



▶ New FIC Guidelines on the Acquisition of Interests, Mergers and Take-Overs by Local and Foreign Interests (“The Guidelines”)

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## *Corporate & Commercial Law Updates*

### ▶ **New FIC Guidelines on the Acquisition of Interests, Mergers and Take-Overs by Local and Foreign Interests (“The Guidelines”)**

The Guidelines came into effect on 1 January 2008.

The purpose of the Guidelines is to clarify the rules and regulations of the Foreign Investment Committee (“FIC”) pertaining to the acquisition of interests, mergers and take-overs by local and foreign interests.

Among the transactions which require the approval of the FIC are:

- (a) any proposed acquisition of interests in a local company or business in Malaysia which is RM10 million or more in value, by local or foreign interests;
- (b) any proposed acquisition of interests of a local company or business in Malaysia by any means, which results in the transfer of ownership or control to foreign interests;
- (c) any proposed acquisition of interests and control of more than 50% of the voting rights in any local company or business in Malaysia by local interests, regardless of whether the value is less than RM10 million;
- (d) any proposed acquisition of interests in any local company or business in Malaysia regardless of whether the value is less than RM10 million by:
  - (i) any foreign interests with the voting rights to the level of 15% or more which will result in an increase of the voting rights to the level of 15% or more; or
  - (ii) any associated or non-associated group of foreign interests of the cumulative voting rights to the level of 30% or more or which will result in an increase of the cumulative voting rights to the level of 30% or more;
- (e) any proposed merger or take-over of any local company or business in Malaysia by local or foreign interests;
- (f) any proposed joint venture involving 2 or more parties in a local company;
- (g) any control of a local company or business in Malaysia through any form of management agreement, technical assistance agreement or other arrangements;
- (h) any transaction by statutory bodies, companies and their subsidiaries owned by the Federal or State Governments; and
- (i) any charging of shares in a local company to any foreign interests where the value of loan or the market value of the shares is RM10 million or more.

Among the situations to which the Guidelines shall not apply are that, any acquisition of interests in a local company which operates in the approved area in any regional development corridor by companies that have been granted the status by the local authority as determined by the Government.



## ► **New FIC Guidelines on the Acquisition of Properties by Local and Foreign Interests (“the Guidelines”)**

The Guidelines came into effect on 1 January 2008.

The purpose of the Guidelines is to clarify the rules and regulations of the FIC pertaining to the acquisition of properties by local and foreign interests.

Among the transactions which require the approval of the FIC are:

- (a) any acquisition of property which is valued at RM20 million and more by local interests. The property has to be registered under a locally incorporated company;
- (b) any acquisition of property by foreign interests from local interests and other foreign interests;
- (c) any acquisition of property which will be developed as a development project other than residential units;
- (d) the leasing of property for a term of 10 years and above by foreign interests;
- (e) any disposal of property by foreign interests to other foreign interests;
- (f) any disposal of property by foreign interests to local interests valued at more than RM20 million;
- (g) any charging of property in Malaysia to foreign interests including foreign banks and financial institutions incorporated outside Malaysia; and
- (h) any acquisition of property by a Real Estate Investment Trust (REIT) management company through a private REIT fund.

Foreign interests are allowed to acquire industrial land without any price limit, registered under a locally incorporated company which acquisition will be subjected to the conditions for acquisition and conditions for foreclosure.

Any transfer of property to a foreigner based on love and affection is allowed among immediate family members only.



## ► Capital Markets and Services (Price Stabilization Mechanism) Regulations 2008 (“the Regulations”)

The Regulations, which came into effect on 11 January 2008, provide that:

- (a) “initial stabilizing price” means the price at which the stabilizing manager takes any initial stabilizing action;
- (b) “stabilizing manager” means a person who is appointed under the Regulation to undertake a stabilizing action on behalf the issuer;
- (c) the stabilizing manager shall take stabilizing action only after he is reasonably satisfied that the price of the relevant securities is not false or misleading;
- (d) “stabilizing action” means that the stabilizing manager may purchase any of the relevant securities during the stabilizing period or offer or attempt to do anything in relation to the purchase during the stabilizing period, for the sole purpose of preventing or minimizing any reduction in the market price of the relevant securities;
- (e) restrictions on stabilizing action include the stabilizing manager not taking any stabilizing action in respect of the relevant securities where the stabilizing manager or its associate has, in connection with the offer relating to the relevant securities, an option or other right to purchase or subscribe for the relevant securities, unless the existence and principal terms of the option or right have been disclosed in the prospectus;
- (f) the stabilization period for any stabilization action shall be 30 calendar days commencing from the first day of trading on the stock exchange of the relevant securities.

## ► Application for Waiver of Stamp Duty under Section 15 and Section 15A of The Stamp Act 1949

Effective 1 January 2008, all applications for waiver of stamp duty with regard to cases of reconstructions or amalgamations of companies and cases of transfer of property between associated companies (i.e. under Section 15 and 15A of the Stamp Act 1949) should be addressed directly to the office of the respective State Director-General of the Inland Revenue Board of Malaysia.



## ► Further Liberalisation of Foreign Exchange Administration Requirements

Effective 1 January 2008:

- (a) the requirement to submit an Overseas Account Statement by a resident company maintaining an overseas account, including a foreign currency account with a licensed offshore bank in Labuan, is abolished; and
- (b) the requirement to submit an Inter-Company Account Statement by a resident company maintaining an inter-company account with a non-resident company is also abolished.