

28 May 2008

TO WHOM IT MAY CONCERN

Tuan,

Foreign Exchange Administration Rules on Borrowing in Foreign Currency by Residents as well as Borrowing and Lending in Ringgit by Residents

In our efforts to further enhance business efficiency, Bank Negara Malaysia is pleased to announce the following with immediate effect:

- A. Further liberalisation of rules on borrowing and lending by residents;
- B. Reclassification of definition of “credit facilities”; and
- C. Clarification on the threshold for foreign currency borrowing and investment in foreign currency assets by resident entities.

A. Further Liberalisation of Rules on Borrowing and Lending by Residents

I. Borrowing in foreign currency by residents

- (a) A resident company is free to borrow any amount in foreign currency from –
 - (i) its non-resident non-bank parent company¹;

¹ A non-resident non-bank parent company refers to -
(a) a non-resident company with more than 50% shareholding in a resident company; or
(b) the ultimate non-resident parent company of the resident company,
which is not a bank, an investment holding company owned by a bank or a stockbroking company.

- (ii) other resident companies within the same corporate group² in Malaysia. (Previously, approval is required for any amount); and
 - (iii) licensed onshore banks³ and licensed International Islamic Banks.
- (b) A resident company is free to obtain any amount of foreign currency supplier's credit for capital goods from non-resident suppliers; and
- (c) A resident company or an individual is free to refinance outstanding approved foreign currency borrowing, including principal and accrued interest.

The thresholds for foreign currency borrowing of RM100 million in aggregate by a resident company on a corporate group basis and RM10 million for a resident individual shall no longer be applicable to the above financing activities.

II. Borrowing in ringgit by residents from non-residents

- (a) A resident company is allowed to borrow in ringgit, including the issuance of ringgit-denominated redeemable preference shares or loan stocks –
 - (i) of any amount from its non-resident non-bank parent company to finance activities in the real sector in Malaysia; and
 - (ii) up to RM1 million in aggregate from other non-resident non-bank companies or individuals for use in Malaysia; and

² Corporate group refers to a group of companies with parent-subsidary relationship in Malaysia. A parent company is a company that holds more than 50% share of another company, i.e. the subsidiary.

³ Licensed onshore banks refer to licensed commercial banks, licensed Islamic banks and licensed investment banks.

- (b) A resident individual is allowed to borrow in ringgit up to RM1 million in aggregate from non-resident non-bank companies or individuals for use in Malaysia.

Previously, borrowing in ringgit of any amount from non-residents required prior permission of the Controller of Foreign Exchange (the Controller).

III. Lending in ringgit by residents to non-residents

- (a) A resident company or individual is free to lend in ringgit of any amount to non-resident non-bank companies or individuals to finance activities in the real sector in Malaysia (previously, only up to RM10,000); and
- (b) A licensed onshore bank is free to lend in ringgit of any amount to non-resident non-bank companies or individuals to finance activities in the real sector in Malaysia (previously, only up to RM10 million in aggregate).

B. Reclassification of Definition of “Credit facilities”

2. The definition of “credit facilities” for the purpose of foreign exchange administration rules are amended to **exclude** the following:

- (a) operational leasing facilities;
- (b) factoring facilities without recourse; and
- (c) performance guarantees and financial guarantees.

3. Nevertheless, guarantees for payment of goods, which effectively are trade financing facilities, continue to be included in the definition of “credit facilities”. The requirement for registration of financial guarantees involving a resident and a non-resident continues to be applicable as per the circular dated 15 May 2007 on “Amendments to the Exchange Control act 1953”. The amended definition of “credit facilities” is in Appendix I.

C. Clarification on the Threshold for Foreign Currency Borrowing and Investment in Foreign Currency Assets⁴ by Resident Entities

4. For clarity, the applicable thresholds for foreign currency borrowing and investment in foreign currency assets by resident entities other than a company incorporated or registered pursuant to the Companies Act 1965 are in the following table.

| Entity | Applicable threshold | |
|---|--|---|
| | Foreign currency borrowing | Investment in foreign currency assets |
| <ul style="list-style-type: none"> • Sole proprietorship • General partnership • General and limited partners within a partnership | <ul style="list-style-type: none"> • Up to RM10 million in aggregate | <ul style="list-style-type: none"> • No limit if funded by own foreign currency funds retained onshore or offshore • Up to full amount of foreign currency borrowing if funded by approved foreign currency borrowing; and • Up to RM1 million in aggregate per calendar year if the entity has domestic ringgit borrowing and funds the investment through the conversion of ringgit. |
| <ul style="list-style-type: none"> • Limited partnership • Other entities (e.g. co-operative and charitable organisation) | <ul style="list-style-type: none"> • Up to RM100 million in aggregate | <ul style="list-style-type: none"> • No limit if funded by own foreign currency funds retained onshore or offshore • Up to full amount of foreign currency borrowing if funded by approved foreign currency borrowing; and • Up to RM50 million in aggregate per calendar year if the entity has domestic borrowing and fund the investment through the conversion of ringgit. |

⁴ Investment in foreign currency assets, amongst others, include –

- Lending to non-residents;
- Placement of foreign currency funds onshore and offshore; and
- Purchase of approved foreign currency investment products marketed by licensed onshore banks, licensed International Islamic Banks and any resident permitted by the Controller.

5. The following Exchange Control Notices dated 1 September 1998 and circular letters dated 1 April 2007 that are relevant to the above changes are amended accordingly:

- (a) ECM 1: Definitions;
- (b) ECM 6: Credit Facilities to Non-residents;
- (c) ECM 10: Foreign Currency Credit Facilities and Ringgit Credit Facilities from Non-residents;
- (d) ECM 12: Securities;
- (e) KL.EC. 100/6/2007/8(a) and KL.EC.100/1/10 on ECM 10: Foreign Currency Credit Facilities and Ringgit Credit Facilities from Non-residents; and
- (f) KL.EC. 100/6/2007/5(a) and KL.EC.100/1/6 on ECM 6: Credit Facilities to Non-residents.

6. With the above relaxations, a summary of the rules relating to borrowing and lending by residents is in Appendices II and III.

Appendix I

Definition of “Credit Facilities”

Any advances, loans, trade financing facilities, hire purchase, factoring facilities with recourse, financial leasing facilities, guarantees for payment of goods, redeemable preference shares or similar facilities in whatever name or form. The following are excluded:

- (a) Trade credit terms extended by a supplier for all types of goods and services;
- (b) Forward foreign exchange contracts entered into with licensed onshore banks and licensed International Islamic Banks;
- (c) Performance guarantees and financial guarantees;
- (d) One personal housing loan and one vehicle loan obtained from residents;
- (e) Credit card and charge card facilities;
- (f) Operational leasing facilities; and
- (g) Factoring facilities without recourse.

Appendix II

Summary Table

A. Foreign Currency Credit Facilities Obtained by Residents (ECM 10)

| TYPE OF RESIDENT BORROWER | TYPE OF LENDER | UTILISATION OF BORROWED FUNDS BY RESIDENT BORROWER | LIMIT |
|--|--|---|---|
| <ul style="list-style-type: none"> • Resident company • Limited partnership • Entity other than company or individual | <ul style="list-style-type: none"> • Licensed onshore bank | <ul style="list-style-type: none"> • Any purpose | <ul style="list-style-type: none"> • No limit |
| | <ul style="list-style-type: none"> • Licensed International Islamic Bank (IIB) | <ul style="list-style-type: none"> • Any purpose other than trade financing involving export | <ul style="list-style-type: none"> • No limit |
| | <ul style="list-style-type: none"> • Resident company within the same corporate group in Malaysia | <ul style="list-style-type: none"> • Any purpose | <ul style="list-style-type: none"> • No limit |
| | <ul style="list-style-type: none"> • Non-resident non-bank parent company | <ul style="list-style-type: none"> • Any purpose | <ul style="list-style-type: none"> • No limit |
| | <ul style="list-style-type: none"> • Non-resident supplier (for suppliers' credit) | <ul style="list-style-type: none"> • To finance purchases from the non-resident supplier | <ul style="list-style-type: none"> • No limit |
| | <ul style="list-style-type: none"> • Non-resident, including banking institution | <ul style="list-style-type: none"> • To refinance approved foreign currency borrowing • To finance other purposes | <ul style="list-style-type: none"> • Up to the outstanding amount of approved foreign currency borrowing, including accrued interest • Up to RM100 million equivalent in aggregate per corporate group: <ul style="list-style-type: none"> ✓ Including trade financing facility obtained from non-resident banking institutions which is capped at RM5 million equivalent |

| TYPE OF RESIDENT BORROWER | TYPE OF LENDER | UTILISATION OF BORROWED FUNDS BY RESIDENT BORROWER | LIMIT |
|--|--|--|---|
| <ul style="list-style-type: none"> • Resident individual • Sole proprietorship • General partnership • General and limited partners within a partnership | <ul style="list-style-type: none"> • Licensed onshore bank • Licensed IIB • Non-resident, including banking institution | <ul style="list-style-type: none"> • To refinance approved foreign currency borrowing • To finance other purposes <ul style="list-style-type: none"> ✓ Export financing only from licensed onshore banks | <ul style="list-style-type: none"> • Up to the outstanding amount of approved foreign currency borrowing, including accrued interest • Up to RM10 million equivalent in aggregate <ul style="list-style-type: none"> ✓ Including trade financing facility obtained from non-resident banking institutions which is capped at RM5 million equivalent |
| <p>Special status company</p> <ul style="list-style-type: none"> • MSC • OHQ • Bionexus • IDR | <ul style="list-style-type: none"> • Any lender | <ul style="list-style-type: none"> • Any purpose | <ul style="list-style-type: none"> • No limit |

¹ **OHQ:** Approved Operational Headquarters – A local or foreign-owned locally-incorporated company approved by the Malaysian Industrial Development Authority which carries a business by providing qualifying services to its offices/related companies in and outside Malaysia

² **MSC:** A company participating and undertaking Information and Communication Technologies (ICT) activities which is awarded the MSC Status by the Government of Malaysia through the Multimedia Development Corporation.

³ **Bionexus:** A qualified biotechnology company which is awarded the Bionexus status by the Malaysian Biotechnology Corporation Sdn Bhd.

⁴ **IDR :** A company approved by the Ministry of Finance to undertake qualifying activities under the six targeted services based sectors in the Iskandar Regional Development Authority (IRDA) approved zones which is awarded the IDR status by IRDA.

B. Ringgit Credit Facilities Obtained by Residents (ECM 10)

| TYPE OF RESIDENT BORROWER | TYPE OF LENDER | UTILISATION OF BORROWED FUNDS BY RESIDENT BORROWER | LIMIT |
|--|---|--|--|
| <ul style="list-style-type: none"> • Resident company • Limited partnership • Entity other than company or individual | <ul style="list-style-type: none"> • Non-resident non-bank parent company | <ul style="list-style-type: none"> • To finance activities in the real sector in Malaysia | <ul style="list-style-type: none"> • No limit |
| | <ul style="list-style-type: none"> • Non-resident – <ul style="list-style-type: none"> ✓ individual ✓ non-bank company | <ul style="list-style-type: none"> • For use in Malaysia | <ul style="list-style-type: none"> • Up to RM1 million in aggregate |
| | <ul style="list-style-type: none"> • Non-resident banking institution | <ul style="list-style-type: none"> • Not allowed | <ul style="list-style-type: none"> • Not allowed |
| <ul style="list-style-type: none"> • Resident individual • Sole proprietorship • General partnership • General and limited partners within a partnership | <ul style="list-style-type: none"> • Non-resident – <ul style="list-style-type: none"> ✓ individual ✓ non-bank company | <ul style="list-style-type: none"> • For use in Malaysia | <ul style="list-style-type: none"> • Up to RM1 million in aggregate |
| | <ul style="list-style-type: none"> • Non-resident banking institution | <ul style="list-style-type: none"> • Not allowed | <ul style="list-style-type: none"> • Not allowed |
| <ul style="list-style-type: none"> Special status company • MSC | <ul style="list-style-type: none"> • Any non-resident | <ul style="list-style-type: none"> • No restriction | <ul style="list-style-type: none"> • No limit |
| <ul style="list-style-type: none"> Special status company • Bionexus • IDR • OHQ | <ul style="list-style-type: none"> • Non-resident non-bank parent company | <ul style="list-style-type: none"> • For use in Malaysia | <ul style="list-style-type: none"> • No limit |
| | <ul style="list-style-type: none"> • Non-resident – <ul style="list-style-type: none"> ✓ individual ✓ non-bank company | <ul style="list-style-type: none"> • For use in Malaysia | <ul style="list-style-type: none"> • Up to RM1 million in aggregate |
| | <ul style="list-style-type: none"> • Non-resident banking institution | <ul style="list-style-type: none"> • Not allowed | <ul style="list-style-type: none"> • Not allowed |

Appendix III

Summary Table

Ringgit Credit Facilities to Non- Residents (ECM 6)

| TYPE OF RESIDENT LENDER | NON-RESIDENT BORROWER | UTILISATION OF BORROWED FUNDS BY NON-RESIDENT BORROWER | LIMIT |
|---|---|---|---|
| <ul style="list-style-type: none"> • Licensed onshore bank | <ul style="list-style-type: none"> • Non-resident – <ul style="list-style-type: none"> ✓ individual ✓ non-bank company | <ul style="list-style-type: none"> • To finance activities in the real sector in Malaysia • To finance or refinance the purchase or construction of residential and commercial property in Malaysia, except for purchase of land only | <ul style="list-style-type: none"> • No limit |
| | <ul style="list-style-type: none"> • Non-resident - <ul style="list-style-type: none"> ✓ bank ✓ stockbroking company | <ul style="list-style-type: none"> • To finance the purchase of ringgit instruments transacted on Bursa Malaysia or settled through RENTAS to avoid settlement failure due to inadvertent delays: <ul style="list-style-type: none"> ✓ Up to two working days with no roll-over option • To finance purposes other than the above | <ul style="list-style-type: none"> • No limit • Not allowed |
| | <ul style="list-style-type: none"> • Non-resident - <ul style="list-style-type: none"> ✓ multilateral development bank (MDB) ✓ multilateral financial institution (MFI) ✓ sovereign ✓ quasi-sovereign agency (QSA) ✓ multinational corporation (MNC) | <ul style="list-style-type: none"> • Any purpose | <ul style="list-style-type: none"> • No limit for subscription of ringgit-denominated sukuk/bonds issued in Malaysia by the non-resident |

| TYPE OF RESIDENT LENDER | NON-RESIDENT BORROWER | UTILISATION OF BORROWED FUNDS BY NON-RESIDENT BORROWER | LIMIT |
|--|---|---|---|
| <ul style="list-style-type: none"> • Resident company • Resident individual • Entity other than company or individual (e.g. sole proprietorship or partnership) | <ul style="list-style-type: none"> • Non-resident – <ul style="list-style-type: none"> ✓ individual ✓ non-bank company | <ul style="list-style-type: none"> • To finance activity in the real sector in Malaysia • To finance or refinance the purchase or construction of residential and commercial property in Malaysia, except for purchase of land only | <ul style="list-style-type: none"> • No limit |
| | <ul style="list-style-type: none"> • Non-resident – <ul style="list-style-type: none"> ✓ bank ✓ stockbroking company | <ul style="list-style-type: none"> • Not applicable | <ul style="list-style-type: none"> • Not applicable |
| | <ul style="list-style-type: none"> • Non-resident – <ul style="list-style-type: none"> ✓ MDB ✓ MFI ✓ Sovereign ✓ QSA ✓ MNC | <ul style="list-style-type: none"> • Any purpose | <ul style="list-style-type: none"> • No limit for subscription of ringgit-denominated sukuk/bonds issued in Malaysia by the non-resident |
| <ul style="list-style-type: none"> • Resident stockbroking company | <ul style="list-style-type: none"> • Non-resident – <ul style="list-style-type: none"> ✓ individual ✓ non-bank company | <ul style="list-style-type: none"> • Margin financing for securities traded on Bursa Malaysia | <ul style="list-style-type: none"> • No limit, subject to the rules issued by Bursa Malaysia |
| | <ul style="list-style-type: none"> • Non-resident – <ul style="list-style-type: none"> ✓ bank ✓ stockbroking company | <ul style="list-style-type: none"> • Not applicable | <ul style="list-style-type: none"> • Not applicable |
| <ul style="list-style-type: none"> • Resident insurance company and takaful operator | <ul style="list-style-type: none"> • Non-resident individual who is a policy holder | <ul style="list-style-type: none"> • Any purpose | <ul style="list-style-type: none"> • Up to the attained cash surrender value of the ringgit insurance/takaful policy |