



INVESTOR'S GUIDE

ECONOMIC REPORT
2005/2006

Investor's Guide

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Investor's Guide



I. INVESTMENT INCENTIVES BY LEGISLATION (AS AT 29 SEPTEMBER 2005)

Malaysia offers incentives for investments in promoted products and activities in the manufacturing and manufacturing related services, agriculture, hotel and tourism, and other approved services projects, research and development (R&D), training, and environmental protection activities. 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 payment of tax.

A. PROMOTION OF INVESTMENTS ACT, 1986

1. Pioneer Status

A company granted Pioneer Status will enjoy different degree of exemption, depending on the type of promoted products or activities as listed in Malaysian Industrial Development Authority (MIDA) List of Promoted Activities and Products:

(a) Promoted Product or Activity

Companies will be granted tax exemption on 70% of the statutory income for five (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 Areas

With effect from 13 September 2003, companies 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 100% tax exemption on the statutory income for five (5) years. For Labuan, the incentive is only applicable to the hotels and tourism industry. Existing companies, which relocate their manufacturing activities to the Promoted Areas, are given a second round of Pioneer Status.

(c) Promoted Product or Activity for High Technology Companies

Companies will be granted full tax exemption on 100% of the statutory income for five (5) years.

(d) *Promoted Product or Activity for Small-Scale Manufacturing Companies*

Companies will be granted 100% tax exemption on the statutory income for five (5) years.

(e) *Promoted Product or Activity in the Approved Industrial Linkage Programme (SMEs producing intermediate goods)*

Companies will be granted 100% tax exemption on the statutory income for five (5) years. Companies in approved Industrial Linkage Programme capable of achieving world-class standards in terms of price, quality and capacity are eligible for tax exemption on 100% of the statutory income for 10 years.

(f) *Promoted Products or Activities of National and Strategic Importance*

Strategic projects include products or activities that are of national importance. Generally, they involve heavy capital investments with long gestation periods, high technology and integration, and generate widespread industrial linkages as well as have significant impact on the economy. Such projects will be granted full tax exemption on 100% of the statutory income for five (5) years and are eligible for extension for another five (5) years.

(g) *Contract R&D Companies*

Companies that provide 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 five (5) years. Contract R&D companies undertaking reinvestment will be granted another round of Pioneer Status.

(h) *Commercialisation of public sector R&D*

Subsidiary companies that undertake commercialisation of R&D findings of the public sector will be granted Pioneer Status with tax exemption of 100% on statutory

income for 10 years. However, the companies must at least be 70% owned by Malaysians. The investing/holding companies should own at least 70% of equity of the subsidiary companies that commercialise the R&D findings.

Terms and Conditions for Companies Enjoying Pioneer Status:

- i. Companies granted Pioneer Status must within six (6) months request for a pioneer certificate, specifying among others the date of production in marketable quantities and the rate of production.
- 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 Contract R&D Company granted Pioneer Status.
- iv. Dividends distributed out of tax-exempt income to shareholders will also be exempted from tax in the hands of the shareholders.

2. Investment Tax Allowance

Investment Tax Allowance is an alternative to Pioneer Status and is designed to cater for projects which have large capital investments and long gestation periods. As in the case of Pioneer Status, companies granted Investment Tax Allowance would enjoy different degree of exemptions depending on the types of promoted products or activities as follows:

(a) *Promoted Product or Activity*

Companies will be granted an allowance of 60% in respect of qualifying capital expenditure (such as factory, plant, machinery or other equipment used for approved projects) incurred within five (5) years from the date the first capital expenditure was incurred. The allowance

can be utilised to be setoff (exempt) up to 70% of the statutory income in each year of assessment year until fully utilised. The balance of that statutory income will be taxed at the prevailing company tax rate.

(b) Promoted Product or Activity for Small-Scale Manufacturing Companies

Companies will be granted an allowance of 60% of qualifying capital expenditure incurred within five (5) years to be setoff up to 100% of the statutory income in each year of assessment.

(c) Promoted Product or Activity In Promoted Areas

Companies 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 100% on the qualifying capital expenditure incurred within a period of five (5) years to be setoff up to 100% of statutory income in each year of assessment. For Labuan, the incentive is only applicable to the hotels and tourism industry.

Existing companies, which relocate their manufacturing activities to the Promoted Areas are given Investment Tax Allowance of 100% of the qualifying capital expenditure incurred within a period of five (5) years, to be setoff up to 100% of statutory income in each year of assessment.

(d) Promoted Product or Activity For High Technology Companies

Companies will be granted an allowance of 60% of qualifying capital expenditure incurred within five (5) years to be setoff up to 100% of the statutory income in each year of assessment.

(e) Promoted Product in the Approved Industrial Linkage Programme

Companies will be granted an allowance of 60% of qualifying capital expenditure incurred within five (5) years to be setoff up to 100% of the statutory income in each year of assessment.

(f) Promoted Product or Activity of National and Strategic Importance and Product or Activity in The Approved Linkage Programme which Achieve World-class Standards

Companies will be granted an allowance of 100% of qualifying capital expenditure incurred within five (5) years to be set-off up to 100% of the statutory income in each year of assessment. Companies that have started operations are also eligible but the incentives will only be given on the additional income. Companies currently enjoying Investment Tax Allowance may apply for the incentives at the end of the Investment Tax Allowance period.

(g) R&D Activities

Incentives given to companies specialising in R&D activities are:

- i. R&D Companies are defined as a companies that provide R&D services in Malaysia to related companies or to any other companies.

Companies will be granted an allowance of 100% on the qualifying capital expenditure incurred within 10 years to be setoff up to 70% of the statutory income in each year of assessment.

Should the R&D Companies opt not to avail themselves of the allowance, their related companies can enjoy a double deduction for payments made to the R&D companies for services rendered. R&D companies undertaking reinvestments will be granted another round of Investment Tax Allowance.

- ii. Contract R&D Companies are companies that provide R&D services in Malaysia to a company other than their related companies.

Companies will be granted an allowance of 100% of qualifying capital expenditure incurred within 10 years to be setoff up to 70% of the statutory income in the assessment year. Contract R&D Companies undertaking reinvestments will be granted another round of Investment Tax Allowance.

- iii. In-house R&D refers to R&D carried out in Malaysia within a company for the purpose of its own business.

Companies will be granted an allowance of 50% of qualifying capital expenditure incurred within 10 years to be setoff up to 70% of the statutory income in the assessment year. In-house R&D companies undertaking reinvestments will be granted another round of Investment Tax Allowance.

(h) Technical or Vocational Training Company

Companies will be granted an allowance of 100% of qualifying capital expenditure incurred within 10 years to be setoff up to 70% of the statutory income in the assessment year. 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 Investment Tax Allowance:

- i. Any unutilised allowance can be carried forward to subsequent years until fully utilised.
- ii. Dividends paid out of tax-exempt income are also exempted from tax.

3. Industrial Adjustment Allowance

Industrial Adjustment Allowance is available to companies in selected manufacturing sub-sectors

mainly in wood-based, textile, machinery and engineering, stamping, moulds, and tools and dies. The companies should already be in existence before 31 December 1990 and participate in certain industrial adjustment activities such as reorganisation, restructuring or amalgamation within the sector.

Based on the industrial adjustment activities, companies will be granted an allowance of 60% to 100% on the qualifying capital expenditure incurred within five (5) years to be setoff up to 100% of adjusted income in each year of assessment.

Terms and Conditions for Companies Enjoying Industrial Adjustment Allowance:

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

4. Infrastructure Allowance

Infrastructure Allowance is available to companies located in the States of Sabah, Sarawak and the Eastern Corridor of Peninsular Malaysia, and engaged in manufacturing, agriculture, hotels and tourism and other industrial or commercial activities. Companies will be granted an allowance of 100% on qualifying capital expenditure for infrastructure such as reconstruction, extension and improvement of any permanent structure including bridges, jetties, ports and roads.

5. Double Deduction for Promotion of Exports

This incentive is available to any resident companies in Malaysia seeking opportunities for exports of manufactured, agricultural products and services. 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) *Feasibility studies for overseas projects identified for the purpose of tenders;*
- (h) *Exhibits and/or participation required in trade or industrial exhibitions held locally or abroad approved by the Malaysian External Trade Development Corporation (MATRADE);*
- (i) Fares in respect of overseas travel by representatives of companies for negotiation or signing of business contract;
- (j) Accommodation expenses up to RM300 per day and sustenance expenses up to RM150 per day for Malaysian traders who travel for overseas trip for the purposes of (g) and (h);
- (k) Cost of maintaining sales office overseas for the promotion of exports;
- (l) Expenses for services rendered for public relations work connected with export;
- (m) Professional fees incurred in packaging design services provided by local professional service providers;
- (n) Participation in virtual trade shows;
- (o) Participation in trade portals for the promotion of local products; and
- (p) Cost of maintaining warehouses overseas.

Partnerships and sole proprietorships registered with the *Company Commission of Malaysia* (SSM), and providing the following professional services are also eligible for the above incentives:

- 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);
- v. Medical and dental.

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 that is backed by the Government of Malaysia's Bill of Guarantees. The incentives are as follows:

- (a) Pioneer Status with tax exemption on 100% of the statutory income for five (5) years and eligible for extension for another five (5) years; **or** Investment Tax Allowance of 100% of capital expenditure incurred within a period of five (5) years to be setoff up to 100% of the statutory income in the assessment year;
- (b) R&D grants (for majority Malaysian owned MSC status companies);
- (c) Freedom to source capital and borrow funds globally;
- (d) Duty-free importation of multimedia equipment;
- (e) Intellectual property protection and a comprehensive framework of cyber laws;
- (f) No censorship of the internet;
- (g) World-class physical and IT infrastructure;
- (h) Globally competitive telecommunication tariffs and services guarantees; and
- (i) 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 faculties located outside the MSC. A multimedia faculty is referred to as a centre of learning which provides courses in media, computer,

information technology, telecommunications, and contents relating to data, voices, graphics and images.

7. Strategic Knowledge-Based Status

Companies granted Strategic Knowledge-Based Status are eligible for the following incentives:

- (a) Pioneer Status with tax exemption on 100% of the statutory income for five (5) years; **or**
- (b) Investment Tax Allowance of 60% of capital expenditure incurred within a period of five (5) years to be setoff (exempt) against 100% of the statutory income in the assessment year.

The incentives are given on condition:

- i. The company must be a knowledge-intensive company having the characteristics:
 - potential to generate knowledge content;
 - high value added operations;
 - usage of high technology; and
 - a large number of knowledge workers.
- ii. Must have a corporate knowledge-based master plan.

8. Incentives for the Manufacture of Specialised Machinery and Equipment

Companies undertaking activities in the production of specialised machinery and equipment, namely machine tools, plastic injection machines, material handling equipment, robotics and factory automation equipment are eligible for the following incentives:

- (a) Pioneer Status with tax exemption on 100% of the statutory income for 10 years; **or**
- (b) Investment Tax Allowance of 100% of qualifying capital expenditure incurred within a period of five (5) years to be setoff up to 100% of the statutory income in each year of assessment.

9. Incentives for Reinvestment in the Manufacture of Machinery and Equipment

Existing locally owned companies that undertake reinvestment in the production of heavy machinery such as cranes, quarry machinery, batching plant and port material handling equipment as well as specialised machinery and equipment, and machine tools are eligible for the following incentives:

- (a) Pioneer Status with tax exemption of 70% on the increased statutory income arising from the reinvestment for a period of five (5) years; **or**
- (b) Investment Tax Allowance of 60% on the additional qualifying capital expenditure incurred within a period of five (5) years to be setoff against 70% of the statutory income for each year of assessment.

10. Incentives for Automotive Component Modules

New and existing companies that undertake design, R&D and production of qualifying automotive component modules or systems are eligible for:

- (a) Pioneer Status with tax exemption on 100% of statutory income for five (5) years; **or**
- (b) Investment Tax Allowance of 60% on qualifying capital expenditure incurred within a period of five (5) years to be setoff against 100% of the statutory income for each year of assessment.

11. Incentives for Manufacturing Related Services

Companies providing the following value added manufacturing related services:

- (a) Integrated logistic services which comprise three principal activities i.e. freight forwarding, warehousing and transportation and at least one of the following activities i.e. distribution, supply chain management and other related and value added services, such as palletising, product assembly or installation, bulk breaking, consolidation,

packaging or repackaging, procurement, quality control, labelling or relabelling and testing.

- (b) Integrated market support services which comprise the activities of branding, research and customer relationship management; and
- (c) Integrated central utility facilities which provide services including the supply of energy (e.g. electricity, steam, chilled water), water (e.g. demineralised water), gas (e.g. industrial gas and compressed air) and storage and handling (e.g. tank farms, pipe lines, pipe racks) are eligible for the following incentives:
 - i. Pioneer Status with tax exemption on 70% of the statutory income for five (5) years; **or**
 - ii. Investment Tax Allowance of 60% of capital expenditure incurred within a period of five (5) years to be setoff against 70% of the statutory income in the assessment year.

12. Reinvestment in the Promoted Resource-Based Industries

Local companies with at least 51% equity owned by Malaysians undertaking reinvestment in rubber, oil palm and wood-based industries for expansion purposes are eligible for another round of Pioneer Status or Investment Tax Allowance:

- (a) Pioneer Status with tax exemption on 70% of the statutory income for five (5) years; **or**
- (b) Investment Tax Allowance of 60% of capital expenditure incurred within a period of five (5) years to be setoff (exempt) against 70% of the statutory income in the assessment year.

13. Reinvestment in the Promoted Food Processing Activity

Local companies with at least 60% equity owned by Malaysians, undertaking reinvestment in promoted food processing activity are eligible for:

- (a) Pioneer Status with tax exemption on 70% of the statutory income for five (5) years; **or**
- (b) Investment Tax Allowance of 60% of the qualifying capital expenditure incurred within five (5) years from the date on which the first qualifying capital expenditure is incurred. The allowance can be utilised to setoff (exempt) up to 70% of the statutory income in the assessment year.

14. Incentives for Companies Providing Cold Chain Facilities and Services for Food Products

To encourage companies to provide cold room facilities or refrigerated transportation for local agriculture, produce with or without other post-harvest activities, such as, cleaning, washing, grading, freezing or chilling and packing, and also for locally processed food products, companies will be granted the following incentives:

- (a) Pioneer Status with tax exemption on 70% of the statutory income for five (5) years; **or**
- (b) Investment Tax Allowance of 60% on capital expenditure incurred within a period of five (5) years to be setoff against 70% of the statutory income in the assessment year.

15. Rearing of Chicken and Duck in the Promoted Areas

Only Companies that undertake chicken and duck rearing projects in the promoted areas are eligible for the following incentives:

- (a) Pioneer Status with tax exemption of 100% on the statutory income for five (5) years; **or**
- (b) Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within five (5) years to be setoff up to 100% of the statutory income in each year of assessment.

Rearers of chickens and ducks who reinvest for purpose of shifting from an opened house to a closed house-system and rearers of parent and grandparent stock of chicken and ducks are eligible for:

- (a) projects located in the Promoted Areas are given Reinvestment Allowance of 60% on the qualifying capital expenditure incurred within a period of 15 years to be setoff against 100% of statutory income in each year of assessment; and
- (b) projects outside the Promoted Areas are given Reinvestment Allowance of 60% on the qualifying capital expenditure incurred within a period of 15 years to be setoff against 70% of statutory income in each year of assessment.

16. Incentives for Forest Plantation Project

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

- (a) Pioneer Status with tax exemption on 100% of the statutory income for five (5) years and eligible for extension for another five (5) years; **or**
- (b) Investment Tax Allowance of 100% of capital expenditure incurred within a period of five (5) years to be setoff against 100% of the statutory income in the year of assessment.

17. Incentives for Storage, Treatment and Disposal of Toxic and Hazardous Waste

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

- (a) Pioneer Status with tax exemption on 70% of the statutory income for five (5) years; **or**
- (b) Investment Tax Allowance of 60% of capital expenditure incurred within a period of five (5) years to be setoff against 70% of the statutory income in the assessment year.

18. Incentives for Waste Recycling Activities

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

- (a) Pioneer Status with tax exemption on 70% of the statutory income for five (5) years; **or**
- (b) Investment Tax Allowance of 60% of capital expenditure incurred within a period of five (5) years to be setoff (exempt) against 70% of the statutory income in the assessment year.

19. Incentives for the Conservation of Energy

The prevailing tax incentives to encourage energy conservations are as follows:

- (a) Companies providing energy conservation services are granted:
 - i. Pioneer Status with tax exemption on 70% of the statutory income for five (5) years; **or**
 - ii. Investment Tax Allowance of 60% of capital expenditure incurred within a period of five (5) years to be setoff (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 Capital Allowance, to be written off within a period of one year.

20. Incentives for the Use of Renewable Energy Resources

Companies that generate energy from renewable sources are eligible for:

- (a) Pioneer Status with tax exemption on 70% of the statutory income for five (5) years; **or** Investment tax Allowance of 60% on the qualifying capital expenditure incurred within a period of five (5) years to be set-off against 70% of the statutory income in the assessment year; **and**
- (b) Import duty and sales tax exemption on equipment used in the project and are not produced locally. Equipment purchased from local manufacturers is given sales tax exemption.

Equipment used by companies to generate renewable energy for its own consumption is granted Accelerated Capital Allowance to be fully claimed within one year.

The scope of “**renewable energy**” includes electricity, steam, chilled water, heat, hydro (not exceeding 10 megawatts) and solar power.

21. Enhanced Incentives for Utilisation of Oil Palm Biomass.

Companies that utilise oil palm biomass to produce value added products are eligible for the following incentives:

(a) New Companies:

- i. Pioneer Status with tax exemption of 100% of statutory income for a period of 10 years; **or**
- ii. Investment Tax Allowance of 100% on qualified capital expenditure incurred within a period of five (5) years to be setoff (exempt) against 100% of the statutory income in each year of assessment.

(b) Existing Companies that reinvest:

- i. Pioneer Status with tax exemption of 100% on increased statutory income arising from reinvestment for a period of 10 years; **or**
- ii. Investment Tax Allowance of 100% on additional capital expenditure incurred within a period of five (5) years to be setoff (exempt) against 100% of the statutory income in the assessment year.

22. Additional Incentives for Hotels and Tourism Projects

Reinvestment (expansion, modernisation and renovation) of hotels and tourism projects are eligible for another round of the Pioneer Status with tax exemption of 70% of the statutory income for five (5) years **or** Investment Tax Allowance of 60% on qualifying expenditure incurred within a period of five (5) years to be setoff against 70% of statutory income in each year of assessment.

B. INCOME TAX ACT, 1967

1. Income Tax Exemption

(a) Approved Service Projects

Approved Service Projects i.e. projects in the transportation, communications and utilities sub-sectors, approved by the Minister of Finance are qualify for income tax exemption under Section 127 of the Income Tax Act, 1967 or Investment Allowance under Schedule 7B of the Income Tax Act, 1967. The income tax exemptions are as follows:

i. Approved Service Projects (outside promoted areas)

Tax exemption on 70% of the statutory income for five (5) years or Investment Allowance of 60% of capital expenditure incurred within five (5) years from the date from which the approval is to take effect. The allowance can be utilised to setoff (exempt) against 70% of the statutory income in the assessment year.

ii. Approved Service Projects (in promoted areas)

Tax exemption on 85% of the statutory income for five (5) years or Investment Allowance of 80% on capital expenditure incurred within five (5) years from the date from which the approval is to take effect. The allowance can be utilised to setoff (exempt) against 85% of the statutory income in the assessment year.

iii. Approved Service Projects (of national and strategic importance)

Tax exemption on 100% of the statutory income for five (5) years which is eligible for extension for another five (5) years or Investment Allowance of 100% of capital

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

Terms and conditions for companies enjoying income tax exemption

- i. Capital allowances have to be utilised during the exemption period and are not allowed to be carried forward to the post exemption period;
- ii. Losses unabsorbed during the exemption period are not allowed to be carried forward to the post exemption period; and
- iii. Dividends paid out of tax-exempt income to shareholders are also exempted from tax.

Terms and conditions for companies enjoying Investment Allowance

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

(b) 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 five (5) years upon fulfilling the following conditions:

- i. not more than 20% of the company's annual sales is derived from trading in commodities (pepper and pepper products, cocoa and cocoa products, palm oil and palm oil products, tobacco and tobacco products, rubber and rubber products, forestry

products, and minerals and minerals products);

- ii. export sales do not include trading commissions and profits derived from trading at the commodity exchange and refers to the f.o.b. value of goods sold;
- iii. goods, locally produced or manufactured or imported for subsequent re-exports are regarded as exports when they are taken out of the country;
- iv. sales to licensed manufacturing warehouse (LMW) and free trade zones (FTZ) are not deemed to be considered export for the purpose of this incentive; and

Qualifying criteria for MITC:

- i. incorporated in Malaysia;
- ii. achieve an annual sales turnover of more than RM10 million;
- iii. have equity holding of at least 60% by Malaysians;
- iv. export manufactured goods, especially those from Malaysian small and medium-scale manufacturing companies (refers to companies with annual sales of RM25 million and less than 150 full time employees) ;
- v. registered with MATRADE;
- vi. not more than 20% of annual sales is derived from trading of commodities, and
- vii. companies use local services such as banking, finance, insurance, ports and airports for export.

(c) Hypermarket and Direct Selling Company

Hypermarkets and direct selling companies that export locally produced goods are given tax exemption on statutory income equivalent to 20% of the increased export value.

(d) Commercialisation of Public Sector R&D

A company that invest in its subsidiary company engaged in commercialisation of resource-based R&D findings by the public research institutes will be granted tax deduction equivalent to the amount of investment made in the subsidiary company. The subsidiary company that undertakes the commercialisation of the R&D findings is given Pioneer Status with 100% tax exemption on statutory income for 10 years.

(e) Operational Headquarters

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

The OHQ is prohibited from providing treasury and fund management services and corporate financial advisory services to non-related companies in Malaysia. An approved OHQ set up by a financial institution is also prohibited from providing treasury and fund management services to its related companies in Malaysia unless the related companies are institutions licensed under the Banking and Financial Institutions Act (BAFIA) 1989.

The qualifying services include general management and administration, business planning and coordination, procurement of raw materials, components and finished products, technical support and maintenance, marketing control and sales promotion planning, data or information management and processing, treasury and fund management services, corporate financial advisory services, R&D work and training and personnel management.

Companies granted approved OHQ status enjoy tax exemption as follows:

- i. 100% tax exemption on statutory income from qualifying services provided to its related companies overseas for 10 years;
- ii. tax exemption on income from qualifying services provided to its related companies in Malaysia provided that such income does not exceed 20% of the OHQ income from qualifying services;
- iii. dividends distributed out of tax-exempt income to shareholders are also exempted from tax; and
- iv. expatriates working in OHQ will be taxed only on that portion of chargeable income attributable to the number of days they are in the country.

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

- i. incorporated in Malaysia under the Companies Act, 1965;
- ii. the paid-up capital should be at least RM0.5 million;
- iii. total business spending (operating expenditure) should be at least RM1.5 million per annum;
- iv. appoint at least three (3) senior professional or management personnel;
- v. serve at least three (3) related companies outside Malaysia;
- vi. a sizeable network of companies outside Malaysia which includes the parent company or its head office and related companies; and
- vii. should perform a minimum of three of the qualifying services.

(f) Regional Distribution Centres

A Regional Distribution Centre (RDC) is a collection and consolidation centre for finished goods, components and

spare parts produced by its own group of companies from overseas or within the country for its own brands to be distributed to dealers and importers or its subsidiaries or other unrelated companies, within or outside the country. Among the activities involved are bulk breaking, repacking and labelling.

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:

- i. incorporated in Malaysia under the Companies Act 1965;
- ii. a minimum paid-up capital of RM0.5 million;
- iii. a minimum total business spending (operating expenditure) of RM1.5 million per year;
- iv. incremental usage of Malaysian ports and airports;
- v. annual sales turnover of RM100 million or more;
- vi. must be located in the free industrial or commercial zones or licensed public or private warehouse or LMW; and
- vii. must not sell more than 20% of its products to the local market.

An approved RDC company is allowed to source goods from outside Malaysia for shipment to overseas destinations via drop-shipment for up to 30% of its annual sales turnover. An approved RDC company is also accorded with the following facilities:

- i. 100% equity holding by the promoter;
- ii. expatriate posts based on the requirements of the RDC;
- iii. open one or more foreign currency

accounts with any licensed commercial bank to retain its export proceeds, without any limit imposed;

- iv. enter into foreign exchange forward contracts with any licensed commercial bank to sell forward its export proceeds, based on its projected sales; and
- v. import duty and sales tax exemption on goods for purpose of distribution.

(g) International Procurement Centres

An International Procurement Centre (IPC) is a locally incorporated company, which carries on a business in Malaysia to undertake the procurement and sale of raw materials, components and finished products to its group of related companies, and to unrelated companies in Malaysia and abroad.

To qualify for IPC status, the company must fulfil the following criteria:

- i. local incorporation under the Companies Act 1965;
- ii. a minimum paid-up capital of RM0.5 million;
- iii. a minimum total business spending (operating expenditure) of RM1.5 million per year;
- iv. incremental usage of Malaysian ports and airports; and
- v. a minimum annual sales turnover of RM50 million by the third year of operation.

As a general rule, sales by an approved IPC status company to the domestic market are limited to not more than 20% of its annual sales value. An IPC is also allowed to source goods from outside Malaysia for shipment to overseas destinations via drop-shipment for up to 30% of its annual sales turnover.

An approved IPC status company will enjoy the following facilities:

- i. 100% equity holding by the promoter;
- ii. expatriate posts based on the requirements of the IPC;
- iii. open one or more foreign currency accounts with any licensed commercial bank to retain its export proceeds without any limit;
- iv. enter into foreign exchange forward contracts with any licensed commercial bank to sell forward export proceeds based on its projected sales; and
- v. bring in raw materials, components or finished products with customs duty exemption into free industrial zones, LMW, free commercial zones and bonded warehouses for repackaging, cargo consolidation and integration before distribution to its final consumers.

An approved IPC status company is also eligible for the following tax incentives:

- i. full tax exemption of its statutory income for 10 years; and
- ii. dividends paid from the exempt income will be exempted from tax in the hands of its shareholders.

(h) Representative Offices and Regional Offices

A representative office or regional office of a foreign corporation in the manufacturing and trading sectors is an office, established in Malaysia to perform permissible activities for its head office or principal. The representative office or regional office should be totally funded from sources outside Malaysia. The approved representative office or regional office is not required to be

incorporated or registered under the Companies Act, 1965.

A representative office is an office of a foreign company approved to collect relevant information on investment opportunities in the country especially in the manufacturing sector, develop bilateral trade relations, promote the export of Malaysian goods or products and carry out R&D.

A regional office is an office of a foreign corporation that serves as the coordination centre for the corporation's affiliates, subsidiaries and agents in South-East Asia and the Asia Pacific. The regional office established is responsible for designated activities of the corporation within its region of operation.

The representative office or regional office established is not allowed to carry out any business transaction nor derive income from its operations. An approved representative office or regional office is allowed to carry out the following activities:

- i. planning or coordination of business activities;
- ii. gathering and analysis of information or undertaking feasibility studies on investment and business opportunities in Malaysia and the region;
- iii. identifying sources of raw materials, components or other industrial products;
- iv. undertakes research and product development;
- v. act as a coordination centre for the corporation's affiliates, subsidiaries and agents in the region; and
- vi. undertakes other activities which will not result directly in actual commercial transactions.

However, an approved representative office or regional offices is not allowed to carry out the following activities:

- i. engage in any trading (including import and export), business or any form of commercial activity;
- ii. lease warehousing facilities; any shipment or transshipment or storage of goods shall be handled by a local agent or distributor;
- iii. sign business contracts on behalf of the foreign corporation or provide services for a fee; and
- iv. participate in the daily management of any of its subsidiaries, affiliates or branches in Malaysia.

Representative offices or regional offices will be given expatriate posts, with the number allowed depending on the functions and activities of the representative office or regional office.

Expatriates will only be considered for managerial and technical posts. The work permit is given on a two-year basis and is renewable. Expatriates working in a regional office are taxed only on the portion of their chargeable income attributable to the number of days that they are in the country.

(i) *Venture Capital Industry*

The following incentives are available:

- i. Venture Capital Companies (VCC) 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; and
- the venture companies must be a resident in Malaysia for the basis year for the year of assessment and involved in products or activities promoted by the Government including those recognised by the following:
 - Promotion of Investments Act, 1986;
 - Technology-based activities prescribed by Bursa Malaysia for the Malaysia Exchange of Securities Dealing and Automated Quotation (MESDAQ) Market;
 - Industrial R&D Grant Scheme; and
 - MSC R&D Grant Scheme.

VCC must obtain annual certification from the Securities Commission (SC) that the conditions imposed for the incentives have been complied. The letter of certification must be kept and produced to the officers of the Inland Revenue Board during auditing.

ii. Companies or Individuals Investing In Venture Companies:

A company or an individual having a business source, invested in a venture company at start-up, early stage financing or seed capital 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; and
- the venture companies must be resident in Malaysia for the basis year of the year of assessment and involved in products or activities promoted by the Government include those recognised by the following:
 - Promotion of Investments Act, 1986;
 - Technology-based activities prescribed by Bursa Malaysia for the MESDAQ market;
 - Industrial R&D Grant Scheme;
 - MSC R&D Grant Scheme.

A company or an individual must obtain annual certification from the SC 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 (i) i. and ii. are mutually exclusive.

For purposes of obtaining tax incentives, the definitions of stages of financing are as follows:

“early-stage financing” means financing or funding provided to a venture company as:

- i. capital expenditure and/or working capital to initiate commercialisation of a technology or product;
- ii. additional capital expenditure and/or working capital to increase production capacity, marketing or product development; or
- iii. 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 Bursa Malaysia MESDAQ market list of technology-based activities, sub clauses (ii) or (iii) 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.

(j) Promotion of Exports

- i. 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.
- ii. 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.
- iii. 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.
- iv. Companies that succeed in penetrating new export markets - Tax exemption on statutory income equivalent to 50% of the value of increased exports.
- v. Companies, which achieve the highest increase in exports - Full tax exemption on statutory income on increased export value.
- vi. Companies which export fruits, fresh and dried cut flowers, ornamental plants, ornamental fish or frozen products for prawns, squids and cuttlefish - Tax exemption on statutory income equivalent to 10% of the value of increased exports.
- vii. 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.

(k) 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 under the Tourism Industry Act 1992 and the tour operators bring in at least 500 foreign tourists in the assessed year, through group inclusive tours that is certified by the Ministry of Tourism.

- ii. Incentive for Domestic Tourism

Exemption from tax on income earned from the business of operating tours, provided that the tour operators are licensed under the Tourism Industry Act 1992 and the tour operators conduct domestic tour packages with at least 1,200 local tourists in the assessed year, that is certified by the Ministry of Tourism.

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

(l) Organisers of International Conferences or Trade Exhibitions

Local companies will be eligible for income tax exemption on income earned from bringing at least 500 foreign participants per year to international conferences or 500 foreign visitors per year to international trade exhibitions in Malaysia.

(m) Car and Motorcycle Racing

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

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

(n) *Repair and Maintenance of Luxury Boats and Yachts in Langkawi*

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

(o) *Chartering Services of Luxury Yachts*

Incomes derived by the company in providing chartering services of luxury yachts are eligible for full income tax exemption for five (5) years.

(p) *Rental of ISO Containers*

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

(q) *Malaysia My Second Home Programme*

- i. Income tax exemption on all pension income remitted to Malaysia; and
- ii. Income tax exemption on all income (other than pension) for participants from countries that do not have Double Taxation Agreements (DTA) with Malaysia.

(r) *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 Higher Education.

food (rice, maize, vegetable, tubers, livestock farming, fruits, production of aquatic products and any other activities) approved by the Minister of Finance undertaking expansion, modernisation and diversification activities. The levels of Reinvestment Allowance granted are as follows:

(a) *Projects in promoted areas*

Reinvestment Allowance of 60% in respect of qualifying capital expenditure incurred. The allowance can be utilised to set-off (exempt) against 100% of statutory income in the assessment year.

(b) *Projects in non-promoted areas*

Reinvestment Allowance of 60% in respect of qualifying capital expenditure incurred. The allowance can be utilised to setoff (exempt) against 70% of statutory income in the assessment year. The balance of the statutory income will be taxed at the prevailing company tax rate.

Reinvestment Allowance is subject to the following criteria:

- i. The company must be in operation for at least 12 months.
- ii. Reinvestment Allowance will be given for a period of 15 consecutive years beginning from the year the first reinvestment is made.
- iii. Assets acquired from Reinvestment Allowance cannot be disposed within two (2) years of reinvestment.
- iv. Has incurred in the basis period for a year of assessment capital expenditure on a factory, plant and machinery used in Malaysia for the purpose of a qualifying project; **and**
- 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 setoff (exempt) against 100% of the statutory income).

2. Reinvestment Allowance

Reinvestment Allowance is given to manufacturing and agricultural companies producing essential

Upon expiry of Reinvestment Allowance, companies producing 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 three (3) years. The promoted food products are rice, maize, vegetables, tubers, roots, fruits, livestock farming, aquatic products and any other activities approved by the Minister of Finance.

3. Double Deductions

(a) *Research & Development*

Research and development (R&D) expenditures eligible for double deduction are:

i. Approved Research - Section 34A of Income Tax Act, 1967

Double Deductions on non-capital expenditure incurred on R&D approved by the Minister of Finance (delegated to the Inland Revenue Board).

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

- approved research institutions;*
- approved R&D companies;**
- contract R&D companies.**

Note:

* Approved research institution includes the following:

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

** R&D companies or contract R&D companies refer to companies, established in conformity with

Section 2 of the Promotion of Investments Act, 1986.

iii. Cash Contributions - Section 34B (1)(a)

Double deductions on cash contributions made to approved research institutions. The list of approved research institutions:

- Malaysian Agricultural Research and Development Institute (MARDI);
- Malaysian Rubber Board;
- Forest Research Institute Malaysia (FRIM);
- Malaysian Institute of Micro Electronic System (MIMOS);
- Malaysian Palm Oil Board;
- Standard and Industrial Research Institute of Malaysia (SIRIM);
- Institute for Medical Research (IMR);
- Malaysian Centre for Remote Sensing;
- Institute of Mineral Research;
- Veterinary Research Institute;
- Fisheries Research Institute;
- Malaysian Institute for Nuclear Technology Research (MINT);
- Unit Pengurusan Penyelidikan, Universiti Kebangsaan Malaysia;
- Pusat Inovasi dan Perundingan, Universiti Sains Malaysia;
- Pusat Penyelidikan dan Perundingan, Universiti Utara Malaysia;
- Unit Penyelidikan, Universiti Putra Malaysia;
- Pusat Penyelidikan, Universiti Islam Antarabangsa Malaysia;
- Unit Perundingan, Universiti Malaya;
- Unit Penyelidikan dan Pembangunan, Universiti Teknologi Malaysia;

- Unit Penyelidikan, Universiti Malaysia Sabah;
- Unit Pemindahan Teknologi & Perundingan, Universiti Malaysia Sarawak;
- Pusat Sains dan Teknologi Pertahanan, Kementerian Pertahanan; and
- 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:

- quality control of products or routine testing of materials, devices, products or produce;
- research in the social sciences or the humanities;
- routine data collection;
- efficiency surveys or management studies;
- market research or sales promotion; and
- 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.

Expenditure on R&D activities undertaken overseas, including the training of Malaysian staff will be considered for double deduction on a case-by-case basis.

(b) Training

Companies which do not contribute to the Human Resource Development Fund (HRDF) but undertake training of full-

time employees who are Malaysian citizens, are eligible for double deduction.

i. 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 institutions 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:

- National Productivity Corporation (NPC);
- SIRIM;
- UiTM;
- MARDI;
- FRIM;
- The Centre For Instructor and Advanced Skill Training (CIAST);
- Penang Skills Development Centre (PSDC);
- Institut Kemahiran Mara (IKM);
- Industrial Training Institute;
- German-Malaysia Institute (GMI);
- Malaysian Timber Industry Board (MTIB);
- Federation of Malaysian Manufacturer - Entrepreneur and Skills Development Centre (FMM - ESDC);
- Perak Entrepreneur and Skills Development Centre;
- Tuas Polytech (British Malaysian Institute);

- ASEAN Timber Technology Centre;
- Sarawak Skills Development Centre;
- Kedah Industrial Skills & Management Development Centre (KISMEC);
- Malaysia France Institute (MFI);
- Selangor Human Resource Development Centre (SHRDC)
- Pusat Pembangunan Tenaga Industri Johor (PUSPATRI)
- MINT; and
- Pahang Skills Development Centre.

ii. Approved Training Programmes:

- 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 or developing craft, supervisory skills, technical skills, productivity and quality improvements.
- Manufacturing companies not yet in production
Qualified manufacturing companies which do not contribute to the HRDF and undertake training programmes that are approved by MIDA for the purpose of acquiring or developing craft, supervisory or technical skills, that can contribute to future production.
- Training for handicapped person
A company, which incurred expenses, in 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 Women, Family and Community Development and the training undertaken must serve to enhance his or her employment prospect.

- 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 Tourism.
- Non-manufacturing Companies
Non-manufacturing companies that send their employees to attend training programmes approved by the Minister of Finance in the following institutions:
 - Institute Bank-Bank Malaysia;
 - Malaysian Insurance Institute;
 - Persekutuan Penghantar Fret Malaysia;
 - Association of Consulting Engineers Malaysia;
 - Persatuan Elektrik & Elektronik;
 - AFCM Training Services Sdn. Bhd;
 - Institut Pengurusan Malaysia; and
 - Institut Jurutera Malaysia.

(c) Freight Charges

- i. Double deductions on freight charges for manufacturers in Sabah and Sarawak which export rattan and wood-based products except sawn timber and veneer.
- ii. Double deductions on freight charges for all manufacturers who ship their goods from Sabah and Sarawak to Peninsular Malaysia, provided they use the ports in Peninsular Malaysia.

(d) Insurance Premiums

- i. Double deductions on premiums paid for export credit insurance.
- ii. Double deductions on insurance premiums paid for the import of goods, provided the risk are insured with an insurance company incorporated in Malaysia.
- iii. Double deductions on insurance premiums paid for export of goods, provided the risks are insured with an insurance company incorporated in Malaysia.

(e) Overseas Promotion

i. Tourism Industry

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

- expenditure on publicity and advertisement in any mass media outside Malaysia;
- expenditure on the publication of brochures, magazines and guide books, including delivery costs which are not charged to the overseas customers;
- expenditure on market research to explore new markets overseas, subject to prior approval from the Ministry of Tourism;

- expenditure which includes economy class airfare 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 Tourism. Such expenses are subject to a maximum for RM300 per day for lodging and RM150 per day for sustenance for the duration of the stay overseas;
- expenditure on organising trade fairs, conferences or forum in foreign country approved by the Ministry of Tourism, subject to maximum amount of RM300 per day for accommodation and RM150 per day for sustenance during the period being in overseas; and
- maintenance of sales office overseas for purposes of promotion of tourism in Malaysia.

ii. Approved International Trade Fairs

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

iii. Export of Services

Double deductions on expenses incurred by resident companies, in seeking export opportunities for Malaysian manufactured and agricultural products and services. This incentive is also currently available to the tourism sector. The eligible expenses include:

- export market research;
- preparation of tenders for the supply of services overseas;
- supply of technical information abroad;

- economy class air fares in respect of travel overseas by a single employee of companies for business;
- 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;
- cost of maintaining offices overseas for purpose of promotion the export of services;
- feasibility studies for overseas projects identified for the purpose of tender;
- participation in trade or industrial exhibitions in the country or overseas;
- participation in exhibitions held in the Malaysian Permanent Trade Exhibition Centres overseas; and
- overseas advertisement, publicity and public relations work;
- expenses incurred pertaining to publicity and advertisement in any form of media outside Malaysia for the purpose of promoting the exports of services.
- preparing architectural and engineering models, perspective drawings and 3-D animations in international competitions.

Services that are provided by partnership or sole proprietors in the following profession:

- 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.

(f) Promotion of Local Brands

Double deductions on the following expenses:

- i. the cost of advertisement through internet, magazines and newspaper, television, and in trade publications or sponsoring approved international sporting events or international trade conferences or exhibitions; 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:

- i. brand name is owned by a company which is locally incorporated with at least 70% Malaysian owned;
- ii. the brand name is registered in Malaysia or overseas;
- iii. the branded product must achieve export quality standards; and
- iv. expenditure incurred in advertising must be incurred in Malaysia.

(g) Halal Certification and Quality Systems and Standards Certification

Double deductions on the following expenses:

- i. quality systems and standards certification as well as certification from JAKIM; and
- ii. international quality systems and standards certification.

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) Organisations 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)

(f) Single Deduction under Section 34(6)

Single deduction for an amount equal to expenditure incurred:

- i. as operational expenditure including payments to consultants related to the usage of IT to improve management and production processes; and
- ii. 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 RosettaNet Malaysia and in assisting local SMEs to adopt RosettaNet.

(i) Single deduction on expenditure incurred by a company for drafting its corporate knowledge-based master plan.

(j) Promotion of Export

- i. single deduction for payment incurred for registration of patents, trademarks and product licensing overseas; and
- ii. single deduction for payment for hotel accommodation for a maximum of three (3) nights to companies providing hospitality to every potential importers invited to Malaysia as a follow-up to trade and investment missions organised by government agencies or industrial trade associations. This invitation date must be within the period of 12 months from the mission date.

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. Companies are eligible to claim IBA within 30 years based on initial allowance of 10% and annual allowance of 3%.

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 where the business 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) building used with the working of the farm with or without other farms;
- (f) building 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 contract 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 Tourism; and
- (n) business of construction, reconstruction or improvement of any public road and ancillary structures pursuant to an agreement with the Government.

A special building allowance at 10% of the expenditure incurred on the construction or purchase of building to be claimed fully within the period of 10 years 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) building for school or faculty building that has been approved;
- (f) use for industrial, technical or vocational training; and
- (g) building constructed under the 'built-lease transfer' in an agreement between a company and the Government will be given IBA to the sum of 3/5 from the qualified expenses.

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.

6. Accelerated Capital Allowance

6.1 Agriculture

- (a) A non-rubber plantation company that plants at least 10% of its plantation with rubber wood trees is given accelerated agriculture allowance of 100%
- (b) Qualifying plant and machinery used for approved agriculture projects under Schedule 4A of Investment Tax Allowance is given allowance of 100%
- (c) Plant and machinery of a manufacturing or food processing company engaged in production of promoted products on expiry of Reinvestment Allowance is given initial allowance of 40% and annual allowance of 20%.
- (d) Plant and machinery used in agriculture and plantation sectors are given initial allowance of 20% and annual allowance of 40%.

6.2 ICT

- (a) Computer and information technology assets including software are given initial allowance of 20% and annual allowance of 40%.

6.3 Environment

- (a) Environmental protection equipment is given initial allowance of 40% and annual allowance of 20%.
- (b) Plant and machinery used exclusively for the conservation of energy are given initial allowance of 40% and annual allowance of 20%.
- (c) Plant and machinery of a manufacturing company used for processing of wastes or waste recycling are given initial allowance of 40% and annual allowance of 20%.
- (d) Plant and machinery used for generation of energy from renewable sources for own consumption are given initial allowance of 20% and annual allowance of 80%.
- (e) Equipment for maintaining quality of power supply is given initial allowance of 20% and annual allowance of 40%.

7. Deduction for Acquiring Property Rights

An amount equal to 20% of cost per year is allowed as deduction for capital expenditure on acquiring proprietary rights such as patent, industrial design or trademarks allowed in ascertaining the adjusted income.

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 five (5) years for purpose of acquiring:

- i. high technology for production within the country; **or**
- ii. 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 five (5) years.

10. Deduction for Capital Expenditure on Approved Agricultural Projects

This incentive provides for a 100% allowance on capital expenditure for approved agriculture projects under schedule 4A of the Income Tax Act 1967. A person carrying on an approved agricultural project is allowed to deduct the qualifying capital expenditure incurred on the project from his aggregate income, including income from other sources. Where aggregate income is insufficient, the unabsorbed expenditure can be carried forward to subsequent years of assessment. However, he will not be entitled to claim any capital allowance or agricultural allowance on that same capital expenditure.

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

- (a) the clearing and preparation of land;
- (b) the planting of new crops (but not replanting) related to an approved agricultural project;
- (c) provision of plant and machinery used for the purpose of crop cultivation, animal farming, aquaculture; inland fishing or deep-sea fishing and other agricultural or pastoral pursuits;
- (d) the construction of access roads including bridges and structural improvements used;
- (e) the construction or purchase of buildings, including those used for the welfare or accommodation for 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; and
- (f) 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 farm cultivation and utilising a specified minimum hectareage for each approved project as stipulated by the Minister of Finance will qualify. The approved agricultural projects are as follows:

Project	Period	Minimum Hectareage
1. Cultivation of Crops:		
Papaya	1 year	40 hectares
Bananas	1 year	40 hectares
Passion fruits	1 year	40 hectares
Star fruits	2 years	8 hectares
Guava	2 years	8 hectares
Mangosteen	7 years	8 hectares
2. Floriculture ¹	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 hectare
6. Pond cultured fish and prawns (brackish water/ fresh water)	2 years	20 hectares
7. Tank cultured fish (brackish water/ fresh water)	2 years	1 hectare
8. Off-shore marine cage cultured fish	2 years	0.5 hectare
9. Marine cage cultured fish (brackish water/ fresh water)	2 years	0.5 hectare
10. Cockle culture	1 year	10 hectares
11. Mussel and oyster culture	2 years	0.5 hectare
12. Seaweed culture	1 year	5 hectares
13. Shrimp hatchery	2 years	0.25 hectare
14. Prawn hatchery	2 years	0.25 hectare
15. Fish hatchery (sea water/ brackish water/fresh water)	2 years	0.5 hectare

¹ (Plants, bulbs, tubers and roots with or without flower buds, 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 is eligible for incentives as in **Alternative A or B:**

Alternative A:

- (a) The company which invests in the subsidiary company engaged in food production is granted tax deduction equivalent to the amount of investment made in that subsidiary; **and**
- (b) 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:
 - 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 also allowed to be brought forward after the exemption period of 10 years; and
 - iii. dividends paid from the exempt income be exempted in the hands of the shareholders.

or, Alternative B:

- (a) 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**
- (b) 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:
 - i. losses incurred during the exemption period is also allowed to be brought forward after the exemption period of 10 years; and
 - ii. 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 70% 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 vegetables, fruits, herbs, spices, aquaculture, beef and mutton as well as *kenaf* for animal feed; 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 reinvest in the production of the same food product. However, the incentives are for a period of five (5) years subject to the same conditions.

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 its record any profit; 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:

- i. The investing company must own 70% of the company that undertakes deep-sea fishing;
- ii. The project should commence operation within one (1) year from the date the incentive is approved; and
- iii. The project must comply with the provision of the Fisheries Act, 1985.

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

13. Production of *Halal* Food

Companies that invests in *halal* food production for the export market and to increase the use of modern machinery and equipment in producing *halal* food that complies with international standards is given Investment Tax Allowance of 100% on qualifying capital incurred within five (5) years to be set-off to 100% of statutory income in each year of assessment. The incentive is granted on condition that such companies must have already obtained *halal* certification from JAKIM and other quality certifications.

14. Incentives to Consolidate the Management of Small Holdings and Idle Land

Incentives are given to promote the consolidation of smallholdings and idle land:

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

15. Incentives to Increase the Planting of Rubberwood Trees

Non-rubberwood plantation companies that plant at least 10% of their plantations with rubberwood trees are given Accelerated Agriculture Allowance on capital expenditure incurred for land preparation, planting and maintenance of rubberwood cultivation, to be written-off in one year.

16. 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 are given Reinvestment Allowance for a period of 15 consecutive years commencing from the first year the reinvestment is made.

- (a) Projects located in promoted areas-Reinvestment Allowance of 60% on qualifying capital expenditure incurred, deducted in each year of assessment to be setoff (exempt) up to 100% of statutory income; and
- (b) Projects located outside promoted areas-Reinvestment Allowance of 60% on qualifying capital expenditure incurred deducted in each year of assessment to be setoff (exempt) up to 70% of statutory income.

These incentives are given provided that:

- i. the minimum rearing capacity of the closed system is as follows:
 - at least 20,000 broiler chicken/ducks per cycle; or
 - at least 50,000 layer chicken/ducks per cycle; or
 - at least 20,000 parent or grand parent stock of chicken/ducks per cycle; and
- ii. project is approved by the Ministry of Agriculture and Agro-based industry.

17. Tax Incentive for Offshore Trading Via Websites in Malaysia

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

18. Special Tax Treatment for Gifts

(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) and (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

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. 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 and the Offshore Insurance 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-brokering or leasing may be carried with residents, where permitted; and
- (d) Others as approved by the Minister of Finance.

Offshore business activities are categorised 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.

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

- (a) pay tax at a rate of 3% of the net audited profit; or
- (b) pay a fix sum of RM20,000.

Income of offshore companies from non-trading offshore activities is not subject to any tax. 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.

Offshore companies undertaking offshore business activities in Labuan, in particular those from Islamic countries where zakat and not income tax is paid on their business income, these companies are given an income tax deduction equivalent to the amount of zakat paid to the Labuan religious authority, subject to a maximum of 3% of net profit or RM20,000.

Tax Exemption to Promote Labuan as International Offshore Financial Centre:

- i. Dividends received from an offshore company by its shareholders including a Malaysian domestic company, 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 Malaysian domestic company are exempted from tax on the dividends paid out of dividends received by Malaysian domestic company 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 and 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 are exempted from stamp duty.
- vii. 50% tax exemption on gross income of a non-citizen trust officer working in a trust company until the year of assessment 2005.
- viii. 50% tax exemption on Labuan and housing allowances of Malaysian citizens working in Labuan with the Federal or State Government, a Statutory Body or an offshore company until year of assessment 2005.
- ix. withholding tax exemption on rental payment to non-residents from the use of moveable property by an offshore leasing company.
- x. 100% exemption on director fees received by a non-citizen director of an offshore company from year of assessment 2002 to 2006.
- xi. Duty free goods for individuals whose period of stay in Labuan is 24 hours.

D. CUSTOMS ACT, 1967; SALES TAX ACT, 1972; EXCISE ACT, 1976 AND FREE ZONES ACT, 1990

1. Manufacturing Sector

- (a) *Import duty exemption on raw materials or components used in:*
 - i. Production for export market - full exemption of import duty on imported raw materials or 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 or components used directly and not available locally.

- iii. Import duty and sales tax exemption on raw materials not manufactured locally and semi-finished goods imported from contract manufacturers abroad by owners of Malaysian brands who outsource their manufacturing activities

(b) *Import duty, excise duty and sales tax exemption on machinery and equipment, spares and consumables*

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

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

For spares and consumables, tax exemption scheme was extended indefinitely. The criteria for exemption are as follows:

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

(c) *Medical devices for purpose of kitting*

Import duty exemption on medical devices imported for purpose of kitting or producing complete procedural sets of medical devices provided these medical devices are not manufactured locally.

(d) Duty Drawback

Manufacturers who have paid duty on importes of raw materials and components used in 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 subject to the conditions under Section 99 of the Customs Act 1967.

(e) Sales Tax Exemption

Manufacturers of taxable goods with annual sales turnover exceeding RM100,000 are required to be licensed under the 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 or components used in:
 - i. Production for export market.
 - ii. Imported direct raw materials or components not available locally or available locally but not of acceptable quality and price.
 - iii. Production for domestic market.
 - iv. Direct raw materials or components not available locally.
- (b) Full import or excise duty and sales tax exemption on machinery or equipment. Full exemption from:
 - i. imported machinery or equipment not available locally; and
 - ii. locally purchased machinery or equipment.

3. Approved Services Sector

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

4. Tourism Sector

- (a) Import duty, sales tax and excise duty exemption on selected materials and equipment for accommodation and non-accommodation tourism projects.
- (b) Import duty exemption on CKD components and excise duty exemption on locally assembled tourist buses.
- (c) Excise duty exemption on purchase of national car for car rental operators for tourists.
- (d) Import duty exemption on branded items valuing more than RM200.00 f.o.b.
- (e) Import duty, sales tax and excise duty exemption on one unit of car for participants of Malaysia My Second Home Programme.

5. Film and Music Sector

Duty exemption on equipment for recording studios, production houses and cineplexes. Full exemption from:

- i. import duty and sales tax on identified imported equipments; and
- ii. sales tax and excise duty on selected locally purchased equipment.

6. Research Activity

Duty exemption on machinery or equipment, materials and samples used for approved research projects, in house research, contract R&D company and R&D company. Full exemption from:

- i. import duty and sales tax on imported items used for R&D irrespective whether it is available locally; and
- ii. sales tax and excise duty on locally purchased items used for R&D.

7. Training Activity

Duty exemption on machinery or equipment, materials and samples used in approved training programme or by an approved training institution and technical or vocational training company.

Full exemption from:

- i. import duty and sales tax on imported items used for training irrespective whether it is available locally; and
- ii. sales tax and excise duty on locally purchased items used for training.

8. Environment Protection

(a) *Manufacturing companies that purchase pollution-control machinery or equipment.* Full exemption from:

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

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

(c) *Catalytic Converters*

Exemption from import duty and sales tax on catalytic converters used in motor vehicles assemblies.

(d) *Companies providing energy conservation services and 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 or equipment that are not available locally; and

- ii. sales tax and excise duty on locally purchased machinery or equipment.

(e) *Companies utilizing biomass as a new source of energy.*

Full exemption from:

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

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:
 - a. promotion of exports;
 - b. R&D;
 - c. training;
 - d. freight charges;
 - e. insurance premium;
 - f. overseas promotion; and
 - g. promotion of local brand names.

6. Single deduction on expenses for:
 - a. pre-operating expenses on approved investment overseas;
 - b. pre-operating training expenses;
 - c. contribution in cash to technical or vocational training institutes;
 - d. donation to approved organization for the promotion and conservation of environment;
 - e. gifts under Section 44 (6A) and 34 (6);
 - f. providing practical training to non-employees;
 - g. managing and operating Rosetta Net Malaysia;
 - h. promotion of export; and
 - i. drafting corporate knowledge-based master plan.
7. Tax exemption on value of increased exports.
8. Accelerated Capital Allowance.
9. Reinvestment Allowance.
10. Industrial Building Allowance.
11. Deduction for:
 - a. acquiring property rights;
 - b. acquiring a foreign-owned company; and
 - c. developing websites
12. Import duty and sales tax exemption on raw materials or components.
13. Import duty and sales tax exemption on machinery or equipment and spares and consumables.
14. Duty drawback.

2. Agriculture Sector

1. Pioneer Status.
2. Investment Tax Allowance.
3. Infrastructure allowance.
4. Double deduction on expenses for:
 - a. promotion of exports;
 - b. R&D; and
 - c. insurance premium.
5. Single deduction on expenses for:
 - a. pre-operating expenses on approved investment overseas;
 - b. donation to approved organization for the promotion and conservation of environment; and
 - c. 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 rubber wood trees.
13. Import duty and sales tax exemption on raw materials or components.
14. Import duty and sales tax exemption on machinery or equipment.
15. Duty drawback.

3. Services Sector

3.1 Approved Service Projects

1. Income tax exemption.
2. Investment Allowance.
3. Infrastructure Allowance.
4. Double deduction on expenses for:
 - a. promotion of exports of services;
 - b. R&D; and
 - c. training.
5. Single deduction on expenses for:
 - a. pre-operating expenses on approved investment overseas; and
 - b. pre-operating training expenses.
6. Industrial Building Allowance.
7. Import duty and sales tax exemption on machinery or equipment.

3.2 Tourism

1. Pioneer Status.
2. Investment Tax Allowance.
3. Infrastructure Allowance.
4. Double deduction on expenses for:
 - a. promotion of exports; and
 - b. training.
5. Single deduction on expenses for:
 - a. pre-operating expenses on approved investment overseas; and
 - b. pre-operating training expenses.

6. Industrial Building Allowance.
7. Income tax exemption:
 - a. tour operators;
 - b. organisers of international conference or trade exhibition;
 - c. cars and motorcycle racing;
 - d. repair and maintenance of luxury boat and yacht in Langkawi; and
 - e. chartering services of luxury yacht.
8. Import duty and sales tax exemption on selected materials and machinery.

3.3 R&D

1. Pioneer Status.
2. Investment Tax Allowance.
3. Double deduction on:
 - a. non-capital expenditure incurred on R&D; and
 - b. expenses payment for the use of services.
4. Accelerated Capital Allowance.
5. Import duty and sales tax exemption on materials, samples and equipment.

3.4 Training Activity

1. Investment Tax Allowance.
2. Double deduction on expenses for training.
3. Single deduction on expenses for:
 - a. pre-operating training expenses;
 - b. contribution in cash to technical or vocational training institutes; and

- c. 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 or Investment Tax Allowance for carrying out promoted activity such as:
 - a. forest plantation;
 - b. recycling of products;
 - c. storage, treatment and disposal of dangerous toxic and hazardous waste;
 - d. energy conservation; and
 - e. 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 Allowance for modernizing chicken and duck rearing system.

5. Labuan International Offshore Financial Centre

1. Offshore Companies can be incorporated or registered in Labuan International Offshore Financial Centre (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.

2. Offshore companies in Labuan undertaking offshore business activity enjoy preferential tax treatment under the LOBATA 1990, Income Tax and Stamp Duty exemptions.
3. Offshore Companies are also declared as non-residents under Exchange Control Act of Malaysia (ECM). Thus, offshore companies are not subject to ECM regulations, except for dealings with residents or dealings in Ringgit Malaysia.

E. NON-TAX INCENTIVES

A number of 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.
3. Financial Assistance Schemes to SMEs.

1. Export Credit Refinancing Scheme

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

(a) Objectives of the ECR scheme:

- i. To promote the export of manufactured products, agricultural products and primary commodities.
- ii. To provide exporters with ready access credit facilities at competitive interest rates.

- iii. To develop backward/upstream linkages in export-orientated industries.

(b) Two (2) types of facilities (**Table I**) are available under the ECR scheme:

- i. The Pre-shipment ECR; and
- ii. The Post-shipment ECR.

(c) Eligibility for ECR Facilities

i. Eligible Exporter

• Direct Exporter:

- Manufacturing company.
- Agricultural products producer.
- Trading company.

• Indirect Exporter (supplier of domestic input).

ii. Eligible Product

- Access to ECR facilities is subject to the products which are not listed under the First Schedule of Customs Duties Order (list of goods prohibited from being exported).

(d) Other types of facilities offered

- i. Guarantee Facility
- ii. Supplier Credit Facility
- iii. Buyer Credit Facility
- iv. Overseas Project Financing Facility
- v. Export of Services Facility

Table 1: Facilities Provided Under Export Refinancing Scheme

	Pre-shipment ECR		Post-shipment ECR
Type of Facilities	Loans to manufacturer/agricultural products producer to facilitate the production of eligible products or loans to trading companies for purchase of domestic intermediate/ final products, for export prior to shipment.		Loan advance for a period after shipment to finance the export of eligible products either on sight or usance terms.
Methods of Financing	Order-Based	Certificate of Performance (CP)	Bills Discounting
Types of Exporter	<i>Direct Exporter</i> - new exporter; or - seasonal exporter; or - exporter whose maximum exports of eligible products for the last preceding 12 months is less than RM1.0 million. <i>Indirect Exporter</i>	<i>Direct Exporter</i> whose total exports of eligible products for the last preceding 12 months is RM1.0 million and above.	<i>Direct Exporter</i>
Limit/Margin of Financing	<i>Direct Exporter:</i> - Max. 95% of value of exports order. <i>Indirect Exporter:</i> - Max. 95% of value of ECR Domestic Letter of Credit/ECR Domestic Purchase Order or Local Purchase Order.	<i>Manufacturing company:</i> - 80% of export value of eligible products for the last preceding 12 months. <i>Trading company:</i> - 90% of export value of eligible products for the last preceding 12 months.	Max. 100% of export bill value.
Period of Financing	Max. of 4 months	Max. of 4 months	Max. of 4 months
Interest Rate	At Exim Bank's ECR funding rate. To be advised by Exim Bank from time to time.	At Exim Bank's ECR funding rate. To be advised by Exim Bank from time to time.	At Exim Bank's ECR funding rate. To be advised by Exim Bank from time to time.
Repayment	<i>Direct exporter</i> - export proceeds or post-shipment proceeds. <i>Indirect exporter</i> - proceeds from direct exporter.	Export proceeds and/or post-shipment proceeds.	Receipt of export proceeds or maturity of the post-shipment bill whichever is earlier.

Note : Details of the Terms and Conditions are stated in the Export Credit Refinancing (ECR) Guideline which can be purchased from Exim Bank. The Terms and Conditions stated above are subject to review from time to time at Exim Bank's absolute discretion.

Further details on the ECR scheme are available in the Guideline on ECR issued by Exim Bank.

Export-Import Bank of Malaysia Berhad (357198-K)
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Tel : 03 - 2692 7077
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2. Export Credit Insurance and Guarantee Scheme

Malaysia Export Credit Insurance Berhad (MECIB), which implements the Export Credit Insurance and Guarantee Scheme was incorporated in 1977. MECIB 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 overseas 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

- Buyer's insolvency;
- Buyer's default; and
- Buyer's non-acceptance of goods.

ii. Political Risk

- Blockage or delay in transfer of payments to Malaysia;
- War, revolution and other annoyances, including war between buyer's and Malaysia;
- The imposition of import restrictions;
- Cancellation of import licenses;
- Default of a foreign Government buyer; and
- The occurrence of natural disaster such as earthquake, flood, hurricane, etc in the buyer's country.

(b) Facilities Offered

i. Short Term Facilities

• 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. Risks premium paid by the exporter entitles them to be eligible for double deduction tax relief under Section 33 of the Tax Act 1967.

• 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. Risks premium paid by the exporter entitles them to be eligible for double deduction tax relief under Section 33 of the Tax Act 1967.

• Comprehensive Policy (Service)

This policy covers export of services 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. Risks premium paid by the exporter entitles them to be eligible for double deduction tax relief under Section 33 of the Tax Act 1967.

- **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 Malaysia's commercial banks to finance the exports to these regions.

ii. Medium and Long-Term Facilities

- **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 (2) years and the policy is issued on a one-off project basis. Percentage of cover is up to 95% of the amount of loss.

- **Supplier Credit Guarantee**

This guarantee applies to loans given by the financial institutions to finance a Malaysian supplier or exporter or 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 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 a 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.

- **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.

- **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.

- **Overseas Investment Insurance**

This insurance protects Malaysian investors of their investment typically related to an overseas project either in the form of equity or commercial bank loan 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.

- **Bond Facility**

MECIB provides 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 or principal. Standard coverage of 95% is available.

- **MECIB Trade Finance Insurance Policy**

This policy, issued to banks is collateral-free, and designed at the behest of the National SME Development Council to cater for Malaysian SMEs involved in the export of goods and services overseas in respect of financing provided by the banks.

For pre-shipments insurance cover, credit risks will be shared between MECIB and the Commercial Bank in the proportion of 75% and 25% respectively. In addition, MECIB shall provide 100% coverage to the Bank for non-honouring of any Irrevocable Letter of Credit without recourse to the Exporter.

Risks premium paid by the exporter entitles them to be eligible for double deduction tax relief under Section 33 of the Tax Act 1967.

- **MECIB Domestic Receivables Financing Policy**

Under this policy, which is collateral-free, MECIB insures banks against non-payment by the local buyer involved in exporting in respect of the bank purchasing receivables from local suppliers. MECIB takes 90% risks whilst 10% risks are borne by banks.

Risks premium paid by the exporter entitles them to be eligible for double deduction tax relief under Section 33 of the Tax Act 1967.

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.my

Regional Office North (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

Regional Office South (Johor)

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

3. Financial Assistance Schemes to SMEs

Financial assistance in the form of grants and soft loans are provided to small and medium enterprises (SMEs) to improve their production processes, increase productivity and facilitate greater market access.

3.1 Grants

(a) Industrial Technical Assistance Fund

The Schemes are implemented to assist SMEs in the areas of:

- i. Business Planning and Development;

- ii. Product and Process Improvement;

- iii. Productivity and Quality Improvement and Certification; and

- iv. Market Development:

- Grant for Business Planning and Development

The scheme provides assistance to SMEs to undertake studies in business planning, technology and market development. SMEs can also implement Cleaner Production Project to reduce waste generation or improve energy efficiency in their production processes. The maximum grant allocated per company is RM40,000.

- Grant for Product and Process Improvement

The Schemes provide assistance to SMEs to improve and upgrade existing products, product designs and processes. The maximum grant allocated per company is RM500,000.

- Grant for Productivity and Quality Improvement and Certification

This Scheme assist SMEs to undertake productivity and quality improvement and to comply with international quality standards and certification. The maximum grant allocated per company is RM250,000.

- Grant for Market Development

To support SMEs in undertaking promotional activities for the export market, the government introduce Market Development Grant (MDG) managed by the Malaysia External Trade Development Corporation (MATRADE). The maximum grant allocated per company is RM100,000.

(b) *Fund for Enhancing Product Packaging Design and Labelling Capabilities of SMEs*

The Scheme provides assistance to SMEs to acquire and improve product packaging, design and labelling, thus enabling companies to enhance product appearance and comply with market requirements. The maximum grant allocated per company is RM200,000.

(c) *Special Fund for Development and Promotion of Halal Products*

The Scheme is introduced to encourage participation from Malaysian companies in the development and promotion of *halal* products and services. The fund is eligible for companies in the food and non-food sectors such as pharmaceutical, cosmetics and toiletries, as well as services related to the handling, storage and distribution of *halal* products. The maximum grant allocated per company is RM150,000.

3.2 Soft Loan Schemes

(a) *Soft Loan for Small and Medium Enterprises*

The Soft Loan for Small and Medium Enterprises is

implemented to assist existing as well as new start-up companies in project, fixed assets and working capital financing.

(b) *Soft Loan Scheme for Factory Relocation*

SMEs operating at non-designated industrial sites are hampered from gaining access to institutional credits, Government assistance programmes as well as limited capacity to expand. This Soft Loan Scheme provides assistance for SMEs to relocate their factories to designated industrial sites.

(c) *Soft Loan Scheme for ICT Adoption*

This Scheme provides assistance in the form of soft loan for SMEs to utilise Information and Communication Technology (ICT) to improve competitiveness, efficiency and productivity.

Qualifying Criteria

- Manufacturing companies or companies providing manufacturing related services incorporated under the Companies Act, 1965 with annual sales turnover of not exceeding RM25 million or full time employees not exceeding 150.
- For the services sector, businesses must be incorporated under the Registration of Business Ordinance, 1956 with an annual sales turnover not exceeding RM5 million or full-time employees not exceeding 50.
- At least 60% equity held by Malaysians.
- Possess valid premise license.

Sector Coverage

- Manufacturing or companies providing manufacturing-related services, namely

engineering support services such as calibration, electroplating, machining, heat treatment, metal casting and metal forging;

- Distributive trade
- Logistics
- Professional management services

Form of Assistance

Assistance is given in the form of matching grant where 50% of approved project cost is borne by the Government and the remainder by the applicant. Further information on Financial Assistance can be obtained from Small and Medium Industries Development Corporation (SMIDEC) and for MDG from MATRADE:

Grant Processing Secretariat

Small and Medium Industries Development Corporation
701 D, Level 7, Tower D, Uptown 5
No. 5, Jalan SS 21/39, Damansara Uptown
47400 Petaling Jaya
Selangor Darul Ehsan.
Telephone No: 03 - 7628 7429 / 7524
Fax No: 03 - 7665 1920
Toll Free Line: 1 - 800-18 - 1801

Market Development Grant Secretariat
Malaysia External Trade Development Corporation
7th Floor, Wisma Sime Darby
50350 Kuala Lumpur.
Telephone No: 03 - 2616 3439
Fax No: 03 - 2694 7271

II. INDUSTRIAL CO-ORDINATION ACT, 1975

The objective of the Industrial Co-ordination Act, 1975 (ICA) is to ensure orderly development and growth in the manufacturing sector. The ICA requires person(s) engaging in any manufacturing activity to obtain a licence from the Licensing Officer in respect of such manufacturing activity. Only manufacturing companies with shareholders' funds of RM2.5 million and above or engaging 75 or more full-time employees need to apply for a licence under the ICA. Manufacturing activities in relation to optical discs are not subjected to this provision.

All applications for Manufacturing Licences should be made to the Director-General of the MIDA.

The relevant definitions in the ICA are as follows:

- (a) The **Licensing Officer** is the Secretary-General of the Ministry of International Trade and Industry (MITI).
- (b) **Manufacturing activity** means the making, altering, blending, ornamenting, finishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal and includes the assembly of parts and ship repairing but shall not include any activity normally associated with retail or wholesale trade.
- (c) **Shareholders' funds** means the aggregate amount of a company's paid-up capital (in respect of preference shares and ordinary shares and not including any amount in respect of bonus shares to the extent they were issued out of capital reserve created by revaluation of fixed assets), reserves (other than any capital reserve which was created by revaluation of fixed assets and provisions for depreciation, renewals or replacements and diminution in value of assets), balance of share premium account (not including any amount credited there in at the instance of issuing bonus shares at premium out of capital reserve by revaluation of fixed assets) and balance of profit and loss appropriation account.
- (d) **Full-time paid employees** means all persons normally working in the establishment for at least six (6) hours a day and at least 20 days a month for 12 months during the year and who receive a salary. Persons such as travelling sales, engineering, maintenance and repair personnel, or who are paid by and are under the control of the establishment are also included. Full-time paid employees also

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

1. Guidelines for Approval of Industrial Projects

The Government has set down guidelines for the consideration of industrial project based on the Capital Investment per Employee (C/E) Ratio. 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 tax incentives by MITI. However, projects that fulfil one of the following criteria will be exempted from the above guideline:

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

This policy is applicable to new manufacturing projects as well as expansion or diversification. For expansion or diversification projects, C/E Ratio of RM55,000 is imposed on the additional fixed capital investment and additional labour (exempted if no additional fixed capital investment incurred).

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.

III. GUIDELINES ON FOREIGN INVESTMENT

1. Equity Policy In The Manufacturing Sector

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

- (a) 100% foreign equity holdings is allowed for all investment in new projects as well as investments in expansion or diversification projects by existing companies, irrespective of the level of exports and without any product or activity being excluded. The new equity policy also applies to:
 - i. Companies previously exempted from the Manufacturing Licence but whose shareholders' funds have now reached RM2.5 million or have now engaged 75 or more full-time employees; and
 - ii. Existing licensed companies exempted from the equity condition which are required to inform MITI when their shareholders' funds reach RM2.5 million.

(b) Equity Policy Applicable to Existing Companies

Equity and export conditions imposed on companies prior to 17 June 2003 will be maintained. However, companies can request for removal of these conditions and approval will be based on the merits of each case.

Companies with export conditions can apply to MIDA for approval to sell in the domestic market based on the following guidelines:

- i. Up to 100% of their output for those products with nil duty or those not produced locally.

- ii. Up to 80% of their output if the domestic supply is inadequate or there has been an increase in imports from ASEAN for products with Common Effective Preferential Tariff (CEPT) duties of 5% and below.

2. Protection of Foreign Investment

(a) 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.

(b) Investment Guarantee Agreements

Investment guarantee agreements (IGA) are to ensure protection against non-commercial risks such as expropriation and nationalisation and to allow for remittances and repatriation of 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:

- i. A guarantee that there shall be no expropriation or nationalisation except for a lawful or public purpose and under due process of law.
- ii. A permission to remit or repatriate in any freely usable currency, profits or capital on investment and other fees.
- iii. Prompt and adequate compensation in the event of nationalisation or expropriation.
- iv. Settlement of investment disputes under the Convention on the Settlement of Investment Disputes of which Malaysia has been a member since 1966.

Beneficiaries

- i. Nationals or citizens according to the laws of each contracting party; and

- ii. 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.

Convention on the Settlement of Investment Disputes

In 1966, the Malaysian Government 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). 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:

- i. In most of the IGA signed by Malaysia, it is provided 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 all the above measures fail to resolve the dispute, it would then be referred to the International Court of Justice.
- ii. Disputes in connection with investment between the citizens or company (investor) and the host country shall first be settled by making use of local administrative and judicial facilities of the host countries. If it fails to settle the disputes, it should then be submitted for reconciliation or arbitration to the International Centre for Settlement of Investment Disputes, at the IBRD or the International Adhoc Arbitral Tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law.

Regional Centre for Arbitration

The Kuala Lumpur Regional Centre for Arbitration was established in 1978 with the objective of providing a system for the settlement of disputes for the benefit of parties engaged in trade, commerce and investments with and within the region. The Centre serves the Asian and Pacific region. The Centre can be reached at:

Regional Centre for Arbitration
No 12, Jalan Conlay
50450 Kuala Lumpur.
Telephone No: 03 - 21420103/21420702/21420384
Fax No: 03 - 21424513

Status of IGA

Malaysia has concluded IGA with the following countries (in order of precedence):

Country	Date Signed
1. USA	21.4.1959 (Amended 24.6.1965)
2. Germany	22.12.1960 (Amended 5.11.1965)
3. Canada	1.10.1971
4. Netherlands	15.6.1971
5. France	24.4.1975
6. Switzerland	1.3.1978
7. Sweden	3.3.1979
8. Belgo-Luxembourg	22.11.1979
9. UK	21.05.1981
10. Sri Lanka	16.04.1982
11. Romania	26.11.1982 (Amended 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

Country**Date Signed**

17. ASEAN	15.12.1987
18. Italy	4.1.1988
19. South 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
27. Taiwan	18.2.1993
28. Republic of Hungary	19.2.1993
29. Republic of Poland	21.4.1993
30. Republic of Indonesia	22.1.1994
31. Republic of Albania	24.1.1994
32. Republic of Zimbabwe	28.4.1994
33. Turkmenistan	30.5.1994
34. Namibia	12.8.1994
35. Kingdom of Cambodia	17.8.1994
36. Argentina	6.9.1994
37. Jordan	2.10.1994
38. Bangladesh	12.10.1994
39. Republic of Croatia	16.12.1994
40. Bosnia Herzegovina	16.12.1994
41. Spain	4.4.1995
42. Pakistan	7.7.1995
43. Kyrgyz Republic	20.7.1995
44. Mongolia	27.7.1995
45. India	3.8.1995
46. Uruguay	9.8.1995
47. Peru	13.10.1995
48. Kazakstan	27.5.1996

Country	Date Signed
49. Malawi	27.5.1996
50. Czech Republic	9.9.1996
51. Guinea	7.11.1996
52. Ghana	11.11.1996
53. Egypt	14.4.1997
54. Botswana	31.7.1997
55. Cuba	26.9.1997
56. Uzbekistan	6.10.1997
57. Macedonia	11.11.1997
58. Democratic People's Republic of Korea	4.2.1998
59. Yemen	11.2.1998
60. Turkey	25.2.1998
61. Lebanon	26.2.1998
62. Burkina Faso	23.4.1998
63. Republic of Sudan	14.5.1998
64. Republic of Djibouti	3.8.1998
65. Republic of Ethiopia	22.10.1998
66. Senegal	11.2.1999
67. State of Bahrain	15.6.1999
68. Algeria	27.1.2000
69. Saudi Arabia	25.10.2000
70. Morocco	16.4.2002
71. Iran	22.7.2002

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 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 Promotion of Investments Act 1986, the recipients are also exempted from Malaysian income tax on such dividends. If the recipients are 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. As of end-August 2005, a total of 59 countries have signed DTA with Malaysia:

IV. 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.

Country	Date of Signing of Agreement
1. Albania	24.01.1994
2. Austria	20.09.1989
3. Australia	20.08.1980
4. Bahrain	14.06.1999
5. Bangladesh	19.04.1983
6. Belgium	24.10.1973
Belgium (Protocol)	21.11.1995
7. Canada	16.05.1976
8. China	23.11.1985
9. Croatia	18.02.2002
10. Czech Republic	08.03.1996

Country	Date of Signing of Agreement	Country	Date of Signing of Agreement
11. Denmark	04.12.1970	46. South Korea	20.04.1982
12. Egypt	14.04.1997	47. Sweden	21.11.1970
13. Federal Republic of Germany	08.04.1977	Sweden (Protocol)	12.03.2002
14. Fiji	19.12.1995	48. Switzerland	30.12.1974
15. Finland	28.03.1984	49. Sudan	07.10.1993
16. France	24.04.1975	50. Thailand	29.03.1982
France (Protocol)	31.01.1991	Thailand (Protocol)	10.02.1995
17. Hungary	24.05.1989	51. Turkey	27.09.1994
18. Indonesia	12.09.1991	52. United Kingdom	30.03.1973
19. Iran	11.11.1992	United Kingdom (New Agreement)	10.12.1996
20. Italy	28.01.1984	53. United Arab Emirates	28.11.1995
21. India	25.10.1976	54. Uzbekistan	06.10.1997
India (New Agreement)	14.05.2001	55. Vietnam	07.09.1995
22. Ireland	28.11.1998	56. Zimbabwe	28.04.1994
23. Japan	30.01.1970		
Japan (New Agreement)	19.02.1999		
24. Jordan	01.10.1994		
25. Kuwait	06.04.1997		
26. Lebanon	20.01.2003		
27. Luxembourg	21.11.2002		
28. Malta	03.10.1995		
29. Mauritius	23.08.1992		
30. Morocco	02.07.2001		
31. Mongolia	27.07.1995		
32. Myanmar	09.03.1998		
33. Netherlands	07.03.1988		
Netherlands (Protocol)	04.12.1996		
34. Namibia	28.07.1997		
35. New Zealand	19.03.1976		
New Zealand (Protocol)	14.07.1994		
36. Norway	23.12.1970		
37. Pakistan	29.05.1982		
38. Papua New Guinea	20.05.1993		
39. Philippines	27.04.1982		
40. Poland	16.09.1977		
41. Republic of Kyrgyz	19.11.2000		
42. Romania	26.11.1982		
43. Russia	31.07.1987		
44. Singapore	26.12.1968		
Singapore (Supplementary)	06.07.1973		
45. Sri Lanka	16.09.1972		
Sri Lanka (New Agreement)	16.09.1997		

LIMITED DTA AGREEMENT

(In respect of income of transport enterprises only)

57. Republic of Argentina (shipping and air transport)	03.10.1997
58. Saudi Arabia (air transport only)	18.07.1993
59. U.S.A (shipping and air transport)	18.04.1989

V. 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 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 of implementation and operation of their projects.

In an effort to streamline the administrative procedures in respect of investment, MIDA has been designated as the Coordinating Centre on Investment. 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.
- (g) Provide consultancy services including training and technical assistance.
- (h) Undertake any activity that promotes cooperation with other countries in line with the objective of the Government with respect to industries and their related services.

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, software development and manufacturing related services, including, IPC, OHQ, RDC and approval for Regional Offices and Representative 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.

(g) Asean Industrial Cooperation Scheme. To further facilitate investors, senior representatives from various key ministries, departments and relevant corporations are emplaced within the MIDA Headquarters to assist and advise investors as well as coordinate applications for approvals and other matters related to investments. The representatives are from Ministry of Finance (MOF), Ministry of Human Resources, Royal Customs, Department of Environment, Immigration Department, Department of Occupational Safety and Health, Tenaga Nasional Berhad and Telekom Malaysia Berhad.

On 1 April 2002, a Promotion of Services Sector Division was established in MIDA to promote investments in the manufacturing-related services.

MIDA can be reached at:

Malaysian Industrial Development Authority
 Block 4, Plaza Sentral
 Jalan Stesen Sentral 5
 Kuala Lumpur Sentral
 50470 Kuala Lumpur.
 Malaysia.
 Tel: 603-2267 6333
 Fax: 603-2274 7970
 Website: www.mida.gov.my
 e-mail: promotion@mida.gov.my

VI. INVESTMENT CENTRE AT STATE LEVEL

At the state level, investment centres have also been formed to provide efficient services to investors. The investment centres at the state level are either at the State Economic Development Corporations (SEDCs) as in Johor, Kelantan, Melaka, Pahang and Perak or at the State Economic Planning Units as in the case of Negeri Sembilan, Selangor and Terengganu. In Sabah, the centre is at the Department of Industrial Research and Development while in Sarawak, the centre is based at the Ministry of Industrial Development. To assist these centres to function effectively, Special Committees have been established.

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

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

With the establishment of the investment centres at the state level, the administrative procedures involved in granting of approvals, permits and licences required for the implementation and operation of the projects at the respective state level have been streamlined.

A joint Industrial Coordination Committee involving Federal and State has also been established in every state with the following function:

- (a) 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 development plans.
- (b) Identify investment promotion strategies to ensure efficient distribution of industries. For this, the committee will emphasize:
 - i. identifying new industrial zones evaluating infrastructure elements such as roads, water supply, electricity, transportation, communications, storage and disposal of industrial wastes;

- ii. evaluating the feasibility of setting up specific industrial zones, specifically for SMIs;
- iii. identifying and solving problems faced by companies operating in industrial zones; and
- iv. identifying industries which need to be emphasized in the different states.
- (c) Plan and monitor linkages in industrial sub-sectors in order to ensure the presence of critical supporting industries at the state level. Industrial development at the state level will be more integrated and synergies.
- (d) Promote skills development centres at the state level to ensure a sufficient supply of skilled workers for industry.
- (e) Identify weaknesses in procedures hindering project implementation and recommend remedial action.
- (f) Plans export promotions so that industrial producers can explore international markets.
- (g) Provide feedback and references to help the private sector solve their problems.

VII. REGULATIONS ON ACQUISITION OF ASSETS, MERGERS AND TAKE-OVER

The FIC Guidelines, 1974, was formulated to establish a set of rules regarding the acquisition of assets or any interest, mergers or take-over of companies and business, as well as a mean for restructuring the pattern, ownership and control of the corporate sectors, in line with the objectives of the New Economic Policy (NEP), 1970-90. The efforts made in restructuring the equity ownership under NEP will continue under the National Development Policy. Hence, the 1974 FIC Guidelines will continue to apply regarding

the acquisition of assets or any interest, mergers and take-over of companies and businesses in furtherance of the restructuring objectives.

Rules and Regulations Regarding Acquisitions, Mergers and Take-Over

The Guidelines for the acquisition of assets, mergers or take-over by foreign or local 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-over 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 R&D.
- (c) The proposed acquisition of assets or any interest, mergers or take-over 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-over of companies and businesses is not against the national interest is on the acquiring parties concerned.

The above guidelines will apply to the following:

- (a) any proposed acquisition of property in Malaysia by foreign interest;
- (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 agreements;
- (e) any merger and take-over of any company or business in Malaysia whether by local or foreign interests; and
- (f) any other proposed acquisition of assets or interests which is RM10 million or more in value whether by local 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

The Foreign Investment Committee (FIC) 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 fulfilment 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.

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

The Secretary
Foreign Investment Committee
Economic Planning Unit
Prime Minister's Department
Level -1, Block B5
Prime Minister's Department Complex
62502 Putrajaya.
Tel : 603 - 8888 2916
Website : www.epu.jpm.my

VIII. 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 (SCA). This saw 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 being transferred to the SC.

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

- (a) A Chairman, who shall be an Executive Chairman;
- (b) A Deputy Chief Executive;

- (c) Four members representing the Government; and
- (d) Three other persons.

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-over 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 holding company, exchange, clearing house and central depository, participating organizations, participants, affiliates, depository participants and all licensed or registered persons of an 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.

The SC is also the sole regulator of the private debt securities market and the registering authority for prospectus in respect of all securities other than securities issued by unlisted recreational clubs. The SC also implements the Foreign Investment Committee (FIC) Guidelines in processing of corporate proposals. 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;
- (d) Securities Industry (Central Depositories) Act 1991; and
- (e) Demutualisation (Kuala Lumpur Stock Exchange) Act 2003.

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

- (a) Policies and Guidelines on Issue or Offer of Securities.

- (b) Guidelines for Public Offerings of Securities of Closed-End Funds.
- (c) Prospectus Guidelines.
- (d) Guidelines on the Offering of Private Debt Securities.
- (e) Securities Commission (Shelf Registration Scheme for Debentures) Regulations 2000.
- (f) Guidelines on the Minimum Contents Requirements for Trust Deeds.
- (g) Malaysian Code on Take-overs and Mergers.
- (h) Guidelines on Asset Valuations.
- (i) Guidelines on Real Estate Investment Trust.
- (j) Guidelines on Property Trust Funds.
- (k) Guidelines on the Establishment of Foreign Fund Management Companies.
- (l) Guidelines for Application for Fund Manager's and Fund Manager's Representative's Licence Under the Securities Industry Act 1983.
- (m) Guidelines For Application For Futures Fund Manager's and Futures Fund Manager's Representative's Licence under The Futures Industry Act 1993.
- (n) Guidelines for the Issue of Call Warrants.
- (o) Guidelines for Application of Licence under the Futures Industry Act 1993.
- (p) Guidelines on the Offering of Asset-Backed Securities.
- (q) Guidelines on Prevention of Money Laundering & Terrorism Financing for Capital Market Intermediaries.
- (r) Guidelines on the Offering of Structured Products.
- (s) Guidelines for Application for Investment Adviser's and Investment Representative's License under the Securities Industry Act 1983.

- (t) Guidelines on Electronic Prospectuses and Internet Securities Application.
- (u) Guidelines on the Offering of Islamic Securities.
- (v) Guidelines on Advertising.

Applications for Corporate Proposals

Both public and private companies are required to seek the approval of the SC, as required by the SCA 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) 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 restructure of any corporation; or
 - ii. an acquisition of securities or assets.
- (d) Apply for the listing of a corporation or for the quotation of securities on a stock market of a stock exchange.
- (e) 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.
- (f) Acquire or dispose of assets (whether or not by way of issue of securities), which results in a significant change in the business direction or policy of a listed public company.

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

- (a) Whether or not there will be adequate disclosure of such information that investors and their professional advisers would reasonably require and reasonably expect to find in the prospectus for the purpose of making an informed assessment of;
 - i. the assets and liabilities, financial position, profits and losses and prospects of the issuer, and in the case of a unit trust scheme or prescribed investment scheme, of the scheme;
 - ii. the rights attaching to the securities; and
 - iii. the merits of investing in the securities and the extent of the risk involved in doing so.
- (b) Whether the enquiries (if any) of the corporation concerned, its officers, underwriters and advisers provide adequate verification of the accuracy and completeness of information disclosed.
- (c) Whether the persons in respect of whom a proposal has been made, need protection through the process of approval and disclosure pursuant to Part IV of the SCA 1993.
- (d) The type of business in which the corporation is engaged and the risks associated with it.
- (e) The overall corporate governance condition of the company, shareholders and directors.
- (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.
- (i) Whether the operation of the market forces, including those with respect to price, provide an adequate mechanism for dealing with risks and merits of the proposal.

Regulatory Framework for Fundraising

With the promulgation of the Securities Commission (Amendment) Act (SCA), 2000, on 1 July 2000, the SC became the sole approving authority for prospectuses in respect of all securities, other than securities issued by unlisted recreational clubs. A company undertaking fundraising activities may be required to prepare a prospectus and register with the SC. The 2000 amendment specifies when a prospectus must be registered and what its contents must include

The existing provisions in the Companies Act 1965 on 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 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 CCM.

Division 3 Part IV of the SCA 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 and other specific requirements in relation to debentures set out in Division 4 of Part IV of the SCA, such as the requirement for a trustee and trust deed, the duties of a trustee, duties of a borrower and a guarantor.

The SC is the single regulatory body for all corporate bond issuance and is responsible for the regulation of trustees, trust deeds, borrowers’

and guarantors’ obligations in relation to debenture issues.

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 (IPOs) of securities with listing and quotation on Bursa Malaysia are stipulated in the “Policies and Guidelines on Issue or Offer of Securities” (Issues Guidelines), 1996. The Issues Guidelines (Amendment April 1999) saw a revision of regulatory requirements for listing on the Main Board and the Second Board of Bursa Malaysia and the requirements for take-overs or back-door listings.

Listing Requirements for Bursa Malaysia was revamped 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.

Further amendments of the Issues Guidelines (May 2003) and six (6) other fund raising guidelines marked the Malaysian capital market's move into the third phase of a disclosure-based regulation (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 fund raising process was more efficient, through a more streamlined approval process as well as more business-friendly and market-based rules and reduced approval time.

In addition, the Government also announced measures to further strengthened the capital market, which include the reduction of the moratorium period on promoters’ shareholdings for all new IPOs or Reverse Takeovers to one (1) year, as an effort to ensure greater availability of shares and increased liquidity in the market.

Effective 1 January 2005, key changes to the Issues Guidelines saw the following enhancements:

- (a) the removal of flexibilities for injection of assets into distressed listed companies;
- (b) standardisation of the admission criteria of financial services, shipping/transportation, trading/retailing, property investment holding and infrastructuring project companies into the Main Board of Bursa Malaysia, whether the admission is made by way of a direct listing or back-door listing/reverse take-over;
- (c) introduction of the requirements for direct listing of property investment companies for the first time;
- (d) companies are no longer required to finance acquisition of foreign assets via issuance of securities if the acquisition is regarded as substantial; and
- (e) acquisition of foreign asset resulting in a change in dominant shareholder is allowed if the new dominant shareholder is a Malaysian.

Effective 1 January 2005, the consideration and approval of listings and corporate proposals on the MESDAQ Market has been undertaken by the SC. Under this process, approval for MESDAQ Market corporate proposals need only be sought under section 32 of the SCA, 1993, which is in line with the approval process for Main and Second Board companies.

Requirements for the Listing of Securities on Bursa Malaysia:

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 RM60 million,

comprising ordinary shares with par value of at least RM0.10 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 par value of at least RM0.10 per share.

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

2.1 Historical Profit Performance

(a) Listing on Main Board

The applicant should have an uninterrupted profit record of either three (3) to five (5) full financial years, with an aggregate after-tax profit of not less than RM30 million over the said three (3) to five (5) years, and at least RM8 million after-tax profit for the latest financial year. Companies with market capitalisation of ordinary equity shares of at least RM250 million need only comply with the requirement of at least RM8 million after-tax profit for the latest financial year.

(b) Listing on Second Board

The applicant 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 (5) years, and at least RM4 million after-tax profit for the latest financial year.

2.2 Infrastructure Project Company

There is no minimum historical profit track record or market capitalisation

requirements for applicants which are considered as infrastructure project companies.

Pricing of securities

While public companies generally have the discretion in the pricing of all securities issued, public companies are expected 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 interests of minority shareholders.

Flexibilities in Listing Criteria for Bumiputera Companies

Flexibilities are granted by the SC to Bumiputera companies in the form of exemptions from the test requirements laid out in paragraph 6.13(a)(iv) or 6.13(b)(iv) in the Issues Guidelines. Paragraph 6.13(a)(iv) of the Issues Guidelines refers to the use of proforma accounts for listing purposes and states the following:

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

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

Paragraph 6.13 (b) (iv) of the Issues Guidelines, on the other hand, refers to the market capitalization test and states the following:

“Where a group of companies is seeking listing using the market capitalization 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 (3) full financial years prior to submission to the SC.

However, in order to qualify for these exemptions, the Bumiputera-controlled companies must comply with the following:

- (a) the group must have a genuine pooling arrangement;
- (b) the company which is the single largest contributor, on an average basis for the past three full financial years, to the proforma group's profits should have been incorporated and have been operating in the same or complementary business for at least five (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 three (3) financial years prior to making submission to the SC (or throughout the life of the company if the company has been incorporated for less than three (3) financial years); and
- (d) the company used as the listing vehicle must, upon listing and for the next 5 years subsequent to the listing, be a Bumiputera-controlled company.

The purpose of the flexibilities is to provide Bumiputera companies with the opportunities to access the capital market. However, it must however be noted that a company is only classified as a Bumiputera-controlled company if either one of the following criteria is satisfied:

- (a) Where more than 50% of its equity is owned by Bumiputera shareholders; or
- (b) Where at least 35% of its equity is owned by an identifiable Bumiputera shareholder and:

- i. there is no other non-Bumiputera group holding more than 10% of the voting power of the company, or, the identifiable non-Bumiputera groups should not, in aggregate, own more than 24% of the voting power of the company;
- ii. the shareholding of the Bumiputera group is not associated directly or indirectly with any non-Bumiputera group;
- iii. the Bumiputera group is the rightful owner and each Bumiputera party is capable of exercising the voting power attached to his/her/its shareholding free of any influence;
- iv. the Chairman, Chief Executive Officer or Managing Director and at least 51% of the company's Board are Bumiputera individuals; and
- v. at least 51% of the management, professional and supervisory staff comprise Bumiputera individuals.

Regulations Relating to Takeover and Mergers

Persons involved in any takeover and merger exercise are required to observe the provisions relating to takeovers and mergers contained in sections 33 to 33E of the Securities Commission Act, 1993 (SCA), the Malaysian Code on Takeovers and Mergers 1998 (Code) as well as the Malaysian Code on Takeovers and Mergers (Amendments) 2004 (Code Amendments). 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 and any instruction under Section 33A(4). 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 (6) 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;

- (a) whether the vendor is acting in concert with the acquirer;
- (b) whether a significant premium was paid for the voting shares; and
- (c) 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 Master Plan

The SC released a comprehensive Capital Market Master Plan in February of 2001, which chart the strategic positioning and future direction of the Malaysian capital market for the next 10 years. The plan provides a review towards:

- (a) formulating a comprehensive vision and programme for the development of the Malaysian capital market going forward;
- (b) formulating a framework for the orderly and effective sequencing of further deregulation and liberalization; and

- (c) identification and mapping the direction for the strategic positioning of the Malaysian capital market, both domestically and externally.

Following the review, the SC identified six key objectives as the basis of its future strategic initiatives and recommendations:

- (a) Be the preferred fund raising centre for Malaysian companies.
- (b) Promote an effective investment management industry and a more conducive environment for investors.
- (c) Enhance the competitive position and efficiency of market institutions.
- (d) Develop a strong and competitive environment for intermediation services.
- (e) Ensure a stronger and more facilitative regulatory regime.
- (f) Establish Malaysia as an international Islamic capital market center.

IX. BURSA MALAYSIA BERHAD

History

The Malayan Stock Exchange was set up in 1960 with trading rooms in Singapore and Kuala Lumpur. With the separation of Singapore from Malaysia in 1965, Stock Exchange of Malaysia and Singapore (SEMS) was established. However, with the termination of currency inter-changeability between Malaysia and Singapore in 1973, SEMS was separated into two, the Kuala Lumpur Stock Exchange (KLSE) and Stock Exchange of Singapore.

Demutualised pursuant to the Demutualisation Act, KLSE was converted into a public company limited by shares on January 5, 2004. Upon the conversion, KLSE vested and transferred the securities exchange business to a wholly-owned subsidiary, Bursa Malaysia Securities Sdn Bhd (Bursa Securities), and became an exchange holding company and was renamed Bursa Malaysia Berhad (Bursa Malaysia) on April 20, 2004.

Bursa Malaysia operates a fully integrated exchange, offering the complete range of exchange-related services, including trading, clearing, settlement and depository services. Bursa Malaysia also provides information services related to the Malaysian securities and derivatives market. As of end August 2005, Bursa Malaysia is one of the largest bourses in ASEAN, with 1,003 companies listed. These companies, are categorised into 15 different sectors representing over 50 different economic activities including plantation, mining, trading/services, technology, infrastructure and finance.

Bursa Malaysia Corporate Governance

In a demutualised structure, a single Board oversees Bursa Malaysia Group. The Board consists of Public Interest Directors, Independent Directors, Shareholder Directors and a Chief Executive Officer. The corporate governance practices of Bursa Malaysia are consistent with the aspirations and objectives as set out in the Code of Corporate Governance.

Bursa Malaysia Group of Companies

Bursa Malaysia Group of Companies comprise an exchange holding company and various subsidiaries which provide a comprehensive range of services to support the securities industry in Malaysia.

Exchanges Business Unit comprising three (3) exchanges:

(a) Securities Exchange

The market is operated by Bursa Malaysia Securities (Bursa Securities) comprising a Main Board, Second Board and MESDAQ Market. As at end August 2005, the Main Board, with 639 companies listed, is the largest market, followed by the Second Board with 272 companies and MESDAQ Market with 92 companies. Total market valuation of Bursa Malaysia was RM706.36 billion as at end August 2005.

(b) Derivatives Exchange

This exchange is operated by Bursa Malaysia Derivatives (Bursa Derivatives) and offers futures and options contracts covering financial, equity and commodity-related instruments. As at end August 2005, seven (7) types of futures contracts and one type of option contract were available for trading. The Exchange total month-end open position in August 2005 was 89,430 contracts.

(c) Offshore Exchange

The offshore exchange is an international offshore financial exchange based in Labuan and operated by Labuan International Financial Exchange Inc (LFX). As at end August 2005, 20 conventional bonds, six (6) investment funds and six (6) Syariah compliant certificates (Sukuk) were listed on the Offshore Exchange, with a market capitalisation of USD12.09 billion.

Clearing, settlement and depository services are offered through Clearing, Settlement and Depository Business Unit, which encompasses Bursa Malaysia Securities Clearing Sdn Bhd, Bursa Malaysia Derivatives Clearing Bhd and Bursa Malaysia Depository Sdn Bhd (Bursa Depository).

Information Services Business Unit complies and disseminates comprehensive information on prices, trading and indices for listed securities on real-time or delayed basis. It also develops and provides information products and services for subscribers through Bursa Malaysia Information Sdn Bhd.

Participants

(a) Stockbroking Companies

Currently there are 32 stockbroking companies offering services in the dealing of securities listed on Bursa Securities. Of these, six (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. As at end August 2005, there were 61 branches.

(b) Trading Participants

A Trading Participant is a company which owns at least one (1) Preference Share to conduct business as a futures broker licensed under the Futures Industry Act and carrying on trading in Contracts traded on the Bursa Derivatives. A Trading Participant has to be registered with the Securities Commission. Currently there are 15 Trading Participants.

Investor Protection

In the interest of protecting investors, Bursa Malaysia currently maintains three (3) compensation funds, namely Compensation Fund of Bursa Securities, the Fidelity Fund of Bursa Derivatives and the Compensation Fund of Bursa Depository to compensate investors who have suffered losses falling within the circumstances specified under the relevant securities laws and rules. The funds are administered by the Compensation Committee.

Risk Management

Bursa Malaysia has put in place an enterprise risk management framework aimed at managing and controlling risks appropriately for the Group. Key risks are identified and ranked for likelihood of occurrence and magnitude of impact with appropriate action plans developed to manage significant residual risks.

X. 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 IOFC on 1 October 1990. Labuan 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) Offshore Trading and 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;
- (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 has developed a two-pronged strategy for the development of Labuan IOFC:

- i. 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
- ii. 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 (LOBATA), 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 LOFSA 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 an offshore 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.

In addition, Labuan offshore companies undertaking offshore business activities in Labuan, in particular those from Islamic countries where zakat, and not income tax, is paid on their business income Labuan offshore companies are also granted an income tax rebate equivalent to the amount of zakat paid to the Labuan religious authority, subject to a maximum of 3% of audited net profit or RM20,000.

(b) Companies other than Offshore Companies or 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. 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

i. Treatment on Dividends

Dividends received by an offshore 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 Employment

Income derived by 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 2005.

viii. 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.

improving regulatory delivery system and encouraging better risk management activities by residents and non-residents for further development of domestic foreign exchange market to promote stability in the financial system and economy of the country.

For foreign exchange administration purposes, the definition of residents and non-residents are as follows:

Residents comprise:

- (a) Citizens of Malaysia (excluding persons who have obtained permanent resident status of a territory outside Malaysia and are residing abroad).
- (b) Non-citizens who have obtained permanent resident status in Malaysia and are residing permanently in Malaysia.
- (c) Persons, whether body corporate or unincorporated, registered or approved by any authority in Malaysia.

Non-residents comprise:

- (a) Persons other than residents.
- (b) Overseas branches, overseas subsidiaries, overseas regional offices, sales offices, representative offices of resident companies.
- (c) Embassies, Consulates, High Commissions, supranational or international organizations recognized by the Government of Malaysia.
- (d) Malaysian citizens who have obtained permanent resident status of a territory outside Malaysia and are residing outside Malaysia.

XI. FOREIGN EXCHANGE ADMINISTRATION POLICIES

The foreign exchange administration rules in Malaysia are aimed at providing an appropriate framework that will influence capital flows and facilitate currency risk management to promote financial and economic stability of the country. With effect from 1 April 2005, Bank Negara Malaysia announced further relaxations aimed towards reducing cost of doing business,

1. Current Account Transactions

- (a) *Payments for Import of Goods and Services*

There is no restriction on payments to non-residents for imports of goods and

services. Such payments must be made in foreign currency, except currency of the State of Israel (Restricted Currency).

There is no restriction for residents to enter into a forward foreign exchange contract with a licensed onshore commercial and Islamic bank (licensed onshore bank) or an approved merchant bank to buy foreign currency against ringgit to make payment for imports from a non-resident.

(b) Proceeds Arising from Export of Goods (Export Proceeds)

All export proceeds are required to be repatriated back to Malaysia in accordance with the payment schedule as specified in the sales contract, which should not exceed six (6) months from the date of export.

Export proceeds must be received in foreign currency and must be sold for ringgit or retained in export foreign currency accounts (FCA) with licensed onshore banks. There is no limit on the amount of funds retained in the export FCA.

Residents may enter into a forward foreign exchange contract with a licensed onshore bank to sell foreign currency export proceeds for ringgit or another foreign currency, provided the maturity of the forward contract is not later than six (6) months after the intended date of export.

Only resident exporters with annual gross exports exceeding RM50 million equivalent are required to submit quarterly reports to the Controller of Foreign Exchange (the Controller).

(c) Import and Export of Currency by Travellers

i. Resident travellers

Resident travellers are allowed to import or export of ringgit up to

RM1,000, including demonetised RM1,000 and RM500 notes, and to export foreign currency notes, including traveller's cheques, not exceeding RM10,000. Resident travellers are also allowed to carry on person or in baggage any amount of foreign currency into Malaysia. Prior permission from the Controller and declaration in the Traveller's Declaration Form is required when they carry into or out of Malaysia, ringgit notes exceeding RM1,000, and carry out foreign currency notes including traveller's cheques exceeding the equivalent of RM10,000. Permission is given within one day of application.

ii. Non-resident travellers

There is no restriction for non-residents to bring in any amount of foreign currency and/or traveller's cheques. Declaration in the Arrival or Departure Card (IMM.26) issued by the Immigration Department is only required for amounts in excess of the equivalent of USD2,500.

Non-residents would need to seek permission 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 from the Controller and declare ringgit exceeding RM1,000 being brought into or out of Malaysia.

2. Capital Account Transactions

(a) Investment In Malaysia by Non-residents

There is no restriction on repatriation of capital, profits, dividends, interest and rental income by foreign direct investors or portfolio investors.

Ringgit assets purchased by residents from non-residents may be settled in ringgit or foreign currency, other than the Restricted Currency. However, all remittances abroad must be made in foreign currency other than the Restricted Currency.

(b) Investment Abroad by Residents

Licensed onshore banks and approved merchant banks may invest abroad as long as they comply with the Banking and Financial Institutions Act 1989 or Islamic Banking Act 1983 and their approved foreign currency net open position limit. Remittances for investment abroad must be made in foreign currency, other than the Restricted Currency.

A resident company or individual with no domestic ringgit credit facility is free to invest abroad. The investment may be made through conversion of ringgit or from foreign currency funds retained onshore or offshore.

Residents with domestic ringgit credit facility are also free to invest abroad their foreign currency funds maintained onshore or offshore. In addition, they are allowed to convert ringgit into foreign currency up to the following limits for overseas investment, including extension of foreign currency credit facilities to non-residents:

- i. Up to RM10 million per calendar year by the company on a per corporate group basis; and
- ii. Up to RM100,000 per calendar year by the individual

For a company converting ringgit for overseas investments, it must have a minimum shareholders' funds of RM100,000 and must be in operation for at least one (1) year.

Individuals may convert ringgit into foreign currency up to the amount required for investment in foreign currency securities under the Employee

Share Option/Purchase Scheme offered by their employers' overseas parent or related companies.

A resident is allowed to finance overseas investment in aggregate up to RM10 million equivalent with foreign currency credit facilities.

All payments for investment abroad exceeding RM50,000 equivalent should be registered with the Controller at least seven working days prior to making the payments. A resident, other than a licensed onshore bank or an approved merchant bank, is required to seek prior permission from the Controller to remit funds in excess of the above limits for overseas investment purposes.

Permission 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.

In addition to the above, resident domestic institutions are also allowed to invest abroad as follows:

- i. Unit trust management company - A resident unit trust management company may invest abroad up to:
 - The full amount of the Net Asset Value (NAV) attributed to non-residents; and
 - 30% of the NAV attributed to residents.

Different funds of a unit trust management company or funds of different companies may be pooled to benefit from economies of scale when

investing abroad. Such investments are subject to the Securities Commission's guidelines.

- ii. Asset/fund management company. A resident asset/fund manager may invest abroad up to:

- The full amount of investments by its non-resident clients;
- The full amount of investments by its resident clients without any domestic ringgit credit facilities; and
- 30% of investments by resident clients with domestic ringgit credit facilities.

These funds by different clients or companies may be pooled to benefit from economies of scale when investing abroad. Such investments should be consistent with clients' mandates and comply with the Securities Commission's guidelines.

- iii. Insurance company and *takaful* operator

A resident insurance company may invest abroad up to 5% of its margin of solvency while a *takaful* operator may invest up to 5% of its total assets.

In addition, a resident insurance company or *takaful* operator may also invest up to 30% of the NAV of its investment-linked funds. These investments are subject to compliance with guidelines or regulations issued by Bank Negara Malaysia.

- (c) *Foreign Currency Credit Facilities Obtained by Residents*

A resident is free to obtain trade financing facility of any amount in foreign currency from licensed onshore banks.

A resident company may obtain credit facilities in foreign currency up to the equivalent of RM50 million in aggregate on a group basis from licensed onshore banks, licensed merchant banks and non-residents.

A resident individual may also obtain credit facilities in foreign currency up to the equivalent of RM10 million in aggregate from licensed onshore banks, licensed merchant banks and non-residents.

Any amount exceeding the above permitted limit would require the prior permission of the Controller. Where the aggregate amount exceeds the equivalent of RM1 million and up to the permitted limit, the resident (company or individual) is required to register the credit facility with the Controller, prior to loan drawdown.

A resident may only utilise up to an aggregate of RM10 million equivalent of the foreign currency credit facilities to finance overseas investment activities.

There is no restriction for repayment or prepayment of credit facilities obtained as long as such credit facilities have been obtained in accordance with the relevant foreign exchange administration rules. Resident borrowers need to register with the Controller any proposal to prepay credit facilities of USD10 million equivalent and above prior to effecting the prepayments.

- (d) *Ringgit Credit Facilities from Non-Residents*

A resident is required to seek prior permission of the Controller to obtain any amount of credit facility in ringgit from non-residents, including from non-resident shareholders or directors.

- (e) *Extension of Credit Facilities to Non-Residents*

- i. Foreign Currency Credit Facilities

Licensed onshore banks and approved merchant banks may extend credit facilities in foreign currency to non-residents for any

purpose. However, credit facilities extended for the purchase or construction of immovable property in Malaysia would be subject to similar requirements as for ringgit credit facilities outlined below.

A resident company or individual with no domestic ringgit credit facility is free to extend credit facilities in foreign currency to non-residents. The extension of credit facility may be made through conversion of ringgit or from foreign currency funds maintained in a foreign currency account in Malaysia or abroad.

A resident company or individual with domestic ringgit credit facility may also extend credit facilities in foreign currency to non-residents subject to the permitted limits for investment abroad by residents.

ii. Ringgit Credit Facilities

A non-bank resident may extend credit facilities in ringgit not exceeding an aggregate of RM10,000 to a non-resident.

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

Licensed onshore banks may extend ringgit intra-day and overnight overdraft facilities in aggregate not exceeding RM200 million to a non-resident stockbroking company or a non-resident custodian bank. The facilities are strictly for financing timing gaps due to unforeseen or inadvertent or technical administration errors or time zone delays in relation to settlement of trades on Bursa Malaysia.

Resident insurance companies may extend policy loans in ringgit to its non-resident policyholders for amounts up to the attained cash surrender value of the policies and not exceeding the duration of the policy.

Residents, bank or non-bank, may extend up to a maximum of three (3) property loans in ringgit to a non-resident to finance or refinance the purchase or construction of any immovable property in Malaysia (excluding for the purchase of land only), subject to their own internal credit assessment guideline. All purchases of immovable properties are subject to the guidelines issued by the FIC. Details of the guidelines can be found at <http://www.epu.jpm.my>.

In addition, banking institutions may extend credit facilities in ringgit up to the aggregate limit of RM10 million to a non-resident (excluding a non-resident stockbroking company, custodian bank and correspondent bank) for any purposes for use in Malaysia, other than to finance the purchase or construction of immovable property and purchase of land only. The above is in addition to credit facilities extended for the purchase of one vehicle for own use.

Prior permission of the Controller is required for the extension of credit facilities exceeding the above permissible limits.

iii. Forward Foreign Exchange Contracts

• Forward Foreign Exchange Contracts with Residents

Licensed onshore banks and approved merchant banks may enter into forward foreign

exchange contracts (forward contracts) with residents to purchase or sell foreign currency against ringgit or another foreign currency as follows:

- Any payments or receipts for import or export of goods and services as well as income, based on firm commitment or anticipatory basis (subject to amount paid or received in the preceding 12 months);
- Hedging the foreign currency exposure of permitted overseas investment, including extension of credit facilities to non-residents;
- Any committed capital inflows or outflows, including drawdown of permitted foreign currency credit facilities, and repayment of foreign currency credit facilities up to the amount repayable within 24 months as well as payments for permitted overseas investment other than placement into a foreign currency account.

The maturity date of the forward contract should be the expected date of receipt or payment of the underlying transaction. For forward purchase of export proceeds, the maturity date of the forward contract should not be later than six (6) months after the intended date of export. In the event where foreign currency receivables are received earlier, the resident can temporarily retain the receipts in its foreign currency account, pending maturity of the forward contract.

For forward contracts involving two foreign currencies, the use or retention of the foreign currency being purchased by the residents must comply with the currency

foreign exchange administration rules.

Licensed onshore banks, approved merchant banks and licensed offshore banks in Labuan are allowed to enter into foreign currency interest rate swap pioneer status with residents, provided the transaction is supported by firm underlying commitment.

- Forward Foreign Exchange Contracts with Non-residents

Licensed onshore banks may enter into forward contracts with non-residents to purchase or sell foreign currency against another foreign currency for any purpose.

Licensed onshore banks may also enter into forward contracts with non-residents to purchase or sell foreign currency against ringgit provided the underlying payment can be made in ringgit and the transaction is supported by firm commitment. However, hedging of committed transactions involving the following ringgit assets is not allowed:

- Funds in External Account, including fixed deposits;
- Negotiable instruments of deposits;
- Over-the-counter derivatives and structured products which tantamount to lending or borrowing of ringgit between residents and non-residents; and
- Ringgit assets purchased prior to 1 April 2005.

The maturity date of the forward contract should be the expected date of payment or receipt of the

underlying committed transaction. The amount of the forward contract should not exceed the expected sum of payment or receipt of the underlying committed transaction.

3. Ringgit Credit Facilities to Non-Resident Controlled Companies

Non-resident Controlled Companies (NRCCs) are residents. With effect from 1 April 2005, there is no restriction on residents in extending any amount of ringgit credit facilities to NRCCs.

4. Issuance of Ringgit Private Debt Securities

There is no restriction for resident companies to raise domestic credit facility through the issuance of ringgit Private Debt Securities regardless of amount, provided not more than RM10 million is used for investment abroad in a calendar year.

Malaysia allows Multilateral Development Banks (MDBs) or foreign multinational corporations (MNCs) to raise ringgit bonds in Malaysia. Applications for issuance of ringgit bonds in Malaysia by MDBs and MNCs would be considered based on the merit of each case. The information notes relating to such applications may be found at <http://www.bnm.gov.my/fxadmin>.

5. Foreign Currency Accounts of Residents

A resident company or individual with or without domestic ringgit credit facility is free to open Foreign Currency Accounts (FCA) with any licensed onshore banks, licensed offshore banks in Labuan or overseas banks to retain any amount of its foreign currency receipts, other than receipts arising from export of goods from Malaysia.

A resident exporter may open FCA with licensed onshore banks to retain any amount of foreign currency export receipts. The resident exporter is also free to merge its export and non-export

FCA maintained with licensed onshore banks. In line with the investment abroad rules, a resident may convert ringgit into foreign currency and credit into their FCA subject to the permitted limits for investment abroad by residents.

Resident individuals with domestic ringgit credit facilities are also allowed to open FCA solely to facilitate education and employment overseas up to an aggregate overnight limit of:

- (a) USD150,000 with licensed onshore banks;
- (b) USD150,000 with licensed offshore banks in Labuan; and
- (c) USD50,000 with overseas banks.

A resident company maintaining an FCA with licensed offshore banks in Labuan or overseas banks is required to submit a monthly statement (Statement OA) to the Controller.

6. Foreign Currency Accounts of Non-Residents

Licensed onshore banks and licensed merchant banks may open FCA for non-residents. There are no limits on the FCA of non-residents and no restrictions on the inflow and outflow of funds through the foreign currency accounts of non-residents.

7. External Accounts of Non-Residents

Resident financial institutions may open accounts in ringgit, known as External Accounts, for non-residents. There is no overnight limit on External Accounts. A non-resident may make cash ringgit withdrawal of any amount from the External Account. There is also no restriction on the amount that can be converted from ringgit into foreign currency and vice versa by the non-resident account holders with licensed onshore banks.

Non-residents may use their ringgit funds in the External Account for the following purposes:

- (a) Purchase of foreign currency excluding the Restricted Currency;

- (b) Purchase of ringgit assets in Malaysia;
- (c) Payment for goods and services for own use in Malaysia;
- (d) Payment of administrative and statutory expenses incurred in Malaysia;
- (e) Payment under a non-financial guarantee (where the External Account holder is making payment upon the guarantee being called upon);
- (f) Extension of ringgit credit facilities to staff in Malaysia in accordance with the terms and conditions of employment;
- (g) Repayment of ringgit credit facilities permitted by the Controller or in accordance with the terms and conditions of employment; and
- (h) Payments to resident beneficiary for any purpose other than for the following:
 - i. Payment for the import of goods and services;
 - ii. Extension of ringgit credit facilities to residents other than as permitted by the Controller;
 - iii. Settlement under financial guarantees; and
 - iv. Payment on behalf of a third party.

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

- (a) Sale of foreign currency excluding the Restricted Currency;
- (b) Sale of ringgit assets;
- (c) All income derived from Malaysia including salaries, wages, royalties, commissions, fees, rental, interest, profits or dividends;
- (d) Proceeds from ringgit credit facilities permitted by the Controller or in accordance with the terms and conditions of employment;
- (e) Proceeds from repayment of ringgit credit facilities permitted by the

Controller or in accordance with the terms and conditions of employment;

- (f) Transfers of funds from:
 - i. Another External Account of the same account holder of any amount; and
 - ii. Another External Account and/or Resident Account of different account holders by way of:
 - Automated Teller Machine transfer up to RM5,000 per person or company, per day, per bank for any purpose; and
 - Internet-bank transfers up to RM5,000 per person or company, per day, per bank for any purpose.
- (g) Deposit of ringgit notes of not exceeding an aggregate RM10,000 per day; and
- (h) 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 permitted purposes. 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 Government of Malaysia. Such persons or organisations can use funds in the External Accounts for all purposes, including for the permissible purposes mentioned above.

8. Special Status Granted to Selected Companies

- (a) *Offshore Entities in the Labuan International Offshore Financial Centre (IOFC)*

Entities incorporated or registered under the Offshore Companies Act 1990 in the Labuan IOFC are declared as non-

residents for foreign exchange administration purposes.

Offshore entities in Labuan may buy or sell foreign currency (other than the Restricted Currency) against another foreign currency spot or forward with licensed onshore banks, licensed offshore banks (excluding licensed offshore investment banks) in Labuan as well as non-residents outside Malaysia. They may also buy or sell foreign currency (other than Restricted Currency) against ringgit with licensed onshore banks for permitted purposes.

All offshore entities may 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 their External Accounts to facilitate the receipt of reinsurance premiums and for payment of claims arising from reinsurance of domestic insurance business.

Licensed offshore banks in Labuan may receive payments in ringgit from residents arising from fees, commissions, dividends, or interest from deposit of funds with onshore financial institutions. Licensed offshore banks in Labuan may also invest in assets or ringgit 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.

(b) MSC Companies

Companies operating in MSC that are incorporated as separate legal entities, are exempted from foreign exchange

administration 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 permission should be obtained for the MSC status companies to deal with specified persons or in Restricted Currency. In addition, the MSC companies are also required to submit the necessary statistical forms/reports/statements for monitoring purposes.

(c) Approved OHQ may:

- i. open FCA with licensed onshore banks to retain any amount of export proceeds in foreign currency;
- ii. open FCA with licensed onshore banks, 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 any amount of domestic credit facilities in ringgit;
- iv. obtain any amount of foreign currency credit facilities from licensed onshore banks and licensed merchant banks in Malaysia, and from any non-residents, provided the OHQs do not re-lend to or raise the funds on behalf of any resident; and
- v. Invest abroad any amount, including extension of credit facilities to their related overseas companies, to be funded with foreign currency funds or foreign currency borrowing. OHQs may also convert any amount of ringgit for investment abroad if they have no domestic credit facility in ringgit or up to RM10 million per calendar year if they have domestic credit facility in ringgit.

XII. INTELLECTUAL PROPERTY PROTECTION

Intellectual property (IP) protection in Malaysia consists of patent, trademark, industrial design, copyright, layout designs of integrated circuits and geographical indication. Malaysia is a member of the World Intellectual Property Organization (WIPO) and signatory to the Paris Convention (for the protection of IP consists of patent, trademark and industrial designs) and Berne Convention (for the protection of copyright works), which govern the above-mentioned IP.

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 World Trade Organisation (WTO). Therefore the Malaysian laws on IP are kept abreast with the international standards, and do provide adequate protection in the field of IP for both local and foreign investors.

1. Patents

Patents protection is governed by Patents Act 1983 and the Patents Regulations 1986. 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 an 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 20 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 10 years from the date of filing, and may be extended to a maximum of 10 years subject to use. 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, which provides adequate protection for registered trademark and service mark in Malaysia. If a trademark 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 trademark 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 Designs

Industrial designs 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 local 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 five (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 artistic works literature, musical, film, sound recording, broadcasting and derivative works. 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 and derivative works 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 50 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 include such powers as 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.

Amendment to the Act in the year 2003, confers the power of arrest (including arrest without warrant) to the Enforcement Officers. Further amendment to The Act was made in 1997 to accommodate requirement of MSC.

5. Layout Designs of Integrated Circuits

Layout designs of integrated circuits are governed by the Layout Designs of Integrated Circuits Act 2000. The Act recognizes a protection for layout

designs of integrated circuits based on its originality, creator's own invention and the creation is freely created. There is no registration of the layout designs of integrated circuits.

The duration of its protection is 10 years from the date of its commercial exploitation or 15 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 totally or partially transferred to either party, by way of assignment, licence, testamentary instrument and devolution by operation 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 IP Protection, please contact the Ministry of Domestic Trade and Consumer Affairs and the Intellectual Property Corporation of Malaysia.

6. Geographical Indication

Geographical Indication is governed by the Geographical Indications Act 2000 and Geographical Indications Regulations 2001. Geographical Indication is defined as an indication which identifies any goods as originating in a country or territory, or a region or locality in that country or territory, where a given quality, reputation or other characteristic of the goods is essentially attributable to their geographical origin, geographical indication can be applied to any natural product, craft or industry.

The Geographical Indications Act 2000 provides a protection system regardless of whether or not the geographical indication is registered, protection is provided against another geographical indication which, although literally true as to the country, territory, region or locality in which the goods originate, falsely represent to the public that the goods originate in another country, territory, region or locality.

The Act provides rights of use in the course of trade to the producer who are carrying their

activity in the geographical area specified in the register. Any interested person may institute civil proceedings in the court for any infringement of his rights. The period of protection is 10 years, which is renewable for a period of every 10 years thereafter.

For further details, please contact Intellectual Property Corporation of Malaysia (MyIPO) at:-

Intellectual Property Corporation of Malaysia
Level 10, 27, 29, 30 & 32, Menara Dayabumi
Jalan Sultan Hishamuddin
50623 Kuala Lumpur.
Tel : 603 - 2274 8671
Fax : 603 - 2274 1332
Website : www.myipo.gov.my

XIII. 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 petroleum Nasional Berhad (PETRONAS). The Petroleum Regulations 1974, which were amended on 14 January 1991, vested powers to the Ministry of Domestic Trade and Consumer Affairs and 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.

XIV. 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.

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 Electricity and Gas Supply Department. The Energy Commission, among others, is responsible for the gas reticulation industry.