

## **GUIDELINES FOR APPLICATION FOR STATUS AND INCENTIVE FOR SETTING UP AN OPERATIONAL HEADQUARTERS (OHQ)**

### 1. Definition

An approved operational headquarters (OHQ) refers to a locally incorporated company that carries on a business in Malaysia to provide qualifying services to its offices or related companies within or outside Malaysia. The OHQ is prohibited from providing treasury and fund management services and corporate financial advisory services to non-related companies in Malaysia. An approved OHQ set up by a financial institution is also prohibited from providing treasury and fund management services to its related companies in Malaysia unless the related companies are institutions licensed under the Banking and Financial Institutions Act 1989 (BAFIA).

### 2. Eligibility Criteria

To qualify as an approved OHQ, the company must fulfill the following criteria:

- Local incorporation under the Companies Act 1965
- A minimum paid-up capital of RM0.5 million
- A minimum total (operating expenditure) of RM1.5 million per year
- Appoint at least three senior professional/ management personnel
- Serve at least three related companies outside Malaysia
- A sizeable network of companies outside Malaysia
- A well established network of companies with significant and substantial employment of qualified professionals and technical and supporting personnel
- Carry out three of the following qualifying services:
  - General management and administration
  - Business planning and coordination
  - Procurement Services
  - Technical support and maintenance
  - Marketing control and sales promotion planning
  - Data/ information management and processing
  - Research and development work carried out in Malaysia on behalf of its offices or related companies

- Training and personnel management to its offices or related companies
- Treasury and fund management services to its offices or related companies. The permissible activities are:
  - Providing credit facilities to related companies outside Malaysia in currencies other than the Malaysian Ringgit
  - Transacting or investing in stocks and shares denominated in any currency other than the Malaysian Ringgit, and of companies not incorporated or resident in Malaysia
  - Transacting or investing in securities other than stocks and shares denominated in any currency other than the Malaysian Ringgit (including bonds, notes, certificates of deposit and treasury bills) issued by foreign governments, foreign banks outside Malaysia, and companies which are neither incorporated nor resident in Malaysia
  - Transacting or investing in certificates of deposit, notes and bonds denominated in any currency other than the Malaysian Ringgit issued by any offshore bank in Labuan
  - Investing in foreign currency deposits with designated banks in Malaysia or with offshore banks in Labuan
  - Foreign exchange transactions for hedging purposes only through authorised dealers and only in foreign currencies (not Malaysian Ringgit) with licensed offshore banks in Labuan
  - Transactions involving interest rate/currency swaps for hedging purposes only through authorised dealers and only in foreign currencies (not Malaysian Ringgit) with licensed offshore banks in Labuan
  - Transactions in financial futures contracts or options for hedging purposes only with a member of any exchange approved by the Central Bank of Malaysia

The above treasury and fund management services are allowed provided that the funds for carrying out the treasury and fund management activities are denominated in foreign currency other than the Malaysian Ringgit and are obtained through:

- Borrowing from authorised banks in Malaysia and offshore banks in Labuan;
- Its paid-up capital
- Its accumulated profits derived from qualifying activities
- The accumulated profits of its offices
- Borrowing from outside Malaysia

The OHQs set up by financial institutions are prohibited from providing treasury and fund management services to their related companies in Malaysia unless the related companies are institutions licensed under BAFIA.

- Corporate financial advisory services to its offices or related companies. The permissible activities are:
  - Provision of corporate financial advisory services
  - Provision of credit administration denominated in currencies other than the Malaysian Ringgit for related companies
  - Arrangement of credit facilities denominated in currencies other than the Malaysian Ringgit for related companies
  - Arrangement of interest rate or currency swaps in currencies other than the Malaysian Ringgit
  - An OHQ may take over claims held by related companies even from third parties outside Malaysia at a discounted price (factoring)
  - All products and services which related companies invoice to each other can be invoiced by the OHQ (re-invoicing)
  - Netting of payments, other than the export proceeds for goods exported from Malaysia, among the related companies vis-à-vis the OHQ is freely allowed
  - An OHQ may purchase machinery, equipment or real estate with a view to lease them to its related companies (leasing)
  - An OHQ may purchase machinery, equipment or real estate belonging to related companies with a view to lease them back to the same related companies (sales and lease back arrangements).

### 3. Incentives

An approved OHQ will be exempted from income tax for a period of 10 years for the following sources of income:

- Business Income  
Income arising from services rendered by an OHQ to its offices or related companies outside Malaysia
- Interest  
Income derived from interest on foreign currency loans extended by an OHQ to its offices or related companies outside Malaysia

- Royalties  
Royalties received from research and development work carried out in Malaysia by an OHQ on behalf of its offices or related companies.

In addition, expatriates working in an OHQ are taxed only on that portion of their chargeable income attributable to the number of days that they are in the country.

Effective from the year of assessment 2003, income from qualifying services provided by an OHQ to its related companies in Malaysia during its tax exempt period is exempted from tax provided such income does not exceed 20% of the OHQ income from qualifying services.

#### 4. Other Facilities

Other facilities accorded to an approved OHQ are as follows:

- Expatriate posts will be approved based on the requirements of the OHQ.
- Foreign Exchange Administration flexibilities as mentioned in **Appendix**.
- A foreign-owned OHQ is allowed to acquire fixed assets as long as it is used for the purpose of carrying out the operations of the OHQ.

#### 5. Procedure for Application:

- The application should be submitted in three (3) copies of OHQ-1 Forms to:

Chief Executive Officer  
Malaysian Investment Development Authority (MIDA),  
MIDA Sentral, No. 5  
Jalan Stesen Sentral 5  
Kuala Lumpur Sentral  
50470 Kuala Lumpur.  
(Attn.: Director, Logistics and Regional Operations Division)

- The following documents (where applicable) should be submitted together with the application:
  - Certificate of Incorporation
  - Form 24 (return of Allotment of Shares)
  - Form 49 (Particulars of Directors)
  - Latest Annual Report of the company
  - A copy of the Group's Corporate Structure
  - A copy of the OHQ corporate structure
  - A copy of manufacturing license / other approvals of affiliated/related company
  - Other relevant information that can support company's application such as company profile as appendix in the application form

- Details on the expatriate posts applied for should be submitted using the format attached as the appendix in the application form.
- For project in Sabah and Sarawak, three (3) copies of the form should also be submitted to the relevant MIDA office as follows:

Sabah	Sarawak
Director MIDA Sabah Office Lot D9.4 & 9.5 9 <sup>th</sup> Floor, Block D, Bangunan KWSP Karamuning 88100 Kota Kinabalu Sabah, Malaysia	Director MIDA Sarawak Office Room 404, 4 <sup>th</sup> Fl. Bangunan Bank Negara Malaysia No 147, Jalan Satok PO Box 716 93714 Kuching Sarawak, Malaysia

- For enquiries and clarification, please refer to:-

MIDA's website : [www.mida.gov.my](http://www.mida.gov.my)  
 Tel : (603)2267-3633  
 Fax : (603) 2274-7970  
 E-mail : [investmalaysia@mida.gov.my](mailto:investmalaysia@mida.gov.my)

**FOREIGN EXCHANGE ADMINISTRATION RULES APPLICABLE TO RESIDENT COMPANIES**

<b>Special Flexibilities Accorded to Resident Companies with Approved Operational Headquarters Status (OHQ)</b>	
<ul style="list-style-type: none"> <li>• <b>Investment in foreign currency assets<sup>1</sup></b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Free to invest any amount in foreign currency assets to be funded with –</b> <ul style="list-style-type: none"> <li>✓ <b>Own foreign currency funds; or</b></li> <li>✓ <b>Foreign currency borrowing</b></li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• <b>Foreign currency borrowing</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Free to borrow any amount of foreign currency from licensed onshore banks, licensed International Islamic Banks, other resident companies within the same corporate group<sup>2</sup> in Malaysia and from any non-residents, provided the OHQ do not on-lend the funds –</b> <ul style="list-style-type: none"> <li>✓ <b>to other residents; or</b></li> <li>✓ <b>raise the funds on behalf of any resident</b></li> </ul> </li> <li>• <b>Free to obtain any amount of foreign currency trade financing facilities from non-resident to finance import payments</b></li> </ul>
<ul style="list-style-type: none"> <li>• <b>Payment between resident companies</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>No restriction for payment in ringgit</b></li> <li>• <b>Free to pay other resident companies in foreign currency for the settlement of goods and services sourced from its foreign currency account, if the OHQ has export earnings (either from export of goods or services)</b></li> </ul>

<sup>1</sup> "Foreign currency assets" include:

- (a) Foreign currency securities;
- (b) Foreign currency loans;
- (c) Foreign currency deposits;
- (d) All approved foreign currency-denominated products offered by:
  - (i) Licensed onshore banks;
  - (ii) Licensed International Islamic Banks;
  - (iii) Bursa Malaysia ; and
  - (iv) Any residents permitted by the Controller of Foreign Exchange
- (e) Exchange traded foreign currency-denominated derivatives (other than currency contacts) transacted via resident futures brokers

<sup>2</sup> Corporate group refers to a group of companies with parent-subsidiary relationship in Malaysia

<b>Flexibilities Applicable to OHQ Status Companies, similar to Other Resident Companies</b>	
<ul style="list-style-type: none"> <li>• <b>Investment in foreign currency assets</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>No limit for residents without domestic ringgit borrowing</b></li> <li>• <b>Residents with domestic ringgit borrowing are allowed to invest as follows:</b> <ul style="list-style-type: none"> <li>✓ <b>No limit if funded from proceeds of listing through initial public offering on Bursa Malaysia or foreign stock exchanges; and</b></li> <li>✓ <b>Up to RM50 million equivalent in aggregate on a corporate group basis per calendar year if funded from conversion of ringgit</b></li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• <b>Foreign currency borrowing</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Free to borrow any amount of foreign currency supplier's credit from non-resident suppliers</b></li> <li>• <b>Allowed to refinance outstanding approved foreign currency borrowing</b></li> <li>• <b>Free to borrow from other resident companies within the same corporate group in Malaysia, the foreign currency proceeds from the listing on foreign stock exchanges</b></li> <li>• <b>Free to obtain foreign currency trade financing facilities from:</b> <ul style="list-style-type: none"> <li>✓ <b>Licensed onshore banks; and</b></li> <li>✓ <b>Licensed International Islamic Banks (other than trade financing facility involving export)</b></li> </ul> </li> <li>• <b>Trade financing facilities for export of goods are to be obtained from licensed onshore banks only</b></li> <li>• <b>Free to repay and prepay approved foreign currency borrowing</b></li> </ul>
<ul style="list-style-type: none"> <li>• <b>Ringgit borrowing</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Free to borrow any amount of ringgit from licensed onshore banks and other resident companies</b></li> <li>• <b>Free to borrow any amount in ringgit from their non-resident non-bank parent companies to finance real sector activities in Malaysia</b></li> <li>• <b>Free to borrow up to RM1 million in aggregate from other non-resident non-bank companies or individuals for use in Malaysia</b></li> </ul>
<ul style="list-style-type: none"> <li>• <b>Ringgit lending</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Free to lend any amount in ringgit to non-resident non-bank companies and individuals to ;</b> <ul style="list-style-type: none"> <li>✓ <b>Finance real sector activities in Malaysia; and</b></li> <li>✓ <b>Finance or refinance the purchase of residential and commercial properties in Malaysia</b></li> </ul> </li> </ul>

<ul style="list-style-type: none"> <li>• Issuance of securities to non-residents</li> </ul>	<ul style="list-style-type: none"> <li>• Free to issue the following ringgit securities registered in Malaysia to non-residents: <ul style="list-style-type: none"> <li>✓ Ordinary shares, including bonus and rights issues;</li> <li>✓ Irredeemable preference shares; and</li> <li>✓ Private debt securities</li> </ul> </li> <li>• Prior permission is required for issuance of securities to non-residents other than as stated above</li> </ul>
<ul style="list-style-type: none"> <li>• Financial guarantee</li> </ul>	<ul style="list-style-type: none"> <li>• Free to issue any amount of financial guarantees on behalf or in favour of a non-resident</li> <li>• Free to obtain any amount of financial guarantees from non-residents</li> <li>• Financial guarantees issued or obtained by the non-bank residents are required to be registered with the Controller of Foreign Exchange at least seven working days prior to the issuance or obtaining of financial guarantee, if the aggregate amount of financial guarantees issued or obtained exceeds RM50 million equivalent, respectively</li> </ul>
<ul style="list-style-type: none"> <li>• Export and import of goods and services</li> </ul>	<ul style="list-style-type: none"> <li>• Payment must be made in foreign currency</li> <li>• Export proceeds must be repatriated to Malaysia in full as per the sales contract which must not exceed six months from the date of export</li> <li>• Prior permission is required for residents to: <ul style="list-style-type: none"> <li>✓ Offset export proceeds against payables due to non-residents; or</li> <li>✓ Receive the export proceeds exceeding six months from the date of exports</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Opening of foreign currency account (FCA)</li> </ul>	<ul style="list-style-type: none"> <li>• Free to open FCA with licensed onshore banks, licensed International Islamic banks, licensed banks in Labuan and overseas banks</li> </ul>
<ul style="list-style-type: none"> <li>• Payment between resident companies</li> </ul>	<ul style="list-style-type: none"> <li>• No restriction for payment in ringgit</li> <li>• Resident companies with export earnings are free to pay other resident companies in foreign currency for settlement of goods and services, sourced from foreign currency account</li> </ul>



<ul style="list-style-type: none"> <li>• <b>Hedging of current account transactions</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Free to hedge with licensed onshore banks and licensed International Islamic Banks for payments and receipts for import and export of goods and services;</b> <ul style="list-style-type: none"> <li>✓ <b>Based on firm underlying commitment; or</b></li> <li>✓ <b>On anticipatory basis provided the amount hedged does not exceed the total amount paid or received in preceding 12 months</b></li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• <b>Hedging of capital account transactions</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Hedging involving ringgit shall only be undertaken with licensed onshore banks</b></li> <li>• <b>Free to hedge with licensed onshore banks and licensed International Islamic Banks based on committed capital inflows or outflows</b></li> <li>• <b>Residents are also allowed to hedge their existing holdings of foreign currency assets</b></li> <li>• <b>Hedging involving ringgit shall only be undertaken with licensed onshore banks</b></li> </ul>