



Corporate & Commercial Law Update

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▶ INVESTMENT REFORMS AS ANNOUNCED BY THE PRIME MINISTER ON JUNE 30, 2009

(a) Repeal of Foreign Investment Committee (FIC) Guidelines on the Acquisition of Interests, Mergers and Takeovers:

- The FIC guidelines on the acquisition of interests, mergers and takeovers are repealed;
- The FIC will, therefore, no longer process such share transactions, nor impose equity conditions on such transactions;
- The equity conditions imposed by the respective sector regulators will continue to apply;
- For strategic sectors, sector regulators are best placed to oversee their respective sectors and to tailor equity conditions according to the requirements and strategic nature of each sector; and
- There will no longer be any equity conditions imposed on sectors not deemed strategic.

(b) Treatment of Listed Companies:

- The conditions imposed on fund raising exercises by listed companies have also been significantly eased in the context of raising Malaysia's attractiveness as a listing destination;
- Currently, companies going for initial public offerings (IPO) will need to meet both the Securities Commission's (SC) public spread requirement (25%) and FIC's bumiputera equity requirement of 30%. Going forward:
 - (a) FIC requirement is removed;
 - (b) SC will now impose a bumiputera equity requirement as part of the public spread requirement (specifically 50% of public spread to be offered to Bumiputeras);
- There will no longer be any equity condition imposed post IPO except in the case of reverse takeovers and backdoor listings.

Please also see below for an extract of the FAQs titled "BUMIPUTERA EQUITY REQUIREMENTS FOR PUBLIC LISTED COMPANIES" issued by the SC on July 1, 2009.

(c) FIC Guidelines on the Acquisition of Properties:

- Going forward, FIC will only process transactions involving the dilution of bumiputera interests and/or Government interests in properties valued at RM20 million and above, whether bought directly or indirectly (through acquisition of companies owning properties);
- All other property transactions shall no longer require the approval of FIC;
- Except in the event of a dilution, as stated above, foreign interests will no longer be required to apply for approval to the FIC for the acquisition of properties. However, foreign interests cannot acquire properties below specified threshold limits. The threshold amounts for commercial properties will be RM500,000. For the purchase of residential properties, the present threshold of RM 250,000 is maintained until the end of 2009, and with effect January 1, 2010, it will be RM 500,000;



- This amendment of the property guidelines significantly eases the regulations on property acquisitions, while at the same time enhancing transparency and reducing regulatory processes.
- A copy of the revised FIC Guidelines on the acquisition of properties can be found on the EPU website (<http://www.epu.gov.my>)

Please also see below for the highlights of the revised Guidelines which took effect on June 30, 2009.

(d) Fund Management Liberalisation

- Ownership in the wholesale segment of the fund management industry fully liberalized to allow 100% ownership for qualified and leading fund management companies to establish operations in Malaysia.
- For the retail segment, the foreign shareholding limits for unit trust management companies have been raised to 70% from current level of 49%.

Please also see below for an extract of the FAQs titled “LIBERALISATION OF EQUITY HOLDINGS IN CAPITAL MARKET INTERMEDIARIES” issued by the SC on 1 July 2009.

(e) EKUINAS

As part of this new approach, the Government will set up Ekuiti Nasional Berhad (EKUINAS), as a private equity fund to ensure meaningful and effective participation by bumiputeras, as well as to stimulate investments in sectors with high growth potential. The Government will provide EKUINAS an initial endowment of RM500 million, with a target of scaling up EKUINAS to become a RM10 billion fund. EKUINAS will jointly invest with private sector and investment decisions will be commercially driven. This is to ensure meritocracy in the selection of companies that will benefit from capital injection and be nurtured for growth.

► **New FIC Guidelines on the Acquisition of Properties**

- Pursuant to the announcements by the Prime Minister on June 30, 2009, the new Guidelines on the Acquisition of Properties were issued and take effect from **June 30, 2009**.
- With the issuance of the new Guidelines, the Guidelines on the Acquisition of Properties by Local and Foreign Interests and the Guidelines on the Acquisition of Interests, Mergers and Take-Overs by Local and Foreign Interests dated 1 January 2008, are repealed.
- The new Guidelines apply only to the following (unless exempted under Appendix 1):
 - (a) **direct** acquisition of property valued at RM20 million and above, resulting in the dilution in the ownership of property held by bumiputera interests and/or government agencies; and
 - (b) **indirect** acquisition of property by non-bumiputera interests through acquisition of shares, resulting in a change of control of the company owned by bumiputera interests and/or government agencies, having property more than 50% of its total assets, and the said property is valued more than RM20 million.



- The Guidelines do set out restrictions against acquisition by foreign interests in respect of certain properties (which have also been liberalised to a large extent). Under the new Guidelines, foreign interests are just not allowed to acquire:
 - Residential units valued at less than RM250,000 per unit;
 - Properties other than residential units valued at less than RM500,000 per unit (above the threshold, foreigners will no longer need to refer to FIC for the purchase of properties);
 - Residential units under the category of low and low-medium cost as determined by the State Authority;
 - Properties built on Malay reserved land; and
 - Properties allocated to Bumiputera interest in any property development project as determined by the State Authority.

► **FAQS ISSUED BY THE SECURITIES COMMISSION (as extracted from the SC website on July 1, 2009)**

- **Bumiputera equity requirements for public listed companies**

General

1. What proposals would be considered by the SC under the new Bumiputera equity requirement?

The proposals that will be considered by the SC under the new Bumiputera equity requirement are those proposals involving listing of companies, reverse take-over (RTO) and transfer of listing.

2. When will the new policy take effect?

The new policy will take effect immediately. This new requirement will supersede all existing Bumiputera equity conditions previously imposed on public listed companies (PLCs).

3. Do companies need to comply with any Bumiputera equity requirement imposed by the relevant Ministries as part of their licensing conditions?

Yes, where relevant, companies must obtain sector regulator's approval prior to submitting any proposals to the SC.

IPO

4. What is the new Bumiputera equity requirement for companies seeking listing on the Main Market?

Currently, all companies seeking listing must meet the 25% public spread requirement under the Bursa Malaysia Listing Rules.

Companies with Malaysian-based operations seeking listing on the Main Market are required to allocate 50% of the public spread requirement to Bumiputera investors at the point of listing. This includes the portion made available for subscription via balloting, 50% of which are to be made available to retail Bumiputera investors. Hence, the Bumiputera equity requirements will be subsumed under the public spread requirements.

Companies with Malaysian-based operations are defined as companies deriving more than 50% of their profits after tax from operations based in Malaysia.



5. How do companies comply with the new Bumiputera equity requirement?

The 25% public spread requirement is generally fulfilled by companies in the following manner:-

- i. companies are expected to make available up to 5% for subscription by the general public via the balloting process; and
- ii. the balance of up to 20% can be placed out to non-substantial shareholders i.e. those owning less than 5% each.

Under the new policy, companies must apply to MITI, or to MOF (if licensed financial institutions) for the allocation of up to the 50% of the public spread requirement shares to MITI or MOF recognized Bumiputera investors.

When the company offers up to 5% of its issued capital for subscription via the balloting process, 50% of these shares must be offered to Bumiputera public.

6. What if Bumiputera allocation is not fully subscribed?

In the event that MITI or MOF approved Bumiputera investors take up less than the 10% of the shares offered to them, the balance of the shares that are unallocated will be made available for subscription by the Bumiputera general public in addition to the mandatory requirement under the IPO balloting process. Say only 8% of the shares offered are taken up by MITI and MOF approved Bumiputera investors, the remaining 2% of the shares will be added to the balloting portion, thus making the total available for subscription by the Bumiputera public to be 4.5%.

The company will be deemed to have complied with the Bumiputera equity requirement once it has completed this process.

7. If a company has existing Bumiputera shareholders, can the Bumiputera shareholders be recognized to fulfill the Bumiputera equity requirement?

Yes, subject to recognition by MITI /MOF and only if the Bumiputera shareholder is not a substantial shareholder i.e. holds less than 5% of the issued and paid-up share capital.

Example:

Existing Bumiputera shareholders: 8%, each holding less than 5%

Bumiputera equity requirement to be fulfilled: 12.5% - 8% = 4.5%

8. What if the companies have met with the 12.5% Bumiputera equity requirement, do they still need to offer 50% of the shares under the balloted public offer portion to Bumiputera investors?

Whenever a company undertakes a public balloting exercise, it must make available up to 50% for subscription by Bumiputera public.



9. Does the new Bumiputera equity requirement apply to all companies seeking listing?

The equity requirement only applies to companies with Malaysian-based operations seeking listing. Companies with MSC status, BioNexus status and companies with predominantly foreign-based operations are exempted from the Bumiputera equity requirement.

Although the Bumiputera equity requirement does not apply to these companies, they are, however, required to notify the SC.

10. What is the definition for companies with predominantly foreign-based operations?

The determination is based on the profit contribution from domestic and foreign operations of the group for the past year, in which the profits after tax derived from the foreign-based operations are higher than the Malaysian-based operations i.e. more than 50%.

11. Does the new Bumiputera equity requirement apply to companies which have been granted approval for listing but have yet to be listed?

Yes, the new Bumiputera equity requirement also applies to such companies.

12. What is the Bumiputera equity requirement for companies seeking listing on the ACE Market?

For listing on the ACE Market, companies are required to allocate 12.5% of their enlarged issued and paid-up share capital to MITI-recognized Bumiputera investors within 1 year after achieving the profit record required for a listing on the Main Market, or 5 years after being listed on ACE Market, whichever is the earlier.

This also applies to all companies currently listed on the MESDAQ Market that have yet to comply with the Bumiputera equity requirements.

13. What should a company listed on the ACE Market do to comply with the Bumiputera equity condition after achieving the profit track record or after being listed for 5 years?

For the purpose of complying with the equity condition imposed, the company needs to submit to the SC on its proposal to comply with the Bumiputera equity condition within six (6) months from the trigger date.

14. Under the new Bumiputera equity requirement, does that mean the Bumiputera shareholding in a company is restricted to 12.5%?

The 12.5% is the prescribed minimum limit. Of course the Bumiputera shareholding can be higher. For example, in the situation where 20% of the shares are held by existing Bumiputera investors, with the 12.5% Bumiputera public spread requirement, this will potentially bring the total Bumiputera shareholding to 32.5%.



Subsequent Fund Raising/Corporate Exercise

15. Are PLCs required to make a submission to the SC for subsequent fund raising exercises involving placement of shares?

No. However, where a proposed placement results in the entry of one or more new controlling shareholders of the company, a submission must be made to the SC. For issuance of shares which results in the entry of new controlling shareholders, the revised Bumiputera equity condition will be imposed. This is because the entry of new controlling shareholders through a reverse take-over or backdoor listing of assets is treated like an IPO and requires the company to meet the IPO guidelines including the Bumiputera equity condition.

16. Are PLCs required to make a submission to the SC for subsequent corporate exercises that result in RTO and/or transfer of listing that they intend to undertake?

Yes. A submission should be made to the SC.

17. What are the Bumiputera equity conditions to be imposed on PLCs in the case of RTO?

For RTO, the PLC is required to comply with the 12.5% Bumiputera equity requirement 3 years after the implementation of the proposal.

18. What are the Bumiputera equity conditions to be imposed on PLCs in the case of transfer of listing?

In the case of a transfer of listing, the PLC is required to comply with the 12.5% Bumiputera equity requirement at the point of transfer.

19. If a PLC has outstanding Bumiputera equity requirement previously imposed pursuant to a fund raising exercise, will the equity condition be removed under the new policy?

Yes. The outstanding equity conditions previously imposed pursuant to subsequent fund raising exercises undertaken by PLCs will be removed with immediate effect.



- **Liberalisation of equity holdings in Capital Market Intermediaries**

General

- 1. How would the liberalisation of the capital market intermediation industry (broking and fund management) affect our domestic intermediaries?**

Our domestic intermediaries have demonstrated the ability to compete effectively with the gradual liberalisation of the capital market over the years. They have now built a strong domestic presence and have been managing the gradual opening up of the capital market well, with several intermediaries successfully venturing abroad. Our intermediaries are now better prepared to compete with the next phase of liberalisation in the capital market based on the strength of their domestic base.

The new equity framework for market intermediaries is part of the broader opening up of the financial and services sectors announced by the government earlier this year. Our domestic intermediaries can take advantage of potential opportunities through tie-ups with foreign intermediaries for expansion of their business both domestically and internationally. This liberalisation will enable them to have greater flexibility in re-organising their business model by forming strategic partnerships with foreign companies for international expansion of their operations.

The presence of foreign companies will enhance competition and innovation in the Malaysian capital market, benefiting both the industry and investors. These companies are expected to broaden and deepen the range of products and services that are offered in our capital market, and provide a platform for products to be developed and distributed from Malaysia to serve regional and global investment needs. This will ensure that Malaysia continues to appear on the radar screen of the international investment community. Investors are also expected to benefit through the availability of a wider selection of products and services.

- 2. Does this mean that any foreign company can apply for a licence?**

The new equity framework is only available for foreign companies which have strong value proposition and can demonstrate the ability to add value to the Malaysian capital market. These foreign companies must exhibit a good track record in their international operations including financial position, reputation and expertise, and demonstrate proven competence. They will also need to provide a viable business plan and specific deliverables which will be monitored on a regular basis.

- 3. Is SC allowing new companies to enter the Malaysian market?**

There will be no new licences issued for stockbroking firms apart from the two new stockbroking licences to be issued for companies that can intermediate transactions from the Middle East. Three licenses were announced last September, of which only one has been approved for Nomura Securities.

For fund management companies, new licenses will be issued on a selective basis, to those who have demonstrated strong proposition in their business plans and other areas as stated in Q2. Similar treatment will be applied to new unit trust management companies, where only those who can value add to the growth of the local market such as through lower transaction cost and greater product range will be permitted entry.



4. Apart from meeting regulatory requirements, will there be other considerations in granting a license to companies seeking to undertake regulated activities in Malaysia?

The liberalisation of equity holdings for capital market intermediaries is intended to enhance the attractiveness of the local market for foreign participants and at the same time provide a platform for greater competition and wider choice of intermediation services. In this regard, in the granting new licenses, the SC will consider various areas, which will include:

- The entities must be able to demonstrate a strong value proposition to and a value add to the development of the Malaysian capital market
- Companies must exhibit a good track record in its international operations. The track record will include financial position, reputation and expertise
- They must demonstrate competence in the area they are seeking a license in;
- They must provide a viable business plan and specific deliverables

5. Apart from the relaxation of the shareholding requirements, will there be changes related to the requirement for Bumiputera employees, licensed representatives and directors?

At this stage, the requirement for companies to have 30% Bumiputera employees, licensed representatives and directors will be maintained to focus on capacity building.

6. Are current capital market intermediaries allowed to vary their shareholding structure in accordance with the new requirements?

Yes. Capital market intermediaries currently licensed may restructure their shareholding structures subject to the demonstrating the above mentioned criteria. In addition, it should also be noted that a change of the controlling shareholder will also trigger the requirement to make the appropriate applications to the SC, under Section 60(7) of the CMSA. In this regard, if there is a substantial change of shareholding and business direction, the SC may require the applicants to seek prior approval.

7. Will entities without an international presence be allowed to seek a license to carry out the above regulated activities in Malaysia?

Subject to demonstrating the above criteria, entities with strong value proposition but without international presence may be considered for a license.

8. Can foreign individuals be owners of entities seeking a license in Malaysia?

Yes, subject to demonstrating the above criteria. However, it should be noted the individual must be able to demonstrate a higher level of competence, corporate governance and have adequate support, resource and competence.



9. Will there be conditions imposed on the license?

Apart from operational conditions related to regulatory requirements imposed on the licenses, the license to entities which are substantially owned by foreign entities will be conditional upon meeting specific measurable deliverables based on representation by the companies within the timelines agreed upon.

Dealing in Securities

10. What are the specific objectives in liberalizing the equity shareholding for stock broking companies?

The liberalization efforts are intended to encourage more foreign participation and to facilitate strategic partnerships with domestic stockbrokers to enhance their position and to expand their base of operations both domestically and internationally.

11. To whom do the new shareholding equities requirements apply to?

The new equity requirements apply to entities seeking a license for stock broking business and companies seeking a license for unit trust management companies.

The new requirements also apply to existing capital market intermediaries. Existing capital market intermediaries may seek a restructuring of their shareholding structures subject to meeting the criteria above.

12. Will the shareholding requirements be considered based on direct ownership or based on effective interests?

Generally, foreign ownership will be considered on an effective basis.

Fund Management Companies and Unit Trust Management Companies

13. What are the specific objectives shareholding requirements for fund management companies?

The liberalization efforts are intended to facilitate growth of private wealth management which will enable Malaysia to achieve its potential to be an international hub for both conventional and Islamic fund management. This is expected to also directly deepen the liquidity in the trading of equity, bond and derivative markets. Apart from this, the liberalisation of the equity holdings is intended to encourage new intermediaries to broaden the range of products they offer, by encouraging product innovation and competitiveness.

There is also an expectation that the direct impact of these measures will be the increase in the pool of product specialists available in Malaysia.



14. Will there be differentiation factors for the existing special scheme foreign fund management companies and foreign Islamic fund management companies?

Existing special scheme foreign fund management companies and foreign Islamic fund management companies have benefited from the incentives provided under the scheme such as seed funding. New licenses will not have seed funding allocated but can benefit from other incentives such as tax benefit for Islamic fund management companies and regulatory framework to attract syariah compliant investments to be based here.

15. Are existing fund management companies allowed to restructure their shareholding structures to include greater foreign participation?

Yes, based on their own plans, existing fund management companies can sell up to 70% equity in the company to foreign company if the foreign company is able spur the company's growth and development.

16. Given the relaxation of foreign ownership, can foreign issued products within the group of companies be made available in Malaysia?

Yes, subject to the necessary approvals being received. At present the only jurisdiction that we have reciprocal arrangement for the cross-border marketing and distribution of funds is with the Dubai International Financial Centre.

► **AMENDMENTS TO THE LABUAN OFFSHORE FINANCIAL SERVICES AUTHORITY ACT 1996**

The Labuan Offshore Financial Services Authority (Amendment) Act 2008 which came into force on June 15, 2009 provides for *intra alia* the following amendments to the Labuan Offshore Financial Services Authority Act 1996:

- (a) functions and powers of the Labuan Offshore Financial Services Authority ("the Authority")
 - the Authority may if it is satisfied that it is necessary to do so issue directions to an offshore financial institution in respect of the action to be taken by offshore financial institution relating to its members or servants;
- (b) the obligation to preserve secrecy
 - no member, officer, servant, agent or consultant of the Authority or person who has by any means access to any record, book, register, correspondence, document, material or information relating to the business and affairs of the Authority in the performance of his duties or the exercise of his functions shall give, divulge, reveal, publish or otherwise disclose to any person such record, book, register, correspondence, document, material or information unless he is lawfully required to do so by any court or under any written law;
 - contravention of which is an offence punishable with a fine not exceeding RM500,000 or imprisonment for a term not exceeding 6 months or both;
- (c) submission of information by, and examination of, offshore financial institution or any corporation related to the offshore financial institution
 - the Authority may require any offshore financial institution or any corporation related to the offshore financial institution to submit to the Authority any information:



- relating to the identity, affairs, account or particulars of any person who is a customer of the offshore financial institution or any corporation related to the offshore financial institution, or his nominee or beneficiary;
- relating to the identity, affairs or particulars of a beneficial owner of an account opened with the offshore financial institution or any corporation related to the offshore financial institution, or relating to such account;
- which the Authority deems necessary or expedient for performance of such supervisory functions;
- the Authority may disclose any of the information submitted to *inter alia* any relevant authority or body in Malaysia or of any other country which exercises supervisory functions over the operations of the offshore financial institution (“the home supervisory authority”) and inform the home supervisory authority of any adverse conditions in the offshore financial institution if satisfied that such information is necessary for the supervisory functions of the home supervisory authority;
- the Director General of the Authority or any person authorised by the Authority may examine and inspect, under condition of secrecy, any offshore financial institution or any corporation related to any offshore financial institution for the purpose of verifying the information submitted.

► PREMIUM REBATES FOR PURCHASING INSURANCE COVERS DIRECTLY FROM INSURERS

On June 19, 2009, Bank Negara Malaysia announced that with effect from July 1, 2009 individuals who purchase general insurance covers *directly from insurance companies will be eligible to receive premium rebates, which quantum will depend on the type of insurance covers purchased.

- For motor insurance, individuals will receive 5% premium rebate in the first year of implementation and 10% thereafter.
- For others (including businesses), insurance companies have the flexibility of providing the rebates.

* includes walk-in, through the internet, direct mailing and telemarketing channels.