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# FCL OVERSIGHT AND EXCLUDED PARENT COMPANIES

DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY

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June 14, 2022



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# Agenda

- What is an XP company, and how does it impact your FCL?
- What are the challenges in managing a cleared company when an XP is present?
- How do we identify corporate legal structure?
- What lessons have been learned here at NAESOC ?





# What is an XP Company ?

- An XP is a company that does not require access to classified information.
- An XP is the highest tiered business entity within the corporate family.
- An XP must be formally excluded by board resolution.





# Common Legal Structures

- Corporation
- Limited Liability Company (LLC)
- General Partnership (GP)
- Limited Partnership (LP)
- Holding Company





# Corporation

- A corporation is legally a separate entity from its owners and possesses many of the same rights and responsibilities as individuals.
- A corporation can issue ownership stock to individuals and other companies.
- Management is vested in a Board of Directors.
- DCSA at minimum will review the business license, fictitious name certificate, articles of incorporation, by-laws, stock ledgers, meeting minutes, and organization chart.



# Limited Liability Company



- An LLC has owners, known as members. The rights and responsibilities of an LLC's members are outlined in the LLC's operating agreement.
- Unless the operating agreement states otherwise, all members have the right to participate in the business' management. This is known as member-managed LLC.
- In a manager-managed LLC, the owners elect a manager or managers to handle day-to-day business decisions. Members still retain rights over some things, such as disbanding the company.
- DCSA at minimum will review the operating agreement and certificate of formation when reviewing an LLC ownership.





# General Partnership

- Two or more individuals come together and agree to share all of the assets, profits, and liabilities related to a business.
- When it comes to a general partnership, the partners both agree to unlimited liability. This means in the event the business has any legal or financial issues, all partners' personal assets are equally on the line to make good on the business' debts or obligations.
- A general partnership is an unincorporated business entity and does not always need to be registered with the state in which it operates.





# Limited Partnership

- An LP is also a type of business partnership that requires two or more partners. Unlike GPs, where all partners play an equal part in running the business, an LP does not assist with day-to-day operations.
- To be considered a LP, there must be one GP and at least one LP.
- LPs are required to file a certificate of LP with the secretary of state office in some states.
- A partnership normally exists that outlines ownership for LPs, too.







# Holding Company

- A holding company is a business that doesn't manufacture anything, sell any products or services, nor conduct any other business operations.
- Rather, holding companies own stock in other companies.
- Usually, a holding company is structured as a corporation or LLC.



# Exclusion Documents



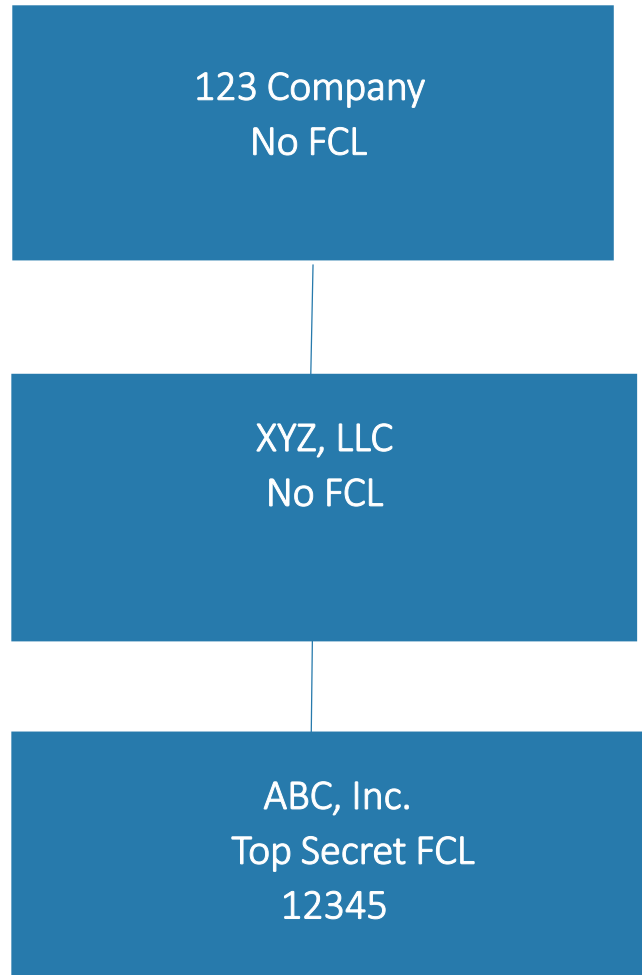
The following XP documents are required at minimum when excluding a corporate entity:

1. Resolution for Exclusion of Parent Organization
2. Subsidiary Board Resolution Noting Parent's Exclusion and Resolution to Exclude Parent Organization
3. SF 328, Certificate Pertaining to Foreign Interests



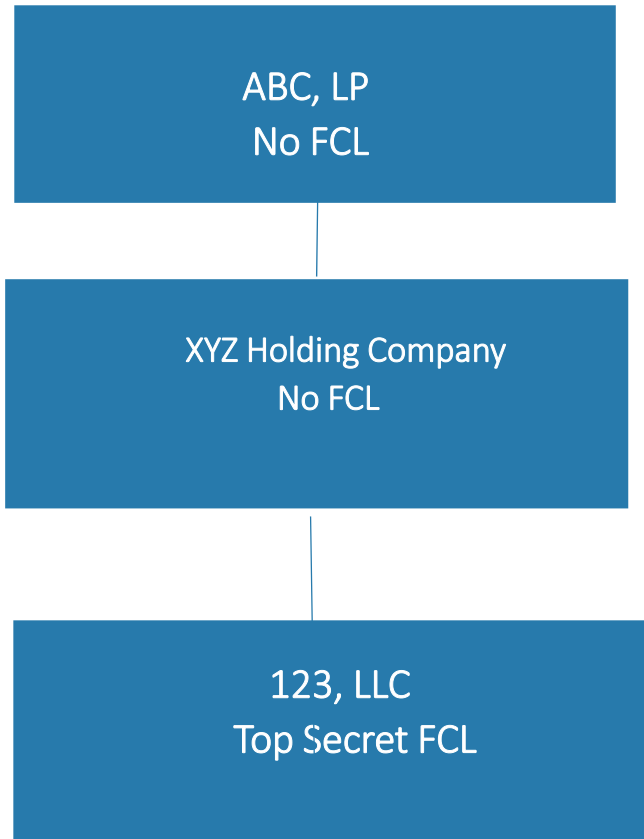


# Sample XP Corporate Structure





# Sample XP Corporate Structure





# Lessons Learned



- Security and management must have a general understanding of an organization legal structure.
- Management must keep security notified of any changes in the legal structure or ownership.
- Stay in contact with DCSA. The earlier you engage with us, the better we can guide you through the process.

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# Putting It All Together

- Final Thoughts

NAESOC Knowledge Center: 1(888) 282-7682, option 7 (NAESOC) and/or email and include: **Facility Name & CAGE Code on the Subject Line:**

For General Questions/Feedback: [dcsa.naesoc.generalmailbox@mail.mil](mailto:dcsa.naesoc.generalmailbox@mail.mil)

To report Changed Conditions: Create a changed condition package in NISS. If you have an upcoming changed condition or have questions regarding submitting a changed condition package, email the General Mailbox above.

To report Security Violations: NISS Messenger labeled “Message My ISR.”

FCL orientation handbook: <https://www.dcsa.mil/mc/isd/fc/>

Mergers, Acquisitions, Restructures, and Spin-offs Job Aid: [Industrial Security Job Aids \(cdse.edu\)](https://www.cdse.edu/Industrial-Security-Job-Aids)