



BILL OF GUARANTEES **EXPLANATORY NOTES**

Introduction

The grant of MSC Malaysia/Malaysia Digital (MD) Status entitles qualified companies access to a set of incentives, rights and privileges from the Government of Malaysia (“**Government**”), namely the MD Bill of Guarantees (“**BoGs**”). The BoGs reflects the Government’s intention to provide an environment in Malaysia that is conducive to the development of MSC Malaysia/MD Status companies.

The incentives, rights and privileges under the BoGs are subject to the applicable application and evaluation process, approval and adherence by the MSC Malaysia/MD Status companies to the relevant criteria, applicable conditions and requirements under relevant laws and regulations.

While the Government will reasonably exercise all authority and power towards providing the relevant incentives, rights and privileges under the BoGs, the actual provision will be dependent upon a range of factors and parties (both public and private), and can be affected by circumstances that are not within the control of the Government.

The BoGs are as follows:

- BoG 1: To provide a world-class physical and information infrastructure.
Note: BoG 1 is only available for MSC Malaysia/MD Status companies located in areas or premises recognised by the Government.
- BoG 2: To allow employment of local and foreign knowledge workers.
- BoG 3: To ensure freedom of ownership by exempting companies with MSC Malaysia/MD Status from local ownership requirements.
- BoG 4: To give the freedom to source capital globally for MD infrastructure, and the right to borrow funds globally.
- BoG 5: To provide competitive financial incentives and duty import and sales tax exemption on the importation of multimedia/ICT equipment.

- BoG 6: To become a regional leader in Intellectual Property Protection and Cyberlaws.
- BoG 7: To ensure no censorship of the Internet.
- BoG 8: To provide globally competitive telecommunications tariffs.
- BoG 9: To tender key MD infrastructure contracts to leading companies willing to use Malaysia as their regional hub.
- BoG 10: To provide a high-powered implementation agency to act as an effective one-stop super shop.

This document reflects the Government's interpretation in respect of the BoGs, and may be subject to change. For further information, please contact Malaysia Digital Economy Corporation Sdn. Bhd. ("MDEC") at:

Client Contact Centre (CliC)

Tel. no.: +603-8315 3000

Toll free no.: 1-800-88-8338 (within Malaysia)

Email: clic@mdec.com.my

ISSUED BY MALAYSIA DIGITAL ECONOMY CORPORATION SDN. BHD. (MDEC)

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Bill of Guarantee No. 1: To provide a world-class physical and information infrastructure

Policy Objective

To realise the vision for Malaysia to be a leading global digital hub, the Government recognises the importance of the physical and digital infrastructure in providing a conducive and enabling environment for companies to conduct their business operations, undertake research and develop new technologies, applications and products.

Interpretation

The Government has put in place policies, frameworks and plans to facilitate the provision of physical and digital infrastructure as part of a conducive and enabling environment for the operation of MSC Malaysia/MD Status companies. The relevant policies, frameworks and plans for the recognition of areas and premises have been developed and will continually be updated based on global benchmark towards attaining globally competitive standards.

This BoG is available for MSC Malaysia/MD Status companies which opted to locate and operate their business operations in areas or premises that are recognised by the Government and measured by the relevant sets of globally competitive standards, on matters such as utilities and telecommunications services.

MSC Malaysia/MD Status companies are required to conduct their own due diligence and continuously satisfy themselves as to the suitability of their respective location(s) and the adequacy of the amenities, facilities, services and business environment provided therein.

Some of the key parties involved in the delivery of this BoG are as follows:

- Building managers and owners.
- Utility companies and telecommunication service providers.
- State Government, local authorities and related Government agencies.

Responsible Ministries / Agencies

- Ministry of Digital

- Ministry of Communications
- Ministry of Natural Resources and Environmental Sustainability
- Ministry of Energy Transition and Water Transformation
- Ministry of Housing and Local Government
- Malaysian Communications and Multimedia Commission

Bill of Guarantee No. 2: To allow employment of local and foreign knowledge workers

Policy Objective

To realise the vision for Malaysia to be a leading global digital hub, the Government recognises the importance of human capital to meet the demands of the industry.

Interpretation

MSC Malaysia/MD Status companies are expected to maintain a work force utilising a substantial percentage of knowledge workers, in view of the nature and demands of the industry, and also because the presence of knowledge workers is consistent with Malaysia's long-term goal of enabling and sustaining productivity-driven growth of the digital economy.

MSC Malaysia/MD Status companies may employ foreign knowledge workers, subject to applicable criteria, conditions and approval by the relevant authorities.

The process for employment of foreign knowledge workers is subject to requirements under the *Immigration Act 1959/63* and the *Immigration Regulations 1963* and the applications must be made through MDEC as the appointed agency.

A "knowledge worker" is an individual who holds one of the following:

- *Tertiary qualification from an institution of higher learning (in any field); or*
- *Diploma in ICT, engineering, technology or specialized certification plus at least 2 years' relevant experience in a field that is a heavy user of technology; or*
- *Professional, executive, management and technical work categories in information technology enabled services eg. Information Technology / IS Professionals, Finance / Accounting, Business Administration, Engineering, Medical, Legal,*

and also includes:

- *foreign workers with knowledge-based skills that are not prevalent in Malaysia and required by MSC Malaysia/MD Status companies.*

- *workers who are utilised for their creative talent to produce value-added creative work for MSC Malaysia/MD Status companies.*

MSC Malaysia/MD Status companies are expected to employ these knowledge workers for roles that commensurate their expertise and experience.

Responsible Ministries / Agencies

- The Immigration Department, under the Ministry of Home Affairs

For More Information

Further information on the process for employment of foreign knowledge workers can be obtained from MDEC website:

<https://mdec.my/expats>

Bill of Guarantee No. 3: To ensure freedom of ownership by exempting companies with MSC Malaysia/MD Status from local ownership requirements

Policy Objective

To realise the vision for Malaysia to be a leading global digital hub, the Government recognises the importance of attracting world-leading companies and multinational corporations to set up their global or regional hubs and/or to conduct their business operations, undertake research and develop new technologies, applications and products in Malaysia.

Interpretation

Generally, no restrictions are imposed by the Government on equity conditions for companies incorporated in Malaysia. However, for companies involved in various sectors, equity conditions imposed by the respective sector regulators will apply. MSC Malaysia/MD Status companies are given exemption on certain local ownership requirements.

1. Property acquisition

For acquisition of properties (except residential units), approval of the Ministry of Economy is required in respect of the following¹:

- Direct acquisition of property valued at RM20 million and above, resulting in the dilution in the ownership of property held by Bumiputera interest and/or Government agency; and
- Indirect acquisition of property by other than Bumiputera interest, through acquisition of shares, resulting in a change of control of the company owned by Bumiputera interest and/or Government agency, having property more than 50% of its total assets and the said property is valued at more than RM20 million.

Companies undertaking the above transactions are required to comply with equity and paid-up capital conditions. However, MSC Malaysia/MD Status companies are exempted from the conditions, subject to prevailing criteria and provided that the property is used for their operational activities, including as residence for their employees.

¹ Guidelines on the Acquisition of Properties issued by Ministry of Economy, effective from 30 June 2009 (<https://ekonomi.gov.my/en/resources/guidelines-and-procedures/guideline-acquisition-properties>).

2. Bumiputera equity requirement for public listed companies

Based on the Frequently Asked Questions (FAQs) on Bumiputera equity requirement for public listed company by Securities Commission Malaysia (“SC”), corporations seeking listing on Bursa Malaysia Securities Berhad (“Bursa Malaysia”) are required to comply with the following²:

- To allocate 12.5% of the enlarged number of issued shares to Bumiputera investors to be approved or recognised by the Ministry of Investment, Trade and Industry (“MITI”). This includes licensed financial institutions (“Licensed FIs”) seeking listing on Bursa Malaysia, whereby the shares to Bumiputera investors shall be allocated by the Ministry of Finance (“MOF”) instead.
- At least 50% of the shares offered to the Malaysian public investors via balloting must be made available to Bumiputera public investors (“Bumiputera balloting allocation”). However, if there are no shares offered to the Malaysian public investors, the Bumiputera balloting allocation will not applicable.

Corporations undertaking one of the following corporate proposals will be exempted from complying with the aforesaid Bumiputera equity requirement:

- (a) Any listing of corporations carrying MSC Malaysia/MD Status or corporations with a subsidiary carrying MSC Malaysia/MD Status which contributes more than 50% to the group’s after-tax profit for the most recent audited financial year; or
- (b) Any acquisition of MSC Malaysia/MD Status corporation which results in a significant change in the business direction or policy of a listed corporation.

Although the corporations are exempted from complying with the Bumiputera equity requirement, the corporations are required to notify the SC of the corporate proposal and the basis of exemption from complying with the Bumiputera equity requirement.

² Regulatory FAQs on Bumiputera equity requirement for public listed companies by Securities Commission Malaysia (<https://www.sc.com.my/regulation/regulatory-faqs/bumiputera-equity-requirement-for-public-listed-companies>).

Notwithstanding, if the corporations offer shares to the Malaysian public investors via balloting in conjunction with the corporate proposal, at least 50% must be made available to Bumiputera public investors at the point of implementation.

Further information on the Bumiputera equity requirement can be obtained from the following:

Securities Commission Malaysia Website:

<https://www.sc.com.my/regulation/regulatory-faqs/bumiputera-equity-requirement-for-public-listed-companies>

3. Network Service Provider (NSP) and Network Facility Provider (NFP) licence requirements

Licensing provisions under the Communications and Multimedia Act 1998 (CMA)³ for individual licence requires a high degree of regulatory control which is for a specified person to conduct a specified activity and may include special licence conditions.

An applicant for new individual licence application to provide network facilities and/or network service is required to fulfil Bumiputera shareholding requirement of at least 30%.

MSC Malaysia/MD Status companies may be considered for exemption from the above requirements.

Responsible Ministries / Agencies

- Ministry of Economy
- Ministry of Communications
- Securities Commission Malaysia
- Malaysian Communications and Multimedia Commission

³ Licensing guidebook by Malaysian Communications and Multimedia Commission updated as of 1 April 2023 (https://www.mcmc.gov.my/skmmgovmy/media/General/pdf2/Suruhanjaya-Komunikasi-dan-Multimedia-Malaysia_Licensing-Guidelines.pdf).

Bill of Guarantee No. 4: To give the freedom to source capital globally for MD infrastructure, and the right to borrow funds globally

Policy Objective

As part of the efforts to promote Malaysia to be a leading global digital hub, the Government recognises the need to provide flexibility to MSC Malaysia/MD Status companies to source capital funds globally and invest abroad.

Interpretation

Under the prevailing Foreign Exchange Policy (FEP), MSC Malaysia/MD Status companies are free to source capital globally, unless otherwise stated in the *Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001*, or from residents, non-residents, authorities, agencies or entities of countries specified in the *Financial Services Act 2013*⁴.

Non-residents investing in MSC Malaysia/MD Status companies are free to repatriate any amount of capital, divestment proceeds, profits and dividends or any income arising from their investments. Repatriation shall be made in foreign currency.

MSC Malaysia/MD Status companies are free to borrow from resident and non-resident lenders in any foreign currency⁵ and ringgit as well as to invest abroad:

1. Free to source funds locally and abroad*

- (i) Free to obtain foreign currency and ringgit borrowing in any amount from licensed onshore banks, related entities and direct shareholders to support their economic activities in Malaysia; and
- (ii) Free to obtain foreign currency borrowing in any amount from non-resident financial institutions (NRFIs) and other non-related non-residents, including through issuance of securities or Islamic securities denominated in foreign currency. The company is also free to obtain

⁴ MSC Malaysia/MD Status companies may not source capital from “specified persons” as determined by the Central Bank of Malaysia from time to time under the *Financial Services Act 2013*, such as any residents, authorities, agencies or entities of Israel and any entity owned or controlled, directly, by Israel or its residents as well as from those belonging to or associated with individuals and entities pursuant to the United Nations Security Council Resolutions (“UNSCR”). Notwithstanding, MSC Malaysia/MD Status companies may enter into, or make or receive payment arising from an international trade with or involving a “specified person” if such trades are allowed by relevant authority in Malaysia.

⁵ MSC Malaysia/MD Status companies may not borrow from resident and non-resident lenders in the currency of Israel.

ringgit borrowing in any amount for use in Malaysia from a non-resident excluding a non-resident financial institution (NRFI).

**Under Notice 2 of the current FEP rules, for item (ii), a non-*MSC Malaysia/MD Status* resident corporate can only borrow in foreign currency up to a prudential limit of RM100 million equivalent in aggregate on corporate group basis (includes resident entities within the group with parent-subsidiary relationship).*

2. Free to invest abroad**

MSC Malaysia/MD Status companies are free to invest any amount in foreign currency assets onshore and abroad for the business expansion and diversification, which are made in foreign currency and transacted through licensed onshore banks.

***Under Notice 3 of the current FEP rules, a non-*MSC Malaysia/MD Status* resident corporate with Domestic Ringgit Borrowing⁶ (DRB) is allowed to invest up to a prudential limit of RM50 million equivalent per calendar year in aggregate on corporate group basis (includes resident entities within the group with parent-subsidiary relationship), where the source of investment is from conversion of ringgit and/or Trade Foreign Currency Account.*

To enjoy the above flexibility (for any amount above the prevailing prudential limit of RM100 million under item 1(ii) and RM50 million under item 2, MSC Malaysia/ MD Status companies shall submit the necessary details to MDEC to obtain the approval letter from Bank Negara Malaysia prior to effecting their first transaction above the limit.

Responsible Ministries / Agencies

- Bank Negara Malaysia

⁶ Please refer to the definition on DRB in the “preamble and interpretation” document here: <https://www.bnm.gov.my/feep>.

For More Information

Further information on FEP can be obtained from the following:

BNM's FEP Website:

<https://www.bnm.gov.my/fep>

Any FEP enquiries can be submitted via the FEP portal at:

<https://www.bnm.gov.my/submission-of-application>

Bill of Guarantee No. 5: To provide competitive financial incentives and duty import and sales tax exemption on the importation of multimedia/ICT equipment

Policy Objective

To realise the vision for Malaysia to be a leading global digital hub, the Government recognises that the offer of tax incentives will encourage the accelerated growth of MSC Malaysia/MD Status companies and enhance the competitiveness of their products and services.

Interpretation

Subject to applicable criteria, conditions, prevailing policies and guidelines, and relevant laws, MSC Malaysia/MD Status companies may be given reduced tax rate, income tax exemption or investment tax allowance under the *Income Tax Act 1967*.

The grant and enjoyment of tax incentives, including the application process, the criteria and conditions to be met and the withdrawal, surrender and renewal process, are governed and regulated by the relevant laws.

Subject to the provisions under the *Customs Act 1967* and the *Sales Tax Act 2018*, and such criteria and conditions as may be imposed by the Minister of Finance, the importation of multimedia/ICT equipment and components by MSC Malaysia/MD Status companies for direct use in the operation of their approved activities may be exempted from import duties and sales tax.

To enjoy the tax incentives, MSC Malaysia/MD Status companies are required to submit an application through MDEC.

Responsible Ministries / Agencies

- Ministry of Finance
- Royal Malaysian Customs Department

For More Information

Further information on MD Tax Incentive can be obtained from MDEC website:

<https://mdec.my/malaysiadigital/tax-incentive>

Bill of Guarantee No. 6: To become a regional leader in Intellectual Property Protection and Cyberlaws

Policy Objective

To realise the vision for Malaysia to be a leading global digital hub, the Government recognises the importance of intellectual property as an engine of growth to enhance economic and social prosperity, and the need for a conducive cyberlaws framework to tackle challenges brought about by developments in the digital industry.

Interpretation

The Government is committed to establish a conducive legal and regulatory framework of intellectual property and cyberlaws, as well as to ensure that laws are duly enacted, administered, complied with and enforced. The Government further recognises the need to stay ahead of global competition and is committed to continually enhance the framework to keep abreast with international developments and new challenges.

In order for MSC Malaysia/MD Status Companies to enjoy the exclusive rights granted under the Intellectual Property Legislations in Malaysia, they are required to comply with the applicable Intellectual Property Legislations in Malaysia or obtain intellectual property registration from the Intellectual Property Corporation of Malaysia where necessary.

Responsible Ministries / Agencies

- Ministry of Digital
- Ministry of Domestic Trade and Cost of Living
- Ministry of Home Affairs supported by the Royal Malaysia Police
- Ministry of Finance supported by the Royal Malaysian Customs Department
- National Cyber Security Agency (NACSA)
- Intellectual Property Corporation of Malaysia (MyIPO)

Bill of Guarantee No. 7: To ensure no censorship of the Internet

Policy Objective

To realise the vision for Malaysia to be a leading global digital hub, the Government recognises the revolutionary role of the Internet in facilitating information-exchange and innovation, and providing the basis for continuing enhancements to quality of work and life.

Interpretation

While the Government will not censor the Internet, this does not mean that any person may disseminate illegal content with impunity and without regard to the law. To the extent that any act is illegal in the physical world, it will similarly be outlawed in the online environment. Hence, laws prohibiting dissemination of, for example, indecent / obscene or other illegal materials will continue to apply.

In this regard, relevant ministries and agencies will continue to take appropriate actions and enforce those laws that are under their respective purview.

Responsible Ministries / Agencies

- Ministry of Digital
- Ministry of Communications
- Malaysian Communications and Multimedia Commission

Bill of Guarantee No. 8: To provide globally competitive telecommunications tariffs

Policy Objective

To realise the vision for Malaysia to be a leading global digital hub, the Government recognises the pivotal role of competitive telecommunication tariffs in attracting investments to Malaysia and encouraging the growth of the digital industry.

Interpretation

MSC Malaysia/MD Status companies enjoy competitive telecommunications tariffs for the conduct of MSC Malaysia/MD approved activities.

The Communications and Multimedia Act 1998 (CMA) aims to regulate for the long-term benefit of the end user in addition to ensuring equitable provision of affordable services over ubiquitous national infrastructure. The CMA 1998 envisaged that service providers will set rates according to market forces.

To ensure that market forces work well, the Government has developed an access regulatory framework to facilitate competition at the upstream level, which will eventually cascade down to the retail level, resulting in a wide range of high-quality services at competitive prices for Malaysian consumers.

Responsible Ministries / Agencies

- Ministry of Communications
- Malaysian Communications and Multimedia Commission

Bill of Guarantee No. 9: To tender key MD infrastructure contracts to leading companies willing to use Malaysia as their regional hub

Policy Objective

To realise the vision for Malaysia to be a leading global digital hub, the Government recognises the importance of attracting leading companies to set up in Malaysia. Hence, MSC Malaysia/MD Status companies are given priority in government procurement as an additional incentive to attract these companies to set up their global / regional hubs in Malaysia.

Interpretation

The Government prioritises products and services of MSC Malaysia/MD Status companies in procurement relating to ICT, subject to prevailing policies, rules, circulars and guidelines⁷, as an additional incentive to attract these companies to set up their global / regional hubs in Malaysia.

Responsible Ministries / Agencies

- Ministry of Finance

⁷ *Pekeliling Perbendaharaan Malaysia Perolehan Kerajaan – PK 1.4 and PK 2.1* (Portal Pekeliling Perbendaharaan Kementerian Kewangan Malaysia: <https://ppp.treasury.gov.my/>).

Bill of Guarantee No. 10: To provide a high-powered implementation agency to act as an effective one-stop super shop

Policy Objective

MDEC has been set up by the Government to lead the digital transformation of the economy since 1996. Beginning with the implementation of MSC Malaysia which has been enhanced into MD, MDEC continues to drive the development and growth of the digital industry and economy.

Interpretation

MDEC is incorporated as a private limited company under the *Companies Act 1965* and is an agency under the Ministry of Digital.

MDEC's functions are to lead the policy, development, coordination, and promotion of Malaysia's digital economy, including driving digital investments and digital exports, developing digital industry, promoting digital adoption as well as facilitating key enablers of digital economy.

This would include processing applications for MSC Malaysia/MD Status, and facilitating applications related thereto, such as applications for foreign knowledge workers and tax incentives.

In addition, MDEC also provides advice to the Government on policies and laws relevant to the digital industry, and develops and implements MD-specific initiatives.

The promotion of MD locally and globally, and support given by MDEC to MSC Malaysia/MD Status companies, both at the national and global levels, are part of initiatives undertaken by MDEC to enhance the development of the digital industry in Malaysia, towards growing Malaysia as a leading global digital hub.

Responsible Ministries / Agencies

- Ministry of Digital

For More Information

Further information on other facilitation offered is available via MDEC website: <https://mdec.my/>
