

MSC MALAYSIA

BILL OF GUARANTEES

MSC MALAYSIA BILL OF GUARANTEES

MSC4STARTUPS COMPANIES - LOCATED OUTSIDE OF MSC MALAYSIA CYBERCITIES / CYBERCENTRES

Introduction

The grant of MSC Malaysia Status entitles qualified entities¹ to a set of incentives, rights and privileges from the Government of Malaysia (“Government”), namely the MSC Malaysia Bill of Guarantees (“BoGs”). The BoGs reflects the Government’s intention to provide an environment in MSC Malaysia that is conducive to the development of MSC Malaysia Status entities.

The incentives, rights and privileges granted pursuant to the BoGs are subject to the continued adherence by the MSC Malaysia Status entities 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: [not applicable]
- BoG 2: To allow employment of local and foreign knowledge workers.
- BoG 3: To ensure freedom of ownership by exempting companies with MSC Malaysia Status from local ownership requirements.
- BoG 4: To give the freedom to source capital globally for MSC Malaysia infrastructure, and the right to borrow funds globally.

- BoG 5: To provide competitive financial incentives namely income tax exemption of 70 percent under Section 127(3)(b) of *Income Tax Act 1967* for a period of five years and no duties on the importation of multimedia 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: *[not applicable]*
- BoG 9: To tender key MSC Malaysia infrastructure contracts to leading companies willing to use MSC 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 the Multimedia Development Corporation Sdn Bhd ("MDeC") at:

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

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SMS: Type *MDEC ASK* (*your email address*)(*your inquiries*), send to 15888



¹ MSC Malaysia Status entities include companies, incubators and institutions of higher learning.

Bill of Guarantee No. 1: *[not applicable]*



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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 major global ICT hub, the Government recognises the importance of human capital to meet the demands of the industry.

Interpretation

MSC Malaysia Status entities are expected to maintain a work force utilising a substantial percentage of knowledge workers, in view of the nature and demands of the ICT 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 a knowledge-based economy.

An entity applying for MSC Malaysia Status is required to specify the number of knowledge workers (local and foreign) that it requires for the conduct of its MSC Malaysia qualifying activities. Such requirements are to be set out in the entity's business plan, which forms part of its application for MSC Malaysia Status.

An MSC Malaysia Status entity may employ such number of knowledge workers as indicated upon the grant of MSC Malaysia Status up to a maximum of 20 foreign knowledge workers at any time.

The process for employment of foreign knowledge workers is subject to requirements under the *Immigration Act 1959/63* and the *Immigration Regulations 1963*. MSC Malaysia Status entities can make applications directly with the Immigration Department, or appoint MDeC to provide the relevant services.

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 multimedia / ICT or specialised ICT certification plus at least 2 years' relevant experience in multimedia / ICT or in a field that is a heavy user of ICT; or*
- *Professional, executive, management and technical work categories in information technology ("IT") enabled services eg. IT / IS Professionals, Finance / Accounting, Business Administration,*

and also includes:

- *In respect of companies falling within the Shared Services and Outsourcing cluster, foreign workers with knowledge-based skills that are not prevalent in Malaysia, required by MSC Malaysia Status companies.*
- *In respect of companies falling within the Creative Multimedia Content cluster, workers who are utilised for their creative talent to produce value-added creative work for MSC Malaysia Status companies.*

MSC Malaysia Status entities 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.

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

Policy Objective

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

For acquisition of properties (except residential units), approval of the Economic Planning Unit of the Prime Minister's Department is required in respect of the following²:

- 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 conditions, and paid-up capital conditions. However, MSC Malaysia Status companies are exempted from the above, provided that the property is used for their operational activities, including as residence for their employees.

Responsible Ministries / Agencies

- The Economic Planning Unit of the Prime Minister's Department.



² Guidelines on the Acquisition of Properties, Economic Planning Unit, Prime Minister's Department, effective from 30 June 2009.

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

Policy Objective

As part of the efforts to promote Malaysia as a major global ICT hub, the Government recognises the need to provide flexibility to MSC Malaysia Status companies to source capital and funds globally.

Interpretation

Flexibility to Source Capital and Funds Globally

Under this BoG, MSC Malaysia Status companies are free to source capital globally, unless otherwise stated in the *Anti-Money Laundering and Anti-Terrorism Financing Act 2001*, or from residents, authorities, agencies or entities of countries specified in the *Exchange Control Act 1953*³.

Non-residents investing in MSC Malaysia Status companies are free to repatriate any amount of capital, divestment proceeds, profits and dividends arising from their investments.

MSC Malaysia Status companies are free to remit funds abroad, which are made in foreign currency and transacted through licensed onshore banks.

MSC Malaysia Status companies are also free to borrow from resident and non-resident lenders in Ringgit and in any foreign currency⁴ to finance their business operations.

MSC Malaysia Status companies can borrow in Ringgit:

- any amount from licensed onshore banks and other residents.
- any amount from their non-resident non-bank parent companies for purpose of financing activities in the real sector in Malaysia.
- up to RM1 million in aggregate from other non-resident non-bank companies or non-resident individuals for use in Malaysia.

The Ringgit is currently non-internationalised. All Ringgit funding is therefore only from resident sources onshore.

MSC Malaysia Status companies can borrow in foreign currencies:

- any amount from licensed onshore banks, licensed International Islamic banks and non-residents in or outside Malaysia.

- any amount from resident companies which are within the same corporate group.

There is no restriction for principal repayment and interest payments to lenders on the Ringgit and foreign currency borrowings by MSC Malaysia Status companies.

Responsible Ministries / Agencies

- The Central Bank of Malaysia (Bank Negara Malaysia).

For More Information

The Foreign Exchange Administration Rules of Malaysia have been progressively liberalised to facilitate a conducive and competitive business environment by enhancing the efficiency of the regulatory delivery system.

Further information on Malaysia's Foreign Exchange Administration Rules can be obtained from the following:

Bank Negara Malaysia Foreign Exchange Administration Website

http://www.bnm.gov.my/index.php?ch=22&tpl_id=181

BNMLINK (Walk-In Centre)

Ground Floor, Block D

Bank Negara Malaysia

Jalan Dato' Onn

50480 Kuala Lumpur

Operating Hours are from Monday to Friday, 9.00 a.m. to 5.00 p.m.

BNMTELELINK (Call Centre)

Tel Number: 1-300-88-5465 or 1-300-88-LINK

Fax Number: 03-2174 1515

Email: bnmtelelink@bnm.gov.my

Operating Hours are from Monday to Friday, 9.00 a.m. to 5.00 p.m.



³ MSC Malaysia Status companies may not source capital from "specified persons" as determined by the Comptroller of Foreign Exchange from time to time under the Exchange Control Act 1953, such as any residents, authorities, agencies or entities of Israel and any entity owned or controlled, directly or indirectly, 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"). The list of the specified persons pursuant to the UNSCR can be obtained from the United Nations' website at <http://www.un.org/Docs/sc/>

⁴ MSC Malaysia Status companies may not borrow from resident and non-resident lenders in the currency of Israel.

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Bill of Guarantee No. 5: To provide competitive financial incentives, namely income tax exemption of 70 percent under Section 127(3)(b) of Income Tax Act 1967 for a period of five years and no duties on the importation of multimedia equipment

Policy Objective

To realise the vision for Malaysia to be a major global ICT hub, the Government recognises that the offer of financial incentives will encourage the accelerated growth of MSC Malaysia Status entities and enhance the competitiveness of their products and services.

Interpretation

Subject to applicable conditions, prevailing policy and relevant laws, MSC Malaysia Status entities are given income tax exemption of 70 percent of statutory income derived from qualifying activities under Section 127(3)(b) of Income Tax Act 1967 for a period of 5 years.

The grant and enjoyment of tax incentives, including the application process, the criteria and conditions to be met and the withdrawal, cancellation 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 1972*, and such conditions as may be imposed by the Minister of Finance, the import by MSC Malaysia Status entities of multimedia equipment and components for direct use in the operation of their MSC Malaysia qualifying activities may be exempted from import duties and sales tax. The exemption from sales tax will cease with the repeal of the *Sales Tax Act 1972* with effect from 1 April 2015.

The criteria to be met for such multimedia equipment and components are as follows:

- Multimedia / ICT equipment;
- Equipment is not available locally (ie. not locally manufactured);
- Equipment is not for trading;
- Equipment is “directly used” for MSC Malaysia qualifying activities; and
- The MSC Malaysia Status entity complies with the relocation requirement in its Conditions of Grant of MSC Malaysia Status.

To enjoy the exemption, MSC Malaysia Status entities are required to submit an application through MDeC.

Responsible Ministries / Agencies

- Ministry of Finance.
- Ministry of International Trade and Industry.
- Royal Malaysian Customs.

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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 major global ICT hub, the Government recognises the importance of Intellectual Property as a new engine of growth to enhance economic and social prosperity, and the need for an enabling Cyberlaws framework to tackle challenges brought about by developments in the ICT 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 administered, complied with and enforced. The Government further recognises the need to stay ahead of regional competition and is committed to continually enhance the framework to keep abreast with international developments and new challenges.

Responsible Ministries / Agencies

- Ministry of Communication and Multimedia Malaysia.
- Malaysian Administration Modernisation and Management Planning Unit (“MAMPU”).
- Ministry of Domestic Trade, Co-operatives and Consumerism.
- Ministry of Home Affairs, supported by the Royal Malaysia Police.
- Intellectual Property Corporation of Malaysia (“MyIPO”).

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



Policy Objective

To realise the vision for Malaysia to be a major global ICT 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 Communication and Multimedia Malaysia.
- Malaysian Communications and Multimedia Commission.


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Bill of Guarantee No. 8: *[not applicable]*



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



Policy Objective

To realise the vision for Malaysia to be a major global ICT hub, the Government recognises the importance of attracting leading companies to set up in MSC Malaysia. Hence, the offer of contracts related to key MSC Malaysia infrastructure may be used as an incentive to attract these leading companies to set up their global / regional hubs in MSC Malaysia.

Interpretation

The Government may consider inviting leading companies that are willing to set up their global / regional hubs in Malaysia to submit proposals for key MSC Malaysia infrastructure works, as an incentive to attract such companies to invest in MSC Malaysia. Where appropriate, the offer of contracts may be made through direct negotiations based on a number of considerations, including value propositions of such companies and their expertise and track record in carrying out similar successful projects elsewhere.

“Key MSC Malaysia infrastructure works” encompass both physical and soft infrastructure.

Responsible Ministries / Agencies

- Ministry of Finance.

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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 act as a one-stop centre, to drive the development of MSC Malaysia specifically, and the ICT industry in general.

Interpretation

MDeC is incorporated as a private limited company under the *Companies Act 1965* and is an agency under the Ministry of Communication and Multimedia Malaysia.

MDeC's functions are to develop, coordinate and promote Malaysia's digital economy, information and communication technology (ICT) industry and the extensive use of ICT in Malaysia⁶.

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

MDeC also conducts periodic benchmarking of regional and global tariffs and facilitates discussions and engagements with Telcos and ISPs, for adoption of competitive telecommunications tariffs for MSC Malaysia Status entities.

In addition, MDeC also provides advice to the Government on policies and laws relevant to the ICT industry, and develops and implements MSC Malaysia-specific initiatives (such as MSC Malaysia Cybercity / Cybercentre Status).

The promotion of MSC Malaysia locally and globally, and support given by MDeC to MSC Malaysia Status entities, both at the national and global levels, are also initiatives undertaken by MDeC to enhance the development of the ICT industry in Malaysia, towards growing Malaysia as a global ICT hub.

Responsible Ministries / Agencies

- Ministry of Communication and Multimedia Malaysia.



⁶ Ministers of the Federal Government (No 2)(Amendment)(No 2)(Amendment) Order 2014 [PU(A) 201/2014].