

**GUIDELINE ON THE
ACQUISITION OF INTERESTS, MERGERS AND TAKE-OVERS
BY LOCAL AND FOREIGN INTERESTS**

I. INTRODUCTION

1. The purpose of this Guideline is to clarify the rules and regulations of the Foreign Investment Committee (FIC) pertaining to the acquisition of interests, mergers and take-overs by local and foreign interests.

II. EFFECTIVE DATE

2. This Guideline is effective from 21 May 2003.

III. DEFINITIONS

3. In this Guideline, except when the context otherwise requires: -

acquisition means any equity ownership in a local company held directly or indirectly including subscription of new shares;

Bumiputera means -

(a) for Peninsular Malaysia,

Malay individual or aborigine as defined in Article 160(2) of the Federal Constitution;

(b) for Sarawak,

individual as defined in Article 161A(6)(a) of the Federal Constitution;

(c) for Sabah,

individual as defined in Article 161A(6)(b) of the Federal Constitution;

Bumiputera interest

means any interest, associated group of interests or parties acting in concert which comprises -

- (a) Bumiputera individual; or
- (b) local company or institution whereby Bumiputera holds more than 50% of the voting rights in the company or institution;

business

as defined in the Income Tax Act 1967;

control

means any individual, company or parties acting in concert -

- (a) having interests of more than 50% in a local company or institution; or
- (b) having interests of 33% or more in a public company; or
- (c) empowered to make and implement decisions pertaining to the business or administration of a local company or institution;

foreign company

means a foreign company as defined in the Companies Act 1965;

foreign interest

means any interest, associated group of interests or parties acting in concert which comprises -

- (a) individual who is not a Malaysian citizen including Permanent Resident; or
- (b) foreign company or institution; or

- (c) local company or local institution whereby the parties as stated in item (a) and/or (b) hold more than 50% of the voting rights in the company or institution;

interest means holding voting rights or equity or any other rights in a company;

joint venture means a business agreement/relationship under which two (2) or more parties join together for a set of activities and agree to share the profits;

local company means a company incorporated in Malaysia under the Companies Act 1965;

local interest means any interest, associated group of interests or parties acting in concert which comprises -

- (a) individual who is a Malaysian citizen; or
- (b) local company or local institution whereby Malaysian citizens hold more than 50% of the voting rights in the company;

merger means any transaction involving -

- (a) amalgamation of two (2) or more local companies to be incorporated into a new local company; or
- (b) amalgamation of two (2) or more companies without the incorporation of a new local company;

take-over means any transaction involving the transfer of more than 50% of the voting rights in a local company or group of local companies from one (1) party to another;

- transaction** means business dealings such as acquisition and disposal of shares, merger, take-over and other business dealings, which results in the application of the FIC Guidelines; and
- voting right** means -
- (a) for local public company, the power to vote attributable to the share capital of a company which are exercisable at an Annual General Meeting or Extraordinary General Meeting; or
 - (b) for a private limited company, the power to vote in the company.

IV. APPLICATIONS

4. This Guideline shall apply to any of the following transactions: -

- 4.1 Any proposed acquisition of interest in a local company or business in Malaysia which is RM10 million or more in value, by local or foreign interests;
- 4.2 Any proposed acquisition of interest of a local company or business in Malaysia by any means, which results in the transfer of ownership or control to foreign interests;
- 4.3 Any proposed acquisition of interest by: -
 - 4.3.1 any foreign interest of 15% or more of the voting right of any local company or business in Malaysia; or
 - 4.3.2 any associated or non-associated group of foreign interests, in aggregate of 30% or more of the voting rights of any local company or business in Malaysia;

regardless of whether the value is less than RM10 million with the exception of open market acquisitions on Bursa Malaysia meant for short term holdings;

- 4.4 Any proposed acquisition of interest as in paragraph 4.3 by: -
- 4.4.1 foreign interest, which will result in an increase of the voting rights to 15% or more, in any local company or business in Malaysia; or
 - 4.4.2 associated or non-associated group of foreign interests, which in aggregate will result in an increase in the voting rights to 30% or more, in any local company or business in Malaysia;
- regardless of whether the value is less than RM10 million with the exception of open market acquisitions on Bursa Malaysia meant for short term holdings;
- 4.5 Any proposed acquisition of interest and control of more than 50% of the voting rights in any local company or business in Malaysia by local interests, regardless of whether the value is less than RM10 million;
- 4.6 Any proposed merger or take-over of any local company or business in Malaysia by local or foreign interests;
- 4.7 Any proposed joint venture involving two (2) or more parties in a local company;
- 4.8 Any control of a local company or business in Malaysia through any form of management agreement, technical assistance agreement or other arrangements;
- 4.9 Any transaction by statutory bodies, companies and their subsidiaries owned by the Federal or State Governments;
- 4.10 Any charging of shares in a local company to any foreign interest where the value of loan or the market value of the shares is RM10 million or more. Charging of such shares is allowed if all of the loan taken would be utilised for operation of business in Malaysia only;
- 4.11 The following proposals must be submitted for the consideration of the Securities Commission (SC), without having to submit the application to FIC: -

- 4.11.1 any proposal related to a unit trust management company;
 - 4.11.2 any application related to equity structure of a company licensed or registered with SC or approved under the Securities Industry Act 1983 or Futures Industry Act 1993;
 - 4.11.3 any proposal which is subject to Section 32 of the Securities Commission Act 1993;
 - 4.11.4 proposed acquisition of interests or take-overs and mergers which is subject to Part II, Section 33 and Section 34 of the Securities Commission Act 1993 and the Code On Take-Overs and Mergers 1998;
- 4.12 For transactions which require approval of any government agencies/statutory bodies, the equity condition imposed will be considered by the relevant government agencies/statutory bodies based on this Guideline.
5. The purchase consideration is applicable in all modes of payment including: -
- 5.1 cash;
 - 5.2 exchange of shares;
 - 5.3 debt settlements;
 - 5.4 exchange of fixed assets;
 - 5.5 charging of shares; and
 - 5.6 any combination of the above.

V. EXEMPTIONS

6. This Guideline shall not apply in the following situations: -
- 6.1 Any acquisition of interest by Ministries and Government Departments;
 - 6.2 Any acquisition of interest by Minister of Finance Incorporated, Menteri Besar Incorporated and State Secretary Incorporated are considered to have been approved by the Government;
 - 6.3 Any privatisation projects, whether at the Federal or State level, are considered as approved by the Government and therefore exempted from the FIC Guideline. However, only the companies or parties who are the original signatories in the contracts for the privatised projects are considered as approved by the Government. Other companies or parties who later participated in the projects are not considered as approved by the Government and are therefore required to obtain the approval of the FIC. The definition of privatisation however does not include disposal of Government-owned companies or their subsidiaries, either owned by the Federal or State Governments, to the private sector, and the acquirers are required to obtain the approval of the FIC;
 - 6.4 Any acquisition of interest in manufacturing companies licensed by the Ministry of International Trade and Industry (MITI);
 - 6.5 Any acquisition of interest in Multimedia Super Corridor (MSC) status companies; and
 - 6.6 Any acquisition of interest in companies that have been granted the status of International Procurement Centre, Operational Headquarters, Representative Office, Regional Office and Labuan offshore company or other special status by the Ministry of Finance, MITI and other ministries.

VI. EQUITY CONDITIONS

7. Conditions to be imposed are as follows: -

- 7.1 Companies which do not have any Bumiputera equity or having less than 30% Bumiputera equity, are required to increase the Bumiputera equity to at least 30%. The remaining equity shareholding can be held either by local interest, foreign interest or by both;
- 7.2 The requirement of at least 30% Bumiputera equity participation will be applied uniformly except if expressly stated otherwise by the Government;
- 7.3 For companies which activities involve national interests such as water and energy supply, broadcasting, defense and security, the participation of foreign interest is limited to 30%. In certain circumstances, the Government may also impose other conditions such as the issuance of the “golden share”;
- 7.4 Companies with Bumiputera equity shareholding of 30% or more, but less than 51% are required to maintain at least 30% Bumiputera equity at all times;
- 7.5 Companies which already have Bumiputera equity shareholding of 51% or more, will be required to maintain at least 51% Bumiputera equity at all times;
- 7.6 For companies incurring losses and undertaking debt restructuring, the equity conditions may be waived and the company’s equity structure will be reviewed after three (3) years from the date of FIC’s approval letter;
- 7.7 For a non-licensed manufacturing company incorporated after 31 July 1998, no equity condition will be imposed;
- 7.8 The equity conditions that will be imposed on companies seeking listing on Bursa Malaysia are as follows: -
 - 7.8.1 upon listing on the Main Board or Second Board, companies are required to have at least 30% Bumiputera equity unless

exempted by the relevant Government agencies or regulatory bodies;

7.8.2 for listing on the Malaysian Exchange of Securities Dealing and Automated Quotation Berhad (MESDAQ) market, companies are required to comply with the Bumiputera equity condition as stipulated in the Bursa Malaysia Listing Requirements For The MESDAQ Market; and

7.8.3 for listing of companies having major foreign-based operations as defined in SC's Policies And Guidelines On Issue/Offer Of Securities, the 30% Bumiputera equity shareholding requirement need not be complied with;

7.9 For companies which are allowed to issue/offer Depository Receipts (DR) overseas, the allocation of 30% equity to Bumiputera will not be imposed on the DR; and

7.10 Any corporate transaction that involves in the increase of the paid-up capital and results in the dilution of Bumiputera equity, 30% of the new shares issued must be offered to Bumiputera investors.

VII. SHARE CAPITAL CONDITIONS

8. Local company owned by foreign interests with a paid-up capital of less than RM250,000 will be required to increase the share capital to at least RM250,000 within six (6) months from the date of FIC's approval letter; and

9. Local company owned by local interest with a paid-up capital of less than RM100,000 will be required to increase the share capital to at least RM100,000 within six (6) months from the date of FIC's approval letter.

VIII. EMPLOYMENT CONDITION

10. Companies must, to the best of their ability, recruit and train Malaysians so as to reflect the country's population composition at all levels of employment.

IX. COMPLIANCE PERIOD OF EQUITY CONDITIONS

11. Equity condition imposed, if any, must be complied with within two (2) years from the date of FIC's approval letter;
12. The compliance status must be reported to the FIC at least one (1) month before the compliance deadline and/or whenever requested by the FIC; and
13. The compliance period may be extended by one (1) year based on the merit of the case.

X. PROCEDURES ON SUBMITTING APPLICATION (Effective From 1 August 2004)

14. The onus to submit the application is on the purchaser. However, application by the vendor or the target company may also be accepted.
15. All applicants are fully responsible to the accuracy of the information submitted.
16. All proposals and communication will be treated in confidence.

Acquisition Of Interest, Mergers And Take-Overs By Local And Foreign Interests

17. For proposed acquisition of interests, mergers and take-overs by local and foreign interests, each application must be accompanied by the following documents:-
 - 17.1 Form FIC S/2004;
 - 17.2 Forms Proforma I/2004 and/or Proforma II/2004;
 - 17.3 One (1) copy of the relevant agreement;
 - 17.4 One (1) copy of the letter/licence from the ministries or Government agencies (if applicable);
 - 17.5 One (1) copy of the confirmation letter from the Company Secretary on the company's current equity structure;

- 17.6 One (1) copy of the approval letter on the same proposal from other ministries or Government agencies (if applicable); and
- 17.7 Declaration Letter FIC SA/2004 to be signed by the Chairman/Managing Director/ Chief Executive Officer of the company or any member of the company's Board of Directors or any authorised personnel/individual.

Foreign Equity Shareholding In A Local Company

- 18. For FIC's approval on the foreign equity shareholding in a local company, as required by the Malaysian Immigration Department (Immigration Department) on companies applying for an extension of the expatriates' work permits, each application must be accompanied by the following documents:-
 - 18.1 Form FIC S/2004;
 - 18.2 Forms Proforma I/2004 and II/2004;
 - 18.3 One (1) copy of the letter from the Immigration Department;
 - 18.4 One (1) copy of the licence from the ministries or Government agencies (if applicable);
 - 18.5 One (1) copy of the confirmation letter from the Company Secretary on the company's current equity structure; and
 - 18.6 Declaration Letter FIC SA/2004 to be signed by the Chairman/Managing Director/ Chief Executive Officer of the company or any member of the company's Board of Directors or any authorised personnel/individual.
- 19. For FIC's approval on the foreign equity shareholding in a local company, as required by other ministries or Government agencies, each application must also be accompanied by the documents as stated in items 18.1 to 18.6 (whichever is applicable).

Appeal

20. All appeals pertaining to FIC's decision or application for extension of time to comply with the conditions imposed by FIC may be considered based on the merit of each case by submitting a completed FIC R/2004 form.

XI. DECISION BY THE FIC

21. Decisions by the FIC on all complete applications will be given within 10 working days.

XII. CORRESPONDENCE ADDRESS AND ENQUIRIES

22. All applications must be submitted to: -

**The Secretary,
Foreign Investment Committee,
Economic Planning Unit,
Prime Minister's Department,
Level -1, Block B5,
Federal Government Administrative Centre,
62502 Putrajaya, Malaysia.**

23. Any enquiries can be forwarded to the FIC's Secretariat:-

**Tel. No. : 603-8888 3333/2944/2916
Fax No. : 603-8888 3917**

24. This Guideline is also available on the Economic Planning Unit's website:-

Website : <http://www.epu.jpm.my>