



EXPORT CONTROL DEVELOPMENTS

Malaysia Fully Implements Strategic Trade Act 2010 from 1 April 2011

Malaysia's Strategic Trade Act ("STA") 2010, Regulations and Orders, which aims to control export, transshipment, transit and brokering of strategic items, including arms and related material, and other activities that will or may facilitate the design, development and production of Weapons of Mass Destruction ("WMD") and their delivery systems, came into force on 1 January 2011 for Part II - Category 0 (Nuclear Materials, Facilities, and Equipment) and subsequently on 1 April 2011 for Part I and Part II - product categories (Category 1 - 9).

For those involved in any of the controlled transactions, a permit from the designated licensing authority in Malaysia is required. The types of export permits and broker registration required, which include (i) single-use permit (one-off export permit and issued on a shipment basis – valid for six months); (ii) bulk permit (multiple shipment export permit destined for one single country / destination – valid for two years); (iii) multiple-use permit (multiple shipment export permit destined for multiple countries / destinations – valid for two years); (iv) special permit (one-off export permit to export to a restricted end-user and issued on a shipment basis – valid for one year); and (v) broker registration certificate (certificate issued to broker strategic items / activities – valid for one year), depend on business needs and activities, as well as qualifying criteria.

ICP Guidelines for Bulk & Multiple-Use Permits under Strategic Trade Act 2010

The Strategic Trade Secretariat ("STS") of Malaysia's Ministry of International Trade and Industry ("MITI") recently issued guidelines for internal compliance program ("ICP") that serves as a **prerequisite** for Malaysian enterprises that wish to apply bulk and multiple-use permits under the STA. MITI defines an ICP as "a set of procedures that company officials must satisfy before an item is exported from the company to ensure that the transactions satisfy the export control regulations enacted by the government" and recommends the following elements for an ICP:

- A written statement of intent on export controls;
- A designated officer appointed at the level of management to oversee the implementation of the ICP whose responsibilities and positions are stated clearly in the company;
- Clear compliance policy and procedures which should be prepared on the company's letterhead;

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- Transparent reporting and decision-making responsibilities for exports;
- Knowledge of customer and the end-use of the items exported;
- Centralized processing for the export of strategic item;
- Early warning and screening of all enquiries and orders;
- Proper documentations of all transactions of strategic items to be kept for a period of at least six years as required by the Regulations of STA;
- Engagement of all employees including across all the business units within the organization on export control;
- Frequent audit of procedures for compliance, at least once every twelve months;
- Continuous training provided within the organization on export control and its implication on the business;
- Remain up-dated on the Government's export control laws, Regulations and Orders; and
- Establish good working relationship between enterprise and export licensing authorities.



To apply for a bulk or multiple-use permit under the STA, companies are required to fill in a check-list developed by the STS, which covers the minimum ICP requirements for consideration by the STS and other licensing authorities. Before applications are approved or rejected, the STS may request further details or information.

Once the bulk or multiple-use permit is approved, it is valid for two years and is renewable, subject to full compliance of the requirements. The STS will undertake pre- and post-audits for compliance, which may be done without notice to conduct a thorough evaluation of the ICP in place as indicated in the check-list submitted by the company.

The check-list should be accompanied by a letter in the company letter head signed by the designated person in charge of export control, who should be the same person identified as overall in-charge of export control in the on-line registration system.

Based on this latest requirement of "ICP", companies should seriously consider adopting an ICP in order to be eligible for bulk or multiple permit application and simultaneously, to safeguard against proliferators from taking advantage of weaknesses within the enterprise in the sales of sensitive dual-use items or technology to unauthorized parties and severe penalties from failing to do so.

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BCIT is actively engaged in export control matters in Asia. We advise US, EU and Asian clients on licensing, ICP (internal compliance programs), classification, end-user screening against global restricted parties list, scenario planning, formulating "red-flag" checkpoints and corresponding response actions, historical reviews and transactions relating to products subject to export controls and identify and determine the risk exposure. We also provide guidance and recommendations on corrective steps and risk management solutions, including making voluntary disclosures to the domestic export control authorities, and supporting clients in engaging the authorities in this regard.

BCIT operates in Bangkok, Beijing, Jakarta, Kuala Lumpur, Manila, Shanghai, Singapore and Tokyo, and covers Australia, Cambodia, India, Korea, New Zealand, Taiwan, Vietnam, and other markets in the region. Our consultants include former senior customs and trade officials, and customs, tax and trade practitioners with years of experience and broad contacts in their respective countries and in the region. These specialists have years of experience advising clients on customs compliance audit, including classification, valuation, transfer pricing, duty drawback, country of origin, free trade agreements and other preferential tariff schemes, as well as other international trade subjects, such as export control and anti-illicit trade.

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