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## Foreign Investment e-Law Alert

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### **Register Your Company as Exporter/Broker of Strategic Items and Technologies Now!**

The Strategic Trade Act 2010 [Act 708] (“the STA<sup>1</sup>”), which aims to curb the proliferation of weapons of mass destruction, came into effect on 1 January 2011. Under the STA, companies are required to apply for export permits for strategic items according to the respective Category Code, which was implemented in different phases.

To ensure export permits are issued effectively and expeditiously, amendments have been made to the Strategic Trade Regulations 2010 (“STR 2010”)<sup>2</sup> via the Strategic Trade Regulations (Amendment) 2011 (PU(A) 393/2011), which was published in the *Gazette* on 30 November 2011 and came into effect on 1 December 2011.

Apart from the key amendments as stated below, some editorial amendments were also made to the STR 2010.

#### **A. Application period for export, transit, transshipment and special permits**

##### **1. Export permit — Regulation 10**

<b>Type of permit</b>	<b>Before</b>	<b>Now</b>
Single-use export permit	Application shall be made not less than <b>30 “working days”</b> before the strategic items or unlisted items concerned are brought on board the conveyance on which it is to be exported or in case of strategic technology, before the transmission of the technology	<b>“days”</b>
Bulk or multiple-use export permit	Application shall be made not later than <b>30 “working days”</b> before the first export of the strategic items concerned	<b>“days”</b>

<sup>1</sup> The STA 2010 controls exports, transits, transshipments, brokering and other activities related to strategic items and technologies that can contribute to the design, development and production of weapons of mass destruction.

<sup>2</sup> The STR 2010:

- (a) prescribes forms, fees, procedures for application and issuance of permits and related matters;
- (b) provides conditions for non-requirement of permit (exemption) for transit and transshipment; and
- (c) provides a list of the military and strategic items for which permits are required in all situations.

2 Transit permit — **Regulation 11**

Type of permit	Before	Now
Single-use transit permit	Application shall be made not less than <b>5 “days”</b> before the arrival in Malaysia of the conveyance on which the strategic items or unlisted items concerned are to be brought in transit	<b>“working days”</b>
Bulk or multiple-use transit permit	No previous provision on the application period for such permit	Application shall be made not later than <b>30 days</b> before the first bringing in transit of the strategic items concerned

3 Transhipment permit — **Regulation 12**

Type of permit	Before	Now
Single-use transhipment permit	Application shall be made not less than <b>5 “days”</b> before the strategic items or unlisted items concerned are to be brought on board the conveyance on which it is to be transhipped	<b>“working days”</b>
Bulk or multiple-use transhipment permit	Application shall be made not less than <b>“2 months”</b> before the first transhipment of the strategic items concerned is carried out	<b>“30 days”</b>

4 Special permit — **Regulation 13**

Type of permit	Before	Now
Special permit	Application shall be made not less than <b>“2 months”</b> before: <ul style="list-style-type: none"> <li>(i) the strategic items or unlisted items concerned is brought on board the conveyance on which it is to be exported or transhipped;</li> <li>(ii) the arrival in Malaysia of the conveyance on which the strategic items or unlisted items concerned are to be brought in transit, in the case of bringing in transit; or</li> <li>(iii) the transmission of the strategic technology concerned is to be carried out.</li> </ul>	<b>“30 days”</b>

**B. End-use statement and delivery of verification statement forms**

1. The forms for the **end-use statement (Form 5)**<sup>3</sup> and for the **delivery verification statement (Form 6)**<sup>4</sup> have been amended for more clarity and user-friendliness.

2. **Return period for the delivery verification statement** is as follows:

(a) Transhipment permit — **Regulation 12(7)(c)**

Type of permit	Before	Now
Single-use transhipment permit	No previous provision on the return period for such permit	Not later than <b>2 months</b> from the date of export/transit/transhipment unless otherwise authorised by the relevant Authority
Bulk or multiple-use transhipment permit	No previous provision on the return period for such permit	Whenever requested by the relevant Authority

(b) Special permit — **Regulation 13(4)(c)**

Type of permit	Before	Now
Special permit	No previous provision on the return period for such permit	Not later than <b>2 months</b> from the date of export/transit/transhipment unless otherwise authorised by the relevant Authority

**C. Transhipment permit for strategic items under Category Codes 5A2 and 5B2 no longer required**

**Category Codes No 5A2 and 5B2** have been **deleted** from the dual-use items list under the **Third Schedule of the STR 2010**. Hence, strategic items under these Category Codes no longer need a **transhipment permit**, provided the conditions under **Regulation 25** are fulfilled.

Although there is already a wealth of experience and resources within the government and the private sector that can be pooled to effectively implement the STA, exporters and brokers need time to familiarise themselves with the new law and registration system and to take the necessary action to comply. As such, the Ministry of International Trade and Industry and the Strategic Trade Secretariat play a crucial role not only in implementing the STA but also in creating awareness among the various stakeholders. From a practical point of view, implementation of the STA in a business-friendly manner that would not disrupt the smooth flow of exports would be most welcome by exporters and brokers.

<sup>3</sup> Paragraphs 10(7)(b), 11(7)(b), 12(7)(b) and 13(4)(b) and sub-regulation 14(1) of the STR 2010

<sup>4</sup> Paragraphs 10(7)(c), 11(7)(c), 12(7)(c) and 13(4)(c) of the STR 2010

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