



FOREIGN INVESTMENT COMMITTEE

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

Economic Planning Unit, Prime Minister's Department

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**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 (Amendment) is effective from 1 January 2008.

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:

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| | (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 (unless the effective shareholding is stated); 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; |
| Government | means the Federal Government; |
| Guideline | means the Guideline On The Acquisition Of Interests, Mergers And Take-Overs By Local And Foreign Interests; |

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| Interest | means holding voting rights or equity or any other rights in a company; |
| Institution | means organization, association and corporation registered under Corporations Act 1966; |
| 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; |
| target company | means a company which its interest is being transacted; |
| 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 |
| public company | means a public company as defined in the Companies Act 1965; |

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 which requires the approval of FIC:
 - 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 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;
 - 4.4 Any proposed acquisition of interest in any local company or business in Malaysia regardless of whether the value is less than RM10 million by:
 - 4.4.1 any foreign interest of the voting rights to the level of 15% or more or which will result in an increase of the voting rights to the level of 15% or more; or
 - 4.4.2 any associated or non-associated group of foreign interests of the cumulative voting rights to the level of 30% or more or which will result in an increase of the cumulative voting rights to the level of 30% or more;
 - 4.5 Any proposed merger or take-over of any local company or business in Malaysia by local or foreign interests;
 - 4.6 Any proposed joint venture involving two (2) or more parties in a local company;

- 4.7 Any control of a local company or business in Malaysia through any form of management agreement, technical assistance agreement or other arrangements;
 - 4.8 Any transaction by statutory bodies, companies and their subsidiaries owned by the Federal or State Governments;
 - 4.9 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; and
 - 4.10 Any acquisition of interest by local company which is financed by cash.
5. This Guideline shall apply to transaction which requires approval from any Ministries or Departments/Government Agencies/Statutory Bodies eventhough the approval of FIC is not required.
6. This Guideline shall apply to the following transactions which require the consideration of the Securities Commission (SC) but does not require the approval of FIC:
- 6.1 any proposal related to a unit trust management company;
 - 6.2 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;
 - 6.3 any proposal which is subject to Section 32 of the Securities Commission Act 1993; and
 - 6.4 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-Over and Mergers 1998;

V. ACQUISITION FOR NOTIFICATION

7. Any proposed acquisition of interest in any local company or business in Malaysia eventhough the value is less than RM10 million for open market acquisitions on Bursa Malaysia meant for short term holdings by:
- 7.1 any foreign interest of the voting rights to the level of 15% or more or which will result in an increase of the voting rights to the level of 15% or more; or

- 7.2 any associated or non-associated group of foreign interests of the cumulative voting rights to the level of 30% or more or which will result in an increase of the cumulative voting rights to the level of 30% or more.

VI. EXEMPTIONS

8. This Guideline shall not apply in the following situations:
- 8.1 any acquisition of interest by Ministries and Government Departments (Federal and State);
 - 8.2 any acquisition of interest by Minister of Finance Incorporated, Chief Minister Incorporated and State Secretary Incorporated are considered to have been approved by the Government;
 - 8.3 any privatization projects, whether at the Federal or State level provided that it involves the companies which are the original signatories in the contracts for the privatized projects as they are deemed to have been approved by the Government except for other companies which later participated in the projects that resulted in the changes of the equity of the company carrying out the privatization project and as such, the approval of FIC is required;
 - 8.4 any acquisition of interest in a manufacturing company licensed by the Ministry of International Trade and Industry as well as manufacturing company which are exempted from obtaining manufacturing license except for transactions under the jurisdiction of SC;
 - 8.5 any acquisition of interest in Multimedia Super Corridor (MSC) status companies;
 - 8.6 any acquisition of interest in a local company which operate in the approved area in the Iskandar Regional Development and have been granted the status by Iskandar Regional Development Authority (IRDA);
 - 8.7 any acquisition of interest in a local company which operate in the approved area in any regional development corridor by companies that have been granted the status by the local authority as determined by Government;
 - 8.8 any acquisition of interest in a company which has obtained the endorsement from the Secretariat of the Malaysian International Islamic Financial Centre (MIFC); and

- 8.9 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.

VII. MODE OF PAYMENT

- 9. The purchase consideration is applicable in all modes of payment including:
 - 9.1 cash;
 - 9.2 exchange of shares;
 - 9.3 debt settlements;
 - 9.4 exchange of fixed assets;
 - 9.5 charging of shares; and
 - 9.6 any combination of the above.
- 10. Financing from internal and external sources are allowed for all acquisition of interest.

VI. EQUITY CONDITIONS

- 11. Conditions to be imposed are as follows:
 - 11.1 Companies which do not have any Bumiputera equity or having less than 30% Bumiputera equity, are required to have or 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;
 - 11.2 The requirement of at least 30% Bumiputera equity participation will be applied uniformly except if expressly stated otherwise by the Government;
 - 11.3 For companies which activities involve national interests such as water and energy supply, broadcasting, defense and security and any activities which is of national interest as determined by the Government from time to time, 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”;

- 11.4 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;
- 11.5 Companies which already have Bumiputera equity shareholding of 51% or more, will be required to maintain at least 51% Bumiputera equity at all times;
- 11.6 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;
- 11.7 For a non-licensed manufacturing company incorporated after 31 July 1998, no equity condition will be imposed;
- 11.8 The equity conditions that will be imposed on companies seeking listing on Bursa Malaysia are as follows:
 - 11.8.1 Main Board or Second Board - upon listing, companies are required to have at least 30% Bumiputera equity unless exempted by the relevant Government agencies or regulatory bodies and therefore, are deemed complied;
 - 11.8.2 Malaysian Exchange of Securities Dealing and Automated Quotation Berhad (MESDAQ) - upon listing, companies are required to comply with the Bumiputera equity condition; and
 - 11.8.3 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;
- 11.9 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
- 11.10 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.

IX. SHARE CAPITAL CONDITIONS

12. 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; and
13. 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.

X. EMPLOYMENT CONDITION

14. 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.

XI. CONDITIONS FOR CHARGING OF SHARES

15. In the event of foreclosure of the shares charged as in paragraph 4.9, the onus of the chargor are as follow:
 - 15.1 to obtain the approval of FIC;
 - 15.2 to give the priority to Malaysian to acquire the property; and
 - 15.3 to inform the chargee of the conditions as in paragraph 15.1 dan 15.2.

XII. COMPLIANCE PERIOD OF THE CONDITIONS

16. Equity condition imposed, if any, must be complied with within two (2) years from the date of FIC's approval letter.
17. The compliance status must be reported to the FIC at least three (3) months before the compliance deadline and/or whenever requested by the FIC.
18. Share capital imposed, if any, must be complied with within six (6) months from the date of FIC's approval letter.
19. The compliance period may be extended based on the merit of the case.

XIII. PROCEDURES ON SUBMITTING APPLICATION

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

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

23. For proposed acquisition of interests, mergers and take-overs by local and foreign interests, each application must be accompanied by the following documents:
 - 23.1 Form FIC S/2004;
 - 23.2 Forms Proforma I/2004 and/or Proforma II/2004;
 - 23.3 One (1) copy of the relevant agreement;
 - 23.4 One (1) copy of the letter/license from the ministries or Government agencies (if applicable);
 - 23.5 One (1) copy of the confirmation letter from the Company Secretary on the company's current equity structure;
 - 23.6 One (1) copy of the approval letter on the same proposal from other ministries or Government agencies (if applicable);
 - 23.7 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 authorized personnel/individual; and
 - 23.8 any other document considered necessary by FIC.

Foreign Equity Shareholding In A Local Company

24. 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:

- 24.1 Form FIC S/2004;
 - 24.2 Forms Proforma I/2004 and II/2004;
 - 24.3 Form 24 and Form 49;
 - 24.4 One (1) copy of the letter from the Immigration Department;
 - 24.5 One (1) copy of the license from the ministries or Government agencies (if applicable);
 - 24.6 One (1) copy of the confirmation letter from the Company Secretary on the company's current equity structure;
 - 24.7 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 authorized personnel/individual; and
 - 24.8 any other document considered necessary by FIC.
25. 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 24.1 to 24.8 (whichever is applicable).

Acquisition Of Interest For FIC's Notification

26. For proposed acquisition of interest that requires notification to FIC, each application must be accompanied by the following documents:
- 26.1 Form FIC S/2004;
 - 26.2 Forms Proforma I/2004 and/or Proforma II/2004;
 - 26.3 One (1) copy of the relevant agreement;
 - 26.4 One (1) copy of the letter/license from the ministries or Government agencies (if applicable);
 - 26.5 One (1) copy of the confirmation letter from the Company Secretary on the company's current equity structure;
 - 26.6 One (1) copy of the approval letter on the same proposal from other ministries or Government agencies (if applicable);

26.7 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 authorized personnel/individual; and

26.8 any other document considered necessary by FIC.

XIV. DECISION BY THE FIC

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

XV. APPEAL

28. 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.

XVI. REPEAL

29. Guideline On The Acquisition Of Interests, Mergers And Take-Overs By Local And Foreign Interests dated 21 May 2003 is repealed.

XVII. CORRESPONDENCE ADDRESS AND ENQUIRIES

30. 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.**

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

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

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

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