Aerospace, Defense and Security Technologies

Skadden

Skadden regularly advises manufacturers, defense contractors, airlines and related service providers in the aerospace, defense and government services industry on matters involving the aerospace, defense and government contracting industries, as well as in related regulatory considerations, sensitive technologies and national security issues. Our capabilities are backed by years of experience — both inside the federal government and in the private sector — navigating complex federal requirements in critical business sectors.

Skadden offers wide-ranging experience regarding all aspects of doing business with the defense, intelligence and homeland security communities. Many of our lawyers have served in government and understand the aerospace and defense sector from both sides of a transaction, contract or dispute. In addition, we have experience leading business development, transactions and operational elements within the defense and government services industry, allowing us to align our legal knowledge with real-world government contracting business imperatives. We routinely combine our experience with government contracting, classified programs and other sensitive matters with Skadden attorneys focused on investigations, litigation, regularly matters and transactions to provide a holistic approach to companies' unique sensitivities in the sector. And our global footprint allows us to, where applicable, ensure that a client's global partnerships are addressed effectively.

Our insight encompasses all elements of government contracting, the National Industrial Security Program Operating Manual (NISPOM) and working with the Defense Counterintelligence and Security Agency (DCSA, formerly the Defense Security Service). We also frequently assist non-U.S. companies in navigating mitigation of Foreign Ownership, Control or Influence (FOCI) with DCSA and its intersection with the Committee on Foreign Investment in the United States (CFIUS), and export control issues under both Export Administration Regulations and International Traffic in Arms Regulations. We work hand-in-hand with our corporate partners to efficiently establish the right corporate structure, taking into account cross-border tax considerations and other intricacies involved in this highly regulated sector.

Our robust understanding of agency decision-making helps clients design strategies to achieve their specific objectives. We also provide strategic regulatory, legislative and transactional advice to companies supplying products and services to government customers and to clients whose commercial operations or strategic development are affected by changing security requirements and policies. We routinely work with a wide range of market advisers to ensure that legal requirements are well aligned with business priorities. We provide a deep understanding of the arrangements necessary to resolve U.S. government security concerns presented by cross-border transactions, if relevant, while preserving the greatest operational efficiencies for our clients.

Aerospace and Defense Industry

Skadden has extensive experience serving clients in the aerospace, defense and government services industry, including manufacturers, defense contractors, airlines and related service providers, and we understand the aerospace and defense sector from all sides of a transaction, contract or dispute.

Our team has represented aerospace and defense companies in government contracting matters, including regulatory compliance, investigations, strategic compliance and intellectual property advice. We help defense companies navigate the regulations that apply to government contracting and understand the opportunities available to them in the government procurement environment. Clients rely on us to devise creative and successful legal strategies that increase their competitiveness and protect their ability to do business with the government. Our work encompasses trade controls and sanctions, industrial security issues, cybersecurity, public policy and government affairs, and congressional investigations.

Working with our M&A team, Skadden aerospace and defense attorneys provide targeted support to all phases of corporate transactions in the sector, including target acquisition and assessment, due diligence analysis, financing, and managing transaction risks associated with government contractors and subcontractors. We provide deep transactional experience in connection with national security and cybersecurity considerations, CFIUS, export controls and trade sanctions. We also are familiar with the procurement process and budgets on complex aerospace and defense programs, the financing needs and structures of the industry, and the enforcement priorities of regulators around the world.

Critical Technologies and Cybersecurity

Skadden offers particular focus on the complex intersection of technology and national security in the aerospace and defense sector, including with respect to cybersecurity and export and defense trade controls. Our attorneys have substantial experience assisting companies with all facets of cybersecurity, including helping clients develop policies and procedures before an incident arises, counseling clients through the important steps that must occur immediately following breach situations, and navigating the federal and state government investigations and private litigation that increasingly accompany cybersecurity incidents. For clients that work with the U.S. government, we advise regarding compliance with regulations and standards related to safeguarding government information from cyberattacks, including the National Institute of Standards and Technology (NIST) Special Publications and Defense Federal Acquisition Regulation Supplement (DFARS) Clause 252.204-7012, and provide guidance for obtaining certification under the Defense Department's Cybersecurity Maturity Model Certification (CMMC) program. We also assist clients in addressing novel questions raised by technological advances in encryption, the global nature of data storage, government surveillance capabilities and authorities, and mitigation of the associated legal risk.

We also work closely with nondefense-focused technology companies that increasingly find themselves a focus of intelligence, law enforcement and homeland security officials. We routinely help companies navigate contracting, regulatory and investigative issues in the U.S. and abroad. Our experience in senior government positions as well as in business positions in both start-up and established public technology companies provides a critical perspective on how to address the full range of increasingly intricate issues that arise at the nexus of technology, information and security.

Defense Department Mitigation of FOCI

Skadden regularly represents foreign clients who are considering working with the U.S. government. We work closely with the firm's corporate attorneys to establish U.S. entities and also address, where necessary, FOCI issues with the DCSA. We counsel clients on the various forms of FOCI mitigation that best fit their business and regulatory needs, and then engage extensively across the U.S. government to enable these efforts and maintain critical ongoing compliance. Our attorneys have served on FOCI boards, overseen mitigation agreements, and worked throughout the defense, intelligence and law enforcement communities.

We are experienced in negotiating mitigation agreements with U.S. government agencies and with related ongoing compliance, ranging from establishing FOCI mitigation procedures for foreign companies seeking a facility security clearance to negotiating CFIUS national security agreements coupled with DCSA mitigation agreements as part of a foreign purchase of a cleared U.S. business. We have counseled clients with DCSA mitigation agreements at the publicly traded company level, as well as in establishing discrete mitigated entities with access to unmitigated corporate networks and facilities under an Affiliated Operations Plan negotiated with DCSA. This legal experience is further augmented by our lawyers' having served on corporate boards and as proxy holders for mitigated entities, allowing us to combine practical experiences with in-depth legal understanding.

European Defense

Skadden leverages its extensive experience advising on major U.S. defense transactions to support clients navigating the rapidly evolving European defense landscape. Our attorneys combine deep knowledge of U.S. and non-U.S. national security, FDI, dual-use and export control regulations with a strong, established presence across key EMEA markets and relationships with regulators and local counsel. This unique combination allows us to provide clients with sophisticated, cross-jurisdictional guidance on European defense transactions, drawing on best practices and insights from our market-leading U.S. work. Our integrated, multidisciplinary teams ensure that clients are well-positioned to achieve their strategic objectives while maintaining compliance with all applicable European and global regulations.