

Chapter 6 – Foreign Investment Committee (FIC) Guidelines

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Learning Objectives

What you should achieve after completing this chapter:

- Understand the rationale for FIC guidelines;
- Be aware of the scope and application of the current FIC rules; and
- Understand the implications of non-compliance to FIC rules.

1. Introduction

The Foreign Investment Committee (FIC) of the Prime Minister's Department has set out general foreign investment guidelines (FIC Guidelines). In addition, there are specific laws, rules and regulations that deal with foreign investment in particular businesses or sectors.

2. Objectives and Rationale for FIC Guidelines

The FIC has been set up to regulate both foreign and local investments in Malaysia. Under the FIC Guidelines, companies incorporated in Malaysia may have in aggregate foreign interest of up to 30% with the remaining 70% to be held by Malaysians, including at least 30% bumiputeras (Malays and natives of Sabah and Sarawak). However this policy is not rigid. The percentage of foreign interest may be increased to more than 30% if the investments are in projects:

- which are encouraged by the Government of Malaysia;
- which provide substantial and direct benefits to Malaysia;
- where the acquisition or which provide substantial and direct benefits to Malaysia; or
- where the acquisition constitutes a substantial rescue operation for the seller.

3. Present Guidelines on the Acquisition of Interests, Mergers and Takeover (with effect from 21 May 2003)

The FIC Guidelines apply to:

1. any proposed acquisition of:
 - (i) substantial fixed assets in Malaysia by foreign interests or assets or interests in companies and businesses in Malaysia, which will result in ownership or control passing to foreign interests;
 - (ii) 15% or more of the voting power by any one foreign interest or associated group; or
 - (iii) 30% or more of the voting power of a Malaysian company and business by a foreign interest in aggregate.
2. any transaction where control of Malaysian companies and businesses passes to foreign interests through any form of joint venture, management or technical assistance agreement, or other arrangement;
3. any merger or takeover of any company or business in Malaysia whether by Malaysian or foreign interests; and
4. any other proposed acquisition of assets or interests exceeding in value the sum of RM10 million, whether Malaysian or foreign interests.

4. Present Guidelines on the Acquisition of Properties (with effect from 21 May 2003)

The FIC guideline is divided into the following categories:

4.1 Acquisition of properties by local citizens

The acquisition of properties by Malaysians under RM10 million does not require the approval of the FIC. This measure is taken in order to simplify and expedite transactions below the limit of RM10 million to be dealt with by the State Authorities.

For acquisition of properties valued at RM10 million and less than RM20 million, only notification to FIC is required if the transactions involve sales from

- Bumiputra to bumiputra;
- Non-bumiputra to bumiputra;
- Non-bumiputra to non-bumiputra; and
- Foreign citizen to Malaysians.

In such cases, the State Authorities do not need to wait for the FIC's approval.

Any acquisition stated below will require the approval of FIC

- Acquisition by Non-Bumiputera interest from Bumiputera interest valued at RM10 million and above
- Acquisition of property by Malaysians valued at RM20 million and must be acquired under a locally incorporated company

4.2 Acquisition of properties by foreign interest

Any acquisition of property by foreign interest including Permanent Resident requires the approval of FIC. They are allowed to acquire property valued at more than RM150,000 with the following exceptions

- Permanent Resident is allowed to acquire property valued at more than RM100,000
- Local manufacturing company owned by foreign interest is allowed to acquire residential unit valued at more than RM60,000 subject to the residential unit is used for the company's employees only

The above acquisitions can be financed by domestic financial sources.

5. Others

Foreign interests involved in manufacturing activities but exempted from obtaining manufacturing licenses from the Ministry of International Trade and Industry (MITI) are permitted to acquire industrial lots or factories for manufacturing purposes only. This is to facilitate foreign interests' acquiring of industrial properties, without equity conditions, for the purposes of undertaking manufacturing activities but not for renting the said properties.

In order to encourage foreign companies to operate their Headquarters or Regional Offices here, these companies are allowed to acquire property valued at less than RM10 million without having to incorporate a local company subject to the property is only for own use.

NOTE:

The "Silver-Haired" programme has been changed to "Malaysia My Second Home" programme and is coordinated by the Ministry of Culture, Arts and Tourism. Under this new programme, foreigners are allowed to purchase up to only two (2) units of residential premises costing more than RM250,000 each, effective from June 24, 2002.

Acquisition of residential units under this programme requires approval from State Authority and a copy of the approval letter has to be forwarded to the FIC.

6. Implications of Contravention

As FIC rules are mere rules, they do not have the force of law. However just like any other rules, they may be persuasive upon the courts.

Nevertheless, for **matters pertaining to land dealings**, if FIC guidelines are not complied with, the State Authority will not register the dealing, leading to incompleteness of the contract.

Therefore as a matter of prudence, parties to a contract can make obtainment of FIC approval, a condition precedent. If the approval is not obtained, the contract can be deemed void.

7. Summary and Conclusion

The above guidelines are not intended to be restrictive, but rather orderly towards investments. Changes are expected from time to time. Readers are advised to keep abreast by reading the available updates.

Practice Questions

1. Explain the rationale for FIC guidelines.
2. What is the limit for local citizens to acquire properties without obtaining FIC approval?
3. Does the FIC guidelines have the force of law?