

A BILL

*i n t i t u l e d*

An Act to amend the Strategic Trade Act 2010.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

**1.** (1) This Act may be cited as the Strategic Trade (Amendment) Act 2017.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

**Amendment of section 2**

**2.** The Strategic Trade Act 2010 [*Act 708*], which is referred to as the “principal Act” in this Act, is amended in section 2—

(a) by substituting for the definition of “authorized officer” the following definition:

‘ “authorized officer” means any of the officers specified in section 25A;’; and

(b) in the definition of “brokering”, by substituting for paragraphs (a) and (b) the following paragraphs:

“(a) negotiates or arranges for the purchase, sale or supply of items from one foreign country to another foreign country; or

(b) purchases, sells or supplies such items from one foreign country to another foreign country;”.

### **Amendment of section 9**

3. Section 9 of the principal Act is amended—

(a) in subsection (4)—

(i) in paragraph (a)—

(A) in subparagraph (i), by substituting for subparagraph (B) the following subparagraph:

“(B) in any other case, be punished with imprisonment for a term not exceeding ten years or with a fine not exceeding ten million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding twenty million ringgit; or”; and

(B) in subparagraph (ii), by substituting for the words “be punished with imprisonment for a term of not less than five years or with a fine of not less than five million ringgit or with both, and in the case of a body corporate, be punished with a minimum fine of ten million ringgit” the words “be punished with imprisonment for a term not exceeding five years or with a fine not exceeding five million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding ten million ringgit”; and

(ii) in paragraph (b)—

(A) in subparagraph (i), by substituting for the words “be punished with imprisonment for a term of not less than ten years or with a fine of not less than ten million ringgit or with both, and in the case of a body corporate, be punished with a minimum fine of twenty million ringgit” the words “be punished with imprisonment for a term not exceeding ten years or with a fine not exceeding ten million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding twenty million ringgit”; and

(B) in subparagraph (ii), by substituting for the words “be punished with imprisonment for a term of not less than five years or with a fine of not less than five million ringgit or with both, and in the case of a body corporate, be punished with a minimum fine of ten million ringgit” the words “be punished with imprisonment for a term not exceeding five years or with a fine not exceeding five million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding ten million ringgit”;

(b) in subsection (5)—

(i) in paragraph (a)—

(A) in subparagraph (i), by substituting for subparagraph (B) the following subparagraph:

“(B) in any other case, be punished with imprisonment for a term not exceeding ten years or with a fine not exceeding ten million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding twenty million ringgit; or”; and

(B) in subparagraph (ii), by substituting for the words “be punished with imprisonment for a term of not less than five years or with a fine of not less than five million ringgit or with both, and in the case of a body corporate, be punished with a minimum fine of ten million ringgit” the words “be punished with imprisonment for a term not exceeding five years or with a fine not exceeding five million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding ten million ringgit”; and

(ii) in paragraph (b)—

(A) in subparagraph (i), by substituting for the words “be punished with imprisonment for a term of not less than ten years or with a fine of not less than ten million ringgit or with both, and in the case of a body corporate, be punished with a minimum fine of twenty million ringgit” the words “be punished with imprisonment for a term not exceeding ten years or with a fine not exceeding ten million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding twenty million ringgit”; and

(B) in subparagraph (ii), by substituting for the words “be punished with imprisonment for a term of not less than five years or with a fine of not less than five million ringgit or with both, and in the case of a body corporate, be punished with a minimum fine of ten million ringgit” the words “be punished with imprisonment for a term not exceeding five years or with a fine not exceeding five million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding ten million ringgit”; and

(c) in subsection (6)—

(i) in paragraph (a)—

(A) in subparagraph (i), by substituting for subparagraph (B) the following subparagraph:

“(B) in any other case, be punished with imprisonment for a term not exceeding ten years or with a fine not exceeding ten million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding twenty million ringgit; or”; and

(B) in subparagraph (ii), by substituting for the words “be punished with imprisonment for a term of not less than five years or with a fine of not less than five million ringgit or with both, and in the case of a body corporate, be punished with a minimum fine of ten million ringgit” the words “be punished with imprisonment for a term not exceeding five years or with a fine not exceeding five million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding ten million ringgit”; and

(ii) in paragraph (b)—

(A) in subparagraph (i), by substituting for the words “be punished with imprisonment for a term of not less than ten years or with a fine of not less than ten million ringgit or with both, and in the case of a body corporate, be punished with a minimum fine of twenty million ringgit” the words “be punished with imprisonment for a term not exceeding ten years or with a fine not exceeding ten million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding twenty million ringgit”; and

- (B) in subparagraph (ii), by substituting for the words “be punished with imprisonment for a term of not less than five years or with a fine of not less than five million ringgit or with both, and in the case of a body corporate, be punished with a minimum fine of ten million ringgit” the words “be punished with imprisonment for a term not exceeding five years or with a fine not exceeding five million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding ten million ringgit”.

#### **Amendment of section 10**

4. Subsection 10(2) of the principal Act is amended by substituting for paragraph (b) the following paragraph:

“(b) in any other case, be punished with imprisonment for a term not exceeding ten years or with a fine not exceeding ten million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding twenty million ringgit.”.

#### **Amendment of section 11**

5. Section 11 of the principal Act is amended—

(a) in subsection (2)—

- (i) in paragraph (a), by substituting for subparagraph (ii) the following subparagraph:

“(ii) in any other case, be punished with imprisonment for a term not exceeding ten years or with a fine not exceeding ten million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding twenty million ringgit; or”; and

(ii) by substituting for paragraph (b) the following paragraph:

“(b) in relation to strategic items other than arms or related material, be punished with imprisonment for a term not exceeding five years or with a fine not exceeding five million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding ten million ringgit.”; and

(b) by inserting after subsection (3) the following subsection:

“(4) In relation to strategic items, subsection (1) shall not apply to any person whose sole involvement is the provision of the following ancillary services:

(a) transportation;

(b) financial services;

(c) insurance or re-insurance;

(d) general advertisement; or

(e) any other ancillary services as may be determined by the Controller.”.

## **Amendment of section 12**

**6.** Section 12 of the principal Act is amended—

(a) in subsection (1), by substituting for the words “to export that unlisted item at least thirty days before that export” the words “to export, tranship or bring in transit that unlisted item at least thirty days before that export, transshipment or bringing in transit”;

(b) in subsection (2), by substituting for the words “whether or not to allow that export to proceed” the words “whether or not to allow that export, transshipment or bringing in transit to proceed”;

(c) in subsection (3), by substituting for the words “that export” the words “that export, transshipment or bringing in transit”; and

(d) in subsection (4)—

(i) in paragraph (a)—

(A) in subparagraph (i), by substituting for subparagraph (B) the following subparagraph:

“(B) in any other case, be punished with imprisonment for a term not exceeding ten years or with a fine not exceeding ten million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding twenty million ringgit; or”; and

(B) in subparagraph (ii), by substituting for the words “be punished with imprisonment for a term of not less than five years or with a fine of not less than five million ringgit or with both, and in the case of a body corporate, be punished with a minimum fine of ten million ringgit” the words “be punished with imprisonment for a term not exceeding five years or with a fine not exceeding five million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding ten million ringgit”; and

(ii) in paragraph (b)—

(A) in subparagraph (i), by substituting for the words “be punished with imprisonment for a term of not less than ten years or with a fine of not less than ten million ringgit or with both, and in the case of a body corporate, be punished with a minimum fine of twenty million ringgit” the words

“be punished with imprisonment for a term not exceeding ten years or with a fine not exceeding ten million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding twenty million ringgit”; and

- (B) in subparagraph (ii), by substituting for the words “be punished with imprisonment for a term of not less than five years or with a fine of not less than five million ringgit or with both, and in the case of a body corporate, be punished with a minimum fine of ten million ringgit” the words “be punished with imprisonment for a term not exceeding five years or with a fine not exceeding five million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding ten million ringgit”.

### **New section 12A**

7. The principal Act is amended by inserting after section 12 the following section:

#### **“Presumption as to export**

**12A.** (1) In relation to export, any items, strategic items or unlisted items shall be deemed to be taken or caused to be taken out of Malaysia if—

- (a) they have been cleared by a proper officer of customs at the last customs station on their route out of Malaysia;
- (b) they have been loaded on to a conveyance which is about to depart from a port or place in Malaysia; or
- (c) they have been cleared by a proper officer of customs at an inland clearance depot or at an inland customs station on their route out of Malaysia through a customs port or airport.

(2) In this section, “customs airport”, “customs port”, “inland clearance depot” and “proper officer of customs” shall have the same meaning assigned to it in the Customs Act 1967 [Act 235].”.

#### **Amendment of section 14**

**8.** Section 14 of the principal Act is amended by substituting for subsection (2) the following subsection:

“(2) The relevant Authority may require the applicant who made an application under subsection (1) to submit an end-use statement.”.

#### **Amendment of section 18**

**9.** Subsection 18(2) of the principal Act is amended by substituting for the words “be punished with imprisonment for a term of not less than three years or with a fine of not less than three million ringgit or with both, and in the case of a body corporate, be punished with a minimum fine of five million ringgit” the words “be punished with imprisonment for a term not exceeding three years or with a fine not exceeding three million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding five million ringgit”.

#### **Amendment of section 21**

**10.** Section 21 of the principal Act is amended—

(a) in subsection (3), by substituting for the words “be punished with imprisonment for a term of not less than ten years or with a fine of not less than ten million ringgit or with both, and in the case of a body corporate, be punished with a minimum fine of twenty million ringgit” the words “be punished with imprisonment for a term not exceeding ten years or with a fine not exceeding ten million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding twenty million ringgit”; and

- (b) in subsection (4), by substituting for the words “be punished with imprisonment for a term of not less than ten years or with a fine of not less than ten million ringgit or with both, and in the case of a body corporate, be punished with a minimum fine of twenty million ringgit” the words “be punished with imprisonment for a term not exceeding ten years or with a fine not exceeding ten million ringgit or with both, and in the case of a body corporate, be punished with a fine not exceeding twenty million ringgit”.

### **Amendment of section 23**

- 11.** Subsection 23(2) of the principal Act is amended by substituting for the words “a minimum fine of” the words “a fine not exceeding”.

### **Amendment of section 24**

- 12.** Subsection 24(4) of the principal Act is amended by substituting for the words “a minimum fine of” the words “a fine not exceeding”.

### **New section 25A**

- 13.** The principal Act is amended by inserting before section 26 the following section:

#### **“Authorized officer**

**25A.** The following officers shall be authorized officers for the purpose of this Act and may exercise all the powers of enforcement:

- (a) any officer of customs;
- (b) any police officer;

- (c) any officer of the Malaysian Maritime Enforcement Agency;
- (d) any officer of the Malaysian Communications and Multimedia Commission;
- (e) any officer of the Atomic Energy Licensing Board;
- (f) any officer of the Pharmaceutical Services Division, Ministry of Health;
- (g) any officer of the Central Bank of Malaysia;
- (h) any officer of the Securities Commission Malaysia;
- (i) any officer of the Labuan Financial Services Authority; and
- (j) any other officers as may be determined by the Controller.”.

### **Amendment of section 33**

**14.** Subsection 33(1) of the principal Act is amended by substituting for the words “be punished with imprisonment for a term of not less than three years or with a fine of not less than one million ringgit or with both” the words “be punished with imprisonment for a term not exceeding three years or with a fine not exceeding one million ringgit or with both”.

### **Amendment of section 40**

**15.** Section 40 of the principal Act is amended—

- (a) in subsection (1), by substituting for the words “a minimum fine of” the words “a fine not exceeding”; and
- (b) in subsection (2), by substituting for the words “a minimum fine of” the words “a fine not exceeding”.

**Amendment of section 41**

16. Section 41 of the principal Act is amended—

- (a) by inserting after the words “order the disposal of the” the words “items,”; and
- (b) by inserting after the words “other article in which the” the words “items,”.

**Amendment of section 45**

17. Section 45 of the principal Act is amended—

- (a) by inserting after the words “in respect of any” the words “items,”; and
- (b) by inserting after the words “other article in which the” the words “items,”.

**New section 50A**

18. The principal Act is amended by inserting after section 50 the following section:

**“Compounding of offences**

**50A.** (1) The Minister may, with the approval of the Public Prosecutor, make regulations prescribing—

- (a) any offence under this Act and any regulations made under the Act that may be compounded;
- (b) the criteria for compounding such offence; and
- (c) the method and procedure for compounding such offence.

(2) The authorized officer may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act and prescribed to be a compoundable offence by making a written offer to the person suspected to have committed the offence to compound the offence upon payment to the authorized officer of an amount of money not exceeding fifty per centum of the amount of maximum fine for that offence within such time as may be specified in his written offer.

(3) An offer under subsection (2) may be made at any time after the offence has been committed but before any prosecution for it has been instituted.

(4) If the amount specified in the offer is not paid within the time specified in the offer or such extended time as the authorized officer may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(5) Where an offence has been compounded under subsection (2), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and any items, strategic items and unlisted items together with any container, package, conveyance and other article in which the items, strategic items and unlisted items are stored, kept or found, record, book, account, document and computerized data seized in connection with the offence may be released or disposed by the Controller in accordance with section 41, subject to such terms as he thinks fit.

(6) All sums of money received by the authorized officer under this section shall be paid into and form part of the Federal Consolidated Fund.”.

### **Amendment of section 55**

**19.** Paragraph 55(2)(e) of the principal Act is amended by substituting for the words “end-user statements” the words “end-use statements”.

### **Savings and transitional**

**20.** (1) Any registration, permit, guideline, notice, order, direction, approval, decision or other act granted, done or made before the date of coming into operation of this Act shall be deemed to have been granted, done or made under this Act and shall continue in full force and effect in relation to whom they apply until expired, revoked or amended.

(2) Any action or proceedings commenced or pending immediately before the date of coming into operation of this Act shall, after the date of coming into operation of this Act, be continued as if the principal Act had not been amended by this Act.

(3) Where on the date of coming into operation of this Act, application for a permit or special permit under section 14 of the principal Act is pending before the relevant Authority, the provisions of the principal Act relating to application for a permit or special permit as amended by this Act shall apply.

(4) Where on the date of coming into operation of this Act, application for a registration to carry out brokering of strategic items under section 19 of the principal Act is pending before the relevant Authority, the provisions of the principal Act relating to the definition of the term brokering and non-application of section 11 in respect of the provision of ancillary services relating to strategic items as amended by this Act shall apply.

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#### EXPLANATORY STATEMENT

This Bill seeks to amend the Strategic Trade Act 2010 (“Act 708”). The proposed amendments seek to revise the provisions relating to the trading of strategic items so as to make it at par with international practices. The proposed amendments also aims at facilitating trade by revising the quantum of punishment for offences under Act 708 and to strengthen the enforcement by appointing authorized officers from various agencies.

2. *Clause 1* contains the short title and provision on the commencement of the proposed Act.

3. *Clause 2* seeks to amend the definition of “authorized officer” and streamline the scope of “brokering” in section 2 of Act 708.

4. *Clauses 3, 4, 9, 10, 11, 12, 14 and 15* seek to amend sections 9, 10, 18, 21, 23, 24, 33 and 40 of Act 708, respectively, to reduce the punishment for offences under Act 708 to provide for trade-facilitative law towards the changing and dynamic business environment.

5. *Clause 5* seeks to amend section 11 of Act 708 to reduce the punishment for the offences of brokering of strategic items without registration of a broker under section 19 of Act 708. *Clause 5* also seeks to provide the non-application of subsection 11(1) for the sole involvement of any person in providing ancillary services related to strategic items. Therefore, the person need not be registered as a broker under section 19 of Act 708.

6. *Clause 6* seeks to amend section 12 of Act 708 to provide that a person intending to tranship or bring in transit any unlisted item is required to notify the relevant Authority of his intention to do so at least thirty days before the transhipment or bringing in transit is to be carried out. *Clause 6* also seeks to reduce punishment under section 12 of Act 708 for the failure to comply with the requirement of such notification.

7. *Clause 7* seeks to introduce a new section 12A into Act 708 to provide for presumptions as to export of any items, strategic items and unlisted items be deemed to be taken or caused to be taken out of Malaysia. The proposed new section seeks to strengthen the enforcement by the authorized officer.

8. *Clause 8* seeks to amend section 14 of Act 708 to provide that for an application for a permit or special permit made under section 9 of Act 708, the relevant Authority may require the applicant to submit an end-use statement.

9. *Clause 13* seeks to introduce a new section 25A into Act 708 to specify the authorized officers that may exercise powers of enforcement for the purpose of enforcement of Act 708.

10. *Clause 16* seeks to amend section 41 of Act 708 to empower the Controller after consultation with the Public Prosecutor to order the disposal of any item seized together with any container, package, conveyance and other article in which the items are stored, kept or found.

11. *Clause 17* seeks to amend section 45 of Act 708 to prohibit any person from recovering the costs or damages arising from the seizure of any items and any container, package, conveyance or other article in which such items are stored, kept or found unless such seizure was made without reasonable cause.

12. *Clause 18* seeks to introduce a new section 50A into Act 708 to empower the Minister with the approval of the Public Prosecutor to make regulations prescribing any offence under Act 708 to be compoundable as well as criteria, method and procedure for compounding such offence. The proposed new section also seeks to empower the authorized officer to implements the compounding of such offences with the consent in writing of the Public Prosecutor.

13. *Clause 20* deals with savings and transitional provisions.

14. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

#### FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any financial expenditure.

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