



Corporate & Commercial Law Update

- ▶ STAMP DUTY
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▶ Stamp Duty

1. By virtue of **Stamp Duty (Exemption) Order 2011**, all instruments executed by Labuan Corporation where the duty due would ordinarily be payable by Labuan Corporation are exempted from stamp duty which would otherwise be chargeable under the Stamp Act 1949.
2. By virtue of **Stamp Duty (Exemption) (No. 2) Order 2011**, all instruments executed between a customer and a financier in accordance with the principles of Syariah as approved by the Shariah Advisory Council on Islamic Finance established under the Central Bank of Malaysia Act 2009 [Act 701] for the purpose of renewing any Islamic revolving financing facility are exempted from stamp duty if the instrument for the existing Islamic revolving financing facility had been duly stamped.
3. By virtue of the **Stamp Duty (Remission) Order 2011**, the stamp duty on any instrument relating to an "Islamic financing facility" executed between a customer and a financier for the purpose of "rescheduling" or "restructuring" any existing Islamic financing facility is remitted to the extent of the duty that shall be payable on the balance of the principal amount of the existing Islamic financing facility PROVIDED THAT the instrument for the existing Islamic financing facility had been duly stamped under item 22 or 27 of the First Schedule to the Act. Further, such instruments must contain the following
 - (a) the name of the financial institution from which the existing Islamic financing facility was originally obtained; and
 - (b) the balance of the principal amount of the existing Islamic financing facility.

Definitions

"*Islamic financing facility*" means a facility granted by a financier to a customer under a scheme of financing in accordance with the principles of Syariah as approved by the Shariah Advisory Council on Islamic Finance established under the Central Bank of Malaysia Act 2009;

"*rescheduling*" means changing the terms of repayment;

"*restructuring*" means changing the form or structure of a facility or other terms of the facility.



► STRATEGIC TRADE ACT 2010

This Act was passed in 2010 and came into effect on 1 January 2011.

This is an Act to provide for control over the 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 and their delivery systems and to provide for other matters connected therewith, consistent with Malaysia's national security and international obligations.

The Act provides, amongst others, that:-

- i) No person shall export, transship or bring in transit strategic items unless he obtains a permit.
- ii) No person shall export, transship or bring in transit strategic items or unlisted items to a restricted end-user unless he obtains a special permit.
- iii) No person shall export, transship or bring in transit strategic items or unlisted items to a prohibited end-user.
- iv) No person shall carry out an act of brokering of any strategic items unless he is registered, and, where required, holds a valid permit for the brokering of such strategic items.
- v) No person shall provide any technical assistance within or outside Malaysia if such technical assistance is intended for use in connection with a restricted activity.

A person who contravenes provisions of the Act in relation to strategic items, unlisted items and restricted activities, commits an offence and depending on the nature of the offence committed, whether the strategic items in question are military items or dual use items, and whether the offence was intentionally committed or otherwise or whether it results in death or otherwise, the maximum punishment that may be ordered by the court upon conviction in respect of:

- a) an individual offender, is death or imprisonment for natural life, and
- b) a corporate offender, is fine of RM30,000,000.

Definitions

To "*export*" means -

- (a) to place any items in a conveyance for the purpose of such items being taken out of Malaysia by land, sea or air; or
- (b) to transmit technology by any means to a destination outside Malaysia, and includes any oral or visual transmission of technology by a communications device where the technology is contained in a document the relevant part of which is read out, described or otherwise displayed over the communications device in such a way as to achieve a similar result.



To “*tranship*” means to remove items from the conveyance on which they are brought into Malaysia and to place the items on the same or another conveyance for the purpose of taking them out of Malaysia where these acts are carried out on a through bill of lading, through airway bill or through manifest

To “*bring in transit*” means to bring items from any country into Malaysia by land, sea or air, where the items are to be taken out from Malaysia on the same conveyance on which they are brought into Malaysia or any other conveyance and whether or not such items are landed or transhipped in Malaysia, but does not include the passage through Malaysia in accordance with international law of a foreign conveyance carrying any items

The act of “*brokering*” means the activity of a person who, either on his own behalf or acting as an agent on behalf of another person negotiates, arranges for or facilitates the purchasing, financing, conveying, sale or supply of items

To provide “*technical assistance*” includes instructions, skills, training, the provision of working knowledge and consulting services and may involve the transfer of technical data

“*Strategic items*” are the various military items and dual-use items as prescribed under the Strategic Trade (Strategic Items) Order 2010. In this Order,

- (a) “*military items*” means items solely or designed or modified for a military purpose, including any part or component thereof and includes the technology necessary for the development, production or use of any military items; and
- (b) “*dual-use items*” means items capable of being used for a non-military and a military purpose in relation to the proliferation of weapons of mass destruction and includes the technology necessary for the development, production or use of any dual-use items.

Note: Items that may fall within the ambit of the definition of “*strategic items*” are not limited to goods, software and/or technology which are clearly in relation to nuclear materials or equipments, but also extends to everyday or consumer goods, software and/or technology such as goods, software and/or technology relating to electronics, computers, sensors, lasers, telecommunications, navigation and avionics, marine aerospace and propulsion, etc.

“*Unlisted items*” means items that may be used in a restricted activity but are not prescribed as strategic items under the Strategic Trade (Strategic Items) Order 2010.

“*Restricted end-user*” means any person or country specified in the Strategic Trade (Restricted End-Users and Prohibited End-Users) Order 2010.

Note: Certain countries are embargoed and there are no exception for transit, such as the Democratic People’s Republic of Korea (DPRK) and Islamic Republic of Iran, while some countries are subjected to transit permits for military items, such as Afghanistan, Iraq, Liberia, Rwanda and Somalia.

“*Restricted activity*” means any activity that supports the development, production, handling, usage, maintenance, storage, inventory or proliferation of any weapon of mass destruction and its delivery systems or participation in transactions with persons engaged in such activities.



“*Prohibited end-user*” means any person or country specified in the Strategic Trade (Restricted End-Users and Prohibited End-Users) Order 2010.

Note: This Order provides a list of individuals and entities who are involved in nuclear-related, other weapons of mass destruction-related and ballistic missile-related programmes as prohibited end-users whereby all export, transshipment or transit of strategic items or unlisted items are prohibited.

▶ **DIRECT SALES (AMENDMENT) ACT 2010**

The Direct Sales (Amendment) Act 2010, which was reported in our previous Corporate and Commercial Update issue 4-2010, has come into force with effect from 1 March 2011.