

INTERNAL COMPLIANCE PROGRAM – A GUIDE

Introduction

1. The Strategic Trade Act (STA) 2010, Regulations and Orders came into force on 1 January 2011 for Part II - Category 0 (Nuclear Materials, Facilities, and Equipment) and on 1 April 2011 for Part I and Part II - product categories (Category 1 - 9).
2. The objective of the STA is:
 - to control exports of strategic items and technology that can be used to design, develop and produce weapons of mass destruction (WMD) and their delivery systems.
3. For those involved in the export and brokering of strategic items and technology, a permit from the designated licensing authority in Malaysia is required, namely:
 - Strategic Trade Secretariat (MITI);
 - Atomic Energy Licensing Board (AELB);
 - Malaysian Communications and Multimedia Commission (MCMC); and
 - Pharmaceutical Services Department, Ministry of Health.
4. Under the STA, export controls are imposed on exports of strategic items (listed and unlisted items), transfers of intangible technology and other activities that support exports of strategic items, including the transit and transshipment of such items.
5. The STA is a 'catch- all' law and it places enormous responsibility on enterprises and other economic operators directly involved in the exports of strategic items that are sensitive and has dual-use possibilities.

What is an Internal Compliance Program?

6. An internal compliance program (ICP) is a set of procedures that company officials must satisfy before an item is exported from the company. It ensures that transactions satisfying the export control regulations enacted by the government. An **ICP is a prerequisite** for Malaysian enterprises that wish to avail **themselves of bulk and multiple-use permits** under the STA.
7. At the company level, Internal Compliance Program (ICP) maybe called by different names, such as:

- Internal Control Plans (ICPs);
 - Export Management Systems;
 - Export Compliance Programs;
 - Global Trade Compliance Plans; or
 - 'Code of Conduct'
8. An ICP within the enterprise is a commitment taken by the enterprise to voluntarily support the authorities by ensuring that internal controls and procedures are in place that safeguards the enterprise from being taken advantage of by proliferators of weapons of mass destruction. It provides the authorities some level of confidence to consider offering bulk and multiple-use permits that allows the enterprise to carry out their business with minimal Government interference, in particular by placing a large part of the responsibility on export control on the economic operator itself.
9. The commitment to the ICP is satisfied when the enterprise has established procedures in place to ensure that thorough investigations of the buyer and the end-user had been undertaken prior to shipment and export of strategic items and/or technology.

Key Elements of an ICP

10. An ICP is intended as a safeguard against proliferators from taking advantage of weaknesses within the enterprise in the sales of sensitive dual-use items or technology to unauthorized parties. The procedures in place must be applied throughout the enterprise in a transparent and responsible manner to ensure compliance to the STA, Regulations and Orders.
11. The ICP should consists the following elements:
- A written statement of intent on export controls;
 - A designated officer appointed at the level of management to oversee the implementation of the ICP and his/their responsibilities and positions stated clearly in the company;
 - Clear compliance policy and procedures which should be prepared on the company's letterhead;
 - Transparent reporting and decision-making responsibilities for exports;
 - Knowledge of your 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 law (Part V – 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 12 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.

How to Apply For a Bulk or Multiple-Use Permit?

12. The Strategic Trade Secretariat has developed the attached check-list on ICP to be used by enterprises to report to the Secretariat on the existing ICP in the enterprise. **The check-list is the minimum requirement that will satisfy the Secretariat and other licensing authorities for consideration of a bulk or multiple-use permit.**
13. Enterprises are encouraged to fill in the check-list and provide it to the Secretariat for consideration of a bulk or multiple-use permit. Such an application should also be done in tandem with the registration of the enterprise as an exporter in the on-line system developed for this purpose.
14. 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. All relevant documents should be attached for reference.
15. Based on the Secretariat and other licensing authorities' evaluation of the information provided, a bulk or multiple-use permit may be approved. Before applications are approved or rejected, the Secretariat may request further details or information.
16. The approved permit is valid for two years and is renewable but it can be suspended or withdrawn at any time if the company is found to have given false information or is not showing full commitment to satisfy the requirements of the STA.

17. The Secretariat will undertake pre and post audits for compliance. These audits may be done without notice and the opportunity will be used to make a thorough evaluation of the ICP in place as indicated by the company in the check-list.
18. For further enquiries and assistance, please contact the Strategic Trade Secretariat in MITI using the help line established for this purpose at admin.sts@miti.gov.my.
19. The completed check-list and supporting documents should be sent to the following address, for consideration:

The Strategic Trade Controller
Strategic Trade Secretariat
Ministry of International Trade and Industry
Level 4, MITI Tower,
No.7, Jalan Sultan Haji Ahmad Shah,
50480 Kuala Lumpur