



PRACTICE NOTE 1 Issued Pursuant to the Guidelines on the Acquisition of Interests, Mergers and Take-overs by Local and Foreign Interests and Guidelines on the Acquisition of Properties by Local and Foreign Interests (FIC Guidelines)

Date Issued: 5 December 2006

Introduction

1. This practice note sets out the following:
 - (a) Types of transactions requiring the approval of the SC in compliance with the FIC Guidelines; and
 - (b) Application procedures to the SC.
2. This practice note must be read together with the FIC Guidelines.

Types of Transactions

3. All transactions requiring the approval of the SC in compliance with the FIC Guidelines, if they fall within the purview of the SC.
4. Applications pursuant to section 32 of the *Securities Commission Act 1993* (SCA), such as:
 - (a) *Bumiputera Issue/Private Placement/Restricted Issue*

Companies issuing new securities by way of Bumiputera issue, private placement or restricted issue **regardless** of the number of shares to be issued, the percentage of share capital to be issued or value of purchase consideration.

(b) *Initial Public Offering (IPO)*

Any company seeking listing and quotation for its securities on the Main Board, Second Board or MESDAQ Market of Bursa Malaysia.

In instances where these companies have been granted Multimedia Super Corridor (MSC) status, they are exempted from the FIC Guidelines. However, they are required to **notify** the SC in writing of the proposal, and submit together relevant documents showing that the proposed listed vehicle has been granted MSC status.

(c) *Acquisitions of Business/Company*

Acquisitions of–

- more than 50% or more of the business/company in Malaysia or outside of Malaysia by local interests, regardless of whether the value is less than RM10 million;
- every 15% or more of the business/company in Malaysia by foreign interests, regardless of whether the value is less than RM10 million (with the exception of open market acquisitions on Bursa Malaysia meant for short-term holdings); or
- every 30% or more of the business/company in Malaysia by any associated or non-associated group of foreign interests, regardless of whether the value is less than RM10 million (with the exception of open market acquisitions on Bursa Malaysia meant for short-term holdings).

(d) *Restructuring Scheme*

Any company issuing new securities for purposes of implementing a restructuring scheme, irrespective of value.

(e) *Issuance of Private Debt Securities (PDS)*

Companies issuing PDS which are convertible into new shares, valued at more than RM10 million, or where the proceeds raised from the securities issue are partly or fully to be used to finance the acquisition.

(f) *Transfer of Listing Status*

Any listed company intending to transfer from MESDAQ Market of Bursa Malaysia to Main Board or Second Board of Bursa Malaysia.

5. Applications in relation to acquisitions, take-overs and mergers under sections 33 and 34 of the SCA and the *Malaysian Code on Take-overs and Mergers 1998* (Code)

Any acquisition which results in a take-over or merger of any local company or business pursuant to section 33 of the SCA, compulsory acquisition pursuant to section 34 of the SCA and the Code. The said acquisition may include acquisitions in the open market by the offeror.

6. Applications in relation to the shareholding structure of the unit trust and real estate investment trust (REIT) management companies.
7. Applications in relation to the shareholding structure of companies that are licensed or registered with the SC or approved under the *Securities Industry Act 1983* (SIA) and *Futures Industry Act 1993* (FIA).

Note: When making a submission, please refer to Appendix I for transactions that require the approval of both MITI and the SC.

Proposals That Do Not Require the Approval of Both the SC and the FIC Under the FIC Guidelines

8. The following proposals do not require the approval of both the SC and the FIC under the FIC Guidelines:
 - (a) Rights issue on equal basis;
 - (b) Bonus issue;
 - (c) ESOS options;
 - (d) Capital repayment/distribution to existing shareholders;
 - (e) Issuance of shares which are not convertible and has no voting powers;
 - (f) Acquisition in MSC companies;
 - (g) Asset-backed securities; and
 - (h) Acquisition of properties by a public REIT fund.
9. For paragraphs 8(d) and (f), the company is required to **notify** the SC in writing of the proposal, and submit together relevant documents showing that the target company has been granted MSC status (only applicable for acquisition of MSC companies) and declare that the foreign equity pursuant to the proposal shall not be more than 70% (only applicable for capital repayment/distribution of shares held in the subsidiary companies to the existing shareholders of the applicant).

Application Procedures

10. An application for the transactions mentioned above shall be made to the SC by submitting the following:
 - (a) Two copies (inclusive of one original copy) of the proposal in the form of hardcopy and one softcopy; and
 - (b) A softcopy of the record of depositors (RoD) categorised by Bumiputera shareholders from the share registrar of the applicant company (if applicable). The total effective Bumiputera shareholding declared in the proposal, must reconcile with the Bumiputera shareholders categorised in the RoD. In the event the RoD is not categorised, the adviser may at its own discretion reconcile the Bumiputera shareholders with the Master List of the RoD, which would further increase the total effective Bumiputera shareholders in the applicant company.
11. Reconciliation of RoD is **exempted** for private placement under paragraph 3 of *Guidance Note 8C¹* of the *Policies and Guidelines on Issue/Offer of Securities*. However, the RoD is to be submitted and categorised by the type of shareholders.
12. Submission of RoD is **exempted** for the following;
 - (a) All transactions (other than restructuring exercises and acquisition/disposal of assets which result in a significant change in the business direction or policy of a public-listed company) by companies that have been listed within the last three years; and
 - (b) Companies that have been conferred Bumiputera-controlled status by the FIC.² However, a copy of the approval letter from the FIC conferring the status must be submitted.
13. All applications must be submitted by the principal adviser³ on behalf of the **purchaser only**, and addressed to:-

The Chairman
Securities Commission
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur
Tel No.: (603) 6204 8176
Fax No.: (603) 6201 5158

¹ Which limits the number of shares and discount to 10% and where shareholders' mandate was previously obtained.

² FIC refers to FIC Putrajaya.

³ Only in relation to applications under sections 32, 33 and 34 of the SCA.

14. Compliance status of the equity condition(s) imposed on the applicant company by the SC shall be reported to the SC **one month** before the expiry date of compliance and/or whenever requested by the SC.
15. The SC must be informed of the dates of completion for all approved proposals.
16. All transactions requiring approval of the FIC under the FIC Guidelines, that do not fall within the purview of the SC, must be submitted at the following address:

The Secretary
Foreign Investment Committee
Economic Planning Unit
Prime Minister's Department
Level -1, Block B5
Federal Government Administrative Centre
62502 Putrajaya
Tel No.: (603) 8888 3333
Fax No.: (603) 8888 3917

17. For any enquiries on matters relating to this *Practice Note 1*, please contact:

Equity Compliance Unit
Tel No.: (603) 6204 8000
Fax No.: (603) 6201 5158

Practice Note 1 – Appendix I

A. Transactions To Be Satisfied By Cash		
Applicant Company	Target Company⁴	Approving Authority
Non-licensed (Bhd ⁵)	– Licensed (Bhd) – Non-licensed (Bhd) but subsidiaries of target company are licensed	SC/MITI
Non-licensed (Bhd)	Licensed (Sdn Bhd)	MITI/SC ⁶
Licensed (Bhd)	– Licensed (Bhd) – Non-licensed (Bhd) but subsidiaries of target company are licensed	SC/MITI
Licensed (Bhd)	Licensed (Sdn Bhd)	MITI/SC ⁶
Foreign ⁷	– Licensed (Bhd) – Non-licensed (Bhd) but subsidiaries of target company are licensed	SC/MITI
Foreign ⁷	Licensed (Sdn Bhd)	MITI ⁸
Non-licensed (Sdn Bhd)	– Licensed (Sdn Bhd) – Non-licensed (Sdn Bhd) but subsidiaries of target company are licensed	MITI
Licensed (Sdn Bhd)	– Licensed (Sdn Bhd) – Non-licensed (Sdn Bhd)	MITI
B. Transactions To Be Satisfied By The Issuance Of Shares		
Applicant Company	Target Company¹	Approving Authority
Non-licensed (Bhd)	– Licensed (Bhd/Sdn Bhd) – Non-licensed (Bhd/Sdn Bhd) but subsidiaries of target company are licensed	SC/MITI
Licensed (Bhd)	– Licensed (Bhd/Sdn Bhd) – Non-licensed (Bhd/Sdn Bhd) but subsidiaries of target company are licensed	SC/MITI
Foreign ⁹	– Licensed (Bhd/Sdn Bhd) – Non-licensed (Bhd/Sdn Bhd) but subsidiaries of target company are licensed	SC/MITI
Non-licensed (Sdn Bhd)	– Licensed (Sdn Bhd) – Non-licensed (Sdn Bhd) but subsidiaries of target company are licensed	MITI
Licensed (Sdn Bhd)	Licensed (Sdn Bhd)	MITI
Licensed (Sdn Bhd)	Non-licensed (Sdn Bhd)	MITI/FIC
Non-licensed (Sdn Bhd)	Non-licensed (Sdn Bhd)	FIC

⁴ Only applicable for acquisition transactions and involving general offers.

⁵ Berhad includes public-listed companies.

⁶ To be considered by the SC if the transaction involves a significant change of business direction of the public-listed company.

⁷ Not listed on Bursa Malaysia Securities Berhad.

⁸ To be considered by the MITI if the transaction involves a stand alone proposal and does not falls under the jurisdiction of the SC.

⁹ Refers to foreign-listed company on Bursa Malaysia Securities Berhad.