



## Part Three

### Strengthen market competitiveness

The experience of developed markets shows that deregulation and liberalisation are critical in deepening secondary market liquidity, allowing industry to offer a wider range of high-quality services, products, and prices to attract an expanding customer base. Our measured approach to liberalisation has yielded the desired benefits with an increase in trading, promotional activities, and product development and research.

# STRENGTHEN MARKET COMPETITIVENESS

## INTRODUCTION

Malaysia's capital market had an excellent year in 2007 – recording extremely strong growth across all market segments. The stock market rose by 32% to close the year at 1,445. Bursa Malaysia's turnover velocity rose from 36% in 2006 to 58% and total turnover for the derivatives market rose by about 49%.

It was also a record-breaking year for Malaysia's bond market, Asia's fourth largest. We approved RM158.8 billion of RM-denominated bond issues in 2007, about double the amount of RM79.6 billion in the previous year. Foreign currency-denominated bond issues approved also increased from US\$7.8 billion in 2006 to US\$12.3 billion. In addition, our approval of programme issuance of structured products rose from RM22 billion in 2006 to RM94.2 billion.

The unit trust industry also registered a strong growth of 39% over the year with industry NAV standing at RM169.41 billion, while the number of funds in operation increased by 26% to 495 funds.

Overall, the size of the Malaysian capital market – comprising debt securities and equity market capitalisation – has more than doubled during the first seven years of this decade to RM1.6 trillion in 2007 from about RM700 billion in 2000 and is about eight times larger than its size of RM200 billion in 1990.

The strong growth trend augurs well for the Malaysian capital market which is gaining international competitiveness as a result of the orderly implementation of developmental initiatives guided by the vision of the CMP.

## Progress of CMP Implementation

Recommendations	CMP Phase			
	One	Two	Three	Overall
Completed	103	11	15	129
In progress	6	10	7	23
<b>Total</b>	<b>109</b>	<b>21</b>	<b>22</b>	<b>152</b>
Completed	94%	52%	68%	85%
In progress	6%	48%	32%	15%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Among them were initiatives implemented to strengthen corporate governance, promote regulatory efficiency, and restructure the intermediation landscape. The initiatives facilitated a structural shift in the Malaysian capital market resulting in a period of increased activities. To date, about 85% of the 152 recommendations in the 10-year CMP have been implemented.

In 2007, the SC focused on optimising regulatory efficiency and introduced key developmental initiatives to promote market efficiency and competitiveness, such as addressing distribution bottlenecks and inefficiencies in the intermediation industry, and strengthening Malaysia's position as a leading ICM centre.

We also streamlined the regulatory framework to achieve an optimal balance between facilitative regulation and investor protection. We promoted greater accountabilities for intermediaries and professionals to reduce regulatory burden, and strengthen oversight through a principle-based supervisory approach.

## GROWTH THROUGH DEREGULATION

### Deregulation of Commission Rates

As part of the phased approach towards a more deregulated, competitive, and vibrant stock market environment, the following initiatives were undertaken:

- Commission rates for Internet trading and cash upfront transactions were made fully negotiable;
- The commission rate structure for non-Internet and non-cash upfront transactions remained unchanged but a minimum brokerage charge of RM40 was imposed for these transactions; and
- The SCANS clearing fee was reduced from 0.04% to 0.03%.

The progressive deregulation of commission rates will allow customers to choose between the cost-efficient service offered by Internet trading and the personal and customised service offered by dealer representatives. This creates an environment where the pricing of services are appropriate to the level of services.

Overall, the gradual deregulation of pricing structures is intended to provide industry the flexibility to offer more choices to a broader range of customers, as well as create a more competitive environment for the provision of intermediation services.

### Budget 2008 Incentives for Investment Management

Consistent with the government's strong commitment to entrench Malaysia's position as an international investment management centre, several broad-ranging incentives to enhance the overall landscape of investment management industry, with a focus on Islamic fund management, were unveiled in Budget 2008:

- Liberalised shareholding structure
  - Foreign ownership of fund management companies and REIT management companies is allowed up to 70%; and

- Islamic fund management companies are allowed 100% foreign ownership;

- Facilitative cross-border investment policy
  - With effect from 1 October 2007, Islamic funds are permitted to invest 100% of assets abroad;
- Greater access to institutional funds
  - Approximately US\$2 billion in start-up funding will be channelled by EPF to Islamic fund management companies;
- More competitive operating environment
  - Income tax exemption on all Islamic fund management activity fees until 2016;
  - Income tax exemption for non-resident Islamic finance experts; and
  - One stop-centre at the SC for all fund management related queries.

### Increasing Regulatory Efficiency

Flexibilities were provided to facilitate remiser mobility, subject to the ability of stockbroking companies to manage the ethical conduct of representatives, and facilitate the global outsourcing of back-office functions for the futures industry.

Investment banks are co-regulated by the SC and BNM, where BNM undertakes prudential regulation for financial soundness, and the SC, which undertakes regulation of business and market conduct to promote market integrity and investor protection. In 2007, the SC and BNM signed an MoU to formalise arrangements for regulatory and supervisory co-operation.

### Financial Planning

To facilitate convergence in the financial planning industry, and minimise regulatory burden and compliance costs for licensees, the SC and BNM signed an MoU on the Mutual Recognition of Financial Advisers and Financial Planners

on 20 August 2007. It was agreed that a dual licensing regime will be maintained and a Working Level Joint Committee was set up to streamline licensing, continuing educational requirements, and co-ordinate a broad range of operational and regulatory issues, including application procedures, compliance and supervision.

The role of financial planners in providing advice and sourcing products suited to investors have increased significantly over the years due to growing investor sophistication. To facilitate licensed financial planners in distributing unit trusts, the SC worked closely with the Federation of Malaysian Unit Trust Managers (FMUTM), the Financial Planning Association of Malaysia (FPAM), the Malaysian Financial Planning Council (MFPC) and the Malaysian Association of Chartered Financial Consultants (MACHFC). The FMUTM launched the *Guidelines for Registration of Corporate Unit Trust Advisers* in October 2007.

To safeguard the independence of financial advisers in distributing unit trust products, financial planners are required to adequately disclose the fee income they earn from the sale of unit trust products. Financial planners also need to meet eligibility criteria on paid-up capital and other requirements.

### Enhancing Savings Intermediation

One of our priorities has been to harness the high level of domestic savings to drive the growth of the capital market through more efficient intermediation in a more deregulated and liberalised environment. Towards this end, the SC reviewed its *Guidelines on Unit Trust Funds* to promote greater product innovation and strengthen investor protection.

In tandem with BNM increasing the limit on investments abroad to 50% of funds under management, the SC amended the guidelines on valuations to facilitate investments in different time zones and liberalised investment and exposure limits.

The SC also adopted a disclosure-based approach for approval of unit trust funds from 1 March 2007; thereby

reducing the time to market from four months to 21 days. Apart from the ability to meet market demand on a timely basis, under a disclosure-based approach, investors are provided sufficient information to make investment decisions. In addition, the single-pricing regime to enhance disclosure of sales charges took effect from 1 July 2007.

For a more competitive distribution environment, the regulatory framework now facilitates the introduction of fund supermarkets while the FMUTM revised its *Guidelines for Registration of Institutional Unit Trust Advisers* (IUTA Guidelines) to provide greater clarity.

The impact of a more deregulated and liberalised environment was immediately evident with the number of fund approvals totalling 105 between January – December 2007, bringing the total number of funds approved as at end-December to 521. Of these, 495 have been launched and made available to investors.

Global participation was further liberalised with the ceiling on foreign ownership in fund management companies raised to 70%. A foreign fund management licence was granted to Credit Agricole, bringing the number of foreign fund managers operating under the special scheme to four.

We introduced guidelines to facilitate the offering, marketing and distribution of foreign funds in Malaysia which took effect on 1 July 2007 to facilitate the cross-border distribution of unit trust products. Under the guidelines, products from or listed in recognised jurisdictions, i.e. foreign jurisdictions recognised by the SC can now be offered in Malaysia. The guidelines also include provisions on the eligibility, duties and responsibilities of local fund distributors in marketing and distributing foreign funds to Malaysian investors.

### EFFICIENCY IN FUND-RAISING

The global capital market landscape is undergoing radical transformation with intensifying competition among exchanges, and a shift in bargaining power from exchanges and intermediaries to issuers and investors in an increasingly demand-driven market place. Capital markets must therefore, increase their value proposition to stay internationally competitive.

## Competitive IPO Market

By most yardsticks, Malaysia has a highly competitive IPO market with a broad investor base as reflected by an average oversubscription rate of 41.9 times for Malaysian IPOs in 2007.

We assess proposals of IPO on whether they meet quality requirements which emphasise on governance. The stringent approach has resulted in strong performances and strengthened confidence in Malaysian IPOs. As at end-December, net profits grew by 43% for 36 IPOs which published their 2006 and 2007 accounts. In addition, 63% of IPOs or 17 PLCs in 2007 traded above their IPO prices with 11 providing a return in excess of 20%.

An analysis of broad market data also indicates that Malaysian PERs are comparable to other markets and that foreign listings tend to trade at a discount to local companies. This reaffirms that Malaysian companies are likely to get better valuations being listed at home rather than abroad as liquidity for PLCs tend to be strongest in their domestic market.

In addition, the direct costs of listing, such as advisory fees are low and the regulatory turnaround time is now comparable, if not faster than other regional markets.

## Growth of MESDAQ

To provide SMEs and start-ups with access to the capital market, Malaysia has the largest number of small and mid-cap companies in Southeast Asia. In particular, MESDAQ has been successful as a fund-raising platform in propelling the growth of young technology-based and high-growth companies. MESDAQ grew from only four listings and a market capitalisation of RM177 million in 2001 to 124 listings with a market capitalisation of RM11.07 billion as at December 2007. In addition, the MESDAQ market also enjoys considerable liquidity. For 2007, MESDAQ's turnover velocity was 159%.

## Preferred Listing Destination

Measures were taken to strengthen the positioning of Bursa Malaysia as a preferred listing destination. To create a

conducive environment that fosters rapid corporate sector expansion through capital-raising or M&A activities, the SC revised the guidelines on the offering and listing of equity securities in order to—

- facilitate dual listings by allowing companies to list their entire issued capital with 100% full trading fungibility across Bursa Malaysia and other exchanges;
- encourage foreign listings by streamlining the regulatory criteria for the listing of companies with foreign operations;
- allow the listing of companies incorporated in foreign jurisdictions in line with international practices while maintaining a requirement for standards of shareholder protection to be comparable with those in Malaysia;
- facilitate acquisition of assets by listed companies which are no longer subjected to profit track record requirements unless such acquisitions result in a change in the controlling shareholders, Board of Directors or core business;
- remove the requirement for property development companies to have a minimum land bank of 500 acres. Property companies are now assessed based on the location of the property, sustainability of development, and earnings prospects. In addition, property companies and construction companies may also apply for listing under either the market capitalisation or profit track record route;
- facilitate greater opportunities for growth of MESDAQ companies by allowing them to undertake acquisitions which may result in a significant change in their business direction;
- introduce a public exposure period for IPO prospectuses for more transparency in the fund-raising process;
- replace the requirement for mandatory profit forecasts with an enhanced requirement for the Board of Directors to provide a “Management Discussion and Analysis” (MDA). The MDA provides a thorough discussion and analysis of the company's businesses, financial condition, and prospects in their submission

to the SC, as well as in the prospectus or other offering documents. The new disclosure standards are benchmarked against the requirements set by IOSCO and the Financial Reporting Standards;

- promote more efficient matching of supply and demand and orderly post-listing price discovery for an IPO through regulatory changes to provide for a “greenshoe” option and price stabilisation mechanism for IPOs;
- imposed a moratorium on all promoters and/or controlling shareholders of IPO companies from dealing in their entire shareholdings for six months from the listing date;
- set a minimum IPO price of RM0.50 per share; and
- remove SC regulations on the pricing of securities to related parties as they overlapped with stringent provisions governing related-party transactions in the *Listing Requirements of Bursa Malaysia Berhad*.

### Revision of Structured Product Guidelines

On 27 April 2007, the SC revised the *Guidelines on the Offering of Structured Products* to increase issuance efficiency and minimise compliance and administrative costs. The revised guidelines facilitate the submission of applications for structured product programmes and issuance of more product types. It also widened the pool of issuers to include foreign banks and special scheme brokers which are now allowed to distribute structured products issued by their parent company or related companies, or special purpose vehicles sponsored by them. In granting these flexibilities, provisions were made whereby issuers are expected to apply a higher standard of care and diligence, particularly when distributing to individual investors.

### Venture Capital Industry

The venture capital (VC) industry is a critical funding source which promotes business creation and entrepreneurship and help in the overall development of the capital market. In 2007, the SC continued to be actively involved in promoting the growth of this industry either directly, or

**Table 1**  
**2007 MVCDC Council**

• Dato’ Zarinah Anwar (Chairman) Chairman, Securities Commission
• Dato’ Ibrahim Mahaludin Puteh Deputy Secretary General (Policy), Ministry of Finance
• Dato’ Abdul Hanan Alang Endut Secretary General, Ministry of Science, Technology and Innovation
• Dato’ Badlisham Ghazali Chief Executive Officer, Multimedia Development Corporation
• Chok Kwee Bee Executive Director, BI Walden Management Sdn Bhd
• Husni Salleh Chief Executive Officer, Malaysia Venture Capital Management Bhd
• Dato’ Azlin Alias Chief Executive Officer, Malaysian Technology Development Corporation
• Ismael Fariz Ali Director, FirstFloor Capital Sdn Bhd

through the Malaysian Venture Capital Development Council (MVCDC) which is chaired by the SC.

The MVCDC, through a Project Steering Committee, chaired by the SC, was involved in the study on “Funding to Achieve an Innovation Economy by 2020.” The study was conducted over three phases. The first phase focused on the Malaysian venture capital industry, angel investors, and nascent companies. The next phase covered government grants, late stage funding from soft loans, venture debt, and private equity funds, as well as ICT and biotech companies in the nascent to expansion or maturity stage. Finally, the third phase covered all key funding mechanisms for an innovation economy. The study, which will form part of an Innovation Roadmap, was presented to the National Innovation Council, chaired by Dato’ Seri Abdullah Ahmad Badawi, on 30 November 2007.

In 2007, the MVCDC also–

- undertook a study on the expansion of the private sector funding for Malaysia’s VC industry;

- held its inaugural Venture Capital Roundtable on “*Creating Positive Traction in the Malaysian VC Industry*” to promote greater dialogue between policy makers and practitioners;
- sponsored an Executive Investment Management Skills Workshop to train participants from the domestic venture capital and private equity community; and
- organised an industry consultation on the “*Guidelines for the Annual Certification for Tax Incentives for the Venture Capital Industry*”.

As at 31 December 2007, the SC received five applications for tax certification under the *Guidelines for the Annual Certification for Tax Incentives for the Venture Capital Industry*. The number of applications represented 10% of the total number of VCC and VCMCs registered with the SC for 2007.

## CONDUCTIVE TRADING ENVIRONMENT

Developmental initiatives are being implemented to strengthen efficiencies and to increase the connectivity of Malaysia’s capital domestic market to global investors.

Bursa Malaysia launched its new trading platform for derivatives and will be launching the BursaTrade equities trading platform in 2008. The new trading platform will provide the necessary infrastructure to introduce many advanced capabilities to further deepen market liquidity. In conjunction with this, the SC has granted approval in principle for the launch of Direct Market Access (DMA) for derivatives.

In addition, the reintroduction of regulated short-selling (RSS) and stock borrowing and lending (SBL) has been critical in signalling the increasing openness of Malaysia’s stock market. Many international benchmarking exercises regard the availability of RSS and SBL as critical features in an advanced capital market.

Malaysia is the leading global centre for price discovery for oil palm products. The SC granted approval for Bursa Malaysia Derivatives to launch a US\$-denominated crude palm oil futures contract. This contract will help meet the growing demand from global edible oil users to trade in

Malaysia’s commodity products, without exposure to currency risks.

The SC led a project task force comprising representatives from Bursa Malaysia and the Malaysia Futures Brokers’ Association (MFBA), to chart a strategic roadmap to review and strengthen the Malaysian derivatives industry in five key strategic areas—

- industry structure and processes;
- marketing capacity and channels;
- market liquidity
- product range; and
- global positioning.

On exchange-traded fund (ETF) developmental initiatives, the SC also worked closely with various parties, including Bursa Malaysia, domestic and foreign ETF participants, trustees and legal advisers, to review its guidelines on ETFs to create a more conducive and facilitative environment. In addition, we provided approval in principle for a permitted short selling framework to facilitate market-making of ETFs.

The first equity ETF in Malaysia was launched by the AmInvestment Bank Group and listed on Bursa Malaysia on 19 July 2007. The FBM30etf tracks the performance of the FTSE Bursa Malaysia Large 30 Index. The Prime Minister also announced in March 2007, the establishment of a RM3.5 billion ETF to be seeded by government-linked investment companies.

The Malaysian REIT industry also gained momentum with four new REITs listed on Bursa Malaysia in 2007. Foreign ownership allowed in REITs management companies was increased to 70%. This was to strengthen the regional competitiveness of the Malaysian REITs industry to attract more listings and global investors. The SC also created a more facilitative environment by—

- amending our guidelines to expand permitted investments;
- streamlining valuation requirements with accounting standards;

- providing greater flexibility on remuneration of a REIT Manager and trustee; and
- providing guidance on placement of new units to finance yield-accretive acquisitions by a listed REIT.

### Take-overs Code – Clarification and Revision

On 20 March 2007, the SC announced that applications for exemption from having to undertake a mandatory offer in circumstances arising from the issuance of new securities in a company (Practice Note (PN) 2.9.1), compulsory acquisition of the remaining shares of a company (PN2.9.8), and when a company purchases its own shares (PN2.9.10), would be approved within one working day. Previously, such approvals took 21 working days. The implementation of this measure should have a favourable effect on take-overs, given that a substantial number of applications for exemption from undertaking a mandatory offer fall under these practice notes. Thus, the time for considering and processing applications will be significantly reduced.

In addition, for more efficient, competitive, and informed take-over and merger activities, we strengthened the requirement for immediate announcements to be made. The requirement now includes instances where a company is the subject of a rumour or speculation of being taken over, where there is untoward movement in share price, or significant volume build-up due to a merger and acquisition exercise. This requirement will provide clarity as to when timely announcements should be made to the market.

With effect from 28 September 2007, the *Malaysian Code on Take-overs and Mergers 1998* (Take-overs Code) was applied to securities borrowing and lending transactions. This follows the reintroduction of regulated short selling on the local stock exchange, which was effected through the issuance of the *Guidelines on Securities Borrowing and Lending* by the SC.

These SC measures are in response to the growth and continued sophistication of the Malaysian capital market

which is best served by minimising regulatory friction cost so that market intermediaries can respond quickly and innovatively. They will increase market efficiency and promote timely dissemination of market information, ultimately, facilitating mergers and acquisitions.

We also made amendments to the CMSA on provisions relating to take-overs, mergers, and compulsory acquisitions. These provisions will come into force when the Take-overs Code, which is under review by the SC, comes into force in 2008.

## ISLAMIC CAPITAL MARKET

Malaysia has the world's most comprehensive Islamic capital market (ICM) which is underpinned by a robust regulatory infrastructure offering end-to-end Shariah compliance. The international competitiveness of Malaysia's ICM continues to be strengthened through sustained expansion of the product range, fiscal incentives, and liberalisation to expand the international customer base of issuers and investors.

### Sukuk Market

The Malaysian *sukuk* market continued to experience unprecedented growth. In 2007, over 76% of all bonds approved by the SC were *sukuk* – with a total value of RM121.3 billion.<sup>1</sup> These were largely innovative structures based on widely-accepted principles, such as *musyarakah*, *ijarah*, and *istisna`*.

Malaysia's ICM continued to strengthen its reputation as a centre of innovation in 2007 with landmark issuances, such as the largest *sukuk* and conventional bond funding programme of RM60 billion by Cagamas Bhd, the *sukuk* issuance of RM15.4 billion by Binariang GSM Sdn Bhd, the largest exchangeable *sukuk* of US\$850 million by Khazanah Nasional Bhd and the RM3 billion TM Islamic Stapled Income Securities by Telekom Malaysia and Hijrah Pertama Bhd (Table 2).

<sup>1</sup> This figure includes the approval of seven combination issuances (conventional bonds and *sukuk*) with a combined issue size of RM89.5 billion.

Table 2  
Notable Sukuk Programmes and Issuances in 2007

Issuer	Shariah Principle	Amount (RM million)
Cagamas Bhd*	Multiple Shariah principles	60,000 <sup>+</sup>
Binariang GSM Sdn Bhd	<i>Musarakah</i>	15,366
Telekom Malaysia Bhd & Hijrah Pertama Bhd	<i>Ijarah</i>	2,997
Khazanah Nasional Bhd	<i>Musarakah</i>	2,890 <sup>++</sup>
MISC Bhd*	<i>Mudharabah</i>	2,500
Cagamas MBS Bhd	<i>Musarakah</i>	2,300
Putrajaya Holdings Bhd*	<i>Musarakah</i>	1,500
Lebuhraya Kajang-Seremban Sdn Bhd (two issues)	<i>Istisna'</i>	1,453
Menara ABS Bhd	<i>Ijarah</i>	1,100
United Growth Bhd*	<i>Musarakah</i>	800

+ A combination of a few Islamic principles and conventional bond

++ Issued out of Labuan amounting to US\$850 million.

\* Programmes

The SC introduced a facilitative framework for the issuance of foreign currency denominated *sukuk* to promote Malaysia as an international *sukuk* centre. Qualified issuers, such as multilateral development banks, multilateral financial institutions, sovereigns and quasi-sovereigns, and multinationals which issue a non-ringgit *sukuk* rated at least a single A, will be deemed approved and can also be offered to sophisticated investors onshore. The new framework allows international documentation based on UK or US laws and accepts ratings by international credit rating agencies to reduce issuance costs for international issuers.

### Hub for Intermediation and Fund Management

Budget 2008 launched initiatives to create a highly liberalised environment and provided several incentives to promote Malaysia's positioning as a wealth management and intermediation hub. The measures are as follows:

- Three new stockbroking licences to be issued to leading stockbroking companies which are able to source and intermediate businesses and order flows from the Middle East;

- Islamic fund management companies are allowed to be wholly owned by foreigners;
- RM7 billion will be outsourced by the Employees Provident Fund to be managed by Islamic fund management companies;
- Islamic fund management companies are allowed to invest all their assets abroad;
- Fund management companies are given income tax exemption on all fees received from Islamic fund management activities, until assessment year 2016; and
- The SC will facilitate the licensing process and all dealings with other government agencies to expedite the approval process for the establishment of fund management businesses in Malaysia.

Several guidelines were introduced to provide greater clarity and certainty on Shariah compliance, as follows:

- The SC issued *The Guidelines on Islamic Fund Management*. It sets out the compliance requirements for Islamic fund management and for carrying on an Islamic fund management business under an Islamic window; and
- Bursa Malaysia released the *Best Practices Guidelines in Islamic Stockbroking*. It outlines key areas for operations and compliance aspects of an Islamic stockbroking business.

Bursa Malaysia collaborated with FTSE to launch the FTSE-Bursa Malaysia Emas Shariah Index and FTSE-Bursa Malaysia Hijrah Shariah Index to facilitate performance benchmarking and launch index-related products. The indices are based on a free-float methodology and the components of the indices are subjected to rigorous screening for Shariah compliance by the Shariah Advisory Council of SC (SAC) and Yassar Research. With the introduction of these two Shariah indices, the SAC revised the publication date of its *List of Securities Approved by the Shariah Advisory Council of the Securities Commission* from the last Friday of April and October to the last Friday of May and November every year.

In 2007, the SC was named "The Best Regulator for Islamic

Funds” at the Master of Islamic Funds Awards in Dubai. The award acknowledges our pioneering efforts and leadership role in the development and promotion of a comprehensive Islamic capital market. It also recognises the government’s efforts to position Malaysia as a global Islamic financial hub that specialises in the origination, distribution, and trading of Islamic funds and wealth management.

### Shariah Advisory Council

The SAC plays a critical role in promoting innovation in ICM by providing timely guidance and clarity on Shariah-

compliance issues. In 2007, the SAC held 14<sup>2</sup> meetings and deliberated on several Shariah issues. The key SAC resolutions are provided in Table 3.

### Building Capacity

The SC actively participates in capacity building for the development of ICM. Our flagship Islamic Markets Programme (IMP), organised annually by the SIDC, has gained a reputation for effective knowledge transfer and sharing of expertise among skilled Islamic market professionals. It has also helped positioned the SIDC as a leading ICM technical training centre under the MIFC initiative.

Table 3  
Key Resolutions by the SAC in 2007

Sukuk	
<i>Kafalah</i> (guarantee) on <i>musyarakah</i> and <i>mudharabah</i> capital	<i>Kafalah</i> on <i>musyarakah</i> and <i>mudharabah</i> capital can be in the form of third-party guarantee based on <i>tabarru'</i> (voluntarily basis), third-party guarantee with the imposition of a fee or a guarantee through special funds.
Purchase undertaking in structuring <i>sukuk</i>	The exercise of a purchase undertaking on maturity or in the event of default within the tenure of the <i>sukuk</i> is permissible. The ruling was made on the basis that the purchase undertaking is regarded as a promise to be fulfilled by the issuer.
Forward lease	Forward lease is permissible. Lease payments can be fully settled upfront upon the contract of <i>ijarah</i> or via other agreeable payment arrangements. If the <i>ijarah</i> asset does not meet the required specifications by the lessee upon delivery in the future, the lessor is then responsible for replacing the asset.
Consent from chargee or co-owner of asset for securitisation	An encumbered asset (either a charged asset to the bank or an asset that is co-owned with another party) can be used as an underlying asset in structuring of <i>sukuk</i> provided that the issuer first obtain consent from the chargee or co-owner, as the case may be.
<i>Ta'widh</i> (compensation) on late payments under <i>sukuk musyarakah</i> and <i>sukuk mudharabah</i>	<i>Ta'widh</i> is permissible under <i>sukuk musyarakah</i> and <i>sukuk mudharabah</i> . However, <i>ta'widh</i> is only applicable when the obligor fails to distribute the capital and realised profit on the dates stipulated in the agreement. <i>Ta'widh</i> cannot be applied to expected profit.
Revision to terms in <i>sukuk</i> documents involving maturity date and profit rate	During the tenure of a <i>sukuk</i> , revision to the terms in the <i>sukuk</i> document, such as an extension of the maturity date and the revision of the profit rate, will adversely affect the original contract ( <i>'aqd</i> ) of the <i>sukuk</i> . Therefore, the revisions can only be implemented by first having the initial contract cancelled. Thereafter, a new contract stating the new maturity date and profit rate is to be executed to replace the previous contract.
Convertible/ Exchangeable <i>sukuk</i>	The issuance of convertible/exchangeable <i>sukuk</i> is permissible as long as the <i>sukuk</i> is structured based on Shariah principles, such as <i>musyarakah</i> , <i>mudharabah</i> and <i>ijarah</i> .

<sup>2</sup> This is inclusive of the Special SAC Meetings held to review the Shariah status of companies at the pre-IPO stage.

The second IMP, themed “Innovating for Growth” was held in July 2007. It attracted 40 local and foreign participants from the Maldives, Brunei, Bangladesh, Uzbekistan, Iran, Japan and Mauritius.

The SC also organised various conferences and seminars in 2007 to further enhance skill sets in ICM, such as:

- The Shariah Advisers’ Workshop on Islamic structured products;
- The SC and Citigroup co-hosted the Global Shariah Dialogue on “Recent Trends in the *Sukuk* Market”. It attracted more than 100 local and international Shariah scholars and market professionals; and
- The SC and Bursa Malaysia jointly organised an Islamic Stockbroking Education Programme as part of its roll-out to promote Islamic stockbroking best practices and Shariah application in Islamic stockbroking services.

## CORPORATE GOVERNANCE

In line with Budget 2008 recommendations, the *Malaysian Code on Corporate Governance* was amended to incorporate latest best practices to elevate the standards of corporate governance in Malaysia, and benchmark the Malaysian corporate governance framework against frameworks in other jurisdictions. The revised *Malaysian Code on Corporate Governance* has improved the following areas:

- *Composition, qualification, and frequency of meetings of the audit committee*

To strengthen the role of the audit committee, all members of the audit committee should be non-executive directors and financially literate. At least one should be a member of an accounting association or body. Additionally, the audit committee should meet with the external auditors without executive board present, at least twice a year.

- *Eligibility of directors*

The revised *Malaysian Code on Corporate Governance* provides greater clarity on the aspects a nominating committee should consider when recommending candidates for directorships. The criteria recommended are as follows:

- skills, knowledge, expertise and experience;
- professionalism;
- integrity; and
- for independent non-executive directors, the nominating committee should also evaluate their ability to discharge the responsibilities/functions as expected of them.

The nominating committee should also ensure that its assessments and evaluations are properly documented.

- *Importance of the internal audit function*

The revised *Malaysian Code on Corporate Governance* recognises the importance of the internal audit function by requiring all companies to have one. Furthermore, a head of internal audit should report directly to the audit committee to preserve the independence of the internal audit function.

## Improved World Bank Ranking for Investor Protection

Our capital market has continued to receive positive reports on its corporate governance framework, specifically with regards to investor protection. In *Doing Business 2007*, the World Bank ranked us fourth for investor protection, after New Zealand, Singapore, and Hong Kong. This is an improvement from last year when we ranked fifth.

**Table 4**  
**Where are Investors Protected, and Where Not?**

Most Protected	Rank	Least Protected	Rank
New Zealand	1	Albania	164
Singapore	2	Gambia	165
Hong Kong, China	3	Rwanda	166
Malaysia	4	Venezuela	167
Canada	5	Djibouti	168
Ireland	6	Swaziland	169
Israel	7	Lao PDR	170
United States	8	Vietnam	171
United Kingdom	9	Tajikistan	172
South Africa	10	Afghanistan	173

Source: World Bank, 2007.

### Oversight Framework for Auditors

Following the announcement of Budget 2008 and in response to the discovery of increasing irregularities in the financial statements of certain PLCs, we are formulating a robust oversight framework for auditors in line with international best practices. An independent and effective audit oversight framework will provide the monitoring mechanisms necessary to ensure that the audited financial statements of PLCs are accurate and reliable.

We have conducted extensive consultations with relevant stakeholders, including the accounting professional bodies, regulatory agencies, and the business community to receive views and feedback on the formulation of an independent oversight framework for auditors. Industry feedback indicates there is strong support for the establishment of such a framework for public company auditors that is benchmarked against best practices internationally.

The SC also established a High Level Task Force comprising members of the profession, regulators, and industry to present an appropriate audit oversight regulatory framework to the government in the first quarter of 2008.

### CORPORATE SOCIAL RESPONSIBILITY

There was a substantial increase in the number of corporate social responsibility (CSR) initiatives in 2007. The Institute of Corporate Responsibility, Malaysia (ICRM) conducted a dialogue on “G3 – Reporting Sustainability, Is It Relevant to Malaysia?” to highlight global corporate responsibility developments and their relevance to Malaysian PLCs.

UNDP Malaysia and the ICRM concluded its second CSR conference, themed “Raising the Bar” on 23 August 2007 which was preceded by two workshops on ‘Strategic CSR for Sustainable Business’. The SC also participated in the National Mirror Committee on Social Responsibility which is responsible for providing a national perspective to the proposed ISO Guidance on Social Responsibility.

### SECURITIES INDUSTRY DEVELOPMENT CORPORATION

A rapidly-changing financial services landscape has redefined traditional job specifications, placing greater demands on skill sets for various functions from the back office to the trading rooms and the client interface. Increasingly, market professionals need to be equipped with capabilities and knowledge to respond proactively to fast-paced developments across the entire spectrum of the capital market.

The SC corporatised the Securities Industry Development Centre (SIDC) so that it can take on greater challenges in capacity building. On 12 March 2007, the SIDC was incorporated as a fully-owned subsidiary of the SC and it was officially launched on 30 July 2007. The SIDC became the Securities Industry Development Corporation. A corporatised SIDC will seek new business opportunities unrestricted by regulatory considerations. It will have greater flexibility to work with a wider range of partners in order to cater to local and global demands. The evolution of the SIDC was recognised in the CMP as a means to further strengthen capacity-building in the capital market.

The independent SIDC is now able to co-develop training programmes and events in partnership with industry,



from 21 countries in the Asia-Pacific region. The APRC met twice in 2007, once in Mumbai and the second time in Seoul. The current mandates of the APRC include the mutual recognition of collective investment schemes (CIS) which is aimed at facilitating the cross-border offerings of CIS among APRC members on the basis of compliance with a single framework. At the IOSCO APRC meeting in Seoul in November 2007, the SC Chairman delivered a presentation on “Recent developments in securities supervision”.

### 14th APEC Finance Ministers Meeting

At the Asia Pacific Economic Co-operation (APEC) Finance Ministers Meeting held in Coolumb, Australia in August 2007, the discussions on “Making Private Capital Markets Work Better” focused on:

- the need for reforms to be consistent with economies’ development priorities; and
- the importance of strengthening financial institutions and regulatory frameworks to increase regional and international market integration.

On the “Transparency and Sustainability of the Public Balance Sheet”, Ministers deliberated on the need to support continued fiscal sustainability and endorsed a set of principles to guide further progress.

### ASEAN Finance Ministers

At the 11th ASEAN Finance Ministers’ Meeting in Chiang Mai, Thailand in April 2007, the ASEAN Finance Ministers

announced the establishment of an ASEAN Infrastructure Financing Mechanism (AIFM) and tasked Malaysia to lead a High Level Task Force to establish a fund and identify initiatives to attract private sector participation in regional infrastructure projects.

The Finance Ministers recognised that infrastructure development was critical in accelerating regional growth and integration. It was proposed that the AIFM effect intermediation of large regional savings into member countries with low levels of infrastructure development. It will work towards achieving the vision of creating an ASEAN Economic Community by 2015 announced by the ASEAN Leaders at the Summit held in Singapore in November 2007.

The SC also participated in the 4th Annual ASEAN Finance Ministers Investors’ Seminar held in New York in October 2007. The road shows were intended to promote ASEAN as an asset class to global investors and carried the theme “Borderless ASEAN – Soaring, Stronger Together”.

### Trade Agreements

In 2007, the SC participated in negotiations on Malaysia’s commitment in the multilateral framework with regard to the capital market sector. There was substantial progress on the fourth package of commitments of the ASEAN Framework Agreement on Services (AFAS) to liberalise market access. The fourth and fifth round of trade negotiations with the US began in early 2007 and predominantly discussed market access to banking, insurance and capital market sectors.