC Rules 13b2-1 and 13b2-2
§ 12:20	—National security exemption
§ 12:21	—Reporting by subsidiaries and affiliates

#### IV. JURISDICTIONAL SCOPE OF THE ACT

- § 12:22 General scope
- § 12:23 Corporate liability for payments by foreign subsidiary or affiliate

#### V. ENFORCEMENT UNDER THE FCPA

§ 12:24	General enforcement
§ 12:25	Penalties
§ 12:26	SEC enforcement
§ 12:27	—Injunctive relief
§ 12:28	—Disciplinary proceedings against professionals
§ 12:29	—Administrative and civil proceedings against issuers and
	reporting companies
§ 12:30	Compliance with internal accounting control requirements
§ 12:31	Department of Justice enforcement
§ 12:32	—DOJ prosecution efforts
§ 12:33	The DOJ business opinion procedure
§ 12:34	—Submitting a request under the business opinion procedure
§ 12:35	—DOJ responses to business opinion procedure requests
8 12:36	Private right of action under the FCPA

#### **Table of Laws and Rules**

**Table of Cases** 

Index