



GUIDELINES
FOR THE ESTABLISHMENT OF
FOREIGN FUND MANAGEMENT COMPANIES

Revised 1 July 2000

Introduction

Under the Securities Commission Act 1993, one of the functions of the Securities Commission (SC) is to encourage the development of the securities and futures industry in Malaysia. The SC has identified the development of the fund management industry as an important agenda in the development of the capital market.

As part of the government's efforts to promote the fund management industry in Malaysia and to make the country an attractive centre for the management of regional and global funds, the SC is entrusted with the administration of the Guidelines on the Establishment of Foreign Fund Management Companies.

These guidelines will be applied in considering applications for the establishment of foreign fund management companies submitted to the SC.

All enquiries regarding these guidelines should be addressed to :

Corporate Affairs Department
Securities Commission
No. 3, Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur
Malaysia
Tel : (603) – 654 8000
Fax : (603) – 651 5078

1.0 Conditions for Establishment

- 1.1 A foreign fund management company must be a company with more than 50% foreign equity and incorporated in Malaysia.
- 1.2 A foreign fund management company may carry out fund management activities as permitted under the securities laws, subject to the terms and conditions of its licence.
- 1.3 A foreign fund management company must carry out its activities from an office in Malaysia.
- 1.4 A foreign fund management company must comply with the licensing requirements under the securities laws, before it can carry out fund management activities.
- 1.5 The paid-up capital of a foreign fund management company shall be at least RM2 million.
- 1.6 The parent company (or holding or related company, as may be applicable) of a foreign fund management company must have a sound track record in the international fund management industry.

2.0 Management of Funds

- 2.1 A foreign fund management company with 100 per cent foreign shareholding shall only manage funds, sourced from, and on behalf of clients outside of Malaysia.
- 2.2 The funds that are being managed by a foreign fund management company may be invested in Malaysia or outside of Malaysia.
- 2.3 A foreign fund management company may manage funds, sourced from within Malaysia, subject to the following conditions :
 - (i) At least 30% of its shareholding must be held by local shareholders ;
 - (ii) The foreign fund management company must manage or undertake to manage funds, sourced from and on behalf of clients outside Malaysia in the amount of at least USD100 million ;

and

- (iii) The amount of each fund sourced within Malaysia shall be at least RM10 million.

2.4 Notwithstanding clause 2.3(ii) above, a foreign fund management company may be allowed to manage funds sourced from within Malaysia if :

- (i) Before or upon expiry or renewal of the first licence, it has fulfilled the requirement as required under clause 2.3 (ii) ;

and

- (ii) For the purposes of managing domestic unit trust funds, it has managed not less than USD50 million sourced from and on behalf of clients outside Malaysia.

2.5 For the purposes of clause 2.0, reference to “manage funds” means managing funds whether on a discretionary authority or otherwise.

3.0 Conditions for Persons Performing Fund Management Functions

3.1 Any person who is in the employment of or acting for or by arrangement with the foreign fund management company and performs fund management functions for that foreign fund management company must comply with the licensing requirements under the securities laws.

3.2 Any person who is in the employment of or acting for or by arrangement with the foreign fund management company and performs fund management functions for that foreign fund management company must have sufficient relevant qualification and experience in fund management activities.

4.0 Employment of Expatriates

4.1 A foreign fund management company may employ expatriate staff based on regional coverage of the funds, size of funds managed and the experience and qualification of the expatriate staff.

5.0 Exchange Control Rules

- 5.1 A foreign fund management company will be allowed by the Controller of Foreign Exchange to open one or more foreign currency accounts with any Designated Bank or Licensed Offshore Bank for crediting foreign currency funds from non-resident investors and income arising from investments abroad, with no limits on the overnight balances.
- 5.2 A foreign fund management company may transact in foreign currency with a resident investor provided the resident has obtained prior approval from the Controller of Foreign Exchange to pay the foreign fund management company in foreign currency.
- 5.3 Where the foreign fund management company manages funds sourced from residents, the company shall segregate those funds belonging to residents from those belonging to non-residents.
- 5.4 The Ringgit account maintained by the foreign fund management company to retain funds belonging to non-residents shall be designated as an External Account/Special External Account.
- 5.5 For investment in Ringgit asset in Malaysia, a foreign fund management company may pay interest income or dividends to non-resident investors in Ringgit or in foreign currency. All proceeds from sale of Ringgit assets and profit realised on Ringgit assets due to non-resident investors, however, must be credited into the Special External Accounts of the non-resident investors.

For overseas investment made on behalf of non-resident investors, a foreign fund management company may pay income or dividends to non-residents in a foreign currency.

6.0 Tax

6.1 Fund Management Company

- (i) Income arising from services rendered by a 100 per cent foreign owned fund management company to clients outside Malaysia will be subject to tax at the concessionary rate of 10 per cent.

- (ii) In the case of a foreign fund management company which has local shareholding of at least 30 per cent, income arising from services rendered to clients outside Malaysia will be subject to tax at the rate of 10 per cent while income arising from services rendered to local clients will be subject to the prevailing corporate tax rate.

6.2 Clients Outside Malaysia

Clients outside Malaysia can either be individuals, companies or trust funds who are not residents of Malaysia for tax purposes. Income received by the clients outside Malaysia will be treated in the following manner :

- (i) Foreign sourced income such as dividend and interest gains arising from realisation of investment outside Malaysia by a foreign fund management company on behalf of its clients will not be subject to tax ;
- (ii) Dividend income arising from investment in Malaysia will not be subject to a further tax ;
- (iii) Interest income derived from Malaysia will be exempt from tax in the following circumstances :
 - (a) Interest paid to individual residents and non-residents, listed closed-end funds and Malaysian and foreign unit trusts in respect of securities or bonds issued by the Government and bonds, other than convertible loan stocks, issued by public companies listed on the Kuala Lumpur Stock Exchange or MESDAQ or a company rated by Rating Agency Malaysia Berhad or Malaysian Rating Corporation Berhad ;
 - (b) Interest paid by Malaysian finance companies and any person carrying on the business of banking in Malaysia and licensed under the Banking and Financial Institutions Act 1989 to non-resident persons such as individuals, companies and trust funds.

Other than the above, interest income will be taxed at the prevailing rate; that is, at the domestic tax rate or at the rate under the Double Taxation Agreement.

- (iv) Gains arising from the realisation of investments in Malaysia, other than real property, will be exempt from tax.

6.3 Clients in Malaysia

Clients in Malaysia can either be individuals, companies or trust funds who are residents of Malaysia for tax purposes. Tax treatment of income received by clients in Malaysia will be in accordance with the domestic taxation laws in force.

7.0 Application Procedure

- 7.1 An application for the establishment of a foreign fund management company shall be made to the Securities Commission by completing the 'Application for the Establishment of a Foreign Fund Management Company'.
- 7.2 For the purpose of managing domestic unit trust funds, a foreign fund management company must make a separate application in writing to the Securities Commission.
- 7.3 An application submitted to the Securities Commission shall also include an application for licences under the securities laws for the foreign fund management company and for all persons who are in the employment of or acting for or by arrangement with that foreign fund management company and performs fund management functions for that foreign fund management company.
- 7.4 For any of the applications mentioned above, additional information may be required.
- 7.5 Supporting documents required for submitting application under clause 7.1 includes :
- (i) Details on the business activities of the shareholders of the proposed foreign fund management company :
 - Annual reports and/or audited accounts (at least 2 years);
 - Memorandum and/or Articles of Association (if shareholder is a dormant company);
 - Corporate profile;
 - (ii) Details on the business activities of the parent company (if shareholder is a subsidiary of an associate company) :
 - Annual reports and/or audited accounts (at least 2 years);
 - Corporate profile;
 - Corporate structure showing relationship with proposed foreign fund management company;

- (iii) Details of fund management activities of shareholders and/or the parent company :
 - Type (Government accounts, Institutions, Pension Funds, Unit Trusts/Mutual Funds, Others to specify) and size of funds managed;
 - Published reports on the performance of funds managed;
 - (iv) Details on the qualification and experience of proposed directors and persons responsible for managing funds of the foreign fund management company;
 - (v) Details on the fund management process to be adopted by proposed foreign fund management company;
 - (vi) An outline of its training programme for persons responsible for managing funds of the foreign fund management company to ensure that they are adequately trained and to enable the transfer of technology, skills and expertise;
- and
- (vii) A copy of the shareholders' agreement and management agreement, for a joint-venture foreign fund management company.

7.6 Supporting documents required for application under clause 7.2 includes any evidence of compliance with clause 2.4 (ii).

7.7 Once the application in 7.1 has been approved by the Securities Commission, the applicant is required to apply to the Registrar of Companies for the incorporation of a foreign fund management company. Any enquiries on the incorporation of a foreign fund management company should be directed to :

Registrar of Companies
11-17th Floor, Putra Place
100 Jalan Putra
50632 Kuala Lumpur
Malaysia
Tel No : (603) 443 3366
Fax No : (603) 443 7505

7.8 Upon such incorporation, the applicant shall inform the Securities Commission of the following :

- a. Date of incorporation
- b. Number of the Certificate of Incorporation
- c. Date of commencement of the business

**APPLICATION FORM FOR THE ESTABLISHMENT OF A FOREIGN FUND
MANAGEMENT COMPANY**

I. PARTICULARS OF THE PARENT COMPANY

(or holding or related company as may be applicable)

1. Name
2. Address
3. Nature of Business
4. Year / Place of Incorporation
5. Incorporation / Registration Number
6. Relevant Regulatory Body
7. Professional or Trade Associations
8. Exchange Membership (if applicable)
9. Size of Shareholders Funds (latest audited unimpaired by losses or provisions)
10. Equity Structure of Company
 - Substantial Shareholders¹
 - Per cent of Shareholding
11. Annual Profile of Funds Managed over the 3 year period immediately preceding year of application
 - Year
 - Market
 1. Global
 2. Asia Pacific (excluding Japan and Australia)
 3. Domestic
 - Bonds / Equities / Others (in USD million)

II PARTICULARS ON THE PROPOSED FOREIGN FUND MANAGEMENT COMPANY

The Company

1. Name
2. Registered Office
3. Business Office
4. Telephone Number for
 - Registered Office
 - Business Office

¹ Substantial shareholder means a person holding not less than 2% of the aggregate nominal amounts of all voting shares in a corporation.

5. Fax No for :
 - Registered Office
 - Business Office
6. Authorised Capital (RM)
7. Paid Up Capital (RM)

Shareholders and Directors

8. Equity Structure of Company
 - Substantial Shareholders²
 - Per cent of Shareholding
9. Name of Board of Directors

Funds proposed to be managed

10. Sources and Types of Funds proposed to be managed out of Malaysia
 - Source
 - Types of Funds (e.g. Government accounts, Institutions, Pension Funds, Unit Trust / Mutual Funds, Others, etc)
 - Estimated Amount in USD million

Human Resource Capabilities

11. Chief Executive Officer
 - Name
 - Qualification
 - Experience
 - Nationality
12. Fund Manager's Representatives
(If the CEO is also the fund manager, please state so)
 - Name
 - Qualification
 - Experience
 - Nationality
13. State other expatriate staff who may be employed other than these mentioned in 10 and 11
 - Name
 - Qualification
 - Experience
 - Nationality

² Ibid

14. Other information

- i. Please provide the names of :
 - (a) The proposed company's bankers(s)
 - (b) The proposed company's lawyer(s)
 - (c) The proposed company's custodian(s)
- ii. Expected date of company's establishment
- iii. Person to liaise in relation to this application
 - Name
 - Telephone
 - Fax No
 - Address

DECLARATION

I declare that the information provided in the application form and the accompanying documents attached to this form are true and correct.

Signature of Company Representative

Date

Name :

Designation :