

405/2011 Coll.

DECREE

of 7 December 2011

on Industrial Security

Amendment: 416/2013 Coll.

Pursuant to Section 15a(7), Section 64, Section 75a(4) and Section 135 points (b), (d), (g), (i) to (k) of Act No. 412/2005 Coll. on the Protection of Classified Information and Security Eligibility as amended (hereinafter referred to as “the Act”), the National Security Authority lays down:

Section 1

Templates related to industrial security

(1) The template for the Facility Security Clearance Application in accordance with Section 96(1) of the Act is provided in Annex 1 to this Decree.

(2) The template for the Facility Security Clearance in accordance with Section 54(3) of the Act is provided in Annex 2 to this Decree.

(3) The template for the Facility Security Clearance Application for a Foreign Power in accordance with Section 57(2) of the Act is provided in Annex 3 to this Decree.

(4) The template for the Facility Security Clearance Recognition Request in accordance with Section 62(2) of the Act is provided in Annex 4 to this Decree.

(5) The template for the Facility Security Questionnaire in accordance with Section 97 of the Act is provided in Annex 5 to this Decree.

(6) The template for the Confidentiality Release Form in accordance with Section 96(2)(d) of the Act is provided in Annex 6 to this Decree.

(7) The template for the Facility Security Declaration in accordance with Section 15a of the Act is provided in Annex 7 to this Decree.

Section 2

The justification for the Facility Security Clearance Application in accordance with Section 96(1) of the Act

The Facility Security Clearance Application justification shall include information on

- a) the type of business due to which the facility requires access to Classified Information,
- b) the public contract under which access to Classified Information is required, the

contracting authority and the expected duration of the tendering procedure,

c) the concession contract under which access to Classified Information is required, the contracting authority and the expected duration of the concession award procedure,

d) the public contract or the concession contract prior to the start of the tendering or concession award procedure the entrepreneur wants to take part in under which access to Classified Information is foreseen, the contracting entity or contracting authority and the expected start date of the tendering or concession award procedure,

e) the contract or other legal relationship based on which access to Classified Information is required, the main subject-matter of the contract and the entity providing the Classified Information,

f) the realities on the basis of which Classified Information will be created at the facility,

g) the circumstances which justify the requested form of access in accordance with Section 20 of the Act.

Section 3

Documents required to verify eligibility for the Facility Security Clearance in accordance with Section 96(2)(c) of the Act

(1) With the Facility Security Clearance Application, an entrepreneur who is a legal person, shall enclose

a) proof of decisions taken by his bodies on matters which are to be entered into the Commercial Register and have not been entered yet,

b) a silent partnership agreement by the entrepreneur,

c) proof of the issuance of bonds indicating the reason for their issuance and the total amount of bonds issued,

d) lease agreements for premises, buildings and land referred to in Section 97(d) of the Act,

e) final accounts from the last 5 years,

f) a controlling agreement or a written report on relations¹⁾ if the entrepreneur is a controlled person, covering the last 5 years,

g) written audit reports on final accounts from the last 5 years encompassing an audit opinion, where another law or regulation so provides²⁾,

h) an overview of business liabilities which are more than 180 days overdue specifying the individual creditors and reasons for non-payment,

i) a statement of the owner's account in the central register of investment instruments,

- j) an overview of all shares in public limited companies and shareholding percentages,
- k) an overview of other investment securities³⁾ provided they are not in the central register, shares in and capital contributions to general partnerships, limited partnerships and private limited liability companies and member contributions to cooperatives.

(2) With the Facility Security Clearance Application, an entrepreneur who is a natural person, shall enclose

- a) lease agreements for premises, buildings and land listed in Section 97(d) of the Act,
- b) final accounts if they keep accounts or tax returns if they keep tax records in accordance with the Income Tax Act, from the last 5 years,
- c) written audit reports on final accounts from the last 5 years encompassing an audit opinion, where another law or regulation so provides²⁾,
- d) an overview of business liabilities which are more than 180 days overdue specifying the individual creditors and reasons for non-payment,
- e) a statement of the owner's account in the central register of investment instruments,
- f) an overview of all shares in public limited companies and shareholding percentages,
- g) an overview of other investment securities³⁾ provided they are not in the central register, shares in and capital contributions to general partnerships, limited partnerships and private limited liability companies and member contributions to cooperatives.

(3) The documents listed in Paragraph 1(h) to (k) and Paragraph 2(d) to (g) shall not be older than 60 days from the date of issue and shall be presented in the original or as a certified copy.

(4) The overviews referred to in Paragraph 1(h), (j) and (k) and Paragraph 2(d), (f) and (g) shall be dated and signed by the responsible person.

(5) The documents listed in Paragraph 1(a) to (g) and Paragraph 2(a) to (c) may be submitted in copy, signed by the responsible person to confirm that the information is complete and the copy matches the original.

(6) A foreign person who is an entrepreneur under other legislation⁴⁾ shall provide the documents listed in Paragraph 1 or 2 in the form of equivalent documentation from relevant registers in their country of origin.

(7) The manner and form of submission of the documents listed in Paragraphs 1 and 2 are laid down in Section 5(3).

Section 4

Facility Security Clearance Applications in accordance with Section 96(4) and (5) of the Act

With the Facility Security Clearance Application submitted in accordance with Section 96(4) and (5) of the Act, the entrepreneur shall enclose the Facility Security Questionnaire containing identifying data encompassing the name or business name and the personal identification number and shall indicate the information which has changed and has not been notified in accordance with Section 68(c) and (d) of the Act; the changes shall be substantiated by the documents listed in Section 3 and in the manner and form laid down in Section 5.

Section 5

The manner and form of submission of the Facility Security Clearance Application

(1) Facility Security Clearance Applications and Confidentiality Release Forms shall be submitted in hard copy or to the official Data Box of the National Security Authority or in electronic form⁵⁾.

(2) Facility Security Questionnaires shall be submitted in hard copy and to the Data Box of the National Security Authority or in electronic form in a format specified on the National Security Authority's website. Submission in electronic form can also be made on removable data media.

(3) The documents listed in Section 3 can be submitted in hard copy or to the Data Box of the National Security Authority or in electronic form⁵⁾.

(4) Electronic versions of the templates listed in Annex 1 and 3 to 7 to this Decree are published by the National Security Authority on its website.

(5) The hard copy of the filled in Facility Security Questionnaire shall correspond to what is displayed in electronic form.

Section 6

The scope of notifications of changes to Facility Security Clearance Applications

(1) Changes to information in Facility Security Clearance Applications referred to in Section 103(2) of the Act shall be notified from the date of submission of the application.

(2) Changes to information in Facility Security Clearance Applications referred to in Section 68(c) of the Act shall be notified over the period of validity of the Facility Security Clearance.

(3) Changes to information in Facility Security Clearance Applications referred to in Section 68(d) of the Act shall be notified once per calendar year over the period of validity of the Facility Security Clearance, on the same date as the date of issue of the Facility Security Clearance. Entrepreneurs are not required to notify changes to information in Facility Security Questionnaires referred to in Section 97(c), (j) to (l).

(4) In the case of changes in the security documentation, changes shall be notified

only in the part that has changed. In the case of notification of changes in accordance with Paragraph 2, changes shall be notified only for the type of protection of Classified Information that has been changed.

Section 7

The manner and form of submission of notifications of changes

(1) Changes to information in Facility Security Questionnaires shall be notified using the Facility Security Questionnaire and substantiated by the documents listed in Section 3. If a change occurred in information referred to in Section 97(e) of the Act, it shall not be notified using the Facility Security Questionnaire, only substantiated by the documents listed in Section 3. When notifying changes in accordance with Section 68(c) of the Act, an entrepreneur who is a legal person shall substantiate the changes by documents referred to in Section 3(1)(a) and (b).

(2) The provisions of Section 3(3) to (7) and Section 5(2) and (3) apply *mutatis mutandis* to notifications of changes in accordance with Section 6.

(3) If an entrepreneur holds multiple Facility Security Clearances, they shall notify changes only in one copy. They shall list all security classification levels and forms of access in the Facility Security Questionnaire.

Section 8

The security instruction in accordance with Section 75a(4) of the Act

(1) The security instruction includes in particular

- a) identification of the central administrative authority which approves the security instruction,
- b) the rules and method of control of Classified Information,
- c) conditions for the protection of Classified Information and limitations of access to information classified TOP SECRET,
- d) a list of provided Classified Information and specifications of the Classified Information which will be created in the performance of the contract, including its security classification level,
- e) the rules governing the relations between the contracting parties requiring access to Classified Information,
- f) the rules for determining the security classification of Classified Information created in the performance of the contract,
- g) the manner and form of release and transport of Classified Information,
- h) the rules for reporting cases of unauthorised disclosure, misappropriation or loss of

Classified Information or suspicion thereof,

e) the rules for visits requiring access to Classified Information,

j) the rules for handling Classified Information after the end of the contract and

k) the rules governing communication between the contracting parties.

(2) At annex to the security instruction is

a) in case of a prime contract, a Project Security Classification Guide,

b) in case of a sub-contract, a Security Classification List.

Section 9

Repeal

The following are repealed:

1. Decree No. 526/2005 Coll. on Templates Related to Industrial Security and on Lists of Documents and the Elements Thereof Required to Verify Eligibility for the Facility Security Clearance and on the Manner of Submission of Facility Security Clearance Applications (the Decree on Industrial Security).

2. Decree No. 11/2008 Coll. amending Decree No. 526/2005 Coll. on Templates Related to Industrial Security and on Lists of Documents and the Elements Thereof Required to Verify Eligibility for the Facility Security Clearance and on the Manner of Submission of Facility Security Clearance Applications (the Decree on Industrial Security).

Section 10

Entry into Force

This Decree shall enter into force on 1 January 2012.

Director:

Ing. Navrátil v. r.

1) Section 66a of the Commercial Code.

2) Act No. 563/1991 Coll. on Accounting, as subsequently amended.

3) Act No. 591/1992 Coll. on Securities, as subsequently amended.

4) The Commercial Code.

5) Section 89(8) of Act No. 412/2005 Coll. on the Protection of Classified Information and Security Eligibility as amended by Act No. 255/2011 Coll.