

The Three Levels of Export Control Preparedness

By Jeffrey Richardson • Miller Canfield

You are nearing retirement.

After an impressive manufacturing career, you've decided it's time to sell the business. Thanks to your years of hard work, relationship building and sound business decisions, you've already received interest from both domestic and foreign buyers.

An offer from a foreign buyer has caught your attention, yet you worry of the legal implications. Would your business — the business you've put your blood, sweat and tears into — be prepared for sale to a foreign buyer? The potential sale to a foreign buyer immediately subjects your business to the U.S. laws affecting the transfer of export-controlled items, *including the transfer of export controlled software and technology to foreign nationals.*

Is your business prepared? Can your business be sold to a foreign buyer?

Consider the three levels of export control preparedness to determine how quickly your business can enter a productive, win-win, pre-sale discussion:

- “Probably Prepared” businesses can likely engage in productive pre-sale discussions due to the following:
 - Experience managing access to export-controlled items for U.S. citizen and foreign national employees
 - Experience exporting to multiple foreign destinations, in full compliance with U.S. export control laws
 - A role as part of a multi-national business structure
 - An actively practiced export controls compliance program involving multiple company stakeholders
- “Possibly Prepared” businesses may or may not have the luxury of engaging in productive pre-sale discussions despite being an exporter to multiple foreign destinations and having sufficient institutional knowledge to create and practice an



“Assessing your export control preparedness now can eliminate or reduce many of the headaches your business could experience down the road.”

export controls compliance program, due to a lack of the following:

- Prior experience granting facility access to foreign nationals, either as employees, independent contractors, or as clients of the business
- The security infrastructure to restrict physical access to export-controlled items
- The information technology infrastructure to restrict access to export-controlled technical data
- “Probably Unprepared” businesses usually cannot engage in pre-sale discussions, due to a number of possible indicators, including the following:
 - Employing an almost exclusively U.S. citizen workforce
 - Limited experience dealing with foreign customers

- Lack of institutional knowledge to effectively classify export-controlled items
- Inability to secure export-controlled items through the physical security infrastructure or technical data through the information technology system

Do you know where your business falls? Can you pursue the offer from a foreign buyer to purchase your business?

Assessing your export control preparedness now can eliminate or reduce many of the headaches your business could experience down the road. Purchasers must perform a series of steps prior to purchase. These include export transaction verification due diligence, a classification of export controlled items, including software and technology, as well as an investigation of any additional export controls compliance infrastructure that may be required. If your business is unprepared, the process could be slowed, become more costly, or even become impossible to complete. ⚙️



Jeffrey Richardson is a senior attorney in Miller Canfield's export controls group, based in Troy, Michigan. He can be reached at richardson@millercafield.com.