

Business Structures in the National Industrial Security Program (NISP) Student Guide

Table of Contents:

- Course Introduction 4
 - Course Information 4
 - Course Overview 4
 - Course Objectives 4
- Lesson: *Identifying Business Structures* 4
 - Lesson Introduction 4
 - Business Structure and the FCL Process* 5
 - Facility Security Clearance (FCL) 5
 - IS Representative Responsibilities 5
 - Common Business Structures 5
 - Recognizing Sole Proprietorships* 6
 - Characteristics of Sole Proprietorships 6
 - Recognizing Partnerships* 6
 - Partnerships 6
 - Characteristics of General Partnerships 6
 - Characteristics of Limited Partnerships 7
 - Characteristics of Common Types of Partners 7
 - Characteristics of Joint Venture Partnerships 7
 - Recognizing Corporations* 9
 - Corporations 9
 - Characteristics of Privately-Held Corporations 9
 - Characteristics of Publicly-Held Corporations 9
 - Recognizing Limited Liability Companies (LLCs)* 10
 - Characteristics of Limited Liability Companies 10
 - Recognizing Colleges and Universities* 10
 - Characteristics of Colleges/Universities 10
 - Review Activity: *Identifying Business Structures* 11
 - Lesson Conclusion 12
- Lesson: *Examining Complex Business Structures* 15
 - Lesson Introduction 15

Overview of Complex Structures	15
Multiple Facility Organizations	15
Processing MFOs	16
Parent – Subsidiary Relationships	16
Processing Parent-Subsidiary Companies	16
Combining Business Structures: Scenario	17
Combining Business Structures: Analysis	17
Recognizing Holding Companies	18
Review Activity: <i>Examining Complex Business Structures</i>	18
Lesson Conclusion	19
Lesson: <i>Reviewing Business Records</i>	21
Lesson Introduction	21
<i>Business Records Overview</i>	21
Why Examine Business Records?	21
Records Related to FCL Process	22
Records Common to All Business Types	23
Business Structure-Specific Records	24
Key Records for Sole Proprietorship	24
Key Records for Partnerships	24
Key Records for Corporations	26
Key Records for LLCs	27
Key Records for Colleges/Universities	27
Review Activity: <i>Reviewing Business Records</i>	29
Lesson Conclusion	31
Lesson: <i>Identifying KMPs to be Cleared</i>	32
Lesson Introduction	32
KMPs and Personnel Clearances	32
Process Overview	32
KMPs Common to All Structures	33
Non-Traditional KMPs	33
KMPs to Process for Clearances	33
Identifying KMPs to be Cleared Review Activity	36
Lesson Conclusion	37

Lesson: *Practical Exercise*..... 39

- Exercise Introduction 39
- Course Job Aid..... 39
- Exercise Conclusion..... 47

Course Conclusion 48

- Course Summary 48
- Lessons Review 48
- Course Conclusion..... 48

Course Introduction

Course Information

Welcome to the Business Structures in the NISP course.

Course Overview

Under the terms of the U.S. Government's National Industrial Security Program (NISP) any prospective contractor company requiring access to classified information must first be found eligible by the Government for a facility security clearance. Industrial Security Representatives, also called IS Reps, help the Government determine a company's eligibility for a facility clearance. IS Reps' responsibilities include examining and verifying a prospective contractor's business structure and then following the clearance requirements for that type of business. This course is about the most common business structures IS Reps encounter in the NISP.

Course Objectives

- Describe the characteristics of business structures commonly found in facilities participating in the NISP
- Analyze complex business structures to determine criteria for a facility clearance (FCL)
- Describe the key business records used to verify the structure and legal status of a company
- List Key Management Personnel (KMP) required to be cleared for granting/maintaining an FCL

Lesson: Identifying Business Structures

Lesson Introduction

The Industrial Security Representative, or IS Rep, is responsible for helping the U.S. Government decide whether prospective contractor facilities should be cleared to have access to classified information. Understanding a contractor's business structure assists the IS Rep in processing the contractor for a facility security clearance.

In this lesson, you will learn how to distinguish among the types of business structures that IS Reps commonly encounter when processing contractor facilities. Determining business type is important because it affects what entities such as divisions, subsidiaries, parents IS Reps need to process, what records they need to review, and which key management personnel (KMPs) will need clearances.

The lesson objective is to be able to:

- Describe the characteristics of business structures commonly found in facilities participating in the NISP by:
 - Correctly identifying common business structures from a given list of options
 - Correctly identifying the distinguishing characteristics of common business

structures from a given list of options

Business Structure and the FCL Process

Facility Security Clearance (FCL)

When the U.S. Government grants a facility security clearance, it represents an administrative determination that the facility is eligible for access to classified information.

IS Reps are tasked with processing facility clearance requests. As part of their responsibilities, IS Reps must confirm that the contractor satisfies eligibility requirements.

First, the company must need access to classified information in connection with a government requirement. The National Industrial Security Program Operating Manual (NISPOM) requires the contractor organization to be a business entity legally organized under the laws of the State where it is registered, and be located in the United States or its territorial areas. In addition, the organization must also conduct its business in a lawful way. Neither the company nor its key managers may be barred from participating in U.S. Government contracts. Furthermore, the organization must not be under foreign ownership, control or influence (FOCI) to such a degree that granting a facility clearance would be inconsistent with the interests of national security.

IS Representative Responsibilities

To confirm a contractor's eligibility for a facility clearance, the IS Representative must first identify the structure of the business. Different types of business structures establish themselves in different ways. For example, one type of business may have to file certain administrative forms or tax documents that are not required for another.

Knowing the structure of the business tells the IS Rep what forms and records to look for to verify that the contractor is a legally established business entity.

By examining the contractor's records, the IS Rep can also identify the key management personnel, or KMPs, who are required to have personnel clearances in order for the facility to be cleared. In some cases certain KMPs may not need personnel clearances as long as they can be excluded from having access to classified information.

Common Business Structures

There are many different types of business entities among contractors participating in the NISP. The most common structures are:

- Sole proprietorships
- Partnerships
- Corporations
- Limited liability companies (LLCs)

- Colleges or universities

Each of these business structures has unique characteristics that define it. Let's take a closer look at each one.

Recognizing Sole Proprietorships

Characteristics of Sole Proprietorships

A sole proprietorship is a business owned by one individual; the business has no legal identity independent from that owner.

The sole owner owns all of the assets of the business, and receives all of the income it generates. The sole owner also has total management control over business operations and is the only person who can enter into contracts on behalf of the business. The owner has unlimited personal liability for all obligations of the business. This liability can extend beyond the assets of the business to the owner's *personal* assets.

The business, in turn, has unlimited liability for the *owner's* personal debts and obligations. Typically, if the owner of a sole proprietorship dies or retires, the business terminates, along with all of its contracts.

Recognizing Partnerships

Partnerships

A partnership is an association of two or more individuals or other legal entities who agree to do business together as co-owners. A partnership is considered a legal entity independent of its owners, for limited purposes. There are three types of partnerships: general partnerships, limited partnerships, and joint venture partnerships. Let's look at each type to see their similarities and differences.

Characteristics of General Partnerships

In a general partnership, all of the partners are called general partners. Each general partner owns an equal portion of the partnership's assets, profits, and liabilities. All partners have equal control and management rights to the business. Any partner can commit the partnership to contracts or legal obligations, without the knowledge or approval of other partners. All partners are jointly and severally liable for all business losses and obligations. This means that any single partner may be held liable for *all* of the partnership's obligations. A general partnership dissolves upon the death or departure of any general partner.

Characteristics of Limited Partnerships

In a limited partnership, there are both general partners and limited partners. General and limited partners share in the ownership of the business, but limited partners' shares of the business assets and profits are proportional to their investment in the business.

Only the general partners have management responsibilities or operational control over the business. Only the general partners can commit the partnership to contracts or other legal obligations. While the general partners are jointly and severally liable for the partnership's obligations, the limited partners are *not* personally liable for the partnership's obligations. Instead, they are liable only for a percentage of the partnership's debts that is proportional to their investment.

If a limited partner dies or departs, it has no effect on the partnership. In contrast, the death or departure of a *general* partner automatically dissolves the entire partnership.

Characteristics of Common Types of Partners

In addition to general and limited partners, common types of partners may include the following:

Secret Partners

Silent partners share in profits but have no active role in the management of the partnership. Their membership is often not publicly disclosed. These are sometimes referred to as dormant partners.

Silent Partners

Silent partners share in profits but have no active role in the management of the partnership. Their membership is often not publicly disclosed. These are sometimes referred to as dormant partners.

Senior and Junior Partners

Senior and junior partners are established when the partnership contract or agreement confers special authority or powers upon one or more of the partners. Partners with special powers are senior partners; other partners are junior partners.

Characteristics of Joint Venture Partnerships

In a joint venture partnership, two or more independent legal entities, such as persons, businesses, or LLCs form a temporary business together to accomplish a specific business objective. Because of this, while the joint venture partners share in the business profits and losses, they retain ownership of the assets they contribute to the venture.

Joint venture partners share equally in management control, unless they agree otherwise. Such agreements are common in joint ventures. One partner usually manages venture operations.

On rare occasions, some joint ventures by contract are not legal entities but instead agreements between independent persons or entities to work together on a common enterprise.

Any joint venture partner can legally obligate the business without approval of the other. Joint venture partners are jointly and severally liable for the venture's obligations.

The business venture has a limited life-span. It usually terminates when the partners' joint project is completed. The death or departure of any joint venture partner will also terminate the business.

Review Activity: *Recognizing Partnerships*

Try answering the following questions. When you are finished, see the Answer Key at the end of this Student Guide to check your answers.

Review Activity 1

- a. In which type(s) of partnership does the business terminate upon the departure of any partner?
 - General
 - Limited
 - Joint Venture

- b. In which type(s) of partnership can any partner obligate the business?
 - General
 - Limited
 - Joint Venture

- c. In which type(s) of partnership do all partners have some share in ownership?
 - General
 - Limited
 - Joint Venture

- d. In which type(s) of partnership is the business temporary to accomplish a specific objective?
 - General
 - Limited
 - Joint Venture

- e. In which type(s) of partnership may any partner be liable for all of the business' obligations?
 - General
 - Limited
 - Joint Venture

Recognizing Corporations

Corporations

A corporation is a business owned by one or more legal entities. These entities can be individuals, partnerships, or even other corporations. Unlike sole proprietorships or partnerships, corporations are legal entities completely independent from their owners. The owners of a corporation are its stockholders. Each entity that holds a percentage of the corporation's stock owns a proportional share of the company itself. Let's compare the characteristics of two types of corporations – privately-held corporations and publicly-held corporations.

Characteristics of Privately-Held Corporations

Privately-held corporations, also called “close” or “closely-held” companies, are owned by a small number of individuals, often family members. Shares in the company are not available to the general public. Those who own the shares of voting stock in the corporation have ultimate control over the company.

State law requires the stockholders to elect a Board of Directors to make overall management decisions. The Board in turn selects corporate officers to manage day-to-day operations. In privately-held corporations, the stockholders are often actively involved in managing the company. They may be members of the Board or corporate officers, or both.

Generally, all directors of the corporation and all of its operating officers are authorized to act as agents of the company, and can legally enter contracts on its behalf. As an independent legal entity, the corporation is solely liable for its obligations. Stockholders, directors, and officers have no personal liability.

The corporation does not go out of existence if a stockholder dies or withdraws from the company. Its life-span is usually perpetual.

Characteristics of Publicly-Held Corporations

Unlike privately-held corporations, publicly-held corporations make their ownership shares available to the general public. The entities that hold these shares own the company. The stockholders that own the voting stock control the corporation.

However, unlike with privately-held corporations, these stockholders do not often play an active role in managing the business. Instead, the corporation is managed by an elected or appointed Board of Directors and/or officers.

All corporate directors and operating officers may obligate the corporation. A publicly-held corporation is solely liable for its obligations; its stockholders, directors, and officers have no personal liability.

Finally, death or withdrawal of any stockholder has no effect on the continuity of the corporation.

Recognizing Limited Liability Companies (LLCs)

Characteristics of Limited Liability Companies

A limited liability company, or LLC, is an unincorporated business that does not issue stock. It is, however, fully independent of its owners.

IS Reps need to be aware that laws governing LLCs differ from state to state and that even the name of this business structure can vary. In this course, we will use the term LLC.

An LLC has one or more owners, which are usually known as "members." A member may be a person, a corporation, a trust, or even another LLC. Depending on the state, members may control the LLC. However, some states require or allow the members to appoint one or more managers to control company operations.

As in a general or joint venture partnership, any member can obligate the LLC without the approval of other members. Where appointed managers control operations, any appointed LLC manager can bind the company, even if he or she is not a member. A key characteristic of LLCs is that the members are not personally liable for business debts. Because it is an independent legal entity, the LLC is solely liable for its own obligations.

Unlike most other common business structures, the LLC has a limited legal duration. Typically this ranges from 10 to 30 years. Members can renew for additional periods if desired.

Recognizing Colleges and Universities

Characteristics of Colleges/Universities

Colleges and universities do not all share a common business structure. In most cases, state laws govern how they are established and operated. A college or university may be a public institution, owned and controlled by a state or community, or it may be privately- owned, supported by student tuition, alumni donations or endowments, and independent from any state or local government.

Most colleges and universities are directed and controlled by some kind of executive board. This may be called a Board of Trustees, a Board of Regents, a Board of Governors, or another similar name. This board selects operating officers and other managers, who are responsible for day-to-day management of the institution.

The executive board can act collectively to obligate the institution. It typically makes major financial and strategic decisions for the institution. Operating officers are also usually authorized to act on the institution's behalf in specifically identified capacities. The liabilities of colleges and universities or their officials can vary greatly, depending on the basis of the liability, state law, and the public or private status of the institution.

Colleges and universities usually have an indefinite life-span. However, the charter under which the school is organized may specify otherwise.

Review Activity: *Identifying Business Structures*

Try answering the following questions. When you are finished, see the Answer Key at the end of this Student Guide to check your answers.

Review Activity 2

How does recognizing the structure of a contractor's business help in processing a facility security clearance application? Select all that apply.

- Helps determine whether the contractor has legitimate need to access classified information
- Helps determine what business records are required to legally establish the organization
- Helps determine whether the company is working on a classified contract.
- Helps determine which Key Management Personnel (KMPs) must be cleared in order for the facility to be cleared

Review Activity 3

Read the descriptions below and select the correct business structure type from the list:

Limited Liability Company, General Partnership, College/University, Corporation, Sole Proprietorship, or Joint Venture

- a. Owned by a single individual.
- b. Owners share equally in business assets, profits, and liabilities.
- c. A temporary business formed by two or more legal entities to accomplish a specific objective.
- d. Unincorporated business that is a legally independent from its owners.
- e. Ownership of business is based on ownership of company stock.
- f. Public or private institution, which may/may not be incorporated.





Review Activity 4





Select True or False for each statement.

	True	False
The sole proprietorship is the only business structure that may legally have no more than one owner.	<input type="radio"/>	<input type="radio"/>
In both general and limited partnerships, the death or departure of any partner will dissolve the partnership.	<input type="radio"/>	<input type="radio"/>
Ownership of both privately- and publicly-held corporations is based entirely on shares of stock.	<input type="radio"/>	<input type="radio"/>
If an LLC's operations are directed by a management board, any manager appointed to the management board can obligate the company; if the members manage the LLC, any member can obligate it.	<input type="radio"/>	<input type="radio"/>
The governing body of a college or university is usually called the Board of Directors.	<input type="radio"/>	<input type="radio"/>

Lesson Conclusion

In this lesson, you learned about the responsibilities of the IS Rep when processing a business for a facility clearance. You also learned how to distinguish among the types of business structures IS Reps commonly encounter when processing facility clearances for contractors. The table on the following pages provides a summary of their key characteristics.

Business Structure	Characteristics
<p>Sole Proprietorship</p> 	<p>Ownership: Owner owns all business assets/income</p> <p>Control: Owner has total management control</p> <p>Ability to obligate: Only owner can obligate</p> <p>Liability:</p> <ul style="list-style-type: none"> • Owner is personally liable for business obligations • Business is liable for owner's personal obligations <p>Continuity: Terminates upon owner's death or retirement</p>
<p>General Partnership</p> 	<p>Ownership: All partners own equally</p> <p>Control: All partners control equally</p> <p>Ability to obligate: Any partner can obligate</p> <p>Liability: All partners are jointly and severally liable</p> <p>Continuity: Terminates upon any partner's departure</p>
<p>Limited Partnership</p> 	<p>Ownership: General partners and limited partners share ownership</p> <p>Control: Only general partners control</p> <p>Ability to obligate: Any general partner can obligate</p> <p>Liability:</p> <ul style="list-style-type: none"> • General partners are jointly and severally liable • Limited partners are liable only up to investment percentage <p>Continuity: Terminates upon any general partner's departure</p>
<p>Joint Venture (JV)</p> 	<p>Ownership:</p> <ul style="list-style-type: none"> • JV partners share venture profits/losses • JV partners retain ownership of assets they contribute <p>Control: JV partners share control, but often divide responsibilities</p> <p>Ability to obligate: Any partner can obligate</p> <p>Liability: All JV partners are jointly and severally liable</p> <p>Continuity:</p> <ul style="list-style-type: none"> • JV terminates upon project completion • Any JV partner's departure terminates partnership

Business Structure	Characteristics
<p>Privately Held Corporation</p> 	<p>Ownership:</p> <ul style="list-style-type: none"> • Small number of stockholders own • Shares not publicly available <p>Control:</p> <ul style="list-style-type: none"> • Voting stockholders control • Board of Directors and operating officers manage <p>Ability to obligate: Directors and/or officers can obligate</p> <p>Liability: Corporation is solely liable</p> <p>Continuity: No impact if stockholder departs</p>
<p>Publicly Held Corporation</p> 	<p>Ownership:</p> <ul style="list-style-type: none"> • Stockholders own • Shares traded publicly <p>Control:</p> <ul style="list-style-type: none"> • Voting stockholders control • Board of Directors and operating officers manage <p>Ability to obligate: Directors and/or officers can obligate</p> <p>Liability: Corporation is solely liable</p> <p>Continuity: No impact if stockholder departs</p>
<p>Limited Liability Company (LLC)</p> 	<p>Ownership: Members share ownership</p> <p>Control:</p> <ul style="list-style-type: none"> • Members have management control • Management board (Managers or Managing Members) may have control <p>Ability to obligate: Any member or management board with control</p> <p>Liability: LLC is solely liable for its obligations</p> <p>Continuity: Has legally limited duration, but is renewable</p>
<p>College/ University</p> 	<p>Ownership: Public or private owners</p> <p>Control:</p> <ul style="list-style-type: none"> • An executive board directs • Operating officers/managers manage daily operations <p>Ability to obligate: Executive board and/or operating officers</p> <p>Liability: Variable</p> <p>Continuity: Perpetual or as specified in charter</p>

Lesson: *Examining Complex Business Structures*

Lesson Introduction

An Industrial Security Representative, or IS Rep, processing a business for a facility clearance may encounter some fairly complex organizational structures. A single facility may be related to other businesses in a variety of ways. Understanding the structure of these relationships helps the IS Rep determine which entities need to be processed for a facility clearance and which do not. In this lesson, you will learn some special considerations for processing organizations with complex structures.

The lesson objective is to be able to:

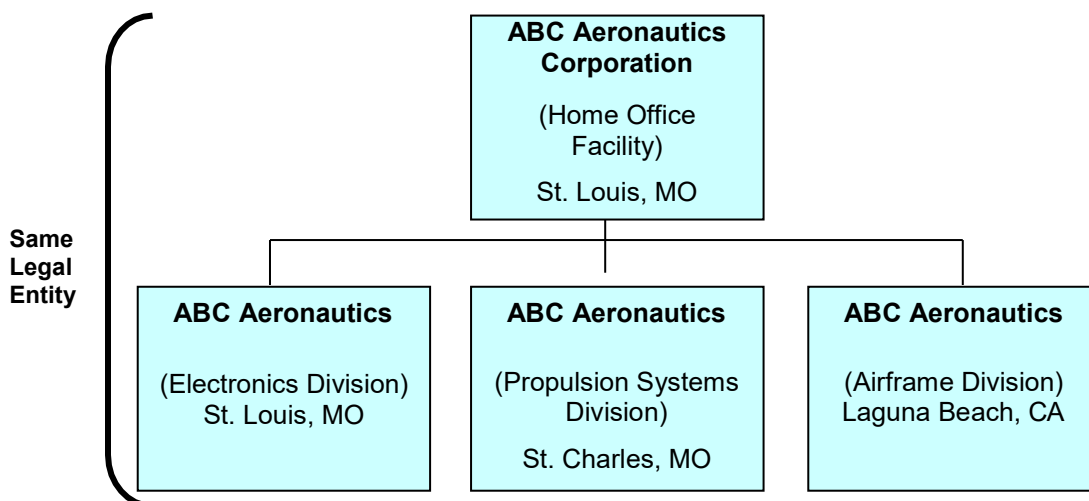
- Analyze complex business structures to determine criteria for a facility clearance (FCL) by:
 - Correctly identifying complex business structures from a given list of options
 - Given a scenario, correctly assess the facts to select special considerations for processing multiple facility organizations

Overview of Complex Structures

Corporations and other businesses may be organized in different ways. The structure of a business affects how it is processed for a facility clearance. We are going to examine two structures in more detail and see how they affect the facility clearance process. One is a multiple facility organization (MFO). The other structure involves companies that are in an ownership relationship to one another. One company may own another, in which case the owner is called the parent, and the other is the subsidiary, or child.

Multiple Facility Organizations

A multiple facility organization, or MFO, is a company that has a home office facility (HOF) and several operating entities. Often these are called business units or divisions. Divisions of an MFO may be co-located with the home office, or they may be located elsewhere. Regardless of location, these divisions are sub-elements of a single company. They are *not* independent legal entities. This chart shows an example:



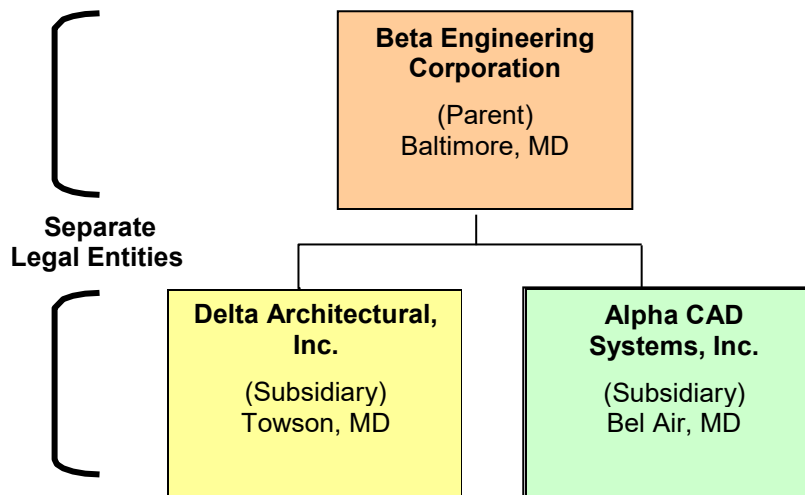
Processing MFOs

When an MFO requires a facility security clearance, the company's home office facility is the legal entity to be processed. All divisions or branch offices of the MFO are extensions of the home office.

The HOF should be processed for a facility clearance at the same or higher classification level than any of its cleared divisions. Divisions or branch offices that do not have a need to store classified information in-house are generally not processed for a facility clearance. In most cases, individual employees from uncleared divisions will have personnel clearances through the home office facility if they have a need for access to classified information.

Parent – Subsidiary Relationships

A parent company is a company or corporation that owns a majority of the voting stock of another company. Companies under the control of the parent company are called subsidiaries. When all of the subsidiary's stock is owned by the parent company, it is known as a wholly-owned subsidiary. Whether wholly-owned or not, the subsidiary company is a legal entity independent of the parent company. This chart shows an example:



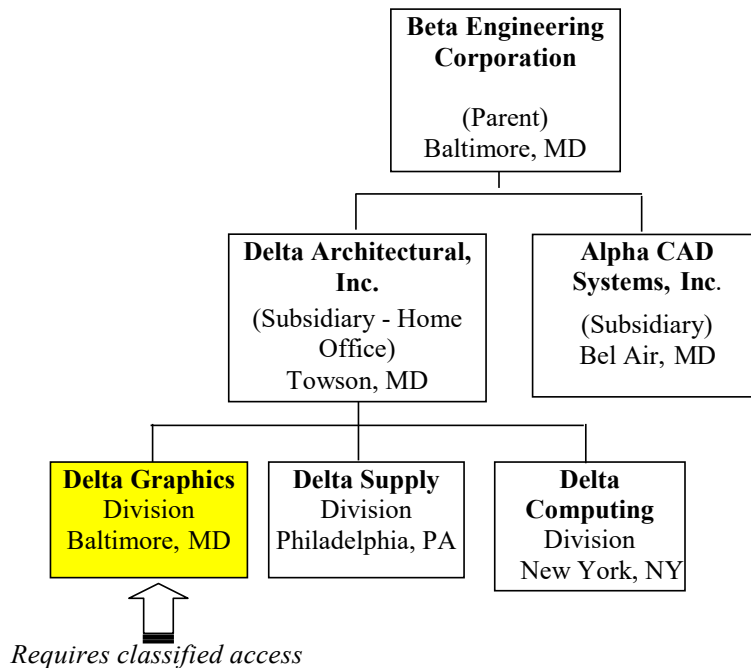
Processing Parent-Subsidiary Companies

When processing a facility security clearance for parent or subsidiary corporations, it is important to remember that the parent and the subsidiary are independent legal entities. They must be cleared separately.

If the parent company does not require access to classified material, it should be excluded. Where both the parent and subsidiary require access, the parent should be cleared to access information at the same or higher classification level as the subsidiary if they need to have access at that level. If the parent needs access only to information at lower classification levels, it may be excluded from higher-level access and cleared at the lower level. When a facility has more than one parent company, all parent facilities must be either cleared or excluded.

Combining Business Structures: Scenario

Corporate structure may be much more complex. IS Reps see many variations and combinations of structures when they examine a facility for clearance. Let's work through a more complicated example. Beta Engineering owns the stock of two other corporations; these are its subsidiaries. One of these subsidiaries is an MFO, with multiple operating divisions. Imagine that one of these divisions needs to access and store classified materials.



What components of this corporate family would the IS Rep need to process for the facility clearance?

Combining Business Structures: Analysis

Let's look first at the facility that needs to access and store the classified materials.

Delta Graphics is a division in an MFO, and is not co-located with its home office, Delta Architectural. Delta Graphics Division will need a facility clearance in order to handle the classified materials on-site. However, because in an MFO, individual divisions are not independent legal entities, the home office still needs to be processed for a facility clearance at the same level or higher. Other divisions in the MFO will not need to be processed, since they do not require access to the materials.

How does the fact that the MFO is a subsidiary to another corporation affect the facility clearance processing determination?

As a subsidiary, the MFO is an independent legal entity from its parent. Unless Beta Engineering itself has a legitimate need to access or store the classified materials, it does not need a facility clearance.

In this case, only Delta Graphics needs access to the materials, so only it and its home office facility would need to be processed for a facility clearance. Beta Engineering, the parent, will be excluded from access to classified information.

This example illustrates how the facility clearance process takes into account complex corporate organization.

Recognizing Holding Companies

The principal business of a holding company is to own stocks or securities of other companies. The holding company's voting rights may allow the company to control the cleared facility's management, although the company may have no other function than to hold stock of cleared company. A holding company can be a corporation, partnership, LLC, or other structure, and they are usually excluded.

Review Activity: *Examining Complex Business Structures*

Try answering the following questions. When you are finished, see the Answer Key at the end of this Student Guide to check your answers.

Review Activity 1

Which of the following are multiple facility organizations (MFO)? Select all that apply.

- A joint venture that involves two or more partner companies, which may or may not be in the same location
- A company that has a home office and multiple divisions, which may or may not be co-located with the home office
- A corporate family that includes a parent company and one or more subsidiary companies, which may or may not be wholly-owned
- A general partnership with offices in two different cities

Review Activity 2

Which of the following best describes a parent company? Select all that apply.

- A company that owns all of the voting stock of another company
- A corporation with one or more operating divisions
- A company that owns a majority of the voting stock of another company
- A corporation divided into multiple legal entities, with a home office that exercises full management control

Review Activity 3

Michaels Construction is a subsidiary of Urban Revisions. Michaels Construction has been sponsored for a facility clearance at the Secret Level because it needs access to classified information. Urban Revisions will not be working on the contract with Michaels Construction, but it owns 100% of its stock. Which entity(ies) must have a facility clearance? Select all that apply.

- Michaels Construction
- Urban Revisions

Review Activity 4

Which of the following is a characteristic of a holding company? Select all that apply.

- Voting rights never allow the company to control the cleared facility's management
- Own stocks or securities of other companies.
- May be any type business structure
- Are never excluded

Lesson Conclusion

In this lesson, you learned some special considerations for processing multiple facility organizations and companies with parent and subsidiary relationships:

Multiple Facility Organizations

MFO: A company divided into home office and smaller operating entities

- Divisions may/may not be co-located with home office
- Divisions are NOT independent legal entities

FCL Processing Considerations for MFOs:

- Company Home Office Facility (HOF) must be cleared
- Process HOF for same or higher clearance as any cleared Division(s)
- Divisions with no need to store classified materials are not processed

Parent-Subsidiary Relationships

Parent: owns the majority of voting stock in another company

Subsidiary: Majority of its voting stock is owned by another company

- Under parent company's control
- Independent legal entity

FCL Processing Considerations for Parents and Subsidiaries:

- Process parent and subsidiary separately
- If parent does not require access, exclude it
- If both need access:
 - Clear parent at same or higher level as subsidiary, *OR*
 - Exclude parent from access to higher-level information
- If subsidiary has more than one parent, clear or exclude all

Holding Company

- Principal business is to own stocks or securities of other companies
- Holding company's voting rights may allow company to control the cleared facility's management although company may have no other function than to hold stock of cleared company
- May have corporation, partnership, LLC, or other structure
- Usually excluded

Lesson: Reviewing Business Records

Lesson Introduction

Before the U.S. Government will grant a facility security clearance to a contractor, it must confirm the contractor is based in the U.S. or its territorial areas, and is a legally organized business entity under the laws of its home State. The Industrial Security Representative, or IS Rep, is responsible for verifying that the contractor meets this requirement. In this lesson, you will learn what business records the IS Rep reviews in order to verify the structure and legal status of a contractor applying for a facility clearance.

The lesson objective is to be able to:

- Describe the key business records used to verify the structure and legal status of a company by:
 - Correctly identifying business records common to all business structures from a given list of options
 - Correctly identifying business records that are specific to a particular business structure from a given list of options
 - Correctly identifying the legal status of a company based upon business records provided

Business Records Overview

Why Examine Business Records?

Confirming that a prospective contractor is a legally established business entity requires research and analysis by the IS Rep. He or she must review a variety of business forms and records.

These records provide key evidence on whether the business is properly organized under state law. The company's records also provide other important kinds of information. For example, they help identify the company's key management personnel (KMPs). You will learn about this in another lesson in this course. Business records also provide the IS Rep with valuable insight into other issues that affect the facility clearance process, such as the degree of foreign ownership or control of the business.

The information in boxes like the one below is supplemental content that you may find useful; however, it will not be addressed in the course examination.

The IS Rep reviews the records of all contractors applying for a facility clearance (FCL) in order to:

- Identify who owns the facility
- Identify who has decision making authority
- Identify how the company is organized
- Verify the company's address
- Identify Senior Managers or KMP
- Review any documentation validating KMP
- Verify information provided on the SF 328 Certificate Pertaining to Foreign Interests
- Resolve any discrepancy between information found in the facility's records and information in the FCL designated system of record or other DCSA Records

Records Related to FCL Process

As part of the facility clearance process, all contractors, regardless of their business type, must complete and submit certain forms that provide detailed information about their business. These documents are key checkpoints for the IS Rep in validating baseline information about the business. The IS Rep will check the information in these forms against the official business records of the facility trying to obtain a facility clearance. One is DD Form 441, the Department of Defense Security Agreement. The other is SF 328, the Certificate Pertaining to Foreign Interests. Review the information below to learn how each form relates to business records and the facility clearance process.

DD Form 441

DD Form 441 is an agreement between a contractor and the U.S. Government. It details the security responsibilities of both the cleared organization and the U.S. Government. The contractor completes DD Form 441 according to instructions for its particular business structure. The IS Rep reviews and verifies the information on this form by comparing it with other business records the company provides.

The IS Rep reviews DD Form 441 for the following:

- Completeness and accuracy
- To determine if there is any information in the company records that conflicts with information contained on DD Form 441
- To ensure that the company official who has signed the form fully understands the terms and conditions of the agreement
- To verify that the entity has completed the form in accordance with instructions

What the IS Rep is looking for:

- Within an MFO, a DD Form 441-1, Appendage to Department of Defense Security Agreement, is executed to identify the cleared division and branch offices that are included and covered by the provisions of the DD Form 441 executed by the HOF.

SF328

Another important reference for the IS Rep is the contractor's SF 328, the Certificate Pertaining to Foreign Interests. Prospective contractors use this form to report foreign ownership and other types of foreign involvement in their operations or management. The IS Rep reviews the SF 328 and cross-checks the information it contains against the company's other business records. It is part of the IS Rep's job to assess the extent to which a prospective contractor is operating under foreign ownership, control, or influence (FOCI). A facility clearance will not be issued to any company found to be under FOCI to a degree that could compromise national security.

The IS Rep reviews SF 328 for the following information:

- Completeness and accuracy
 - Verify that any "Yes" answers are fully explained
- To determine if there is any information in the company records that conflicts with information contained on SF 328
- To compare SF 328 data against:
 - Any records indicating a significant percentage of the company's income comes from a foreign source
 - Any records of indebtedness to a foreign entity
- If one or more of the company's key management personnel (KMPs) are foreign persons, additional information will be required

Records Common to All Business Types

Now let's consider the basic business records the IS Rep will look at during a facility visit to confirm a business is legally established. Some of these records are common to all business types, and others are specific to particular structures.

Business License

Almost all companies have a basic business operation license issued by the city or county where they operate. Reviewing the Business License and the application for that license helps the IS Rep validate basic facts about the company. For example, if the company has represented itself to the U.S. Government as a general partnership, this may appear on the license or application under "Type of Ownership," or another similar heading. The license also shows the correct legal name and address of the business. The name should be consistent with the way the company identifies itself on other key business forms and records.

Fictitious Name Certificate

The Fictitious Name Certificate, also called the "d.b.a." or "doing business as" permit, is another form that any type of business may have among its records. A company may want to use a fictitious name for a variety of reasons, for example to use a name that describes what type of service the company sells. In most states, companies wishing to do business under a fictitious name must file a certification to that effect with their city or state. The IS Rep

compares the data on this certificate with other company documentation to confirm that the actual and “d.b.a.” names are correctly and consistently identified.

Business Structure-Specific Records

Now let’s look at business records that are specific to a particular business structure.

Key Records for Sole Proprietorship

Administrative requirements for establishing a sole proprietorship are simple. There are typically no business records unique to this business structure. Key records establishing the business may be limited to the Business License.

The IS Rep reviews the license to verify that the business is owned by a single individual. Since the owner’s name is the correct legal name of the business, the IS Rep also verifies the owner’s name as listed on the license.

As you know, the sole proprietor may do business under another name. In these cases, the IS Rep reviews the “Fictitious Name Certificate” to verify the actual and “d.b.a.” names of the business.

Key Records for Partnerships

Almost all general partnerships, limited partnerships, and joint venture partnerships have a Business License and a certificate listing their “d.b.a.” name, if they don’t operate under the names of the partners. Additional partnership records reviewed by the IS Rep include the Partnership Agreement, for general and limited partnerships, the Certificate of Limited Partnership, for limited partnerships, and the Joint Venture Agreement, for joint venture partnerships. Review the information below to learn more about the records for each type of partnership.

Partnership Agreement

In most general and limited partnerships, the Partnership Agreement—sometimes called the Articles of Partnership—is the key legal document establishing the business and its structure. Reviewing the agreement helps the IS Rep confirm the structure of the business, its location and correct legal name, the names of all partners, their responsibilities and their investments in the firm, and the distribution of partnership profits and losses.

The information in the box below will not be on the test, but it may provide you with useful background and insights.

The IS Rep also reviews the Partnership Agreement and/or other relevant records to identify:

- Individuals with decision-making authority
- Any limitations on that authority

Certificate of Limited Partnership

To establish a limited partnership, the partners must follow specific procedures set out in the laws of each state. Most states require the filing of a Certificate of Limited Partnership at the appropriate state office. Since this certificate is unique to the limited partnership, reviewing it helps the IS Rep confirm the structure of the business.

The IS Rep also reviews the Certificate of Limited Partnership and/or other relevant records to:

- Identify all partners
- Determine:
 - Who has decision-making authority?
 - What limitations are placed on that authority?
 - Who can sign a contract?
 - Who can obligate the partnership?

Joint Venture Agreement

The Joint Venture Agreement is an agreement tailored to the specialized needs of a joint venture. The agreement defines the structure of the business, which could be made up of different types of organizations such as LLCs, individuals, corporations and partnership firms, and explains its ownership and management control. The IS Rep reviews this agreement to verify the structure of the business, its correct legal name and principal business location, as well as the legal names of all partner organizations.

For guidance on documenting FOCI, see CDSE's eLearning course *Understanding FOCI*.

The IS Rep also reviews the joint venture partnership business records to:

- Identify any written agreements excluding any non-cleared joint venture partner from access to classified information:
 - Each joint venture partner who requires access to classified information must be processed for a facility clearance (FCL).
 - Joint venture partners who do not need access to classified information must be excluded from access.
- Identify any indications of foreign ownership, control, or influence (FOCI):
 - A joint venture under FOCI is ineligible for an FCL unless:
 - The participating contractors are foreign companies from a country with which the U.S. has an Industrial Security agreement
 - OR
 - An appropriate FOCI mitigating instrument is implemented that prevents unauthorized disclosure of classified information

Key Records for Corporations

Whether privately-held or publicly-held, all corporations must register with the State Corporation Commission in each state where they intend to do business. Laws in each state also dictate the types of business records that corporations must file or maintain. In addition to a Business License and Fictitious Name Certificate, the IS Rep typically reviews corporate records, including the Articles of Incorporation, and the By-laws for the company. Other corporate documents are also relevant in the facility clearance process. Review the information below to learn more about the records for each type of corporate record.

Articles of Incorporation

The Articles of Incorporation serve as the legal means by which a company is incorporated. This document must be filed with the state and becomes part of the public record. The IS Rep reviews the Articles of Incorporation to verify the corporate structure of the business, its legal name, and its principal office location, as well as the names and titles of the corporate officers.

By-laws

The By-laws of a corporation establish how the company will conduct its business. By-laws are not generally filed with the state, nor are they part of the public record. The By-laws guide the officers in managing the company. They address many operating rules and organizational details, such as when, where, and how stockholder and Board of Directors meetings are conducted. By-laws also define the administrative powers of company directors and managers. The IS Rep reviews the By-laws to see how the company is organized and how it does business. The By-laws also describe the powers and authority of the company's directors and managers, and any limits on those powers.

The IS Rep may also review corporate By-laws to identify:

- Type of stock issued (common or preferred)
- Number of shares of each type of stock authorized
- Number of shares of each type issued

Other Records

Other corporate records are also relevant in the facility clearance process. Examples include the corporation's stock ledger, minutes from Board of Directors meetings, and filings with the Securities and Exchange Commission (SEC).

The IS Rep may also perform the following actions when reviewing corporate records:

- Review Stock Ledger to identify
 - Any stock owned by a foreign person or entity
 - Anyone who owns 5% or more of the company’s stock
- Review Board of Directors Meeting Minutes to identify any recent changes to key management personnel (KMPs) or other information impacting the facility clearance
- Review Securities and Exchange Commission (SEC) filings for public corporations to identify:
 - Ownership of 5% or more of the corporation stock
 - Other business information

Key Records for LLCs

Although the LLC is an unincorporated business, it must organize and establish itself according to the procedures set by the state. In most states, the only legal requirement is the filing of a Certificate of Formation—or Articles of Organization, as it is called in some states—with the office of the State Secretary or the State Corporation Commission.

The IS Rep reviews the organizing agreement to verify that the business is legally organized as an LLC. Because state requirements vary, the IS Rep may have to consult statutes in the LLC’s home state to confirm that the company is properly established. From the review of the certificate, the IS Rep also confirms the legal name of the LLC, the location of its principal office, the names and addresses of the LLC’s owners, and the name and address of the LLC’s registered agent. This is a person or company that agrees to accept legal papers on behalf of the LLC.

In addition to the Certificate of Formation or Articles of Organization, the IS Rep also reviews the LLC Operating Agreement to determine:

- Who has decision-making authority
- Who can obligate the LLC
- Who is authorized to sign contracts for the company
- What limits there are, if any, on each member’s authority

Key Records for Colleges/Universities

Most colleges and universities must follow procedures for establishment and operation, like those the states set for commercial corporations. This usually includes being granted a Charter by the state and being required to follow its stipulations. The IS Rep reviews the Charter to confirm that the college or university is legally established, and to determine how it is organized and managed.

For college/university records, the IS Rep will also:

- Review Charter and other documents as available to determine:
 - Names and titles of Officers, Directors, Regents, Executives, other management officials
 - Who has decision-making authority
 - How decisions are made
 - Who can be excluded from access to classified information
- Obtain and review a copy of any franchise agreement, if applicable

Review Activity: *Reviewing Business Records*

Try answering the following question. When you are finished, see the Answer Key at the end of this Student Guide to check your answer.

Review Activity 1

Which statement best describes the Department of Defense Security Agreement (DD Form 441)?
Select all that apply

- A business record that all business structures maintain in the normal course of operations
- A record the IS Representative reviews to determine whether a business is legally established under state law
- A document that all prospective cleared contractors complete as part of the facility clearance process, regardless of their business structure
- A form that prospective contractors complete to report the extent of foreign ownership, control, or influence (FOCI) over the business

Review Activity 2

Which business structure(s) would you expect to have a Business License? Select all that apply.

- Sole Proprietorship
- General Partnership
- Limited Partnership
- Joint Venture
- Privately-Held Corporation
- Publicly-Held Corporation
- LLC
- College/University

Review Activity 3

For a Sole Proprietorship, which record(s) would the IS Rep ask for to verify its structure?

- Articles of Incorporation
- Business License
- Certificate of Formation
- Charter
- By-Laws
- Partnership Agreement
- Certificate of Limited Partnership

Review Activity 4

For a Limited Partnership, which record(s) would the IS Rep ask for to verify its structure?

- Articles of Incorporation
- Business License
- Certificate of Formation
- Charter
- By-Laws
- Partnership Agreement
- Certificate of Limited Partnership

Review Activity 5









For an LLC, which record(s) would the IS Rep ask for to verify its structure?

- Articles of Incorporation
- Business License
- Certificate of Formation
- Charter
- By-Laws
- Partnership Agreement
- Certificate of Limited Partnership

Lesson Conclusion

In this lesson, you learned that the IS Rep reviews many different types of business records when processing a prospective contractor for a facility clearance. The records provide evidence that the contractor is a legally established business entity under the laws of the state where it is located.

This table summarizes the key documents the IS Rep reviews to verify the structure and legal status of a contractor applying for a facility clearance:

Business Structure	Key Business Records to Verify Structure
<p>Sole Proprietorship</p> 	<ul style="list-style-type: none"> • Business License • Fictitious Name Certificate/"d.b.a." Permit, where applicable
<p>General Partnership</p> 	<ul style="list-style-type: none"> • Business License • Fictitious Name Certificate/"d.b.a." Permit, where applicable • Partnership Agreement
<p>Limited Partnership</p> 	<ul style="list-style-type: none"> • Business License • Fictitious Name Certificate/"d.b.a." Permit, where applicable • Partnership Agreement • Certificate of Limited Partnership
<p>Joint Venture</p> 	<ul style="list-style-type: none"> • Business License • Fictitious Name Certificate/"d.b.a." Permit, where applicable • Joint Venture Agreement
<p>Privately-Held Corporation</p> 	<ul style="list-style-type: none"> • Business License • Fictitious Name Certificate/"d.b.a." Permit, where applicable • Articles of Incorporation • By-laws
<p>Publicly-Held Corporation</p> 	<ul style="list-style-type: none"> • Business License • Fictitious Name Certificate/"d.b.a." Permit, where applicable • Articles of Incorporation • By-laws
<p>Limited Liability Company</p> 	<ul style="list-style-type: none"> • Business License • Fictitious Name Certificate/"d.b.a." Permit, where applicable • Certificate of Formation or Articles of Organization • Operating Agreement
<p>College/ University</p> 	<ul style="list-style-type: none"> • Charter

Lesson: *Identifying KMPs to be Cleared*

Lesson Introduction

When evaluating whether a contractor is eligible for a facility clearance, the Defense Counterintelligence and Security Agency (DCSA) must also determine whether certain key management personnel (KMPs) are eligible for personnel clearances. A facility clearance will be granted only if appropriate KMPs receive a personnel clearance. The U.S. Government may issue personnel security clearances to contractor employees who will have access to classified information. The types of KMPs who need a clearance will vary, depending on the contractor's business structure. In this lesson, you will learn which KMPs must be cleared for the business structures commonly found in the NISP.

The lesson objective is to be able to:

- List Key Management Personnel (KMP) required to be cleared for granting/maintaining an FCL by:
 - Correctly identifying NISP requirements for KMP clearance from a given list of options
 - Correctly identifying NISP requirements for KMP exclusions from a given list of options
 - Correctly categorizing the type of business based upon a given list of corresponding KMPs

KMPs and Personnel Clearances

Process Overview

During the facility clearance process, DCSA requires a prospective contractor to identify all of its key management personnel or KMPs. The IS Rep reviews the company's business records, along with the KMP information provided, to confirm that all KMPs have been appropriately identified. Based on the structure of the contractor's business and the responsibilities of the KMPs, the IS Rep determines who should be cleared and who should be excluded from classified access.

The information in boxes like the one below is supplemental content that you may find useful; however, it will not be addressed in the course examination.

When evaluating key management personnel (KMP), the IS Rep will:

- Review for completeness and accuracy
- Ensure contractor facility has executed any required exclusion resolutions:
 - Review all exclusion resolutions for completeness and accuracy
 - Verify that written resolutions are provided to exclude from access to classified information any KMPs who are not cleared, and for whom a personnel clearance (PCL) is not otherwise required

KMPs Common to All Structures

There are certain individuals who must receive a personnel clearance regardless of the prospective contractor's business structure.

First, the Senior Management Official in charge of the facility must be found eligible for a personnel clearance. This is because this individual is responsible for managing the business, and is an integral part of decision-making.

The prospective Facility Security Officer (FSO) must also receive a personnel clearance. This is because the FSO is the person who will be responsible for the facility's security program.

Additionally, the Insider Threat Program Senior Official (ITPSO) must be cleared because this person is responsible for establishing and executing the facility's insider threat program.

The Senior Management Official, FSO and ITPSO must be eligible for a clearance at the same classification level as the facility clearance. When determining who the Senior Management Official is at a facility, it is important to consider who makes the actual decisions about its operation. In some cases an individual may hold a title in name only and have little real authority. Additionally, the ITPSO must serve in a position within the organization that has the authority to provide management, accountability, and oversight to effectively implement and manage the requirements of the NISPOM related to insider threat.

Non-Traditional KMPs

In some circumstances, a facility may have an individual in a key management position, but delegate the decision-making to another management position. For example, a corporate President still holds the President title in name only but has delegated all decision-making authorities to a Vice President.

In these instances, DCSA will review legal documentation and interview key management to determine:

- all the key management personnel
- which position(s) control influence over the company operations and classified contracts

In instances where another KMP position may control the classified contracts or facility operations, DCSA may determine a non-traditional KMP requires a personnel clearance in conjunction with the facility clearance.

KMPs to Process for Clearances

Sole Proprietorships

In a sole proprietorship, the owner of the business must *always* be found eligible for access to classified information. This same individual may also serve as the company's Senior Management Official, FSO, and ITPSO. If, however, the sole proprietorship has *different* individuals acting as its Senior Management Official, FSO, and ITPSO, these individuals

must also be cleared in order for the facility to be cleared.

General and Limited Partnerships

The rules that determine which KMPs must receive personnel clearances are similar for both general and limited partnerships.

In both general and limited partnerships, all general partners must be processed for personnel clearances. The only exceptions are cases where the partnership has designated full authority for management control and supervision to a managing partner, or to an executive committee. In these cases, general partners who do not manage the partnership or who are not members of the executive committee may be excluded from classified access. However, all executive committee members must be processed for a PCL, whether they are general partners or not.

In a limited partnership, the limited partners will need clearances in conjunction with the facility clearance if their positions allow them to impact the way the partnership handles classified contracts.

Joint Venture Partnerships

As in a general partnership, all partners in a joint venture must either be cleared or excluded from classified access. Usually, the executive officers of the joint venture also serve as executives for one of the partner companies. These executives will be processed for personnel clearances when each partner company is processed for its facility clearance. However, joint ventures sometimes have their own executive officers, independent of the partner companies' executive staff. In these cases, the Chief Executive Officer (CEO) for the joint venture must be found eligible for classified access. Other joint venture officers will be cleared or excluded based on whether they can adversely affect the venture's performance on classified contracts.

Corporations

The IS Rep processes the same types of KMPs for clearance at both privately-held and publicly-held corporations. For both types of corporations, the Chairman of the Board must be eligible for classified access. Sometimes corporate By-laws provide for the Chairmanship to rotate among the Directors. In these cases, all Directors who could potentially fill the Chairman position must also be processed. The company may submit applications for other corporation officials to be granted clearances if their duties require them to access classified information. However, the eligibility of these individuals for personnel clearances will not affect the status of the corporation's facility clearance.

Limited Liability Companies (LLCs)

In an LLC, all of its members must be either eligible for access to classified information, or excluded from access. In making this determination, the IS Rep analyzes each member's duties and degree of ownership, control, or influence over company policies and practices. Other management officials in the LLC who are legally authorized to sign contracts on behalf of the company must also be cleared or excluded.

Colleges and Universities

Since colleges and universities vary in their business structure, the position titles of key management personnel may also vary. Commonly, however, a personnel clearance will be required for the institution's Chief Executive Officer (CEO). Other officers or officials that the school's governing body has made responsible for negotiating, executing, and administering classified contracts will also require personnel clearances. At most colleges and universities, all Regents, Trustees, and Directors must also be cleared. There are two exceptions to this.

First, any Regents, Trustees, or Directors who do not require classified access and who cannot influence the institution's performance on classified contracts may be excluded, as long as a legal quorum of the executive body remains eligible for classified access.

The second exception is when the Regents, Trustees, or Directors have transferred management control of the institution and any classified material in its custody to a legally designated executive committee. In this case, all members of the executive committee must be cleared, but other Regents, Trustees, or Directors may be excluded from classified access.

Identifying KMPs to be Cleared Review Activity

Try answering the following question. When you are finished, see the Answer Key at the end of this Student Guide to check your answer.

Review Activity 1

Which KMPs must be cleared to the level of the facility clearance at all types of cleared facilities? Select all that apply.

- All business owners
- Senior Management Official in charge of facility
- Insider Threat Program Senior Official
- Facility Security Officer
- Board of Directors

Review Activity 2






Select True or False for each statement.




In order for a facility to be cleared:	True	False
The owner of a sole proprietorship must be found eligible for a PCL.	<input type="radio"/>	<input type="radio"/>
In general and limited partnerships, a general partner not authorized to exercise management control may be excluded from classified access.	<input type="radio"/>	<input type="radio"/>
All limited partners should be excluded from access to classified information.	<input type="radio"/>	<input type="radio"/>
All joint venture partners must be either eligible for a PCL or excluded.	<input type="radio"/>	<input type="radio"/>
LLC managers should be processed for a PCL only if they are also owner-members of the LLC.	<input type="radio"/>	<input type="radio"/>
If there is more than one potential Chairman of a corporation's Board of Directors, all must be processed for a PCL.	<input type="radio"/>	<input type="radio"/>
A vice president, or other management position, who is delegated control and influence over the company operations and classified contracts should be processed for a PCL.	<input type="radio"/>	<input type="radio"/>

Lesson Conclusion

In this lesson, you learned that as part of processing a contractor for a facility clearance, the IS Rep must identify the KMPs who require personnel security clearances. You also learned that the KMPs who must be cleared or excluded from classified access vary, depending on the contractor’s business structure.

This table provides a summary of the KMPs to be cleared to support an FCL for each business structure:

Business Structure	Key Management Personnel to be Cleared to support Facility Clearance
<p>Sole Proprietorship</p> 	<ul style="list-style-type: none"> • Sole proprietor • Senior Management Official (SMO)* • Facility Security Officer (FSO)* • Insider Threat Program Senior Official (ITPSO)* <p>*If other than owner</p>
<p>General Partnership</p> 	<ul style="list-style-type: none"> • SMO • FSO • ITPSO • All general partners must be cleared • Exception: if full management control resides in a: <ul style="list-style-type: none"> ○ Managing partner (that partner must be cleared), or ○ Executive committee (all committee members must be cleared)
<p>Limited Partnership</p> 	<ul style="list-style-type: none"> • SMO • FSO • ITPSO • All general partners must be cleared • Exception: if full management control resides in a: <ul style="list-style-type: none"> ○ Managing partner (that partner must be cleared), or ○ Executive committee (all committee members must be cleared) • Limited partners need PCL only if they impact classified contract performance or need access to classified information
<p>Joint Venture</p> 	<ul style="list-style-type: none"> • SMO • FSO • ITPSO • All JV partners must be cleared <ul style="list-style-type: none"> ○ When one or more partners but not all partners require access to classified information, those partners not requiring access to classified may be excluded • Chief Executive Officer (CEO) working exclusively for the JV must be cleared • Other JV officials will be cleared or excluded based on whether they can adversely affect the JV’s performance on classified contracts
<p>Privately-Held Corporation</p> 	<ul style="list-style-type: none"> • SMO • FSO • ITPSO • Chairman of the Board must be cleared (and all potential alternates) • Other corporate officials must be excluded or cleared if their duties require access to classified information. <ul style="list-style-type: none"> ○ Ineligibility will not affect FCL

Business Structure	Key Management Personnel to be Cleared to support Facility Clearance
<p>Publicly-Held Corporation</p> 	<ul style="list-style-type: none"> • SMO • FSO • ITPSO • Chairman of the Board must be cleared (and all potential alternates) • Other corporate officials must be excluded or cleared if their duties require access to classified information. <ul style="list-style-type: none"> ○ Ineligibility will not affect FCL
<p>Limited Liability Company</p> 	<ul style="list-style-type: none"> • SMO • FSO • ITPSO • All LLC members must be cleared or excluded <ul style="list-style-type: none"> ○ Eligibility for classified access depends on member's duties, ownership share, and management influence • Managers when delegated decision making authority and ability to bind the LLC • Non-member officials who can enter into contracts must also be cleared or excluded
<p>College/ University</p> 	<ul style="list-style-type: none"> • SMO • FSO • ITPSO • CEO • Other officers/officials with accountability for classified contracts must be cleared • All Regents/Trustees/Directors must be cleared unless: <ul style="list-style-type: none"> ○ Exclusions of Regents/Trustees/Directors who do not require access and cannot affect contract performance leave a legal quorum of executives who <i>ARE</i> eligible ○ They have delegated management control to an executive committee <ul style="list-style-type: none"> • All committee members must be cleared

Lesson: *Practical Exercise*

Exercise Introduction

In this lesson, you will have an opportunity to apply what you have learned about the business structures an IS Rep commonly encounters in the NISP. This practical exercise will help you meet the course objectives.

The lesson objectives are to be able to:

- Describe the characteristics of business structures commonly found in facilities participating in the NISP
- Analyze complex business structures to determine criteria for a facility clearance (FCL)
- Describe the key business records used to verify the structure and legal status of a company
- List Key Management Personnel (KMP) required to be cleared for granting/maintaining an FCL

Course Job Aid

All of the information you have learned in the course – the characteristics of common business structures, the key business records an IS Rep reviews for each, and the KMPs who need to be cleared or excluded – has been consolidated into a job aid for your reference and review.

You can use it as a reference during this practical exercise. You can print a copy from the course resources page. Try answering the questions in each scenario. When you are finished, see the Answer Key at the end of each scenario in this Student Guide to check your answers.

Scenario 1 - Able-Baker

Imagine you are an IS Rep, assigned to the Able-Baker company as it is being processed for a facility clearance. Today you are meeting with the FSO and the Senior Management Official.

Activity 1

You are sitting in a conference room at the Able-Baker company, talking with their FSO. The FSO tells you that Mr. Able and Mr. Baker are co-owners and partners. They both take an active role in managing the business. The FSO says there is another owner- partner, Ms. Edwards, but she isn't involved in management decisions and can't sign contracts on behalf of the company.

Based on what you know now, what is the most likely business structure for this company? Select the best answer.

- General Partnership
- Limited Liability Company
- Limited Partnership
- Joint Venture Partnership

Activity 2

You continue talking with the FSO for the Able-Baker company, asking questions about the business. If this company is a limited partnership, what else would you expect to be true of Able-Baker? Select True or False for each statement.

	True	False
Ownership share in Able-Baker is based on shares of stock.	<input type="radio"/>	<input type="radio"/>
All partners are jointly and severally liable for all business losses and obligations.	<input type="radio"/>	<input type="radio"/>
Limited partners' share of business assets and profits is proportional to their investment in the business.	<input type="radio"/>	<input type="radio"/>
The business has sole liability for its debts and obligations; owners are not personally liable	<input type="radio"/>	<input type="radio"/>
The partnership is a temporary business that will terminate after a specific objective is accomplished.	<input type="radio"/>	<input type="radio"/>
If a limited partner leaves, there is no impact on business continuity.	<input type="radio"/>	<input type="radio"/>

Activity 3

You are now meeting with the Senior Management Official at the Able-Baker company's facility. She asks you what business records you would like to see.

Which of the following records would you ask for to verify that Able-Baker is a limited partnership? Select all that apply.

- Business License
- Articles of Incorporation
- By-laws
- Charter
- Certificate of Limited Partnership
- Certificate of Formation
- Partnership Agreement

Activity 4

The Senior Management Official at Able-Baker has brought you the business records you requested. You are reviewing the company's Partnership Agreement. What relevant types of information would you expect to find here? Select all that apply.

- Full names of all partners
- Legal name of business
- Number of shares of stock authorized
- Partners' responsibilities
- Principal business location
- Type of partnership
- Distribution of profits/losses
- Record of initial SEC filings

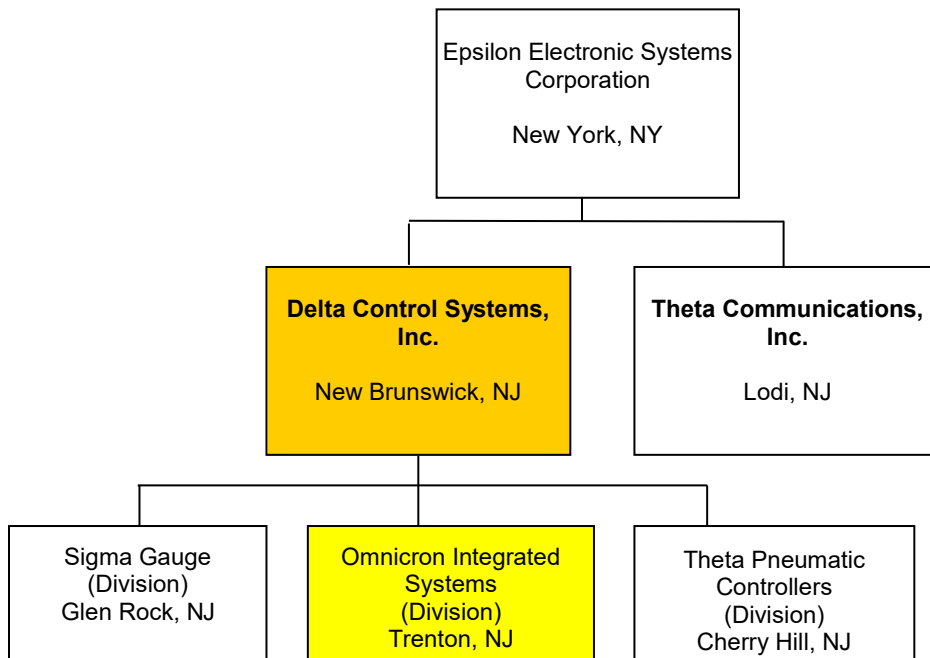
Activity 5

You have reviewed business records for the Able-Baker company and verified the business structure as a limited partnership. Based on that information, which of the company's KMPs must be found eligible for a PCL? Select all that apply.

- Senior Management Official in charge of facility
- All general partners
- All limited partners
- Facility Security Officer
- Insider Threat Program Senior Official
- Only partners owning majority shares in the business

Scenario 2 - Omnicron

Now let's suppose that, as an IS Rep, you are reviewing business documents for the Omnicron Integrated Systems Company, which is being processed for a facility security clearance. You have an appointment today with the company's Senior Management Official and the FSO.



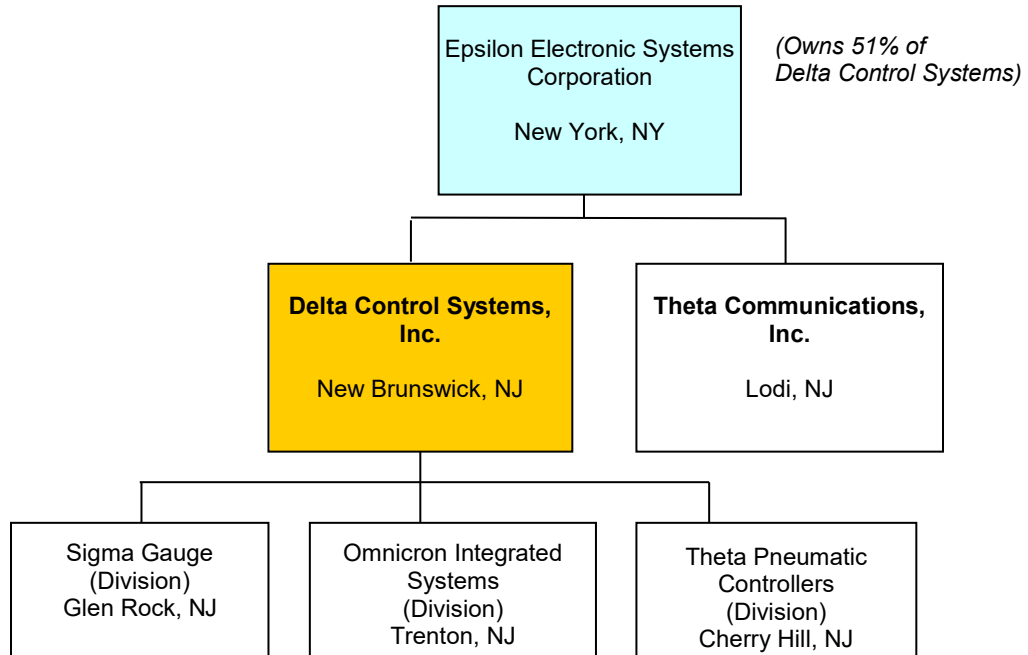
What best describes the corporate relationship between Delta and Omnicron? Select the best answer. (HINT: Review the diagram before you answer.)

- Two single-entity corporations
- Parent and subsidiary corporations
- Two wholly-owned subsidiary corporations
- A multiple facility organization

Activity 2

You ask Ms. Holden to tell you more about the relationship between her Home Office Facility, Delta Control Systems, Inc., and the company that owns it, the Epsilon Electronic Systems Corporation.

She tells you that Epsilon owns 51% of Delta.

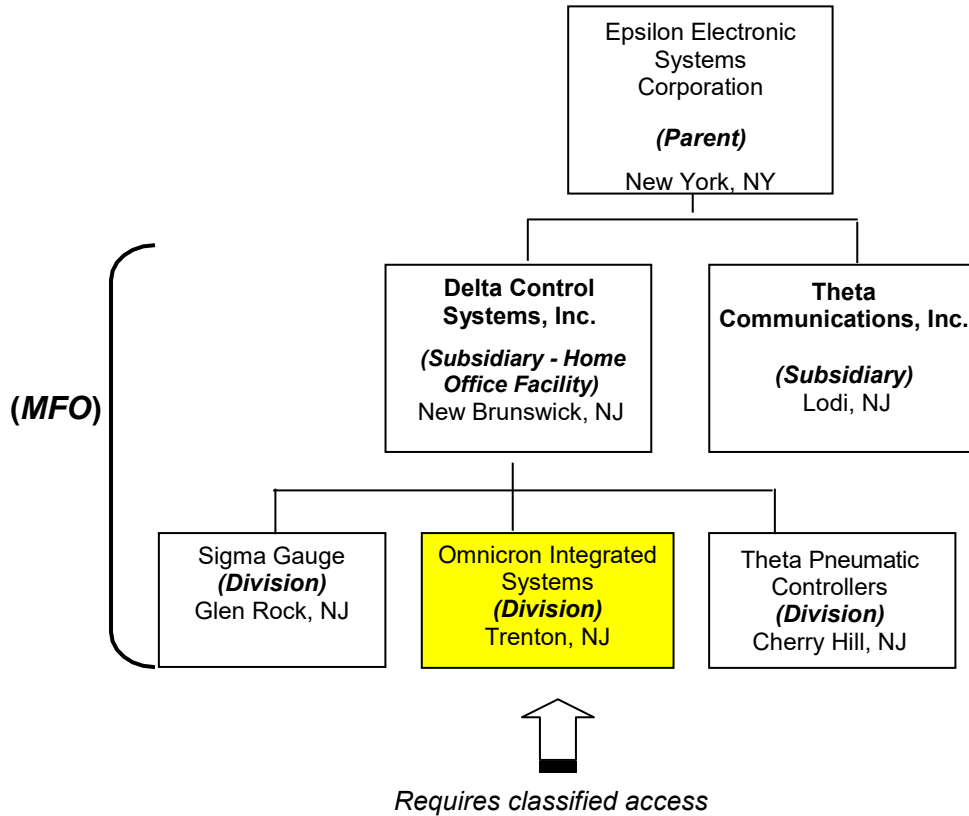


What best describes the corporate relationship between Epsilon and Delta? Select the best answer. (HINT: Review the diagram before you answer.)

- Two single-entity corporations
- One multiple facility organization
- Parent and subsidiary
- Parent and wholly-owned subsidiary

Activity 3

You have now learned that Omnicron Systems is a division of Delta Control Systems, Inc. Ms. Holden tells you Omnicron will need to store classified materials on-site to meet the U.S. Government’s contract requirements. However, neither Delta’s home office facility (HOF) nor Delta’s parent company, Epsilon Electronic Systems, will be working on this classified contract.



Based on what you know now, which facility or facilities must be found eligible for a facility clearance? Select the best answer. (HINT: Review the diagram before you answer.)

- Omnicron Systems only
- Omnicron Systems and Delta Control Systems HOF
- Delta Control Systems HOF and all of Delta’s divisions
- Delta Control Systems HOF and Epsilon Electronic Systems
- Epsilon Electronic Systems only

Activity 4

Ms. Holden from Omnicron has set up a meeting for you with the FSO at Delta Control Systems, Inc., the division’s home office facility.

Mr. West, the FSO at Delta, asks what business records you want to see. From what you already know about Delta, you expect to find it is a publicly-held corporation.

What records do you want to review to confirm Delta’s business structure and legal status? Select all that apply.

- Business License
- Charter
- Certificate of Formation
- Articles of Incorporation
- Fictitious Name Certificate
- Partnership Agreement
- By-laws

Activity 5

If Delta Control Systems is a publicly-held corporation, as you believe, what else would you expect to be true of this company?

Select True or False for each statement.

True False

- | | | |
|--|-----------------------|-----------------------|
| Ownership share in the company is based on shares of stock. | <input type="radio"/> | <input type="radio"/> |
| All owners are personally liable for all business losses and obligations. | <input type="radio"/> | <input type="radio"/> |
| Company stock is not available for purchase by the general public. | <input type="radio"/> | <input type="radio"/> |
| Company is managed by its owners. | <input type="radio"/> | <input type="radio"/> |
| If an owner leaves, there is no impact on business continuity. | <input type="radio"/> | <input type="radio"/> |
| All directors and operating officers may obligate the company. | <input type="radio"/> | <input type="radio"/> |
| The business has sole liability for its debts and obligations; owners are not personally liable. | <input type="radio"/> | <input type="radio"/> |

Activity 6

Mr. West, the FSO at Delta Control Systems, has brought you the business records you asked to see. You are reviewing the company's Articles of Incorporation. What useful types of information would you expect to find here? Select all that apply.

- Legal name of business
- Names of all stockholders
- Dates of stockholders' meetings
- Type of business structure
- Records of SEC filings
- Principal business location
- Names/titles of executive officers
- Records of stock owned by foreign entities

Activity 7

You have reviewed the business records for Delta Control Systems and confirmed that it is a publicly-held corporation. Based on that information, which of the company's KMPs must be found eligible for a personnel clearance to support the facility clearance? Select all that apply.

- Facility Security Officer
- Any potential Chairman of the Board, if chairmanship rotates
- Current Chairman of the Board
- Any stockholder owning majority shares in the company
- Insider Threat Program Senior Official
- Senior Management Official in charge of facility

Scenario 3 – Security Professionals LLC

You have received new facility clearance paperwork to clear Security Professionals LLC for a Secret facility clearance.

What records do you want to review to confirm Security Professionals LLC business structure and legal status? Select all that apply.

- Business License
- Charter
- Certificate of Formation
- Articles of Incorporation
- Fictitious Name Certificate
- Stock Ledger
- By-laws

Activity

After reviewing the legal documentation, you identify Hawk Operations Inc. as the sole member of the LLC. You also identify a clause that delegates all of Hawk Operations Inc.'s management authority over Security Professionals LLC to a manager-led governance committee. Which of the following statements are true? Select all that apply.

- Hawk Operations Inc. requires a facility clearance in order for Security Professionals to obtain a facility clearance.
- The managers appointed to the governance committee will not require personnel clearances and may be excluded.
- The managers appointed to the governance committee will require personnel clearances and may be excluded.
- Hawk Operations Inc. does not require a facility clearance in order for Security Professionals to obtain a facility clearance. Hawk Operations Inc. may be excluded.

Exercise Conclusion

Congratulations! You have completed the Practical Exercise for the Business Structures in the NISP course.

Course Conclusion

Course Summary

This course introduced you to the most common business structures IS Reps encounter when processing prospective contractors for facility clearances. You should now be able to identify their distinguishing characteristics, identify the key business records that can verify each structure, and identify what key management personnel need personnel clearances for each business type to support a facility clearance.

Lessons Review

Here is a list of the lessons in the course:

- Course Introduction
- Identifying Business Structures
- Examining Complex Business Structures
- Reviewing Business Records
- Identifying KMPs to be Cleared
- Practical Exercise
- Course Conclusion

Course Conclusion

You should now be able to:

- Describe the characteristics of business structures commonly found in facilities participating in the NISP
- Analyze complex business structures to determine criteria for a facility clearance (FCL)
- Describe the key business records used to verify the structure and legal status of a company
- List Key Management Personnel (KMP) required to be cleared for granting/maintaining an FCL

Congratulations. You have completed the Business Structures in the NISP Course.

To receive credit for this course, you *must* take the Business Structures in the NISP Examination. Please use the CDSE STEPP system to take the on-line exam.

Review Activity Answer Key

Lesson: *Identifying Business Structures*

Review Activity Answer Key

Review Activity 1

- a. **General** and **Joint Venture** partnerships both dissolve if any partner leaves. Limited partnerships do not dissolve if a limited partner leaves.
- b. Any partner in a **General** or a **Joint Venture** partnership can obligate the business. Limited partners cannot bind limited partnerships.
- c. **General** and **Joint Venture** partners have equal shares in the business assets and liabilities. **Limited** partners also have a share in the business, but only in proportion to their individual investment.
- d. **Joint Venture** partnerships are typically formed to accomplish a particular goal, and only last until it is achieved.
- e. **General** and **Joint Venture** partners are jointly and severally liable for the business obligations. Limited partners are liable only in proportion to their investment in the business.

Review Activity 2

Correctly identifying the business structure helps determine both which business records are required and which KMPs must be cleared.

Review Activity 3

- a. Owned by a single individual: **Sole Proprietorship**
- b. Owners share equally in business assets, profits, and liabilities: **General Partnership**
- c. A temporary business formed by two or more legal entities: **Joint Venture**
- d. Ownership of business is based on ownership of company stock: **Corporation**
- e. Unincorporated business that is legally independent from its owners: **Limited Liability Company**
- f. Ownership of business is based on ownership of company stock: **Corporation**
- g. Public or private institution, which may/may not be incorporated: **College/University**

Review Activity 4

	True	False
The sole proprietorship is the only business structure that may legally have no more than one owner.	<input checked="" type="radio"/>	<input type="radio"/>
In both general and limited partnerships, the death or departure of any partner will dissolve the partnership.	<input type="radio"/>	<input checked="" type="radio"/>
Ownership of both privately- and publicly-held corporations is based entirely on shares of stock.	<input checked="" type="radio"/>	<input type="radio"/>
If an LLC's operations are directed by a management board, any manager appointed to the management board can obligate the company; if the members manage the LLC, any member can obligate it.	<input checked="" type="radio"/>	<input type="radio"/>
The governing body of a college or university is usually called the Board of Directors.	<input type="radio"/>	<input checked="" type="radio"/>

Lesson: *Examining Complex Business Structures*

Review Activity Answer Key

Review Activity 1

MFOs have a home office facility (HOF) and divisions, which are not legally independent entities and may or may not be co-located with the home office.

Review Activity 2

A parent company is one that owns a majority of the voting stock of another company.

Review Activity 3

Since the parent does not require access to the classified information, the parent will be excluded. Only the subsidiary company will be processed for a facility clearance.

Review Activity 4

The holding company's voting rights may allow the company to control the cleared facility's management. Holding companies are usually excluded.

Lesson: *Reviewing Business Records*

Review Activity Answer Key

Review Activity 1

DD Form 441 is an agreement between a contractor and the U.S. Government that details the security responsibilities of both the cleared organization and the U.S. Government.

Review Activity 2

Almost all companies have a locally-issued business license authorizing conducting of business in that location. Colleges and universities are usually granted a charter by the state.

Review Activity 3

A sole proprietorship will probably have a business license, but will not have any of the other business records listed.

Review Activity 4

A limited partnership should have a business license, a partnership agreement, and a certificate of limited partnership.

Review Activity 5

An LLC should have a business license, certificate of formation, and an operating agreement.

Lesson: *Identifying KMPs to be Cleared*

Review Activity Answer Key

Review Activity 1

The Senior Management Official in charge of the facility, the FSO and the ITPSO must be found eligible for a PCL at the same or higher classification level as the FCL.

Review Activity 2

In order for a facility to be cleared:

The owner of a sole proprietorship must be found eligible for a PCL.

True False

● ○

In general and limited partnerships, a general partner not authorized to exercise management control may be excluded from classified access.

● ○

- | | | |
|---|----------------------------------|----------------------------------|
| All limited partners should be excluded from access to classified information. | <input type="radio"/> | <input checked="" type="radio"/> |
| LLC managers should be processed for a PCL only if they are also owner-members of the LLC. | <input type="radio"/> | <input checked="" type="radio"/> |
| All joint venture partners must be either eligible for a PCL or excluded. | <input checked="" type="radio"/> | <input type="radio"/> |
| If there is more than one potential Chairman of a corporation's Board of Directors, all must be processed for a PCL. | <input checked="" type="radio"/> | <input type="radio"/> |
| A vice president, or other management position, who is delegated control and influence over the company operations and classified contracts should be processed for a PCL | <input checked="" type="radio"/> | <input type="radio"/> |

Lesson: *Practical Exercise*

Answer Key: Scenario 1 – Able-Baker

Activity 1

The business structure is likely a Limited Partnership due to general partners Mr. Able and Mr. Baker sharing ownership and management control while the limited partner Ms. Edwards does not.

Activity 2

- | | True | False |
|---|----------------------------------|----------------------------------|
| Ownership share in Able-Baker is based on shares of stock. | <input type="radio"/> | <input checked="" type="radio"/> |
| All partners are jointly and severally liable for all business losses and obligations. | <input type="radio"/> | <input checked="" type="radio"/> |
| Limited partners' share of business assets and profits is proportional to their investment in the business. | <input checked="" type="radio"/> | <input type="radio"/> |
| The business has sole liability for its debts and obligations; owners are not personally liable. | <input type="radio"/> | <input checked="" type="radio"/> |
| The partnership is a temporary business that will terminate after a specific objective is accomplished. | <input type="radio"/> | <input checked="" type="radio"/> |
| If a limited partner leaves, there is no impact on business continuity. | <input checked="" type="radio"/> | <input type="radio"/> |

Activity 3

- Any business structure may have a locally-issued business license authorizing it to do business in that location
- Most states require partners to file a certificate of limited partnership at the appropriate state office. This certificate is unique to this type of business, so it is particularly helpful in confirming the business structure.
- Most limited partnerships have a written partnership agreement that establishes the business

Activity 4

You could expect to find the partnership's legal name, the type of partnership, and its principal place of business. You should also find the names of the partners, their responsibilities, and how profits and losses are distributed.

Activity 5

- For all business structures, the senior management official in charge of the facility, the FSO, and the ITPSO must be found eligible for a personnel clearance at the same or higher classification level as the facility clearance.
- In a limited partnership, all general partners must be processed for personnel clearances.
- Limited partners will be processed only if their positions allow them to affect the company's performance on classified contracts or if their duties require access to classified information.

Answer Key: Scenario 2 – Omnicron

Activity 1

The corporate relationship between Delta and Omnicron is a Multiple Facility Organization (MFO). An MFO is a company divided into smaller operating entities such as divisions. Regardless of their physical location, the divisions of an MFO are sub-elements of a corporation and are NOT independent legal entities.

Activity 2

The corporate relationship between Epsilon and Delta is a parent-subsidary relationship in which Epsilon owns a majority of the voting stock of Delta. As a subsidiary, Delta is an independent legal entity from its parent, Epsilon.

Activity 3

Only the home office of Delta Control Systems and its Omnicron division should be processed for FCLs.

- Since Omnicron must store classified materials on-site, it will need an FCL.
- The other MFO divisions will not, since they do not require access to classified information.
- As a division, Omnicron is not an independent legal entity, so Omnicron cannot be cleared

unless its home office-Delta Control Systems-is also cleared at the same or higher level.

Because Delta is an independent legal entity from its parent, Epsilon Electronics, Epsilon does not need an FCL unless it has its own legitimate need to access or store the classified material.

Activity 4

Almost all companies have a locally-issued Business License. For a corporation, the Articles of Incorporation are the key legal document establishing the business and its structure. Any company that does business under a fictitious name typically files a certification with the city or state. Corporate By-laws detail how the company will operate and conduct its business.

Activity 5

	True	False
Ownership share in the company is based on shares of stock.	<input checked="" type="radio"/>	<input type="radio"/>
All owners are personally liable for all business losses and obligations.	<input type="radio"/>	<input checked="" type="radio"/>
Company stock is not available for purchase by the general public.	<input type="radio"/>	<input checked="" type="radio"/>
The business has sole liability for its debts and obligations; owners are not personally liable.	<input checked="" type="radio"/>	<input type="radio"/>
Company is managed by its owners.	<input type="radio"/>	<input checked="" type="radio"/>
If an owner leaves, there is no impact on business continuity.	<input checked="" type="radio"/>	<input type="radio"/>
All directors and operating officers may obligate the company.	<input checked="" type="radio"/>	<input type="radio"/>

Activity 6

The Articles of Incorporation would tell you the business structure, its legal name and principal place of business, and the names and titles of its executive officers.

Activity 7

- For all business structures, the Senior Management Official in charge of the facility, the FSO, and the ITPSO must be found eligible for a PCL at the same or higher classification level as the company's FCL
- For a Corporation, the current Chairman of the Board must be found eligible
- If the Chairmanship rotates among the Directors, all who could potentially fill the chairman position must also be processed

Answer Key: Scenario 3 – Security Professionals LLC

Activity 1

You should request a business license, certification of formation, and fictitious name certificate, if applicable.

Activity 2

- The managers appointed to the governance committee will require personnel clearances and may not be excluded.
- Hawk Operations Inc. does not require a facility clearance in order for Security Professionals LLC to obtain a facility clearance. Hawk Operations Inc. may be excluded.