

FDI And Foreign Ownership of Properties In Malaysia

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Preamble

The 1997 regional economic crisis was a wake-up call for the Asean region, which suffered a drop in foreign direct investment (FDI). The ensuing economic downturn in the United States has left Malaysia, with its export-driven economy, feeling the pinch, as FDI is crucial to the prosperity of Malaysia. The UNCTAD World Investment Report 1998 observed that FDI inflows into the region, including Malaysia, could decelerate in the short term resulting from the decline in intra-regional investment, the loss of asset values and reduced earnings for multinational corporations (MNCs).

To promote FDI, the Malaysian Government liberalized the equity policy for the manufacturing sector. It also relaxed the 30 per cent limit imposed on foreign ownership for several domestically oriented activities such as telecommunications, shipping and forwarding, insurance, hotel and tourism as well as approved activities in the Multimedia Super Corridor (MSC).

With all the incentives offered by the Government to attract FDI, the last decade was an opportune time for foreign investors to buy into the Malaysian property sector. Property prices are rock bottom compared to those offered by Malaysia's competitors. However, the country's position is that FDI are welcomed so long as they are consistent with the National Development Policy. Accordingly, any proposed acquisition of property assets must be examined in the light of the objectives of the National Development Policy (NDP).

*Against this background, a 1998 UNCTAD survey of the 500 largest MNCs in the world

notes that Malaysia continues to remain attractive to foreign investors. Among the reasons given are its relatively more liberal approach to FDI and its lower property prices arising from the currency depreciation. Foreign investment guidelines were also relatively liberal compared to its neighbors to allow foreigners greater opportunities for property ownership. This statement is supported by a comparison of the restrictions on foreign ownership imposed by the governments of Malaysia, Australia and Singapore (see Appendix B and C).

In Malaysia, the purchase of any property by foreign concerns requires the prior approval of the Foreign Investment Committee (FIC) pursuant to Section 433A of the National Land Code 1965, irrespective of the amount of the purchase price. Foreign concerns are defined as foreign citizens, companies incorporated overseas or companies incorporated in Malaysia but with more than 50 per cent owned by the previous two categories.

The FIC was established in 1974 to ensure a fairer distribution of economic opportunities among the ethnic communities in Malaysia. It is thus part of the NDP or its precursor, the New Economic Policy (NEP) initiatives, with its restructuring objectives very much a central concern of the FIC. Thus in its efforts to facilitate foreign investment inflows, the policies of the FIC cannot relinquish the country's national aspirations and strategic priorities (see Appendix A).

The FIC resides within the Economic Planning Unit (EPU) of the Prime Minister's Department. Members of the FIC are high-powered and their job is to protect the national interests, especially in strategic industries such

as utilities, communications, broadcasting and lately, property. The functions of FIC are four, without any direct mention of property. The reason for the FIC guidelines not being enacted as law is anyone's guess, but the impact of the guidelines remains far-reaching.

Introduction

The local property industry is long recognized as one of the country's main economic drivers. Property has strong linkages to 142-odd industries such as brick- kilns, sawmills, distributive trades, construction, manufacturing, etc. It is estimated that the real estate sector currently provides employment to some 1.4 million people in Malaysia. Total direct bank lending to the broad property sector continues to hover around the 30 per cent level.

Despite recent financial difficulties, effective demand and interest in landed property has remained strong. Foreigners also enjoyed our 40 per cent devaluation earlier, and property prices also have never really dropped. So real estate remains an attractive option for foreigners.

The interest in the FIC property guidelines arises out of the special characteristics of property investment. Although there is a huge property oversupply (the glut of unsold apartments, offices and retail space collectively valued at 10 per cent of GDP, *circa* 2000), there is no stock clearance as would have happened in the manufacturing sector. There were few real bargains about. Generally, prices have remained relatively inelastic since no one was forced to sell and what transpired was just a dearth of transactions. With a prolonged oversupply in most of the real estate sub sectors, property developers were looking at a relaxation of the FIC regulations, as a way of attracting FDI and boosting the contribution of the real estate sector to the Gross Domestic Product.

FIC duly relaxed the conditions for the acquisition of properties by foreign interests

through the introduction of Special Guidelines, effective from 22 April 1998 as well as under the Home Ownership Campaign for the period from 12 December 1998 to 12 January 1999. The FIC guidelines are regularly updated once the economic conditions improve or consolidate. However, any new conditions will not be imposed retrospectively to any purchases that have been approved under these guidelines.

The FIC Guidelines On Property Investment

Summaries of the latest FIC Guidelines relating to property acquisitions are tabled in Appendix D1, D2 and E.

Guidelines relating to property first appeared on 17 December 1992, with amendments on 23 June 1995, 22 April 1998 (property overhang) and on May 2001. These guidelines are to clarify the rules and regulations on the acquisition of properties by foreign interests, which were imposed at the Federal and State levels as announced by the Deputy Prime Minister on 23rd June 1995. A complete set of guidelines was later released in November 1995 to clarify the initial announcement.

The 1998 Guidelines were also to address the problems confronting the property market during the Asian economic crisis of mid-1997. This relaxation was made pursuant to the recommendations made by the National Economic Action Council (NEAC), after discussions with various parties involved in the property sector. The latest guidelines expedite and simplify the FIC procedure for acquisition of properties by local citizens and foreigners:

17th December 1992 FIC Guidelines on the acquisition of residential units by foreign interests-applies only to completed residential units.

Sales of office space-relaxation only for sales of office space in the hands of developers-not office buildings.

Acquisition of companies exceeding a value of RM5 million also required FIC approval.

24th June 1995	RM250,000 rule introduced.
22nd April 1998	Foreigners were allowed to purchase all types of completed buildings and newly launched projects, if the price is greater than RM250,000 per unit, without the need to incorporate local equity participation, but all such acquisitions must be made from a developer.
25th April 2001	New guidelines on the acquisition of property by locals and foreigners. Relaxation of equity conditions on almost all types of properties.

- a. All purchases of landed property by foreign nationals, regardless of value, require FIC approval.
- b. Foreign parties are not permitted to acquire all types of properties priced at below RM250,000 per unit or less.
- c. Properties bought by foreign nationals cannot be resold within less than three years from the date of FIC approval.
- d. Certain categories of properties cannot be acquired at all, including low and medium cost residential properties, Malay Reserve Land, agricultural land etc.

Under the 22 April 1998 Special Guidelines and Home Ownership Campaign (HOC), the limits on the number of residential or commercial properties that can be bought by a foreigner is removed. The equity conditions imposed previously were also removed. Other conditions that came with the Special Guidelines and the HOC, viz the project must be newly completed or at least 50 per cent in progress, and the financing must be from offshore funds, were also later removed. The only condition remaining is that the prices of the properties must be above RM250,000 per unit.

The HOC was a series of marketing events, organized by the Real Estate and Housing Developers Association (REHDA) in the form of a national road show as their response to the property overhang. The relaxation of the FIC Guidelines under the HOC was a one-off, and only applicable to those who signed their Sales and Purchase Agreement between 12 December 1998 and 12 January 1999, provided they submitted a copy of the Special Certificate endorsed by the developer and REHDA, stating that the property was purchased during the HOC.

Policy Analysis

The FIC Guidelines are based on four basic rules, and deviations from these rules are exceptions or relaxations to these four basic rules:

Residential Property

A foreign national may purchase a terraced house of more than 2 storeys if it costs more than RM250,000 per unit and the total number of units sold to the foreign nationals do not exceed 10 per cent of the total number of units for a particular type in a residential project. Foreign nationals may also purchase land for bungalow and semi-detached houses subject to the same conditions. Similarly, foreign nationals may also purchase condominiums or apartments priced at more than RM250,000 per unit, provided that foreign interests acquire not more than 50 per cent of the total number of units in each block.

Individual foreigners are allowed to purchase two residential units of which one unit must be a condominium. Any additional units will be considered as an investment and the acquisitions must be made through a company that has 70 per cent Malaysian equity, including at least 30 per cent Bumiputera equity. Foreign manufacturing companies or companies promoted by the Government are allowed to purchase more than two residential units for use of its employees.

The RM250,000 per unit upper limit is not a hard and fast rule as there are several exceptions. Apartments costing RM80,000 and above can be bought by manufacturing

companies for use by their employees, in companies promoted by the Government. Similarly, permanent residents may buy properties costing RM60,000 and above, provided the spouse is a Malaysian citizen.

The government has also introduced a Silver-Haired Programme, where foreign nationals are allowed to own residential units costing RM150,000 per unit and above, if such units are within the areas identified by the Ministry of Culture, Arts and Tourism for that purpose. Foreign companies may also purchase more than one residential unit to be used as company resort homes.

Commercial Properties

For many years, the Government has a policy of encouraging foreign companies incorporated in this country to locate their regional office or headquarters here. In this regard, foreign companies may acquire without limit, any number of offices or amount of office space including branch offices costing more than RM250,000 per unit, without any equity conditions. Thus, there is no restriction on the purchase of office space for use as the headquarters of foreign companies, but the Ministry of Finance must be informed. The previous policy was that sales of office space require FIC approval, except for sales of office space in the hands of developers - not completed office buildings.

Foreign nationals who are not building their headquarters here may also purchase commercial complexes or office space, provided that not more than 20 per cent of the particular type of property in each project is acquired by foreign interests and the acquisition is made through a Malaysian incorporated company with at least 49 per cent Malaysian equity, including 30 per cent Bumiputra share interest.

Foreign nationals may purchase shophouses of three storeys or more, with prices exceeding RM250,000, provided that foreign interests

acquire a total of not more than 50 per cent of the total number of units in each block.

Agricultural Properties

The basic rule is that foreign nationals are not permitted to purchase agricultural property perhaps because they are seen as strategic assets. Acquisition for the purpose of pursuing traditional agricultural activity, such as rubber or oil palm plantation is thus not permitted.

There are a few notable exceptions. The first are cases where the acquisition is for an agricultural venture where high or advanced technology will be utilized, provided that the acquisition is made through a Malaysian incorporated company with at least 49 per cent Malaysian equity, including 30 per cent Bumiputra share interest.

Secondly, the purchase of agricultural property is likewise permitted if the purpose is to undertake an agricultural-based industry or a tourism project. Thirdly, foreign interests are permitted to purchase agricultural land, for the purpose of providing goods for export, as outlined by the Ministry of International Trade and Industry (MITI). The equity structure of the foreign interest is to be in accordance with the guidelines determined by MITI.

Industrial Property

Foreign nationals are permitted to purchase industrial properties for the purpose of a company's operational purposes, provided that the foreign interest possesses a Manufacturer's License from the Ministry of Trade and Industry. For those without the License, the foreign interest must obtain prior FIC approval on the foreign-owned equity.

Foreign interests that are operating manufacturing activities which are exempted from obtaining manufacturing licenses from the Ministry of Trade and Industry (MITI) are permitted to purchase industrial lots and

factories for manufacturing activities only but equity conditions are imposed if they are letting the properties out. This step is to facilitate the acquisition of industrial properties by foreign nationals since it does not impose any equity requirements; however, as stated above, this exemption only applies to manufacturing activities by foreign nationals if they are not going to rent out the properties.

This means that foreign nationals may purchase industrial land if there is a license from the Ministry of Trade and Industry (MITI). If they are exempted from taking a license from MITI, they may acquire the properties but they cannot rent them out without equity conditions being imposed on them.

Development Property

For development properties, foreign nationals may acquire landed property for the purpose of development as a housing project, business (commercial) property, or industrial area, provided that the acquisition is made through a Malaysian incorporated company, with at least 70 per cent Malaysian equity, including 30 per cent Bumiputra share interest.

Summary of the Latest Position

Acquisition of property by local citizens costing below RM10 million does not require the approval of FIC. This is an increase of RM5 million compared to the earlier guideline. This new amendment is to expedite and facilitate real estate transactions costing below RM10 million, by enabling them to be settled at State Authority level.

Bureaucratic red tape and uncertainty is also reduced further. Acquisition of properties by locals costing more than RM10 million but below RM20 million need not be approved by FIC but only needs to be reported to FIC Secretariat for record purposes before the transaction is done if it involves the following special cases:

- a. Bumiputera to Bumiputera
- b. Non-Bumiputera to Bumiputera
- c. Non-Bumiputera to non-Bumiputera and
- d. Foreign interests to Malaysians

Approvals are given on a case-by-case basis. Thus, acquisition of properties by a Bumiputera to Bumiputera does not require FIC approval if it is below RM10 million.

The Asean countries has forged an understanding in many political and business areas. It should also be noted that under the AIA (Asean Investment Area) agreement, head of states of the Asean countries agreed that any Asean national can get equivalent reciprocal treatment in any Asean country, equivalent to locals. Thus, a 100 equity can be held by an Asean national in a company incorporated in Malaysia.

In this context, foreign companies incorporated within Asean countries which wishes to set up a joint-venture, a co-operative company or carry out trade and business activities in this country are allowed to own office or commercial space costing above RM250,000 per unit, without domestic equity conditions. Hotel properties and other tourism projects, due to their special nature, may be majority owned or 51 per cent owned by foreigners, with the equity going up to 100 per cent after five years.

Foreign nationals are permitted to acquire all types of residential, shophouses, office and commercial space, whether old units or newly launched ones, provided they cost more than RM250,000 per unit, without the need to form a company with the participation of local equity. The previous relaxation applied only to projects that were newly completed or where construction was at least 50 per cent completed. These acquisitions can also now be financed from local sources, such as domestic banks, whereas previously, such acquisitions had to be financed from overseas funds.

Similarly, we can summarise the landed properties which are still "out of bounds" to foreigners, as follows:

- a. All landed properties below RM250,000 per unit.
- b. Properties built on Malay Reserve Land or reserved for Bumiputras.
- c. Acquisition of three or more units of residential properties (for individuals, including spouses) .
- d. Agricultural land without technological input on Malay Reserve Land.
- e. Historical or gazetted buildings.

Reviewing The FIC Guidelines

The main sentiments against the FIC guidelines can be summarised thus:

- a. The FIC Guidelines are rather micro.
- b. Since the foreign nationals cannot take the property away even if they owned it, there is no need for undue worry.
- c. It causes delay.
- d. Thresholds are too low compared to other countries.
- e. It changes frequently.

To put things in perspective, a lot of the reasons for the dissatisfaction with the FIC are creatures of the recession. Likewise, solutions should embrace measures to foster greater economic growth. The FIC guidelines are not the main reason for the ills of the property market in this country, since FIC policies are only one of many factors why investors choose to invest in this country. Other factors include political stability, expected returns, risk analysis, etc. Ultimately, Malaysia's efforts to lure foreigners to buy surplus properties depend on the state of the national and regional economy.

In this context, the Malaysian government in recent years has taken several steps impacting on the property sector as part of the financial measures to promote economic recovery: On 7 September 1998, lending for the construction or purchase of residential properties costing

RM250,000 and below were exempted from the 20 per cent limit on lending to the broad property sector. On 5 October 1998, the 60 per cent maximum margin for financing the purchase of non-owner occupied residential properties costing RM150,000 and above, shophouses costing RM300,000 and above, and the purchase of land lots was abolished. The National Housing Company Berhad also offered bridging finance to developers for the construction of houses costing RM150,000 and below.

Solutions also cannot be patterned solely on those of other countries, as the national aspirations and strategic priorities are different. Proponents of liberalisation have put on cogent arguments, but it is ultimately a question of getting the right balance between the aspirations of the country's economic policies and that of the business imperatives. Words like AFTA, globalisation, free trade, etc, should not be excuses to throw caution to the wind, by totally liberalising the acquisition of property assets by foreign nationals. Even developed countries like Australia have not gone down this path. A similar body to the FIC, the Australian Foreign Investment Review Board (FIRB) also has similar regulations to the FIC. See Appendix A. Thus, even for a developed country like Australia, purchases of its properties by foreign nationals are controlled.

The frequent relaxation of the FIC Guidelines relating to property acquisitions is not only to clarify and simplify the FIC procedures for the acquisition of property by local and foreign interests but also to be proactive in responding to urgent issues of the day. However, a common grouse of foreign property investors in the past is that the government has a tendency for flip-flopping on regulations relating to foreign property ownership. The retroactive 100,000 ringgit (\$26,315) sales tax introduced temporarily in 1995, is still fresh in the mind of some foreign investors, making them nervous about future policy about-turns relating to property

purchases by foreigners. Investors who got their fingers burnt will not return easily. Thus, whilst responsiveness to public feedback is good, the FIC policies relating to property needs the balm of permanency, as real estate is a long-term investment. The foreign investors need assurance that these policies are here to stay.

Another area of uncertainty is whether the Malaysian Ringgit (RM), which is pegged to the US dollar, will be revised downwards in the medium term, as Malaysia is forced to devalue its currency. As landed properties are long-term investments, the value of Malaysian equity or properties held by a foreign investor would diminish in such an event. This concern has already resulted in various Singapore-based financial institutions, such as the Government of Singapore Investment Corporation Pte Ltd (GIC), reducing its exposure to Malaysian assets recently.

The RM10 million threshold may be too low; perhaps a higher threshold of RM30 million might be more appropriate, if the Australian experience is anything to go by. Certainly the FIC should find an appropriate threshold to plant the goalposts and keep them there, come recession or otherwise so that investors would be reassured of the continuity, long term nature and stability of our national policies. This calls for a deep discussion among all relevant parties on what an appropriate threshold is, and how we want to go forward. In this context, FIC should be applauded for taking the initiative to provide various briefings and holding various dialogues with all the relevant parties before coming out with the new guidelines.

With regard to delays, as a federal government, policies are sometimes administered concurrently through different Ministries as the transactions involves different areas such as companies, properties, services, labour laws, approval and operating permits and so on. This can be perplexing to some investors and may be regarded as red

tape, especially if this process takes longer than expected. To be fair, the FIC has vastly improved their act. They receive about 80 applications a month, and on average, a single application takes about two months to process. This does not include delays caused by insufficient information being provided by the applicant.

Nevertheless, it is important that the various government agencies try to work in unison as much as they can, to avoid confusion among investors. For example, FIC and the Ministry of Trade and Industry (MITI) must not contradict each other. FIC should also work towards processing applications simultaneously with all the other relevant departments, instead of asking applicants to apply serially. Even better, automatic approval should be given within a certain frame if the conditions set out are met.

It is estimated that business transactions can be slowed down by RMS to RM10 million if FIC takes too long to process the applications due to too many applications in the pipeline. A typical application would take 6-8 weeks, putting off many potential buyers. If FIC is inundated with applications, this delay is bad for business. Against the backdrop of most of the available foreign investment previously due to countries within the Asean region going to China, there is a need to review the FIC guidelines. The basis for the argument is that the FIC Guidelines should support the efforts of the businessman to fight for a share of a shrinking FDI. Further, since all shares on the Kuala Lumpur Stock Exchange (KLSE) are freely traded, companies listed on the KLSE find waiting for the FIC approvals rather difficult, as they need quick decisions to buy or sell.

The merits and demerits of FIC guidelines may always be subject to different perspectives of the different interested parties. Objective discussions on the policies of the FIC can be difficult, as there is not much reliable data on application and

approvals forthcoming, since land, is a state matter whilst FIC is a federal body. Analysts estimate that foreigners make up less than 2 per cent of the property market, so how much impact the previous regulations had on putting off Singaporean investors cannot be measured except to say anecdotally that the public perception is negative. The need for more data is imperative, so that the impact of FIC policies on the country can be more closely gauged and monitored by researchers.

Concern has also been expressed that the current rules provide a relaxation only to developers, whereas other landed property owners also suffer from property overhang. This is believed to be because most purchasers are direct from the developer, not sub-sales. On this point, it is up to the aggrieved parties to put their grievances across clearly to the authorities, in the same way as the developers had done. Overhang figures should also be correctly interpreted, as a small overhang would not be a totally bad thing. As with other sectors of the economy, such as employment, a small amount of excess capacity is needed to ensure flexibility in economic response.

Conclusion

By all accounts, the policies of the FIC have attracted a lot of Press. Depending on their perspective, it is perceived as a boon or a bane to FDI. It has been variously described as a perpetrator of dead end policies, or the savior of the country's strategic long-term interests. That some sort of guidelines on foreign

investment is needed is common ground. Much of the more rational comments are due to the different expectations of the various parties relating to threshold levels and how the policies of the FIC should be implemented.

It should also be noted that since land is a state matter, the FIC has no direct control over the land transaction process in the respective states. However, through the National Land Council, which is chaired by the Deputy Prime Minister, and where all the states are represented, the cooperation of the various states are sought to ensure administrative facilitation by the states to implement the FIC Guidelines. This step also shows the FIC's role vis-a-vis the state in liberalizing property transactions. If this role is not effective, then even if any new measures send a strong signal to the market, foreigners may not be coming in droves to take advantage of the new rules yet.

When the NEP was first introduced, the Bumiputra equity in Malaysia was about 2 per cent, whereas the foreign equity was about 70 per cent. Now in 2002, the foreign equity is about 30 per cent, while the Bumiputra equity is about 20 per cent. There is still a need to continue with the policies of the FIC to address this continuing imbalance. The equity conditions imposed under the FIC Guidelines are in line with the objectives of the NEP. Since the intention is to make Malaysia a country which is always united, peaceful and prosperous, all companies which are affected by the policies should endeavor earnestly to comply with the conditions.

List of Appendices

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Appendix A

Main Functions Of The FIC

The main functions of the FIC are to:

- Plan policy guidelines on foreign investment in all sectors of the economy (including the property industry)-
- Administer and advise Ministries and Governmental Agencies on foreign investment matters.
- Assist foreign investors in their business activities in Malaysia and recommend suitable investment policies.
- Organise and control the acquisition of assets or any interests, mergers and take-over of companies and businesses in Malaysia.
- Monitor and evaluate the form, extent and conduct of foreign investment in the country and to maintain comprehensive information on foreign investment matters.

The FIC guidelines apply to the following:

- Foreign investors proposing an acquisition of any large fixed assets in Malaysia.
- Any proposed acquisition, merger or take-over of companies and businesses in Malaysia that will result in ownership or control passing to foreign parties.
- Any proposed acquisition of 15% or more of the voting power by anyone of the foreign interests or associated groups or by foreign interests in the aggregate of 30% or more of the voting power of a Malaysian company or business.
- Control of Malaysian companies and businesses through any form of joint venture agreement, management agreement and technical assistance agreement or other arrangements.
- Any merger or take-over of any company or business in Malaysia whether by Malaysians or foreign parties.
- Any acquisition of assets (including properties) or interests exceeding the sum of RM5 million, whether by Malaysian or foreign parties.

Appendix B

Purchase of Property In Singapore By Foreigners

Under the Residential Property Act 1976 (RPA), all Singapore citizens and companies can freely buy any type of residential property in Singapore. However, foreigners wishing to buy a property are not permitted to acquire “landed” properties. Landed properties are properties that have their own land title, for example, detached, semi-detached or terraced houses, non-strata-titled property; vacant land zoned for residential use and apartment units in buildings below six storeys in height without condominium status.

However, they can purchase a flat comprised in any building containing six or more storeys, or property that bears the title ‘condominium’ in any approved documents, or any non-residential, commercial or industrial property.

Any foreign person who wishes to purchase any of the above restricted residential property for owner-occupation may apply to the Controller of Residential Property for his written approval. Once approval is given, the successful applicant is required to sign an undertaking to the government that the property will be used for occupation as opposed to investment.

The application process takes about three months and the applicant will be evaluated on a case-by-case basis. Foreigners eligible to apply are permanent residents of Singapore; those who are of “economic benefit” to Singapore or are able to make economic contributions to Singapore; and foreigners who possess professional or other qualifications or expertise which are of value or benefit or are advantageous to Singapore. Foreigners who have been granted approval to purchase landed property in Singapore cannot later transfer this approval to another foreigner .

In terms of financing, since May 1996, foreigners cannot obtain Singapore Dollar loans to purchase residential properties. Foreign currency loans e.g. HKD, USD, GBP, are available to foreigners and Singapore permanent residents from most commercial banks.

Appendix C

Purchase of Property In Australia By Foreigners

Acquisitions of developed residential real estate by foreign interests in Australia are not normally approved except for the following two categories:

- i. Foreign companies, with an established substantial business in Australia, buying for named senior executives continuously resident in Australia for periods longer than 12 months, provided the dwelling is sold when no longer required for this purpose. Whether a company is eligible, and the number of properties it may acquire under this category, will depend upon the scope of the foreign company's operations and assets in Australia. Unless there are special circumstances, foreign companies normally will not be permitted to buy more than two dwellings under this category.
 - Foreign companies would not be eligible under this category where the property would represent a significant proportion of its Australian assets.
- ii. Foreign nationals temporarily resident in Australia, holding a current temporary resident visa which permits continuous residence in Australia for a minimum further period of more than 12 months from the time of application, purchasing a dwelling for use as their principal place of residence (and not for rental purposes), subject to the immediate sale of that property if their visa expires, or if they no longer occupy the property or when they cease to reside in Australia. This latter category includes long-stay retirees, and students 18 years of age and over studying courses of more than twelve months duration at recognised tertiary institutions. A general limit of \$300,000 applies to the value of properties acquired by students temporarily resident in Australia.
 - Persons who only hold visitor or bridging visas are not eligible for approval under this category.
- iii. Acquisitions of residential real estate (including vacant building allotments and house and land packages where construction has not commenced) for development by foreign interests' are normally approved subject to a specific condition requiring continuous construction to commence within 12 months.

Foreign interests may apply to acquire home units, town houses, house/land packages (where construction has commenced), strata titled hotel/motel units etc in a new development, either 'off-the-plan', during the construction phase or when the dwelling is newly completed, provided that it has never been occupied or sold and provided no more than 50 per cent of the dwellings in anyone development are sold to foreign interests. This category includes dwellings that are part of extensively redeveloped buildings where the building's use has undergone a change from non-residential (eg office, warehouse) to residential and the cost of redevelopment is at least 50 per cent of the total acquisition cost based on purchase price or market value of the property, whichever is the greater .

- This category does not include developed residential real estate that has been refurbished.

Integrated Tourism Resorts

Acquisitions of residential real estate within a resort which has been designated by the Government as an Integrated Tourism Resort (ITR) prior to September 1999 are exempt from the normal foreign investment restrictions applying to foreign acquisitions of residential property and do not require further foreign investment approval. For resorts designated as ITRs from September 1999, the exemption only applies to developed residential property which is subject to a long term (10 years or more) lease to the resort/hotel operator, making it available for tourist accommodation when not occupied by the owner .

Commercial Real Estate

Commercial real estate means developed property (such as offices, retail and industrial complexes), but **not** (i) vacant land (ii) accommodation facilities (iii) residential properties (i.e. houses, flats, units, 'hobby farms' and 'rural residential' blocks) and (iv) land which is integral to a farming business.

Who Should Apply?

Acquisitions of commercial real estate by foreign interests should be submitted to the Government through the Foreign Investment Review Board for approval prior to purchase unless the acquisition is exempt (see below).

Exempt Commercial Real Estate Acquisitions

Acquisitions of commercial real estate by Australian citizens resident abroad or Australian incorporated companies or Australian based trusts owned by Australian citizens resident abroad do not require approval. Acquisitions of commercial real estate where the total value of the property being acquired is less than \$50 million do not require notification or approval unless:

- i the land is vacant;
- ii the whole or part of the land comprises an accommodation facility;
- iii. the property is being acquired by a foreign government or its agent.
- iv. the property is valued at more than \$5 million and is subject to heritage listing. 35.

Acquisitions of developed commercial real estate which are to be used immediately for industrial or commercial purposes which are incidental to an existing or proposed business (other than a business of dealing in land or operating an accommodation facility) do not require notification or approval.

The United States remained the largest source of proposed foreign investment in Australia during 2000-01 accounting for around 45 per cent of the total. The other major source was the United Kingdom, its proposed investment in Australia increased to \$22.7 billion in 2000-01 or 21 per cent of the total. This represents a 97 per cent increase from \$11.5 billion in 1999-2000. The next largest contributors of proposed foreign investment were Germany, Canada and Hong Kong with proposed investments valued at \$4.7 billion, \$3.6 billion and \$3.1 billion, respectively.

Appendix D1: Summary of Guideline For Residential Property From 1992 - 2001

Issued Date	17 December 1992	1 November 1995	22 May 1998	18 May 1998	2 May 2001
Effective Date	17 December 1992	23 June 1995	16 October 1997	22 April 1998	25 April 2001
Price	RM80,000 and above	RM250,000 and above	RM250,000 and above	RM250,000 and above	RM250,000 and above RM150,000 for Silver Haired Programme
Source of Funding	*	*	*	offshore	within Malaysia
Restricted Purchases		a. 1 & 2 storey terraced house b. low and medium cost c. houses on Malay Reserve land d. Bumiputra quota	a. 1 & 2 storey terraced house b. low and medium cost c. houses on Malay Reserve land d. Bumiputra quota		
Restricted Sales	a. For own use, cannot be resold within 3 years b. For rent, cannot be sold within 5 years	Cannot be sold within 3 years	Cannot be sold within 3 years		
Restricted Purchases and Sales According To Price Categories	Terraced Houses	a. RM80,000 to RM200,000 for own use only b. RM200,000 and above, for own use or for rent			
	Condominium	a. RM80,000 to less than RM300,000, for own use or rent b. RM300,000 and above no restriction			
	Bungalows	a. RM80,000 to less than RM500,000, for own use only b. RM500,000 and above, for own use or rent			
Additional Condition For Purchases of Bungalows and Semi-detached Units	If land is developed for investment, the owner has to transfer the title to a local company, with 30% foreign equity and 70% local equity (including 30% Bumiputra share)	If land is redeveloped for investment, the owner has to transfer the title to a local company, with 30% foreign equity and 70% local equity (including 30% Bumiputra share)	**	**	**

* No statement concerning sources of finance is mentioned in the above Guideline but approval is given to applications that has obtained offshore financing.

** No statement concerning development but every approval for purchase of bungalow units includes the condition that "every redevelopment must obtain prior approval of FIC"

Appendix D2: Summary of Guideline For Residential Property From 1992 - 2001 -cont

Issued Date		17 December 1992	1 November 1995	22 May 1998	18 May 1998	2 May 2001
Effective Date		17 December 1992	23 June 1995	16 October 1997	22 April 1998	25 April 2001
Number of Units Permitted		Only one - extra units have to be purchased through a local company, with 30% foreign equity and 70% local equity(including 30% Bumiputra share)	Only one - extra units have to be purchased through a local company, with 30% foreign equity and 70% local equity (including 30% Bumiputra share)	2 condo units or 1 landed and 1 condo unit, extra unit have to be purchased through local company, with 30% foreign equity and 70% local equity (including 30% Bumiputra share)	No restriction	No restriction
Purchased By Foreign Companies as resort/holiday homes		a. One unit is permitted for company staff b. Extra units must be purchased through a local company, with 30% foreign equity and 70% local equity (including 30% Bumiputra share)	For staff use, purchase of more than one unit may be considered			
Purchase By Local Manufacturing companies		a. For staff use, may purchase more than one unit, provided less than RM80,000 per unit b. For investment, units must be purchased through a local company, with 30% foreign equity and 70% local equity (including 30% Bumiputra share)		For staff use, purchases of more than two units are permitted, but they must cost less than RM60,000 each		
Developer Sales Quota	Terraced Houses	30 per cent	30 per cent	50 per cent		
	Condominium	30 per cent	10 per cent (more than two storeys)	10 per cent (more than two storeys)		
	Bungalows/ bungalow lots/ semi-detached	30 per cent	10 per cent	10 per cent		
Relaxation For Permanent Resident				May purchase property costing more than RM60,000 each if husband or wife Malaysian citizen Or buyer qualifies for permanent resident status and has applies for it		
Purchase under "time sharing Schemes"		No restriction				

Appendix E: Summary of Guideline For Commercial Property, Industrial Land and Factories, and Development Land From 1992 - 2001

Commercial Properties

Issued Date	17 December 1992	1 November 1995	18 May 1998	22 May 1998	2 May 2001
Effective Date	17 December 1992	23 June 1995	16 October 1997	22 April 1998	25 April 2001
Price		More than RM250,000	More than RM250,000	More than RM250,000	More than RM250,000
Restriction on Purchase		a. Two-storey shops and lower b. Low cost shops c. Stalls d. Service workshops e. Business premises on Malay Reserve Land		1. Subsales only (not from developers) 2. If from developers, projects must be less than 50 per cent completed	Subsales only (not from developer)
Source of Financing				Offshore	Within the country
Equity Condition	For shop-house only, a local company with 30% foreign equity and 70% local equity (including 30% Bumiputra share)	1. For own use: A company that is incorporated in Malaysia with 30% foreign equity and 70% local equity (including 30% Bumiputra share) 2. For Renting out: A company that is incorporated in Malaysia with 30% foreign equity and 49% local equity (including 30% Bumiputra share)			
Sales Quota (Developer)		Less than 20 per cent of such units within a project			

* Shop-house, Office and Retail Lots

** Only the conditions for the purchase of residential units are mentioned

Industrial Land and Factories

Issued Date	1 November 1995	18 May 1998	2 May 2001
Effective Date	23 June 1995	16 October 1997	25 April 2001
Condition	1. With a manufacturing license from MITI - no equity conditions imposed 2. Without a manufacturing license from MITI - A company that is incorporated in Malaysia with 30% foreign equity and 70% local equity (including 30% Bumiputra share)		1. With a manufacturing license from MITI - no equity conditions imposed 2. Without a manufacturing license from MITI - no equity conditions imposed but only for manufacturing activities
Purpose of Purchase	For own use only	For own use only	For own use and for rent

* Only the conditions for the purchase of residential units are amended

Land For Development

Issued Date	1 November 1995	18 May 1998*
Effective Date	23 June 1995	16 October 1997
Price	More than RM250,000	More than RM250,000
Equity Condition	A company that is incorporated in Malaysia with 30% foreign equity and 70% local equity (including 30% Bumiputra share)	

* Only the conditions for the purchase of residential units are amended