NEWSLETTER

Regulatory Approvals in Defence Sector Investments: Integration into Shareholders' Agreements

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Introduction

Investment activity in the defence and dual-use sector continues to accelerate across Europe, driven by heightened geopolitical tensions, renewed focus on industrial capacity, and increased demand for resilient supply chains. Strategic investors and financial sponsors are showing strong interest in defence technology, manufacturing, cyber, and advanced dual-use capabilities.

This momentum is, however, accompanied by a dense and sometimes overlapping regulatory landscape. In Denmark, the regulatory framework spans the Foreign Direct Investment (FDI) Act, the Industrial Cooperation Contract (ICC) regime, the War Materiel Act as lex specialis in certain transactions, and an extensive export control system covering weapons, dual-use items, technology transfer and amendments or transfers of existing export licenses. Depending on the business, procurement rules and change-of-control restrictions under national and NATO procurement frameworks may also apply.

Companies active in this sector may also have received public funding (State aid, EU funding or NATO-related support). Depending on the specific programme, this can involve conditions relating to ownership stability, change-of-control notifications, eligibility maintenance or security requirements. These considerations should form part of the regulatory due diligence and may influence SHA drafting.

Shareholders' agreements (SHAs) play a central role in ensuring regulatory compliance in this context. Proper drafting is essential to structure ownership governance, navigate approval requirements, safeguard access to classified or export-controlled information, and allocate risk between investors.

Regulatory Framework and Approval Requirements

Public Funding

Companies receiving State aid, EU funding or NATO-related support may be subject to programme-specific conditions. While such conditions vary significantly between funding schemes, they can include:

- notification requirements in case of change of control,
- continued compliance with eligibility criteria (including security-related conditions)
- restrictions on transfer of funded assets or IP, and
- obligations to maintain operations, facilities or capabilities for a defined period.

These conditions must be mapped during due diligence and reflected in the transaction structure, including long-stop dates, covenants and SHA approval mechanisms.

Foreign Direct Investment Screening

The Danish FDI regime subjects investments in critical sectors – including defence, cyber, and dual-use technologies – to mandatory notification and standstill. Approval timelines and potential conditions must be factored into deal planning and SHA mechanics.

Importantly, the FDI Act does not apply where the transaction is captured by the lex specialis screening and approval rules under the Danish War Materiel Act. These rules include separate approvals for changes in ownership, management structures, foreign board representation and the transfer or amendment of weapons- and export-related permits.

War Materiel Act as Lex Specialis

Where a Danish business manufactures or handles war materiel or holds relevant permits, the War Materiel Act may require:

- Prior approval for changes in ownership tresholds,
- Approval of management or board composition, and
- Separate permits for the continuation, amendment or transfer of weapons-, manufacturing- or export related licenses.

These approvals override the FDI screening regime for the relevant scope of activities.

Export Control Regulation

Export control requirements must be considered both at transaction level and when drafting change-of-control provisions. Depending on the company's activities, approvals may be required for:

- export of weapons, ammunition, components and technology under the Danish Weapons Act,
- export, brokering, transfer or transit of dual-use items under Regulation (EU) 2021/821, and
- amendments to or transfers of existing export licenses.

Export-controlled activities can require coordinated filings to the Danish National Police, Ministry of Foreign Affairs or Danish Business Authority, depending on the specific permits involved.

Failure to address export control implications may result in suspension or revocation of permits – with significant operational consequences.

Industrial Cooperation Contracts (ICC)

Foreign suppliers entering into certain major defence procurement contracts must conclude an ICC with the Danish Business Authority. An ICC is not automatically required for every defence-related procurement; however, where applicable, the ICC may:

- restrict ownership changes without prior consent,
- impose performance and localisation obligations relevant to new owners, and
- influence SHA drafting, particularly in relation to transfer mechanics and investor protections.

Procurement Frameworks and Change-of-Control Considerations

Danish and NATO procurement contracts typically impose security-driven requirements on contractors and key subcontractors. While specific obligations depend on the individual contract, it is market practice that contracting authorities require notification – and in some cases prior approval – where changes in ownership or control may affect:

- existing security clearances,
- access to classified information,
- supply-chain integrity, or
- the contractor's ability to meet security obligations.

In Danish defence procurement, contractual terms often allow the Danish Ministry of Defence Acquisition and Logistics Organisation (FMI) to review or, in specific circumstances, terminate a contract where an ownership change materially affects security-related performance or compliance. Similar provisions are found in NATO procurement frameworks, including those administered by the NATO Support and Procurement Agency (NSPA), which may require pre-notification, security vetting of new owners and, in some cases, approval prior to effectiveness of the transfer.

Specific mechanisms are contract-dependent and must therefore be assessed on a case-by-case basis.

Structuring Shareholder Agreements for the Defence Sector

Regulatory Approvals and Timing Risks

SHAs should expressly condition transfers on obtaining all required approvals under the FDI Act, War Materiel Act, export control regulations and relevant procurement-related requirements. Until all approvals are obtained, the transferring shareholder should retain governance rights.

Given that regulatory reviews can be prolonged or sequential, SHAs should include:

- flexible long-stop dates,
- suspension of pre-emption and co-sale deadlines during regulatory review, and
- obligations to cooperate in filings and share required information. These conditions must be mapped during due diligence and reflected in the transaction structure, including long-stop dates, covenants and SHA approval mechanisms.

National-Security-Driven Veto Rights

To protect sensitive activities and preserve regulatory compliance, SHAs may include enhanced veto rights covering:

- transfers to non-approved or non-allied purchasers,
- establishment of subsidiaries in high-risk jurisdictions,
- outsourcing of sensitive or export-controlled activities, and
- changes to security protocols affecting classified access.

Board Composition, Security Clearances and Access Protocols

Defence-sector companies often require:

- locally resident, security-cleared directors,
- restrictions on foreign board observers,
- clean-team arrangements, and
- security-cleared board committees for classified matters.

These governance structures must be reflected both in the SHA and in internal corporate instructions.

Integrating Export Control, Public Funding and ICC Considerations into SHAs

SHAs should specify whether the company:

- holds export licences,
- relies on dual-use authorisations,
- is subject to weapons-related permits,
- is party to an ICC, or
- has received public funding (State aid, EU aid or NATO-related financial support).

Where public funding is involved, the SHA should address:

Defence-sector companies often require:

- compliance with grant or aid conditions,
- obligations to notify or seek consent from funding authorities in a change-of-control scenario,
- allocation of responsibility for maintaining eligibility criteria,
- cooperation obligations regarding any required correspondence with funding bodies, and
- remedies or indemnities if a breach of funding conditions leads to clawback, suspension or termination of support.

Our Comments

Defence and dual-use sector investments require more than ordinary transactional execution. The combination of FDI screening, export controls, War Materiel Act approvals, ICC obligations and procurement-related change-of-control restrictions makes regulatory due diligence essential.

In our experience, the most significant risks arise not from obtaining approvals per se, but from overlooking their interaction – particularly where ownership thresholds trigger separate permits under multiple regimes, or where the SHA does not adequately reflect national-security governance requirements.

A comprehensive due diligence process should therefore be undertaken, including a review of any public funding conditions, change-of-control implications, clawback provisions, ongoing eligibility requirements and any authority consent or notification duties. These considerations should directly inform SHA drafting through tailored covenants, warranties, cooperation obligations, long-stop mechanisms and risk-allocation terms.

Failure to do so may result in:

- delays in closing,
- suspension or loss of critical operational permits,
- breach of procurement obligations, or
- severe administrative or criminal sanctions for non-compliance.

Properly structured, SHAs can mitigate these risks and support stable, compliant ownership structures in a strategically critical sector.

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