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Investors' Guide

Economic Report 2003/2004

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I. INVESTMENT INCENTIVES BY LEGISLATION (AS AT 11 SEPTEMBER 2003)

Malaysia offers incentives for investments in promoted products and activities in the manufacturing, agriculture, tourism (including hotel), approved services projects, research and development (R&D), training, environmental protection activities and other manufacturing related services sectors. These incentives are contained in the Promotion of Investments Act 1986, Income Tax Act 1967, Labuan Offshore Business Activity Tax Act (LOBATA) 1990, Customs Act 1967, Sales Tax Act 1972, Excise Act 1976, Service Tax Act 1976 and Free Zones Act 1990. The incentives are designed to grant partial or to a limited extent total relief from the payment of tax.

A. PROMOTION OF INVESTMENTS ACT 1986

1. Pioneer Status

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

- (a) Promoted Product or Activity - Company will be granted tax exemption 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 or Activity in Promoted Area - Company located in Sabah, Sarawak, the Federal Territory of Labuan* and the designated Eastern Corridor of Peninsular Malaysia which covers,

Kelantan, Terengganu, Pahang and the district of Mersing in Johor, will be granted tax exemption 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. This incentive is applicable for all applications received by 31 December 2005.

- (c) Promoted Product or Activity for High Technology Companies - Company will be granted full tax exemption on 100% of the statutory income for 5 years.
- (d) Promoted Product or Activity in an Approved Industrial Linkage Scheme (SMIs producing intermediate goods) - Company will be granted full tax exemption on 100% of the statutory income for 5 years. Companies in approved industrial linkage scheme capable of achieving world class standards in terms of price, quality and capacity are eligible for tax exemption of 100% of its statutory income for a period of 10 years.
- (e) Promoted Product or Activity of National and Strategic Importance.

Strategic project includes product/activity that is of national importance. Generally, it involves heavy capital investment with long gestation period, high technology and integrated that generates widespread industrial linkages as well as provides significant impact to the economy.

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

Companies that have started operation are also eligible but the incentives will only be given on the additional investment.

* only applicable to the hotel and tourism industry.

For companies currently enjoying PS may apply for the incentives at the end of the pioneer period.

- (f) Contract R&D company - A company that provides R&D services in Malaysia to a company other than its related company, will be granted full tax exemption 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

Investment Tax Allowance (ITA) is an alternative to PS and is designed to cater for projects which have large capital investments and long gestation period.

As in the case of PS, a company granted ITA will enjoy different degree of exemptions depending on the types of promoted products/activities as follows:

- (a) Promoted Product or 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 the first capital expenditure was incurred. The allowance can be utilised to set off (exempt) 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.

- (b) Promoted Product or Activity In Promoted Area

Company located in Sabah, Sarawak, the Federal Territory of Labuan* 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 the first capital expenditure was incurred. The allowance can be utilised to set off (exempt) 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.

- (c) Promoted Product or 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 from which the first capital expenditure was incurred. The allowance can be utilised to set off (exempt) against 100% of statutory income in the assessment year.

- (d) Promoted Product In An Approved Industrial Linkage Programme

Company will be granted an allowance of 60% in respect of qualifying capital expenditure incurred within 5 years from the date from which the first capital expenditure was incurred. The allowance can be utilised to set off (exempt) against 100% of statutory income in the assessment year.

* only applicable to the hotel and tourism industry.

- (e) Promoted Product/Activity of National and Strategic Importance and product/activity in the approved linkage programme which achieve world class standard:

Company will be granted an allowance of 100% in respect of qualifying capital expenditure incurred within 5 years from the date from which the first capital expenditure was incurred. The allowance can be utilised to set off (exempt) against 100% of statutory income in the assessment year. Companies that have started operation are also eligible but the incentives will only be given on the additional income. For companies currently enjoying ITA may apply for the incentives at the end of the ITA period.

- (f) R&D Activities

Different incentives are given to companies specialising in R&D activities as follows:

- (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 was incurred. The allowance can be utilised to set off (exempt) 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.

- (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 (exempt) 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.

- (iii) In-house R&D (R & D carried out 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 was incurred. The allowance can be utilised to set off (exempt) 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.

- (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 was incurred. The allowance can be utilised to set off (exempt) 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.

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 incentive.

Terms and conditions for companies enjoying ITA:

- (i) Any unutilised allowance can be carried forward to subsequent years until fully utilised.

- (ii) Dividends paid out of tax exempt income to shareholders are also exempted from tax.

3. Industrial Adjustment Allowance

Industrial Adjustment Allowance (IAA) is available to companies in selected manufacturing sector mainly in wood based, textile, machinery and engineering, stamping, mould, tools and dies and machinery sub-sector. The companies should already be in existence before 31.12.1990 and have been 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 (exempt) against 100% of adjusted income in the assessment year.

Terms and conditions for companies enjoying 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 from tax.

4. Infrastructure Allowance

Infrastructure Allowance is available to any company located in the promoted areas engaged in manufacturing, agriculture, hotel, tourist and other industrial/commercial activities.

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 (exempt) up to 85% of statutory income in the assessment year. The balance of that statutory income will be taxed at the prevailing company tax rate. This incentive is applicable to all applications received by 31 December 2005.

5. Double Deduction for Promotion of Exports

This incentive is available to any resident company in Malaysia seeking opportunities for exports of manufactured 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) publicity expenses connected with export;
- (g) exhibits and/or participation required in trade or industrial exhibitions held abroad approved by the Ministry of International Trade and Industry (MITI);
- (h) fares in respect of travel overseas by employees of companies for business;
- (i) accommodation and sustenance expenses up to RM200 per day;
- (j) cost of maintaining sales office overseas for the promotion of exports;
- (k) expenses for services rendered for public relations work connected with export;
- (l) professional fees incurred in packaging design services provided by local professional service provider;
- (m) participation in virtual trade shows;
- (n) participation in trade portals for the promotion of local products; and
- (o) cost of maintaining warehouse overseas.

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

6. Incentives for the Multimedia Super Corridor

Companies with Multimedia Super Corridor (MSC) status are entitled to enjoy a set of tax incentives and benefits from the Government of Malaysia that is backed by a Bill of Guarantees. The incentives are as follows:

- (i) PS with tax exemption on 100% of the statutory income for 5 years which is eligible for extension another 5 years; or
- (ii) ITA of 100% of capital expenditure incurred within a period of 5 years to be set off (exempt) against 100% of the statutory income in the assessment year;
- (iii) R&D grants (for majority Malaysian ownership MSC status companies);
- (iv) Freedom to source capital and borrow funds globally;
- (v) Duty-free importation of multimedia equipment;
- (vi) Intellectual property protection and a pioneering and comprehensive framework of cyberlaws;
- (vii) No censorship of the Internet;
- (viii) World-class physical and IT infrastructure;
- (ix) Globally competitive telecommunication tariffs and services guarantees; and
- (x) High-powered implementation agency, the Multimedia Development Corporation to provide consultancy and assistance within the MSC.

The tax incentives accorded to the MSC companies are also extended to multimedia facilities located outside the MSC. Multimedia facility is referred to as a center of learning which provides courses in media, computer, information technology, telecommunications, communications and contents relating to data, voice, graphics and images.

7. Strategic knowledge-based company

- (i) PS with tax exemption on 100% of the statutory income for 5 years; or

- (ii) ITA of 60% of capital expenditure incurred within a period of 5 years to be set off (exempt) against 100% of the statutory income in the assessment year.

The incentives given are on condition:

- (a) the company must be a knowledge-intensive company having the characteristics:
 - potential to generate knowledge content
 - high value added operations
 - high technology
 - a large number of knowledge workers
- (b) must have a corporate knowledge-based masterplan.

8. Incentives for the Manufacture of Machinery and Equipment

Companies undertaking activities in the production of specialised machinery and equipment (machine tools, plastic injection machines, material handling equipment, robotics and factory automation equipment specialised/ process machinery or equipment for specific industry, packaging machinery, plastic extrusion machinery, and parts and components of the above mentioned machinery and equipment) are eligible for the following incentives:

- (i) PS with full tax exemption on 100% of statutory income for 10 years; or
- (ii) ITA of 100% of capital expenditure incurred within a period of 5 years to be set off (exempt) against 100% of the statutory income in the assessment year.

9. Incentives for Manufacturing Related Services

Companies providing the following value added manufacturing related services:

- (i) Integrated logistic services which comprise the entire supply chain management including procurement of software and

hardware, warehousing, distribution (transportation and freight services), packaging activities and custom clearance;

- (ii) Integrated market support services which comprise the activities of brand development, consumer development, packaging design, advertising and promotion; and
- (iii) Integrated central utility facilities which provide services including the supply of steam, demineralised water and industrial gas are eligible for the following incentives:
 - (i) PS with tax exemption on 70% of statutory income for 5 years; or
 - (ii) ITA of 60% of capital expenditure incurred within a period of 5 years, to be set off (exempt) against 70% of the statutory income in the assessment year.

10. Reinvestment in the Promoted Resource-Based Industries

Local companies (with at least 51% equity owned by Malaysians) undertaking investment in rubber, oil palm and wood based industries for expansion purposes are eligible for the following incentives:

- (i) PS with tax exemption on 70% of the statutory income for 5 years; or
- (ii) ITA of 60% of capital expenditure incurred within a period of 5 years to be set off (exempt) against 70% of the statutory income in the assessment year.

11. Reinvestment in the promoted food processing activity

Local companies (with at least 60% equity owned by Malaysian) undertaking investment in promoted food processing activity for expansion purposes are eligible for:

- (i) PS with tax exemption on 70% of the statutory income for 5 years; or
- (ii) ITA of 60% of the qualifying capital expenditure incurred within 5 years from the date on which the first qualifying capital

expenditure is incurred. The allowance can be utilised to set off (exempt) up to 70% of the statutory income in the assessment year.

12. Incentive for Companies Providing Cold Chain Facilities and Services for Food Products

To encourage companies to provide cold room and refrigerated facilities and related services such as collection and treatment of locally produced perishable food products, companies will be granted the following incentives:

- (i) PS with tax exemption of 70% on statutory income for 5 years; or
- (ii) ITA of 60% of capital expenditure incurred within 5 years to be set off (exempt) against 70% of statutory income in the assessment year.

13. Rearing of chicken and duck in the promoted areas

- (i) PS with tax exemption on 85% of the statutory income for 5 years; or
- (ii) ITA of 80% of the qualifying capital expenditure incurred within 5 years from the date on which the first qualifying capital expenditure is incurred. The allowance can be utilised to set off (exempt) up to 85% of the statutory income in the assessment year.

14. Incentive For Forest Plantation Project

Companies which undertake forest plantation projects are eligible for the following incentives:

- (i) PS with full income tax exemption on 100% of the statutory income for 5 years and eligible for extension of another 5 years; or
- (ii) ITA of 100% of capital expenditure incurred within a period of 5 years to be set off (exempt) against 100% of the statutory income in the assessment year.

15. Incentive For Storage, Treatment And Disposal Of Toxic And Hazardous Waste

Companies which are directly involved in the storage, treatment and disposal of toxic and hazardous waste in an integrated manner are granted:

- (i) PS with tax exemption on 70% of the statutory income for 5 years; or
- (ii) ITA of 60% of capital expenditure incurred within a period of 5 years to be set off (exempt) against 70% of the statutory income in the assessment year.

16. Incentive For Waste Recycling Activities

Companies undertaking waste recycling activities of high value added using high technology are granted:

- (i) PS with tax exemption on 70% of the statutory income for 5 years; or
- (ii) ITA of 60% of capital expenditure incurred within a period of 5 years to be set off (exempt) against 70% of the statutory income in the assessment year.

17. Incentive for the Conservation of Energy

(A) Companies providing energy conservation services are granted:

- (i) PS with tax exemption on 70% of statutory income for 5 years; or
- (ii) ITA of 60% of capital expenditure incurred within a period of 5 years to be set off (exempt) against 70% of the statutory income in the assessment year.

(B) Companies which incur capital expenditure arising from energy conservation measures in their own company are granted Accelerated Depreciation Allowance, to be written off within a period of 3 years.

18. Incentive For Utilising Biomass As A New Source Of Energy

Companies intending to generate 'energy' from 'biomass sources' are granted:

- (i) PS with tax exemption of 70% of statutory income for 5 years; or
- (ii) ITA of 60% of capital expenditure incurred within a period of 5 years to be set off (exempt) against 70% of the statutory income in the assessment year.

For purposes of this incentive 'biomass sources' refer to the following:

- (i) palm oil mill/estates waste
- (ii) rice mill waste
- (iii) sugar cane mill waste
- (iv) timber/saw mill waste
- (v) paper recycling mill waste
- (vi) municipal waste
- (vii) biogas (from landfill, palm oil mill effluent, animal waste, others)

'Energy' forms in this incentive refers to:

- (i) electricity
- (ii) steam
- (iii) chilled water
- (iv) heat

B. INCOME TAX ACT, 1967

1. Income Tax Exemption

(i) Approved Service Projects

Approved Service Projects (ASP) i.e. projects in the transportation, communications and utilities sub-sector approved by the Minister of Finance qualify for income tax exemption under Section 127 of the Income Tax Act 1967 or

Investment Allowance (IA) under Schedule 7B of the Income Tax Act, 1967. The income tax exemptions or IA are as follows:

a. ASP (outside promoted areas)

Tax exemption on 70% of the statutory income for 5 years; or

IA of 60% of capital expenditure incurred within 5 years from the date from which the approval is to take effect. The allowance can be utilised to set off (exempt) against 70% of the statutory income in the assessment year.

b. ASP (in promoted areas)

Tax exemption on 85% of the statutory income for 5 years; or

IA of 80% of capital expenditure incurred within 5 years from the date from which the approval is to take effect. The allowance can be utilised to set off (exempt) against 85% of the statutory income in the assessment year.

c. ASP (of national and strategic importance)

Tax exemption on 100% of the statutory income for 5 years which is eligible for extension for another 5 years; or

IA of 100% of capital expenditure incurred within 5 years from the date from which the approval is to take effect. The allowance can be utilised to set off (exempt) against 100% of the statutory income in the assessment year.

Terms and conditions for companies enjoying income tax exemption

- (a) Capital allowances have to be utilised during the exemption period and are not allowed to be carried forward to the post exemption period;

- (b) Losses unabsorbed during the exemption period are not allowed to be carried forward to the post exemption period; and
- (c) Dividends paid out of tax-exempt income to shareholders are also exempted from tax.

Terms and conditions for companies enjoying IA

- (a) Any unutilised allowance can be carried forward to subsequent years until fully utilised; and
- (b) Dividends paid out of tax-exempt income to shareholders are also exempted from tax.

(ii) Malaysian International Trading Companies

Companies approved as Malaysian International Trading Companies (MITC) are given income tax exemption equivalent to 20% of the increased export value for 5 years. For the purpose of this incentive, export sales do not include trading commissions and profits derived from trading at the commodity exchange. MITC must satisfy the following criteria:

- (a) incorporated in Malaysia;
- (b) achieve an annual sales turnover of more than RM10 million;
- (c) have equity holding of at least 60% by Malaysian;
- (d) export manufactured goods, especially those from small and medium scale industry;
- (e) registered with MATRADE;
- (f) not more than 20% of annual sales is derived from trading of commodities; and
- (g) company uses local services for export such as banking, finance, insurance, ports and airports.

(iii) Hypermarket and direct selling company

Tax exemption equivalent to 20% of increased export value.

(iv) Operational Headquarters

An approved Operational Headquarters (OHQ) is a locally incorporated company, whether Malaysian or foreign-owned, which carries on a business in Malaysia of providing qualifying services to its offices or related companies outside Malaysia.

The qualifying services are 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) data/information management and processing;
- (vii) treasury and fund management services;
- (viii) corporate financial advisory services;
- (ix) R&D work;
- (x) training and personnel management;

Companies granted approved OHQ status enjoy tax exemption on 100% of the statutory income for 10 years. Dividends paid out of tax exempt income to shareholders are also exempted from tax.

To qualify for the above incentives, the company must fulfil the following conditions:

- (i) the paid up capital should be at least RM0.5 million;
- (ii) total business spending should be at least RM1.5 million per annum; and
- (iii) should perform a minimum of three of the qualifying services

(v) Regional Distribution Centre

Regional Distribution Centre (RDC) is a collection and consolidation center for finished goods, components and spare parts from overseas or within the country to be distributed to dealers and importers or its subsidiaries or associated companies within or outside the country.

RDC is eligible for tax exemption on 100% of the statutory income for 10 years. Dividends paid out of tax exempt income to shareholders are also exempted from tax.

RDC must satisfy the following conditions:

- (a) incorporated in Malaysia;
- (b) total annual turnover should not be less than RM100 million;
- (c) must be located in the free industrial/commercial zones or licensed public/private warehouse or licensed manufacturing warehouses; and
- (d) must not sell more than 20% of its products to the local market.

(vi) Venture Capital Industry

The following incentives are available:

- (i) Venture Capital Companies (VVC)
Investing In Venture Companies:

VCC investing in venture companies are given full tax exemption on all sources of income for 10 years of assessment or the years of assessment equivalent to the life span of the fund (if any) established for the purpose of investing in the venture company whichever is the lesser. Where a VCC incurs a loss from the disposal of shares in a venture company in the basis period for any year of assessment within the exempt period, such loss shall be carried forward to the post-exempt period.

Conditions to qualify for the exemption:

- be a company incorporated under the Companies Act 1965, a partnership, a scheme or an arrangement investing in a venture company in the form of seed-capital, start-up or early-stage financing.
- have at least 70% of its funds invested in venture companies which are not its related companies at the point of first investment.
- the venture companies must be a resident in Malaysia for the basis year for the year of assessment and involved in products/activities promoted by the Government including those recognised by the following:
 - Promotion Investments Act (PIA) 1986;
 - Technology-based activities prescribed by Kuala Lumpur Stock Exchange (KLSE) for the MESDAQ Market;
 - Industrial Research & Development Grant Scheme;
 - MSC Research & Development Grant Scheme.

VCC must obtain annual certification from the Securities Commission that the conditions imposed for the incentives have been complied. The letter of certification must be attached with the income tax return form for submission to the Inland Revenue Board.

(ii) Companies or Individuals Investing In Venture Companies:

A company or an individual having a business source, having invested

in a venture company at start-up, seed capital and early stage financing are entitled to a deduction from the adjusted income equivalent to the value of the investment made in the venture company. If the company or individual does not have sufficient adjusted income to offset the investment, the deductions will be allowed to be carried forward.

Conditions to qualify for the deduction:

- be a resident in Malaysia and making investments in a venture company for financing or funding at seed-capital, start-up or early-stage.
- the investment in the venture company is in a form of holding of shares which at the point of acquisition are not listed for quotation in the official list of a stock exchange.
- the venture companies must not be its related companies at the point of first investment.
- the venture companies must be resident in Malaysia for the basis year of the year of assessment and involved in products/activities promoted by the Government include those recognised by the following:
 - PIA 1986;
 - Technology-based activities prescribed by KLSE for the MESDAQ market;
 - Industrial Research & Development Grant Scheme;
 - MSC Research & Development Grant Scheme.

A company or an individual must obtain annual certification from the

Securities Commission that the conditions imposed for the incentives have been complied. The letter of certification must be attached with the income tax return form for submission to the Inland Revenue Board. For a company the incentive (vi)(a) and (b) are mutually exclusive.

For purposes of obtaining tax incentives, the definitions for stages of financing are as follows: “early-stage financing” means financing or funding provided to a venture company as:

- (a) capital expenditure and/or working capital to initiate commercialisation of a 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 venture companies expecting to be listed on the official list of a stock exchange.

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

“seed-capital financing” means financing or funding provided to a venture company, for the purposes of research, assessment and development of an initial concept and/or prototype.

“start-up financing” means financing or funding provided to a venture company for product development and initial marketing.

(vii) **Promotion of Exports**

- (a) Companies whose exported manufactured goods attain at least 30% value added

Tax exemption on statutory income equivalent to 10% of the value of increased exports.

- (b) Companies whose exported manufactured goods attain at least 50% value added

Tax exemption on statutory income equivalent to 15% of the value of increased exports.

- (c) Companies whose exported manufactured goods achieve a significant increase in exports

Tax exemption on statutory income equivalent to 30% of the value of increased exports.

- (d) Companies which succeed in penetrating new export market

Tax exemption on statutory income equivalent to 50% of the value of increased exports.

- (e) Companies which achieve the highest increase in exports

Full tax exemption on statutory income on increased export value.

- (f) Companies which export fruits, fresh and dried cut flowers, ornamental plants and ornamental fish

Tax exemption on statutory income equivalent to 10% of the value of increased exports.

- (g) Companies in selected services sector

Tax exemption on statutory income equivalent to 50% of the value of increased exports.

Selected services sectors are:

Legal, accounting, engineering consultancy, architecture, marketing, business consultancy, office services, construction management, building management, plantation management, health, education, publishing and information and communication technology.

(viii) **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 per year through group inclusive tours. This incentive is extended until year of assessment 2006.

(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 2006.

(ix) **Organisers of International Conference or Trade Exhibitions**

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

(x) **Car and Motorcycle Racing**

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.

(xi) **Repair and Maintenance of luxury Boats/Yachts 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.

(xii) **Chartering Services of Luxury Yachts**

Income derived by the company in providing chartering services of luxury yachts are eligible for full tax exemption for full tax exemption for 5 years.

(xiii) **Rental of ISO Containers**

Income received from rental of ISO containers by non-resident from shipping companies in Malaysia is exempted from income tax.

(xiv) **Malaysia My Second Home Program**

Income tax exemption on all pension income remitted to Malaysia; and

Income tax exemption on all income (other than pension) for participants from countries that do not have Double Taxation Agreement with Malaysia.

(xv) **Royalty Under the Franchised Education Scheme**

Income tax exemption on royalty income received by non-residents (franchisor) for franchised education schemes approved by the Ministry of Education.

2. **Reinvestment Allowance**

Reinvestment Allowance (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 levels of RA granted are as follows:

(a) Projects in promoted areas:

- 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 assessment year.

(b) Projects in non-promoted areas:

- (i) The RA of 60% in respect of qualifying capital expenditure incurred. The allowance can be utilised to set off (exempt) 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 (exempt) against 100% of statutory income.

Productivity will be measured by using the Process Efficiency Ratio (PER) as shown below:

Definition of “significant increase in productivity” 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.

RA is subject to the following criteria:

- (i) The company must be in operation for at least 12 months.
- (ii) RA will be given for a period of 15 consecutive years beginning from the year the first reinvestment is made.
- (iii) Assets acquired from RA cannot be disposed within 2 years of reinvestment.
- (iv) Has incurred in the basis period for a year of assessment capital expenditure on a factory, plant/machinery used in Malaysia for the purpose of a qualifying project.
- (v) Has achieved the level of productivity as prescribed by the Minister of Finance. (this only applies to a company which is claiming for the allowance to be set off (exempt) against 100% of the statutory income).

Effective from the year of assessment 2001, upon expiry of RA, companies promoted products or engaging in promoted activities or promoted food products are eligible for Accelerated Capital Allowance on their capital expenditure at the following rate: initial rate 40% and annual rate 20% enabling them to write off their capital expenditure within 3 years. The promoted food products are rice, maize, vegetables, tubers, roots, fruits, livestock farming, aquatic product and any other activities approved by the Minister of Finance.

3. Double Deduction

i. Research & Development

Types of (R&D) that are eligible for the double deduction are:

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

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

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

Note:

* Approved research institution includes the following:

- (i) all government research institutions, including institutions corporatised under Section 24 of the Companies Act 1965;
- (ii) 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 Investment 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 are:

- (i) Malaysian Agricultural Research and Development Institute (MARDI)
- (ii) Rubber Research Institute of Malaysia
- (iii) Forest Research Institute Malaysia (FRIM)
- (iv) Malaysian Institute of Micro Electronic System
- (v) Palm Oil Research Institute of Malaysia
- (vi) Standard and Industrial Research Institute of Malaysia (SIRIM)
- (vii) Mineral Research Institute

(viii) Malaysian Centre for Remote Sensing

(ix) Veterinary Research Institute

(x) Fisheries Research Institute

(xi) Institute for Medical Research

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

(xiii) Unit Pengurusan Penyelidikan, Universiti Kebangsaan Malaysia

(xiv) Pusat Inovasi dan Perundingan, Universiti Sains Malaysia

(xv) Pusat Penyelidikan dan Perundingan, Universiti Utara Malaysia

(xvi) Unit Penyelidikan, Universiti Putra Malaysia

(xvii) Pusat Penyelidikan, Universiti Islam Antarabangsa Malaysia

(xviii) Unit Perundingan, Universiti Malaya

(xix) Unit Penyelidikan dan Pembangunan, Universiti Teknologi Malaysia

(xx) Unit Penyelidikan, Universiti Malaysia Sabah

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

(xxii) Pusat Sains dan Teknologi Pertahanan, Kementerian Pertahanan

(xxiii) Biro Penyelidikan, dan Perundingan, Universiti Teknologi MARA (UiTM)

For purposes of this incentive, R&D is defined as follows:

“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”.

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

Companies, including those in the services sector not covered by the HRDF are eligible for double deductions on training expenses if such training were to be undertaken in approved training institution or government training institutions. 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 are as follows:

- (i) National Productivity Corporation
- (ii) SIRIM
- (iii) UiTM
- (iv) MARDI

(v) FRIM

(vi) The Centre For Instructor and Advanced Skill Training

(vii) Penang Skills Development Centre

(viii) Institut Kemahiran Mara

(ix) Industrial Training Institute

(x) German-Malaysia Institute

(xi) Malaysian Timber Industry Board

(xii) Federation of Malaysian Manufacturer - Entrepreneur and Skills Development Centre

(xiii) Perak Entrepreneur and Skills Development Centre

(xiv) Tuas Polytech (British Malaysian Institute)

(xv) ASEAN Timber Technology Centre

(xvi) Sarawak Skills Development Centre

(xvii) Kedah Industrial Skills & Management Development Centre

(xviii) Malaysia France Institute

(xix) Selangor Human Resource Development Centre

(xx) Pusat Pembangunan Tenaga Industri Johor

(xxi) MINT

(xxii) Pahang Skills Development Centre

(b) Approved Training Programmes

- (i) Manufacturing companies in production

Manufacturing companies which do not contribute to the HRDF 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 which do not contribute to the HRDF 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 (19 October 2001):

- (a) Institute Bank-Bank Malaysia
- (b) Malaysian Insurance Institute
- (c) Persekutuan Penghantar Fret Malaysia
- (d) Association of Consulting Engineers Malaysia

- (e) Persatuan Elektrik & Elektronik

- (f) AFCM Training Services Sdn. Bhd

- (g) Institut Pengurusan Malaysia

- (h) Institut Jurutera Malaysia

iii. Freight Charges

- (a) Double deduction on freight charges for manufacturers in Sabah & Sarawak who export rattan and wood-based products except sawn timber and veneer.
- (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.

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 RM300 per day for lodging and RM150 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; and
- (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 sub sector, is extended to the entire services sector.

The expenses eligible for double deduction include:

- (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 promotion of services for export, subject to RM300 per day for accommodation and RM150 per day for sustenance;
- (vi) cost of maintaining office overseas for purpose of promotion the export of services;
- (vii) feasibility studies for overseas projects identified for the purpose of tender;
- (viii) participation in trade or industrial exhibitions in the country or overseas;
- (ix) participation in exhibitions held in Malaysia Permanent Trade Exhibition Centres overseas.

The above incentive is only granted to companies registered with the Registrar of Companies. Effective from year of assessment 2003, the incentive is extended to the following professional services that are provided by partnership or sole proprietors registered with the Registrar of Business:

- (i) Legal;
- (ii) Accounting (including taxation and management consultancy services);
- (iii) Architectural (including town planning and landscaping services);
- (iv) Engineering and integrated engineering (including valuation and quantity surveying); and
- (v) Medical and dental.

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

vi. Promotion of Local Brand Name

Double deduction on the following expenses:

- (i) The cost of advertisement through internet, magazines and newspaper, television, advertisement handling trade publications or sponsoring approved international events or international book conference/exhibition; and
- (ii) Professional fees paid to companies promoting Malaysian brand names.

To be eligible for this incentive, 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 owned;
- (b) the brand name is registered in Malaysia or overseas;
- (c) the brand name product must achieve export quality standards; and
- (d) expenditure incurred in advertising must be incurred in Malaysia.

4. 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 and information & communication technology approved by the Minister of Finance.
- (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;
- (v) as operational expenditure including payments to consultants related to the usage of IT to improve management and production processes; and
- (vi) in obtaining quality systems and standards and halal certification.

- (g) Single deduction for expenses incurred by a company in providing practical training to residents who are not employees of the company.

- (h) Single deduction for an amount equal to expenditure and contributions incurred by companies in the management and

operation of Rosetta Net Malaysia and in assisting local small and medium scale companies to adopt Rosetta Net.

(i) Promotion of Export:

- (i) single deduction for payment incurred for registration of patents, trademarks and product licensing overseas;
- (ii) single deduction payment for hotel accommodation for a maximum of 3 nights to companies providing hospitality to every potential importers instead to Malaysia as a follow-up to trade and investment missions organised by government agencies or industrial trade associations.

(j) Single deduction on expenditure incurred by a company for drafting its corporate knowledge-based masterplan.

5. Industrial Building Allowance

Industrial Building Allowance (IBA) is granted to companies incurring capital expenditure on construction or purchase of a building which is used for specific operational purposes as per Schedule 3 of the Income Tax Act 1967. In this regard, companies are eligible for an initial allowance of 10% and annual allowance of 3% so as IBA can be claimed within 30 years.

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

- (a) factory;
- (b) dock, wharf, jetty or other similar building;
- (c) warehouse and the business consists or mainly consists of the hire of storage space to the public;
- (d) business of water or electricity supply projects or telecommunication project for the public;
- (e) used with the working of the farm with or without other farms;
- (f) used with the working of a mine with or without other mines;

(g) private hospital, maternity home and nursing home licensed under any written law for the registration of private hospital, maternity home or nursing home;

(h) R&D approved by the Minister;

(i) R&D undertaken by a company participating in industrial adjustment programme;

(j) training undertaken by a company participating in industrial adjustment programme;

(k) research by contact R&D company and R&D company defined in the Promotion of Investments Act 1986;

(l) buildings or structures used for the operation of approved service projects;

(m) hotel building which has been registered with the Ministry of Culture, Arts and Tourism; and

(n) business of construction, reconstruction or improvement of any public road and ancillary structures pursuant to an agreement with the agreement.

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

- (a) Warehouse buildings which are used for storing goods for exports and re-export;
- (b) Approved industrial training, technical or vocational training and education;
- (c) Accommodation of employees in manufacturing, approved services project, hotel or tourism business;
- (d) providing child care facilities to employees for sectors in (c);
- (e) use for industrial, technical or vocational training.

Where industrial building is in use and a building is constructed for use as living accommodation, the initial allowance of 2/5 of the qualifying expenditure is granted; and

Business of construction of a building on a build-lease-transfer basis pursuant to an agreement with the government is granted industrial building allowance equal to 3/5 of the qualifying expenditure.

6. Accelerated Capital Allowance

- (a) Computer and information technology assets including software.

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

- (b) Environmental protection equipment.

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

- (c) Companies that reinvest in the production of promoted products and food items are eligible for accelerated capital allowance upon expiry of reinvestment allowance.

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

- (d) Conservation of energy for own consumption

Capital expenditure incurred on the equipment used in energy conservation is written-off within one year.

7. Deduction for Acquiring Property Rights

Capital expenditure on acquiring proprietary rights such as patent, industrial design/trademarks is allowed as deduction of 20% on the cost of the acquisition of the proprietary rights for 5 years.

8. Deduction for Acquiring a Foreign-owned Company

An amount equal to 20% of the cost of acquisition is allowed as a deduction in ascertaining the adjusted income for 5 years for purpose of:

- (i) acquiring high technology for production within the country; or
- (ii) gaining new export market for local products.

9. Deduction for developing websites

Cost of developing websites is allowed as an annual deduction of 20% for a period of 5 years.

10. 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 PIA, 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:

Project	Period	Minimum Hectareage
1. 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
2. Floriculture*	2 years	8 hectares
3. Cultivation of vegetables, tubers, roots, herbs, spices, crops for animal feeds and hydroponics based products	3 years	40 hectares
4. Ornamental fish culture-open system (land/ concrete pond)	2 years	5 hectares
5. Ornamental fish culture-enclosed system	2 years	0.25 hectares
6. Pond culture-fish and prawns (brackish water/ fresh water)	2 years	20 hectares
7. Tank culture-fish (brackish water/ fresh water)	2 years	1 hectares
8. Off-shore marine cage culture-fish	2 years	0.5 hectares
9. Marine cage culture -fish (brackish water/fresh water)	2 years	0.5 hectares
10. Cockle culture	1 year	10 hectares
11. Mussel and oyster culture	2 years	0.5 hectares

Project	Period	Minimum Hectareage
12. Seaweed culture	1 year	5 hectares
13. Shrimp hatchery	2 years	0.25 hectares
14. Prawn hatchery	2 years	0.25 hectares
15. Fish hatchery (sea water/ brackish water/ fresh water)	2 years	0.5 hectares

* (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).

11. Additional Incentives for Food Production

A company which invests in a subsidiary company engaged in food production are eligible for incentives as in alternative A or B:

Alternative A:

- (i) The company which invests in the subsidiary company engaged in the food production is granted tax deduction equivalent to the amount of investment made in that subsidiary: AND
- (ii) The subsidiary company undertaking food production is given tax exemption on 100% of the statutory income for 10 years commencing from the first year the company enjoys profit in which:
 - (a) Losses incurred before the exemption period is allowed to be brought forward after the exemption period of 10 years;
 - (b) Losses incurred during the exemption period is also allowed to be brought forward after the exemption period of 10 years; and
 - (c) Dividend paid from the exempt income be exempted in the hands of the shareholders.

OR

Alternative B:

- (i) The company which invests in the subsidiary company engaged in food production is given group relief for the losses incurred by subsidiary company before it records any profits; AND
- (ii) The subsidiary company undertaking food production is given tax exemption on 100% of the statutory income for 10 years commencing from the first year the company enjoys profit in which:
 - (a) Losses incurred during the exemption period is also allowed to be brought forward after the exemption period of 10 years; and
 - (b) Dividends paid from the exempt income be exempted in the hands of the shareholders.

The incentives are granted with the following conditions:

- (i) The investing company should own 100% of the subsidiary company that undertakes foods production;
- (ii) The eligible food products are as approved by the Minister of Finance. Initially the approved food products are kenaf, vegetables, fruits, herbs, spices, aquaculture, beef and mutton: and
- (iii) The food production project should commence within a period of one year from the date the incentive is approved.

The above incentives are extended to companies which reinvests in the production of the same food product but the incentives are for a period of 5 years subject to the same conditions. Application for these incentives should be submitted for the approval of the Minister of Finance through the Minister of Agriculture.

12. Incentives for Deep Sea Fishing

The existing incentives for food production is extended to new companies undertaking deep sea fishing as follows:

First alternative:

- (a) The company which invests in the subsidiary company engaged in deep sea fishing is granted tax deduction equivalent to the amount of investment made in that subsidiary: AND
- (b) The subsidiary company undertaking deep sea fishing is given tax exemption on 100% of the statutory income for 10 years commencing from the first year the company enjoys profit in which:
 - (i) Losses incurred before the exemption period is allowed to be brought forward after the exemption period of 10 years;
 - (ii) Losses incurred during the exemption period is allowed to be brought forward after the exemption period of 10 years; and
 - (iii) Dividends paid from the exempt income are exempted in the hands of the shareholders.

OR

Second alternative:

- (a) The company which invests in the subsidiary company engaged in deep sea fishing is given group relief for the losses incurred by the subsidiary company before it records any; AND
- (b) The subsidiary company undertaking deep sea fishing is given tax exemption on 100% of the statutory income for 10 years commencing from the first year the company enjoys profit in which:
 - (i) Losses incurred before the exemption period is allowed to be brought forward after the exemption period of 10 years; and
 - (ii) Dividends paid from the exempt income are exempted in the hands of the shareholders.

The incentives are granted with the following conditions:

- (a) The investing company must own 100% of the company that undertakes deep sea fishing;
- (b) The project should commence operation within one year from the date the incentive is approved; and
- (c) The project must comply with the provision of the Fisheries Act 1985.

For investors and companies already involved in deep sea fishing, the incentives are given for a period of 5 years subject to the same conditions as above.

13. Incentives to Consolidate the Management of Smallholdings and Idle Land

- (i) A company that invests in a wholly-owned subsidiary company involved in the consolidation of management of smallholdings or idle land is given a deduction equivalent to the amount of investment; and
- (ii) a wholly-owned subsidiary company involved in the consolidation of management of smallholdings or idle land is exempted from service tax.

14. Incentives to Increase the Planting of Rubberwood Trees

Plantation companies that switch to rubber wood planting is given Agriculture Allowance on capital expended for land preparation, planting and maintenance of rubber wood to be written off in one year.

This incentive is given to companies that plant at least 10% of their plantations with rubber wood trees.

15. Incentives for Modernising Chicken and Duck Rearing System

Chicken and duck rearers who reinvest for the purpose of shifting from opened house system to closed house system is given RA for a period

of 15 consecutive years commencing from the first year the reinvestment is made.

(i) Projects located in promoted areas

RA of 60% on qualifying capital expenditure incurred with the allowance deducted in each year of assessment to be set off (exempt) up to 100% of statutory income; and

(ii) Projects located outside promoted areas

RA of 60% on qualifying capital expenditure incurred with the allowance deducted in each year of assessment to be set off (exempt) up to 70% of statutory income;

16. Incentives for Malaysian Experts Abroad to Return to Work in Malaysia

To encourage Malaysian experts who are abroad to return to serve Malaysia the following incentives are granted:

- (i) Income remitted within 2 years from the date of arrival will be exempted from income tax;
- (ii) Two motorcars registered in the country of origin for at least 6 months in the name either the husband/wife/children will be exempted from import duty and sales tax; and
- (iii) Husband/wife and children of a Malaysian citizen will be given permanent resident status within 6 months from the date of arrival.

These incentives are effective from 1 January 2001. Applications for this incentive should be submitted to a Special Committee in the Ministry of Human Resources.

17. Tax Exemption on Income of Trade Association

Statutory income from subscription fees received by trade association is exempted from income tax indefinitely. However, if this tax

exemption is less beneficial compared to the current tax treatment of 50% exemption, then the trade association can continue to enjoy the prevailing tax exemption until the expiry of the period and subsequently, enjoy the tax exemption on statutory income from subscription fees.

18. Tax Incentive for Offshore Trading Via Websites in Malaysia

Income received by companies undertaking offshore trading via website in Malaysia be taxed at a concessionary rate of 10% for a period of 5 years.

19. 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.

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.

C. Labuan Offshore Business Activity Tax Act 1990

- I. Labuan Offshore Business Activity Tax Act (LOBATA) 1990 provides for the imposition, assessment and collection of tax on offshore business activities carried on by an offshore company in or from Labuan and for matters connected therewith;

- II. Offshore Business Activity means an offshore trading or an offshore non-trading activity with non-residents and in a currency other than Ringgit Malaysia. However, there are certain exceptions whereby dealings are allowed with residents or in Ringgit Malaysia, as follows:

- (a) Offshore company carrying on offshore banking or insurance may be carried on with residents and in Ringgit Malaysia as permitted in the Section 20(2) of Offshore Banking Act 1990;
- (b) Holding of investments by an offshore company in a domestic company may be in Ringgit Malaysia, where permitted;
- (c) Offshore company carrying on money-broking or leasing may be carried with residents, where permitted; and
- (d) Others as approved by the Minister of Finance

- III. Offshore Business Activities are categorized into:

- (a) Offshore Trading Activities, which includes banking, insurance, trading, management, licensing, petroleum operations or any other activity which is not an offshore non-trading activity but does not include shipping operations;
- (b) Offshore non-trading operations means an activity relating to the holding of investments in securities, stock, shares, loans, deposits, and immovable properties by an offshore company on its own behalf.

- IV. Offshore companies in Labuan undertaking offshore trading activities can choose either to:

- (i) pay tax at a rate of 3% from the audited net profit; or
- (ii) pay RM20,000.

- V. Income of offshore companies from non-trading activities is not subject to any tax. However, where an offshore company carrying on both offshore trading and non-trading activity, it is deemed to be carrying on offshore trading activity.

In Addition to Promote Labuan as International Offshore Financial Centre

- (i) Dividends received from an offshore company by its shareholders including a Malaysian Domestic Company (MDC), which are paid, credited or distributed out of income derived from an offshore business activity is exempted from income tax. In addition, the shareholders of the MDC are exempted from tax on the dividends paid out of dividends received by MDC from an offshore company.
- (ii) Royalties received from an offshore company by a non-resident or another offshore company is exempted from income tax.
- (iii) Interest received from an offshore company by residents, non-residents or another offshore company is exempted from income tax.
- (iv) Technical and management fees received from an offshore company by a non-resident or another offshore company is exempted from income tax.
- (v) Distributions received from an offshore trust by the beneficiaries are exempted from tax.
- (vi) Documents for offshore business activities, transfer of shares in an offshore company and Memorandum & Articles of Association of an offshore company is exempted from stamp duty.
- (vii) 65% tax exemption on statutory income of Labuan trust company and service providers providing qualifying professional services of accounting, financial, legal and secretarial services to offshore company until the year of assessment 2004.

- (viii) 50% tax exemption on gross income of non-citizen employee working in a managerial capacity in an offshore company until the year of assessment 2004.
- (ix) 50% tax exemption on gross income of a non-citizen trust officer working in a trust company until the year of assessment 2005.
- (x) 50% tax exemption on Labuan and housing allowances of citizen working in Labuan with the Federal or State Government, a Statutory Body or an offshore company until year of assessment 2005.
- (xi) withholding tax exemption on rental payment to non-residents from the use of moveable property by an offshore leasing company.
- (xii) 100% exemption on director fees received by a non-citizen director of an offshore company from year of assessment 2002 to 2006.
- (xiii) Duty free goods for individuals whose period of stay in Labuan is 24 hours (formerly 72 hours).

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 used in:
 - (i) Production for export market
Full exemption of import duty on import raw materials/components used directly and not manufactured locally, or manufactured locally but not of acceptable quality and price.
 - (ii) Production for domestic market
Effective 1 January 1999, full exemption from import duty

on raw materials/components used directly and not available locally.

(b) Import duty/excise duty and Sales Tax exemption for machinery and equipment, spares and consumables

It is the policy of the Government not to impose taxes on machinery/equipment, which are not produced locally and used directly in the manufacturing process. However, due to difficulties arising from tariff classification rules, some machinery/equipment which are not locally manufactured are categorised under taxable items.

Therefore, full exemption is given on:

- (i) Import duty and sales tax for imported machinery/equipment that not available locally;
- (ii) Sales tax and excise duties on locally purchased machinery/equipment.

For spares and consumables, tax exemption was granted selectively based on specific criteria until 31 December 2003. The criteria are as follows:

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

(c) Duty Drawback

Manufacturers who have paid duty on the import of raw materials & components used for the production of goods for export within a year are eligible to claim drawback on

the duty paid. Drawback can be claimed from the Customs Department but subject to the conditions under Section 99 of the Customs Act, 1967.

(d) Sales Tax Exemption

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

There are few categories of goods exempted at both the input and output stage, i.e. all goods (including packing materials) used in the manufacture of the following;

- (i) controlled articles (goods);
- (ii) pharmaceutical products;
- (iii) milk products;
- (iv) batik fabrics;
- (v) perfumes and eau d' toilette, beauty or make-up preparations;
- (vi) photographic cameras, wrist-watches, pens;
- (vii) computers and computers peripherals, parts and accessories;
- (viii) carton boxes, corrugated paper or paperboard, folding carton boxes and cases of non-corrugated paper and paperboard;
- (ix) products in the printing industry;
- (x) agricultural or horticultural sprayers;

- (xi) plywood;
- (xii) retreaded tyres;
- (xiii) uninterruptible power systems;
- (xiv) machinery; and
- (xv) manufactured goods for export.

(2) Agriculture Sector

- (a) Full import duty exemption on raw materials/components used in:

- (i) Production for export market.

Imported direct raw materials/components not available locally or available locally but not of acceptable quality and price.

- (ii) Production for domestic market.

Direct raw materials/components not available locally.

- (b) Full import/excise duty and sales tax exemption on machinery/equipment

Full exemption from:

- (i) imported machinery/equipment not available locally.
- (ii) locally purchased machinery/equipment.

(3) Approved Service Sector

- (a) Import duty and sales tax exemption on materials used directly in the implementation of ASP and are not available locally.
- (b) Excise duty and sales tax exemption on machinery/equipment for locally purchased machinery/equipment used in the implementation of ASP.

(4) Tourism Sector

- (i) Import duty, sales tax and excise duty exemption on selected materials and equipment for accommodation and non-accommodation tourism projects;
- (ii) Import duty exemption on CKD components and excise duty exemption on locally assembled tourist buses;
- (iii) Excise duty exemption on purchase of national car for car rental operators for tourist;
- (iv) Import duty exemption on branded items valuing more than RM200.00 f.o.b.; and
- (v) Import duty, sales tax and excise duty exemption on one unit of car for participants of Malaysia My Second Home program.

(5) Film & Music Sector

Duty exemption on equipment 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 duty on selected locally purchased equipment.

(6) Research Activity

Duty exemption on machinery/equipment, materials and samples used for approved research projects, in house research, contract R&D company and 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 duty on locally purchased items used for R&D .

(7) Training Activity

Duty exemption on machinery/equipment, materials and samples used in approved training programme or by an 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 not available locally.
- (ii) sales tax and excise duty on locally purchased machinery/equipment.

- (b) Companies undertaking storage, treatment and disposal of toxic and hazardous wastes.

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 used in motor vehicle assemblies.

- (d) Companies providing energy conservation services & Companies which incur capital expenditure arising from energy conservation measures undertaken in their own company.

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.

- (e) Companies utilising biomass as a new source of energy.

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.

(9) Education Sector

All private institutions of higher learning and private language institutions are granted import duty, sales tax and excise duty exemption on all education equipment including laboratory equipment, workshop studio and language laboratory.

(10) **International Procurement Centre**

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

Tax incentives given to IPC is in the form of exemption of import duty and sales tax on raw materials, components and finished products into the Free Zones or Licensed Manufacturing Warehouses under Section 11, Free Zone Act 1990, Section 14, Customs Act 1967 and Section 10, Sales Tax Act 1970. IPC is also given non-tax incentives as follows:

- (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; and
- (d) exempted from the requirements of the Ministry of Domestic Trade and Consumer Affairs Guidelines on foreign equity ownership on wholesale and retail trade.

IPC with total annual turnover not less than RM million is eligible for full tax exemption on statutory income for 10 years.

In order to qualify for the whole package of incentives offered, the IPC must be an 'approved IPC status company'. To

qualify for 'approved IPC status' it 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) goods to be handled directly through Malaysian ports and airports.

SUMMARY OF DIRECT & INDIRECT TAX INCENTIVES BY SECTORS

(1) Manufacturing Sector

1. Pioneer Status
2. Investment Tax Allowance
3. Industrial Adjustment Allowance
4. Infrastructure Allowance
5. Double deduction on expenses for:
 - promotion of exports
 - R&D
 - training
 - freight charges
 - insurance premium
 - overseas promotion
 - promotion of local brand names
6. Single deduction on expenses for:
 - pre-operating expenses on approved investment overseas
 - pre-operating training expenses
 - contribution in cash to technical or vocational training institutes
 - donation to approved organization for the promotional and conservation of environment
 - gifts under Section 44(6A) and 34(6)

- providing practical training to non-employees
 - managing and operating RosettaNet Malaysia
 - promotion of export
 - drafting corporate knowledge-based masterplan
7. Tax exemption on value of increased exports
 8. Accelerated Capital Allowance
 9. Reinvestment Allowance
 10. Industrial Building Allowance
 11. Deduction for:
 - acquiring property rights
 - acquiring a foreign-owned company
 - developing websites
 12. Import duty and sales tax exemption on raw materials/components
 13. Import duty and sales tax exemption on machinery/equipment and spares and consumables
 14. Duty drawback

(2) **Agricultural Sector**

1. Pioneer Status
2. Investment Tax Allowance
3. Infrastructure Allowance
4. Double deduction on expenses for:
 - promotion of exports
 - R&D
 - insurance premium
5. Single deduction on expenses for:
 - pre-operating expenses on approved investment overseas

- donation to approved organisation for the promotional and conservation of environment
 - gifts under Section 44(6A) and 34(6)
6. Tax exemption on value of increased exports
 7. Accelerated Capital Allowance
 8. Reinvestment Allowance
 9. Industrial Building Allowance
 10. Deduction for capital expenditure on approved agricultural projects
 11. Additional incentives for food production and deep sea fishing
 12. Accelerated Agriculture Allowance on planting of rubberwood trees
 13. Import duty and sales tax exemption on raw materials/components
 14. Import duty and sales tax exemption on machinery/equipment and spares and consumables
 15. Duty drawback

(3) **Service Sector**

a. Approved Service Projects (ASP)

1. Income tax exemption
2. Investment Allowance
3. Infrastructure Allowance
4. Double deduction on expenses for:
 - promotion of exports of services
 - R&D
 - training
5. Single deduction on expenses for:
 - pre-operating expenses on approved investment overseas
 - pre-operating training expenses

6. Industrial Building Allowance
7. Import duty and sales tax exemption on machinery/equipment

b. Tourism

1. Pioneer Status
2. Investment Tax Allowance
3. Infrastructure Allowance (IA)
4. Double deduction on expenses for:
 - promotion of exports
 - training
5. Single deduction on expenses for:
 - pre-operating expenses on approved investment overseas
 - pre-operating training expenses
6. Industrial Building Allowance
7. Income tax exemption:
 - tour operators
 - organisers of international conference or trade exhibition
 - cars and motorcycle racing
 - repair and maintenance of luxury boat/yacht in Langkawi
 - chartering services of luxury yacht
8. Import duty and sales tax exemption on selected materials and machinery

c. R & D

1. Pioneer Status
2. Investment Tax Allowance
3. Double deduction on:
 - Non-capital expenditure incurred on R&D
 - Payment for use of services of

4. Accelerated Capital Allowance
5. Import duty and sales tax exemption on materials, samples and equipment

d. Training Activity

1. Investment Tax Allowance
2. Double deduction on expenses for training
3. Single deduction on expenses for:
 - pre-operating training expenses
 - contribution in cash to technical or vocational training institutes
 - providing practical training to non-employees
4. Industrial Building Allowance
5. Import duty and sales tax exemption on materials, samples and equipment
6. Duty drawback

(4) Environmental Protection Activity

- (1) Pioneer Status/Investment Tax Allowance for carrying out promoted activity such as:
 - (i) forest plantation
 - (ii) recycling of products
 - (iii) storage, treatment and disposal of dangerous toxic and hazardous waste
 - (iv) energy conservation
 - (v) utilising biomass as a new source of energy
- (2) Accelerated Capital Allowance for environmental protection equipment
- (3) Import duty and sales tax exemption on machinery and equipment
- (4) Import duty and sales tax exemption on catalytic converters

- (5) Reinvestment Allowances for modernising chicken and duck rearing system

(5) Labuan International Offshore Financial Centre (IOFC)

- (a) Offshore Companies can be incorporated or registered in Labuan IOFC to undertake financial and non-financial offshore business activities with non-residents and in a currency other than Ringgit Malaysia. However, under certain circumstances dealings are allowed with residents or in Ringgit Malaysia;
- (b) Offshore companies in Labuan undertaking offshore business activity enjoy preferential tax treatment under the LOBATA, 1990, Income Tax and Stamp Duty exemptions.
- (c) Offshore Companies is also declared as non-residents under Exchange Control Act of Malaysia (ECM). Thus, offshore companies not subject to ECM regulations, except for dealings with residents or dealings in Ringgit Malaysia.

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 Scheme

Export Credit Refinancing (ECR) 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 Guidelines;
- Product with a minimum Value Added of 20 per cent and a minimum Domestic Content of 30 per cent; or
- Products listed in Appendix 3 of Exim Bank's Export Credit Refinancing Guideline.

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

	Pre-shipment ECR		Post-shipment ECR
Purpose	Loan advance to manufacturing/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 whole exports for the last financial year and the last preceding 12 months is between RM1 billion 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 period 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	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. Malaysia Export Credit Insurance Berhad

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 Letter of Credit (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-Own-Operate-Transfer on limited recourse financing basis where the source of repayment is from the cash flow 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 commercial bank loan or shareholder's 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 - 26910677 Fax: 03 - 26910353
E-mail : mecib@mecib.com.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.com.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
Tel : 607 - 2231191
Fax : 607 - 2240370
E-mail : ros@mecib.com.my

E3. Industrial Technical Assistance Fund

To enhance capacity and capability of SMEs, the Industrial Technical Assistance Fund (ITAF) was set up in 1990 with an allocation of RM120 million under 7MP. To further provide assistance for SMEs, RM40 million has been allocated under 8MP. The ITAF schemes are as follows:

- (i) Grant for Planning and Development (ITAF1);
- (ii) Grant for Process and Product Improvement (ITAF 2);
- (iii) Grant for Productivity and Quality Improvement and Certification (ITAF 3); and
- (iv) Market Development Grant (ITAF 4).

SMEs that fulfill the following conditions are eligible to apply for assistance:

- (i) Companies incorporated under the Companies Act 1965;
- (ii) Manufacturing companies or companies providing manufacturing related services* with an annual sales turnover of not exceeding RM25 million and with full-time employees of not exceeding 150; and
- (iii) At least 60% held by Malaysian.

* manufacturing related services include the following activities:

- engineering support services such as calibration, electroplating, machining, heat treatment, metal casing, metal forging;
- specialized services such as warehousing, bulk breaking, international procurement center, haulage;
- maintenance and repair of factory machinery and equipment;
- software development such as CAD, CAM, CAE, ERP, CIM, SCM, CRM;
- automation of production line;
- design houses; and
- packaging services

Priority will be given to SMEs which:

- Manufacture products or involved in activities or services promoted under the PIA, 1986;
- Participate in the Industrial Linkage Programme.

Assistance is given in the form of matching grant whereby 50% of the project cost is borne by the government and the remaining 50% is borne by the applicant company subject to a maximum grant as stipulated for each schemes. Further information on ITAF 1,2 and 3 can be obtained from SMIDEC and for ITAF 4 from MATRADE:

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

Telephone No : 03-7660 8585

Fax No : 03-7660 1919

II. THE INDUSTRIAL COORDINATION ACT, 1975

The objective of the Industrial Coordination Act 1975 (ICA 1975) is to ensure orderly development and growth in the manufacturing sector. The ICA 1975 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 1975. Manufacturing activities in relation to optical discs are not subjected to this provision.

All applications for manufacturing licences should be made in the prescribed form to the Director-General of the 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 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 traveling 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 fulfill 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.
- (e) 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 In continuing its effort to further improve the investment climate, the Malaysian Government has decided to fully liberalise equity holdings in all manufacturing projects. Thus, effective from 17 June 2003, 100% foreign equity holdings is allowed for all investment in new projects as well as investments in expansion/diversification

projects by existing companies, irrespective of the level of exports and without any product/activity being excluded.

However, equity and export conditions imposed on companies prior to this new policy will be maintained. Some flexibility will be given to requests for the removal of these conditions depending on the merits of each case.

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 2003 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; 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 2003, 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 2003.

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 2003. With this relaxation, all existing companies with export conditions can apply to MIDA for an approval to sell in the domestic market as follows:

- up to 100% of their output for those products with nil duty or not produced locally.
- Up to 80% of their output, if the domestic supply is inadequate; or the imports from ASEAN for products with CEPT duties of 5% and below have increased.

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

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 (IGA) 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 and State of Bahrain, Algeria, Saudi Arabia and Morocco.

• 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 Center for Settlement of Investment Disputes, which is located at the principal office of the IBRD in Washington.

• 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.

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

IV. MALAYSIAN INDUSTRIAL DEVELOPMENT AUTHORITY

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 other 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, IPCs, OHQs, RDCs and approval for Regional Offices and Representatives Offices;

- (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; and
- (g) Asean Industrial Cooperation 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 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 1st April 2002, a Promotion of Services Sector Division was established in MIDA. The function of this Division include:

- (a) Formulation of programmes related to the promotion of manufacturing related services
- (b) Promotion of investments in the manufacturing related services such as logistics (warehousing, distribution, packaging), specialized services centers, product testing, central utilities facilities and integrated market support services (brand and consumer development, advertising and promotion services)

- (c) Collation of information on policies, procedures, incentives and facilities on manufacturing related services sector.

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 this existing systems 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 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 (SEPUs) as in the case of Negeri Sembilan, Selangor and Terengganu. In Sabah, the centre is at the Department of Industrial Research and Development. In Sarawak, the State Government has agreed that the centre be based at the Ministry of Industrial Development.

To assist these centers 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 and problems faced by investors at the state level. All applications and complaints received are channeled by the centers (which also serve as the secretariats to the Special Committees) to the relevant agencies for consideration. The centers 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 centers 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 SMIs;
 - (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 projects licensed under the Industrial Coordination Act 1975 must obtain the prior written approval of the MITI before entering into any technology transfer agreement involving foreign partners.

Types of Agreements

Technology transfer agreements cover license rights over specific processes, formulae or manufacturing technology (may be patented or unpatented), other knowledge and expertise necessary for the setting up of 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. An agreement to set up a joint-venture company between two or more parties involving locals and foreigners.
- (ii) Technical Assistance and Know-How Agreement. An agreement between two or more parties where one party will provide the technical assistance and know-how for the manufacture of certain products for a certain amount of fee or royalty.
- (iii) Licence Agreement. An agreement between two or more parties where the licensor grants a licence/right to the licensee to use its patents, trademarks and other industrial/intellectual properties for the manufacture of certain products for a certain amount of fee or royalty.
- (iv) Patent and Trademark Agreement. An agreement between two or more parties where one party gives the right to the other to use its patents and trademarks for the manufacture of certain products for a certain amount of fee.
- (v) Turnkey Contract. A contract between two or more parties where the contract is awarded to one of the parties to perform all stages from the initial stage inclusive of consultancy, managerial, technical and other services, until the contractual project is ready for immediate commercial production or final use.
- (vi) Management Agreement. An agreement between two or more parties where one party will provide management services to the other for a management fee.

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) Particular of technical assistance, services and manner in which they are to be provided.

The transfer of technology must be affected 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 Malaysia-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) Trademark and patent agreements signed between Malaysia-owned/Malaysian joint-venture companies and any foreign party involving royalty payments not exceeding 1% of net sales for each category.

Practice of itemization of service under separate agreements is discouraged.

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

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 cost of training should be borne by the technology supplier but all expenses related to salaries, wages, living and traveling allowances should be borne by the local company.

6. Patents and Trademarks

Patents and trademarks 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 arrangements 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. Infringement of Third Party's Right

The technology supplier should undertake to indemnify the local company against any claims in the event that legal proceedings are taken by a third party against the local company for

infringement upon any industrial property rights arising out of the use by the local company of any of the technical assistance furnished by the technology supplier.

10. Termination Clause

Either party should have the right to terminate the agreement.

11. Taxes

A withholding tax of 10% 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.

12. 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.

13. 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 Nation Commission on International Trade Law Rules and conducted at the AALCC Regional Centre for Arbitration, Kuala Lumpur.

The requirement does not apply to agreements signed between 100% foreign-owned companies in Malaysia and any foreign party or foreign holding company.

VI. INTELCTUAL PROPERTY PROTECTION

Intellectual property protection in Malaysia consists of Patent, Trademark, Industrial Design, Copyright and Layout Design of Integrated Circuit.

Malaysia is a member of the World Intellectual Property Organization and signatory to the Paris Convention and Berne Convention, which govern the abovementioned intellectual properties. In addition Malaysia is also a signatory to the Agreement On Trade Related Aspects of Intellectual Property Rights (TRIPS), an agreement under the auspices of the WTO. Therefore the Malaysian laws on Intellectual Property are kept abreast with the international standards, and do provide adequate protection in the field of intellectual property for both local and foreign investors.

1. Patents

Patents protection is governed by Patents Act 1983 and the Patents Regulations 1996. An applicant may file a patent application directly if he is domicile or resident in Malaysia. A foreign patent's application can only be filed through a registered patent agent in Malaysia who will act on behalf of the applicant. Similar to the provision of the legislation in the other countries, an invention is patentable if it is new, involves and inventive step and is industrially applicable. The Act provides that a period for patent protection is 15 years from the date of grant and subject to yearly renewal. The Patent Act was amended to extend the protection period to twenty years from the date of filing of an application in order to comply with the TRIPS agreement.

For utility innovation (minor innovation) the protection period is 5 years from the date of grant, and may be extended to a maximum of 10 years subject to use. Under the recent amended Act, the utility innovation certificate is given an initial duration of ten years protection from the date of filing of the applications instead of five years from the date of grant of the certificate. The owner of a patent has a right to exploit the patented invention, to assign or transmit the patent and to conclude licensed contract.

2. Trade Marks

Trademarks protection is governed by the Trade Marks Act 1976 and the Trade Marks Regulations 1997. The Act provides adequate protection for registered trade marks and service

mark in Malaysia. If a trade mark or service mark is registered, no person or enterprise other than its proprietor or authorized users may use it, otherwise infringement action can be initiated against them. The period of protection is 10 years, which is renewable for a period of every 10 years thereafter. The proprietor of the trade mark or service mark has the right to deal or assign as well as to license the use of it. In accordance with the TRIPS requirements, provision for the prohibition of registration of well known trade marks by unauthorized persons and provision for border measures to prohibit counterfeit trade marks from being imported into Malaysia are provided for to facilitate a conducive business environment in Malaysia. While the local applicants may file applications on their own, the foreign applicants would have to file applications only through the agents.

3. Industrial Design

Industrial design protection is governed by the Industrial Designs Act 1996 and Industrial Designs Regulations 1999. The new Act replaces the United Kingdom Designs (Protection) Act 1949 for West Malaysia, the United Kingdom Designs (Protection) Ordinance Chapter 152 for Sabah and Designs (United Kingdom) Ordinance Chapter 59 for Sarawak. With the introduction of the New Act, registration for the protection of industrial designs in Malaysia must be filed locally.

The Act provides the rights of registered industrial designs as that of a personal property capable of assignment and transmission by operation of the law. Registrable industrial designs must be new and does not include a method of construction or design that are dictated solely by function. In addition the design of the article must not be dependent upon the appearance of another article of which the article forms an integral part. Registration by a local applicant can be filed individually or through a registered industrial designs agent. However for a foreign applicant, filing has to be done through a registered industrial designs agent. Registered industrial designs are protected for an initial period of 5 years, and may be extended twice for a 5-year term each, providing a total protection period of 15 years.

4. Copyright

Copyright protection is governed by the Copyright Act 1987, which provides comprehensive protection for copyrightable works. The Act outlines the nature of works eligible for copyright (which includes computer software), the scope of protection, and the manner in which the protection is accorded. There is no registration of copyright works.

The duration of copyright protection in literary, musical or artistic works, is the life of the author and 50 years after his death, while the duration of protection in sound recordings, broadcasts and films is 50 years after the works are first published or made. The act also provides protection for the performers' rights in a live performance which shall continued to subsist until the expiry of fifty years computed from the beginning of the calendar year following the year in which the live performance was given. A unique feature of the Act is the inclusion of provision for enforcement of the Act, which included such powers to enter premises suspected of having infringing copies and to search and seize infringing copies and contrivances. A special team of officers is appointed to enforce the Act.

5. Layout Design of Integrated Circuit

Layout design of integrated circuit is governed by the Layout Design of Integrated Circuit Act 2000. The Act recognizes a protection for layout design of integrated circuit base on its originality, creator's own invention and the creation is freely created. There is no registration of the Layout Design of Integrated Circuit.

The duration of its protection is ten years from the date of its commercial exploitation or fifteen years from the date it was created if not commercially exploited. The Act also allows an action to be taken by the owner if such a right recognized under the Act has been infringed. It can also be transferred either party or wholly by way of assignment, licence, wills or through the enforcement of law. The Act is implemented in compliance with the TRIPS agreement to ensure the growth of technology in this country and provide a guarantee to the investors in the electronic industrial sector.

For further details on the Intellectual Property Protection, please contact the Ministry of Domestic Trade and Consumer Affairs.

VII. LABUAN INTERNATIONAL OFFSHORE FINANCIAL CENTRE

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) Offshore Trusts and Trusts business;
- (iv) Investment holdings;
- (v) Mutual funds, units trust and fund management;
- (vi) Factoring;
- (vii) Limited partnerships;
- (viii) Venture capital;
- (ix) Company management;
- (x) Money broking;
- (xi) Money market, Corporate Treasury; and
- (xii) Labuan International Financial Exchange (LFX); and
- (xiii) Islamic Financial Business

The Administration of Labuan IOFC

Labuan Offshore Financial Services Authority (LOFSA) was established on 15 February 1996 under the Labuan Offshore Financial Services Authority Act 1996 as a single regulatory authority responsible to develop and promote offshore business in Labuan IOFC. However, matters relating to taxation continue to be administrated by the Inland Revenue Board. LOFSA's establishment further underscores the

Government's commitment to make Labuan a premier IOFC of high repute. LOFSA has developed a two-pronged strategy for the development of Labuan IOFC: The creation of an integrated offshore financial centre offering a wide range of offshore products, particularly in its niche market of Islamic banking and finance, and the provision of a legal and supervisory framework for the development of a globally competitive offshore industry. In implementing the strategy, LOFSA:

- i. Develops national objectives, policies and priorities for the orderly development and administration of the offshore financial services industry in Labuan IOFC;
- ii. Supervises the activities and operations of the offshore financial institutions in Labuan; and
- iii. Oversees the promotional and developmental aspects of the IOFC.

Legislation

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

(a) **Offshore Companies Act, 1990**

For the incorporation, registration and administration of offshore companies and foreign offshore companies

(b) **Labuan Trust Companies Act, 1990**

For the registration of companies as trust companies in Labuan, for the prescription of their powers and duties

(c) **Offshore Banking Act, 1990;**

For the licensing and regulations of persons carrying on offshore banking business

(d) **Offshore Insurance Act, 1990;**

For the licensing and regulation of persons carrying on offshore insurance business and offshore insurance-related activities

(e) **Labuan Offshore Business Activity Tax Act, 1990;**

For the imposition, assessment and collection of tax on offshore business activity carried on by an offshore company in or from Labuan

(f) **Labuan Offshore Financial Services Authority Act, 1996;**

For the establishment of Labuan Offshore Financial Services Authority and to provide for its functions and powers

(g) **Labuan Offshore Trusts Act, 1996;**

For the creation and recognition of offshore trusts

(h) **Labuan Offshore Limited Partnership Act, 1997;**

For the establishment, regulation and dissolution of offshore limited partnerships

(i) **Labuan Offshore Securities Industry Act, 1998;**

For the regulation of securities in Labuan, the establishment of a facility for the listing thereof on an exchange

(j) Any other laws relating to offshore financial services in Labuan

Tax System

(a) **Offshore Companies**

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 LOBATA, 1990. The definition of an offshore company includes an offshore trust created in Labuan, a Limited Partnership and a branch of Malaysian bank. An offshore company carrying on an offshore trading activity (which includes banking, insurance, trading, petroleum operations, management activities, chartering and leasing of ships (on bare-

boat basis) for the basis period for a year of assessment will be taxed at a rate of 3% of its audited 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 Board. 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. However, where an offshore company is carrying on both offshore trading and non-trading activity, it is deemed to be carrying on offshore trading activity.

(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. In addition, shareholders of Malaysian Companies, which are shareholders of an offshore company, are also exempted from tax on the dividend paid of the exempt dividends.

(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 transfer of shares and Memorandum and Articles 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 until year of assessment 2004.

(viii) **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 and a non-citizen trust officer in a Labuan Trust Company is exempted from tax up to an amount equivalent to 50% of the gross income from that employment until year of assessment 2004 and 2005, respectively.

(ix) **Exemption of Tax for Non-citizen Director of Offshore Company**

Director fees received by a non-citizen director of an offshore company is 100% exempted from tax for years of assessment 2002 to 2006.

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 Petroliaam 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 MITI to regulate all activities in the downstream sector of the petroleum industry.

The Ministry of Domestic Trade and Consumer Affairs have 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.

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. The Gas Supply Act 1993 was amended in September 2001 and the Energy Commission was established to replace the Department of the Electricity and Gas Supply Department. The Energy Commission, among others, is responsible for the gas reticulation industry.

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 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, dishonourable 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. Following the announcement of the economic stimulus package in May 2003, the implementation of the FIC Guidelines to process corporate proposals that had previously required approval from both the SC and the FIC will be operationalised solely by the SC. This measure forms part of the effort to further streamline the approval processes in the Malaysian capital market.

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 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 KLSE;
- (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 and Fund Manager's Representative's Licence Under the Securities Industry Act 1983;
- (p) Guidelines For Application For Futures Fund Manager's and Futures Fund Manager's Representative's Licence under The Futures Industry Act 1993;
- (q) Guidelines for the issue of Call Warrants;
- (r) Guidelines on Securities Borrowing and Lending in Malaysia;
- (s) Guidelines for Application of Licence under the Futures Industry Act 1993;
- (t) Statutory Declaration by a Person Pursuant to an Application for a Licence under the Futures Industry Act 1993/Securities Industry 1983;
- (u) Guidelines on the offering of Asset-Backed Debt Securities.

Applications For Corporate Proposals

A public 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 purposes of or in connection with a scheme, compromise or arrangement for the amalgamation of any 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 the 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.
- (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.

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 expert 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.

Regulatory Framework for Fundraising

With the promulgation of the Securities Commission (Amendment) Act (SCA), 2000 on 1 July 2000, the Securities Commission became the sole approving authority for prospectuses in respect of all securities, other than shares and debentures issued by unlisted recreational clubs.

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 Companies Commission of Malaysia (CCM) would also continued 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 Companies Commission of Malaysia. The Registrar of Companies (later replaced by the CCM beginning April 2002) 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 ROC.

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 registered with the SC a document known as a prospectus. The SCA 2000 specifies when a prospectus must be registered and what its contents must include.

Division 3 Part IV of the SCA 2000 set out the provisions regulating the requirement for prospectuses in relation to any issue of, offer for subscription or purchases 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 2000 and other specific requirements in relation to debentures set out in Division 4 of Part IV of the SCA 2000, 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 KLSE are stipulated in the "Policies and Guidelines on Issue/Offer of Securities" (Issues Guidelines), which became effective on 1 January 1996.

The Issues Guidelines were amended in April 1999, leading to a revision of regulatory

requirements for listing on both the Main Board and the Second Board of the KLSE and the requirements for take-overs/back-door listings. These amendments enhanced listing standards and were also aimed at strengthening investor confidence in the Malaysian capital market. A revamp of the KLSE Listing Requirements in January 2001, aimed at continuously improving the level of corporate governance and further promoting the credibility and efficiency of the Malaysian market in order to benefit listed companies, directors, major shareholders as well as minority investors.

Amendments made to the Issues Guidelines and six other fund raising guidelines effective from May 2003 marked the Malaysian capital market's move into the third phase of a disclosure-based regulatory (DBR) framework for fund raising. DBR, which focuses on greater and higher-quality of information disclosure by issuers, aims at bringing greater transparency in the market and empowering investors to make informed investment decisions. Under Phase 3 of the DBR, the market enjoys significant improvement in the efficiency of the fund raising process, through a more streamlined approval process as well as more business-friendly and market-based rules. Issuers also benefit from faster approval time, with the processing time for IPSs expected to be reduced to less than 3 months from 6-8 months previously.

In addition the Government also announced measures in 2003 to strengthen the capital market, which include the reduction of the moratorium period on promoters' shareholdings for all new Initial Public Offerings/Reverse Takeovers from four years to one year, as an effort to ensure greater availability of shares and increased liquidity in the market.

To reflect the implementation of the full DBR and the latest revamp/amendments to the SC's Guidelines, which became effective on 1st May 2003. 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

An applicant seeking listing of and quotation for its securities on the Main Board should have a minimum issued and paid-up capital of RM 60 million, comprising ordinary shares with per value of at least 10 sen per share.

(b) Listing On Second Board

An applicant 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 per value of at least 10 cent per share.

2. The applicant should fulfill one of the following tests:

2.1 Historical Profit Performance

(a) Listing on Main Board

The company should have an uninterrupted profit record of either three to five full financial years, with an aggregate after-tax profit of not less than RM30 million over the said three to five years, and at least RM8 million after-tax profit for the latest financial year. Following the announcement of the economic stimulus package in May 2003, the implementation of the FIC Guidelines to process corporate proposals that had previously required approval from both the SC and the FIC will be operationalised solely by the SC. This measure forms part of the effort to further streamline the approval processes in the Malaysian capital market.

(b) Listing on Second Board

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

2.2 Infrastructure Project Company

There are no minimum historical profit track record applicants which are considered as infrastructure project companies (IPC).

(iii) Pricing of securities

While public companies have the discretion in the pricing of all securities of all securities issued public companies are respected to price their securities based on market-based principles and at a level which is in the best interests of the company, and to take into account the interest of minority shares.

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 KLSE.

Paragraph 6.13(b)(iv) of the Guidelines pertaining to the use of proforma accounts for the purpose of listing state the following:

“Where a group of companies is seeking listing using the market capitalisation test, all the companies in the group must:

- (a) be 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 a minimum period of three full financial years prior to submission to the SC.

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 shares of the company.

With these 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 directors and common controlling shareholders.

However, in order to qualify for the flexibility, the *Bumiputera* group of companies must fulfill 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 in business 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 of 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 or control the 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.

In addition, where an acquirer acquires part of a vendor's holding, particularly where he acquires just under 33% of the voting shares, thereby avoiding an obligation to make an offer, the SC may require such acquirer to provide confirmation that he has not in fact obtained control of the company. In providing such confirmation, the following situations should be taken into consideration:

- (i) whether the vendor is acting in concert with the acquirer;
- (ii) whether a significant premium was paid for the voting shares;
- (iii) any change in the board composition or a significant change in business direction or policy, following the acquisition.

A person who fails to comply with the mandatory offer requirement shall be guilty of an offence and 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 documents 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 be guilty of an offence and 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 company or exercising the voting rights attached to the voting shares which have been acquired before the acquirer sends out an offer document to the offeree shareholders. Section 10 of the Code provides that persons who intend to sell his or its voting shares to an acquirer are not allowed to resign as director or cause a director who is accustomed to act in accordance to his or its directions or instructions 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 becomes or is declared unconditional as to acceptances, whichever is later.

Practice Notes attached to the Code provide guidance on the interpretation of certain 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 mandatory offer provisions.

Capital Market Masterplan

The SC released the Capital Market Masterplan in February of 2001. It is intended to be a comprehensive plan charting the strategic positioning and future direction of the Malaysian capital market for the next 10 years. The plan is a comprehensive review towards:

- Formulating a comprehensive vision and programme for the development of the Malaysian capital market going forward;

- Formulating a framework for the orderly and effective sequencing of further deregulation and liberalization; and
- Identification and mapping the direction for the strategic positioning of the Malaysian capital market both domestically and externally.

The recommendations are based on 6 strategic initiatives, which include; to be the preferred fund raising center for Malaysian.

XI. KUALA LUMPUR STOCK EXCHANGE

Kuala Lumpur Stock Exchange (KLSE), is a front-line regulator and market operator for exchange traded securities. It has its own Memorandum and Articles of Association and Rules which governs the conduct of its members in securities dealings.

It is also responsible for the surveillance of the marketplace, and for the enforcement of its Listing Requirements, which spell out the criteria for listing, disclosure requirements and standards to be maintained by listed companies.

Products and Services

The KLSE today is one of the largest bourses in ASEAN, with over 870 companies listed either on the Main Board for larger capitalised companies, Second Board for medium-sized companies and MESDAQ Market for growth and technology companies. These companies, which mirror the diversity and scope of the Malaysian economy, are categorised into 15 different sectors for Plantation, Mining, Trading/Services, Technology, Infrastructure and Finance to name a few.

KLSE Group of Companies

In addition to providing a marketplace for equities securities, the KLSE Group also provides a comprehensive range of services to support the securities industry in Malaysia.

- Malaysia Derivatives Exchange (MDEX) operates the derivatives market. MDEX was

a result of the consolidation between the financial futures and commodities futures exchanges. MDEX provides investors with hedging instruments and currently offers commodities, financial and equity-related futures. Current products available are KLSE CI Futures and Options, Kuala Lumpur Interbank Offered Rate (KLIBOR) Interest Rate Futures, Five-Year Malaysian Government Securities Futures and Crude Palm Oil Futures.

- Labuan International Financial Exchange (LFX) offers and trading facilities that caters for a wide range of multi-currency financial instruments in an offshore environment. These instruments can be based on conventional or Islamic based principles. LFX offers web-based trading and on-line submission of documents, including equity and debt instruments, bonds, insurance products and intellectual property rights. Instruments that are currently listed include a conventional bond issue and two series of the serial Islamic Lease Sukuk, and an Islamic financial instrument.
- Securities Clearing Automated Network Services Sdn. Bhd is the equity clearing house while the Malaysian Derivatives Clearing House Bhd (MDCH) is the derivatives clearing house, provide clearing and settlement facilities for each market respectively.
- Malaysian Central Depository Sdn Bhd provides efficient central clearing and settlement of securities, and operates the central depository system.

Stockbroking companies

Currently there are 39 stockbroking companies offering services in the dealing of securities listed on the KLSE. Out of these, 6 stockbroking companies have been granted universal brokers status. Universal brokers are able to offer a full scope of integrated capital market services that is, corporate finance, debt securities trading and share dealing.

XII. 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 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 RM10 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 Foreign Investment Committee (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;
- (j) Secretary General Ministry of Land and Cooperative Development; and
- (k) Commissioner of Companies Malaysia.

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

The Secretary
Foreign Investment Committee
Economic Planning Unit
Prime Minister's Department
Block B5 & B6
62502 Putrajaya.

XIII. EXCHANGE CONTROL POLICIES

In line with the policy of gradual and progressive liberalisation of the financial sector, Malaysia continued to further liberalise the exchange control rules. In this regard, further changes were effected in 2002 and early 2003 to enhance efficiency for businesses operating in Malaysia. Measures included:

- (i) Increasing the aggregate amount of domestic credit facilities that can be extended by residents to non-resident controlled companies (NRCC) to RM50 million from RM10 million and abolishing the requirement that at least 50% of the credit facilities from banking institutions must be extended by Malaysian-owned banking institutions.
- (ii) Allowing a non-resident to obtain:
 - (a) Ringgit credit facilities up to RM5 million to finance projects undertaken in Malaysia;

- (b) Overdraft facilities up to RM500,000 in aggregate as long as the credit facilities are secured by fixed deposits placed by the non-resident with the lending bank; and
 - (c) Ringgit loans to refinance property loans taken to finance the purchase of properties in Malaysia.
- (iii) Liberalising payments for ringgit assets between residents and non-residents as well as between non-residents to be made either in ringgit or foreign currency. Prior to the liberalisation, such payments were allowed only in ringgit.
 - (iv) Increasing the maximum overnight limit on foreign currency accounts for export proceeds maintained by resident exporters from USD10 million to up to USD70 million, depending on their average monthly export receipts.
 - (v) Allowing residents to enter into foreign exchange forward contracts with an authorised dealer to sell foreign currency receivables for ringgit for any purpose. Prior to 1 April 2003, only export proceeds and services receivables (excluding interest receivables) were allowed to be sold on forward contract basis.
 - (vi) Removing the limit of RM10,000 equivalent in foreign currency for investment abroad by residents under the Employee Share Option/Purchase Scheme.
 - (vii) Abolishing the requirement to complete Form KPW X for exports exceeding RM100,000 f.o.b.
 - (viii) Increasing the threshold to RM50,001 from RM10,001 to complete Form P for payments. Accordingly, the threshold to complete Form R for receipts has also been raised to RM50,001.

Rules on capital flows are liberal with policies aimed at monitoring the settlement of payments and receipts. For monitoring and compiling balance of payments statistics, residents are required to complete statistical forms, Form P and Form R, for each payment and receipt

respectively of more than RM50,000 vis-à-vis non-residents. All rules are applied uniformly to transactions with all countries, except Israel, Serbia and Montenegro for which special restrictions apply. Exchange control rules are also applied where appropriate to prevent recourse to the Malaysian banking system for terrorist financing.

The following are the main exchange control rules:

I. Current Account Transactions

(a) Payments for Import of Goods and Services

There are no restriction on payments to non-residents for imports of goods and services. Such payments must be made in foreign currencies, except currencies of Israel, Serbia and Montenegro.

Residents may enter into a forward exchange contract to buy foreign currency against ringgit to make payment for imports from a non-resident, provided the maturity of the forward contract is not later than 12 months after the intended date of import.

(b) Export Proceeds

All export proceeds are required to be repatriated back to Malaysia in accordance to the payment schedule as specified in the sales contract, which in any case should not exceed six months from the date of export.

Export proceeds must be received in foreign currency and must be sold for ringgit or retained in permissible foreign currency accounts with resident commercial banks and Islamic banks. The aggregate overnight limits range from USD1 million up to USD70 million. Higher limits may be allowed on a case-by-case basis.

Residents may enter into a forward foreign exchange contract with an authorised dealer to sell foreign currency for ringgit arising from export proceeds provided the maturity of the forward contract is not later

than six months after the intended date of export.

For exports in excess of RM100,000 f.o.b., resident exporters are required to submit a quarterly report detailing such exports. In addition, the resident exporters are required to submit yearly summary reports no later than 30 days after the close of the financial year of the companies.

(c) Import and Export of Currency by Travellers

Import and export of ringgit up to RM1,000 including demonetised RM1,000 and RM500 notes, and export of foreign currency up to an equivalent of RM10,000 by residents are allowed. Resident travellers are also allowed to carry on person or in baggage any amount of foreign currency into Malaysia. Resident travellers are required to obtain permission from the Controller of Foreign Exchange (the Controller) and declare in the Traveller's Declaration Form when they carry currency notes and/or traveller's cheques as listed below:

- carrying into or out of Malaysia, ringgit notes exceeding RM1,000.
- Carrying out foreign currency notes including traveller's cheques exceeding the equivalent of RM10,000.

Approval is given within one day of application.

Non-residents are free to bring in any amount of foreign currency and/or traveller's cheques. Declaration in the Disembarkation Card issued by the Immigration Department is only required for amounts in excess of the equivalent of USD2,500.

Non-residents would need to seek approval if the amount of foreign currency to be carried abroad exceeds the amount brought into Malaysia, provided the amount to be taken out is more than the equivalent of USD2,500.

Non-residents must obtain permission and declare ringgit exceeding RM1,000 being brought into or out of Malaysia.

II. Capital Account Transactions

(a) Foreign Direct Investment

Foreign direct investors are freely allowed to repatriate their investments, including capital, profits, dividends and interest.

(b) Investment Abroad by Residents

Residents, other than commercial banks, Islamic banks and approved merchant banks, are required to seek prior approval from the Controller to remit funds in excess of RM10,000 equivalent in foreign currency for overseas investment purposes. Approval is based on a set of transparent criteria, namely:

- (i) The investment is undertaken to gain market access and the investments will use Malaysian inputs (raw materials, parts, components);
- (ii) The investment will assist in exporting Malaysian products or services;
- (iii) There is transfer of technology and know-how to Malaysia;
- (iv) The investment will supply inputs required by resident companies; or
- (v) The investment is synergistic to the investing company's core business.

Resident individuals may invest any amount in foreign currency in securities offered by their employers' overseas parent or related companies under the Employee Share Option/Purchase Scheme. This is provided that such investments are registered with the Controller at least 7 days prior to the remittance of funds overseas.

Commercial banks, Islamic banks and approved merchant banks may invest abroad as long as they comply with the Banking and Financial Institutions Act, 1989

and their approved foreign currency net open position limit. Remittance for investments abroad must be made in foreign currency.

(c) Foreign Currency Credit Facilities from Non-Residents

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 no restriction for repayment of credit facilities obtained as long as such credit facilities have been obtained in accordance with the relevant exchange control policies.

(d) Ringgit Credit Facilities from Non-Residents

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

(e) Extension of Credit Facilities to Non-Residents

Foreign Currency Credit Facilities

Commercial banks and Islamic banks may extend credit facilities in foreign currency to non-residents for any purpose. However, credit facilities extended for the acquisition or development of immovable property in Malaysia would be subject to similar requirements as in ringgit credit facilities outlined below.

Ringgit Credit Facilities

Non-bank residents may extend credit facilities in ringgit to non-residents not exceeding RM10,000. Such credit facilities may be extended by crediting the funds

into the non-resident's External Account. Any remittance abroad must be made in foreign currency.

Resident stockbroking companies may extend margin-financing facilities to non-resident clients for the purchase of shares listed on the KLSE, provided they comply with all the relevant rules imposed by the KLSE.

Commercial banks and Islamic banks are allowed to extend ringgit overdraft facility in aggregate not exceeding RM200 million on intra-day basis and not exceeding RM10 million on overnight basis to non-resident stockbroking companies and non-resident custodian banks. The facilities are strictly for financing funding gaps due to unforeseen or inadvertent/technical administration errors or time zone delays in relation to settlement of trades on the KLSE.

Resident insurance companies may extend policy loans in ringgit to its non-resident policy holders not exceeding the attained cash surrender value of the policies at all times for a duration not exceeding the duration of the policy.

Financial institutions may extend up to three property loans in ringgit in aggregate to a non-resident to finance/refinance the purchase or construction of any property in Malaysia (excluding for the purchase of land only), subject to their own internal credit assessment guideline. All purchases are subject to the guidelines issued by the FIC. Details of the guidelines can be found at <http://www.epu.jpm.my>.

Resident companies may extend credit facilities to their non-resident employees subject to terms and conditions of employment to finance the purchase or construction of property (excluding for the purchase of land only) in Malaysia. The credit facility will be included as one of the three permissible property loans to be extended by financial institutions.

Banking institutions may extend credit facilities in ringgit up to the aggregate of RM200,000 to a non-resident for purposes other than to finance the acquisition or development of immovable property in Malaysia. The above is in addition to credit facilities extended for the purchase of one vehicle for own use. Prior approval of the Controller is required for the extension of credit facilities exceeding the limit.

Banking institutions may also extend credit facilities in ringgit up to the aggregate of RM5 million to a non-resident to finance project undertaken in Malaysia. The project may be undertaken by the non-resident individually or jointly with residents and/or non-residents. The total amount of credit facilities should not exceed the contract value of the project undertaken by the non-resident.

In addition to the above, banking institutions may also extend to a non-resident ringgit overdraft facilities not exceeding RM500,000 in aggregate provided they are secured by fixed deposits placed by the non-resident customer with the banking institutions.

Ringgit Swap/Forward

Authorised dealers are allowed to enter into:

- (i) Short-term currency swap arrangements with non-resident stockbrokers and non-resident custodian banks to cover payment for their share purchases on the KLSE; and
- (ii) Outright ringgit forward sale contract with non-residents for the same purpose.

The permission is subject to the condition that such contracts are based on firm commitment and not on anticipated purchases, and for maturity period of up to three working days with no rollover option.

Authorised dealers are allowed to enter into forward foreign exchange contracts with residents to purchase foreign currency receivables against ringgit for any purpose (other than export proceeds) provided the transaction is supported by firm underlying commitment to receive such currency and the tenure of the contract does not exceed 12 months. For forward sale of export proceeds, the maturity date of the forward contract should not be later than six months after the intended date of export.

(f) Portfolio Investments

Non-residents are freely allowed to repatriate their principal sum, profits and dividends out of the country at any time. (The exit levy system was abolished on 2 May 2001).

III. Ringgit Credit Facilities to Non-Resident Controlled Companies

Residents are freely allowed to extend credit facilities in ringgit to a Non-Resident Controlled Company (NRCC) operating in Malaysia up to an aggregate limit of RM50 million per corporate group or on single entity basis 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 RM50 million in aggregate. However, the NRCC has to comply with the 3:1 gearing ratio requirement between its domestic debt and eligible capital funds, only for the portion that is in excess of RM50 million.

In computing the 3:1 gearing ratio requirement, NRCC are provided with the option to compute their domestic debt and eligible capital funds either on per corporate group basis or on single entity basis.

There is no restriction on the amount of credit facilities to be extended by foreign-owned banking institutions in Malaysia to a NRCC provided the aggregate amount

of credit facilities obtained by the NRCC from all residents does not exceed RM50 million.

In addition to the above, resident banking institutions in Malaysia are also permitted to allow NRCC to overdraw their current accounts for amounts of up to RM500,000 per account for a period not exceeding 2 business days.

IV. Issuance of Ringgit Private Debt Securities

Residents are generally permitted to raise domestic credit facility through the issuance of ringgit Private Debt Securities regardless of amount, provided the proceeds are not used for financing of investment abroad and/or for refinancing of offshore borrowing. The issuance of Private Debt Securities must also be in accordance with the Exchange Control Guideline on Private Debt Securities. The amount issued by the NRCC would be included as part of the NRCC's total domestic credit facilities and is subject to the 3:1 gearing ratio.

V. Foreign Currency Accounts of Residents

Resident exporters are permitted to open foreign currency accounts (export FCA) with resident commercial banks and Islamic banks to retain export proceeds in foreign currency of between USD1 million and USD50 million, depending on their average monthly export receipts.

In addition, upon attaining the maximum limit of permitted overnight limit of the export FCA, resident exporters may retain 10% of subsequent export proceeds repatriated to Malaysia in the export FCA, provided the aggregate overnight limit does not exceed the overnight limit of the next higher threshold.

For resident exporters who are eligible to retain export proceeds up to the general permissible USD50 million limit, the maximum additional amount they are able to retain is USD20 million. The balance

90% must be sold to authorised dealers for ringgit.

Effective from 1 April 2003, the permissible aggregate overnight limits are as follows:

Aggregate Overnight Limit (USD million)	Limit including 10% accumulation (USD million)	Average Monthly Export Receipts
50	70	Exceeding RM100 million
30	50	Exceeding RM50 million up to RM100 million
10	30	Exceeding RM20 million up to RM50 million
5	10	Exceeding RM10 million up to RM20 million
3	5	Exceeding RM5 million up to RM10 million
1	3	Not exceeding RM5 million or new exporters

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 limit of:

- (i) USD0.5 million with commercial banks and Islamic banks in Malaysia; and
- (ii) USD0.5 million with Licensed Offshore Banks in Labuan.

Resident companies with no domestic credit facilities are permitted to open foreign currency accounts with commercial banks and Islamic banks in Malaysia to retain foreign currency receivables (other than export proceeds) with no overnight limit specified by BNM.

Resident individuals are also allowed to open foreign currency accounts solely to facilitate education and employment overseas up to an aggregate overnight limit of:

- (i) USD100,000 with commercial banks and Islamic banks in Malaysia;

- (ii) USD100,000 with Licensed Offshore Banks in Labuan; and

- (iii) USD50,000 with overseas banks.

VI. Foreign Currency Accounts of Non-Residents

Commercial banks, Islamic banks and merchant banks are freely allowed to open foreign currency accounts for non-residents.

There are no restrictions on the inflow and outflow of funds through the foreign currency accounts of non-residents.

VII. External Accounts of Non-Residents

Financial institutions are freely allowed to open accounts in ringgit, known as External Accounts, for non-residents.

Non-residents are allowed to use their ringgit funds in the External Account for the following purposes:

- (i) Purchase of foreign currency excluding the currencies of Israel, Serbia and Montenegro;
- (ii) Purchase of ringgit assets;
- (iii) Payment for goods and services for own use in Malaysia;
- (iv) Payment of administrative and statutory expenses incurred in Malaysia;
- (v) Payment under a non-financial guarantee (where the External Account holder is making payment upon the guarantee being called upon) due to residents;
- (vi) Extension of ringgit credit facilities to staff in Malaysia in accordance to the terms and conditions of employment;
- (vii) Repayment of ringgit credit facilities that were extended in accordance to ECM Notice, ECM 6 (Credit Facilities to Non-residents) or the terms and conditions of employment;

- (viii) Ringgit cash withdrawals of any amount; and
- (ix) Payments to resident beneficiary for any purpose other than for the following:
 - Payment for the import of goods and services;
 - Extension of ringgit credit facilities to residents other than as permitted above;
 - Settlement under financial guarantees; and
 - Payment on behalf of a third party.

The sources of funds in these ringgit External Accounts may be from:

- (i) Sale of foreign currency excluding the currencies of Israel, Serbia and Montenegro;
- (ii) Sale of ringgit assets;
- (iii) All income derived from Malaysia including salaries, wages, royalties, commissions, fees, rental, interest, profits or dividends;
- (iv) Proceeds from credit facilities permitted under ECM Notice, ECM 6 (Credit Facilities to Non-residents) or in accordance with the terms and conditions of employment;
- (v) Proceeds from repayment of ringgit credit facilities extended in accordance with ECM Notice, ECM 6 (Credit Facilities to Non-residents) or in accordance with the terms and conditions of employment;
- (vi) Transfers from:
 - Another External Account of the same account holder of any amount; and/or
 - Another External Account of different account holders and/or Resident Account by way of—
 - Automatic Teller Machine transfer up to RM5,000 per

person/ company, per day, per bank for any purpose; and/or

- Internet-bank transfers up to RM5,000 per person/ company, per day, per bank for any purpose.

(vii) Deposit of ringgit notes of an aggregate not exceeding RM10,000 per day; and

(viii) Deposit of cheques up to RM5,000 per cheque for any purpose.

Ringgit funds in the External Accounts may be converted into foreign currency and repatriated or used in Malaysia for permissible purposes mentioned above.

There is no restriction on the operations of the External Accounts of non-residents working or studying in Malaysia (including their spouse, children and/or parents who are currently residing in Malaysia), Central Banks, Embassies, Consulates, High Commissions, Supranational or international organisations recognised by the Malaysian Government. Such persons or organisations can use funds in the External Accounts for all purposes, including the permissible purposes referred to above.

VIII. Special Status Granted to Selected Companies

(a) Offshore Entities in the Labuan International Offshore Financial Centre

Entities established in Labuan IOFC are declared as non-residents for exchange control purposes after they are incorporated/registered under the Offshore Companies Act 1990.

Offshore entities in Labuan are freely allowed to deal with non-residents in foreign currency (other than the restricted currencies namely the currencies of Israel, Serbia and Montenegro).

Licensed Offshore Banks in Labuan are permitted to receive payments in ringgit

from residents arising from fees, commissions, dividends, or interest from deposit of funds.

Licensed Offshore Banks in Labuan are permitted to invest in assets/instruments in Malaysia for their own account provided investments are transacted directly with resident banking institutions or resident brokers. The investments must not be financed by ringgit borrowings.

All offshore entities are freely allowed to maintain External Accounts, with resident banks to facilitate the defrayment of statutory and administrative expenses in Malaysia.

Offshore insurance entities in Labuan may also use the External Accounts to facilitate the receipt of insurance premiums and for payment of claims arising from insurance and reinsurance of domestic insurance business.

(b) Multimedia Super Corridor Companies

Companies operating in Multimedia Super Corridor (MSC) that are incorporated as separate legal entities, are given exemption from exchange control rules upon the companies being awarded the MSC status by the Multimedia Development Corporation. The exemption granted to the MSC status company is solely for transactions undertaken on its own account. However, prior approval should be obtained for MSC status companies to deal with Specified Persons or in Restricted Currencies of Israel, Serbia and Montenegro.

In line with the exemption from exchange control rules, MSC status companies may maintain foreign currency accounts with any authorised dealer in Malaysia or non-residents, without a limit on the overnight balances of the accounts.

MSC status companies may also obtain any amount of foreign currency credit

facilities from commercial banks, Islamic banks and merchant banks in Malaysia and non-residents. In addition, the MSC status companies may also invest any amount abroad.

Notwithstanding the above, the MSC status companies are required to submit specified statistical forms/reports/statements for monitoring purposes.

(c) Approved Operational Headquarters

Approved Operational Headquarters (OHQs) are allowed to:

- (i) open foreign currency accounts with commercial banks and Islamic banks in Malaysia to retain export proceeds in foreign currency up to an aggregate overnight balance equivalent to USD70 million, regardless of the amount of export receipts;
- (ii) open foreign currency accounts with commercial banks and Islamic 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;
- (iii) obtain domestic credit facilities in ringgit not exceeding RM50 million, provided the ringgit funds are used in Malaysia; and
- (iv) obtain any amount of foreign currency credit facilities from commercial banks, Islamic banks and merchant banks in Malaysia, and from any non-residents, provided the OHQ do not on-lend to, or raise the funds on behalf of, any resident. Such credit facilities can be extended to their related companies overseas or invested abroad if their aggregate domestic credit facilities in ringgit does not exceed RM50 million.

(d) **Approved International Procurement Centres**

Approved International Procurement Centres (IPC) are allowed to:

- (i) retain any amount of export proceeds in foreign currency accounts maintained with resident commercial banks for the approved IPC activities only.
- (ii) enter into forward exchange contracts with resident commercial banks and Islamic banks to hedge exchange risk based on projected volume of trade.

XIV. DOUBLE TAXATION AGREEMENTS

Double taxation agreements (DTA) 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 to prevent evasion of taxes on income.

Under DTA 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 DTA 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 DTA 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 PIA, 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, 60 countries have DTA with Malaysia, namely:

	Country	Date of Signing Agreement
1.	Sweden	21.11.1970
2.	Sweden (Protocol)	12.03.2002
3.	Denmark	04.12.1970
4.	Norway	23.12.1970
5.	United Kingdom United Kingdom (New Agreement)	30.03.1973 10.12.1996
6.	Belgium Belgium (Protocol)	24.10.1973 21.11.1995
7.	Switzerland	30.12.1974
8.	France France (Protocol)	24.04.1975 31.01.1991
9.	Federal Republic of Germany)	08.04.1977
10.	Poland	16.09.1977
11.	Romania	26.11.1982
12.	Italy	28.01.1984
13.	Finland	28.03.1984
14.	Russia	31.07.1987
15.	Netherlands Netherlands (Protocol)	07.03.1988 04.12.1996
16.	Hungary	24.05.1989
17.	Austria	20.09.1989
18.	Albania	24.01.1994
19.	Malta	03.10.1995

	Country	Date of Signing Agreement
20.	Czech Republic	08.03.1996
21.	Ireland	28.11.1998
22.	Singapore Singapore (Supplementary)	26.12.1968 06.07.1973
23.	Japan Japan (New Agreement)	30.01.1970 19.02.1999
24.	Sri Lanka Sri Lanka (New Agreement)	16.09.1972 16.09.1997
25.	India India (New Agreement)	25.10.1976 14.05.2001
26.	Thailand Thailand (Protocol)	29.03.1982 10.02.1995
27.	South Korea	20.04.1982
28.	Philippines	27.04.1982
29.	Pakistan	29.05.1982
30.	Bangladesh	19.04.1983
31.	China	23.11.1985
32.	Indonesia	12.09.1991
33.	Iran	11.11.1992
34.	Sudan	07.10.1993
35.	Turkey	27.09.1994
36.	Jordan	01.10.1994
37.	Mongolia	27.07.1995
38.	Vietnam	07.09.1995
39.	United Arab Emirates	28.11.1995
40.	Kuwait	06.04.1997
41.	Egypt	14.04.1997
42.	Uzbekistan	06.10.1997
43.	Republic of Kyrgyz	19.11.2000
44.	Myanmar	09.03.1998
45.	Bahrain	14.06.1999
46.	New Zealand New Zealand (Protocol)	19.03.1976 14.07.1994
47.	Australia	20.08.1980
48.	Papua New Guinea	20.05.1993
49.	Fiji	19.12.1995

	Country	Date of Signing Agreement
50.	Canada	16.05.1976
51.	Mauritius	23.08.1992
52.	Zimbabwe	28.04.1994
53.	Namibia	28.07.1997
54.	Croatia	18.02.2002
55.	Lebanon	20.01.2003
56.	Luxembourg	21.11.2002
57.	Morocco	02.07.2001

LIMITED DTA AGREEMENT (In respect of income of Transport Enterprises only)

58.	Saudi Arabia (air transport only)	18.07.1993
59.	U.S.A (shipping and air transport)	17.04.1989
60.	Republic of Argentina (shipping and air transport)	03.10.1997

XV. INVESTMENT GUARANTEE AGREEMENTS

The purpose of the Investment Guarantee Agreements (IGA) 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 IGA will help to quicken the pace of industrialisation by encouraging the inflows of foreign capital. It is generally considered that the IGA, 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 IGA, 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 IGA, 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 IGA 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.
- (b) 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 which is established under the auspices of the IBRD or the International Adhoc Arbitral Tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law.

Status of Investment Guarantee Agreements

Malaysia has signed IGAs with the following countries:

	Country	Date of Signing Agreement
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
9.	United Kingdom	21.5.1981
10.	Sri Lanka	16.4.1982
11.	Romania	26.11.1982 (amended on 25.6.1996)
12.	Norway	6.11.1984
13.	Austria	12.4.1985
14.	Finland	15.4.1985
15.	Organization of Islamic Conference (OIC)	30.9.1987
16.	Kuwait	21.11.1987
17.	ASEAN	15.12.1987
18.	Italy	4.1.1988
19.	Republic of Korea	11.4.1988
20.	People's Republic of China	21.11.1988
21.	United Arab Emirates	11.10.1991
22.	Denmark	6.1.1992
23.	Socialist Republic of Vietnam	21.1.1992
24.	Papua New Guinea	27.10.1992
25.	Republic of Chile	11.11.1992
26.	Lao People's Democratic Republic	8.12.1992

¹ Germany since 3.10.1990.

<i>Country</i>	<i>Date of Signing Agreement</i>	<i>Country</i>	<i>Date of Signing Agreement</i>
27. Taiwan	18.2.1993	50. Czech Republic	9.9.1996
28. Republic of Hungary	19.2.1993	51. Republic of Guinea	7.11.1996
29. Republic of Poland	21.4.1993	52. Republic of Ghana	11.11.1996
30. Republic of Indonesia	22.1.1994	53. Arab Republic of Egypt	14.4.1997
31. Republic of Albania	24.1.1994	54. Republic of Botswana	31.7.1997
32. Republic of Zimbabwe	28.4.1994	55. Republic of Cuba	26.9.1997
33. Turkmenistan	30.5.1994	56. Republic of Uzbekistan	6.10.1997
34. Republic of Namibia	12.8.1994	57. Macedonia	11.11.1997
35. Kingdom of Cambodia	17.8.1994	58. Democratic People's Republic of Korea	4.2.1998
36. The Argentine Republic	6.9.1994	59. Republic of Yemen	11.2.1998
37. Jordan	2.10.1994	60. Republic of Turkey	25.2.1998
38. Republic of Bangladesh	12.10.1994	61. Republic of Lebanon	26.2.1998
39. Republic of Croatia	16.12.1994	62. Burkina Faso	23.4.1998
40. Bosnia Herzegovena	16.12.1994	63. Republic of Sudan	14.5.1998
41. Spain	4.4.1995	64. Republic of Djibouti	3.8.1998
42. Pakistan	7.7.1995	65. Republic of Ethiopia	22.10. 1998
43. Kyrgyz Republic	20.7.1995	66. Senegal	11.2. 1999
44. Mongolia	27.7.1995	67. State of Bahrain	15.6. 1999.
45. Republic of India	3.8.1995	68. Algeria	27.02.2000
46. Oriental Republic of Uruguay	9.8.1995	69. Saudi Arabia	25.10.2000
47. Republic of Peru	13.10.1995	70. Morocco	16.04.2002
48. Republic of Kazakhstan	27.5.1996	71. Iran	22.07.2002
49. Republic of Malawi	5.9.1996		