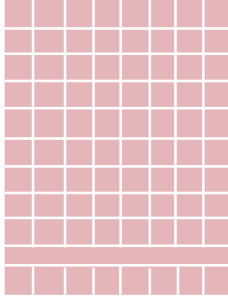


Investors' Guide

INVESTORS' GUIDE

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Investors' Guide

I. INVESTMENT INCENTIVES BY LEGISLATION (AS AT 27 OCTOBER 2000)

A. Promotion of Investments Act 1986

Malaysia offers incentives for investments in promoted products and activities in the manufacturing, agriculture, hotel and tourism industry, research and development (R&D) and training activity. These incentives are contained in the Promotion of Investments Act 1986 and the Income Tax Act 1967. The incentives are designed to grant partial or to a limited extent total relief from the payment of income tax.

(1) Pioneer Status (PS)

A company that is granted PS will enjoy different degree of exemptions depending on the types of promoted products or activities as follows:

(a) Promoted product/activity

Company will be granted exemption of income tax on 70% of the statutory income for 5 years. The balance 30% of that statutory income will be taxed at the prevailing company tax rate.

(b) Promoted product/activity in promoted area

Company located in Sabah, Sarawak and the designated Eastern Corridor of Peninsular Malaysia which covers, Kelantan, Terengganu, Pahang and the district of Mersing in Johor, will be granted exemption of income tax on 85% of the statutory income

for 5 years. The balance 15% of that statutory income will be taxed at the prevailing company tax rate.

(c) Promoted product/activity for high technology companies

Company will be granted full exemption of income tax i.e. on 100% of the statutory income for 5 years.

(d) Promoted product in an approved industrial linkage scheme

Company will be granted full exemption of income tax i.e. on 100% of the statutory income for 5 years (SMIs producing intermediate goods).

(e) Promoted product/activity of national and strategic importance including the MSC status companies and product/activity in the approved linkage programme which achieve world class status.

(i) Company will be granted full exemption of income tax i.e. on 100% of the statutory income for 5 years and is eligible for extension of another 5 years.

(ii) Companies accorded Multimedia Super Corridor (MSC) status are also eligible for this incentive in addition to other incentives under the Bill of Guarantees. The tax incentive accorded to the MSC companies is also extended to multimedia faculties located outside the MSC. A multimedia faculty under the proposed incentive is referred to as a centre of learning which provides courses in media, computer, information

technology, telecommunications, communications and contents relating to data, voice, graphics and images.

- (iii) Companies in approved industrial linkage scheme capable of achieving world class standards in terms of price, quality and capacity are also eligible. Companies that have started operation are also eligible but the incentives will only be given on the additional income. For companies currently enjoying PS may apply for the incentives at the end of the existing incentive period.

- (f) Contract research and development (R&D) company

(A company that provides R&D services in Malaysia to a company other than its related company).

Company will be granted full exemption of income tax i.e. on 100% of the statutory income for 5 years.

Terms and conditions for companies enjoying PS:

- (i) Company granted PS must within 6 months request for a pioneer certificate, specifying among others the date of production from which the partial exemption/full exemption will be granted.
- (ii) Capital allowances have to be utilised during the pioneer period and will not be allowed to be carried forward to the post pioneer period.
- (iii) Losses unabsorbed during the pioneer period will not be allowed to be carried forward to the post pioneer period except for PS for Contract Research and Development Company.
- (iv) Dividends paid out of tax-exempt income to shareholders will also be exempted from tax.

(2) Investment Tax Allowance (ITA)

The Investment Tax Allowance is an alternative to the pioneer status and is designed to cater for projects which have large capital investments and long gestation periods.

As in the case of PS, a company granted ITA will enjoy different degree of exemptions stated as follows:

(a) Promoted product/activity

Company will be granted an allowance of 60% in respect of qualifying capital expenditure (such as factory, plant, machinery or other equipment used for approved project) incurred within 5 years from the date that the first capital expenditure was incurred. The allowance can be utilised to set off up to 70% of the statutory income in the assessment year. The balance of that statutory income will be taxed at the prevailing company tax rate. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been used up.

(b) Promoted product/activity in promoted area

Company located in Sabah, Sarawak and designated Eastern Corridor of Peninsular Malaysia which covers Kelantan, Terengganu, Pahang and the district of Mersing in Johor will be granted an allowance of 80% in respect of qualifying capital expenditure incurred within 5 years from the date that the first capital expenditure was incurred. The allowance can be utilised to set off up to 85% of the statutory income in the assessment year. The balance of that statutory income will be taxed at the prevailing company tax rate. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been used up.

(c) Promoted product/activity for high technology companies

Company will be granted an allowance of 60% in respect of qualifying capital expenditure incurred within 5 years from the date the first capital expenditure was incurred. The allowance can be utilised to set off against 100% of statutory income in the year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been used up.

(d) Promoted product in an approved industrial linkage programme

Company will be granted an allowance of 100% in respect of qualifying capital expenditure incurred within 5 years from the date the first capital expenditure was incurred. The allowance can be utilised to set off against 100% of statutory income in the year of assessment. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been used up.

(e) Promoted product/activity of national and strategic importance including MSC companies and product/activity in the approved linkage programme which achieve world class status.

(i) Company will be granted an allowance of 100% in respect of qualifying capital expenditure incurred within 5 years from the date the first capital expenditure was incurred. The allowance can be utilised to set off against 100% of statutory income in the year of assessment.

(ii) Companies accorded Multimedia Super Corridor (MSC) status are also eligible for this incentive in addition to other incentives under the Bill of Guarantees. The tax incentive accorded to the MSC companies is also extended to multimedia faculties located outside the MSC. A multimedia faculty under the proposed incentive is referred to as a centre of learning which provides courses in media, computer, information technology, telecommunications, communications and contents relating to data, voice, graphics and images.

(iii) Companies in approved industrial linkage scheme capable of achieving world class standards in terms of price, quality and capacity are also eligible. Companies that have started operation are also eligible but the incentives will only be given on the additional investment. For companies

currently enjoying ITA may apply for the incentives at the end of the existing incentive period.

(f) Research and Development (R&D) activities

Different incentives are given to companies specialising in R&D activities, i.e. incentives for "R&D company" and incentives for "Contract R&D company":

(i) R&D company (a company that provides R&D services in Malaysia to its related company or to any other company)

Company will be granted an allowance of 100% in respect of qualifying capital expenditure incurred within 10 years from the date from which the first capital expenditure incurred. The allowance can be utilised to set off up to 70% of the statutory income in the assessment year. The balance of that statutory income will be taxed at the prevailing company tax rate. Any unutilised allowance can be carried forward to the subsequent years until it is fully utilised.

(ii) Contract R&D company (a company that provides R&D services in Malaysia to a company other than its related company)

Company will be granted an allowance of 100% in respect of qualifying capital expenditure incurred within 10 years from the date from which the first capital expenditure was incurred. The allowance can be utilised to set off up to 70% of the statutory income in the assessment year. The balance of that statutory income will be taxed at the prevailing company tax rate. Any unutilised allowance can be carried forward to the subsequent years until it is fully utilised.

- (iii) In-house R&D (research and development carried on in Malaysia within a company for the purpose of its own business)

Company will be granted an allowance of 50% in respect of qualifying capital expenditure incurred within 10 years from the date from which the first capital expenditure incurred. The allowance can be utilised to set off up to 70% of the statutory income in the assessment year. The balance of that statutory income will be taxed at the prevailing company tax rate. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been used up.

(g) Technical or Vocational training company

Company will be granted an allowance of 100% in respect of qualifying capital expenditure incurred within 10 years from the date from which the first capital expenditure incurred. The allowance can be utilised to set off up to 70% of the statutory income in the assessment year. The balance of that statutory income will be taxed at the prevailing company tax rate. Any unutilised allowance can be carried forward to subsequent years until the whole amount has been used up.

Companies with existing technical or vocational training institutes and which incur new investment to upgrade their training equipment or expand their training capacities are also eligible for this incentives.

(3) Industrial Adjustment Allowance (IAA)

IAA is available to companies in selected manufacturing sector* which are in existence before 31.12.1990 and were already participating in certain industrial adjustment activities such as reorganisation, reconstruction or amalgamation within the sector.

Companies will be granted an allowance of 60% to 100% based on the industrial adjustment activities undertaken. The allowance will be given in respect of qualifying capital expenditure incurred

within 5 years. The allowance can be utilised to set off against 100% of adjusted income in the year of assessment.

Terms and conditions for companies enjoying ITA & IAA:

- (i) Any unutilised allowance can be carried forward to the subsequent years until it is fully utilised.
- (ii) Dividends paid out of tax-exempt income to shareholders will also be exempted.

Note (*):

Wood based, textile, machinery and engineering, stamping, mould, tools and dies and machinery sub-sector.

(4) Infrastructure Allowance (IA)

IA is available to any company resident in Malaysia engaged in manufacturing, agricultural, hotel, tourist or other industrial/commercial activity in Sabah, Sarawak and the designated Eastern Corridor of Peninsular Malaysia.

Company will be granted an allowance of 100% in respect of capital expenditure on infrastructure (such as reconstruction, extension, or improvement of any permanent structure including a bridge, jetty, port or road). The allowance can be utilised to set off up to 85% of statutory income in the year of assessment. The balance of that statutory income will be taxed at the prevailing company tax rate. Any unutilised allowance can be carried forward to the subsequent years until it is fully utilised.

(5) Double Deduction on Expenses for Promotion of Exports

This incentive is available to any company resident in Malaysia seeking opportunities for exports of manufactured products, services products and agricultural products.

The expenses eligible for double deduction are:

- (a) overseas advertising,
- (b) supply of free samples abroad,

- (c) export market research,
- (d) preparation of tenders for the supply of goods overseas,
- (e) supply of technical information abroad,
- (f) exhibits and/or participation required in trade or industrial exhibitions held locally or abroad approved by the Ministry of International Trade and Industry (MITI),
- (g) fares in respect of travel overseas by employees of companies for business,
- (h) accommodation and sustenance expenses incurred by Malaysian businessman going overseas for business, subject to RM200 per day, and
- (i) cost of maintaining sales office overseas for the promotion of exports.

For pioneer companies, the deduction are accumulated and allowed against their post-pioneer income.

B. Income Tax Act 1967

(1) Exemption of Income

(a) Approved Service Projects (ASP)-(Section 127)

The income of companies undertaking ASP is exempted at statutory level. The quantum of tax exemption on statutory income varies between 70% and 100% for a period of 5 to 10 years from the date of generation of income. The quantum of exemption available are as follows:

- (i) companies undertaking ASP will be granted partial exemption of income tax on 70% of the statutory income for 5 years. The balance 30% of that statutory income will be taxed at the prevailing company tax rate;
- (ii) companies undertaking ASP in Sabah, Sarawak and the designated 'eastern corridor' of Peninsular Malaysia will be granted partial exemption of income tax on 85% of the statutory income for 5 years. The balance 15% of that statutory income will be taxed at the prevailing company tax rate;

- (iii) companies undertaking ASP of national and strategic importance will be granted full exemption of statutory income from payment of income tax for 10 years.

Note:

- Dividends paid out of tax-exempt income to shareholders will also be exempted from tax.
- Capital allowances and losses unabsorbed have to be utilised during the exemption period and will not be allowed to be carried forward to the post exemption period.

(b) Trading Companies

Companies approved as "International Trading Company" are given income tax exemption amounting to 70% of the statutory income arising from increased export sales. For the purpose of this incentive, export sales do not include trading commissions and profits derive from trading at the commodity exchange. This exemption is for five (5) years. To qualify as an 'International Trading Company', a company must satisfy the following criteria:

- (i) be incorporated in Malaysia,
- (ii) achieve an annual sales turnover of more than RM25 million,
- (iii) equity holding of at least 70% by Malaysian,
- (iv) market manufactured goods, especially those from small and medium scale industry, and
- (v) be registered with MATRADE.

In addition, the company must satisfy the following conditions to enjoy for the tax incentive:

- (i) not more than 20% of annual sales is derived from trading of commodities,
- (ii) not more than 20% of annual sales is derived from the sales of the goods of related companies, and
- (iii) use local services such as banking, finance, insurance, ports and airports.

(c) Operational Headquarters Company (OHQ)

An approved OHQ company is a locally incorporated (Please refer to the illustration below) which carries on a business in Malaysia of providing qualifying services to its offices or related companies outside Malaysia and which is approved by the Minister of Finance.

Under Section 60E of the Income Tax Act 1967, income derived by an approved OHQ company is given a tax concession from the provision of qualifying services in respect of:

- (i) general management and administration;
- (ii) business planning and co-ordination;
- (iii) procurement of raw materials, components and finished products;
- (iv) technical support and maintenance;
- (v) marketing control and sales promotion planning;
- (vi) training and personnel management;
- (vii) treasury and fund management services;
- (viii) corporate financial advisory services;
- (ix) research and development (R&D) work;
- (x) Income arising from sources outside Malaysia and received in Malaysia by a resident company is not subject to tax;
- (xi) The tenure of the OHQ incentives is for a period of five (5) years which may be extended for another five (5) years;
- (xii) Companies granted an approved OHQ status will enjoy a 10% concessionary tax on business income, income from loan/fund management services (interest on approved loans raised through financial institutions in Malaysia and extended to its offices or related companies outside Malaysia) and royalty income received from research and development work.

(d) Venture Capital Companies

Tax incentive for the venture capital companies (VCC) are as follows:

- (i) VCC is given full tax exemption on all sources of income at the statutory income; and
- (ii) Exemption up to 10 years or equivalent to the life span of the fund, whichever is the lesser.

Qualifying criteria:

- (i) At least 70% of the funds be invested in venture companies and in the form of seed capital, start-up or early stage financing;
- (ii) Definition of 'early stage financial' would include—
 - (a) capital expenditure and/or working capital to initiate commercialization of technology or product;
 - (b) additional capital expenditure and/or working capital to increase production capacity, marketing or product development; or
 - (c) an interim funding for companies expecting to go public.

For products or activities that are not in MESDAQ's list of technology-based activities, subclasses (b) or (c) would only be applicable if the financing/funding has been provided for from seed-capital or start-capital or start-up stage.

- (iii) The venture company must be involved in product/activities promoted by the Government such as projects listed in the promoted list for pioneer status/investment tax allowance incentive or MSC-status project:

The products or activities of the investee companies must be recognized under any of the following:

- (a) pioneer status or investment tax allowance incentive granted by MIDA/MITI;

- (b) MSC status;
 - (c) MESDAQ priority technology areas;
 - (d) High tech incentives granted by MIDA;
 - (e) Industry Grant Scheme;
 - (f) SMIDEC.
- (iv) VCC should not invest in a company within its group or in a company in which it has equity participation.

Application procedures:

- (i) VCC must obtain annual certification from the Security Commission that the conditions imposed for the incentives have been complied; and
- (ii) The letter of certification must be attached with the income tax return form for submission the Inland Revenue Board.

This incentive effective from year of assessment 2000 (current year basis)

(e) Tour Operators

- (i) Incentive for bringing in Foreign Tourists

Exemption from tax on income earned from the business of operating tours provided that the tour operators are licensed with the Ministry of Culture, Arts & Tourism and the tour operators bring in at least 500 foreign tourists through group inclusive tours. This incentive is extended until year of assessment 2001 (current year basis).

- (ii) Incentive for Domestic Tourism

Exemption from tax on income earned from the business of operating tours provided that the tour operators are licensed with the Ministry of Culture, Arts and Tourism and the tour operators conduct domestic tour packages with at least 1,200 local tourist per year. For this purpose, a

domestic tour package means any tour package within Malaysia participated by local tourist (individuals who are Malaysian citizens or residing in Malaysia) inclusive of transportation by air, land or sea and providing at least one night accommodation.

This incentive is extended until year of assessment 2001 (current year basis).

(f) Promotion of International Conference

Local companies which promote international conferences in Malaysia will be eligible for income tax exemption on income earned from bringing at least 500 foreign participants into the country.

(g) Promotion of Export

Exemption of statutory income equivalent to 10% of the value of increased exports is given to manufacturers provided that the goods exported attains at least 30% value added;

- (i) exemption of statutory income equivalent to 15% of the value of increased exports is given to manufacturers provided that the goods exported attains at least 50% value added;
- (ii) exemption of statutory income equivalent to 10% of the value of increased exports is given to companies which export fruits and cut flowers;
- (iii) exemption of statutory income equivalent to 10% of the value of increased exports is given to companies in selected services sector as follows:
 - (a) legal;
 - (b) accounting;
 - (c) engineering consultancy;
 - (d) architecture;
 - (e) marketing;

- (f) business consultancy;
- (g) office services;
- (h) construction management;
- (i) building management;
- (j) plantation management; and
- (k) health and education.

(h) Promotion of Car and Motorcycle Racing Events

Drivers and organisers of car and motorcycles racing of international standard held in Malaysia are eligible for:

- (i) full tax exemption on income earned by the drivers;
- (ii) 50% tax exemption on income earned by the organisers.

(i) Promotion of Boat/Yacht Maintenance Activities in Langkawi

Companies undertaking repair and maintenance activities of luxury boats and yacht in Langkawi are eligible for full income tax exemption for 5 years.

(j) To encourage the use of information technology (IT) to improve business and management process

To enhance productivity and efficiency in the production system of the manufacturing, agriculture and services sectors, all operating expenditure including payments to consultants related to the usage of IT in improving management and production processes is allowed as a deduction in the computation of income tax.

This incentive is effective from year of assessment 2000 (current year basis).

(2) Investment Allowance (IA) (Schedule 7B)

IA is an alternative to income tax exemption under section 127 for companies undertaking ASP. Under IA, the quantum of allowance available to companies undertaking ASP in respect of qualifying capital expenditure incurred within 5 years from the date the qualifying capital expenditure is first

incurred varies between 60% to 100%. The allowance can be utilised to set off against 70% to 100% of the statutory income. The quantum of allowance available are as follows:

- (i) companies undertaking ASP will be granted IA of 60% in respect of qualifying capital expenditure incurred within 5 years from the date the capital expenditure is first incurred. The allowance can be utilised to set off against 70% of the statutory income;
- (ii) companies undertaking ASP in Sabah, Sarawak and the designated eastern corridor of Peninsular Malaysia will be granted IA of 80% in respect of qualifying capital expenditure incurred within 5 years from the date the capital expenditure is first incurred. The allowance can be utilised to set off against 85% of the statutory income;
- (iii) companies undertaking ASP of national and strategic importance will be granted IA of 100% in respect of qualifying capital expenditure incurred within 5 years from the date the capital expenditure is first incurred. The allowance can be utilised to set off against 100% of statutory income.

Note:

- Dividends paid out of tax-exempt income to shareholders will also be exempted.
- Any unutilised allowance can be carried to the subsequent years until it is fully utilised.

(3) Reinvestment Allowance (RA)

RA is given to manufacturing and agricultural companies producing essential food (rice, maize, vegetable, tubers, livestock farming, production of aquatic products and any other activities approved by the Minister of Finance) undertaking expansion, modernisation, and diversification activities.

The level of RA granted are as follows:

- (a) Projects in promoted areas such as Sabah, Sarawak and designated Eastern Corridor of Peninsular Malaysia which covers Kelantan, Terengganu, Pahang and the district of Mersing in Johor.
 - RA of 60% in respect of qualifying capital expenditure incurred. The

allowance can be utilised to set off against 100% of statutory income in the year of assessment.

(b) Projects in non-promoted areas (Western Corridor of Peninsular Malaysia);

(i) RA of 60% in respect of qualifying capital expenditure. The allowance can be utilised to set off up to 70% of statutory income in the assessment year. The balance of the statutory income will be taxed at the prevailing company tax rate.

(ii) Companies that carry out reinvestment which can improve significantly their productivity level will be granted RA of 60% which is allowed to be utilised to set off against 100% of statutory income.

Definition of “significant increase in productivity”

PER has increased by at least the same rate as the GDP growth rate for that industry.

Formula : Process Efficiency Ratio (PER)

$$\text{PER} = \frac{\text{Total Output} - \text{BIMS}}{\text{Total Input} - \text{BIMS}}$$

Whereby, BIMS (Bought in materials and services) is defined as value of materials consumed in the production process (including payment for the transport, tax paid including those on materials) + value of equipment used such as packaging materials, daily used materials (including office stationery, materials for improvement and maintenance) + publication cost + lubricants + cost of goods sold in same condition such as utilities (water, electricity and fuels) + payments to contractors + payment to industrial work done by others + payment for non-industrial services.

Eligibility criteria

The RA is subjected to the following criteria:

- (i) The company must be in operation for at least 12 months.
- (ii) The RA will be given for a period of 5 years beginning from the year the first reinvestment is made;

(iii) Assets acquired from RA cannot be disposed within 2 years of reinvestment.

Note:

- Effective from the year of assessment 2001, RA will be granted to manufacturing companies that reinvest to expand/modernise/diversify which result in improve productivity, as measured by “PER”. Any reinvestment that does not result in improve productivity is no longer eligible for RA.

(4) Double Deduction Incentive

i. Research & Development (R&D)

Companies including companies in the services sector are eligible for double deduction incentive on expenses incurred for undertaking R&D activities. For this purpose, R&D is defined as follows:

“Research and development (R&D) means any systematic or intensive study undertaken in the field of science or technology with the object of using the results of the study for the production or improvement of materials, devices, products, produce or processes but does not include:

- (i) quality control of products or routine testing of materials, devices, products or produce;
- (ii) research in the social sciences or the humanities;
- (iii) routine data collection;
- (iv) efficiency surveys or management studies;
- (v) market research or sales promotion; and
- (vi) with effect from year of assessment 1998, a company carried out designing or prototyping as an independent activity will also qualify for R&D incentives”

Incentives given for R&D are as follows:

- (a) Approved Research- Section 34A of Income Tax Act 1967
 - (i) Double Deduction on non-capital expenditure incurred on research and development approved by the Minister of Finance.

(b) Payment for Services- Section 34B (1)
(b) & (c) Double deduction on payment
for use of services of:

- (i) approved research institutions; *
- (ii) approved research and development
(R&D) company; **
- (iii) a contract research and development
(R&D) company. **

Note:

* Approved research institution includes
the following:

- (a) all government research institutions,
including institutions corporatised
under Section 24 of the Companies
Act 1965;
- (b) government funded universities
which undertake research that
conform to the definition of R&D
as indicated above.

** R&D company or contract R&D
company refers to companies which
are established in conformity with
Section 2 of the Promotion of
Investments Act 1986.

(c) Cash Contributions Section 34B (1)
((a) Double deduction on cash
contributions made to approved
research institutions. The list of
approved research institutions as
at 27 October 2000 are:

- (i) Malaysian Agricultural
Research and Development
Institute (MARDI)
- (ii) Rubber Research Institute of
Malaysia (RRI)
- (iii) Forest Research Institute
Malaysia (FRIM)
- (iv) Malaysian Institute of Micro
Electronic System (MIMOS)
- (v) Palm Oil Research Institute
of Malaysia (PORIM)
- (vi) Standard and Industrial
Research Institute of Malaysia
(SIRIM)
- (vii) Mineral Research Institute
- (viii) Malaysian Centre for Remote
Sensing (MACRES)
- (ix) Veterinary Research Institute

(x) Fisheries Research Institute

(xi) Institute for Medical Research
(IMR)

(xii) Malaysian Institute for
Nuclear Technology Research
(MINT)

(xiii) Unit Pengurusan
Penyelidikan, Universiti
Kebangsaan Malaysia (UK

(xiv) Pusat Inovasi dan
Perundingan, Universiti Sains
Malaysia (USM)

(xv) Pusat Penyelidikan dan
Perundingan, Universiti Utara
Malaysia (UUM)

(xvi) Unit Penyelidikan, Universiti
Putra Malaysia (UPM)

(xvii) Pusat Penyelidikan, Universiti
Islam Antarabangsa Malaysia
(UIA)

(xviii) Unit Perundingan, Universiti
Malaya (UM)

(xix) Unit Penyelidikan dan
Pembangunan, Universiti
Teknologi Malaysia (UTM)

(xx) Unit Penyelidikan, Universiti
Malaysia Sabah (UMS)

(xxi) Unit Pemindahan Teknologi
& Perundingan, Universiti
Malaysia Sarawak (Unimas)

(xxii) Pusat Sains dan Teknologi
Pertahanan, Kementerian
Pertahanan

ii. Training

Effective from 1 July 1993 double deduction
for expenses on training will be considered only
for companies which do not contribute to the Human
Resource Development Fund (HRDF) and the
trainees must be full-time employees who are
Malaysian citizens.

(a) Approved Training Institutions

- (i) Companies under the services sector
not covered by the Human Resources
Development Fund (HRDF) are
eligible for double deductions on
training expenses if such training were
to be undertaken in approved training

institution or government training institutions. In order to qualify as an approved training institution, it must be an association based institute.

- (ii) Qualified manufacturing and non-manufacturing companies undertaking training in approved training institutions could claim double deduction on expenses billed by the respective approved training institutions. (No other expenses are allowed for double deduction). The approved training institutions as at 27 October 2000 are as follows:

- (a) National Productivity Corporation (NPC)
- (b) Standard and Industrial Research Institute of Malaysia (SIRIM)
- (c) Institut Teknologi Mara (ITM)
- (d) Malaysian Agricultural Research and Development Institute (MARDI)
- (e) Forest Research Institute of Malaysia (FRIM)
- (f) The Centre For Instructor and Advanced Skill Training (CIAST)
- (g) Penang Skills Development Centre (PSDC)
- (h) Institut Kemahiran Mara (IKM)
- (i) Industrial Training Institute (ITI)
- (j) German-Malaysia Institute (GMI)
- (k) Malaysia Timber Industry Board (MTIB)
- (l) Federation of Malaysian Manufacturer - Entrepreneur and Skills Development Centre (FMM-ESDC) (certain programmes only)
- (m) Perak Entrepreneur and Skills Development Centre (PESDC)
- (n) Tuas Polytech (British Malaysian Institute)
- (o) ASEAN Timber Technology Centre (ATTC)
- (p) Sarawak Timber Industry Development Corporation (STIDC)

- (q) Kedah Industrial Skills & Management Development Centre (KISMEC)
- (r) Malaysia France Institute (MFI)
- (s) Selangor Human Resource Development Centre (SHRDC)
- (t) Pusat Pembangunan Tenaga Industri Johor (PUSPATRI)
- (u) Malaysian Institute of Neuclear Technology (MINT)
- (v) Pahang Skills Development Centre

(b) Approved Training Programmes

- (i) Manufacturing companies in production

Manufacturing companies undertaking training programmes locally or overseas approved by MIDA for the purpose of upgrading/developing craft, supervisory skills, technical skills, productivity and quality improvements.

- (ii) Manufacturing companies not yet in production

Qualified manufacturing companies undertaking training programmes that are approved by MIDA for the purpose acquiring/developing craft, supervisory or technical skills, that can contribute to future production.

- (iii) Training for handicapped person

A company which incurred training expenses in the training of any handicapped person who is not an employee of the company. The training should be done either in-house or at any approved training institution in Malaysia. Such handicapped person must be classified as handicapped by the Ministry of National Unity and Social Development and the training undertaken must serve to enhance his/her employment prospect.

- (iv) Tourism Industry

Companies in the hotel or tour operating business which undertake training for the purpose of upgrading the level of skills and professionalism

in the tourism industry and approved by the Minister of Culture, Arts and Tourism.

(v) Non-manufacturing Companies

Non-manufacturing companies that send their employees to attend training programmes approved by the Ministry of Finance in the following institutions (1 January 1999):

- (a) Institut Bank-Bank Malaysia (IBBM)
- (b) Malaysian Insurance Institute (MII)
- (c) Federation of Malaysian Freight Forwarders (FMFF)
- (d) Association of Consulting Engineers Malaysia (ACEM)
- (e) The Electrical and Electronics Association of Malaysia (TEEAM)
- (f) AFCM Training Services Sdn. Bhd
- (g) Malaysian Institute of Management (MIM)
- (h) Institut Jurutera Malaysia (IEM)

iii. Freight Charges

- (a) Double deduction on freight charges for manufacturers in Sabah & Sarawak who export rattan and wood-based products.
- (b) Double deduction on freight charges for all manufacturers who ship their goods from Sabah & Sarawak to Peninsular Malaysia provided they use the ports in Peninsular Malaysia. This incentive is effective from the year of assessment 2000 (current year basis).

iv. Insurance Premiums

- (a) Double deduction on premiums paid for export credit insurance.
- (b) Double deduction on insurance premiums paid for the import of goods provided the risk are insured with an insurance company incorporated in Malaysia.

- (c) Double deduction on insurance premiums paid for export of goods provided the risk are insured with an insurance company incorporated in Malaysia.

v. Overseas Promotion

(a) Tourism Industry

Double deduction for tourism industry is granted on expenditure incurred by hotels and tour operators for overseas promotions as follows:

- (i) expenditure on publicity and advertisement in any mass media outside Malaysia;
- (ii) expenditure on the publication of brochures, magazines and guide books, including delivery costs which are not charged to the overseas customers;
- (iii) expenditure on market research to explore for new markets overseas, subject to the prior approval of the Ministry of Culture, Arts and Tourism;
- (iv) expenditure which includes fares to any country outside Malaysia for purposes of negotiating or securing a contract for advertising or participating in trade fairs, conferences or forum approved by the Ministry of Culture, Arts and Tourism. Such expenses are subject to a maximum for RM200 per day for lodging and RM100 per day for food for the duration of the stay overseas;
- (v) expenditure on organising trade fairs, conferences or forum approved by the Ministry of Culture, Arts and Tourism;
- (vi) maintenance of sales office overseas.

(b) Approved International Trade Fairs

Double deduction is allowed for expenditure incurred by a company for participating in an approved international trade fair held in Malaysia.

(c) Export of services

The incentive on double deduction on expenses incurred pertaining to promotion of export of services, which is currently available to the tourism subsector, is extended to the entire services sector.

The expenses eligible for double deduction are as follows:

- (i) export market research;
- (ii) preparation of tenders for the supply of services overseas;
- (iii) supply of technical information abroad;
- (iv) fares in respect of travel overseas by employees of companies for business;
- (v) accommodation and sustenance expenses incurred by Malaysian businessmen going overseas for business, subject to RM200 per day for lodging and RM100 per day for food;
- (vi) cost of maintaining office overseas for purpose of promotion of services.

Double deduction on promotion of export of services for companies eligible for tax incentives under Section 127 or Schedule 7B of the Income Tax Act 1967, is allowed to be accumulated and offset against their post exemption income.

(vi) Promotion of Local Brand Name

Double deduction on expenses incurred in Malaysia for advertising local Malaysian brand names products. The cost of advertisement include advertisements through internet, magazines and newspaper, television, advertisement hoarding, trade publications or sponsoring an approved international sporting events or international trade conference/exhibition. To be eligible, the local brands must satisfy the following criteria:

- (a) Brand name is owned by a company which is locally incorporated with at least 70% Malaysian;

(b) the brand name is registered in Malaysia;

(c) the brand name product must achieve export quality standards; and

(d) expenditure incurred in advertising must be incurred in Malaysia

(5) Single Deduction

(a) Approved Investment Overseas

Single deduction on pre-operating expenses such as cost of market research for approved investment overseas.

(b) Training Expenses

Single deduction on pre-operating training expenses incurred by any company.

(c) Technical or Vocational Training Institute

Single deduction for contribution in cash to a technical or vocational training institute established and maintained by the Government or statutory body.

(d) Organisation for the Promotion and Conservation of the Environment

Single deduction for donations to an approved organisation established exclusively for the protection and conservation of the environment.

(e) Single deduction for gift under Section 44(6A)

Single deduction for an amount equal to value as determined by the Department of Museums & Antiquities, the National Archives or National Art Gallery of any gift or artefact or manuscript made to the State/National Art Gallery, Government or State Government.

(f) Single deduction for gift in cash and kind under Section 34(6)

Single deduction for an amount equal to expenditure incurred:

- (i) on the provision of services, public amenities and contribution to a charity or community project pertaining to education, health, housing and infrastructure approved by the relevant authority;

- (ii) on the provision and maintenance of a child care centre for the benefit of persons employed by him in his business;
- (iii) in establishing and managing a musical or cultural group approved by the Minister;
- (iv) on sponsoring local and foreign cultural performances approved by the Ministry of Culture, Art and Tourism.

6. Industrial Building Allowance (IBA)

Industrial Building Allowance (IBA) is granted to companies incurring capital expenditure on construction or purchase of a building which is used for operational purposes. In this regard, companies are eligible for an initial allowance of 10% and an annual allowance of 2%.

IBA is granted to an industrial building and approved buildings used for the following purposes:

- (a) buildings or structures used for the operation of approved service sector projects;
- (b) private hospital, maternity home, nursing home licensed under any written law for the registration of private hospital, maternity home or nursing home.
- (c) hotel business (granted PS/ITA);
- (d) approved research projects and approved research companies;

A special allowance which is 1/10 of the expenditure incurred on the construction or purchase of the building is given for the following.

- (a) warehouse buildings which are used for storing goods for exports and import;
- (b) approved industrial training, technical or vocational training and education;
- (c) accommodation of employees in manufacturing business approved services project, hotel or tourism business;
- (d) providing child care facilities to employees in sectors in (g).

Annual allowance of 1/5 of qualifying capital expenditure incurred is given for accommodation of employees on a farm or in the forest.

7. Special Capital allowance

- (a) Computer and information technology assets.

Initial allowance of 20% and annual allowance of 40%.

- (b) Environmental protection equipment.

Initial allowance of 40% and annual allowance of 20%.

- (c) Deduction for acquiring property rights

Capital expenditure on acquiring proprietary rights such as patent, industrial design and trademarks is allowed as capital allowance for 10 years.

(8) Deduction for Capital Expenditure on Approved Agricultural Projects

Capital expenditure on approved agricultural projects under schedule 4A of the Income Tax Act 1967 allows a person carrying on an approved agricultural project to elect so that the qualifying capital expenditure incurred by him in respect of that project is deducted from his aggregate income, including income from other sources. Where there is insufficient aggregate income for the qualifying farm, expenditure to be deducted from the unabsorbed expenditure will be carried forward to subsequent years of assessment, he so elects, he will not be entitled to any capital allowance or agricultural allowance on that same capital expenditure.

This incentive is not available to companies which have been granted incentive under the Promotion of Investment Act 1986 and the repealed Investment Incentive Act 1968 and whose tax relief period have not started or have not expired.

The qualifying capital expenditure eligible for deduction for purposes of this incentive are as follows:

- (a) the clearing and preparation of land;

- (b) the planting (but not replanting) of a crop relating to an approved agricultural project;
- (c) the construction on a farm of a road or bridge;
- (d) the construction on a farm of a building used for the purposes of an approved agricultural project which is carried out on that farm or the construction on that farm of building provided for the welfare and accommodation of persons employed in that project and which, if that project ceased to be carried out, is likely to be little or no value to any person except in connection with the working of another farm;
- (e) the construction of a pond or the installation of an irrigation or drainage system which is used for the purpose of an approved agricultural project.

Only expenditure incurred within a specific time frame and in respect of a farm cultivation and utilising a specified minimum hectareage for each approved project as stipulated by the Minister of Finance will qualify. The approved projects are as follows:

<i>Project</i>	<i>Period</i>	<i>Minimum Hectarage</i>
1. Aquaculture (Prawns)	2 years	40 hectares
2. Cultivation of Crops:		
Papaya	1 year	40 hectares
bananas	1 year	40 hectares
passion fruit	1 year	40 hectares
star fruit	2 years	8 hectares
guava (jambu)	2 years	8 hectares
mangosteen	7 years	8 hectares
3. Floriculture*	2 years	8 hectares

Note:

- * (Plants, bulbs, tubers and roots with or without flowerbuds, of the kind specified in chapter 6 of the Custom Duties Order 1988, which are suitable for planting of ornamental use, excluding mushroom spawn, budded or seedling rubber stamp and rubber budwood).

(9) Special Tax Treatment for Gift

(a) Training Activity

Special tax treatment for donation of used machinery or equipment, to a technical or vocational training institute established and maintained by the Government or statutory body or technical or vocational training institute approved by the Minister of Finance

(b) Research Activity

Special tax treatment for donation of used machinery or equipment to approved research institutes.

(c) For both (a) & (b)

The disposal value of such machinery or equipment is deemed as zero. Any unutilised capital allowance (residual expenditure) in respect of the machinery or equipment will be given full deduction in the year of assessment in which the machinery or equipment are donated.

Prior to this, the disposal value of such gifts is taken to be the market value and if the value is higher than the utilised capital allowance, the donor is subject to tax on the balancing charge.

(10) Tax Exemption to Further Promote Labuan as International Offshore Financial Center (IOFC)

- (i) Management and technical fees, interest and royalty paid by offshore companies to non-residents or to other offshore companies are exempted from withholding tax.
- (ii) Dividend paid or received from offshore companies is not subjected to income tax except for dividend received from companies undertaking offshore business activities.
- (iii) Expatriates in Labuan in the field of management who are engaged by offshore companies are exempted from income tax on 50% of their gross income.

- (iv) Eligible professional services in legal services, accounting, finance or secretarial services, rendered to offshore companies in Labuan are exempted from income tax up to 65% of their statutory income, effective from year of assessment 1997 until year of assessment 2000. Income Tax (Exemption)(No.2) Order 1997.
- (v) Adjusted income from activities relating to provision of infrastructure in Labuan is exempted from income tax on 50% of their income.

C. Labuan Offshore Business Activity Act (LOBATA) 1990

- I. Offshore companies in Labuan undertaking offshore business can choose either to:
 - (i) pay tax at a rate of 3% from net profit; or
 - (ii) pay RM20,000.
- II. Income of offshore companies from non-trading activities is not subjected to any taxes.

D. Customs Act 1967, Sales Tax Act 1972, Excise Act 1976 and Free Zone Act 1990

(1) Manufacturing Sector

- (a) Import duty exemption on raw materials/components:
 - (i) Production for export market
Full exemption from import duty will be considered on imported direct raw materials/components which are not manufactured locally, or where they are manufactured locally are not of acceptable quality and price.
 - (ii) Production for domestic market
Effective 1 January 1999, full exemption from import duty will be considered on raw materials/components which are not available locally.

(b) Import duty and sales tax exemption on machinery and equipment

- (i) full exemption from import duty and sales tax for imported machinery/equipment that are not available locally and used directly in the manufacturing process;
- (ii) full exemption from sales tax and excise duties on locally purchased machinery/equipment used directly in the manufacturing process.

Duty exemption on spares and consumables was withdrawn in 1996 to encourage domestic production. However to reduce cost of production in the midst of economic turmoil, duty exemption was granted selectively based on specific criteria until 31 October 1999. The criteria are as follows:

- (i) Company must export at least 80% of their production;
- (ii) Such spares and consumables have limited demand and do not have potential for domestic production;
- (iii) Import duty on such items exceed 5%.

(c) Import duty sales tax exemption on spares and consumables

Full exemption on import duty and sales tax on spares and consumables used in the manufacturing process. The exemption is given selectively based on specific criteria until 31 December 2000. The criteria are as follows:

- (i) company must export at least 80% of their production; or
- (ii) such spares and consumables have limited demand and do not have potential for domestic production; or
- (iii) import duty on such items exceed 5%.

(d) Duty Drawback

Manufacturers who have paid duty on the imports of their raw materials & component and used it to produce goods for export within a year are eligible to claim drawback on the duty paid. Manufacturers should claim the drawback from the Customs Department but must satisfy the conditions laid out in Section 99 of the Customs Act 1968.

(e) Sales Tax Exemption

Manufacturers of taxable goods with annual sales turnover exceeding RM100,000 need to be licensed under Sales Tax Act 1972 and hence will be eligible to obtain exemption from sales tax on inputs (in line with single stage tax concept). For manufacturers with annual sales turnover less than RM100,000, they have the option to obtain exemption from sales tax on inputs (by being licensed) or pay sales tax on inputs but enjoy exemption on output.

(2) Agricultural Sector

(a) Duty exemption on raw materials/ components

(i) Produce for export market

Full exemption from import duty will be considered on imported direct raw materials/components which are not available locally or where they are available locally are not of acceptable quality and price.

(ii) Produce for domestic market

Full exemption from import duty will be considered on direct raw materials/ components which are not available locally.

(b) Duty exemption on machinery/equipment

Full exemption from—

- (i)** import duty and sales tax on imported machinery/equipment which are not available locally.
- (ii)** Sales tax and excise duties on locally purchased machinery/equipment.

(3) Service Sector

(a) Duty exemption on raw materials/ components

Exemption from import duty and sales tax is given on imported raw materials/ components which are used directly in the implementation of approved service projects and are not available locally.

(b) Duty exemption on machinery/equipment

Exemption is given on sales tax and excise duties on locally purchased machinery/ equipment which are used in the implementation of approved service projects

(4) Tourism Sector

Duty exemption on materials/equipments for accommodation and non-accommodation tourism projects.

Full exemption from—

- (a)** import duty and sales tax on identified imported materials/equipments.
- (b)** sales tax and excise duties on identified locally purchased equipments

(5) Film & Music Sector

Duty exemption on equipments for recording studios, production houses and cineplexes.

Full exemption from:

- (a)** import duty and sales tax on identified imported equipments.
- (b)** sales tax and excise duties on selected locally purchased equipments.

(6) Research Activity

Duty exemption on machinery/equipment, materials, raw materials and samples used for approved research projects, in house research, contract research and development company and research and development (R&D) company.

Full exemption from:

- (a) import duty and sales tax on imported items used for R&D irrespective whether it is available locally.
- (b) sales tax and excise duties on locally purchased items used for R&D.

(7) Training Activity

Duty exemption on machinery/equipment, materials, raw materials and samples used for approved training programme, approved training institution and technical or vocational training company.

Full exemption from—

- (a) import duty and sales tax on imported items used for training irrespective whether it is available locally.
- (b) sales tax and excise duties on locally purchased items used for training.

(8) Environment Protection

- (a) Manufacturing companies that purchased control pollution machinery/equipment.

Full exemption from:

- (i) import duty and sales tax on imported machinery/equipment that are not available locally.
 - (ii) sales tax and excise duty on locally purchased machinery/equipment.
- (b) Companies engaged in storage, treatment and disposal of toxic and hazardous waste; or manufacturing companies which produce toxic and hazardous waste (waste generators) and have their own storage, treatment and disposal facilities (on site/off site).

Full exemption from—

- (i) import duty and sales tax on imported machinery/equipment that are not available locally.
 - (ii) sales tax and excise duty on locally purchased machinery/equipment.

The level and criteria of exemption on raw material/component are the same as the exemption on raw material/component for the manufacturing sector.

(c) Catalytic Converters

Exemption from import duty and sales tax on catalytic converters to motor vehicle assemblers.

- (9) **All goods except petroleum and petroleum products are exempted from sales tax, import duty and excise duty, as Labuan is a free port.**

(10) International Procurement Centre (IPC)

The term International Procurement Centre (IPC) refers to a locally incorporated company whether local or foreign owned which carries on a business in Malaysia to undertake procurement and sales of raw materials, components and finished products to its group of related and unrelated companies in Malaysia or abroad. This would include procurement and sales from local sources or from third country.

The following incentives will be available to an approved IPC:

- (a) expatriate posts will be approved based on requirement of IPC;
- (b) open one or more foreign currency accounts with any licensed commercial bank to retain their export proceeds without any limit imposed;
- (c) enter into foreign exchange forward contracts with any licensed commercial bank to sell forward export proceeds based on projected sales;
- (d) exempted from the requirements of the Ministry of Domestic Trade and Consumer Affairs Guidelines on foreign equity ownership on wholesale and retail trade; and
- (e) bring in raw materials, components or finished products without payment of custom duties into Free Zones or Licensed Manufacturing Warehouses for repackaging, cargo consolidation and integration before distribution to the final consumers.

Companies that have a sizeable network of companies outside Malaysia which are well established and sizeable in terms of assets and employees with a substantial number of qualified professionals, technical and other supporting personnel can apply for an approved IPC status. In order to qualify for the incentives offered, the IPC must satisfy the following conditions:

- (a) locally incorporated under the Company's Act 1965 with a minimum paid-up capital of RM0.5 million;
- (b) a minimum total operating expenditure of RM1.5 million per year;
- (c) a minimum annual business turnover (sales) of RM50 million in the third year of operation; and
- (d) goods to be handled directly through Malaysian ports and airports.

Summary of Direct & Indirect Tax Incentives by Sectors

(1) Manufacturing Sector

- (a) Pioneer Status or Investment Tax Allowance
- (b) Industrial Adjustment Allowance
- (c) Infrastructure Allowance
- (d) Double deduction on expenses for promotion of exports
- (e) Reinvestment Allowance
- (f) Double deduction incentives for research
- (g) Double deduction incentives for training only for SMI's
- (h) Double deduction on freight charges for rattan and wood
- (i) Double deduction on insurance premium (export credit premium, premium for import, premium for capital)
- (j) Single deduction on pre-operating training expenses
- (k) Industrial Building Allowance
- (l) Special Capital Allowance for computers

(m) Duty exemption on machinery, raw materials & components/duty drawback for:

- (i) producing manufactured goods
- (ii) research activity
- (iii) training activity
- (iv) environment protection

(n) Special Capital Allowance for Environment friendly equipment

(o) Tax Exemption on value of incurred exports

(p) Special tax treatment for gifts

(2) Agricultural Sector

(a) Pioneer Status or Investment Tax Allowance

(b) Infrastructure Allowance

(c) Agriculture Allowance

(d) Reinvestment Allowance

(e) Double deduction incentives for research

(f) Double deduction incentives for training

(g) Single deduction on pre-operating training expenses

(h) Industrial Building Allowance

(i) Special deduction for capital expenditure on approved agricultural projects

(j) Special tax treatment for gifts

(k) Duty exemption on machinery, raw material & components for:

- (i) producing manufactured goods
- (ii) training activity
- (iii) research activity
- (iv) environment protection

(l) Double deduction on insurance premium (export credit insurance premium for import, premium for export)

(m) Tax exemption on value of increased exports

(n) Double deduction for promotion of export

- (o) Special capital allowance for computers
- (p) Special capital allowance for environment friendly equipment

(3) Service Sector

(i) Approved Service Projects (ASP)

- (a) Tax Exemption/Investment Allowance
- (b) Industrial Building Allowance
- (c) Duty Exemption on Machinery/ Equipment & Raw Materials/ Components
- (d) Double Deduction Incentive on Promotion of Export of Services
- (e) Double Deduction Incentive For Research & Development (Entire Services Sector)
- (f) Double Deduction Incentive on Training (Entire Services Sector)
- (g) Tax exemption on value of increased export
- (h) Special capital allowance for computers
- (i) Special capital allowance for environment friendly equipment

(ii) Tourism Sector

- (a) Pioneer Status/Investment Tax Allowance
- (b) Infrastructure Allowance
- (c) Double deduction incentive for research
- (d) Double deduction incentives for training
- (e) Double deduction for promotional expenditure
- (f) Single deduction on pre-operating training expenses
- (g) Industrial Building Allowance
- (h) Special Capital Allowance for computers

- (i) Special capital allowance for environmental friendly equipment
- (j) Tax exemption for tour operators
- (k) Duty exemption on materials & equipments
- (l) No import and excise duty on CKD components for locally assembled tourist buses.
- (m) No sales tax on pewter ware, camera, watches, lighters, fountain pens, transistor radios, perfumes and cosmetic products.
- (n) Abolishment of service tax in Labuan & Langkawi
- (o) Deduction for international Conference Promotion
- (p) Incentives for Domestic Tourism
- (q) Incentives for bringing in foreign tourists
- (r) Double deduction in approved International Trade fairs.

(iii) Research & Development Activity

- (a) Pioneer Status for Contract Research and Development Company.
- (b) Investment Tax Allowance (ITA) for Research and Development Company and Contract Research and Development Company (as an alternative to PS).
- (c) ITA for in-house research
- (d) Double Deduction Incentive
- (e) Industrial Building Allowance
- (f) Special Capital Allowance for computers
- (g) Special Tax Treatment for Gifts
- (h) Duty Exemption on Machinery & Materials

(iv) Training Activity

- (a) Investment Tax Allowance for new & existing Technical or vocational Training Company

- (b) Double Deduction Incentive
- (c) Single deduction for gift in cash
- (d) Industrial Building Allowance
- (e) Special Capital Allowance for computers
- (f) Special Tax Treatment for Gifts
- (g) Duty Exemption on Machinery & Materials

(4) **Environment Protection Activity**

- (a) Pioneer Status/Investment Tax Allowance for carrying out promoted product/activity such as:
 - (i) forest plantation project (strategic project);
 - (ii) processing of agricultural and chemical waste and storing;
 - (iii) treating and disposing of dangerous toxic waste.
- (b) Infrastructure Allowance
- (c) Single deduction for gift in cash
- (d) Special Capital Allowance
- (e) Duty exemption on machinery & materials
- (f) Duty exemption on catalytic convertors

(5) **Investment Overseas Activity**

- (a) Tax exemption on income;
- (b) Single deduction on pre-operating expenses for approved investment overseas.

(6) **Labuan IOFC**

- (i) Offshore companies in Labuan undertaking offshore business can elect to pay tax at a rate of 3% from net profit; or pay RM20,000.
- (ii) Income of offshore companies from non-trading activities is not subjected to any taxes.

- (iii) Management and technical fees, interest and royalty paid by offshore companies to non-residents or to other offshore companies are exempted from withholding tax.
- (iv) Dividend paid or received from offshore companies is not subjected to income tax except for dividend received from companies undertaking offshore business activities.
- (v) All documents relating to business of offshore companies are not subjected to stamp duty.
- (vi) Expatriates in Labuan in the field of management who are engaged by offshore companies are exempted from income tax on 50% of their gross income.
- (vii) All goods except petroleum and petroleum products are exempted from sales tax, import duty and excise duty, as Labuan is a free port.

Supporting Companies in Labuan IOFC

- Eligible professional services in legal services, accounting, finance or secretarial services, rendered to offshore companies in Labuan are exempted from income tax up to 65% of their statutory income, effective from year of assessment 1997 until year of assessment 2000. Income Tax (Exemption) (No.2) Order 1997.
- Adjusted income from activities relating to provision of infrastructure in Labuan is exempted from income tax on 50% of their income.

E. Non-tax Incentives

A number of other non-tax incentives are also provided to spur the private sector to take advantage of investment opportunities that will assist the development of the Malaysian economy. These incentives include:

1. Export Credit Refinancing Facilities;
2. Export Credit Insurance and Guarantee Schemes; and
3. Industrial Technical Assistance Fund.

E1. Export Credit Refinancing (ECR)

Export Credit Refinancing is a scheme whereby Export Import Bank of Malaysia Berhad (Exim Bank) provides short-term financing to direct/indirect exporters, via the commercial banks.

Objectives of the ECR scheme:

- to promote the export of manufactured products, agricultural products and selected primary commodities that have significant value-added and utilize local content resources;
- to provide exporters with ready access to credit facilities at competitive rates of interest;
- to develop backward linkages in export-oriented industries.

Two types of facilities are available to exporters under the scheme:

- The pre-shipment ECR; and
- The post-shipment ECR

Eligibility For ECR Facilities

Eligible exporter

- Direct exporter either:
 - Manufacturer
 - Agricultural products producer
 - Trader
- Indirect exporter (supplier of domestic input)

Eligible product

- Product not listed in the Negative List of Exim Bank's Export Credit Refinancing Guideline,
- Product with a minimum Value Added (VA) of 20 per cent and a minimum Domestic Content (DC) of 30 per cent, or
- Products listed in Appendix 3 of Exim Bank's Export Credit Refinancing Guideline.

Details of the two facilities are explained as per the following table:

	Pre-shipment ECR		Post-shipment ECR
Purpose	Loan advance to manufacturer/agricultural products producer to facilitate the production of eligible goods or loan advance to trader for purchasing of domestic intermediate/final products, for export prior to shipment.		Loan advance for a period after shipment to finance the export of eligible goods on usance terms of minimum 30 days
Methods of Financing	Order-Based	Certificate of Performance (CP)	Bills Discounting
User	(a) Direct Exporter - New Exporter; or - Seasonal Exporter; or - Exporter whose maximum exports for the last financial year and the preceding 12 months is less than RM1 million; and (b) Indirect Exporter	Direct Exporter whose maximum exports for the last financial year and the preceding 12 months is RM1 million and above Note: Exporter whose exports for the last financial year and the last preceding 12 months is between RM1 million to RM3 million can use either order-based or CP method	Direct Exporter whose exports of eligible goods on usance terms of minimum 30 days
Margin of Financing	Max. of 80% of value of export order	Amount specified on the CP	Max. of 100% of value of export bill
Period of Financing	Max. of 4 months	Max. of 4 months.	Min. period of 7 days Max. period of 6 months

Interest Rate	Shall be at Exim Bank's ECR funding rate.	Shall be at Exim Bank's ECR funding rate.	Shall be at Exim Bank's ECR funding rate.
Limit	The max limit of RM50 million loans outstanding at Any one	The eligible amount of financing is segregated into 3 periods of 4 months each, subject to a max amount of RM50 million per period.	The max limit of RM50 million loans outstanding at any one time
	Request for financing limit of exceeding RM50 million is subject to recommendation of exporter's bank.	Request for financing limit of exceeding RM50 million is subject to recommendation of exporter's bank.	Request for financing limit of exceeding RM50 million is subject to recommendation of exporter's bank.
Repayment	Upon receipt of: For direct exporter: - export proceeds; or - post-shipment proceeds; whichever is earlier For indirect exporter: - payment from the buyer's bank or - upon maturity of the loan, whichever is earlier	Upon receipt of: - export proceeds and/or - post-shipment proceeds or - upon maturity of the loan whichever is earlier	Upon: - receipt of export proceeds; or - maturity of the post-shipment bill whichever is earlier

Future details on the ECR scheme are available in the "Guideline on Export Credit Refinancing (ECR)" issued by Exim Bank.

E2. Export Credit Insurance and Guarantee Schemes

Malaysia Export Credit Insurance Berhad (MECIB), incorporated in 1977 is a wholly owned subsidiary of Bank Industri & Teknologi Malaysia Berhad, a Government development financial institution.

MECIB's objective is to help promote Malaysian exports and foreign investments by providing a range of export credit insurance and financing guarantee facilities. MECIB provides protection, whereby it undertakes to indemnify its policyholders for their losses arising from any of the following risks inherent in international trade.

A. Risks Covered

(i) Commercial Risks

- (a) Buyer's insolvency;
- (b) Buyer's default; and
- (c) Buyer's non-acceptance of goods

(ii) Political Risk

- (a) Blockage or delay in transfer of payments to Malaysia;
- (b) War, revolution and other annoyances, including war between buyer's and exporter's country;
- (c) The imposition of import restrictions;
- (d) Cancellation of import licenses;
- (e) Default of a foreign Government buyer.

B. Facilities Offered

(a) Short Term Facilities

(i) Comprehensive Policy (Shipments)

This policy covers non-payment resulting from commercial and political risks in respect of goods and commodities exported on credit terms of not more than 180 days. The cover commences from the date of shipment. Percentage of cover is up to 95% of the amount of loss.

(ii) Comprehensive Policy (Contracts)

This policy covers the risks of non-payment for goods specifically produced under a contract of sale for overseas buyers especially where loss can be sustained in the event of the contract being frustrated in the pre-shipment period. Hence, cover commences from the date of the contract. Percentage of cover is up to 95% of the amount of loss.

(iii) Comprehensive Policy (Service)

This policy covers export of services other than tangible goods to overseas clients or principals such as technical or professional assistance; repairs; refits conversion carried out on ships; and payment under royalty agreement etc; on credit terms of not more than 180 days. Cover is effective from date of invoice. Percentage of cover is up to 95% of the amount of loss.

(iv) Bank Letter of Credit Policy (Bank LC Policy)

Bank LC Policy is offered to commercial banks providing post-shipment financing to the exporters selling on LC terms of payment. With the policy, the LC negotiating bank's concerns about the credit standing of the LC issuing bank and/or the political and economic conditions prevailing in the buyers' country are mitigated.

The policy insures the LC negotiating bank for non-reimbursement by the LC issuing bank up to 95% of the face value of the LC.

This policy aims to promote Malaysian export to non-traditional and difficult markets by enabling the commercial banks to finance the exports to these regions.

(b) Medium and Long-Term Facilities

(i) Specific Policy

This policy covers export of capital or semi-capital goods and/or services

with lengthy manufacturing and/or payment periods and high contract values. It is tailored to the needs and features of each project or manufacturer in Malaysia. The credit terms must be for a minimum of two years and the policy is issued on a one-off project basis. Percentage of cover is up to 95% of the amount of loss.

(ii) Supplier Credit Guarantee

This guarantee applies to loans given by the financial institutions to finance a Malaysian supplier/exporter/contractor of Malaysian goods and services or Malaysian turnkey contractor undertaking an overseas project.

Without the loan, the Malaysian exporter or turnkey contractor may not be able to implement the project.

To mitigate its balance sheet exposure to political risks in the buying country, the Malaysian exporter or turnkey contractor can insure these risks with MECIB under the Specific Policy.

The percentage of cover for the Supplier Credit Guarantee is determined on case-by-case basis up to a maximum of 100%. The loan, in turn, could provide financing for up to 85% of the Malaysian contract value related to the overseas project or export transaction. If the contract contains goods other than Malaysian goods and services, a Malaysian content and value added requirement of 30% is necessary.

(iii) Buyer Credit Guarantee

This guarantee is provided to financial institutions lending to a foreign sovereign, public or private buyer for financing the purchase of Malaysian goods and services typically capital goods or turnkey projects whereby disbursement is made directly to the exporter in accordance with the supply contract.

Without the loan, the foreign buyer may not be able to purchase the Malaysian goods and services.

Percentage of cover is on case-by-case basis, but generally, for a loan to a sovereign buyer, a 100% comprehensive coverage is extended. The loan, in turn, could provide financing for up to 85% of the Malaysian contract value related to the overseas project or export transaction. If the contract contains goods other than Malaysian goods and services, a Malaysian content and value added requirement of 30% is necessary.

(iv) Project Finance Guarantee

This guarantee applies to loans given by financial institutions to companies undertaking overseas privatisation projects e.g. Build-Operate-Transfer or Build-Owned-Operate-Transfer on limited recourse financing basis where the source of repayment is from the cashflow of the project itself.

Guarantee provided can be in the form of political risks cover only or both political and commercial risks coverage. The extent of commercial risk coverage is determined on case-by-case basis subject to maximum of 100%. The project is normally required to be financed through injection mix of debt and equity, and, typically a 70:30 mix is ideal for an infrastructure project.

(v) Overseas Investment Insurance

This insurance protects Malaysian investors of their investment typically related to an overseas project either in the form of equity or commercial bank loan against losses arising from political risks such as restrictions or blockage in repatriation of profits, dividend, loan repayment etc., expropriatory acts by the host

government whether directly or indirectly and damages to tangible assets due to war and civil disturbances. On a case-by-case basis, where concession has been awarded to an investor, extended coverage of repudiation of contract by host government may be considered.

Standard coverage of 90% of any investment losses arising from the aforementioned political risks is available.

(vi) Bond Facility

MECIB can either issue bonds or provide guarantee to commercial banks to encourage the issuance of bonds on behalf of the Malaysian companies to meet the requirement of the overseas buyers of Malaysian goods and services.

The types of bonds typically covered are tender bond, advance payment bond and performance bond. Coverage is 100%.

An unfair calling of bond is also available providing protection to Malaysian companies against unfair calling of the bond by the overseas buyer/principal. Standard coverage of 95% is available.

For further information, please contact MECIB at the nearest office:

Kuala Lumpur

Malaysia Export Credit Insurance Berhad
(32522-U)

Level 17, Bangunan Bank Industri,
Bandar Wawasan

No 1016, Jalan Sultan Ismail,

P.O. Box 11048

50734 Kuala Lumpur

Tel : 03 - 2910677

Fax : 03 - 2910353

E-mail : mecib@mecib.po.my

Website : www.mecib.com

Penang

Malaysia Export Credit Insurance Berhad
(32522-U)
2nd Floor, 53 Jalan Selat, Taman Selat
P.O. Box 157,
12000 Butterworth,
Penang
Tel : 604 – 3321862
Fax : 604 – 3322172
E-mail : ron@mecib.po.my

Johor

Malaysia Export Credit Insurance Berhad
(32522-U)
2nd Floor, No 95, Jalan Damai
Taman Setia, Off Jalan Stulang Darat
80300 Johor Bahru,
Johor Darul Takzim
Tel : 607 – 2231191
Fax : 607 – 2240370
E-mail : ros@mecib.po.my

E3. Industrial Technical Assistance Fund (ITAF)

The Industrial Technical Assistance Fund (ITAF) was initially set up by the Government with an allocation of RM50 million for the purpose of providing grants to small and medium-scale industries (SMIs). On depletion of the original allocation, an additional RM70 million has been injected into the fund under Seventh Malaysia Plan to be utilised for the following schemes:

- (i) Business Planning and Development Scheme (ITAF1) (maximum grant RM40,000 per company);
- (ii) Process Improvement and Product Development Scheme (ITAF 2) (maximum grant RM250,000 per company);
- (iii) Productivity and Quality Improvement and Certification Scheme (maximum grant RM250,000 per company);
- (iv) Market Development Scheme (maximum grant RM40,000 per company).

SMIs that operate in the manufacturing sector or services directly-related to manufacturing

activities and fulfil the following conditions are eligible to apply for assistance:

- (i) Incorporated under the Companies Act 1965;
- (ii) Annual sales turnover not exceeding RM25 million and with fulltime employees not exceeding 150;
- (iii) At least 70% of their equity are held by Malaysians, of which not more than 25% held by large companies.

Priority will be given to SMIs, which are:

- (i) Manufacture or intend to manufacture or intend to manufacture product(s) or involve in activities and services related to manufacturing, promoted under the Promotion of Investment Act (PIA) 1986;
- (ii) Companies appointed under the Industrial Linkage Programme (ILP).

Assistance is given in the form of matching grant whereby 50% of the project cost is borne by the Government and the remainder is borne by the applicant company subject to a maximum grant as stipulated for each scheme.

Further information on ITAF can be obtained from:

ITAF Secretariat
Perbadanan Pembangunan Industri Kecil dan Sederhana Malaysia
701 D, Level 7, Tower D
Uptown 5
Jalan SS 21/39
Damansara Uptown
47400 Petaling Jaya
Selangor Darul Ehsan

Telephone No : 03 – 9258585
Fax No : 03 – 9259119

II. THE INDUSTRIAL CO-ORDINATION ACT 1975

The objective of the Industrial Co-ordination Act 1975 (ICA) is to ensure orderly development and growth in the manufacturing sector. The ICA requires person(s) engaging in any manufacturing activity to obtain a licence from the Licensing Officer in respect of such manufacturing activity. Only manufacturing companies with shareholders'

funds of RM2.5 million and above or engaging 75 or more full-time employees need to apply for a licence under the ICA.

All applications for manufacturing licences should be made in the prescribed form to the Director-General of the Malaysian Industrial Development Authority (MIDA) in Kuala Lumpur, Malaysia. MIDA is the Government's principal agency for the promotion and coordination of industrial development in Malaysia.

The relevant definitions in the ICA are as follows:

- (a) The "Licensing Officer" is the Secretary-General of the Ministry of International Trade and Industry (MITI).
- (b) "Manufacturing activity" means the making, altering, blending, ornamenting, finishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal and includes the assembly of parts and ship repairing but shall not include any activity normally associated with retail or wholesale trade.
- (c) "Shareholders' funds" means the aggregate amount of a company's paid-up capital (in respect of preference shares and ordinary shares and not including any amount in respect of bonus shares to the extent they were issued out of capital reserve created by revaluation of fixed assets), reserves (other than any capital reserve which was created by revaluation of fixed assets and provisions for depreciation, renewals or replacements and diminution in value of assets), balance of share premium account (not including any amount credited there in at the instance of issuing bonus shares at premium out of capital reserve by revaluation of fixed assets) and balance of profit and loss appropriation account.
- (d) "Full-time paid employees" means all persons normally working in the establishment for at least six hours a day and at least 20 days a month for 12 months during the year and who receive a salary. Persons such as travelling sales, engineering, maintenance and repair personnel, or who are paid by and are under the control of the establishment are

also included. Full-time paid employees also include directors of incorporated enterprises except those paid solely for the attendance at Board of Directors meetings. Family workers who receive regular salaries or allowances and who contribute to the Employees Provident Fund (EPF) or other superannuation funds are also included in the definition.

1. Guidelines For Approval of Industrial Projects

Malaysia's rapid industrial growth over the past decade has created a high demand for labour in the manufacturing sector. The last few years has seen a tightening in the labour market situation.

In view of this, the Government has set down guidelines for the consideration of industrial project based on the Capital Investment Per Employee (C/E) Ratio. With effect from 26 August 1995, projects with a C/E Ratio of less than RM55,000 will be defined as labour-intensive and will not be considered for a manufacturing licence or for tax incentives by MITI.

However, projects which fulfil one of the following criteria will be exempted from the above guideline:

- (a) If value-added is more than 30%.
- (b) If the Managerial, Technical and Supervisory (MTS) Index is more than 15%.
- (c) If the project undertakes activities or products listed as promoted activities and products of high technology.
- (d) If the project is located in the Eastern Corridor of Peninsular Malaysia, Sabah and Sarawak.

2. Expansion of Production Capacity and Diversification of Products

An existing licensed company which proposes to undertake an expansion of production capacity for its approved products or diversification to manufacture additional products is required to submit an application for the expansion or diversification in the prescribed form to MIDA.

III. GUIDELINES ON FOREIGN INVESTMENT

1. Equity Policy In The Manufacturing Sector

The Malaysian Government welcomes foreign investment in the manufacturing sector. In keeping with the objective of increasing Malaysian participation in manufacturing activities, it is the policy of the Government to encourage projects to be undertaken on a joint-venture basis between Malaysians and foreign entrepreneurs.

1.1 Equity Policy Applicable to New Investments, Expansion or Diversification

Foreign equity participation in manufacturing projects has been governed by the level of exports. Effective from 31 July 1998, the Malaysian Government has liberalised the equity policy for the manufacturing sector in respect of new investments, expansion or diversification as follows :

- (a) Foreign investors can now hold 100% equity irrespective of the level of exports.
- (b) This relaxation is applicable for all applications received from 31 July 1998 until 31 December 2000 to set up manufacturing projects with the exception of specific activities and products where Malaysians small and medium scale companies have the capabilities and expertise. These activities and products are paper packaging; plastic packaging (bottles, films, sheets and bags); plastic injection moulded components; metal stamping, metal fabrication and electroplating; wire harness; printing and steel service centres. For these activities and products, the prevailing specific equity guidelines are applicable.
- (c) This policy will apply to all applications received from 31 July 1998 to 31 December 2000, as well as

applications already received, but for which decisions are pending.

- (d) All projects approved under this policy will not be required to restructure their equity after the period.
- (e) The Government will review this policy after 31 December 2000.

1.2 Equity Policy Applicable to Existing Companies

- (a) Companies which have been licensed before 31 July 1998 have to comply with the equity condition as stated in the licence. However, for existing companies undertaking expansion or diversification, the equity policy as in para 1.1 above applies to the expansion and diversification projects.

The equity policy as in para 1.1 above also applies to the following companies:

- (b) Companies previously exempted from the Manufacturing Licence but whose shareholders' funds have now reached RM2.5 million or have engaged 75 or more full-time employees; and
- (c) Existing licensed companies exempted from the equity condition which are required to inform MITI when their shareholders' funds reach RM2.5 million.

1.3 Relaxation of Export Conditions for Existing Manufacturers

To encourage greater levels of industrial linkages and local sources, the Government has relaxed the export conditions imposed on manufacturing companies effective from 1 January 1998 to 31 December 2000. With this relaxation, all existing companies with export conditions can apply to MIDA for approval to sell up to 50% of their output in the domestic market.

The products which are eligible to be considered for increased domestic sales are as follows:

- (a) All products with nil duty.

* The Eastern Corridor of Peninsular Malaysia covers Kelantan, Terengganu, Pahang and the district of Mersing in Johor.

- (b) All products with import duty which are not available locally or where local supply is inadequate.

The above temporary relaxation of export conditions will not affect the current equity structure and incentives of existing companies.

The relaxation is also extended to new companies approved before 31 July 1998 once they commence operation.

2. Protection Of Foreign Investment

2.1 Equity Ownership

A company that has been approved with a certain equity participation will not be required to restructure its equity at any time, provided that the company continues to comply with the original conditions of approval and retains the original features of the project.

2.2 Investment Guarantee Agreements

Malaysia's readiness to conclude Investment Guarantee Agreements (IGAs) is a testimony of the Government's desire to increase the confidence of foreign investors in Malaysia.

An IGA will provide the foreign investor with the following:

- (a) Protection against nationalisation and expropriation.
- (b) Prompt and adequate compensation in the event of nationalisation or expropriation.
- (c) Free transfer of profits, capital and other fees.
- (d) Settlement of investment disputes under the Convention on the Settlement of Investment Disputes of which Malaysia has been a member since 1966.

Malaysia has concluded Investment Guarantee Agreements with the

following countries (in order of precedence): United States of America, Germany, Canada, Netherlands, France, Switzerland, Sweden, Belgo-Luxembourg, United Kingdom, Sri Lanka, Romania, Norway, Austria, Finland, Organisation of Islamic Countries (OIC), Kuwait, Association of South-East Asian Nations (ASEAN), Italy, South Korea, China, United Arab Emirates, Denmark, Vietnam, Papua New Guinea, Chile, Laos, Taiwan, Hungary, Poland, Indonesia, Albania, Zimbabwe, Turkmenistan, Namibia, Cambodia, Argentina, Jordan, Bangladesh, Croatia, Bosnia Herzegovina, Spain, Pakistan, Kyrgyz Republic, Mongolia, India, Uruguay, Peru, Kazakhstan, Malawi, Czech Republic, Guinea, Ghana, Egypt, Botswana, Cuba, Uzbekistan, Macedonia, North Korea, Yemen, Turkey, Lebanon, Burkina Faso, Republic of Sudan, Republic of Djibouti, Republic of Ethiopia, Senegal, State of Bahrain and Algeria.

2.3 Convention on the Settlement of Investment Disputes

In line with the national policy of promoting and protecting foreign investment, the Malaysian Government in 1966 ratified the provisions of the Convention on the Settlement of Investment Disputes established under the auspices of the International Bank for Reconstruction and Development (IBRD).

Facilities for international conciliation or arbitration are established by the Convention through the International Centre for Settlement of Investment Disputes which is located at the principal office of the IBRD in Washington.

2.4 Regional Centre for Arbitration

The Kuala Lumpur Regional Centre for Arbitration was established in 1978 under the auspices of the Asian-African Legal Consultative Committee (AALCC) - an inter-governmental organisation in

cooperation with and with the assistance of the Government of Malaysia.

The Centre serves the Asian and Pacific region. It is a non-profit organisation and has been established with the objective of providing a system for the settlement of disputes for the benefit of parties engaged in trade and commerce and investments with and within the region.

IV. MALAYSIAN INDUSTRIAL DEVELOPMENT AUTHORITY (MIDA)

The Malaysian Industrial Development Authority (MIDA) is the first point of contact for investors who intend to set up projects in the manufacturing and related support services sector in Malaysia. MIDA has established a global network of overseas offices covering North America, Europe and the Asia-Pacific and a local network of branch offices in the various states to assist investors in the initial stages to the implementation and operation of their projects.

Since 1 October 1988, MIDA has been designated as the Coordinating Centre on Investment. Investors need only to approach MIDA to obtain most of the approvals required at the Federal level. This measure is aimed at further streamlining the administrative procedures in respect of investment at the Federal level.

The major functions of MIDA are:

- (a) Promote foreign and local investments in the manufacturing and related services sector;
- (b) Undertake planning for industrial development in Malaysia;
- (c) Recommend to the Minister of International Trade & Industry policies and strategies on industrial promotion and development;
- (d) Evaluate various types of applications relating to the set up and implementation of industrial and related projects;
- (e) Assist companies in the implementation and operation of their projects, and offer

assistance through direct consultation and cooperation with the relevant authorities at both the federal and state levels;

- (f) Facilitate the exchange of information and coordination among institutions engaged in or connected with industrial development.

Applications evaluated cover the following:

- (a) Manufacturing licences;
- (b) Tax incentives for manufacturing activities, agriculture projects, hotel and tourism projects, R&D, technical or vocational training institutions and software development;
- (c) Expatriate posts;
- (d) Import duty exemption on raw materials and components;
- (e) Import duty and sales tax exemption on machinery and equipment;
- (f) Tariff protection;
- (g) Approvals of technology transfer agreements; and
- (h) Asean Industrial Cooperation (AICO) Scheme.

To further enhance MIDA's role in assisting investors, senior representatives from various key Ministries, departments and relevant corporations are emplaced within the MIDA Headquarters in Kuala Lumpur to assist and advise investors and coordinate applications for approvals and other matters under the purview of these bodies. The 3 representatives are from:

- (a) Ministry of Finance;
- (b) Ministry of Human Resources;
- (c) Immigration Department;
- (d) Royal Customs and Excise Department;
- (e) Department of Occupational Safety and Health;
- (f) Department of Environment;
- (g) Tenaga Nasional Berhad; and
- (h) Telekom Malaysia Berhad.

On the 3rd May 1999, an Industry Support Division was set up in MIDA with the following functions:

- (a) Assist companies in the implementation and operation of new projects;
- (b) Extend support to existing companies in their expansion, diversification and re-investment projects;
- (c) Undertake periodic reviews of issues and formulate appropriate measures for the smooth implementation and operation of industrial projects;

Investment Centre at State Level

At the state level, investment centres have also been formed to provide efficient services to investors. Presently, nine states have set up such centres. These are Johor, Kelantan, Melaka, Negeri Sembilan, Pahang, Perak, Sabah, Selangor and Terengganu. The state Government of Sarawak has also agreed in principle to set up a similar centre. The three other states of Kedah, Perlis and Pulau Pinang are still operating under the existing system where applications are submitted directly to the respective agencies for approval. If complications or delays should arise in the granting of certain approvals, the State Economic Development Corporations (SEDCs) of Kedah and Perlis, and the Penang Development Corporation (PDC) will then convene a meeting among the agencies concerned to expedite the granting of such approvals.

The investment centres at the state level are either at the SEDCs as in Johor, Kelantan, Melaka, Pahang and Perak or at the State Economic Planning Units (SEPU) as in the case of Negeri Sembilan, Selangor and Terengganu. In Sabah, the centre is at the Department of Industrial Research and Development (DIRD). In Sarawak, the State Government has agreed that the centre be based at the Ministry of Industrial Development (MID).

To assist these centres to function effectively, Special Committees have been established. The role of these Committees is to coordinate and decide all matters concerning the issue of licences, permits and approvals as well as problems faced

by investors at the state level. All applications and complaints received are channelled by the centres (which also serve as the secretariats to the Special Committees) to the relevant agencies for consideration. The centres at state level do undertake different functions but they are generally very similar and their functions relate more to expediting the necessary approvals for the implementation of their projects.

The essential Terms of Reference of the centres at the state level are as follows:

- (a) to establish an investment information centre for collecting, updating and providing relevant information or data to investors;
- (b) to receive, process and convey decisions on applications for licences, permits and approvals required by investors at the state level for the implementation and operation of their projects;
- (c) to monitor the progress of projects with the view to assisting investors in the implementation of their projects; and
- (d) to advise the State Governments from time to time on all matters pertaining to the development of the industrial sector in the state.

With the establishment of the investment centres at the state level, the administrative procedures involved in the granting of approvals, permits and licences required for the implementation and operation of the projects at the respective state level have been streamlined. It would not only make it easier for the investors as they would have to deal only with the centres in respect of most, if not all, of the problems they would encounter at the state level, but the time taken to secure the necessary approvals would also be reduced. This would save the investors valuable time, effort and resources in their dealings with the State Governments and would consequently enhance the overall investment climate not only of the states but also of the nation as a whole.

Pertaining to the relationship between Federal and State Governments, the joint Industrial Coordination Committee involving Federal and State has been established in every state with the following function:

- (i) Plan industrial development at the state level to ensure that it is in accordance with

national planning. State industrial development plans are used as inputs to national industrial to national industrial development plans to ensure effectiveness.

- (ii) Identify investment promotion strategies to ensure efficient distribution of industries. For this the committee will emphasize:
 - (a) identifying new industrial zones evaluating infrastructure elements such as roads, water supply, electricity, transportation, communications, storage and disposal of industrial wastes;
 - (b) evaluating the feasibility of setting up specific industrial zones, specifically for SMI's
 - (c) identifying and solving problems faced by companies operating in industrial zones; and
 - (d) identifying industries which need to be emphasized in the different states.
- (iii) Plan and monitor linkages in industrial sub-sectors in order to ensure the presence of critical supporting industries at the state level. Industrial development is to be more integrated. Synergy in industrial development to be achieved by the different states.
- (iv) Promote Skills Development Centres at the state level to ensure a sufficient supply of skilled workers for industry.
- (v) Identify weaknesses in procedures hindering project implementation and recommend remedial action.
- (vi) Plan export promotions so that industrial producers explore international markets.
- (vii) Provide feedback and references to help the private sector solve their problems.

V. TRANSFER OF TECHNOLOGY

All manufacturing concerns, licensed by the Ministry of International Trade and Industry (MITI), should obtain the prior written approval of MITI before entering into any agreement involving foreign partners.

Types of Agreements

Technology transfer agreements cover licence rights over specific processes, formulae or manufacturing technology (may be patented or unpatented), other knowledge and expertise necessary for the setting up of a plant, and provision of various technical assistance and supporting services.

Under these arrangements, a specific agreement entered into could be in the form of:

- (i) Joint-Venture Agreement;
- (ii) Technical Assistance and Know-How Agreement;
- (iii) Licence Agreement;
- (iv) Patent and Trademark Agreement;
- (v) Turnkey Contract; and
- (vi) Management Agreement.

Guidelines on Transfer of Technology

Agreements on transfer of technology must define in detail the following:

- (i) technological content and principal features of technology or process;
- (ii) anticipated production;
- (iii) quality and specification of products; and
- (iv) particulars of technical assistance, services and manner in which they are to be provided.

The transfer of technology must be effected through the following:

1. Access to Improvements

The technology to be supplied should incorporate:

- (i) the latest development know-how of the supplier; and
- (ii) access to innovations or breakthrough in technology, including new patents applied for or registered.

2. Remuneration for Technology

Payment for technology can be in the form of a 'fixed lump sum fee' or a 'running royalty' or a combination of lump sum fee and running royalty for a specified period. Lump sum payments are usually allowed in cases where the know-how can be fully and completely transferred and absorbed within a specified period. The method of payment that is preferable is the running royalty based on net sales. Initial lump sum payments in addition to royalties are not encouraged by MITI. Where such payments are requested, it should be only for the recovery of actual expenses incurred by the Licensor for preliminary services provided to the Licensee.

3. Method of Payment

- (a) Royalty is imputed in relation to the level of technology and principal elements of transfer. Depending upon the merits of each case, a rate of 1% to 5% of net sales can be considered. Net sales are defined as gross sales less sales discounts or returns, transport costs (including freight), insurance, duties, taxes and other charges including where applicable, costs of raw materials, parts and components imported from the foreign licensor concerned or its subsidiaries or affiliated companies.
- (b) The Government has liberalised the present policy for regulating technology transfer agreements by allowing automatic approval of the following:
 - (i) Technology transfer agreements signed between 100% foreign-owned companies in Malaysia and any foreign party or foreign holding company.
 - (ii) All technical assistance, licence and know-how agreements signed between Malaysian-owned/Malaysian joint-venture companies and any foreign party where the royalty payment is as follows:
 - (a) running royalty not exceeding 3% of net sales; or
 - (b) lump sum payment not exceeding RM500,000; or

- (c) lump sum payment and running royalty in total not exceeding 3% of net sales.

- (iii) Trade mark and patent agreements signed between Malaysian-owned/Malaysian joint-venture companies and any foreign party involving royalty payments not exceeding 1% of net sales for each category.

Practice of itemisation of service under separate agreements is discouraged.

- (c) Capitalisation of know-how fees or royalty is not encouraged.

4. Duration and Renewal

- (a) Duration of the agreement should be adequate for full absorption of technology. The life of any patent relating to the technology is also taken into consideration.
- (b) An initial period of five years is normally approved and any renewal is subject to the prior approval of MITI.

5. Training

A provision for adequate training of the local company's personnel in the technology supplier's plant facilities as well as in-house training in the local company's plant should be incorporated and clearly specified. In the case of the former, the number of personnel to be trained, the areas of training and its duration, together with arrangements and the facilities to be made available for the training should also be defined. The costs of training should be borne by the technology supplier but all expenses related to salaries, wages, living and travelling allowances should be borne by the local company.

6. Patents and Trade Marks

Patents and trade marks may come as one of the components of the whole technology transfer package. In the case of patents, it is of utmost importance that those patents involved in any process know-how be explicitly defined in the

agreements and the local company is granted user rights over all such patents. Where the life of the patents extends beyond the duration of the agreement concerned, an arrangement should be made for the continued use of the patents after the expiry of the agreement.

7. Confidentiality/Secrecy

Confidentiality of information should be confined to the duration of the agreement only.

8. Guarantee/Warranty

The agreement should define a guarantee with respect to the production capacity, product quality and specifications and other features of the manufacturing process.

9. Taxes

A withholding tax of 15% is levied on payments made to foreign suppliers of technology and this tax has to be borne by the foreign recipient. Exemption under the Double Taxation Agreement, where applicable, has to be made to the Ministry of Finance separately.

10. Sales Territory

The local company should be free to sell its produce (manufactured with the licensed technology) in the whole of Malaysia and all other countries except where the foreign technology supplier is manufacturing directly or where he has given exclusive rights to others or where he is legally not empowered to allow sales based on his technology.

11. Governing Laws and Arbitration

The governing laws for any technology transfer arrangement should be Malaysian laws and arbitration proceedings must be conducted in Malaysia in accordance with either the Malaysian Arbitration Act 1952 (Revised 1972) or the United Nations Commission on International Trade Law (UNCITRAL) Rules and conducted at the Asian-African Legal Consultative Committee (AALCC) Regional Centre for Arbitration, Kuala Lumpur.

VI. INTELLECTUAL PROPERTY PROTECTION

Intellectual property in Malaysia comprises of patents, trademark, industrial designs and copyright. Malaysia provides adequate protection in the field of intellectual property for both local and foreign investors. Malaysia is a member of the World Intellectual Property Organization and signatories to two conventions administered by the world body, namely, Paris Convention (for the protection of industrial property – patents, trademarks and industrial designs) and the Berne Convention (for the protection of Copyright). Malaysia is also a signatory to the TRIPS Agreement (Agreement on Trade Related Aspects of Intellectual Property Rights), an agreement under the auspices of the World Trade Organization.

1. Patents Act 1983

Patents protection in Malaysia is governed by the Patents Act 1983 and the Patents Regulations 1986.

An application for a patent can be filed in Malaysia and upon registration, protection is provided for its exploitation in the country. An invention is patentable if it is new, involves an inventive step and is industrially applicable. Besides patent, a utility innovation certificate is also granted for an innovation or a 'minor' invention which does not require to satisfy the test of inventiveness as of patent.

The period for patent protection is 15 years from the date of grant, subject to yearly renewal. A utility innovation certificate is granted for a period of 5 years from the date of grant and may be extended for another 5 years plus 5 years. The proprietor of the patent has the right to exploit the patented invention, to assign or to license the use of a patent.

2. Trade Marks Act 1976

Trademarks protection in Malaysia is governed by the Trade Marks Act 1976 and the Trade Marks Regulations 1997 which provides effective and adequate protection for registered trademarks in Malaysia.

The period of protection is 10 years which is renewable for a period of every 10 years thereafter.

The proprietor of the trademark has the right to assign as well as to licence the use of a trademark.

The protection of a trademark is not limited in time, provided its registration is periodically renewed.

3. Copyright Act 1987

Copyright protection in Malaysia is governed by the Copyright Act 1987 which came into force on 1 December 1987. The Act provides for the protection of literary works, artistic works, musical works, films, sound recordings, broadcasts and published editions. Copyright generally subsists during the life of the author and 50 years after his death. Duration of protection of films, sound recordings, broadcasts and published editions is 50 years.

The Act also provides for civil as well as criminal sanctions. A unique feature of the Act is the inclusion of provisions for enforcement which provides the power to enter premises suspected of having infringing copies and contrivances and the appointment of a special team of officers to enforce the Act. The Act accords similar protection to local and foreign works.

The Act was last amended in 1997 to fulfil the requirement of the Multimedia Super Corridor (MSC).

4. Industrial Designs

Designs now registered in the United Kingdom are protected in Malaysia by virtue of the existing United Kingdom Designs (Protection) Act 1949 of West Malaysia; the United Kingdom Designs (Protection) Ordinance Chapter 152 of Sabah and the Designs (United Kingdom) Ordinance, Chapter 59 of Sarawak. However, these legislations will be replaced by the Industrial Designs Act 1996 which will be enforced on 1 September 1999. Beginning from that date, Malaysian residents and others who desire design protection must file in Malaysia.

VII. INTERNATIONAL OFFSHORE FINANCIAL CENTRE (IOFC)

To further enhance the role of Malaysia as a financial centre, the Federal Territory of Labuan was launched as an International Offshore Financial

Centre (IOFC) on 1 October 1990. Labuan as an IOFC will complement the onshore financial system in Kuala Lumpur. The business and activities promoted in Labuan IOFC are:

- (i) Offshore banking including investment banking;
- (ii) Offshore insurance and offshore insurance-related businesses;
- (iii) Trusts business;
- (iv) Investment holdings;
- (v) Mutual funds, units trust and fund management;
- (vi) Leasing;
- (vii) Venture capital;
- (viii) Company management;
- (ix) Money broking;
- (x) Money market, Corporate Treasury; and
- (xi) Islamic financing.

The Administration of Labuan IOFC

The businesses and activities of Labuan IOFC are administered by the Labuan Offshore Financial Services Authority (LOFSA) – a Single Regulatory Agency which was established on 15 February 1996. The purpose of LOFSA is to act as a one-stop agency to streamline and rationalise the Government administrative machinery in supervising the activities and operations of the offshore financial services industry in Labuan, and be responsible for setting national objectives, policies and priorities for the orderly development and administration of the Labuan IOFC. However, matters relating to taxation continue to be administered by the Inland Revenue Board.

Legislation

The legislation governing the conduct of offshore businesses and investment activities in Labuan IOFC is as follows:

- (a) Offshore Companies Act 1990;
- (b) Labuan Trust Companies Act 1990;
- (c) Offshore Banking Act 1990;

- (d) Offshore Insurance Act 1990;
- (e) Labuan Offshore Business Activity Tax Act 1990;
- (f) Labuan Offshore Financial Services Authority Act 1996;
- (g) Labuan Offshore Trust Act 1996;
- (h) Labuan Offshore Limited Partnership Act 1997; and
- (i) Labuan Offshore Securities Industry Act 1998.

Investment/Mutual Fund Business

The investment/mutual fund business is a new activity which has been promoted in Labuan and is regulated under the Labuan Offshore Securities Industry Act 1998 (LOSIA). The LOSIA provides the necessary legal framework for the creation and management of offshore investment funds, including Islamic funds as well as the provision of fund administration services. The Act also allows for the setting-up of the Labuan International Financial Exchange (LIFE) which can be used for the listing of mutual funds and other permitted offshore instruments. As investment opportunities in the South East Asian region are plentiful, Labuan offers an attractive domicile to foreign funds seeking to undertake investments in the region.

The main features of the LOSIA are described below:

- (i) Two types of funds can be established under LOSIA, namely, a private and a public fund. A private fund is defined as a fund which has either not more than 100 subscribers whose each first time investment is not less than RM100,000 or any number of subscribers whose each first time investment is not less than RM500,000. On the other hand, a public fund is a fund in which its shares are offered for subscription to the general public.
- (ii) While both type of funds need to be registered with LOFSA in accordance with the procedures provided under the Act, private funds are accorded more flexibility. Minimal requirements are imposed for establishing private funds in Labuan. For example, private funds need not apply to LOFSA for approval of their prospectus, fund manager and fund administrator.
- (iii) LOSIA only allows a person who is licensed or registered with LOFSA to manage or administer a fund duly registered under the Act. However, in certain circumstances, LOFSA may allow a fund manager outside Labuan and licensed in a recognized country to manage or administer any fund established in Labuan.
- (iv) The offshore banks and Labuan trust companies are allowed to be the custodian of any fund launched in Labuan. LOSIA also provides that only a Labuan trust company may be appointed as the trustee of the fund. However, LOSIA allows an authorized trustee under the laws of any recognised country or jurisdiction to carry out similar functions in Labuan.
- (v) A public fund is statutorily required to keep proper accounting records and prepare annual financial statements. These documents must be kept in Labuan and may be inspected by LOFSA, potential investors or the public.
- (vi) No public fund shall be offered to the public unless a prospectus pertaining to the fund has been published and filed with the Authority. This would ensure that potential investors have adequate information about the fund.
- (vii) The Act provides that if a person has subscribed to a fund and the fund did not comply with the provisions of LOSIA, the person may rescind the subscription contract or claim damages from the fund operator. It is an offence under LOSIA to issue any misleading prospectus.
- (viii) Any public fund which conducts any business outside Labuan is required to file with LOFSA a certificate to be issued by a competent Authority who is responsible for the regulation and supervision of the conduct of its business in that recognised country or supervision. The certificate shall state the fund is carrying on or engaged in a lawful business.
- (ix) LOSIA provides for the establishment of Labuan International Financial Exchange (LIFE). The purpose of the establishment of LIFE is to provide listing facilities to a fund launched in Labuan or abroad.

Tax System

An offshore company must be incorporated or registered under the Offshore Companies Act 1990 to carry on offshore business activities in or from Labuan and to enjoy the preferential tax treatment under the Labuan Offshore Business Activity Tax Act 1990 (LOBATA). The LOBATA provides for the imposition, assessment and collection of tax on offshore business activities carried on by an offshore company in or from Labuan, effective from the year of assessment 1991. An offshore company includes an offshore trust created in Labuan.

(a) Offshore Companies

An offshore company carrying on an offshore trading activity (which includes banking, insurance, trading, petroleum operations, management activities, chartering and leasing of ships) for the basis period for a year of assessment will be taxed at a rate of 3% of its net profits or at a fixed rate of RM20,000 upon election by the company for that year of assessment payable to the Inland Revenue Department. An offshore company carrying on an offshore non-trading activity (which refers to an activity relating to the holding of investments in securities, stocks, shares, loans, deposits and immovable properties by an offshore company on its own behalf) for the basis period for a year of assessment is not subject to tax for that year of assessment.

(b) Companies other than Offshore Companies/Residents and Non-Resident Individuals

Companies operating in Labuan, incorporated or registered under the Companies Act 1965, are not recognised as offshore companies and do not enjoy the preferential tax treatment under the LOBATA. Such companies continue to be taxed under the Income Tax Act 1967. Tax incentives under the LOBATA are also not applicable to companies carrying on industrial and/or manufacturing activities but instead they may apply for incentives under the Promotion of Investments Act 1986. Non-resident and resident individuals in Labuan will continue to be taxed under the Income Tax Act 1967.

(c) Preferential Tax Treatment Accorded Under Income Tax 1967 and Stamp Act 1949

The preferential tax treatments are:

(i) Treatment on Dividends

Dividends received by an offshore company from a Malaysian resident company are not subject to income tax and no refund or set-off is given in respect of tax deducted from such dividends. Dividends paid by an offshore company out of income derived from an offshore business activity or out of exempt income is not subject to income tax in the hands of the recipient. Such dividends will be paid gross without any tax deduction at source.

(ii) Treatment on Distribution By Offshore Trust

Distribution made by an offshore trust is not subject to income tax in the hands of the beneficiary.

(iii) Treatment on Royalty

Royalty paid by an offshore company to a non-resident person or another offshore company is not subject to income tax and hence is not subject to withholding tax.

(iv) Treatment on Interest

Interest paid by an offshore company to a non-resident person or another offshore company is not subject to income tax. However, where the interest accrues to a banking, finance company or insurance business carried on by a non-resident person in Malaysia, that interest will be subject to income tax as part of business income. Interest paid by an offshore company to a resident person, other than a person carrying on a banking, finance company or insurance business in Malaysia, is not subject to income tax.

(v) Treatment on Technical Or Management Fees

Technical or management fees paid by an offshore company to a non-resident or another offshore company is not subject to income tax.

(vi) **Exemption from Stamp Duty**

All instruments made in connection with an offshore business activity by an offshore company are not subject to stamp duty under the Stamp Act 1949.

(vii) **Abatement of Tax for Professional Services**

Income derived from qualifying professional services rendered to an offshore company in Labuan is exempted from tax up to an amount equivalent to 65% of the statutory income from that source. This incentive is applicable from the year of assessment 1997 to the year of assessment 2000.

(viii) **Abatement of Tax for Business Relating to or Letting of a Qualifying Asset**

Income derived from the carrying on of a business that relates to a qualifying asset or the letting of a qualifying asset in Labuan is exempted from tax up to an amount equivalent to 50% of the adjusted income from that source. This incentive is available if the construction project of a qualifying asset commenced before 1 October 1996.

(ix) **Abatement of Tax for Employment**

Income derived by a non-citizen individual from an employment exercisable in a managerial capacity of an offshore company in Labuan is exempted from tax up to an amount equivalent to 50% of the gross income from that employment. This exemption applies from year of assessment 1997 to year of assessment 2000.

VIII. PETROLEUM DEVELOPMENT ACT 1974

The Petroleum Development Act 1974 came into force on 1 October 1974. The purpose of the Act is to regulate the petroleum and petrochemical industries. The power to regulate all activities in the upstream petroleum sector is vested in the Petroleum Nasional Berhad or PETRONAS. The Petroleum Regulations 1974, which were amended on 14 January 1991, vested powers to the Ministry of Domestic Trade and Consumer Affairs and the

Ministry of International Trade and Industry (MITI) to regulate all activities in the downstream sector of the petroleum industry.

The Ministry of Domestic Trade and Consumer Affairs has been given the powers to issue licences for the marketing and the distribution of petroleum and petrochemical products. MITI is vested with the powers to issue licences for the processing and refining of petroleum as well as the manufacture of petrochemical products.

In addition, the Petroleum (Income Tax) Act 1967 was amended in 1976 to bring the structure in line with the production sharing contracts signed between PETRONAS and the various oil companies. Effective from the year of assessment 1998, income tax on the petroleum industry was reduced from 40% to 38% while the export duty for crude oil and condensate was reduced from 20% to 10% with effect from 1 January 1998.

IX. GAS SUPPLY ACT 1993

The Gas Supply Act 1993 was gazetted on 4 February 1993 to safeguard the interests of consumers supplied with gas through pipelines and from storage tanks or cylinders specifically used for reticulation of gas. Gas was reticulated to commercial and industrial outlets as well as residential consumers.

The Gas Supply Act 1993 came into effect simultaneously with the gazetting of the Gas Supply Regulations 1997 on 17 July 1997. The Regulations include procedures for the issuance of a license to supply, installation of gas pipelines, inspection, tests and maintenance of gas installations as well as the certification and registration of competent persons to undertake the relevant work in such a manner as to ensure public safety. Both the Act and its Regulations are enforced by the Director General of the Electricity and Gas Supply Department.

With the gazetting of the Gas Supply Act 1993, the relevant sections in the Petroleum Development Act 1974 pertaining to the gas reticulation process have also been amended to prevent duplications between the two Acts. This is to ensure that all gas reticulation and related transmission and supply activities will be conducted in accordance with the Gas Supply Regulations 1997.

X. SECURITIES COMMISSION

The Securities Commission (SC) was established and started operations on 1 March 1993 with the coming into force of the Securities Commission Act 1993. With the coming into force of the Securities Commission Act 1993, the functions of the Capital Issues Committee (CIC) established under the Securities Industry Act 1983 and those of the Panel on Take-overs and Mergers under the Companies Act 1965 were transferred to the SC.

The SC comprises the following nine members appointed by the Minister of Finance:

- (a) SC a Chairman, who shall be an Executive Chairman;
- (b) Four members representing the Government, including the Deputy Chief Executive; and
- (c) Four other persons from the private sector.

A member of the SC shall hold office for a term not exceeding three years and is eligible for reappointment.

Functions of the Securities Commission

The functions of the SC as stipulated in the Securities Commission Act 1993, are as follows:

- (a) to advise the Minister of Finance on all matters relating to the securities and futures' industries;
- (b) to regulate all matters relating to securities and futures contracts;
- (c) to ensure that the provisions of the securities laws are complied with;
- (d) to regulate the take-overs and mergers of companies;
- (e) to regulate all matters relating to unit trust schemes;
- (f) to be responsible for supervising and monitoring the activities of any exchange, clearing house and central depository;
- (g) to take all reasonable measures to maintain the confidence of investors in the securities and futures' markets by ensuring adequate protection for such investors;

- (h) to promote and encourage proper conduct among members of the exchanges, clearing houses, central depository and all licensed persons;
- (i) to suppress illegal, dishonorable and improper practices in dealings in securities and trading in futures contracts and the provision of investment advice or other services relating to securities or futures contracts;
- (j) to consider and make recommendations for the reform of the law relating to securities and futures contracts;
- (k) to encourage and promote the development of securities and futures' markets in Malaysia including research and training in connection thereto;
- (l) to encourage and promote self-regulation by professional associations or market bodies in the securities and futures industries;
- (m) to license and supervise all licensed persons as may be provided for under any securities law; and
- (n) to promote and maintain the integrity of all licensed persons in the securities and futures' industries.

In addition, the SC is also the sole regulator of the private debt securities market and the registering authority for prospectuses in respect of all securities other than shares and debentures issued by unlisted recreational clubs.

Governing Acts and Guidelines

The SC is responsible for the administration and enforcement of the following Acts:

- (a) Securities Commission Act 1993;
- (b) Securities Industry Act 1983;
- (c) Futures Industry Act 1993; and
- (d) Securities Industry (Central Depositories) Act 1991.

The following are some of the Guidelines, Codes and Regulations issued and administered by the SC:

- (a) Policies and Guidelines on Issue/Offer of Securities;

- (b) Guidelines for Public Offerings of Securities of Infrastructure Project Companies;
- (c) Guidelines for Public Offerings of Securities of Closed-End Funds;
- (d) Guidelines for the Public Offering of Securities of Foreign-Based Companies with the Listing and Quotation on the Kuala Lumpur Stock Exchange;
- (e) Prospectus Guidelines;
- (f) Guidelines on the Offering of Private Debt Securities;
- (g) Guidelines on Contents of Prospectus for Debentures;
- (h) Securities Commission (Shelf Registration Scheme for Debentures) Regulations 2000;
- (i) Guidelines on the Minimum Contents Requirements For Trust Deeds;
- (j) Malaysian Code on Take-overs and Mergers;
- (k) Guidelines on Asset Valuations for Submission to the Securities Commission;
- (l) Guidelines on Unit Trust Funds;
- (m) Guidelines on Property Trust Funds;
- (n) Guidelines on the Establishment of Foreign Fund Management Companies;
- (o) Guidelines for Application for Fund Manager's Licences under the Securities Industry Act 1983;
- (p) Guidelines For Application For Licences For Futures Fund Managers, Futures Fund Manager Representative and Registration Of Compliance Officers Under The Futures Industry Act 1993;
- (q) Guidelines on Reporting Requirements for Fund Managers;
- (r) Guidelines for the issue of Call Warrants;
- (s) Guidelines on Securities Borrowing and Lending in Malaysia;
- (t) Guidelines for Application of Licence under the Futures Industry Act 1993.

Applications For Corporate Proposals

A person company is required to seek the approval of the SC, as required by the Securities Commission Act 1993, before undertaking any of the following proposals:

- (a) Make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase securities in Malaysia.
- (b) Make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, outside Malaysia, securities of a public company or to list such securities on a securities exchange outside Malaysia.
- (c) Make a bonus issue of securities of a public company other than by way of capitalisation of unappropriated profits.
- (d) By way of issue of securities effect:
 - (i) a compromise or arrangement whether or not for the purpose of or in connection with a scheme, compromise or arrangement for the amalgamation of two or more corporations or for reconstruction of any corporation; or
 - (ii) an employee share or employee share option scheme; or
 - (iii) an acquisition of securities or assets.
- (e) Apply for the listing of a corporation or for the quotation of securities on a stock market of a stock exchange.
- (f) Distribute assets of a public company to its members other than distribution in cash or distribution of assets to members of a public company on its winding up.
- (g) Acquire or dispose of assets (whether or not by way of issue of securities) which results in a significant change in the business direction or policy of a listed public company.

In considering the proposals stipulated above, the SC may have regard to any of the following matters:

- (a) whether or not there will be adequate disclosure of such information that investors

and their professional advisers would reasonably require and reasonably expect to find in the prospectus for the purpose of making an informed assessment of—

- (i) the assets and liabilities, financial position, profits and losses and prospects of the issuer, and in the case of a unit trust scheme or prescribed investment scheme, of the scheme;
 - (ii) the rights attaching to the securities; and
 - (iii) the merits of investing in the securities and the extent of the risk involved in doing so.
- (b) whether the enquiries (if any) of the corporation concerned, its officers, underwriters and advisers provide adequate verification of the accuracy and completeness of information disclosed;
- (c) whether the persons in respect of whom a proposal has been made, need protection through the process of approval and disclosure pursuant to Part IV of the Securities Commission Act 1993.
- (d) the type of business in which the corporation is engaged and the risks associated with it;
- (e) the record of the corporation and the character, skills and experience of its management;
- (f) the purpose for which the company is raising funds;
- (g) the suitability of permitting the proposal or permitting trading in securities on the stock market of a stock exchange or any stock market outside Malaysia;
- (h) interests of the public; or
- (i) whether the operation of the market forces, including those with respect to price, provide an adequate mechanism for dealing with risks and merits of the proposal.

Regulatory Framework for Fundraising

Major changes to the regulatory framework for fundraising were introduced with effect from 1 July 2000 when the Securities Commission

(Amendment Act 2000 (SCA) came into force. The rationale for the amendments is to create a fully rationalised and efficient regulatory regime for capital raising in Malaysia. Under the SCA, the SC is the approving and registering authority for prospectuses in respect of all securities other than shares and debentures issued by unlisted recreational clubs whilst the Registrar of Companies (ROC) retains all responsibilities relating to the lodgment of prospectuses.

The existing provisions in the Companies Act 1965 that deal with prospectuses will apply to any offer of shares or debentures by unlisted recreational clubs and in respect of “interests” which are regulated under Division 5 of Part IV of the Companies Act 1965. The ROC would also continue to regulate all public offers of shares and debentures by unlisted recreational clubs under Division 4 of Part IV of the Companies Act 1965 administered by the Registrar of Companies.

The SC is the single regulatory body for all corporate bond issuance except for bonds which are issued by unlisted recreational clubs. The SC is responsible for the regulation of trustees, trust deeds, borrowers’ and guarantors’ obligations in relation to debenture issues which are considered to be integral to the regulation of corporate bond market.

A company undertaking fundraising activities may be required to prepare and register with the SC a document known as a prospectus. The SCA specifies when a prospectus must be registered and what its contents must include.

Division 3 Part IV of the SCA sets out the provisions regulating the requirement for prospectuses in relation to any issue of, offer for subscription or purchase of or invitation to subscribe for or purchase securities. Other forms of fundraising include debt securities e.g. debentures, mortgage debentures and unsecured notes. These forms of fundraising are also governed by the prospectus requirements set out in the SCA and other specific requirements in relation to debentures set out in Division 4 of Part IV of the SCA, such as the requirement for a trustee and trust deed, the duties of a trustee, duties of a borrower and the duties of a guarantor.

Initial Public Offering of Securities with Listing and Quotation on a Stock Exchange

The general policies and principles adopted by the SC on public companies intending to undertake initial public offerings of securities with listing and quotation on the Kuala Lumpur Stock change are stipulated in the “Policies and Guidelines on Issue/Offer of Securities” (Issues Guidelines), which became effective on 1 January 1996 and replaced the previous “Guidelines for the New Issue of Securities and the Valuation of Public Limited Companies” issued by the then CIC.

The amendments made to the Issues Guidelines in April 1999 involved the revision of requirements for listing on both the Second Board and Main Board of the KLSE and reverse take-overs/back-door listings. The revised requirements were aimed at strengthening listing standards to provide added comfort to the investing public in their investment opportunities as well as to promote the growth and orderly development of the Malaysian capital market.

More amendments were made to the Issues Guidelines in December 1999 to further facilitate the progressive move towards disclosure-based regulation (DBR). The revisions, which marked the commencement of Phase 2 of DBR, generally focused on liberalisation of the requirements of pricing of securities; valuation of assets; and utilisation of proceeds. Under Phase 2 of the DBR programme, the SC would minimise its assessment in these areas as long as the broad requirements/guidelines are complied with.

In evaluating an applicant’s suitability for listing, the SC will take into consideration a number of factors including adherence to quantitative and qualitative requirements as well as other requirements set out in the Issues Guidelines. Some of the more pertinent requirements that would have to be met are as follows:

1. Issued and Paid-up Capital

(a) Listing on Main Board

A public company seeking listing of and quotation for its securities on the Main Board should have an issued and paid-up capital of not less than RM60 million, comprising ordinary shares with a par value of not less than 10 sen per share.

(b) Listing On Second Board

A public company seeking listing of and quotation for its securities on the Second Board should have a minimum issued and paid-up capital of RM40 million, comprising ordinary shares with a par value of not less than 10 sen per share.

2. Historical Profit Performance

(a) Listing on Main Board

The company should have an uninterrupted profit record of either three or five full financial years, with an aggregate after-tax profit of not less than RM30 million over the said three or five years, and at least RM8 million after-tax profit for the latest financial year.

(b) Listing on Second Board

The company should have an uninterrupted profit record of either three or five full financial years, with an aggregate after-tax profit of not less than RM12 million over the said three or five years and at least RM4 million after-tax profit for the latest financial year.

3. Pricing

In determining the pricing of the securities to be issued or offered for sale, the company’s standing and economic sector should be taken into account. The pricing of such securities is no longer constrained by the price earnings multiple (PE) yardsticks imposed by the SC in the past and would neither be approved nor disapproved. However, the SC has the right to review the pricing of such securities, in consultation with issuers and their corporate advisors, if the pricing is too aggressive.

Flexibilities in Listing Criteria for Bumiputera Companies

Flexibilities in compliance with the listing requirements for applications on proforma accounts are given by the SC for Bumiputera-controlled companies that have pooled together for listing on the Kuala Lumpur Stock Exchange (KLSE).

Paragraph 10.10(1)(e) of the Issues Guidelines pertaining to the use of proforma accounts for the purpose of listing state the following:

“Where a group of companies is seeking listing on the stock exchange, at least one (1) company (which is the qualifying company) within the group, should be able to fulfil the profit track record requirements. If no one company qualifies, listing based on the strength of the group’s proforma accounts may be considered provided that all the companies within the group:

- (a) are involved in the same or complementary business activities;
- (b) have common directors; and
- (c) have common shareholders with controlling shareholding, on a collective basis;

over the profit track record period.

For the purpose of determining controlling shareholding, only legal or registered ownership will be accepted, and control is taken as more than 50% of the voting rights.”

With the flexibilities, a group of Bumiputera-controlled companies applying for listing based on the strength of the group’s proforma accounts would only have to comply with the first criterion of being involved in the same or complementary business activities and not the other two criteria of having common controlling shareholders.

However, Bumiputera companies grouped together for the purpose of listing must fulfil the following conditions:

- (a) The group must have a genuine pooled arrangement;
- (b) The company which is the single largest contributor, on an average basis for the past three full financial years, to profits within the proforma group should have been incorporated and have been operating the same or complementary business for at least 5 full financial years prior to making submission to the SC;
- (c) Each company to be pooled together must have been a Bumiputera-controlled company under the control of the same

Bumiputera shareholders with controlling shareholding for at least 3 full financial years prior to making submission to the SC (or throughout the duration of the company if the company has been incorporated for a period of less than 3 financial years); and

- (d) The company used as the listing vehicle must, upon and subsequent to listing, be a Bumiputera-controlled company.

The purpose of the flexibilities is to provide Bumiputera companies with the opportunities to access the capital market.

Regulations Relating to Take-overs and Mergers

Persons involved in any take-over and merger exercise are required to observe the provisions relating to take-overs and mergers contained in sections 33 to 33E of the Securities Commission Act 1993 (SCA) and the Malaysian Code on Take-overs and Mergers 1998 (Code). In administering the Code, the SC will take into account the desirability of ensuring that the acquisition of voting shares or control of companies takes place in an efficient, competitive and informed market.

Pursuant to section 33B(2) of the SCA, an acquirer who has obtained control in a company is required to make a take-over offer, other than in respect of voting shares of the company which at the date of the offer are already held by the acquirer or which the acquirer is entitled to exercise. In this regard, control, in relation to an acquisition of shares, is defined under section 33 of the SCA as the acquisition or holding of, or entitlement to exercise of, voting shares of more than 33% in a company.

Pursuant to section 33B(3) of the SCA, an acquirer who has obtained more than 33% of the voting shares in a company but less than 50% of voting shares in that company shall not acquire any additional voting shares in that company, except in accordance with the provisions of the Code. In this regard, section 6(1) (b) of the Code provides that an acquirer who holds more than 33% but less than 50% of the voting shares of a company and such person acquires in any period of six months more than 2% of the voting shares of the company, such person shall be subjected to the provisions in the Code relating to mandatory offers.

A person who fails to comply with the mandatory offer requirement shall, upon conviction, be punished with a fine not exceeding one million ringgit or imprisonment for a term not exceeding 10 years or both pursuant to section 33B(4) of the SCA.

Additionally, where any document or information is required to be submitted to the SC, in relation to or in connection with a take-over offer or merger and a person submits or causes to be submitted any document or information that is false or misleading, the person shall, upon conviction, be punished to a fine not exceeding three million ringgit or to imprisonment not exceeding 10 years or both pursuant to section 33E(3) of the SCA.

Certain restrictions are imposed on both the acquirer as well as persons who sell their shares to an acquirer. Pursuant to section 7 of the Code, acquirers who are subject to the mandatory offer requirement are restricted from appointing any director to the board of the offeree or exercising the voting rights attached to the voting shares acquired before the acquirer sends out an offer document to the offeree shareholders. Section 10 of the Code provides that persons who sell their voting shares to an acquirer are not allowed to resign or cause a director who is accustomed to act in accordance with his or its directions to resign from the board of the offeree until the first closing date of the take-over offer or the date when the take-over offer becomes or is declared unconditional as to acceptances, whichever is the later.

Practice Notes attached to the Code provide guidance on the interpretation of provisions of the Code. Amongst others, it provides for instances where the mandatory offer obligation would be deemed to be incurred as well as circumstances under which a person may apply for exemption from the mandatory offer provisions.

XI. KUALA LUMPUR OPTIONS AND FINANCIAL FUTURES EXCHANGE BHD (KLOFFE)

The Kuala Lumpur Options and Financial Futures Exchange Bhd (KLOFFE), Malaysia's first financial derivatives exchange was launched on 15 December 1995. KLOFFE was established to

provide for the growing needs of investors, offering both domestic and international investors and portfolio managers access to effective risk and portfolio management tools never before available.

At inception KLOFFE was a 100% subsidiary of KLOFFE Capital, whose shareholders were Renong Bhd, HLG Capital Bhd, New Straits Times Press (M) Bhd and Rashid Hussain Bhd. However, in January 1999 a Sales and Purchase agreement was finalised between the Kuala Lumpur Stock Exchange (KLSE) and shareholders of KLOFFE Capital for the purchase of KLOFFE Capital by KLSE for RM27 million. The KLSE then became the 100% shareholders of KLOFFE capital, hence the ultimate shareholders of KLOFFE.

KLOFFE started moderately in its first year operation with less than 500 average daily contracts. However, the growth has been exponential within six months of trading with the increase of average daily volume from 107 contracts in January 1996 to 4,646 contracts in August 1998. This represents a 4000% growth in volume. The imposition of selective capital controls in September 1998 resulted an immediate slow down, with the average daily volume decreasing to 1,255 contrast in December 1998. Currently, The Exchange is experiencing an average of 1,600 contracts as at July 2000.

KLOFFE has expanded much effort in the areas of marketing and education of the exchange and its products to the public. Among the steps taken include holding regular educational symposiums and presentations for the public and participating in local and international derivative exhibitions. To further increase public awareness of KLOFFE we now have daily market commentaries on the television and radio as well as the publishing of educational articles in local business magazines and newspapers.

KLOFFE was awarded "Derivatives Exchange of The Year 1996" by the UK-based World Equity Magazine in recognition of its progress despite the challenges faced in the first year of operations. KLOFFE is a member of the International Options Market Association (IOMA) and the International Finance and Commodities Institute (IFCI), an indication of its commitments to be apart of the international derivatives industry. In December 1996, KLOFFE also became a signatory to the

Windsor Agreement, upon which KLOFFE is now in a position to apply to be a Recognised Futures Exchange pursuant to the rules of other foreign futures exchanges. Subsequently, KLOFFE has also recently received approval to have its products traded in Australia and Taiwan and is in the process of establishing its distribution channels in the relevant countries.

The Market Structure and Regulatory Framework

The Ministry of Finance is responsible under the Futures Industry Act (FIA) 1993 to regulate the trading of futures and options contracts and has empowered the Securities Commission to regulate all matters relating to the derivatives industry. The two bodies are jointly responsible in setting guidelines for the operations of the KLOFFE. The Securities Commission was established under the Securities Commission Act 1993 with the principal objective of regulating and monitoring the securities and futures industries. The Securities Commission is also the approving authority for all contracts traded in accordance with the provisions of the FIA and for the licensing of participants in the market such as:

- (i) Futures Brokers and its representatives;
- (ii) Futures Trading Advisers and its representatives; and
- (iii) Futures Fund Managers and its representatives.

In addition to the overall governance provided under the FIA, KLOFFE is also a self-regulatory organisation. Under KLOFFE's Business Rules, four committees have been set up to handle matters relating to membership, members' business conduct, product development and the fidelity fund to ensure the orderly conduct of the futures market as follows:

(i) Membership Committee

This committee evaluates membership applications, reviews the need for introducing new classes of membership and looks at other membership issues.

(ii) Fidelity Fund Committee

This committee administers the Fidelity Fund on behalf of KLOFFE. This Fund is

designed to compensate any person who suffers a financial loss as a result of defalcation or misappropriation of funds on the part of a futures broker. Each trading member is required to place an initial minimum deposit of RM30,000 into this fund with a subsequent deposit of RM10,000 for the next five years.

(iii) Business Conduct Committee

This committee handles all matters relating to members' conduct and the integrity of the market place. In addition, it has wide ranging investigative and adjudicative powers.

(iii) Product Development Committee

This committee handles the introduction of new derivative contracts. It looks at the viability of futures and options products to meet the needs of a diverse user group.

The Clearing House

The clearing house that clears contracts traded in KLOFFE is the Malaysian Derivatives Clearing House (MDCH) which is managed independently from KLOFFE. The primary function of a clearing house is to provide financial stability by guaranteeing the performance of all contracts traded. Essentially, it acts as the counter party to all contracts traded by assuming the obligation as a buyer (seller) to the original seller (buyer) of the contract.

MDCH is now the common clearing house for the two derivatives exchange, namely, KLOFFE and the Commodity and Monetary Exchange of Malaysia (COMMEX Malaysia).

Electronic Trading Platform

The screen based trading system used by KLOFFE is known as the KLOFFE Automated Trading System (KATS). KATS is based on the system used by EUREX (jointly owned by Deutsche Bourse AG and the Swiss Exchange). KATS is specially designed to:

- (i) Order execution and matching;
- (ii) Trade posting to Clearing House system;
- (iii) Real time prices dissemination.

One of the main features of KATS is to provide for total segregation of all individual client accounts. This enhanced level of recording trade details enables the Exchange, the Malaysian Derivatives Clearing House (MDCH) and Trading Members to continuously monitor and assess risk at individual client account levels at all times, thus enabling all parties to effectively manage risk at their respective levels particularly during volatile market conditions.

Prior to May 1999, KLOFFE provided front-end clearing functions while MDCH performed the back-end clearing functions for KLOFFE traded products. It was later decided, at an industry level, that the MDCH should provide both front and back end clearing functions for both KLOFFE and COMMEEX products. Hence, on 10 May 1999, the new derivatives industry solution which also addressed Y2K compliance was successfully rolled-out.

Membership on KLOFFE

Membership on KLOFFE is divided into two categories:

(a) Trading Members

Trading Members are companies set-up specifically to carry out a futures broking business. They are also known as Futures Brokers and must be licensed as Futures Brokers under the FIA. Trading Membership is only available to companies incorporated under the Companies Act 1965 with a minimum paid-up capital of RM5 million. This membership enables a company to trade in futures and options contracts for itself and also on behalf of its clients. It is obtainable by way of subscription to an "A" Preference Share issued by KLOFFE which has attached to it all the rights and obligations of a Trading Member.

Trading Members will have full and direct access to the trading facilities of KLOFFE. They can also choose to become Clearing Members and by doing so will have access to the clearing facility. They are also known as Futures Brokers and they must be licensed under the FIA. The person who directly deals with the customers of a Trading Member is a futures broker representative (FBR). As at 31 July 2000

there are 25 licensed Trading Members on KLOFFE.

(b) Local Members

Local Membership is offered to individuals who wish to trade on their own behalf. These individuals cannot trade on behalf of clients. They only have access to the trading facilities of KLOFFE for the purpose of executing their own trades of which matched trades must be cleared through a nominating Clearing Member. As at 31 July 2000 there are 58 Local Members trading on KLOFFE.

Local Members are not required to be licensed under the Act as they are not considered to be intermediaries in the industry. Instead, they will have to undergo a registration process with KLOFFE and vetting by the Securities Commission.

Products

KLOFFE currently has only one product traded, namely the Kuala Lumpur Stock Exchange Composite Index (KLSE CI) Futures Contract. However, KLOFFE is working towards include the launch of options on the KLSE CI by end of the year (which will position KLOFFE as the first and ever Exchange to trade options contract in Malaysia). Besides, the Exchange also plans to introduce individual stock options, to provide investors with a wider range of equity derivative instruments to hedge their underlying portfolio. In terms of new products research, we are looking into the possibility of introducing an Islamic Index derivative in the near future.

XII. COMMODITY AND MONETARY EXCHANGE OF MALAYSIA (COMMEEX MALAYSIA)

Commodity and Monetary Exchange of Malaysia (COMMEEX Malaysia) is a membership owned futures exchange which was incorporated on 14 July 1980 as The Kuala Lumpur Commodity Exchange. In 1992 The Kuala Lumpur Commodity Exchange formed a wholly-owned subsidiary Malaysia Monetary Exchange in order to offer trading in financial futures. The business operations of Malaysia Monetary Exchange was merged with that of COMMEEX Malaysia on 7 December 1998.

COMMEX Malaysia operates under the jurisdiction and supervision of the Securities Commission and is governed by the Futures Industry Act 1993 (FIA), thus offering investors the security of trading on a regulated Exchange with proven procedures and standards which conform to international standards.

COMMEX Malaysia provides and regulates the facilities and place for trading of both commodity and financial futures contracts pursuant to the business rules of the exchange. All futures contracts traded on the exchange are guaranteed by the clearing house, Malaysian Derivatives Clearing House Bhd.

Management of COMMEX Malaysia

The powers of management of the exchange are vested in the Management Board of the Exchange. As stipulated in section 5 of the FIA, the Management Board comprises of:

- (i) An Executive Chairman and two other directors appointed by the Minister of Finance; and
- (ii) Six directors elected by the members.

Membership

The membership structure of Commodity and Monetary Exchange of Malaysia has two distinct futures markets namely the commodity and financial futures markets. Members of the Exchange Company are corporations (brokers and non-brokers), categorised as General Members, Commodity Members and Financial Members. Members of the Exchange are individual Local Members, Local Lessees, Trading Permit Holders and corporate Trade Affiliates.

A broker member of COMMEX Malaysia is a corporate member holding a futures broker license issued by the Securities Commission (SC) under the Futures Industry Act (FIA) 1993, to carry on futures brokering business. Consequently, under the FIA, every director and relevant employee of a futures broker member are required to be licensed by the SC as futures broker's representatives (FBR).

Seats

The trading rights of members of the Exchange are attached to Seats, (minimum 1 seat) which are either owned or leased. As for the Members of the Exchange Company, they must at least own 2 seats, a prerequisite to their trading rights. Seats are categorised as Commodity Seats, Financial Seats and Individual Seats.

Seats may be purchased from the Exchange or from Members wishing to sell in the secondary market, subject to the approval and in accordance with the Business Rules of the Exchange.

Market Safeguards

COMMEX Malaysia has many safeguards of high standards to protect the integrity of the markets. They are as follows.

(i) The Clearing House

In protecting the financial integrity of the marketplace, COMMEX Malaysia together with its clearing house, the Malaysian Derivatives Clearing House Berhad (MDCH), adopts a financial and operational safeguard system that is comparable to the best international practices. This system is designed to provide the highest level of safety with very early detection of unsound practices on the part of any member. Protection against market defaults is imperative and remains the ultimate goal of the clearing system.

Financial performance of all contracts traded on the floor of COMMEX Malaysia is guaranteed, initially by the Clearing Members, and thereafter by the MDCH, once the contract has been matched and accepted for clearing. All participants of the Exchange must have their trades cleared through a Clearing Member of the MDCH to ensure themselves of a financially strong party behind their contracts as soon as they are transacted.

Once a contract has been accepted for clearing, the MDCH substitutes itself as the buyer to the seller and vice versa. MDCH will then hold each Clearing Member

accountable for every position it carries regardless of whether the position is carried for the account of another member, for the account of a non-member client, or for the Clearing Member's own account. In short, the MDCH looks solely to the Clearing Member carrying and guaranteeing the account to secure all payments and performance obligations.

(ii) The Audit, Compliance & Surveillance (ACS) Division

The ACS division has an overall responsibility of upholding the integrity of COMMEM Malaysia's futures markets. The Division carries out a wide range of duties through its highly dedicated and competent audit staff which include daily and regular monitoring of the market and members, regular visits to members' offices for field audits and monitoring of the activities on the trading floor of the Exchange.

The duties of the ACS Division can be classified into the following major areas:

(a) Audit and Compliance

The Division is responsible for detecting violation of the Rules and the Act. It conducts routine and surprise audits on Broker Members as well as reviewing the adequacy of their internal controls.

(b) Financial Surveillance

The Division is also responsible for detection of any failure by Members to meet the minimum financial requirements of the Exchange. It conducts regular monitoring of Members' financial positions and clients' funds in segregation. Early warning levels are established to facilitate more intensive monitoring where necessary, on the Broker Members' financial positions.

(c) Market Surveillance

The Division is responsible for detection of any adverse situations that may threaten the orderly trading or liquidation of contracts on any

COMMEM Malaysia's futures markets avoiding possible market disruptions. It conducts daily monitoring of the futures prices and prices of the underlying commodity in the cash and forward markets, and the prices of substitutes of the underlying commodity of the futures contracts, as well as the open positions of large traders.

(d) Floor Surveillance

The Division is also responsible for detecting any fraudulent trading practice, abuse, and any other violation of COMMEM Malaysia's Business Rules or the objects contained in COMMEM Malaysia's Floor Procedures Manual. Their duties include ensuring all traders on the Floor maintain a high standard of conduct and professionalism, conduct regular audits on Members pertaining to Floor Rules violation, investigate complaints officially received from Members, Locals, the Clearing House, and other sources, and carry out special audits at the request of the Compliance Committee of the Exchange.

A CCTV (closed-circuit television) Surveillance System is in place to enhance the Division's performance. The system includes cameras located at strategic positions within the trading floor, microphones, television monitors, videocassette recorders, and a scanner with pan, tilt and zoom capabilities.

Other than carrying out its responsibilities of detecting violations that may affect the integrity of the market, the division also adopts a proactive approach to assist Members in complying with the Rules. Members are strongly encouraged to consult the division on regulatory issues. Early warnings to Members in some situations where Members face some risks of violating the Rules are also provided. In addition, the Division regularly

initiates amendments to the Rules in steering towards a more efficient marketplace.

In addition to the above, the Division also acts as the Secretariat to the Dispute Committee of the Exchange in settling disputes between Members and clients. The framework for enforcing the Rules is firmly established and well-tested, with the Compliance Committee of the Exchange having some limited disciplinary powers like imposing compound fines for some specific minor violations, and ordering Broker Members to trade for liquidation only for failure to meet minimum financial requirements. All major and serious violations detected are referred to the Business Conduct Committee for a full disciplinary hearing.

iii. Registration of Brokers

A Member of the Exchange, who handles clients' futures accounts must be registered as a Futures Broker with the Securities Commission (SC) under the Futures Industry Act (FIA) 1993. The SC is an independent national regulatory agency responsible for the regulation and supervision of both commodity futures and financial futures trading in Malaysia.

A Futures Broker must also ensure that all its employees, who handle clients, are registered as Futures Broker's Representatives (FBRs) and are registered with the SC.

iv. Reportable Position and Speculative Position Limits

Members are required to report to the Exchange when its proprietary account, or any of its client's, has a position equal to or in excess of the reportable level set by the Exchange for each contract.

Reportable position for Crude Palm Oil futures contract is set at 100 or more open contracts, either long or short, in any one delivery month. As for the Three-month KLIBOR futures

contract, an open position of 100 or more Contracts in any one (1) delivery month which is owned or controlled by a Member or Client, alone or in conjunction with any other person or corporation, at the close of the Afternoon Session on any Business Day shall constitute Reportable Position.

Speculative position limits are also set for all contracts. For CPO futures, the limit is 500, net long or short, in any delivery month or in all months combined. This limit is set at 2,000 contracts, nett gross open positions for all delivery months of the contract for KLIBOR futures.

Exemptions from position limits can be obtained for bona fide hedging trades. These limits are enforced strictly to prevent price manipulation or cornering of the market, hence protecting the integrity of the Exchange.

v. Segregation of Clients' Funds

Members are required to maintain a separate bank account for all clients' funds. Clients' funds cannot be withdrawn from the segregated account except for the purposes of payment of deposits and margins, payment of debts due to the Member from the clients, and monies drawn on clients' authority. Members are also not permitted to use monies belonging to one client for margining or financing the trades and positions of another client or the Member itself.

COMMEX Malaysia's Products

COMMEX Malaysia, Malaysia's premier and first multi-product futures exchange, currently offers two futures contracts.

The Crude Palm Oil (CPO) Futures contract, launched in 1980, caters to the price risk management needs of the oils and fats' industry. Over the last few years, the market has gained tremendously in stature. Prices discovered on the trading floor are now recognised as the pricing benchmark for palm oil and its products worldwide.

The Three-Months Kuala Lumpur Interbank Offered Rate (3-month KLIBOR) futures contract was launched in 1996. This contract caters to the hedging and trading needs of financial institutions

and large corporations with Ringgit-based assets. Major users of the contract currently include the commercial banks, large corporations and many others with risk exposure to interest rate movements.

XIII. REGULATION OF ACQUISITION OF ASSETS, MERGERS AND TAKE-OVERS

The Foreign Investment Committee (FIC) Guidelines of 1974 were formulated to establish a set rules regarding the acquisition of assets or any interest, mergers or take-overs of companies and business. The Guidelines may be viewed as a means of restructuring the pattern, ownership and control of the corporate sectors in line with the objectives of the New Economic Policy (NEP) of 1970-90. Through these Guidelines, the Government endeavors to reduce the present imbalances in the distribution of the corporate wealth and to encourage those forms of private investment that would contribute to the development of the country in consonance with the objectives of the NEP. Since efforts made in restructuring the equity ownership in the corporate sector will continue under the National Development Policy for the period after 1990, the 1974 FIC Guidelines will continue to apply regarding the acquisition of assets or any interest, mergers and take-overs of companies and businesses in furtherance of the restructuring objectives.

Rules and Regulations Regarding Acquisition, Mergers and Take-Over

The Guidelines for the acquisition of assets, mergers or take-overs by foreign or Malaysian interests are governed among others by the following rules:

- (a) Against the existing pattern of ownership, the proposed acquisition of assets or any interest, mergers or take-overs should result directly or indirectly in a more balanced Malaysian participation in ownership and control.
- (b) The proposed acquisition of assets or any interest, mergers or take-over should lead directly or indirectly to net economic benefits in relation to such matters as the extent of Malaysian participation,

particularly Bumiputera participation, ownership and management, income distribution, growth, employment, exports, quality, range of products and services, economic diversification, processing and upgrading of local raw material, training, efficiency, and research and development.

- (c) The proposed acquisition of assets or any interest, mergers or take-overs of companies and businesses should not have adverse consequences in term of national policies in such matters as defence, environmental protection or regional development.
- (d) The onus of proving that the proposed acquisition of assets or any interest, mergers or take-overs of companies and businesses is not against the objectives of the NEP is on the acquiring parties concerned.

The above guidelines will apply to the following:

- (a) any proposed acquisition by foreign interests of any substantial fixed assets in Malaysia;
- (b) any proposed acquisition of assets or any interest, mergers and take-overs of companies and businesses in Malaysia by any means, which will result in ownership or control passing to foreign interest;
- (c) any proposed acquisition of 15% or more of the voting power by any one foreign interest or associated group or by foreign interests in the aggregate of 30% or more of the voting power of a Malaysia company or business;
- (d) control of Malaysian companies or businesses through any form of joint-venture agreement, management agreement and technical assistance agreement or other agreement;
- (e) any merger and take-over of any company or business in Malaysia whether by Malaysians or foreign interests; and

- (f) any other proposed acquisition of assets or interests exceeding in value of RM5 million whether by Malaysians or foreign interests.

The guidelines, however, do not apply to specific projects approved by the Government comprising the following:

- (a) acquisition by Ministries and Government Departments;
- (b) acquisition by Minister of Finance Incorporated, Menteri Besar Incorporated and State Secretary Incorporated; and
- (c) privatisation projects approved by the Federal or State Government.

Foreign Investment Committee

For the purpose of implementing the guidelines, the FIC was established and is responsible for major issues on foreign investment. The functions of the FIC are:

- (a) to formulate policy guidelines on foreign investments in all sectors of the economy to ensure the fulfillment of the objectives of the NEP;
- (b) to monitor the progress and help resolve problems pertaining to foreign private investments and to recommend suitable investment policies;
- (c) to supervise and advise ministries and Government agencies in all matters concerning foreign investments;
- (d) to coordinate and regulate the acquisition of any assets or interests, mergers and take-overs of companies and businesses in Malaysia; and
- (e) to monitor, assist and evaluate the form, extent and conduct of foreign investments in the country and to maintain comprehensive information to foreign investments.

The FIC comprises the following members:

- (a) Director-General of the Economic Planning Unit (as Chairman);

- (b) Secretary-General of the Ministry of Finance;
- (c) Governor of the Central Bank ;
- (d) Secretary-General of the Ministry of International Trade and Industry;
- (e) Chairman of the Securities Commission;
- (f) Chairman of the Malaysian Industrial Development Authority;
- (g) Director-General of the implementation and Coordination Unit;
- (h) Secretary-General of the ministry of Domestic Trade and Consumer Affairs;
- (i) Secretary-General of the Ministry of Entrepreneur Development; and
- (j) Registrar of Companies.

Further details on the Guidelines and procedures for submission of proposals to the FIC are obtainable from:

The Secretary
Foreign Investment Committee (FIC)
Economic Planning Unit
Prime Minister's Department
Block B5 & B6
P.M's Department Complex
62502 Putrajaya.

XIV. EXCHANGE CONTROL POLICY

With the return of stability in the financial markets, Malaysia's selective exchange control measures introduced since 1 September 1998 have been progressively relaxed to enhance their effectiveness and to ensure efficient implementation. With the lapse of the 12-month rule on 1 September 1999, the principal amount of non-resident portfolio transactions brought into Malaysia is freely allowed to be repatriated at anytime without being subject to levy. At present, profits on portfolio investment are subject to a flat levy of 10%, and only upon the repatriation of such profits. The major changes introduced in 1999/2000 were the following:

(a) 21 September 1999

Standardised Levy of 10%

The levy on profits repatriated from the Special External Accounts was

standardised to only 10%. The standardised levy replaced the tiered levy systems of 10% and 30% on profits introduced on 15 February 1999.

(b) 27 July 2000

Review of Declaration Procedure

Resident and non-resident travellers are no longer required to declare the amounts in the Travellers Declaration Form (TDF) as long as they carry currency notes and/or traveller's cheques within the permissible limits. For non-residents, the declaration is being incorporated into the Embarkation Card issued by the Immigration Department.

The exchange control policies of Malaysia are applied uniformly to transactions with all countries, except Israel and the Federal Republic of Yugoslavia (Serbia and Montenegro) for which special restrictions apply. The exchange control policies, in general, are aimed at monitoring the settlement of payments and receipts as well as encouraging the use of the country's financial resources for productive purposes in Malaysia. For monitoring and compilation of balance of payments statistics, residents are required to complete statistical forms, Form P or Form R, for each payment and receipt of more than RM10,000 vis-a-vis non-residents.

The main exchange control requirements are as follows:

(i) Current Account Transactions

(a) Payment for Import of Goods and Services

There are no restrictions on payments, irrespective of amount, to non-residents for import of goods and services. However, such payments are required to be made in foreign currency.

(b) Export Proceeds

All export proceeds are required to be repatriated back to Malaysia in accordance with the payment schedule

as specified in the sales contract, which in any case should not exceed six months from the date of export.

The export proceeds must be received in foreign currency and must be sold for ringgit or retained in approved foreign currency accounts with onshore commercial banks, up to an aggregate overnight limit between USD1 million and USD10 million.

(c) Import and Export of Currency by Travelers

All travelers are required to complete TDF at the Immigration check-point upon their exit or arrival at Malaysia only if the amount of currency notes including traveller's cheques being carried exceed the permissible limits. Resident and non-resident travellers are allowed to bring into Malaysia any amount of foreign currency notes, including traveller's cheques.

Declaration in the TDF is no longer required under the following circumstances:

- Resident and non-resident travellers carrying ringgit notes up to RM1,000.
- Resident travellers bringing out foreign currency notes, including traveller's cheques, up to the equivalent of RM10,000,
- Non-resident travellers bringing in foreign currency notes, including traveller's cheques less than the equivalent of USD2,500.

However, prior written approval from the Controller of Foreign Exchange (the Controller) should be obtained if the amount exceeds the permissible limits. In the case of non-resident travellers, they will only need to seek approval if the amount brought out exceeds the amount brought into Malaysia, provided the amount brought out is more than the equivalent of USD2,500.

(ii) Capital Account Transactions

(a) Foreign Direct Investment

Foreign direct investors, holding at least 10% of the voting shares or voting rights of the company, are freely allowed to repatriate their investments, including capital, profits, dividends and interest, without being subject to any levy.

(b) Investment Abroad by Residents

Residents are required to seek prior approval from the Controller to remit funds in excess of RM10,000 for overseas investment.

(c) Credit Facilities from Non-Residents

Credit Facilities in Foreign Currency

Residents are freely permitted to obtain credit facilities in foreign currency up to the equivalent of RM5 million in the aggregate from licensed banks, licensed merchant banks and non-residents. Any amount exceeding the permitted limit would require the prior approval of the Controller. Where the aggregate amount exceeds the equivalent of RM1 million, the resident must provide the Controller information on the credit facilities.

There is also no restriction for repayment of credit facilities obtained from non-residents as long as such credit facilities have been obtained in accordance with the relevant exchange control rule.

Credit Facilities in Ringgit

Residents are not allowed to obtain credit facilities in ringgit from non-residents without the prior approval of the Controller.

(d) Extension of Credit Facilities to Non-Residents

Credit Facilities in Foreign Currency

Commercial banks are freely allowed to extend credit facilities in foreign currency to non-residents for purposes other than financing the acquisition or development of immovable property in Malaysia.

Credit Facilities in Ringgit

Authorised dealers are allowed to grant overdraft facility in aggregate of not exceeding RM200 million for intra-day and not exceeding RM5 million for overnight to a foreign stockbroking company, subject to certain conditions. Banking institutions and other non-bank residents are allowed to extend credit facilities in ringgit to non-residents to finance up to 60% of the purchase price or construction cost of a residential property in Malaysia for their own accommodation. This is applicable for non-residents who hold a valid Malaysian work permit with at least one year duration before expiry as at the date of application.

In addition, banking institutions are also allowed to extend credit facilities in ringgit of up to an aggregate of RM200,000 to non-resident for purposes other than to finance the acquisition or development of immovable property in Malaysia and for the purchase of one vehicle for their own use. Prior approval of the Controller is required for the extension of credit facilities exceeding the limit.

Resident stockbroking companies are allowed to extend margin financing facilities to non-resident clients for the purchase of shares listed on the Kuala Lumpur Stock Exchange (KLSE), subject to the compliance with the rules imposed by the KLSE.

(e) Swap/Forward in Ringgit

Authorised dealers are allowed to enter into short-term currency swap arrangement with non-resident stockbrokers and outright ringgit forward sale contract with non-resident to cover payment for their share purchases on the KLSE. The permission is subject to the condition that such contracts are based on firm commitment and not on anticipated purchase, and with maturity period of up to five working days with no rollover option.

(f) Portfolio Investment

Non-residents who are non-foreign direct investors, are freely allowed to move their funds in and out of the country. The 12-month rule for non-resident to hold the principal amount of their portfolio transactions in Malaysia has lapsed on 1 September 1999 and no longer applicable. At present, repatriation of profits from the External Accounts is free from levy. Repatriation of principal from the Special External Accounts is also not subject to any levy, however, profits repatriated are subject to a levy of 10%. Effective 21 September 1999, funds for investment in ringgit securities should be channeled through the Special External Accounts.

Repatriation of proceeds from Malaysian Exchange of Securities Dealing and Automated Quotation (MESDAQ) and sale of investments in immovable property (for both principal capital profits) is not subject to any levy.

(iii) Credit Facilities in Ringgit to Non-Resident Controlled Companies

A resident is freely allowed to extent credit facilities in ringgit to a Non-Resident Controlled Company (NRCC) operating in Malaysia up to an aggregate limit of RM10 million per corporate group and any amount of short-term trade financing where the tenure does not exceed 12 months. The NRCC is required to obtain prior approval from the Controller for domestic borrowing exceeding RM10 million in aggregate and to comply with the 3:1 gearing ratio requirement between its domestic debt and eligible capital funds.

Of the total amount of credit facilities extended to an NRCC by resident banking institutions in Malaysia, foreign-owned banking institutions may only extend credit facilities up to a maximum of 40%, with the balance from Malaysian-owned banking institutions.

General permission from the Controller of Foreign Exchange is granted to NRCC as stated in the Exchange Control Guideline on Private Debt Securities to raise domestic

credit facility through the issuance of Private Debt Securities regardless of the amount. However, NRCC needs to comply with the 60:40 rule and the 3:1 ratio. The NRCC is granted exemption on the 60:40 rule if Private Debt Securities is issued by way of a competitive bidding system. The proceeds from the Private Debt Securities must be utilised for productive purposes.

(iv) Foreign Currency Accounts of Residents

Resident exporters are permitted to open foreign currency accounts with on shore commercial banks to retain export proceeds in foreign currency between USD1 million and USD10 million, depending on their export receipts:

Aggregate Overnight Limit	Average Monthly Export Receipts
USD10 million	Exceeding RM20 million
USD5 million	Exceeding RM10 million, up to RM20 million
USD3 million	Between RM5 million and RM10 million
USD1 million	Less than RM5 million

Resident companies with domestic credit facilities are permitted to open foreign currency accounts to retain foreign currency receivables, other than export proceeds, up to an aggregate overnight balance equivalent to USD0.5 million with commercial banks in Malaysia, and USD0.5 million with Licensed Offshore Banks in Labuan.

Resident with no domestic credit facilities are permitted to open foreign currency accounts with onshore commercial banks and the overseas branches branches of Malaysian-owned banks to retain foreign currency receivables other than export proceeds with no limit on overnight balances.

Resident individuals are also allowed to open foreign currency accounts solely to facilitate education and employment overseas up to an aggregate overnight balance of USD100,000 with commercial banks in Malaysia, USD100,000 with Labuan Offshore Banks, and USD50,000 with overseas banks.

(v) Foreign Currency Accounts of Non-Residents

Commercial banks and merchant banks are freely allowed to open foreign currency accounts for non-residents. There is no restriction on the inflow and outflow of funds through the foreign currency accounts of non-residents.

(vi) External Accounts of Non-Residents

Banking institutions are freely allowed to open accounts in ringgit known as External Accounts (or Special External Accounts for those opened on or after 15 February 1999) for non-residents.

The uses of funds in such ringgit accounts are allowed for the following permitted purposes:

- Purchase of ringgit assets/placement of deposits;
- Payment of administrative and statutory expenses in Malaysia;
- Payment of goods and services for use in Malaysia;
- Granting of loans and advances to staff in Malaysia according to the terms and conditions of services; and
- Payment in relation to the issuance of non-financial guarantees, that is, payment under counter-guarantee from non-resident financial institution to resident financial institution in Malaysia and payment by Licensed Offshore Banks.

The sources of funds in these ringgit accounts may be from:

- Sale of ringgit instruments, securities or other assets in Malaysia;
- Salaries, wages, rental, commissions, interest, profits or dividends; and
- Sale of foreign currencies.

Effective from 21 September 1999, reinvestment for ringgit securities would have to be made from the Special External Accounts. Prior approval is required for

transfer of funds between ringgit accounts of different account holders and for uses of funds other than permitted purposes. There is no restriction on the operation of the ringgit accounts of non-residents working in Malaysia, non-residents studying in Malaysia, central banks, embassies, consulates, high commission, supranational or international organisations recognised by the Malaysian Government.

(vii) Designated External Accounts

Commercial banks are allowed to open ringgit accounts known as Designated External Account (DEA) for non-residents, solely for the purpose of facilitating the trading at the Commodity and Monetary Exchange of Malaysia (COMDEX) and Kuala Lumpur Options and Financial Futures Exchange (KLOFEE). Funds in the DEA are not subject to levy on repatriation.

(viii) Special Status Granted to Selected Companies

(a) Offshore Entities in Labuan International Offshore Financial Centre

Entities established in Labuan International Offshore Financial Centre (IOFC) are declared as non-residents for exchange control purposes after they are incorporated/registered under the Offshore Companies Act 1990, and/or licensed Offshore Banking Act 1990 or Offshore Insurance Act 1990 as the case may be. Offshore entities in Labuan are freely allowed to deal in foreign currency with non-residents.

Licensed Offshore Banks in Labuan are permitted to receive payments in ringgit from residents arising from fees, commission, dividends or interest from deposit of funds.

Offshore Insurance Entities in Labuan are also permitted to use their ringgit account to receive insurance premiums and for payment of claims arising from insurance and reinsurance of domestic insurance business.

All offshore entities are freely allowed to maintain ringgit accounts with onshore banks in Malaysia solely for the purpose of defraying their statutory and administrative expenses in Malaysia.

(b) Multimedia Supercorridor Companies

Companies operating in Multimedia Super Corridor (MSCs) which are incorporated as separate legal entity, are given exemption from exchange controls upon the companies being awarded the MSC status by the Multimedia Development Corporation (MDC). The exemption granted to the MSC company is solely for transactions undertaken on its own account. However, prior approval should be obtained to deal with Specified Persons and in Restricted Currencies of Israel, Serbia and Montenegro. In addition, the MSC company is also required to submit the necessary statistical forms/reports/statements for monitoring purposes.

(c) Approved Operational Headquarters

Approved Operational Headquarters (OHQs) are allowed to open foreign currency accounts with commercial banks in Malaysia to retain export proceeds in foreign currency up to an aggregate overnight balance equivalent to USD10 million, regardless of the amount of export receipts.

OHQs are also allowed to open foreign currency accounts with commercial banks in Malaysia, Licensed Offshore Banks in Labuan or overseas banks for crediting foreign currency receivables, other than export proceeds, with no limit on the overnight balances.

OHQs are permitted to obtain any amount of foreign currency credit facilities from commercial banks and merchant banks in Malaysia, and from any non-residents for their own use. Such credit facilities can also be extended to their related companies overseas or invested abroad if their aggregate domestic credit facilities in ringgit does not exceed RM10 million.

(d) Approved International Procurement Centres

Approved International Procurement Centres (IPCs) are allowed to retain any amount of export proceeds in foreign currency accounts maintained with onshore commercial banks for the approved IPC activities only. IPCs are also allowed to enter into forward exchange contracts with onshore commercial banks to hedge exchange risk based on projected volume of trade.

XV. DOUBLE TAXATION AGREEMENTS

Double taxation agreements provide for the avoidance of incidences of double taxation on international income, such as business profits, dividends, interests and royalties, derived in one country and remitted to another country. This removes the “tax barrier” to international trade and investment. The agreements also provide for the exchange of information on relevant income and this is useful to prevent evasion of taxes on income.

Under double taxation agreements, business profits are taxed only in the country in which the enterprise is situated. Where the enterprise carries on business through a permanent establishment situated in the other contracting country, tax is levied in the other country on profits attributable to or derived by the permanent establishment in the country where it is situated.

Under most double taxation agreements, profits from shipping and air transport operations in international traffic are taxed only in the country where the management and control of the enterprise are exercised.

In most double taxation agreements which Malaysia has entered into, countries of residence accord tax sparing credit. A tax sparing credit is a credit given if no tax or a lower rate of tax is paid in the host country. In case of dividends paid by companies exempted from tax under the Promotion of Investments Act 1986, the recipients are also exempted from Malaysian income tax on such dividends. If the recipients are also taxed in their country of residence on the dividends, then the country of residence will give credits as if Malaysian tax has been paid.

Under most of the agreements, interests on approved loans and approved industrial or technical royalties derived from Malaysia by residents of other countries are exempted from tax in Malaysia. In addition, there is a provision for credit to be given by the country of residence for the tax spared by Malaysia in respect of such income.

To date, 52 countries have double taxation agreements with Malaysia, namely:

	Country	Date of Signing Agreement
1.	Singapore (Supplementary Agreement)	26.12.1968 6.7.1973
2.	Japan	30.1.1970
3.	Sweden	21.11.1970
4.	Denmark	4.12.1970
5.	Norway	23.12.1970
6.	Sri Lanka	16.9.1972
7.	United Kingdom	30.3.1973
8.	Belgium	24.10.1973
9.	Switzerland	30.12.1974
10.	France 31.1.1975 (Protocol)	24.4.1975
11.	New Zealand	19.3.1976
12.	Canada	16.10.1976
13.	India	25.10.1976
14.	Federal Republic of Germany ¹	8.4.1977
15.	Poland	27.3.1978
16.	Australia	20.8.1980
17.	Thailand	29.3.1982
18.	Republic of Korea	20.4.1982
19.	Philippines	27.4.1982
20.	Pakistan	29.5.1982
21.	Romania	26.11.1982

	Country	Date of Signing Agreement
22.	Bangladesh	19.4.1983
23.	Italy	28.1.1984
24.	Finland	28.3.1984
25.	People's Republic of China	23.11.1985
26.	Russia (The Former Union of Soviet Socialist Republics)	31.7.1987
27.	Netherlands	7.3.1988
28.	United States of America (Limited Agreement)	18.4.1989
29.	Hungary	24.5.1989
30.	Australia	20.9.1989
31.	Indonesia	12.9.1991
32.	Mauritius	23.8.1992
33.	Islamic Republic of Iran	10.11.1992
34.	Papua New Guinea	20.5.1993
35.	Saudi Arabia	18.7.1993
36.	Sudan	7.10.1993
37.	Republic of Albania	24.1.1994
38.	Zimbabwe	28.4.1994
39.	Turkey	27.9.1994
40.	Jordan	1.10.1994
41.	Mongolia	27.7.1995
42.	Vietnam	7.9.1995
43.	Malta	3.10.1995
44.	United Arab Emirates	28.11.1995
45.	Republic of Fiji	19.12.1995
46.	Czech Republic	8.3.1996
47.	Kuwait	6.4.1997
48.	Arab Republic of Egypt	14.4.1997
49.	Sri Lanka	16.9.1997
50.	Republic of Argentina	3.10.1997
51.	Myanmar	9.3.1998
52.	Namibia	28.7.1998

¹ Germany since 3.10.1990.

XVI. INVESTMENT GUARANTEE AGREEMENTS

The purpose of the Investment Guarantee Agreements (IGAs) is to ensure against non-commercial risks such as expropriation and nationalisation and to allow for remittances and repatriation of capital. For a developing country such as Malaysia, it is hoped that the IGAs will help to quicken the pace of industrialisation by encouraging the inflows of foreign capital. It is generally considered that the IGAs, which prevent arbitrary action by a recipient country, will generate confidence in foreign investors.

Coverage

The IGA normally covers the following:

- (a) A guarantee that there shall be no expropriation or nationalisation except for a lawful or public purpose and under due process of law and with prompt and adequate compensation.
- (b) A permission to remit or repatriate in any freely usable currency, profits or capital on investment.

Beneficiaries

Under most IGAs, the beneficiaries would be:

- (a) nationals or citizens according to the laws of each contracting party; and
- (b) companies which are incorporated in either contracting party's country and substantially owned by, and whose management and control are vested in the nationals of each contracting party.

Arbitration

Under the IGAs, two forms of disputes may arise. First, disputes on the interpretation or the application of the agreement itself and secondly, disputes in connection with the investments in the contracting countries.

- (a) In most of the IGAs that Malaysia has signed, it is provided for that consultations through

diplomatic channels shall settle disputes on the interpretation or application of the agreement with the view towards arriving at an amicable solution. Where a dispute fails to be settled in the above manner, it will be submitted to an arbitration board or an arbitration tribunal for settlement. If these measures fail to resolve the dispute, it would be referred to the International Court of Justice.

- (c) Disputes in connection with the investment between the national or company (investor) and the host country shall first be settled by making use of local administrative and judicial facilities. If the above means fail to settle the issue, it should then be submitted for reconciliation or arbitration to the International Centre for Settlement of Investment Disputes (ICSID) which is established under the auspices of the International Bank for Reconstruction and Development (IBRD) or the International Adhoc Arbitral Tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

Status of Investment Guarantee Agreements

Malaysia has signed IGAs with the following countries:

	<i>Country</i>	<i>Date of Signing Agreement</i>
1.	United States of America	21.4.1959 (amended on 24.6.1965)
2.	Federal Republic of Germany ¹	22.12.1960 (amended on 5.11.1965)
3.	Netherlands	15.6.1971
4.	Canada	1.10.1971
5.	France	24.4.1975
6.	Switzerland	1.3.1978
7.	Sweden	3.3.1979
8.	Belgo-Luxembourg	22.11.1979

¹ Germany since 3.10.1990.

<i>Country</i>	<i>Date of Signing Agreement</i>	<i>Country</i>	<i>Date of Signing Agreement</i>
9. United Kingdom	21.5.1981	38. Republic of Bangladesh	12.10.1994
10. Sri Lanka	16.4.1982	39. Republic of Croatia	16.12.1994
11. Romania	26.11.1982 (amended on 25.6.1996)	40. Bosnia Herzegovena	16.12.1994
12. Norway	6.11.1984	41. Spain	4.4.1995
13. Austria	12.4.1985	42. Pakistan	7.7.1995
14. Finland	15.4.1985	43. Kyrgyz Republic	20.7.1995
15. Organisation of Islamic Conference (OIC)	30.9.1987	44. Mongolia	27.7.1995
16. Kuwait	21.11.1987	45. Republic of India	3.8.1995
17. Association of South- East Asian Nations (ASEAN)	15.12.1987	46. Oriental Republic of Uruguay	9.8.1995
18. Italy	4.1.1988	47. Republic of Peru	13.10.1995
19. Republic of Korea	11.4.1988	48. Republic of Kazakhstan	27.5.1996
20. People's Republic of China	21.11.1988	49. Republic of Malawi	5.9.1996
21. United Arab Emirates	11.10.1991	50. Czech Republic	9.9.1996
22. Denmark	6.1.1992	51. Republic of Guinea	7.11.1996
23. Socialist Republic of Vietnam	21.1.1992	52. Republic of Ghana	11.11.1996
24. Papua New Guinea	27.10.1992	53. Arab Republic of Egypt	14.4.1997
25. Republic of Chile	11.11.1992	54. Republic of Botswana	31.7.1997
26. Lao People's Democratic Republic	8.12.1992	55. Republic of Cuba	26.9.1997
27. Taiwan	18.2.1993	56. Republic of Uzbekistan	6.10.1997
28. Republic of Hungary	19.2.1993	57. Macedonia	11.11.1997
29. Republic of Poland	21.4.1993	58. Democratic People's Republic of Korea	4.2.1998
30. Republic of Indonesia	22.1.1994	59. Republic of Yemen	11.2.1998
31. Republic of Albania	24.1.1994	60. Republic of Turkey	25.2.1998
32. Republic of Zimbabwe	28.4.1994	61. Republic of Lebanon	26.2.1998
33. Turkmenistan	30.5.1994	62. Burkina Faso	23.4.1998
34. Republic of Namibia	12.8.1994	63. Republic of Sudan	14.5.1998
35. Kingdom of Cambodia	17.8.1994	64. Republic of Djibouti	3.8.1998
36. The Argentine Republic	6.9.1994	65. Republic of Ethiopia	22.10. 1998
37. Jordan	2.10.1994	66. Senegal	11.2. 1999
		67. State of Bahrain	15.6. 1999.
		68. Algeria	27.01.2000.