

LEGAL UPDATES

October 2021

MALAYSIA

BUMIPUTERA EQUITY REQUIREMENT FOR FREIGHT FORWARDERS

The Ministry of Finance, Malaysia (**MoF**), had purportedly issued a letter in January 2021, stating that all Customs related licences, such as for freight-forwarders / customs agents, will be required to comply with Bumiputera equity requirements by the end of 2021. This requirement will also apply to majority Malaysian-owned companies with International Integrated Logistics Services (**IILS**) status. The exact percentage of Bumiputera equity required was however not provided.

The letter noted that majority foreign-owned IILS providers and publicly listed entities on Bursa Malaysia, are exempt from the Bumiputera equity requirement.

This decision was purportedly agreed upon by the Bumiputera Economic Council in 2015, with the original deadline for compliance being December 31, 2020. This was subsequently extended to December 31, 2021.

In September, 2021, the Federation of Malaysian Freight Forwarders (**FMFF**) wrote to International Trade and Industry Minister Datuk Seri Mohamed Azmin Ali, where the FMFF President, Alvin Chua, urged the Government to give urgent attention and assistance with regards to this Bumiputera equity requirement, to seek clarity, given the purported imminent implementation.

There has been significant resistance and objections from various quarters against this requirement, as its implementation is seen to be unconstitutional as well as being punitive to existing owners of logistics / freight forwarding companies which are owned by non-Bumiputeras and which would not be in compliance if such new requirement is implemented.

The Ministry of Finance (**MoF**), in response to such queries and objections, has agreed to extend the period for compliance with the Bumiputera equity requirement, to December 31, 2022.

Some Key Takeaways:

- Up to this new requirement being raised, the sector participants had been complying with the following Bumiputera equity requirements for the renewal of their Customs licences:

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	<u>Bumiputera Equity Requirement</u>
Custom licences registered before 1976	No Bumiputera equity required
Custom licences registered after 1976 and before 1990	30% Bumiputera equity
Customs license registered after 1990	51% Bumiputera equity
IILS Customs Licences Registered	No Bumiputera equity required

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Given that the Government had merely extended the period for compliance and had voiced their intention for the Bumiputera Agenda Steering Unit (TERAJU) to study and review the requirements for Bumiputera participation in the logistics industry, this has not addressed the concerns that not only would the implementation of such equity requirements be unconstitutional (being punitive towards non-Bumiputera owners) but also that it will not achieve the purpose of increasing the participation of Bumiputeras in the sector, as the requirement would appear to only benefit a handful of Bumiputeras.

Clarity is also important, as this will also potentially impact the confidence of participants in the industry, both foreign and Malaysian, if such important and pertinent requirements can be changed without significant review or basis prior to implementation. Accordingly, this issue was raised for discussion in the October Parliamentary sittings, though with no specific resolution.

Given the potential widespread impact on the industry as a whole, which is predominantly owned by foreign and non-Bumiputera entities / persons, and the impact more generally on the confidence of foreign investors with regards to Malaysia, it is hoped that the Malaysian Government will reconsider implementation of the requirement, taking heed of input from all quarters and where necessary, find other means of assisting Bumiputeras to increase their participation in the sector.

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