



Section B Planning and Implementation
Part 1 Regulatory and Governance Framework

CHAPTER 6

Regulatory, Legal and Institutional Initiatives

6.1 The South Johor Authority – Introduction and Objective

The South Johor Authority (SJA) will be a statutory body tasked with the objective of regulating and driving the various players in both public and private sectors towards realising the vision of developing the SJER into a strong and sustainable metropolis of international standing.

SJA will be established by a Federal Act of Parliament, the proposed **SJA Act**, to assure a level of permanency and clearly defined powers and authority which are readily verifiable by potential investors. SJA's powers will not extend directly over local authorities, local government or land matters, which all remain under the jurisdiction of the State of Johor. Although SJA has a planning role from the economic, social and environmental perspectives, this role will not encroach on the State's planning jurisdiction and the existing planning regulatory structure.

Section 6.2 below highlights the essence of the proposed SJA Act.

6.2 Legal Framework

A. SJA's Functions and Powers

SJA's statutory powers and functions, as set out in the proposed SJA Act, are designed to achieve the above objective, and include the following core functions:

- to plan and establish the national policies, direction and strategies that have a direct impact to the development of the SJER;
- to co-ordinate the performance of the activities carried out by Government Entities in the SJER, including:
 - acting as a one-stop centre to expedite applications for licenses, permits, approvals and fiscal incentives;
 - recommending and monitoring uniform standards, best practices, and administrative processes and procedures to be used by Government Entities for the SJER;

- to promote, stimulate, facilitate and undertake development in the SJER, especially through private sector investment and to ensure balanced socio-economic development including ensuring that Bumiputera participation and interest are addressed.

SJA's ancillary functions include:

- to collate and analyse information, statistics and factors relevant to the development, business or investment and disseminate such information to investors or potential investors in the SJER and relevant Government Entities;
- to propose to the relevant Government Entities policies, laws and actions to be applied to the SJER to enhance its international competitiveness.

B. SJA's Role in Developing the SJER

SJA will be responsible for the direction, policies and strategies in relation to development within the SJER, having regard to the general framework of national and Johor State policies. Pursuant to this responsibility, SJA will assist the Johor State Planning Committee (SPC) and relevant local planning authorities to guide and co-ordinate development. It is for this purpose that the CDP is devised for adoption by such local planning authorities.

SJA will also provide guidance and assistance in respect of prescribed strategic development having significant economic impact to the SJER, so as to secure conformity or consistency with national, State and regional policies, SJA's objective and the CDP in a holistic manner. In this regard the SJA is envisaged to also provide guidance and assistance to drive policy reforms and innovation in public delivery systems at the national level including but not limited to the delivery systems provided by Federal agencies in education, healthcare,

immigration, customs, taxation, infrastructure development, environmental protection and so on.

In respect of economic development, the SJA is envisaged to work in tandem and close cooperation with the South Johor Investment Corporation Berhad (SJIC), a “super developer” entity owned by Federal and State investment agencies to undertake catalyst development projects. A Social Development and Lifestyle Unit within SJA will be formed to undertake specific social development initiative as outlined, inter alia, in Chapter 8.

C. SJA’s Role in Facilitating Regulatory Approvals

In addition to acting as a one-stop centre to expedite approvals, SJA will also provide administrative services and assistance to the State Authority of Johor in connection with matters relating to land. In this regard, SJA may enter into an agreement or arrangement with any Government Entity concerning, among others, the carrying out of their respective functions and powers, or the use of their respective facilities or the services of their respective staff.

An Approvals and Implementation Committee (AIC) comprising of key senior Federal, State and local government representatives will also be established by SJA, with the responsibility to, among others, identify, monitor and co-ordinate the roles and activities of all relevant Government Entities to expedite the implementation of major or strategic proposed development and investments.

D. SJA’s Role in Promoting Social Benefits to Community Projects

SJA will administer a Social Projects Fund consisting of sums allocated by the Federal and/or Johor State Government and sums donated, contributed and/or borrowed, from time to time. The Social Projects Fund will be expended for projects, schemes and undertakings which, in SJA’s opinion, are for the general benefit of the SJER community.

6.3 Management and Organisation

The development of SJER is a fast track initiative. Five development components, represented by approximately 60 initiatives, have been proposed for the SJER. These are Economics and Business, Environment, Social Development and Lifestyle, Physical Infrastructure and Human

Resources and Talent.

A. Structure of SJA

The SJA structure will encompass the following four components:

- The minister charged with the responsibility for matters relating to the SJER (Minister-in-Charge)
- The statutory members of SJA (Board)
- The management and personnel of SJA (SJM)
- The Approvals and Implementation Committee (AIC)

These four components will deliver commitment at three levels of SJA operation:

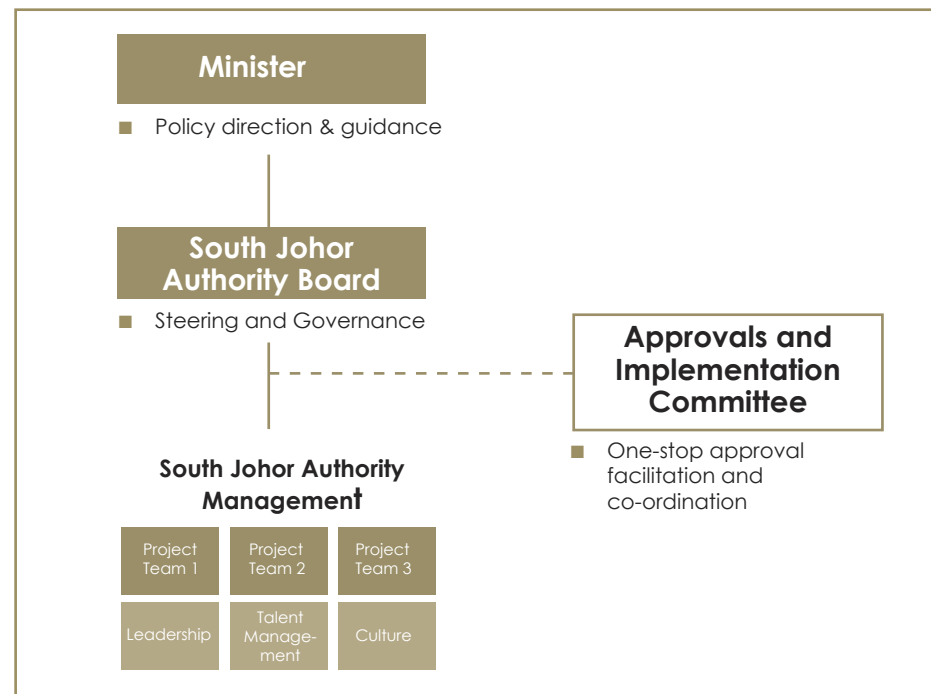
▼ Commitment at vision and aspirations level:

The Minister-in-Charge: The Minister will provide policy direction and guidance to SJA in achieving its ultimate objective of developing the SJER into a strong and sustainable metropolis of international standing.

▼ Commitment at steering and governance level:

The Board: The Board will perform total governance by building trust, providing direction and driving performance of the organisation.

Figure 6.1: Overall Structure of SJA



Source: SJER CDP 2025

▼ Commitment at execution level:

The SJM: The SJM will execute decisions of the Board, monitor and assist the implementation of the CDP and provide fast and efficient service delivery to citizens and stakeholders. It will employ the best talent and adopt management processes practiced by high performance organisations.

The AIC: This committee is a super one-stop approval facilitation and co-ordinating body. It identifies, monitors and co-ordinates the roles and activities of the relevant incumbent agencies to expedite the grant of approvals and the implementation of major or strategic proposed development and investments.

B. SJM Organisation

▼ Structure, Operating Model and Business Processes

SJM will adopt a matrix structure, enabling it to manage and adapt to a potentially highly complex and constantly changing environment. This structure will work on the basis of clustering of functions, which involves redesigning and deploying functional units to create seamless, cross-functional systems and processes.

SJM's activities will be grouped and aligned to the five development components to allow for sufficient focus of resources in these areas.

These functional areas form the Operating Units of SJM which are:

- Economics and Business (E&B)
- Environment
- Physical Infrastructure
- Social Development and Lifestyle
- Planning and Control

There will also be Supporting Units which are required to provide internal functions and support the operations of the Operating Units. These are:

- Corporate Services
- Processing Centre
- Human Resources
- Information Intelligence

■ Communication

Project Teams will be formed to execute projects/initiatives identified in this CDP. They will form an integral element of SJM to allow multiple areas of discipline to collaborate and generate a comprehensive approach to implementing development projects. SJM will deliver results mainly through Project Teams rather than by department/function.

SJM's operating model will be driven by effective business processes. Project Teams will utilise Project Management methodologies to implement initiatives, while the Operating and Supporting units will adopt a set of business processes that incorporate global best practices.

SJM will also adopt several other High Performance Organisation (HPO) practices such as leadership, culture, learning, talent management, people selection, performance management and communication. This will ensure employees exhibit competence, commitment and behaviours that are in congruence with SJA's core values and aspiration to serve customers.

▼ Chief Executive Officer (CEO)

The CEO of SJA will be accountable for the performance of SJA and will be sufficiently empowered to carry his responsibilities consisting of:

- Managing the operations of SJM
- Connecting SJM with the Board
- Initiating the merging of the CDP with the local and structural plans as well as with national level plans and policies
- Monitor and assist the implementation of projects and initiatives in the CDP
- Nurturing elements of HPO into SJM
- Ensuring SJM will meet its Key Performance Indicators (KPIs) and monitor these KPIs constantly
- Fostering good relationship with the relevant Federal, State and local agencies

To deliver the above, the CEO will be a well respected and dynamic individual who will be able to drive SJA to perform well. He/she must also possess adequate local and global perspectives to introduce

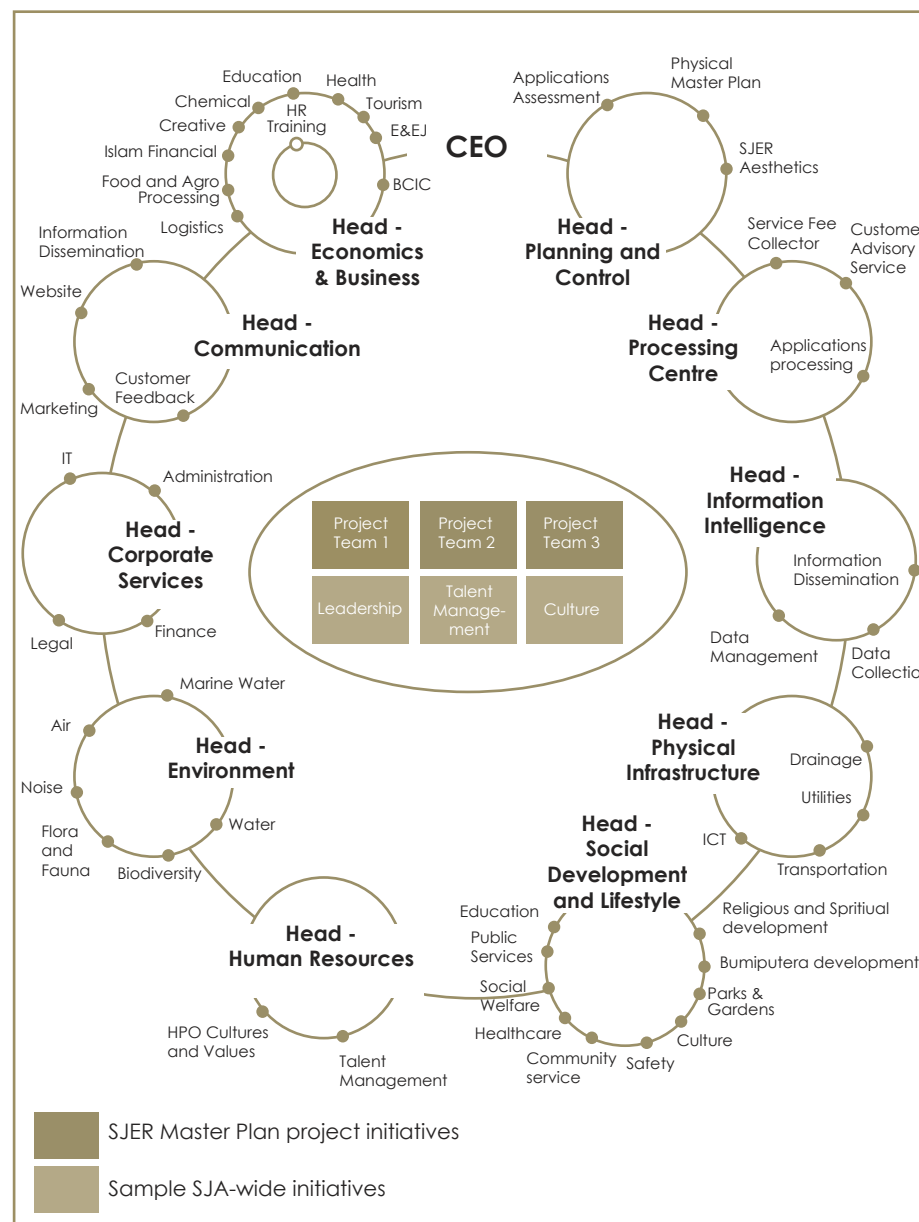
and foster best practices into SJA. The CEO is expected to have significant experience and track record in delivering results in a complex commercial environment with significant interaction with the government and social development sectors.

C. Staffing Considerations

SJM will be a 'lean' organisation. It will require a pool of excellent talent operating under a culture and system where all employees are focused on continuous improvement in all aspect of their work. Recruitment will be based on hiring global best talent, whilst maintaining the right balance between local and international input.

It is envisaged that SJA will have a compensation structure that is competitive and benchmarked to the private sector marketplace. As the SJM organisation is project based, staff will be hired, as far as possible, on a contract basis.

Figure 6.2: Organisation Structure of SJM



Source: SJER CDP 2025

Table 6.1: SJM Organisation Summary

Characteristics	Divisions
<p><i>Matrix Structure</i></p> <ul style="list-style-type: none"> • Clustering of functions, which involve redesigning and deploying functional units • Seamless, cross-functional systems and processes 	<p>Operating Divisions</p> <ul style="list-style-type: none"> • E&B • Environment • Lifestyle • Physical Infrastructure • Planning and Control

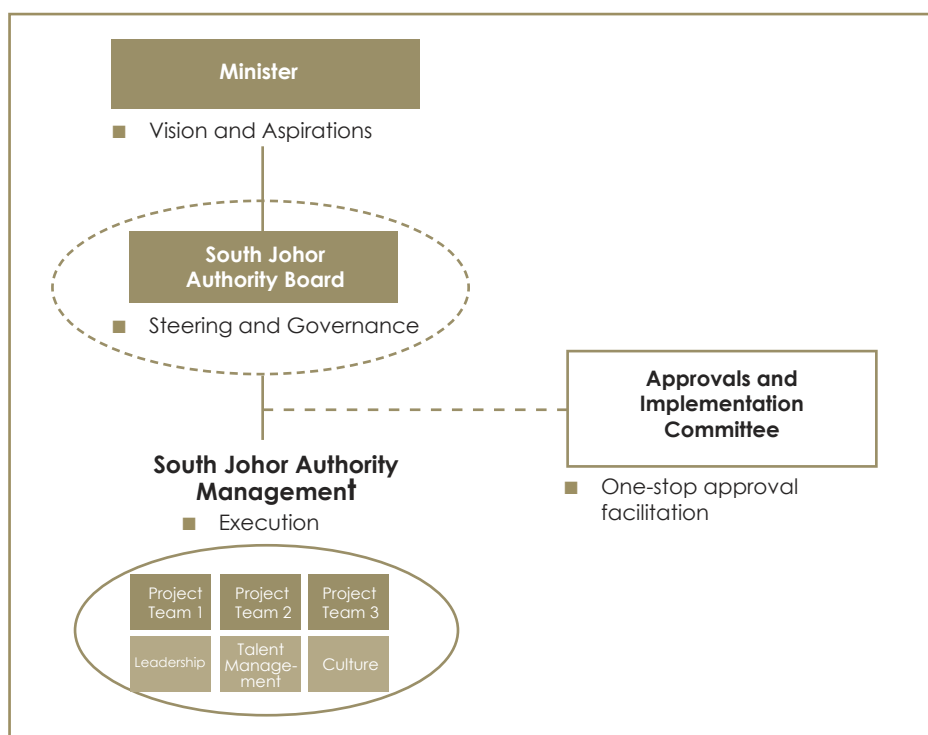
Characteristics	Divisions
<p><i>Project Team Based</i></p> <ul style="list-style-type: none"> Team Leaders and Assistant Leaders are owners of projects Resources will be pulled from the relevant divisions in SJM and external parties Monitor and assist the implementation of projects from CDP <p><i>Other HPO Practices</i></p> <ul style="list-style-type: none"> Leadership, culture, learning, talent management, people selection, performance management and communication 	<p>Supporting Divisions</p> <ul style="list-style-type: none"> Processing Centre Information Intelligence Communication Human Resources Corporate Services

Source: SJER CDP 2025

D. The Board

The Board will embrace a governance philosophy of total performance instead of just compliance. It will build trust and drive performance. In addition, the Board will be sufficiently 'hands on' and connected to SJM through the CEO. SJM and the Board must be aligned on the key strategic matters and be clear where the respective roles and

Figure 6.3: SJA Board



Source: SJER CDP 2025

the demarcation between the Board and management are, hence increasing the chances of building and maintaining a sustainable enterprise. The Board will be effective, cohesive and ready to make decisions.

E. Membership of the Board

The Board will comprise the following members, in line with the expectation of building trust and driving performance:

▼ Two Co-Chairmen

- YAB Prime Minister (PM) – The PM will co-chair the Board. YAB PM's participation at SJA will enable for his vision to be directly transmitted to SJA.
- YAB Menteri Besar of Johor (MB) – As the Head of the State Government, YAB MB will play a pivotal role in guiding and realising the vision of SJER. He will also influence the direction of SJA. YAB MB will co-chair the Board together with YAB PM.

▼ Two Representatives from the Federal Government

- The Secretary General of Treasury – this will facilitate direct and expeditious funding from the Federal Government.
- The Director General of the Economic Planning Unit of the PM's Department (EPU) - SJA will be directly connected to the EPU, thus facilitating linkage of SJA's economic and social programmes and budgets into national development plans.

▼ Two Representatives from the Johor State Government

- The State Secretary - to facilitate the coordination with and support of the state government agencies in implementing the CDP.
- The Director of the Johor State Economic Planning Unit (UPEN) - This allows for SJER's economic strategy and plans to be linked to the bigger picture, i.e. Johor's plan, to maximise success and avoid conflicts.

▼ Three Professional Representatives and CEO of SJA

- Three professionals who will have expert knowledge related to the development of SJER. They could be businessmen, economists,

environmentalists, town planners and other subject matter experts. At least two of them will be from the banking, finance or commercial sector.

- The **CEO** of SJA, to ensure connectivity between the Board and SJM

The composition will create a Board that will be effective and one that will create trust and drive performance.

Table 6.2: Composition of SJA Board

Composition	Members	Value / Rationale
Co-Chairmen	<ul style="list-style-type: none"> • YAB Prime Minister • YAB Menteri Besar of Johor 	<ul style="list-style-type: none"> • Direct transmission of vision • Eminence • Confidence and trust • Performance – Federal Government support • Eminence • Confidence and trust • Performance - State Government support
Federal representatives	<ul style="list-style-type: none"> • Secretary General of Treasury • Director General of EPU 	<ul style="list-style-type: none"> • Performance – financial support • Performance – projects support
State representatives	<ul style="list-style-type: none"> • State Secretary • Director of UPEN 	<ul style="list-style-type: none"> • Confidence and trust • Performance – State agencies support • Confidence and trust • Performance – project support
Subject matter experts (SMEs)	<ul style="list-style-type: none"> • Three SMEs 	<ul style="list-style-type: none"> • Performance – expert knowledge provision
SJM Representative	<ul style="list-style-type: none"> • CEO 	<ul style="list-style-type: none"> • Performance – inter connectivity between Board and Management

Source: SJER CDP 2025

F. Advisory Council

An Advisory Council shall be set up consisting of eminent Malaysians and eminent foreign nationals with the purpose of providing valuable global and national perspectives in line with the aspiration of SJER to develop in a comprehensive and holistic fashion with the attendant international standing. The Minister-in-Charge shall appoint the members of the Advisory Council. The Advisory Council shall have an advisory role to the SJA Board and the Co-Chairmen of the SJA Board.

G. The Minister and AIC

▼ The Minister-in-Charge

The Minister-in-Charge is responsible for giving policy direction and guidance for SJER. As the Minister-in-Charge, he is responsible for reporting the progress of the SJER and SJA to the Cabinet and Parliament, as required by the proposed SJA Act.

▼ The AIC

The AIC will act as a one-stop approval facilitation and implementation body for SJA. Applications for approvals of major or strategic proposed development and investments (including those relating to land, planning permission and building plans) processed by the SJA Processing Centre are referred to AIC for decisions. The AIC will also identify any difficulties or issues arising during the implementation of such development and investments, and take appropriate steps and administrative actions to resolve such difficulties or issues. The decisions of AIC are taken and formalised by the relevant incumbent agencies.

The AIC members will comprise relevant Federal, State and local government representatives set out in the Table 6.3, which includes two or more Commissioners who will be empowered by the Federal and Johor State Governments to liaise with and coordinate all relevant government agencies in order to expedite the grant of approvals under Federal and State laws, respectively. YAB MB will be the Chairman of AIC, who, together with the CEO, will provide connectivity to the Board.

Table 6.3: Composition of the AIC

Chairmanship	<ul style="list-style-type: none"> • YAB Menteri Besar of Johor • CEO
Federal representatives	<ul style="list-style-type: none"> • The Federal Commissioner <p>Senior representatives from:</p> <ul style="list-style-type: none"> • The Ministry of Finance • The Ministry of Domestic Trade & Consumer Affairs (in relation to the registration of companies & businesses) • The Ministry of Home Affairs (in relation to immigration matters) • The Ministry of International Trade & Industry (in relation to manufacturing & industrial approvals & incentives)
State representatives	<ul style="list-style-type: none"> • The State Commissioner • The State Director of the Department of Lands and Mines, • The State Planning Director
Local government representatives	<ul style="list-style-type: none"> • The President of every local authority within the SJER

Source: SJER CDP 2025

H. SJA To Be A Special Authority

SJA is required to be a Special Authority to be able to implement the initiatives successfully. Within the present regulatory set up, SJA needs to be given adequate ownership of processes to enable it to deliver services better with than the present delivery system. SJA's Processing Centre will own these processes and operate as a one stop centre. For selected applications, it will be the 'only-point-of-call' – it will receive and process applications up to the final stage of approval when it will refer them to the incumbent authorities.

Table 6.4: Key Areas of Authority

Legislation and policies	<ul style="list-style-type: none"> • Directly recommend to the Ministers of Finance, International Trade & Industry, Natural Resources & Environment, etc. on matters relating to policies, incentives, exemptions, special treatment, special requirements, etc. • SJA sets and monitors standards in areas of physical development, environment, lifestyle, etc
Approval processes	<ul style="list-style-type: none"> • The Processing centre owns steps "1-14", step "15" is signing of approval by relevant parent agency
Funding from Government	<ul style="list-style-type: none"> • Priority given to SJER projects • Funded through direct allocation

Source: SJER CDP 2025

6.4 Processing Centre in SJA

SJA will operate a Processing Centre that will be the only point-of-call for citizens and investors for obtaining approvals for licenses, permits, incentives as well as selected planning and land matters. It will function as a one-stop centre (OSC), offering a multi-channel government-customer interface and employing simplified processes and efficient work procedures. The processing speed will be targeted to as good as the best in class in the world, to meet investors' and increased citizen expectations.

The Processing Centre will be different from the traditional, business-as-usual One-Stop Centres (OSCs) being implemented by other government agencies. These traditional OSCs are mainly coordinators, whilst SJA will own the processes from start to finish, save for the final step of approving the application.

A. Target Processing Times

Table 6.5 sets out SJA's target processing times as proposed by the CDP for selected applications¹. In most cases, these targets are radically less than the existing time frames in view of a need to set delivery and service standards in line with the aspirations of SJER. Table 6.6 indicates the results of a recent benchmarking exercise in this regard.

The target processing times will be reviewed further during the set-up of the SJA and with appropriate modification and subject to the approval of the SJA, will be formally adopted in the form of a service charter thereafter.

Table 6.5: Target Processing Turnaround Time for SJA

Business Process	Target no. of days
Getting Started	
1. Registering a company	6
2. Approvals to set up a warehouse	51
Licensing	
3. Hospital license	14
Clinic license	13
4. Hotel license	21
5. Manufacturing license	14
6. Business-related licenses	7
7. Excise license	12
8. Sales tax license	1
9. Licensed Manufacturing Warehouse	10
10. Development license	9
11. Renewal of hospital license	14
Incentives	
12. Incentives	14
13. Grants	14
14. Loans	14
Immigration	
15. Employment pass (professionals)	14
16. Work permit (unskilled workers)	7
17. Dependent pass	7
18. Social pass	2
19. Short term professional pass (set up machines, entertainer, etc)	3
Land Dealings	
20. Sub-division	21-30
21. Conversion	21-30
Planning Permission	
22. Planning permission	14-21
23. Building plan	14-21
Others	
24. Application for connection to utilities	3
25. Certificate of Occupancy	6
26. Department of Occupational Safety and Health Approval – safety of machinery	10

Source: SJER CDP 2025

¹ These targets have been set based on comparisons to timings taken by other efficient government agencies around the world, as well as on discussions with industry players on the timeframe they believe is achievable. It assumes that all the necessary systems and technology, and sufficient staffing resources are in place.

Table 6.6: Global Benchmarks for Target Processing Turnaround Time for SJA

Business Processes	Parent Agency in Malaysia	Target Days	Processing Time (days)					
			Malaysia	Singapore	Dubai ²	UK	Australia	USA
Getting Started								
1. Registering a company	Companies Commission of Malaysia	6	30	6	7	18	2	5
2. Approvals to set up a warehouse	MIDA, local authority, DOSH, Fire & Rescue department, DID, utility providers, etc	51	281	129	125	115	140	69
Licensing								
3. Hospital Licence Clinic Licence	Ministry of Health	14 13	36 35	14	-	180	60	28
4. Hotel Licence	Ministry of Tourism	21	21	21	10	-	-	15
5. Manufacturing Licence	MIDA	14	28	14	3	-	38	-
6. Business-related licences	Local authority	7	30	12.5	3	-	4	10
7. Excise Licence	Royal Customs Malaysia	12	30	12.5	3	12	28	1
8. Sales Tax Licence	Royal Customs Malaysia	1	10	12.5	3	15	14	1
9. Licensed Manufacturing Warehouse	Royal Customs Malaysia	10	21	7	3	-	14	-
10. Development Licence	Ministry of Housing & Local Government	9	20	9	-	-	-	-
11. Renewal of Hospital Licences	Ministry of Health	14	36	14	-	-	60	-
Incentives								
12. Incentives	MIDA, MOF, other relevant Ministries/agencies	14	28	12.5	-	-	38	-
13. Grants	MIDA, MOF, other relevant Ministries/agencies	14	28	12.5	-	-	38	-
14. Loans	MIDA, SMIDEC, other relevant Ministries/agencies	14	28	12.5	-	-	38	-

Source: Deloitte Analysis/SJER CDP 2025

² Applies to areas outside of the free zones. Other numbers for Dubai apply to free zone areas. Source: Jumeirah Capital.

Table 6.6 (con't): Global Benchmarks for Target Processing Turnaround Time for SJA

Business Processes	Parent Agency in Malaysia	Target Days	Processing Time (days)					
			Malaysia	Singapore	Dubai ²	UK	Australia	USA
15. Employment pass (professionals)	Immigration	14	14 ³	14	7	49	30	3
16. Work Permit (unskilled workers)	Immigration	7	7 ³	14	14	49	30	15
17. Dependant pass	Immigration	7	7 ³	14	7	49	60	15
18. Social pass	Immigration	2	2 ³	2	N/A	1	1	15
19. Short term professional pass (set up machines, entertainer, etc)	Immigration	3	3 ³	14	7	28	1	15
Land Dealings								
20. Sub-division	Land Office	21-30	510	90	7	60	42	150
21. Conversion	Land Office	21-30	420	-	N/A	60	42	150
Planning Permission								
22. Planning Permission	Local Authority	14-21	240	21	21	120	60	150
23. Building plan	Local Authority	14-21	180	30	21	60	30	7
Others								
24. Application for connection to utilities	TNB, TM, SAJ, GMSB, etc	3	2	2	14	20	10	2
25. Certificate of Occupancy	Local Authority	6	14	14	9	20	30	10

Source: Deloitte Analysis/SJER CDP 2025

² Applies to areas outside of the free zones. Other numbers for Dubai apply to free zone areas. Source: Jumeirah Capital.

³ Malaysia's immigration processing time is based on the Departments service standards.

B. Requirements for Success of the Processing Centre

▼ Staffing

The Processing Centre will be staffed by a mix of officers seconded from the respective parent agencies and other officers hired directly by SJA. These Government officers will be carefully selected through SJA's people selection and talent management processes that will cover both hard and soft competencies. They include the Federal or State Commissioners, equipped with the required authority to process applications on behalf of the parent agency. The representative will work under the terms and conditions of SJA organisation and adopt SJA's organisational culture that focuses on high performance and serving the citizen/investor's needs.

▼ Ownership of the Processes

To successfully operate the Processing Centre, SJA will need to have adequate authority and ownership of the approval processes, especially in relation to prescribed strategic projects and other pre-determined processes to assist investors. By owning such processes, it allows SJA to improve or re-engineer the processes from start to finish.

SJA will not usurp power from existing agencies. Instead it will assist with the execution of policies or procedures. For instance, SJA will own and carry out steps '1 to 14' whilst the final step '15' remains with the incumbent agencies⁴.

▼ Technology to Support Service Delivery

The Processing Centre will rely on the extensive use of information technology for the submission, collection and distribution of information. SJA will not be able to meet the set expectations without the heavy reliance on technology.

A web-portal will be developed to link with citizens/investors, and enable electronic submission of applications. Such applications will be encouraged by highlighting the shorter processing time for electronic versus paper submissions. A document and information management

system will also be implemented to allow for efficient processing and more responsive customer service. Other systems such as Global Information System (GIS) will also be installed as required to support service delivery.

6.5 Overview of Tax Incentives

Tax incentives are a key aspect of attracting businesses to the SJER. Other foreign jurisdictions which have established special economic zones similar to the SJER provide significant tax incentives. In order for Malaysia to be competitive, it is essential that appropriate incentives are available to investors and businesses in the SJER. Before addressing the types of incentives that need to be implemented to spur the success of the SJER, it is important to examine the types of incentives currently available in Malaysia.

Malaysia has a wide range of tax incentives for various industries. At present, these incentives are enacted in the Promotion of Investments Act (PIA), as well as through various gazette orders pursuant to Section 127 of the Income Tax Act (ITA). The incentives in Malaysia can be categorized on industry bases, although many of these apply across industries. The incentives currently available are fairly generous and arguably the basket of incentives is wide enough to cater to the needs of the SJER. However, some of the incentives would need to be modified for the purposes of the SJER.

The following sets out a list of some of the more important incentives currently available in Malaysia (prior to considering the 2007 Budget Proposals which have not yet been gazetted). This list provides a clear indication of the range of incentives available.

▼ Manufacturing

1. Pioneer status for companies undertaking the manufacture of a promoted product:
 - a) generally, this provides a 5 year tax exemption of 70% of statutory income.
 - b) companies located in the promoted areas⁵ are entitled to

⁴ For illustration purposes, it is assumed that an application will involve 15 steps in obtaining an approval. Steps "1-14" refer to the processing procedure of an application from the beginning to step "14". Step "15" will involve obtaining the stamp of approval from the relevant incumbent agency.

⁵ i.e. the Eastern Corridor of Peninsular Malaysia, Sabah, Sarawak and Labuan.

an exemption of 85% or 100% of statutory income. The 100% exemption is available for applications up to 31 December 2010. The exemption is for a 5 year period. (85% applies to companies granted pioneer status in this area prior to September 2003)

- c) companies participating in a promoted product/activity which relocate their manufacturing activities to the promoted areas (as above), will be entitled to an extension (2nd round) of tax exemption on 100% of statutory income for 5 years
- d) Companies involved in projects of national and strategic importance are eligible for a 100% exemption on statutory income. e.g. Multi-media Super Corridor (MSC) companies, and companies engaged in areas of new and emerging technologies
- e) companies producing prescribed products are entitled to a 100% exemption on statutory income (e.g. plastic injection machines; machine tools; material handling equipment; robotics and factory automation equipment; packaging machinery; plastics extrusion machinery, etc.)
- f) companies participating in a promoted activity or in producing a promoted product in an industrial linkage programme⁶ are entitled to a tax exemption of 100% of statutory income for 5 years
- g) companies which produce intermediate goods for international markets in an approved scheme (i.e. capable of achieving world class standard in terms of price, quality and capacity) are entitled to a tax exemption of 100% of statutory income for 10 years
- h) companies undertaking design, research and development (R&D), and production of qualifying automotive component modules or systems enjoy a 100% tax exemption on statutory income
- i) any company which reinvests for expansion purposes in industries involving the main commodities (i.e. rubber, oil palm and wood) are entitled to an exemption of 70% of statutory income for 5 years (85% if located in the promoted areas)
- j) companies under a pre-packaged scheme⁷ are entitled to a 15 year tax exemption period. Terms of the exemption will be dependent on each scheme.

⁶ Integrated programme by a Government agency/Ministry in which a small and medium company is a manufacturer/supplier linked to a larger company, or another small and medium company through the manufacture and supply of parts/components or through technology or R & D.

⁷ pursuant to Section 154A, ITA

2. Investment Tax Allowance (ITA) for companies undertaking the manufacture of a promoted product:

- a) generally, this provides a 5 year tax exemption of 70% of statutory income at 60% on qualifying capital expenditure incurred within 5 years from the date of approval of the ITA
- b) companies located in Sabah, Sarawak and the Eastern corridor of Peninsular Malaysia are entitled to a tax exemption of up to 100% of statutory income computed at 100% of qualifying capital expenditure for 5 years. (For companies applying for the incentive up to 31 December 2010.) For companies which applied for the incentive prior to September 2003, the exemption is on 85% of statutory income based on 80% of qualifying capital expenditure.
- c) companies which relocate manufacturing activities to promoted areas will be entitled to a 2nd round of ITA on 100% of statutory income based on 100% of qualifying capital expenditure for a period of 5 years.
- d) companies undertaking projects of national and strategic importance (see above) are entitled to an exemption of up to 100% of statutory income computed at 100% of qualifying capital expenditure for 5 years
- e) companies engaged in activities outlined in 1(e) & (g) above are eligible for a 100% tax exemption on statutory income from ITA computed at 100% of qualifying capital expenditure
- f) companies participating in new and emerging technologies are entitled to a tax exemption of 100% of statutory income based on ITA of 60% of qualifying capital expenditure for 5 years
- g) companies participating in activities in industrial linkage programmes (refer to 1(f) above) are entitled to a tax exemption of 100% of statutory income based on ITA of 60% of qualifying capital expenditure for 5 years
- h) companies undertaking in-house R&D will be entitled to ITA of 50% (restricted to 70% of statutory income) for 10 years.
- i) companies which reinvest in rubber, oil palm and wood industries are entitled to an exemption on 70% of statutory income based on an ITA of 60% of qualifying capital expenditure for 5 years. (Where the reinvestment is in a promoted area, the exemption is on 85% of statutory income based on ITA of 80% of qualifying capital expenditure)

- j) Companies undertaking production of halal food which meet the relevant certification requirements are entitled to 100% exemption on 100% qualifying capital expenditure for 5 years
- k) companies under a pre-packaged scheme⁸ are entitled to an exemption of 100% of statutory income based on ITA of 100% of qualifying capital expenditure for a 10 year period.

(Note that ITA and pioneer status are mutually exclusive)

3. Reinvestment Allowance (RA)

This entitles the taxpayer to an exemption of 60% of qualifying capital expenditure restricted to 70% of statutory income. Qualifying capital expenditure for RA is capital expenditure incurred for expansion, automation, modernization and diversification. RA is available to manufacturing companies and for companies involved in agricultural projects.

Companies located in Sabah, Sarawak, the Eastern corridor of Peninsular Malaysia and Labuan will not be subject to the restriction of 70% of statutory income.

- 4. Double deductions for certain qualifying expenditure as follows in relation to several activities including those set out below:
 - a) for approved outgoings and expenses for companies engaged in the promotion of exports
 - b) for export credit insurance premiums paid to approved companies (note: this applies to ALL industries)
 - c) for approved training for purposes of upgrading and developing employees' craft, supervisory or technical skills which contribute directly to future production.
 - d) approved R&D expenditure for in-house R&D and for the services of approved research institutes or companies
 - e) expenditure on training handicapped persons who are not employees (note: this applies to all industries)
 - f) for expenses incurred on advertising Malaysian brand name goods locally (for companies which are 70% Malaysian owned) and for expenses incurred in advertising Malaysian brand names overseas.
- 5. Deduction of 20% per year for companies for the cost of acquisition of proprietary rights, i.e. patents, industrial design or trade marks. The companies must be at least 70% owned by Malaysian citizens.

⁸ pursuant to Section 154A, ITA

- 6. Accelerated capital allowances(CAs) for:
 - a) companies which incur capital expenditure on equipment for the generation of energy for their own consumption from renewable and environmentally friendly resources, e.g. biomass, hydropower and solar energy – 20% initial allowance and 80% annual allowance resulting in full claim in one year (Note: applies to all industries)
 - b) companies which incur capital expenditure on moulds for the production of industrial building systems in the construction industry – accelerated CAs on related equipment to be fully written off within 3 years
- 7. Deduction of 20% per year of capital costs incurred by locally owned companies which acquire a foreign company to acquire high technology for production in Malaysia or to gain new export markets for local products
- 8. Companies whose manufactured goods achieve a significant increase in exports⁹ are eligible for a tax exemption of 50% of value of increased exports (subject to restriction of 70% of statutory income)

Companies which succeed in penetrating new export markets are entitled to an exemption of 50% of value of increased exports of manufactured goods (subject to a restriction of 70% of statutory income)

▼ Agriculture

- 1. Pioneer status – similar to pioneer status for the manufacturing sector, including:
 - a) generally, an exemption of 70% of statutory income for 5 years
 - b) companies located in the promoted areas¹⁰ are entitled to an exemption of 85% or 100% of statutory income. The 100% exemption is available for applications up to 31 December 2010. The exemption is for a 5 year period. (85% exemption for companies granted pioneer status in this area prior to September 2003)
 - c) project of national and strategic importance – 100% exemption on statutory income for 5 years with extension of another 5 years
 - d) company establishing a forest plantation – 100% exemption on statutory income for 5 years with extension of another 5 years

⁹ i.e. at least 50%

¹⁰ as per note 1 above.

2. Investment tax allowance – similar to ITA for the manufacturing sector, including:
- a) generally, a 5 year tax exemption of 70% of statutory income at 60% on qualifying capital expenditure incurred within 5 years from the date of approval of the ITA
 - b) companies located in Sabah, Sarawak and the Eastern corridor of Peninsular Malaysia are entitled to a tax exemption of up to 100% of statutory income computed at 100% of qualifying capital expenditure for 5 years. (For companies applying for the incentive up to 31 December 2010). For companies which applied for the incentive prior to September 2003, the exemption is on 85% of statutory income based on 80% of qualifying capital exemption).
 - c) companies involved in the production of halal food in compliance with International standards are eligible for 100% allowance on qualifying capital expenditure against 100% of statutory income for 5 years
 - d) companies engaged in projects of national and strategic importance are eligible for 100% allowance on qualifying capital expenditure against 100% of statutory income for 5 years
 - e) companies establishing forest plantations are eligible for 100% allowance on qualifying capital expenditure against 100% of statutory income for 5 years

3. Reinvestment allowance – similar to that applicable to the manufacturing sector. This incentive is also available to individuals who are citizens and resident.

Where companies produce promoted food products upon expiry of the RA, accelerated allowances on capital expenditure over a 3 year period will be given – 40% initial allowance and 20% annual allowance. (This is subject to MIDA confirming the promoted product status)

4. Companies engaged in production of approved food products:
- deduction for investment cost in the company engaged in production of approved food products – the deduction is granted to the investor who is required to own 70% of the equity in the subsidiary; and
 - subsidiary company undertaking approved food production entitled to exemption on 100% of statutory income for 10 years – commencing from 1st year of profits. Further, losses incurred during the exempt period can be carried forward to post exempt period

- 5 Companies which export fresh and dried fruits, flowers, ornamental plants, ornamental fish, frozen raw or cooked prawns and shrimps are eligible for a tax exemption on statutory income of 10% of value of increased exports
- 6 Companies which incur capital expenditure on machinery and equipment¹¹ used in the agricultural sector (except for forest plantations) are eligible for accelerated CAs on the related machinery over a period of 2 years.
- 7 Double deductions for certain qualifying expenditure as follows in relation to several activities including those set out below:
 - a) for approved outgoings and expenses for companies engaged in the promotion of exports
 - b) for export credit insurance premiums paid to approved companies (note: this applies to ALL industries)
 - c) approved R&D expenditure for in-house R&D and for the services of approved research institutes or companies
 - d) expenditure on training handicapped persons who are not employees (note: this applies to all industries)
8. Non-rubber plantation companies which plant rubberwood trees are entitled to a write-off on qualifying capital expenditure over 1 year.¹²

▼ Tourism

- 1 Pioneer status (100% exemption of statutory income) or
- 2 ITA (100% allowance on qualifying capital expenditure) for 5 years for expansion, modernization or renovation of hotel
- 3 Double deductions, including:
 - a) For companies carrying on hotel or tour operating businesses which have incurred expenses for training employees and handicapped persons are eligible for a double deduction for training expenses
 - b) For overseas promotion expenses

¹¹ to be determined by the Minister of Finance

¹² application to the Ministry of Primary Industries

4 Exemptions from tax, including the following:

- a) local companies organizing conferences in Malaysia and bringing in at least 500 foreign participants entitled to exemption on statutory income relating to such participants
- b) promoters of car international car and motorcycle races held in Malaysia are eligible for an exemption of 50% of statutory income from such races
- c) local companies organizing exhibitions, festivals or conferences including sporting competitions of international standard in Malaysia are eligible for a 50% exemption on statutory income from such events

▼ **Education**

1. ITA for the following:

- a) technical and vocational training companies are eligible for ITA of 100% of qualifying capital expenditure restricted to 70% of statutory income for 10 years
- b) private institutions of higher learning providing science courses including biotechnology, medical and health science, molecular biology, material sciences and technology, and food science and technology are eligible for ITA of 100% of qualifying capital expenditure restricted to 70% of statutory income for 10 years

2. Pioneer status or ITA (accorded to MSC companies) will also be available for multi-media faculties in institutes of higher learning for 5 years

3. Companies involved in the export of education services are exempt from tax on 50% of the value of increased exports

4. Double deduction for companies incurring expenses for the export of education services

5. Non-resident franchisors exempt from withholding tax in respect of royalties from approved franchised education programmes¹³

▼ **Utilities**

1 Pioneer status:

- a) for approved services projects (ASPs) of national and strategic importance – 100% tax exemption on statutory income for 10 years

b) ASPs in Sabah, Sarawak and the Eastern corridor of Peninsular Malaysia – 85% exemption on statutory income for 5 years

c) ASPs in other areas of Malaysia – 70% exemption on statutory income for 5 years

d) companies undertaking generation of energy using biomass – 100% exemption on statutory income for 5 years

2. ITA:

Companies undertaking generation of energy using biomass – 100% exemption of statutory income computed at 100% ITA on capital expenditure for 5 years

3. Investment Allowance (IA) – companies undertaking ASPs in the service sector in relation to transportation (referred to below), utilities or other approved sub-sector – tax exemption of 70% of statutory income from IA computed at 60% of qualifying capital expenditure for 5 years

▼ **Logistics**

(refer below to the services sector)

1 IA - tax exemption of 70% of statutory income from IA computed at 60% of qualifying capital expenditure for 5 years

2 Exemptions on import duties and sales tax for certain types of prime movers and trailers

3 Pioneer status or ITA for companies which reinvest in cold chain facilities and services for agricultural and perishable products

▼ **High technology and multimedia**

1. Pioneer status or ITA for MSC companies (refer above to MSC companies)

2. Pioneer status (100% exemption of statutory income) or ITA (100% exemption of statutory income computed at 60% qualifying capital expenditure) for 5 years for companies granted "strategic knowledge-based status"¹⁴, i.e. a company which has the ability to

- generate knowledge content
- high value added operations
- high technology
- large number of knowledge workers

3. Deduction for cost of acquisition of a foreign owned company abroad to acquire high technology for production within the country or to gain new export markets for local products – 20% deduction a year

¹³ approved by the Ministry of Education

¹⁴ the company must have a corporate knowledge master plan

▼ Services

1. Exemption on 70% of statutory income (or 85% for companies located in the Eastern Corridor of Peninsular Malaysia, Sabah and Sarawak) for companies providing manufacturing related support services in total chemical management systems, integrated logistics, marketing support and utility services for 5 years
2. Companies providing energy conservation services are eligible for an exemption on 70% of statutory income for 5 years or IA of 60% restricted to 70% of statutory income
3. Companies located in the promoted area which incur capital expenditure on infrastructure and are eligible for an Infrastructure Allowance of 100% of such expenditure restricted to 85% of statutory income
4. Companies involved in the export of the following services are eligible for an exemption on 70% of statutory income equivalent to 50% of value of increased exports:
 - legal,
 - accounting
 - architecture
 - marketing
 - business consultancy
 - office services
 - construction management
 - building management
 - plantation management
 - private healthcare
 - private education
5. Operational headquarters (OHQ) incentive. This incentive grants a tax exemption on statutory income from the provision of qualifying services (to at least 3 related companies overseas) and a part of the income from the provision of services in Malaysia (not exceeding 20%) for 10 years

There are several criteria that must be met to obtain OHQ status including a minimum paid up capital of RM5 million, total business spending of RM1.5 million per year, etc.

6. International Procurement Centre (IPC) incentive. This incentive provides a tax exemption on all income from qualifying services in respect of direct export sales, of part of the income from drop shipment export sales and on part of the income from qualifying activities in relation to local sales.

The criteria required for eligibility for IPC status include the requirements that the company procures from and sells to its related and unrelated companies within or outside Malaysia, a minimum annual sales turnover of RM100 million with export sales of at least RM80 million. Further, an IPC should not sell more than 20% of its products to the local market, and should make incremental usage of Malaysian ports/airports. The capital and annual business spending requirement are the same as for an OHQ.

7. Regional Distribution Centre incentive – the incentives are the same as those for IPCs. The difference is that an RDC is only allowed to deal with its own brand of goods and must be located in free zones or licensed warehouses or licensed manufacturing warehouses.

▼ Waste Recycling

1. Pioneer status (70% exemption on statutory income or 85% if located in promoted areas) for 5 years, or
2. ITA on 60% of qualifying capital expenditure restricted to 70% of statutory income (or 80% ITA restricted to 85% of statutory income if located in promoted areas) for companies undertaking high value added waste recycling activities using high technology in the following areas:
 - recycling of agricultural waste or by-products
 - recycling of chemicals
 - recycling of reconstituted wood-based panel boards/products
3. Companies undertaking waste recycling activities are eligible for accelerated CAs on capital expenditure incurred in waste recycling equipment and machinery. The CAs are given over a 3 year period.
4. Exemption of duties on machinery and equipment not available locally for waste recycling activities

▼ Venture Capital

1. A deduction is allowed to a company or individual who is resident in Malaysia for an amount equivalent to the value of investment made in the basis period in a venture company.

The investment must be made for seed capital financing, start up financing or early stage financing.

“Seed capital” means financing or funding provided for the purposes of research, assessment and development of an initial concept or prototype

“Early stage financing” means financing or funding provided by a company or an individual to a venture company as:

- capital expenditure or working capital to initiate commercialization of a technology or product,
- additional capital expenditure or working capital to increase production capacity, marketing or product development, or
- interim funding for a venture company expecting to be listed on the official list of a stock exchange

“start-up financing” means financing or funding provided to a venture company for product development and initial marketing
OR

2. A venture capital company (VCC) is exempt from tax on statutory income from all sources for 10 years or the life of the fund, whichever is less. At least 70% of the VCC's funds must be invested in venture companies, and that the venture companies invested in were not related companies at the point of initial investment.

A VCC is defined as a company (incorporated under the Companies Act, 1965), a partnership, a scheme or arrangement investing in a venture company in the form of seed capital, start up or early stage financing.

▼ Key ‘Incentives’ available to all sectors

1. Group relief on 50% of adjusted business losses. Conditions:
 - claimant and surrendering company to have paid up capital of more than RM2.5 million
 - both companies to have same accounting period
 - both companies must be related with at least 70% shareholding owned directly or indirectly
2. Accelerated CAs (over 2 years) on equipment to ensure quality of power supply
3. Various double deductions and export incentives. Export incentives include a partial exemption from tax for export of goods having a value-added component. The exemption is given on 10% - 15% of the value of increased exports but is restricted to 70% of statutory income

The above provides an outline of the main incentives (from a direct tax perspective) currently available in Malaysia. Many of these incentives would be available to companies currently located in the SJER or which will be located in the SJER. However, to aggressively promote investment and relocation to the SJER, the incentives could be further improved and/or modified. In recommending appropriate incentives for the SJER, it is also important to consider the manner in which special incentives for the SJER will be perceived by investors and industry players who have invested elsewhere in Malaysia. The SJER must be marketed

as a new and dynamic region to spearhead the nation's growth, and to this end, added or improved incentives are required. The incentives could be similar to those currently available, and a progressive reversion to the normal tax regime upon cessation of the incentives should be considered. Indirect tax incentives also need to be addressed.

6.6 RECOMMENDATION FOR INCENTIVES

The SJER requires sufficient tax considerations and incentives to help create a competitive environment for the region. The following summarises the key issues together with the relevant recommendations. The recommendations set out below are over and above the existing set of incentives offered by the Government of Malaysia and nor are the recommendations set out below intended to be an exhaustive list of proposed incentives.

It should be emphasised that these recommendations made by the CDP, while having gone through various discussions with the relevant agencies, will as a matter of policy undergo the required due process of review by the government before they are approved.

A. SJA

- SJA will seek a tax exemption via a Section 127(3) exemption order under the Income Tax Act 1967 (ITA). The exemption provision or order will clearly specify the type of income exempt from tax, and the level at which business income will be exempt, e.g. adjusted income, or statutory income, or chargeable income. It is suggested that all income (other than dividend income) be exempted and that the exemption should be at the chargeable income level.
- Exemptions from real property gains tax (RPGT) and stamp duty (SD) would also be necessary for SJA if it is envisaged that land will be transferred to SJA to facilitate and control development and that SJA will be involved in land transactions. These exemptions can be granted pursuant to Section 9(3) of the RPGT Act, 1976 and Section 80(1) of the Stamp Act, 1949 respectively. These exemptions could also be sought whenever a specific transaction takes place.

- Specifically with respect to tax incentives, representatives from the Ministry of Finance (MoF) and the Ministry of International Trade and Industry (MITI) will sit in the AIC. The AIC will make appropriate recommendations with regard to applications made under the Promotion of Investments Act 1986 (PIA). This would need to be agreed upon with the MoF and MITI. This will eliminate the requirement for applications to be sent to each of the relevant ministries, and would enable SJA to take responsibility for the applications in the context of a one-stop centre.
- For other incentives applications under the ITA, such as an approved services project, SJA will be empowered to set up a Committee with the relevant representatives to recommend the incentives and SJA can then deal with the MoF for the approval and the issuance of the *Gazette* order. SJA will thus operate in a way similar to the Tax Analysis Division of the MoF in terms of processing applications and making recommendations to the MoF.
- SJA should have the power to oversee the manner in which the tax administration system is operated in the SJER, with a view to ensuring that tax matters are dealt with in a timely and clear manner. This would require active liaison with the Inland Revenue Board (IRB) and the Customs Department. It is suggested that a high level committee be established at SJA to resolve any issues that arise so that timely responses can be given to investors. The SJA should have an in-house tax unit to handle all tax issues.
- SJA should implement a system of 'user-charges' for the services it will provide to investors, in particular, in the Free Zones that may be set up and operated by SJA as the Free Zone Authority.

B. SJIC

In so far as SJIC remains wholly owned by Federal and State investment or trust agencies, it is proposed that SJIC be granted the following exemptions:

- SJIC will seek a tax exemption via a Section 127(3) exemption order under the Income Tax Act 1967 (ITA). The exemption provision or order will clearly specify the type of income exempt from tax, and the level at which business income will be exempt, e.g. adjusted income, or statutory income, or chargeable income. It is suggested that all income (other than dividend income) be exempted and that the exemption should be at the chargeable income level.
- Exemptions from real property gains tax (RPGT) and stamp duty (SD) would also be necessary for SJIC if it is envisaged that land will be transferred to SJIC to facilitate and control development and that SJIC will be involved in land transactions. These exemptions can be granted pursuant to Section 9(3) of the RPGT Act, 1976 and Section 80(1) of the Stamp Act, 1949 respectively. These exemptions could also be sought whenever a specific transaction takes place.

C. Tax Incentives

▼ Direct Tax Incentives

■ Incentives for Investors

It is recommended that:

- A deduction should be given for the cost of investment in prescribed companies located in the SJER (criteria to be decided by SJA) depending on the specific sector/activity.
- Group relief provisions should be relaxed to allow surrender of 100% of adjusted losses and to reduce the shareholding requirement for a group company to 51%.
- Either exempt payment of interest/royalty to non-residents from withholding tax or allow a lower withholding tax rate for a 5 year period.

■ Incentives for Industry Operators

It is recommended that:

- Pioneer status of 100% of adjusted income for 5 years be granted with the possibility of renewal.
- Investment Tax Allowance (ITA) of 100% on qualifying capital expenditure for 5 years be granted for set-off against 100% of statutory income.
- Companies in the SJER should be entitled to claim Reinvestment Allowance (RA) against 85% of their statutory income (as is the case for companies in promoted areas, which for RA purposes includes the district of Mersing in Johor)
- Once companies have come out of their tax holidays, additional incentives are necessary to retain these companies in the SJER, including:
 - export incentives – e.g. abatement of adjusted income from exports
 - Graduated tax rates after the tax holiday over a 5 year period culminating in the prevailing corporate tax rate in the 6th year post tax holiday
- Accelerated capital allowances for capital expenditure on energy conservation equipment, environmentally friendly equipment, 'smart' buildings, etc. This should also apply to developers.
- Double deductions should be given to companies which incur fees for services from approved environmental experts who assist companies in setting up environmentally friendly processes, etc.
- Contributions to the Social Projects Fund managed by SJA should be encouraged by allowing tax deductions or being treated as donations to the Government.
- Partial exemption on developers' profits from large scale development projects for key industries.
- 'Percentage for Arts' scheme should be implemented and tax deductions should be allowed for such contributions.
- Possible stamp duty exemption on certain business transactions to be determined by the SJA.

- SJA will establish clear criteria for pre-packaged incentives, to be discussed with the MoF.
- There could be incentives for the use of local products/materials such as an abatement of adjusted income.

■ Incentives for Individuals

It is recommended that:

- A tax exemption for 5 years on a percentage of income should be considered to attract and retain skilled individuals to work in the SJER, either from overseas or from elsewhere in Malaysia. (The exemption may be similar to the exemption currently available to non-citizen individuals from employment exercised in a 'managerial capacity' in a Labuan offshore company). SJA would need to set the criteria for granting such an exemption. For knowledge workers, even though they may be non-resident in Malaysia, they could be taxed at the same income tax rates as resident individuals.
- Individuals (regardless of their residence/citizenship) acquiring residential property in the SJER should not be subject to the FIC Guidelines and should be subjected to the same RFGT rates and treatment upon disposal of such property as resident individuals.
- Stamp duty – Exemption from stamp duty for first-time buyers (both companies and individuals) of real property in the SJER.

▼ Indirect Tax Incentives

- Free Zones and Free Ports could be designated within the SJER, including specialist free zones in the SJER to cater for specific objectives.
- SJA should be appointed as the Free Zone Authority for Free Zones in the SJER

▼ Creative Industry

There are incentives currently available to the creative industry in Malaysia, but these are not sufficient at present to nurture and grow the industry extensively. Accordingly, additional incentives as follows are for the proposed Creative Cluster.

■ Incentives for Investors

□ Deduction for Investment Cost

A deduction should be granted to investors (located in Malaysia) for the cost of investing in entities undertaking creative ventures to be determined by SJA, possibly in collaboration with a body of representing reputable members of the creative industry. The projects would be an example of such type of investment and would be able to get a deduction for the amount invested under this proposed incentive. The incentive should be in respect of share capital investment. For debt financing, it is proposed that interest income be exempt from tax. For a non-resident investor, interest payments to non-residents should be exempted from withholding tax.

A specific order under the ITA would need to be *Gazetted*. For the exemption from tax in respect of interest income, an amendment to Schedule 6 of the ITA is necessary, or a separate *Gazette* order may be issued pursuant to Section 127 of the ITA.

□ Group Relief

The current group relief provisions should be relaxed such that 100% of the losses of the surrendering company should be available for the purposes of group relief to encourage the setting up of creative ventures in the SJER. Furthermore, the shareholding test should be reduced to 51% to make this relief more flexible.

□ Repatriation of Profits (for non-resident investors)

Payment of interest and royalties to non-residents should either be exempt from withholding tax, or be subject to a reduced rate of withholding tax, say 5%, for a 5 year period. Thereafter, the prescribed rates of tax per the ITA would prevail. SJA

should determine companies eligible for this reduced rate. The exemption from or reduction in the withholding tax rate would need to be enacted via a *Gazette* order.

■ Incentives for Creative Operations

□ Profit-making Projects

In addition to the existing incentives currently available, some additional incentives are recommended. To this end, SJA need to determine the activities which should be classified as promoted activities for the purposes of claiming tax incentives under the PIA. It is recommended that the existing pioneer and investment tax allowance incentives to be further liberalised as follows:

- Promoted activities for the Creative Cluster should be viewed as projects of national and strategic importance and accordingly, should be eligible for a 100% exemption for 5 years (renewable for another 5 years, if necessary). Further the tax exemption should be granted at the adjusted income level rather than at the statutory income level.
- Losses incurred during the pioneer period should be available to be carried forward to the post pioneer period or the pioneer incentive should only commence in the year the company makes profits.

As the exemption would be on adjusted income, capital expenditure incurred during the exempt period should be deemed incurred in the post-exempt period. To implement this incentive, the following options are possible:

- The PIA would need to be amended to specifically include such treatment for qualifying companies located in the SJER;
OR
- The incentive could be granted as a 'standard' pre-packaged incentive (pursuant to Section 154A, ITA), provided criteria as set by SJA are met. The incentive would be given effect via a *Gazette* order.
- Investment Tax Allowance of 100% of capital expenditure

should be given against 100% of statutory income for a period of 5 years, and any unabsorbed allowance should be available to be carried forward to future years. This incentive would be particularly attractive to capital intensive projects such as the Anime Theme Park and the Creative Theme Park.

In order to implement this incentive, the following options are possible:

- The PIA would need to be amended to specifically include qualifying companies located in the SJER/Creative Cluster or via the MSC route of according certain projects as being of national and strategic importance; or
- The incentive could be granted as a 'standard' pre-packaged incentive, provided criteria as set by SJA are met. The incentive would be given effect via a *Gazette* order.

Post tax holiday incentives could be given, such as:

- Abatement of adjusted income for earnings from exported outsourced activities (to be clearly defined by SJA in the form of a 10% - 15% abatement for a 5 year period. This exemption would need to be given via an exemption order under Section 127 of the ITA.
- Graduated tax rates - graduated tax rates should be implemented over a period of time to progressively increase the tax payable by companies coming out of tax holidays to the prevailing rate in the country. A period of 5 years to implement the graduated rates would be a reasonable timeframe. To implement this, a new provision would need to be introduced into the law (in Schedule 1 of the ITA).
- Double deductions should be granted for various types of expenditure incurred in relation to creative businesses, e.g. costs associated with exhibiting at the Asiacade festival, relocation costs for talented individuals hired from overseas, etc. SJA must set the necessary criteria. This incentive would be implemented via a *Gazette* order pursuant to Section 127 of the ITA.

- Tax exemption on royalties from the development and commercialization of concepts /ideas via patented works and other forms of intellectual property.
- Tax exemption to the organiser/promoter of the Asiacade festival based on specific criteria.

□ Non Profit-making Projects

- Tax exemption for Grants - Grants are prima facie taxable although a portion of these may be tax exempt where the grants are from Federal or State Governments. It is recommended that grants to creative undertakings from the Government or the private sector (as prescribed by SJA be given a tax exemption for a specific time frame say 5 years. An exemption order under Section 127 of the ITA would be required for this purpose. A tax deduction should also be given to the persons giving the grants, where these are non-government grants. This deduction can be implemented by an amendment to the ITA or via a *Gazette* order pursuant to Section 127 of the ITA.
- It is recommended that a tax exemption be sought for each of the not-for-profit projects, pursuant to Section 127 of the ITA.
- In order to encourage private sector entities to donate to such projects, a specific order may need to be issued under the ITA to grant a deduction to the contributor. Alternatively, the not-for-profit projects (if these are not Government projects) could apply for approved organisation status (under Section 44(6) of the ITA) so that donors will be eligible to get a deduction for their donations. Once this status is granted, then the entity/organisation running the project will also be exempt from tax as being a charitable institution. This is subject to the organisation meeting the necessary criteria and complying with the necessary conditions including spending 50% of its income annually on its activities, etc.

▼ Incentives for Human Capital

- Based on criteria determined by SJA, a tax exemption for 5 years should be given on employment income for creative workers to attract and retain talented and trained individuals in the creative sector.

It is recommended that a new exemption order be *Gazetted* (pursuant to Section 127 of the ITA) with reference to the creative industry in the SJER to implement this exemption.

- For non-Malaysians, a 50% exemption from tax on gross employment income should be considered. This is currently granted to non-Malaysian citizens exercising employment in a 'managerial capacity' in Labuan. The exemption could be given for 5 years with the possibility of an extension. A *Gazette* order pursuant to Section 127 of the ITA would be required. If the above is not feasible, then Malaysian employees could also be granted the 50% exemption subject to specific criteria set by SJA.
- Non-resident creative workers (the criteria for which must be determined by SJA) who would otherwise be taxed at a flat rate of 28% (based on the prevailing tax rates), should be eligible for scale rates of tax available to residents. To implement this, Schedule 1 of the ITA would need to be amended.
- It is recommended that such payments of consultancy fees to non-residents in respect of creative services which facilitate the establishment of the creative industry in the SJER be exempt from withholding tax, or be subject to reduced rates of withholding tax (say, 5%) for a 5-year period. Such an exemption would require a *Gazette* order pursuant to Section 127(3) of the ITA. SJA would need to determine the types of services for which the exemption should be given.

▼ Incentives for the Enabling Environment

- Green Spaces – tax incentives in the form of allowances (at 10% per annum) should be given for 'Green Spaces' such as parks, outdoor recreational facilities, etc, within the creative cluster.

Where private enterprises provide 'green spaces' for their staff or for the public as a whole, the cost (or part of the cost) of creating such spaces should be eligible for allowances. This may be given by way of an amendment to Schedule 3 of the ITA, 1967 or through a *Gazette* order. The latter option is preferable.

- Accelerated capital allowances – incentives in the form of accelerated capital allowances should be made available to all companies located in the SJER, which incur capital expenditure on environmental 'friendly' equipment. Such accelerated capital allowances will require a *Gazette* order.
- Companies located in the SJER should be encouraged to contribute a small percentage (i.e. 0.5% - 1% of turnover) to the Social Projects Fund managed by SJA. Such a contribution should be eligible for a tax deduction by way of being treated as a deemed donation to the Government or via a specific *Gazette* order to allow a tax deduction.
- Accelerated capital allowances should be granted to developers undertaking construction methods and building technology which are safe and environmentally friendly. To the extent that revenue expenditure is incurred (e.g. for consultant's fees, architect's fees which are instrumental to creating an environmentally friendly building, etc), a double deduction for such expenses should be considered. A *Gazette* order is needed to give effect to this.
- Developers and industry operators in the SJER should be encouraged to contribute a percentage of their earnings to promoting the arts in the SJER. This contribution should be eligible for at least a single, if not a double deduction.

A *Gazette* order is needed to give effect to either a single or double deduction.

- Where developers undertake the development of specific buildings within the Creative Cluster, or indeed the SJER as a whole, a 50% tax exemption on statutory income should be given. A *Gazette* order is needed to give effect to this.
- Leisure and Entertainment:
 - Pioneer status/Investment Tax Allowance for enterprises undertaking the provision of leisure and entertainment in the Creative Cluster. SJA would need to determine the criteria for this incentive.
 - The relevant 'entertainment' activities would need to be included in the list of 'promoted products/activities'. SJA should have the authority to designate the relevant activities as 'promoted products/activities'.
 - As an alternative, a tax exemption may be granted pursuant to Section 127(3) of the ITA for a period of 5 years from the first year the businesses start to make profits. A *Gazette* order is required for this.

▼ Indirect Tax incentives

Locating the Creative Cluster within a free zone would clearly have advantages. However, free zones have to be controlled and this element of control may be counteractive to the creative environment, which should be easily and readily accessible to all.

An alternative approach would be to seek an exemption from import duties and sales tax on approved items essential to the creative industry. An approved list of items needs to be compiled for the purposes of seeking such an exemption on a broad basis rather than based on individual applications for exemptions.

Service tax exemption for businesses located in the Creative Cluster that contribute to the creative environment could be granted under Section 6 of the Service Tax Act, 1975. Alternatively, an increased turnover threshold of RM500,000 should be considered. To implement this, an amendment is needed to the Service tax Regulations, 1975.

D. Free Access Zones (FAZ)

Subject to the approval of SJA and other authorities it is proposed that FAZ be established within the SJER.

▼ Introduction

FAZ are areas in SJER where 'seamless' work and living environment between Johor and Singapore is created, enabling foreign workers, especially those from Singapore to move in and out of the FAZ with limited or no impediments i.e. with no immigration and custom checks.

▼ Concept of FAZ

FAZ is a zone where activities are allowed to be operated at all hours. With no imposition on duration of stay, the FAZ will attract international-related economic activities and foreigners can live and work in the FAZ or live in the FAZ and travel to work in Singapore. To facilitate such movements, it is proposed for smart cards to be introduced to further ease the movement of residents of FAZ.

Security will be an important feature of the FAZ. Surveillance systems will be installed in all public areas and barriers shall be established to demarcate the FAZ. These barriers are to be as natural as possible such as in the form of waterways or roadways.

The FAZ will encourage foreign companies to establish offices in the SJER and a variety of properties for lease or sale should be made available. Residential properties of high-density structures such as apartments, condominiums or townhouses can be leased or sold to locals and foreigners. However, supporting facilities such as retail, shopping, office space, food and entertainment outlets in the FAZ should be controlled by locals.

▼ Location of FAZ

In line with the objective to economically drive the region as outlined in the Development Promotion Areas in Chapter 9, it is proposed that the FAZ shall only be confined to within the SEC.

Two initial areas have been identified as FAZ for the SJER. These areas are:

- Johor Bahru FAZ (East of the Causeway, near the former CIQ site)
- Nusajaya FAZ (between PTP and the Second Link)

▼ Proposed Planning and Development Concession

The proposed planning and development of the FAZ shall conform to the following guidelines:

A. Use and Activities of FAZ

The FAZ is a special development zone where mixed use and activities are promoted to encourage working, living and entertainment activities. Hence FAZ encourages the development of the following:

- High quality office and business centres planned within a park-like environment;
- Retail shopping;
- Restaurant and dining activities;
- Entertainment outlets other than theme park;
- Hotels and Service Apartments;
- High-end and high-density residential units;
- R&D Parks;
- Parks and Waterfront Promenade

B. Allowable Activities Classes

Table 6.7: Allowable Activity Classes in FAZ

Class	FAZ
Class 1 - Residential	C
Class 2 - Wholesale Trade	C
Class 3 - Retail Trade	P
Class 4 - Business and Professional Services	P
Class 5 - Personal & Household Services	P
Class 6 - Hotel	C
Class 7 - Service Apartment	P

Class	FAZ
Class 8 - Hostel	C
Class 9 - Restaurant	P
Class 10 - Entertainment	P
Class 11 - Petrol Station	P
Class 12 - Industry	N
Class 13 - Service Industry	C
Class 14 - Health and Medical Facilities	P
Class 15 - Security and Emergency Facilities	P
Class 16 - Welfare Institution	N
Class 17 - Religious	C
Class 18 - Education	N
Class 19 - Community Facilities	P
Class 20 - Open Space and Parks	P
Class 21 - Sports Facilities	P
Class 22 - Theme Park	N
Class 23 - Golf	C
Class 24 - Institutional	P
Class 25 - Utility & Infrastructure	P

Note: P Outright Permitted
C Permitted with condition
N Not allowed

C. Intensity of Development

Allowable Residential densities - 250 persons per acre
 Allowable Plot Ratio - 1 : 4

E. Financial Services

The following summarises the relevant recommendations from a tax perspective.

▼ Asset/Fund Management

- The financial landscape continues to evolve and innovative products continue to be developed. In this connection Paragraph 35A, Schedule 6 of the ITA should be amended so as to allow all income received (not only interest) by a unit trust from a licensed financial institution to be exempt from income tax.

- Paragraph 35, Schedule 6 of the ITA exempts income paid or credited to any individual, unit trust and listed closed-end fund that invest in securities guaranteed by the Government, debentures approved by the Securities Commission and Bon Simpanan Malaysia issued by the Central Bank. For the avoidance of doubt, Paragraph 35(b), Schedule 6 of the ITA should specifically stipulate Islamic securities so as to clear up any doubt as to whether the term 'debentures' includes Islamic securities.
- In order to attract foreign funds to invest in the infrastructure projects in the SJER, the Government should consider special tax incentives for the setting up of Investment funds/Infrastructure funds. These Funds can be used as a vehicle to attract Middle-Eastern investors to invest in the SJER. Tax incentives akin to the Labuan style tax regime could be adopted. The Fund could be taxed at a preferential rate, like the Labuan offshore companies. Exemptions on stamp duty and real property gains tax would also assist in increasing the yields to the investors. An alternative is to adopt the tax transparency approach of a Real Estate Investment Trust (REIT). However, any ambiguity (such as the applicability of the FIC Guidelines, etc) about such "private" funds investing directly in properties must be cleared and if necessary, a waiver could be given in such cases.

▼ Private Equity

- In relation to the claim for a tax deduction for the investment in a Venture Company (VC), the investment made is only deemed to be incurred on the date the investment is disposed. Hence, the tax benefit for the investor company is only realised at a future date and not when the expense was incurred. It is proposed that deductions be given upfront in the year the investment is made.
- In relation to the exemption of income tax for a Venture Capital Company (VCC), the current condition prohibiting investment in a related party at the point of first investment is too restrictive and hence it is proposed to be relaxed. To encourage the private sector to play a bigger role in the venture industry, it is proposed that the exemption from income tax be given notwithstanding

the fact that the VCC had invested in its related party provided the investment in the related party was undertaken on normal commercial terms and the income tax exemption is only given in relation to income arising from the investment made in non-related parties.

- Currently, the incentives in Malaysia are only targeted at the venture capital industry. It is proposed that the similar incentives (such as deductions and exemption from income tax) be also allowed for private equity funds which are not necessarily involved in investment in high technology or high risk investments. For example, to spur the growth of infrastructure projects within the SJER, similar incentives could also be allowed for private equity funds investing in approved infrastructure projects.

▼ Private Wealth Management

- Islamic wealth management includes gifting of properties to trusts designed to undertake charitable objectives, e.g. religious worship or the advancement of religion. Currently, an exemption from income tax is available on income earned by such charitable trusts (approval from the IRB is necessary) and as such, it is recommended that exemption from RPGT and stamp duty should be granted for the making of such gifts to an approved charitable trust or scheme.

▼ Asset Securitisation

- The proposals announced in the 2004 Budget seek to achieve tax neutrality on such transactions. However, to provide certainty to investors and parties seeking to use this alternative financing mechanism, the proposals should be formalised via guidelines as soon as possible.
- Based on current definitions and principles outlined in the ITA, the Special Purpose Vehicle ("SPV") employed in asset securitisation transactions is most likely to be treated as an investment holding company. As such, there could be a mismatch in the taxation of the income received by the SPV and the expenses that it

claims as a deduction. Therefore to avoid any mismatch, it is recommended that the official guidelines on asset-backed securities (ABS) regard the SPV as a trading entity.

- In relation to purchased interest on certain assets, due to the lack of official guidelines, the authorities could adopt the position that accrued interest is fully taxable to the purchaser of a cum interest security. This will result in the SPVs not being able to achieve an essentially tax neutral position and hence discourage the use of SPVs especially for financing structures that are backed with interest bearing assets. It is therefore the preferred approach for SPVs that the tax treatment should follow the accounting treatment, such that only interest which has accrued during the SPV's ownership of the investments is reported and taxed in the SPV's hands.
- To increase Malaysia's competitiveness by encouraging investors to set up their SPVs in Malaysia, it is recommended that a 5 year income tax exemption be given on income derived by companies carrying out approved securitisation transactions.
- Various expenses in relation to the securitisation transaction and maintenance expenditure should be clearly stipulated as being tax deductible.

▼ Insurance

- In view of the continuous growth in the insurance industry and the limited capacity to retain the risks within the Malaysian financial system, it is recommended that a deduction of 100% (instead of the current 95%) should be allowed for reinsurance premium ceded to foreign reinsurers who have the financial ability and expertise to absorb such risks.
- Currently, both conventional insurance and takaful insurance do not enjoy a deduction for the writedown in the value of investments as compared to the other sectors of the financial industry such as banking, financial institutions, etc. In this regard, a specific provision needs to be incorporated in Section 60 of

the ITA (current provision that governs the taxation of insurance companies) to allow a tax deduction for the writedown in value of investments for takaful and conventional insurance companies.

- The takaful model has its own uniqueness in managing and operating the general and family funds due to its requirement to comply with the principles of Syariah. In view of this, the authorities in Malaysia (i.e. BNM, MoF, and IRB) have to recognise that takaful operators are different from conventional insurance companies and existing provisions in the tax legislation do not specifically address such disparity. This means that the principle of '*mutatis mutandis*' should be applied in this manner, i.e. necessary changes need to be made in view of the difference between takaful and conventional insurance. This would require guidelines or public rulings to be made available in order to cater for the tax implications arising from such differences.

▼ Real Estate Investment Trust (REIT)

- It is clear that there are mismatches between the taxation of the REIT and the distribution to unit-holders. This mismatch would create inefficiencies and hence reduce the yields to the unit-holders. A convergence between accounting and taxable profits should be considered.
- To enhance the attractiveness of REITS, the income received by a resident individual unit-holder of a REIT should be exempted.
- To be competitive with other jurisdictions in the region, a reduction in the withholding tax (say, to 10%) for non-resident unit holders should be considered. This could be for a period of time and specifically aimed at REITs set up in the SJER to spur the property sector in the SJER.
- To enhance REITS and to be internationally competitive, a REIT should be tax exempt if it distributes say 90% of its income and all unitholders (resident and non-resident) could be exempt from tax. This would be for a specific timeframe as a measure to attract funds/investment.

▼ Securities Lending

- Currently, exemptions are available to both borrowers and lenders in a securities lending arrangement on income (other than dividends, lending fees and interest earned on collateral and rebate) arising from a loan of listed securities. However, rules or guidelines should be issued to cater for manufactured dividends received by the lender from the borrower, i.e. to ensure that the lender is in the same position as if he had directly received the dividend. Ultimately, the rules or guidelines would need to provide the Section 110 ITA credit to the lender given that the objective of a securities lending transaction is a securitised loan transaction and not a sale and repurchase agreement.

▼ Derivatives

- The current tax legislation does not specifically provide for the taxation of derivatives. Therefore, a public ruling or a guideline on the taxation of derivatives should be issued.

▼ Enabling Environment

A number of suggestions have been put forward to enhance the financial landscape including effective facilitation, incentives to attract funding in various activities in the SJER, incentives to financial service providers, incentives to attract human capital and the need to look at aspects of the tax administration system. In other words, an enabling environment would be necessary to nurture and develop financial services in a possible hub in the SJER and elsewhere where there are comparative advantages.

The establishment of the International Centre for Education in Islamic Finance demonstrates the Government's commitment in promoting education excellence and developing professionals and specialists in Islamic finance. The possibility of setting up a branch in the SJER may be explored.

There are no specific provisions that cater for specific financial instruments as compared to existing tax legislation in countries such as Australia and the United Kingdom.

The financial instruments that have been evolving in the Malaysian market may not be the same in all aspects, in particular, the Islamic financial instruments. In this respect, the tax authorities should be proactive in issuing advance tax rulings or private rulings to address tax issues pertaining to specific financial instruments. The issuance of advance tax rulings or private rulings would provide more transparency, clarity and consistent application of the law with the ultimate objective of not hindering the taxpayers' day-to-day business operations.

One major aspect that needs to be looked into is whether the provisions in the relevant tax legislation adequately address Islamic transactions. This requires a collective effort between the regulators, the industry players and the IRB. The need for a high-level committee to continuously keep track of and review developments in Islamic financing is essential and it must have representatives from all stakeholders. There is a clear need for all to understand the actual mechanics of a particular scheme and to come up with the tax treatment of such a scheme with the view that an Islamic transaction will not be treated less favourably than a conventional transaction.

An efficient and transparent tax regime in Malaysia will contribute to the Government's efforts in promoting Malaysia as a centre for Islamic financial activities and in developing specific cells or sub-hubs, where possible.

