

Procedure for the imposition of fines on unlawful transfers of dual-use
good to the Gaza Strip

Introduction and Background

1. According to section 20 of the Defense Export Control Law, 5767-2007 (hereinafter: the **Control Law**), controlled dual-use equipment included in the Defense Export Control Order 2008 (Controlled Dual-Use Goods Transferred to Areas under Palestinian Civilian Control 5769-2008) (hereinafter: the **Control Order**) may not be transferred into areas under Palestinian civil control unless license was obtained for such transfer from the licensing authority and according to the provisions of said license.
2. The relevant officials of the Coordinator of Government Activities in the Territories (COGAT) and of the Gaza District Coordination Office (Gaza DCO) have been authorized to act as the "licensing authority" for this purpose. Therefore, the transfer of controlled dual-use equipment as aforesaid from the territory of Israel to the Gaza Strip requires license according to the Control Law from the relevant COGAT and/or DCO officials.
3. According to section 35 of the Control Law the licensing authority is authorized to impose a civil fine on any person violating the provisions of the Control Law and orders promulgated thereunder. Therefore, *inter alia*, the head of the Gaza DCO is authorized to impose civil fines for smuggling attempts of controlled dual-use equipment, as this term is defined in the Control Order.
4. In view of the increasing security for effective enforcement against the smuggling of controlled dual-use equipment into the Gaza Strip, the need arises to use this tool, among others, without prejudice to the right to use any other lawful measure which is available to the different authorities in their fight against the phenomenon of controlled dual-use equipment smuggling into the Gaza Strip.
5. Therefore, this procedure is hereby published, **the purpose of which is to regulate the exercise of the power of the head of the Gaza DCO to impose fines, in appropriate cases, on offenders who violated the provisions of the Control Law and transferred or attempted to transfer, unlawfully, controlled dual-use equipment into the Gaza Strip through "Kerem Shalom" crossing.**

Parties liable for fines

6. Any attempt to transfer to controlled dual-use equipment the Gaza Strip without a license constitutes an offense according to the Control Law. Hence, fines may be imposed for any such smuggling attempt.
7. The party liable is **the party that transfers** the equipment to the Gaza Strip through "Kerem Shalom" Crossing.

8. As a general rule, the party on whom imposition of fine should be considered for the attempt to smuggle controlled dual-use equipment is the **dispatching party** (namely, the party that sold the equipment for its transfer to the Gaza Strip and is also referred to as the "supplier") – whether said party is an Israeli or a Palestinian resident of the Judea and Samaria area - hereinafter referred to as the "**violating party**".

Criteria to be consideration of a fine

9. The amount of the fine established in section 35 of the Control Law is 1,017,000 ILS. According to section 38, the licensing authority is not authorized to reduce said fine other than according to the provisions of the Defense Export Control Regulations (Reduction of Civil Fine Amounts), 5768-2008 (hereinafter: the **Reduction Regulations**).
10. A fine will be imposed in appropriate cases when the head of the Gaza DCO is of the opinion that special severity exists which justifies the imposition of a fine. The following are guiding, non-exhaustive, criteria, in light of which the head of the Gaza DCO will examine the severity of the case as aforesaid:
 - a. The severity of the **potential terror threat** posed by the equipment the transfer of which to the Gaza Strip was sought, as indicated from the nature of the equipment.
 - b. **The quantity of controlled dual-use equipment** the transfer of which to the Gaza Strip was sought.
 - c. **The extent of the attempt to deceive** the administrative authority, as indicated by the **circumstances surrounding the attempted transfer to the Gaza Strip** – concealment (hiding the dual-use goods in a manner which makes it difficult to locate them); attempts to pass dual-use equipment off as legitimate (placing dual-use goods together with goods which were lawfully coordinated, to create a "semblance" of legitimacy); etc.
 - d. **The extent of the attempt to deceive** the administrative authority, as indicated by the discrepancy between the dual-use equipment which was coordinated or approved and the dual-use equipment the transfer of which was actually sought – both in terms of type and quantity of the equipment.
 - e. **The extent to which "recidivism" exists** – when information exists, either open or confidential, indicating that the transferring party was involved in the past in attempts of prohibited transfers of goods to the Gaza Strip.

Criteria to be considered for determination of fine amount

11. If a decision was made, according to the provisions of section 10 above that a fine should be imposed, the amount of the fine is 1.017 million ILS. Upon the occurrence of any one of the following circumstances the percentage stipulated in connection to each circumstance should be reduced from the fine, according to the Reduction Regulations.
 - a. It is the first time, to the best knowledge of the licensing authority which reviews the case, in which the dispatcher tried to smuggle dual-use goods – the fine should be reduced by 50%.

- b. Evidence exists which indicates that the dispatcher or anyone on their behalf stopped the violation at their own initiative and reported it to the authorities at the crossing – the fine should be reduced by 25%.
 - c. The dispatcher proves, to the satisfaction of the licensing authority, that they took measures to prevent the re-occurrence of the violation – the fine should be reduced by 15%.
12. In the event that more than one circumstance occurs, the fine may be reduced by a **cumulative rate** of the rates stipulated in connection to the circumstances. If **aggravated circumstances** exist which provide justification for non-reduction even in the event that the circumstances described in the Reduction Regulations occurred (such as previous information, including confidential information, regarding the involvement of the violating party in smuggling activity), **reduction may be foregone**.
 13. It should be emphasized that no additional deductions may be granted above and beyond the deductions specified above, unless after all said deductions, the amount of the fine still exceeds 20% of dispatcher's total annual sales cycle. In such circumstances, the fine may be reduced to an amount equivalent to 20% of the total annual sales cycle.

Examination according to this section should be conducted, irrespective of whether or not (one or more) circumstances were found which justify reduction according to the provisions of section 11.

14. It should be further emphasized that it is the obligation of the **violating party** to provide said information, and that there is no obligation to demand or request said party to provide same. In the event that a violating party failed to provide said information, substantiated by documents, the requirement to examine reduction according to this section shall not apply.

Procedure for consideration of fine

15. Upon the detection of an attempted smuggling in "Kerem Shalom" Crossing, the head of Economics Division at the Gaza DCO will inform the head of the DCO of the details of the incident. The head of the DCO will decide, based on an initial examination whether, *prima facie*, it is an incident which justifies the imposition of a fine according to the above fine imposition criteria.
16. If the head of the DCO finds that a certain case is *prima facie* suitable – he will direct the head of economics division to hold consultations with the following – relevant legal adviser; relevant COGAT professionals – coordinators, operations officers, etc.; and security officials. The head of economics division will present the results of the examination and consultations to the head of the Gaza DCO together with the references required to substantiate the smuggling attempt and any relevant information satisfying the criteria.
17. The head of the Gaza DCO will decide, based on the results of the consultations according to section 17 above whether imposition of fine should be considered.

18. Where the head of the Gaza DCO decides that imposition of fine should be considered, a letter on behalf of the Gaza DCO shall be sent to the violating party in whose case it was decided that imposition of fine shall be considered. The letter will specify the information (to the extent it is not confidential) concerning the smuggling which was discovered, and the intention of the head of the Gaza DCO to impose a fine by virtue of his power under the Control Law. The letter will be drafted with the assistance of the legal adviser.
19. The violating party will be granted a 15-day period to present detailed arguments, in writing, against the intention of the head of the Gaza DCO to impose a fine.
20. To the extent arguments as aforesaid are transferred to the Gaza DCO, they will be reviewed and presented to the head of the Gaza DCO for final decision. In the absence of arguments as aforesaid, the case will be brought to the head of the Gaza DCO for a decision without arguments. In this context, the decision to impose a fine shall be considered and the amount of the fine shall be determined, if a decision to impose it was made.
21. If the head of the Gaza DCO decides to **impose a fine**, the decision of the head of the Gaza DCO including its reasons shall be provided to the violating party together with details concerning method of payment.
22. It is hereby noted that in an 1708y case in which an attempt was made to make a prohibited transfer of controlled dual-use equipment with respect of which a decision was made **not to impose a fine**, provision of a warning to the violating party should be considered, and if given, it should be documented. Responsibility for this matter lies with the head of the economics division.

Flowchart describing the progression of the procedure:

Note: nothing in the flowchart adds or derogates from the procedure and it only serves as an aid for a better understanding thereof.

