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LICENSING STRUCTURE FOR DEFENCE MANUFACTURING SIMPLIFIED BY THE MCI

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Introduction

On 1 January 2019, the Ministry of Commerce and Industry (MCI) *vide* Press Note No.1 of 2019 Series (Press Note 2019) specified the list of defence items under the Industries (Development and Regulation) Act, 1951 (IDRA) and the list of arms and ammunitions requiring license under Form VII of the Arms Act, 1959 (Arms Act), for which the licensing authority has been granted to the Department of Industrial Policy and Promotion (DIPP). The Press Note 2019 supersedes the Press Note No.3 of 2014 Series issued by the MCI on 26 June 2014 (Press Note 2014).

As per Annexure-I of the Press Note 2019, industrial license is required to be obtained for the manufacture of the following categories of defence items from the DIPP under the IDRA:

- Defence aircrafts;
- Warships of all kinds; and
- Allied items of defence equipment.

Further, as per Annexure-II of the Press Note 2019, license is required to be obtained in Form VII for the manufacture and / or proof testing of the following categories of arms and ammunitions from the DIPP under the Arms Act:

- Tanks and other armoured fighting vehicles; and
- Arms and ammunitions and allied items of defence equipment other than small arms of caliber 12.7 mm and above as defined under clause (51) and sub-rule (1) of rule 2 of the Arms Rules, 2016 (Arms Rules).

Background

In relation to the licensing regime under the IDRA, until the issue of Press Note 2019, the manufacturing of defence items was governed by Press Note 2014, which included categories of defence items such as tanks and other armoured fighting vehicles and defence aircrafts and parts thereof. The Press Note 2014 also stated that defence items not included in the Press Note 2014 would not require an industrial license for defence

purposes under the IDRA and that dual use items would also not require a license from a defence angle.

In relation to the licensing regime under the Arms Act, the Ministry of Home Affairs (MHA) had issued the Notification S.O. 1636 (E) on 19 May 2017 (Notification) empowering the DIPP to grant industrial licenses under Form VII for defence manufacturing for categories of defence items such as tanks, defence aircraft, warships and arms and ammunition, detailed in the Schedule to the Notification. The Notification clarified that the power granted to DIPP to issue industrial licenses in Form VII in respect of the items listed in the Schedule to the Notification was subject to the supervision and control of the MHA.

Following the issue of the Notification, the defence manufacturing industry was grappling to understand why the licensing authority granted to DIPP in respect of defence items such as tanks and warships, was under the supervision of the MHA. While the MHA was understandably the last authority in relation to defence equipment requiring licensing under the provisions of the Arms Act (as it concerns matters of internal security), there was no reason why it should have been the final authority for granting licenses for industrial manufacturing under the aegis of the IDRA. This power should have ideally rested with the Ministry of Defence. Further, there was ambiguity regarding the licensing requirement for items specified under the Press Note 2014 but not included in Notification.

In order to address and clarify the above-mentioned issues, the MHA issued a clarification on 22 September 2017 acknowledging that certain items were specified in the Press Note 2014 but not included in the Notification as the provisions of the Arms Act and the Arms Rules were not applicable to such defence items. To provide further clarity, the MHA also clarified that the licenses under Form VII were only required for the manufacture of pressure bearing parts under the Arms Rules. Accordingly, manufacture of non-pressure bearing parts and components of a firearm were not required to obtain a license under Form VII of the Arms Act and the Arms Rules.

The MHA *vide* its notification dated 14 December 2018, which was issued in supersession of the Notification, revised the Schedule to the Notification to only include "tanks and other armoured fighting vehicles" and "arms and ammunitions and allied items of defence equipment; other than small arms of caliber 12.7 mm and above" as the defence items requiring license under Form VII of the Arms Act and the Arms Rules (Notification 2018). "Defence aircrafts, space crafts and parts thereof" and "warships of all kinds", which were earlier included in the Notification, were now de-notified. Further, because of the removal of words "parts and accessories" from the category of arms and ammunitions under the Notification 2018, parts and components of defence equipments also did not require a license under Form VII of the Arms Act and the Arms Rules.

Further, under the Press Note 2019 the MCI clarified that the list of arms and ammunitions requiring license for manufacturing and / or proof testing under the Arms Act given under the Annexure-II to the Press Note 2019, is the same as the list notified by the MHA (and as amended from time to time) under the Notification 2018.

Comment

Under the Press Note 2019, the licensing structure for the manufacture of defence items has been simplified with a clear bifurcation between the defence equipment requiring a license under the IDRA and the Arms Act. It appears that the defence items listed in Annexure-II of Press Note 2019, for which the licensing authority has been granted to the DIPP subject to the supervision of the MHA, concern only matters of internal security. Also, the removal of the requirement for licensing of "parts and accessories" of arms and ammunition under the Arms Act and "parts thereof" of defence aircrafts and space craft under the IDRA, has been received in good light and will also provide

an impetus to the small and medium sized enterprises to break into the defence manufacturing industry.

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