Course: Business Structures in the NISP

Lesson: Course Introduction

Course Information

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Enable the student to recognize the business structure of any facility participating in the National Industrial Security Program (NISP) and obtain key information from business records that is relevant to the facility being cleared in the NISP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audience</td>
<td>DSS Industrial Security Representatives, Facility Security Officers, and others involved in the National Industrial Security Program</td>
</tr>
<tr>
<td>Pass/Fail %</td>
<td>75% on final examination</td>
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<tr>
<td>Estimated completion time</td>
<td>120 minutes</td>
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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

- Recognize the characteristics of business structures commonly found in facilities participating in the NISP
- Examine complex business structures to determine criteria for a facility clearance (FCL)
- Identify business structures based upon examination of business records
- Identify KMP required to be cleared for granting/maintaining a FCL

Course Structure

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

The Industrial Security Representative, or IS Rep, is responsible for helping the 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, e.g., divisions, subsidiaries, parents, etc. IS Reps need to process, what records they need to review, and which key management personnel will need clearances.

The lesson objective is to be able to:

- Recognize the characteristics of business structures commonly found in facilities participating in the NISP

Business Structure and the FCL Process

1. Facility Security Clearance (FCL)

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

IS Representatives 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. DoD 5220.22-M, 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 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.
2. **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.

3. **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**

**Key Characteristics**

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

1. Partnerships Overview
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.

2. General Partnerships: Key Characteristics
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.

3. Limited Partnerships: Key Characteristics
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.

4. Additional Types of Partners
In addition to general and limited partners, common types of partners may include the following:

a. Secret Partners
Secret partners share in management of partnership, but their relationship to the business is concealed from the public.
b. **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.

c. **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.

5. **Joint Venture Partnerships: Key Characteristics**
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.

**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.

**Question 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 Overview
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.

1. Privately-Held Corporations: Key Characteristics
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.
2. Publicly-Held Corporations: Key Characteristics

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)

LLCs: Key Characteristics

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

Colleges/Universities: Key Characteristics
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**

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

**Question 1**

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

**Question 2**

Match each business structure to its definition.

- **A. Sole Proprietorship**
  - Temporary business formed by two or more legal entities to accomplish a specific objective
- **B. General Partnership**
  - Public or private institution, which may/may not be incorporated
- **C. Joint Venture**
  - Owners share equally in business assets, profits, and liabilities
D. Corporation
Ownership of business is based on ownership of company stock

E. Limited Liability Company
Owned by a single individual

F. College / University
Unincorporated business that is legally independent from its owners

Question 3
Select True or False for each statement.

<table>
<thead>
<tr>
<th>Statement</th>
<th>True</th>
<th>False</th>
</tr>
</thead>
<tbody>
<tr>
<td>The sole proprietorship is the only business structure that may legally have no more than one owner.</td>
<td>o</td>
<td>o</td>
</tr>
<tr>
<td>In both general and limited partnerships, the death or departure of any partner will dissolve the partnership.</td>
<td>o</td>
<td>o</td>
</tr>
<tr>
<td>Ownership of both privately- and publicly-held corporations is based entirely on shares of stock.</td>
<td>o</td>
<td>o</td>
</tr>
<tr>
<td>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.</td>
<td>o</td>
<td>o</td>
</tr>
<tr>
<td>The governing body of a college or university is usually called the Board of Directors.</td>
<td>o</td>
<td>o</td>
</tr>
</tbody>
</table>

Lesson Conclusion
In this lesson, you learned about the responsibilities of the IS Rep when processing a business for a facility clearance:
- Identify contractor’s business structure
- Review records to verify the business is legally established
- Identify KMPs who require PCLs for facility to be cleared
- Identify KMPs who can be excluded

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.
<table>
<thead>
<tr>
<th>Business Structure</th>
<th>Characteristics</th>
</tr>
</thead>
</table>
| **Sole Proprietorship** | **Ownership**: Owner owns all business assets/income  
**Control**: Owner has total management control  
**Ability to obligate**: Only owner can obligate  
**Liability**:  
- Owner is personally liable for business obligations  
- Business is liable for owner’s personal obligations  
**Continuity**: Terminates upon owner’s death or retirement |
| **General Partnership** | **Ownership**: All partners own equally  
**Control**: All partners control equally  
**Ability to obligate**: Any partner can obligate  
**Liability**: All partners are jointly and severally liable  
**Continuity**: Terminates upon any partner’s departure |
| **Limited Partnership** | **Ownership**: General partners and limited partners share ownership  
**Control**: Only general partners control  
**Ability to obligate**: Any general partner can obligate  
**Liability**:  
- General partners are jointly and severally liable  
- Limited partners are liable only up to investment percentage  
**Continuity**: Terminates upon any general partner’s departure |
### Joint Venture

**Ownership:**
- JV partners share venture profits/losses
- JV partners retain ownership of assets they contribute

**Control:** JV partners share control, but often divide responsibilities

**Ability to obligate:** Any partner can obligate

**Liability:** All JV partners are jointly and severally liable

**Continuity:**
- JV terminates upon project completion
- Any JV partner’s departure terminates partnership

### Privately Held Corporation

**Ownership:**
- Small number of stockholders own
- Shares not publicly available

**Control:**
- Voting stockholders control
- Board of Directors and operating officers manage

**Ability to obligate:** Directors and/or officers can obligate

**Liability:** Corporation is solely liable

**Continuity:** No impact if stockholder departs

### Publicly Held Corporation

**Ownership:**
- Stockholders own
- Shares traded publicly

**Control:**
- Voting stockholders control
- Board of Directors and operating officers manage

**Ability to obligate:** Directors and/or officers can obligate

**Liability:** Corporation is solely liable

**Continuity:** No impact if stockholder departs
<table>
<thead>
<tr>
<th>Business Structure</th>
<th>Ownership:</th>
<th>Control:</th>
<th>Ability to Obligate:</th>
<th>Liability:</th>
<th>Continuity:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Limited Liability Company</strong></td>
<td>Members share ownership</td>
<td>Members have management control</td>
<td>Any member or management board with control</td>
<td>LLC is solely liable for its obligations</td>
<td>Has legally limited duration, but is renewable</td>
</tr>
<tr>
<td><strong>College/University</strong></td>
<td>Public or private owners</td>
<td>• An executive board directs</td>
<td>Executive board and/or operating officers</td>
<td>Variable</td>
<td>Perpetual or as specified in charter</td>
</tr>
</tbody>
</table>
Answer Key

Activity: Recognizing Partnerships

Question 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 partnership** 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

Question 1

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

Question 2

A. Sole Proprietorship  
B. General Partnership  
C. Joint Venture  
D. Corporation  
E. Limited Liability Company  
F. College / University

A  Owned by a single individual  
B  Owners share equally in business assets, profits, and liabilities  
C  Temporary business formed by two or more legal entities to accomplish a specific objective  
D  Ownership of business is based on ownership of company stock  
E  Unincorporated business that is legally independent from its owners  
F  Public or private institution, which may/may not be incorporated
### Question 3

<table>
<thead>
<tr>
<th>Statement</th>
<th>True</th>
<th>False</th>
</tr>
</thead>
<tbody>
<tr>
<td>While other types of business structures may have one or more owners, only the sole proprietorship is limited to a single owner.</td>
<td>●</td>
<td>○</td>
</tr>
<tr>
<td>In a limited partnership, the departure of a limited partner has no impact on the continuity of the business.</td>
<td>○</td>
<td>●</td>
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<tr>
<td>The stockholders of both privately- and publicly-held corporations are its owners.</td>
<td>●</td>
<td>○</td>
</tr>
<tr>
<td>Depending on state laws and member preferences, an LLC may be managed by a management board or directly by its members.</td>
<td>●</td>
<td>○</td>
</tr>
<tr>
<td>The governing body is usually called a Board of Trustees, a Board of Governors, a Board of Regents, or something similar.</td>
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<td>●</td>
</tr>
</tbody>
</table>
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:

- Examine complex business structures to determine criteria for a facility clearance (FCL)

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:

![Diagram of ABC Aeronautics MFO]

Clearing 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:

![Diagram showing parent and subsidiary relationships]

Clearing Companies with Parents or Subsidiaries

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 Complex 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 Complex 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**

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

**Question 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

**Question 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
Question 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

Question 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
Answer Key

Question 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.

Question 2
A parent company is one that owns a majority of the voting stock of another company.

Question 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.

Question 4
The holding company’s voting rights may allow the company to control the cleared facility’s management. Holding companies are usually excluded.
Student Guide

Course: Business Structures in the NISP

Lesson: Reviewing Business Records

Lesson Introduction

Before the 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:

• Identify business structures based upon examination of business records

Examples of the business records referenced in this Student Guide are available in its Appendix.

Business Records Overview

1. 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.*

<table>
<thead>
<tr>
<th>The IS Rep reviews the records of all contractors applying for a facility clearance (FCL) in order to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Identify who owns the facility</td>
</tr>
<tr>
<td>• Identify who has decision making authority</td>
</tr>
</tbody>
</table>
2. 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 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:

<table>
<thead>
<tr>
<th>Business Type</th>
<th>What the IS Rep looks for in DD Form 441:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sole Proprietorship</td>
<td>• The full name of the owner and the correct legal name of the business should be listed</td>
</tr>
<tr>
<td></td>
<td>• All forms must be signed by the owner</td>
</tr>
<tr>
<td></td>
<td>• Two witnesses’ signatures are required</td>
</tr>
<tr>
<td>Business Type</td>
<td>What the IS Rep looks for in DD Form 441:</td>
</tr>
<tr>
<td>--------------</td>
<td>------------------------------------------</td>
</tr>
</tbody>
</table>
| **Partnership** | • The correct legal name of the business and full names of all general partners should be listed  
• All forms must be signed by a partner  
• Two witnesses’ signatures are required |
| **Corporation** | • The name of the business as it appears on Articles of Incorporation should be listed  
• The form must be signed by a corporate officer, and the Certificate portion must be signed by a second officer such as the corporate secretary  
• No witnesses are required  
• The form must be impressed with the corporate seal, if there is one |

**SF 328**

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.

1. 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 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. This name should be consistent with the way the company identifies itself on other key business forms and records.

2. 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.

1. 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.
2. 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 IS Rep also reviews the Partnership Agreement and/or other relevant records to identify:

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

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

**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

Page 5
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.

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

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

### 3. 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.

<table>
<thead>
<tr>
<th>The IS Rep may also review corporate By-laws to identify:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Type of stock issued (common or preferred)</td>
</tr>
<tr>
<td>• Number of shares of each type of stock authorized</td>
</tr>
<tr>
<td>• Number of shares of each type issued</td>
</tr>
</tbody>
</table>

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).

<table>
<thead>
<tr>
<th>The IS Rep may also perform the following actions when reviewing corporate records:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Review Stock Ledger to identify</td>
</tr>
<tr>
<td>o Any stock owned by a foreign person or entity</td>
</tr>
<tr>
<td>o Anyone who owns 5% or more of the company’s stock</td>
</tr>
<tr>
<td>• Review Board of Directors Meeting Minutes to identify any recent changes to key management personnel (KMPs) or other information impacting the facility clearance</td>
</tr>
<tr>
<td>• Review Securities and Exchange Commission (SEC) filings for public corporations to identify:</td>
</tr>
<tr>
<td>o Ownership of 5% or more of the corporation stock</td>
</tr>
<tr>
<td>o Other business information</td>
</tr>
</tbody>
</table>

4. Key Records for Limited Liability Companies (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.

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

5. **Key Records for Colleges and 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**

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

**Question 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

**Question 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

**Question 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

**Question 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

**Question 5**
For a Limited Liability Company, which record(s) would the IS Rep ask for to verify its structure?

- [ ] Articles of Incorporation
- [ ] Business License
- [ ] Certificate of Formation
- [ ] Charter
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:

<table>
<thead>
<tr>
<th>Business Structure</th>
<th>Key Business Records to Verify Structure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sole Proprietorship</td>
<td>• Business License&lt;br&gt;• Fictitious Name Certificate/&quot;d.b.a.&quot; Permit, where applicable</td>
</tr>
<tr>
<td>General Partnership</td>
<td>• Business License&lt;br&gt;• Fictitious Name Certificate/&quot;d.b.a.&quot; Permit, where applicable&lt;br&gt;• Partnership Agreement</td>
</tr>
<tr>
<td>Limited Partnership</td>
<td>• Business License&lt;br&gt;• Fictitious Name Certificate/&quot;d.b.a.&quot; Permit, where applicable&lt;br&gt;• Partnership Agreement&lt;br&gt;• Certificate of Limited Partnership</td>
</tr>
<tr>
<td>Joint Venture</td>
<td>• Business License&lt;br&gt;• Fictitious Name Certificate/&quot;d.b.a.&quot; Permit, where applicable&lt;br&gt;• Partnership Agreement</td>
</tr>
<tr>
<td>Privately Held Corporation</td>
<td>• Business License&lt;br&gt;• Fictitious Name Certificate/&quot;d.b.a.&quot; Permit, where applicable&lt;br&gt;• Articles of Incorporation&lt;br&gt;• By-laws</td>
</tr>
<tr>
<td>Publicly Held Corporation</td>
<td>• Business License&lt;br&gt;• Fictitious Name Certificate/&quot;d.b.a.&quot; Permit, where applicable&lt;br&gt;• Articles of Incorporation&lt;br&gt;• By-laws</td>
</tr>
</tbody>
</table>
**Limited Liability Company**

- Business License
- Fictitious Name Certificate/"d.b.a." Permit, where applicable
- Certificate of Formation or Articles of Organization
- Operating Agreement

**College/ University**

- Charter

## Answer Key

## Review Activity

**Question 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 Government.

**Question 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.

**Question 3**
A sole proprietorship will probably have a business license, but will not have any of the other business records listed.

**Question 4**
A limited partnership should have a business license, a partnership agreement, and a certificate of limited partnership.

**Question 5**
An LLC should have a business license, certificate of formation, and an operating agreement.
Lesson: Identifying KMPs to be Cleared

Lesson Introduction

When evaluating whether a contractor is eligible for a facility clearance, the Defense Security Service, (DSS) 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 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:

- Identify KMP required to be cleared for granting/maintaining a FCL

KMPs and Personnel Clearances

1. Process Overview

During the facility clearance process, DSS 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
2. **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.

Both the Senior Management Official and the FSO must be eligible for 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.

3. **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, DSS will review legal documentation and interview key management to identify:
- 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 contractors or facility operations, DSS may determine a non-traditional KMP requires a personnel clearance in conjunction with the facility clearance.

**KMPs to Process for Clearances**

1. **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 and the FSO. If, however, the sole proprietorship has different individuals acting as its Senior Management Official and FSO, these individuals must also be cleared in order for the facility to be cleared.

2. **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.

3. Joint Venture Partnerships

As in a general partnership, all partners in a joint venture must either be cleared or be 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.

4. 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.

5. 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.

6. 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 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.

**Non Traditional KMPs to Process for Clearances**

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, DSS will review legal documentation and interview key management to identify:
- 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 contractors or facility operations, DSS may determine a non-traditional KMP requires a personnel clearance in conjunction with the facility clearance.

**Review Activity 1**

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

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
- [ ] Executive Committee members
- [ ] Facility Security Officer
- [ ] Board of Directors
Review Activity 2

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

Select True or False for each statement.

**In order for a facility to be cleared:**

- The owner of a sole proprietorship must be found eligible for a PCL.
  - True (Circle)  
  - False (Circle)

- In general and limited partnerships, a general partner not authorized to exercise management control may be excluded from classified access.
  - True (Circle)  
  - False (Circle)

- All limited partners should be excluded from access to classified information.
  - True (Circle)  
  - False (Circle)

- All joint venture partners must be either eligible for a PCL or excluded.
  - True (Circle)  
  - False (Circle)

- LLC managers should be processed for a PCL only if they are also owner-members of the LLC.
  - True (Circle)  
  - False (Circle)

- If there is more than one potential Chairman of a corporation's Board of Directors, all must be processed for a PCL.
  - True (Circle)  
  - False (Circle)

- 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.
  - True (Circle)  
  - False (Circle)
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:

<table>
<thead>
<tr>
<th>Business Structure</th>
<th>Key Management Personnel to be Cleared to support Facility Clearance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sole Proprietorship</td>
<td>• Owner of the sole proprietorship&lt;br&gt;• Senior Management Official (SMO)<em>&lt;br&gt;• Facility Security Officer (FSO)</em>&lt;br&gt;*If other than owner</td>
</tr>
<tr>
<td>General Partnership</td>
<td>• SMO&lt;br&gt;• FSO&lt;br&gt;• All general partners must be cleared&lt;br&gt;• Exception: if full management control resides in a:&lt;br&gt;  o Managing partner (that partner must be cleared), or&lt;br&gt;  o Executive committee (all committee members must be cleared)</td>
</tr>
<tr>
<td>Limited Partnership</td>
<td>• SMO&lt;br&gt;• FSO&lt;br&gt;• All general partners must be cleared&lt;br&gt;• Exception: if full management control resides in a:&lt;br&gt;  o Managing partner (that partner must be cleared), or&lt;br&gt;  o Executive committee (all committee members must be cleared)&lt;br&gt;• Limited partners need PCL only if they impact classified contract performance or need access to classified information</td>
</tr>
<tr>
<td>Joint Venture</td>
<td>• SMO&lt;br&gt;• FSO&lt;br&gt;• All JV partners must be cleared&lt;br&gt;  o When one or more partners but not all partners require access to classified information, those partners not requiring access to classified may be excluded&lt;br&gt;• Chief Executive Officer (CEO) working exclusively for the JV must be cleared&lt;br&gt;• Other JV officials will be cleared or excluded based on whether they can adversely affect the JV’s performance on classified contracts</td>
</tr>
<tr>
<td>Privately Held Corporation</td>
<td>• SMO&lt;br&gt;• FSO&lt;br&gt;• Chairman of the Board must be cleared (and all potential alternates)&lt;br&gt;• Other corporate officials must be excluded or cleared if their duties require access to classified information.&lt;br&gt;  o Ineligibility will not affect FCL</td>
</tr>
<tr>
<td>Publicly Held Corporation</td>
<td>• SMO&lt;br&gt;• FSO&lt;br&gt;• Chairman of the Board must be cleared (and all potential alternates)&lt;br&gt;• Other corporate officials must be excluded or cleared if their duties require access to classified information.&lt;br&gt;  o Ineligibility will not affect FCL</td>
</tr>
<tr>
<td>Business Structure</td>
<td>Key Management Personnel to be Cleared to support Facility Clearance</td>
</tr>
<tr>
<td>------------------------------</td>
<td>---------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| **Limited Liability Company**| • SMO  
• FSO  
• All LLC members must be cleared or excluded  
  o 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 |
| **College/University**        | • SMO  
• FSO  
• CEO must be cleared  
• Other officers/officials with accountability for classified contracts must be cleared  
• All Regents/Trustees/Directors must be cleared unless:  
  o Exclusions of Regents/Trustees/Directors who do not require access and cannot affect contract performance leave a legal quorum of executives who ARE eligible  
  o They have delegated management control to an executive committee  
    • All committee members must be cleared |
## Answer Key

### Review Activity 1

The Senior Management Official in charge of the facility and the FSO 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:

<table>
<thead>
<tr>
<th>Statement</th>
<th>True</th>
<th>False</th>
</tr>
</thead>
<tbody>
<tr>
<td>The owner of a sole proprietorship must be found eligible for a PCL.</td>
<td></td>
<td>O</td>
</tr>
<tr>
<td>In general and limited partnerships, a general partner not authorized to exercise management control may be excluded from classified access.</td>
<td></td>
<td>O</td>
</tr>
<tr>
<td>All limited partners should be excluded from access to classified information.</td>
<td>O</td>
<td></td>
</tr>
<tr>
<td>LLC managers should be processed for a PCL only if they are also owner-members of the LLC.</td>
<td>O</td>
<td></td>
</tr>
<tr>
<td>All joint venture partners must be either eligible for a PCL or excluded.</td>
<td></td>
<td>O</td>
</tr>
<tr>
<td>If there is more than one potential Chairman of a corporation’s Board of Directors, all must be processed for a PCL.</td>
<td></td>
<td>O</td>
</tr>
<tr>
<td>A vice presidente, or other management position, who is delegated control and influence over the company operations and classified contracts should be processed for a PCL</td>
<td></td>
<td>O</td>
</tr>
</tbody>
</table>
Lesson 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:

- Recognize the characteristics of business structures commonly found in facilities participating in the NISP
- Examine complex business structures to determine criteria for a facility clearance (FCL)
- Identify business structures based upon examination of business records
- Identify KMP required to be cleared for granting/maintaining a FCL

You can use the course Job Aid as a reference during this practical exercise. You can print a copy from the Resources menu. 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

Your Tasking

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

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
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.

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

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.
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
- Only partners owning majority shares in the business
- Facility Security Officer
- All Directors on the Board of Directors
Answer Key for 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

<table>
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<td></td>
</tr>
</tbody>
</table>

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 and the FSO 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.
Scenario 2 - Omnicron

Your Tasking

Now let’s suppose that, as an IS Rep, you are assigned to 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.

Activity 1

You are meeting with Ms. Holden, the Senior Management Official at Omnicron Integrated Systems. You ask her to tell you how Omnicron is organized. She explains the company is actually one of three divisions of Delta Control Systems, Inc. but does business as Omnicron Integrated Systems. In turn, Delta is owned by another company, the Epsilon Electronic Systems Corporation. She draws you a diagram that shows these relationships.

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 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.

Ownership share in the company is based on shares of stock. ☐ ☐
All owners are personally liable for all business losses and obligations. ☐ ☐
Company stock is not available for purchase by the general public. ☐ ☐
The business has sole liability for its debts and obligations; owners are not personally liable. ☐ ☐
Company is managed by its owners. ☐ ☐
If an owner leaves, there is no impact on business continuity. ☐ ☐
All directors and operating officers may obligate the company. ☐ ☐
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
- Current Chairman of the Board
- Any potential Chairmen of the Board, if chairmanship rotates
- Any stockholder owning majority shares in the company
- Senior Management Official in charge of facility
- All Directors on the Board of Directors
Answer Key for 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-subsidiary 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 materials.

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.  ●  ○

All owners are personally liable for all business losses and obligations.  ○  ●

Company stock is not available for purchase by the general public.  ○  ●

The business has sole liability for its debts and obligations; owners are not personally liable.  ●  ○

Company is managed by its owners.  ○  ●

If an owner leaves, there is no impact on business continuity.  ●  ○

All directors and operating officers may obligate the company.  ●  ○

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 and the FSO 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

Scenario 3 – Security Professionals LLC

Activity 1

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
Activity 2

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 LLC to obtain a facility clearance. Hawk Operations Inc. may be excluded.
Answer Key for 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.

Lesson Conclusion

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

Lesson 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 Objectives

You should now be able to:

- Recognize the characteristics of business structures commonly found in facilities participating in the NISP
- Examine complex business structures to determine criteria for a facility clearance (FCL)
- Identify business structures based upon examination of business records
- Identify KMP required to be cleared for granting/maintaining FCL

Conclusion

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 register for the on-line exam.