

## Chapter 5 – Exchange Control Notices (ECM)

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## Learning Objectives

What you should achieve after completing this chapter:

- Understand the rationale of exchange control rules relating to credit facilities;
- Know the relevant definitions for exchange control purposes; and
- Know the relevant exchange control rules on credit facilities applicable to residents and non-residents, and their implications with respect to a credit officer.

## 1. Introduction

Malaysia has implemented exchange control since 1939. Over time, the exchange control policies and rules have been amended in tandem with the country's changing economic development. The most recent of these amendments took effect on April 1, 2005. These amendments heralded further relaxations of the foreign exchange administration rules. The liberalisation of these rules is evidence of Bank Negara Malaysia's continuous effort to:

- (a) further enhance the Malaysian business environment by reducing the regulatory cost to do business;
- (b) increase the efficiency of and enhancing the regulatory delivery system and promote wider risk management options by promoting efficiency; and
- (c) facilitate better risk management.

The objectives of implementing exchange control remain the same. One of the main objectives of exchange control is to ensure that the country's limited financial resources are used for purposes that will benefit the Malaysian economy, that is, to be able to increase the country's productivity and earn foreign exchange. It is also a tool for Bank Negara Malaysia (BNM) to monitor funds' inflow and outflow, and to foster a more dynamic economic environment.

Based on these objectives, several rules are imposed on residents, including banking institutions in obtaining or extending credit facility vis-à-vis non-residents.

Bank Negara Malaysia, as agent of the Government on exchange control matters, administers the Exchange Control Act 1953 since August 1, 1960, with the Governor as the Controller of Foreign Exchange. To complement the Act, the Controller issues exchange control notices and various circulars from time to time. Currently, there are sixteen ECM notices:

ECM NO.	CONTENTS
1	Definitions
2	Dealings in Gold and Foreign Currency
3	External Accounts
4	General Payments
5	Export of Goods
6	Credit Facilities to Non-Residents
7	Foreign Currency Accounts
8	Domestic Credit Facilities to Non-Residents

ECM NO.	CONTENTS
9	Investment Abroad
10	Foreign Currency Credit Facilities and Ringgit Credit Facilities From Non-Residents
11	Inter-Company Accounts
12	Securities
13	Import and Export of Currency Notes, Bills of Exchange, Assurance Policies, etc.
14	Dealings with Specified Persons and in Restricted Currencies
15	Labuan International Offshore Financial Centre
16	Approved Operational Headquarters

As different exchange control rules are imposed on residents and non-residents, it is very important for a credit officer to know the difference between a resident and a non-resident. Some of the terms used for exchange control purposes are also different from the normal understanding, e.g. the term “credit facility”. The term “credit facility” itself is defined differently for different Exchange Control Notices.

## 2. ECM 1 – Definitions

### 2.1 Resident

“Resident” means:

- (a) a citizen of Malaysia, excluding a person with permanent resident status abroad and residing abroad;

Examples:

- i. A Malaysian citizen holding a permanent resident status in Australia and living in Australia, is a non-resident.
- ii. A Malaysian citizen holding a permanent resident status in Singapore but living in Johore Bahru, is a resident.

- (b) a non-citizen of Malaysia with permanent resident status of Malaysia and residing permanently in Malaysia;

Examples:

- i. A Singaporean citizen holding a permanent resident status in Malaysia and living in Malaysia, is a resident.

- ii. A Singaporean citizen holding a permanent resident status in Malaysia but living in Singapore, is a non-resident.
  - iii. A Singaporean citizen without a permanent status in Malaysia but living in Malaysia, is a non-resident.
  - iv. A Singaporean citizen without a permanent status in Malaysia but holding a work permit and living in Malaysia, is a non-resident.
- (c) a person, whether body corporate or unincorporate, whether head office or branch, incorporated or registered with, or approved by any authority in Malaysia.

Examples:

- i. A company owned by non-residents but incorporated in Malaysia, is a resident.
- ii. A branch of a foreign company registered with the Companies Commission of Malaysia, is a resident.
- iii. A branch of a Malaysian company overseas, for example, in Brunei, is a non-resident.
- iv. A company owned by Malaysians but incorporated outside Malaysia, is a non-resident.
- v. A sole-proprietorship or a partnership registered with the Registrar of Business in Malaysia, is a resident, even if the sole-proprietor or the partners of the partnership are non-residents.
- vi. A Malaysian Embassy, Consulate or High Commission overseas, is a resident.

## 2.2 Non-resident

“Non-resident” means:

- (a) Any person other than a resident;
- (b) An overseas branch/overseas subsidiary/regional office/sales office/ representative office of a resident company;
- (c) Foreign Embassies, Consulates, High Commissions, supranational or international organisation recognised by the Malaysian Government; and/or
- (d) A Malaysian citizen who has obtained permanent resident status of a territory outside Malaysia and is residing outside Malaysia.



- (c) one personal housing loan and one vehicle loan obtained from residents;
- (d) personal credit card and charge card facilities;
- (e) inter company borrowing within a corporate group; or
- (f) effects not cleared.

**Important points to note:**

- For the purposes of ECM 6, credit facility includes personal housing credit facility.
- For the purposes of ECM 10, credit facility includes a facility to guarantee payment for purchase of goods as well as trade credit term exceeding 12 months extended by a non-resident supplier for capital goods. It also includes financial guarantees obtained from offshore financial institutions other than the Labuan Offshore Banks.

**2.5 Trade financing facility**

“Trade financing facility” means a facility that is used to directly finance a trade transaction (buying and selling of goods) and is self-liquidating. Example: a letter of credit, trust receipt facility.

**2.6 Non-trade financing facility**

“Non-trade financing facility” means a facility that can be used for any purpose such as term loan, overdraft facility, revolving credit facility and combined omnibus/multiple option line  
(Please refer to Appendix I – A guide to classification of various type of facilities into trade or non-trade)

**2.7 Current Account Transactions**

Transactions involving:

- (i) trading of goods;
- (ii) services, including fees, commissions and royalties; and
- (iii) income, including wages, salaries, dividends, profits and interests.

**2.8 Capital Account Transactions**

Transactions involving:

- (i) direct and portfolio investments (equity, credit facilities and debt securities); and
- (ii) other investment.

## 2.9 Banking institution

“Banking institution” means a licensed bank, a licensed merchant bank or a licensed finance company<sup>1</sup>.

## 2.10 Licensed bank

“Licensed bank” means a commercial bank which is licensed under the Banking and Financial Institutions Act 1989 or an Islamic bank licensed under the Islamic Banking Act 1983.

## 2.11 Licensed merchant bank

“Licensed merchant bank” means a merchant bank which is licensed under the Banking and Financial Institutions Act 1989.

## 2.12 Licensed finance company

“Licensed finance company” means a finance company<sup>2</sup> which is licensed under the Banking and Financial Institutions Act 1989.

## 2.13 Financial guarantee

“Financial guarantee” means a guarantee for any payment obligation, other than for payment of goods. Guarantee for payment of goods is a trade financing facility.

## 2.14 Performance guarantee

“Performance guarantee” means a guarantee to compensate in the event of non-performance of a service, such as a contract for project. Examples are tender bonds and shipping guarantees.

## 2.15 Dealings in foreign currency

It means:

- (a) borrowing or lending in foreign currency;
- (b) either buying or selling in both the spot and forward markets;
  - (i) Spot – Purchase and sale of foreign currency for delivery within two business days.
  - (ii) Forward – Purchase and sale of foreign currency for delivery after two business days for the following transactions:
    - Outright forward contracts;

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<sup>1</sup> Now, to include ‘banking and finance company’.

<sup>2</sup> Ibid.

- Swaps;
- Futures;
- Options; and
- Financial derivatives.

### 2.16 Dealers in foreign currency in Malaysia

**Authorised dealers** – They are commercial banks and Islamic banks namely Bank Islam and Bank Muamalat and approved merchant banks.

### 2.17 Payment

By any means or form including remittances and transfers.

### 2.18 Specified Person

Israel (including its authorities, residents, agencies, entities).

### 2.19 Specified Account

Specified Account – Account of Specified Person.  
Restricted Currencies – Currency of Israel.

## 3. Exchange Control Rules on Credit Facility

As one of the main businesses carried on in banking and finance is lending, bankers are required to know the main rules found in the Exchange Control Notices which are directly relevant to the credit function. They are as follows:

Exchange Control Notice	Subject
ECM 6	Extension of credit facilities in foreign currency or ringgit to non-residents.
ECM 8	Extension of credit facilities to non-resident control companies.
ECM 10	Obtaining credit facilities in foreign currency or ringgit from non-residents and in foreign currency from authorised dealers and licensed merchant banks.

**Table 5.2**

For a credit officer to be able to perform his or her functions effectively, he or she will also need to know other relevant Exchange Control Notices, for example,

- ECM 2 – Dealing in foreign currency.
- ECM 3 – External accounts.
- ECM 4 – General payments.
- ECM 7 – Foreign currency accounts.
- ECM 9 – Investment abroad.
- ECM 12 – Securities.

### **3.1 Factors to consider by a credit officer of banking institutions when considering extension of credit facilities**

To determine whether prior approval from the Controller is required or not, check:

- (a) The client itself → Resident or non-resident.
- (b) Credit facility → Trade or non-trade financing facility.
- (c) Currency denomination → Foreign currency or RM.
- (d) Usage of credit facility → If facilities require prior approval (loan proceeds) from the Controller, are the purposes able to meet the criteria set in relevant ECM.
- (e) If credit facility is in FC → Whether hedging against exchange rate exposure is required.

## **4. ECM 6 – Credit Facilities to Non-Residents**

### **4.1 Foreign currency credit facilities**

- (a) Licensed banks are allowed to freely extend credit facilities in foreign currency to non-residents.
- (b) Other non-bank residents are allowed to lend in foreign currency up to RM10,000 equivalent to a non-resident.

### **4.2 Ringgit credit facilities (effective April 1,2004)**

- (a) 3 Property Loans  
Resident (banks or non-banks) are allowed to extend ringgit credit facilities to non residents to finance purchase or construction of

three property loans (excluding financing for purchase of land only).

- The property financed by loans obtained from resident financial institutions may not be for non-residents' own use.
- There is no limit on the amount for such loans. However, in the event a non-resident is to obtain one housing loan extended by a resident company pursuant to the terms and conditions of service for purchase of property in Malaysia, resident financial institutions may only extend up to a maximum of two property loans in aggregate.
- All purchases are subject to the guideline issued by the Foreign Investment Committee (FIC). The current FIC guideline is dated 2 May 2001. (FIC guidelines can be found at <http://www.epu.jpm.my>).

- (b) Lending by Banking Institutions to Foreign Stockbroking Companies and Foreign Custodians  
Overdraft facilities of up to RM200 million intra day and overnight in aggregate to non resident stockbrokers and non-resident global custodian banks.

Condition:

Only to be used to finance funding gaps due to unforeseen or inadvertent technical or administration errors or time zone delays in relation to settlements of trade on the Bursa Malaysia.

- Resident stockbroking companies are allowed to extend margin financing facilities of any amount to non-resident clients for the purchase of shares listed on the Bursa Malaysia, subject to compliance with the rules on margin financing imposed by the Bursa Malaysia.
- (c) Various lending limits are to be consolidated by banking institutions to non-residents up to an aggregate of RM10 million for any purpose for use in Malaysia, except for purchase or construction of immovable property in Malaysia.
- (d) Other non-bank residents are allowed to lend in ringgit up to RM10,000 to a non-resident.

## **5. ECM 8 – Domestic Credit Facilities to Non-resident Controlled Companies (NRCC)**

Licensed banks are allowed to extend short-term trade financing facilities of any amount in foreign currencies to NRCC.

### **5.1 Effective 1 April, 2005**

- (a) Residents, including banking institutions, are allowed to extend any amount of domestic ringgit credit facilities to NRCC.
- (b) Free to obtain trade financing of any tenor.
- (c) NRCC with domestic ringgit credit facilities, including issuance of Private Debt Securities (PDS), are required to seek prior permission of the Controller to convert ringgit exceeding RM10 million per calendar year, on corporate group basis, to finance investment abroad.

## **6. ECM 10 – Foreign Currency Credit Facilities and Ringgit Credit Facilities from Non-Residents**

### **6.1 Foreign currency credit facilities**

- (a) A resident company is free to obtain:
  - i. Foreign currency trade finance facilities of any amount and tenor from licensed onshore banks; and
  - ii. Foreign currency credit facilities up to an equivalent of RM50 million in aggregate, on a corporate group basis, from licensed onshore banks, licensed merchant banks and non-residents.
- (b) An individual resident is allowed to obtain credit facilities in foreign currency up to the equivalent of RM10 million in aggregate from licensed banks, licensed merchant banks and non-residents.
- (c) Where the aggregate amount of credit facilities is more than RM1 million equivalent, the resident borrower is required to provide the Controller with information on the foreign currency credit facilities within 2 weeks of obtaining the credit facilities as follows:
  - i. individuals – between RM1 million and RM10 million in aggregate.
  - ii. companies – between RM1 million and RM50 million in aggregate.

- (d) Residents are free to prepay FC borrowings subject to registration (at least 7 days prior to remittance by completing Form SSC 10A, SSC 10B, SSC 10C) where the prepayment amounts to USD10 million equivalent and above. In such case, a Registration ID will be issued. There is no reporting requirement for prepayments.
- (e) Credit facilities in foreign currency, other than permitted as mentioned above, require prior approval from the Controller.
- (f) Credit facilities in ringgit of any amount from non-residents requires prior approval from the Controller. This includes advances from an External Account holder to a resident, irrespective whether the External Account holder is related to the resident or not; or the External Account holder is a shareholder or director of the resident company.

## 6.2 Criteria for approval by the Controller

The Controller will take the following criteria, among others, into consideration:

- (a) Whether the credit facility will be used for purposes that will benefit the Malaysian economy, such as to finance the build-up of productive capacity in activities which generate foreign exchange earnings for Malaysia or save on future outflow of foreign exchange from Malaysia, through the production of import substitution goods.

However, the Controller may exercise discretion in the application of the above criterion, in cases of:

- i. Credit facilities for large infrastructure projects in Malaysia which are unable to source all their funding requirements from domestic sources or projects which serve the broader national interest, including investments abroad approved by the Controller; and
  - ii. Concessional credit facilities from shareholders.
- (b) Where the purpose is for working capital, credit facilities in foreign currency are kept to a minimum.
  - (c) Where the credit facility is obtained through the issuance of convertible bonds, the total amount of bonds issued by a resident shall not result, on conversion (assuming that full conversion will be made), in the issue of new shares to the bondholders exceeding the limit imposed by the Securities Commission.
  - (d) Arrangements for all credit facilities exceeding an amount equivalent to RM25 million in each case from non-residents shall,

at all levels, be made jointly with a licensed bank, a licensed merchant bank or a licensed offshore bank.

- (e) Where credit facilities, including financial guarantees, are to be obtained from a non-resident financial institution which is not an inter-government entity of which Malaysia is a member or shareholder, residents are required to accord the right of first refusal to the licensed offshore banks.
- (f) The requirements of paragraphs (d) and (e) above shall not apply to concessional credit facilities obtained from:
  - i. Non-resident shareholders, subsidiaries, related or associate entities which are not financial institutions; or
  - ii. Non-resident individuals.
- (g) Where the Controller's prior written permission is required for a proposed foreign currency credit facility, the resident shall apply to the Controller, submitting information as required.

## 7. Other Relevant Exchange Control Notices

Exchange Control Notices are to be read and implemented in total. It is necessary for a credit officer to understand other relevant exchange control rules stipulated in other Notices, namely,

- ECM 2 – Dealing in foreign currency.
- ECM 3 – External accounts.
- ECM 4 – General payments.
- ECM 7 – Foreign currency accounts.
- ECM 9 – Investment abroad.
- ECM 12 – Securities.

### 7.1 Examples

- (1) While a bank may extend any amount of Ringgit loan to a resident, the use of the loan funds for investment abroad exceeding the general limit given, will need the prior approval of the Controller under Exchange Control Notices 4,9 and 12.
- (2) Resident to seek prior approval to make payment to a non-resident for investment abroad exceeding the general limit given under ECM 4 and 9.
- (3) Residents with foreign currency credit facilities may wish to hedge their foreign currency exposure when making repayments (ECM 2).

- (4) Remittance of foreign currency loan proceeds for overseas investment purposes or on-lending to a non-resident, even if the loan is within the RM50 million equivalent limit, still requires the prior approval of the Controller if the amount for overseas investment or loan extension exceeds the general limit given (ECM 4 and 9).
- (5) A resident may need to temporarily park their foreign currency loan amount into their foreign currency account pending disbursement (ECM 7).

## 8. ECM 2 – Dealings in Gold and Foreign Currency

- (i) General permission is given for residents to deal in gold.
  - To deal in gold means either to buy or sell, borrow or lend, import or export or to hold gold.
- (ii) Dealers in foreign currency are authorised dealers and approved merchant banks.

### 8.1 Dealings in foreign currency by residents and non-residents

- (a) **Residents** may enter into forward contracts to buy or sell foreign currency against ringgit or another foreign currency to hedge:
  - Anticipatory payments for imports or receipts from exports of goods and services up to the amount paid or received in the preceding 12 months. There is no restriction on the tenor of the forward contracts;
  - Payment for permitted investment abroad including lending to non-residents in foreign currency, other than conversion from ringgit for placement into a foreign currency account;
  - Foreign currency exposure of permitted investment abroad; and/or
  - Amount of prepayment or repayment of permitted foreign currency credit facilities that is payable within the next 24 months.
- (b) **Non-residents** may enter into forward contracts to buy or sell foreign currency against ringgit to hedge:
  - Committed payments or receipts for current account transactions, provided the payments to or receipts from residents are permitted to be settled in ringgit; and

- Committed inflows and outflows for investments in, or divestments of, ringgit assets excluding:
- Funds in External Account, including fixed deposits;
- Negotiable instruments of deposits in ringgit; and
- Over-the-counter derivatives or structured products which tantamount to lending or borrowing of ringgit between residents and non-residents.

## **9. ECM 3 – External Accounts**

External accounts are Ringgit accounts opened with local financial institutions where the beneficial owners of the funds are non-residents.

### **9.1 Guidelines on maintenance of external accounts**

The following persons can open external accounts:

- (i) A non-resident.
- (ii) A non-resident guardian jointly with a resident minor.
- (iii) A non-resident who operates the account in trust for a resident who is not a minor.
- (iv) Resident fund managers, nominee companies, trust companies or legal firms (to maintain funds belonging to non-residents).
- (v) A resident who operates the account in trust for a non-resident who is not a minor.

### **9.2 Rules on external accounts**

- (i) No restriction on non-residents to open External Accounts with Malaysian banking institutions.
- (ii) Transfer of funds between EA of the same account holder (including an omnibus account) is allowed.
- (iii) Strictly no transfer of funds between two non-residents except for payment for the purchase/sale of Ringgit assets.

### **9.3 Sources and uses of funds for external accounts**

- (a) Permitted sources of funds for external accounts are follows:
  - Ringgit obtained from sale of foreign currency.
  - Sale proceeds of Ringgit instruments, securities registered in Malaysia or other assets in Malaysia.

- Salaries, wages, rental, commissions, interest, profits or dividends.
  - Repayments for loans and advances to staff in Malaysia according to the terms and conditions of service.
  - Transfer from another external account of the same account holder.
  - Crediting cash of RM10,000 per day.
- (b) Permitted uses of funds of external accounts are as follows:
- Conversion and repatriation abroad.
  - Payment of administrative and statutory expenses incurred in Malaysia.
  - Purchase of goods and services in Malaysia for own use.
  - Extension of Ringgit loan to staff in Malaysia in accordance with terms and conditions of service.
  - Purchase of Ringgit assets or securities.
  - Payment under a non-financial guarantee (guarantee that is called upon against the account holder).
  - Repayment of Ringgit credit facilities extended to resident in accordance with ECM Notice, ECM 6 or the terms and conditions of employment.
  - Ringgit cash withdrawals of any amount.
  - Payments to resident beneficiary for the following purposes require prior approval:
    - Payment for the import of goods and services;
    - Extension of Ringgit loans to residents other than loans extended on terms of services;
    - Settlement under financial guarantees; and
    - Payment on behalf of a third party.

#### **9.4 Transfer of Ringgit Funds by External Account Holders through Internet Banking, ATM Cards and Ringgit Cheques**

Resident Banking Institutions are permitted to effect payment for any purpose up to RM5,000 in Malaysia as follows:

- (1) Transfer funds from an account, up to an aggregate of RM5,000 per person/company per day per bank via Internet banking and ATM cards.

- (2) Transfer funds from an to an account by way of ringgit cheques up to RM5,000 per cheque.

### 9.5 Exemption from restrictions on the uses of funds is extended to:

- High Commissions, Embassies and Consulates.
- Central Banks.
- Offices of supranational or international organisations recognised by the Malaysian government.
- Non-residents studying or working in Malaysia with valid work permits.
- Spouses and children of non-residents studying or working in Malaysia.

**Note:** Government Investment Corporations are not exempted.

## 10. ECM 4 – General Payments

### 10.1 Rules on general payments

- (a) General permission is given for a resident to pay in Ringgit or foreign currency up to the equivalent of RM50,000 to a non-resident for **any purpose**. However, there is no limit on the amount for import of goods and services in foreign currency, regardless of the amount.
- (b) For a resident to pay in foreign currency exceeding the equivalent of RM50,000 to a non-resident for any purpose, other than payment for investment abroad and extension of credit to a non-resident, he or she needs to complete “Declaration Form P”.
- (c) For residents to pay in Ringgit exceeding RM50,000 to a non-resident into External Accounts for purchases of Ringgit assets registered in Malaysia or other assets in Malaysia and salaries, wages, commissions, interest or dividend irrespective of purpose, they need to complete “Declaration Form P”.

### 10.2 Responsibilities of authorised dealers

Authorised dealers are required to:

- (i) To report to the Bank through the International Transactions Information System (ITIS) for all relevant information for payments above the equivalent of RM50,000.

- (ii) This includes transfers from Foreign Currency Accounts (FCA) maintained onshore to FCA maintained offshore by the same account holder.
- (iii) To comply with the prevailing foreign exchange administration rules for all payments by residents to non-residents and among residents.
- (iv) To sight approval letter from the Controller of Foreign Exchange (the Controller) for payment in foreign currency between residents (other than payment for purchase of foreign currency assets by residents as permitted by the Controller).
- (v) To sight the relevant approval or registration letter and identification number (ID) for remittances in respect of investment abroad that require the prior permission or registration with the Controller.
- (vi) **In the event that the remitter cannot provide documentary evidence or the approval or registration ID, the payment shall not be made.**
- (vii) To ensure that internal procedures are in place to check on compliance with all foreign exchange administration rules prior to making any remittance on behalf of clients.
- (viii) To ensure that the full amount of funds retained arising from the early receipt are earmarked and may not be used for any other purpose other than for settlement of the identified forward contract, for temporary placement of foreign currency proceeds received earlier than the maturity date of a forward contract.
- (ix) To ensure that resident fund managers, nominee companies, trust companies, legal firms or stockbroking companies maintain separate FCA to segregate the funds belonging to their resident clients from those belonging to non-resident clients.
- (x) To apply the principle of “know your customer” and comply with the Anti-Money Laundering Act 2001.
- (xi) To report the registration or approval ID together with other relevant information to the Bank through ITIS.

## 11. ECM 7 – Foreign Currency Accounts

Foreign currency accounts are defined as:

- (i) Accounts maintained by residents in foreign currency with designated banks, licensed offshore banks and overseas banks.
- (ii) Accounts maintained by non-residents in foreign currency with designated banks.

### 11.1 Foreign currency account by non-residents

- (1) Non-residents are allowed to freely maintain foreign currency accounts with commercial banks and merchant banks.
- (2) Non-resident account holders are allowed to freely transfer foreign currency funds into or out of Malaysia through the accounts.

### 11.2 Foreign currency account by residents

- (1) There is no restriction for residents to open FCA onshore and offshore.
- (2) Export proceeds must still be maintained in onshore FCA and the limits have been abolished.
- (3) Ringgit can be converted for credit into FCA (in line with rules on investment abroad) as follows:
  - (i) no limit for residents with no domestic borrowing; and
  - (ii) for residents with domestic borrowing
    - individuals – RM100,000 per annum;
    - companies – RM10million per annum (corporate group basis); and
    - FCA for education and employment abroad subject to a limit totalling USD350,000 with authorised banks, licensed offshore banks and overseas banks.

## 12. ECM 9 – Investment Abroad

### 12.1 Investment Abroad

For exchange control purposes, investment abroad includes:

- Resident and non-resident swapping local securities with foreign securities respectively;
- Resident and non-resident swapping goods (e.g. plant and machinery) with foreign securities respectively;
- Payment for setting up and working capital expenses for sales office, branch, partnership, associate company, subsidiary, joint venture projects, or any other business arrangements;
- Lending to non-resident in foreign currency;
- Placement of funds in Foreign Currency Account maintained with licensed onshore banks, approved merchant banks, licensed offshore banks in Labuan and overseas banks; and

- Purchase of approved foreign currency products marketed by licensed onshore banks, approved merchant banks and any resident permitted by the Controller.

The rules on investment abroad are:

- Residents without domestic credit facilities are free to invest abroad in foreign currency, to be funded either from their own foreign currency account or from conversion of ringgit funds.
- Corporations with domestic credit facilities are also free to use their foreign currency funds or convert ringgit up to RM10 million per annum for investment in foreign currency assets. These corporations must have a minimum shareholders' fund of RM100,000 and must be operating for at least 1 year.
- Individuals with domestic credit facilities may invest abroad any amount of their own foreign currency funds or convert ringgit up to RM100,000 per annum.

Prior registration for investment abroad in excess of RM50,000 for individuals and companies are required and submission of quarterly report continues.

## **12.2 Investments abroad by financial institutions**

Authorised dealers and approved merchant banks are permitted to invest abroad subject to the following conditions:

- Comply with BAFIA;
- Comply with net foreign currency overnight open positions;
- Remittances made in foreign currency; and
- Investments in foreign currency (bonds, derivatives, etc.) issued by resident overseas must be financed from his offshore borrowing.

## **12.3 Investment abroad attributed to residents and non-residents by unit trust companies**

The threshold for investing abroad funds attributed to residents by a unit trust company is 30% of the Net Asset Value of all resident funds. There continues to be no restriction on investment abroad for funds attributed to non-resident clients (still 100% of Net Asset Value of non-resident fund)

#### **12.4 Investment abroad attributed to residents and non-residents by asset or fund management companies**

The threshold for investing abroad funds attributed to residents by asset or fund management company is 30% of funds belonging to resident clients with domestic borrowing. There is no restriction on investment abroad of funds belonging to non-resident clients and resident clients with no domestic borrowing.

#### **12.5 Investment abroad by insurers and takaful operators**

The threshold for investing abroad funds by insurers and takaful operators is 30% of the Net Asset Value of all resident funds. The requirement of 5% of Margin of Solvency (MOS) and 5% of total assets respectively still apply and remain unchanged.

Notwithstanding the above relaxation of threshold limits, the registration requirements remain unchanged and still continues.

#### **12.6 Criteria for approval**

The Controller will take the following factors into account:

- Gains market access;
- Uses Malaysian products;
- Assists in exporting Malaysian products or services;
- Transfer of technology and know-how to Malaysia; and
- Supplies inputs not available in Malaysia.

#### **12.7 Registration and reporting for Investment Abroad**

The threshold for registration requirement is RM50,000 equivalent per investment. A Registration ID will be issued. All resident individuals and companies (irrespective with or without domestic borrowing and in relation to investment abroad financed from conversion of ringgit and funds in local FCA only) are required to register at least 7 days prior to remittance by completing Form SSC 9A, SSC 9B, SSC 9C and SSC 6B (lending to Non-resident [NR]).

The threshold for reporting requirement is every quarterly for total investment on per company basis exceeding RM10million equivalent irrespective of the source of funds.

## 13. ECM 12 – Securities

### 13.1 Securities

Securities include shares, stocks, bonds, notes (other than personal promissory notes issued by individuals), debentures, debenture stocks, units under a unit trust scheme, shares in an oil royalty, letters of allotment, letters of right, coupons (conferring rights to acquire securities), options, warrants or certificates of deposits.

General permission is given to resident to issue to non-residents:

- Ordinary shares;
- Bonus shares;
- Rights shares;
- Irredeemable preference shares; and
- Ringgit denominated bonds, subject to the following conditions:
  - Proceeds not used for repayment of offshore borrowing and for financing investment abroad

Offshore entities in the Labuan IOFC and approved Operational Headquarters (OHQs) are given permission to issue to any non-residents:

- Bonds, notes, bearer certificates or coupons, which are denominated in foreign currency, whether to be registered in Malaysia or outside Malaysia.
- Transfer of any security, bearer certificate or coupon registered in Malaysia between a resident and a non-resident.

### 13.2 Redeemable shares under various ECMs

- (1) Issuance of redeemable shares by residents is included under the definition of ‘credit facilities’ for exchange control purposes.
- (2) Issuance of redeemable shares by residents to any non-resident requires BNM’s prior permission regardless of the amount.

## 14. Summary and Conclusion

Exchange Control is an area which changes in tandem with several factors that can have an impact on the country’s financial resources. Therefore, readers are advised to keep abreast of future changes as the rules contained herein are reflective of the position as at May 2, 2006.

**Appendix 1**

The following table provides a guide on the classification of various types of credit facilities into trade or non-trade financing facilities, for exchange control purposes.

<b>A GUIDE TO CLASSIFICATION OF CREDIT FACILITIES</b>		
<b>Facility Name</b>	<b>Description</b>	<b>Trade *</b>
OD	Overdraft	N
TOD	Temporary Overdraft	N
RC	Revolving Credit	N
SYND RC	Syndicated Revolving Credit	N
SYND TL	Syndicated Term Loan	N
N-SYND TL	Non-Syndicated Term Loan	N
HOUSING(PS)	Priority Sector Housing Loan	N
HOUSING(O)	Other Housing Loan	N
SYND HP	Syndicated Hire Purchase	N
N-SYND HP	Non-Syndicated Hire Purchase	N
SYND LEASE	Syndicated Lease	N
N-SYND LEASE	Non-Syndicated Lease	N
SYND BRIDG	Syndicated Bridging	N
N-SYND BRIDG	Non-Syndicated Bridging	N
BD	Block Discounting	N
PRE-ECR	Pre-Shipment ECR	Y
POST-ECR	Post-Shipment ECR	Y
DOM BILL P	Domestic Bills Purchased	Y
FGN BILL P	Foreign Bills Purchased	Y
BILL REC	Bills Receivable	Y
TR	Trust Receipts	Y
FACTORING	Factoring	N
FLR STOCK	Floor Stocking	N
BA	Banker Acceptances	Y
WCF	Working Capital Financing	N
CR CARD	Credit Card	N
IS-PF	Project Financing	N
IS-EF	Equity Financing	N
IS-PAWN	Pawnbroking	N
IS-QH	Benevolent Loan	N
NEC	Not Elsewhere Classified	N
LC	Letter of Credit	Y
STANDBY LC	Standby Letter of Credit	N
FIN G'TEE	Financial Guarantee	N

<b>Facility Name</b>	<b>Description</b>	<b>Trade *</b>
PERF G'TEE	Performance Guarantee	N
SHIP G'TEE	Shipping Guarantee	Y
FOREX	Forward Foreign Exchange Contract	Y
UNDERWRITE	Underwriting Facility	N
* N = Non-trade		