

## **GUIDANCE NOTE 18**

Date issued: 15 February 2007

### **Issued Pursuant to the Guidelines on Unit Trust Fund Prospectus**

- Procedures for registration and lodgement of prospectus.

#### **Introduction**

1. This Guidance Note is published to notify amendments in relation to the procedures for registration and lodgement of prospectus currently stipulated under the Guidance Note 7, which was issued pursuant to the Guidelines on Unit Trust Fund Prospectus.
2. The new procedures under this Guidance Note shall take effect from 1<sup>st</sup> March 2007.
3. Nothing contained herein should be construed as prejudicing the powers of the Securities Commission under the Guidelines on Unit Trust Fund.

#### **Policy Amendments**

4. Under this Guidance Note, the procedures for registration and lodgement of prospectus has been amended to reflect a move by the SC towards a new regulatory philosophy of disclosure-based regulation.
5. Guidance Note 7 is hereby revoked and the procedures for registration and lodgement of prospectus in Guidance Note 7 is replaced with new procedures under a revised Chapter 1 and 2 attached herein in the Guidance Note 18.

# Chapter 1

## GENERAL

- 1.01 Pursuant to section 44(1)(f) of the *Securities Commission Act 1993* (SCA), this *Guidelines on Unit Trust Fund Prospectus* specifies the minimum information that the Securities Commission (SC) requires for inclusion in a unit trust fund prospectus, in addition to the requirements of section 44(1)(a) to (e) SCA. These guidelines are general in nature but should not be viewed as the only criteria for disclosure in unit trust fund prospectuses. Directors, promoters, advisers and experts have the primary obligation and liability in relation to the contents of unit trust fund prospectuses and they should ensure that any or all such information necessary for an assessment of the units offered by the prospectus is disclosed.
- 1.02 Pursuant to section 44 SCA, the management company may seek a waiver or variation from complying with the requirements of these guidelines relating to the form and content of a prospectus.
- 1.03 These guidelines also set out the procedures for the registration and lodgement of a prospectus with the SC.
- 1.04 Management companies are required to ensure that a due diligence review with respect to the *contents* of the prospectus has been carried out by an independent professional or legal adviser prior to submission of the prospectus for registration or renewal of registration. The SC reserves the right to require the due diligence review report to be submitted forthwith.
- 1.05 The cut-off date for information to be disclosed in the prospectus shall be *at the latest practicable date*<sup>1</sup> available prior to the issue of the prospectus.
- 1.06 The prospectus shall be legible and appear in type size of not less than eight-point Times New Roman. All pages must be numbered.

---

<sup>1</sup> "Latest practicable date" is a date whereby the information disclosed shall remain relevant and current as at the date of issue of the prospectus.

- 1.07 Further, the information to be included must be such information which is within the knowledge of directors, promoters and principal adviser, stockbroker, underwriter, auditor, banker, advocate and other professional advisers/experts or any other persons named in the prospectus with their consents.
- 1.08 In determining what information is required to be included as per the above paragraph, regard shall be given to the following:
- (1) The nature of the fund;
  - (2) The persons likely to consider acquiring units of the fund;
  - (3) The fact that certain matters may reasonably be expected to be within the knowledge of professional advisers whom investors may reasonably expect to consult; and
  - (4) Whether the persons to whom an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, units is to be made are unit holders in the unit trust fund, and if they are, to what extent (if any) relevant information has previously been given to them by the management company under any law or guidelines, if applicable, or otherwise.
- 1.09 Applicants, or their advisers, are advised to strictly observe any significant changes and/or new matters arising that could affect the content of the prospectus to be registered or has been registered. Any material change after the registration of the prospectus would require an update of the prospectus via a supplementary prospectus.
- 1.10 Full accountability for the accuracy of all information contained in the prospectus and the responsibility to ensure that there is no omission of facts which would make any of the statements therein misleading remains with the promoters or directors of the management company or any other person who is a party to the preparation of the prospectus or any relevant portion thereof. Such persons are advised to be mindful of the provisions in section 55 SCA pertaining to criminal liability for false or misleading statements or material omissions in prospectuses.

## Chapter 2

### PROCEDURES FOR REGISTRATION AND LODGEMENT OF PROSPECTUS

2.01 The applicant, or its adviser, shall submit a prospectus of a unit trust fund for registration and lodgement in accordance with the submission requirements and procedures set out herein.

#### 2.02 Registration of Prospectus

- (1) The following requirements and procedures shall apply to the registration of a prospectus, registration of supplementary prospectuses and renewal of registration of a prospectus.
- (2) Pursuant to Section 41(1) of the SCA, no person shall issue, offer for subscription for or purchase, any securities unless a prospectus in relation to the securities has been registered with the SC.
- (3) The SC shall not commence registration of a prospectus unless the prospectus is in its final/complete form<sup>2</sup> and is accompanied by all the required materials/documents. The SC reserves the right to refuse registration and return the registrable prospectus, if in the opinion of the SC, the standards of disclosure of the said prospectus are found to be wanting, the prospectus is not in its final/complete form and/or the prospectus is not accompanied by all relevant materials/documents, as the case may be.
- (4) All reports and letters, e.g. Reporting Accountant's report and letters, tax adviser's report, Director's Report, letter of consent and other experts' reports, contained in the registrable copy of the prospectus shall be dated and signed.

---

<sup>2</sup> Final/complete form' means the form and context of its contents or in which it appears can be properly ascertained (including all relevant reports).

- (5) The prospectus shall be submitted to the SC for registration together with the appropriate fee.
- (6) Where the applicant proposes to issue prospectuses in various languages, the prospectus in each language must be registered with the SC.
- (7) The SC will conduct *post-vetting* of the prospectus submitted for registration.

#### **Unlisted Unit Trust Funds**

- (8) For a new unit trust fund proposed to be established, the applicant or its adviser, shall submit the registrable prospectus to the SC concurrently with the application to establish the new fund, as required under the Guidelines on Unit Trust Funds.
- (9) The registrable prospectus may be left undated upon submission to the SC. However, the printed copy of the registered prospectus submitted for lodgement with the SC pursuant to Section 43(b) of the SCA must be dated.
- (10) For renewal of registration and registration of supplementary prospectus, the registrable prospectus must be submitted to the SC at least seven (7) business days **before** the date of expiry of the prospectus or intended date of the supplementary prospectus. There is no assurance of registration on the intended date if the registrable prospectus is submitted less than the above-mentioned period.

#### **Listed Unit Trust Funds**

- (11) For a new unit trust fund (such as real estate investment trust, exchange traded fund and closed-end fund) proposed to be established, the applicant or its adviser, shall first submit the draft prospectus concurrently with the application to establish the new fund, as required under the relevant Guidelines.

- (12) Upon receiving the SC's approval for the fund's establishment, the applicant or its adviser, shall submit the registrable prospectus for registration purpose to the SC at least fourteen (14) business days **before** the intended date of the prospectus.
- (13) For registration of supplementary prospectus, the submission must be made to the SC at least seven (7) business days **before** the intended date of the supplementary prospectus.
- (14) There is no assurance of registration on the intended date if the registrable prospectus is submitted less than the period stated in Clause 2.02(12) and Clause 2.02(13).
- (15) The SC shall only register a prospectus after the deed of the fund has been registered with the SC.

#### **Submission of Documents for Registration**

- (16) The applicant or its adviser must submit two (2) copies of the registrable prospectus, together with the application form.
- (17) The registrable prospectus, shall be accompanied by a copy of the following documents:
  - (a) Covering letter specifying the following:
    - (i) Application for registration of the prospectus;
    - (ii) A confirmation that the accompanying documents for the registration of the prospectus is complete, duly signed and dated;
    - (iii) A declaration that the due diligence review on the contents and amendments thereof, had been conducted;

- (iv) A declaration that the registrable copy of the prospectus complies with the requirements of the SCA and the guidelines; and
  - (v) A declaration that the copy of the prospectus to be duly lodged forthwith with the SC will be identical to the prospectus registered with the SC;
- (b) Registration Checklist;
  - (c) Checklist of Disclosure Requirements;
  - (d) A director responsibility statement for the prospectus and, where applicable, the offerors' and promoters' responsibility statement, signed by all directors and dated. In the event the director's responsibility statement for the prospectus is signed by an alternate director, there shall be clear reference made in the responsibility statement of such fact;
  - (e) (For renewal of registration and supplementary prospectus) A list highlighting the original statements from the previously registered prospectus and the amended statements;
  - (f) Certified true copies of all material contracts referred to in the prospectus, or in the case of a contract not reduced in writing, a memorandum, which has been verified by an expert, giving full particulars of that contract;
  - (g) Original copies of all written consents from any person(s) named in the prospectus as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based;
  - (h) Letter of confirmation from the board of directors of the applicant, or its adviser (where applicable), confirming the true and accurate translation of the prospectus (where applicable);

- (i) Letter of confirmation from the applicant, or its adviser (where applicable), that the electronic copy of the prospectus (if applicable) will be identical to the prospectus registered with the SC;
- (j) Copy of letter of approval from any other relevant authorities; (e.g. Bank Negara Malaysia, Bursa Malaysia Securities Berhad) (where applicable); and
- (k) Original copies of the Reporting Accountant's Report and letters, tax adviser's reports, Director's Report and other experts' reports, contained in the prospectus (where applicable).

### **2.03 Lodgement of Prospectus**

- (1) Once the prospectus has been registered, the applicant, or its adviser, shall submit a printed version of the prospectus for lodgement with the SC before the date of the prospectus, as required by Section 43(b) of SCA. However, for closed-end fund, the prospectus shall be lodged with Companies Commission of Malaysia.
- (2) The prospectus shall be submitted to the SC for lodgement together with the appropriate fee.
- (3) Where the applicant proposes to issue prospectuses in various languages, the prospectus in each language must be lodged with the SC.

#### **Submission of Documents for Lodgement**

- (4) The applicant or its adviser must submit 2 copies of the printed version of the prospectus, together with the application form.
- (5) The printed version of the prospectus, shall be accompanied by a copy of the following documents:

- (a) Covering letters signed by at least one of the directors of the management company specifying the following:
  - (i) Application for lodgement of the prospectus;
  - (ii) A declaration that the copy of the prospectus lodged with the SC is identical to the prospectus registered with the SC; and
  - (iii) A declaration that the copy of prospectus in CD-ROM 'pdf' format is identical to the printed prospectus;
- (b) Lodgement Checklist; and
- (c) A CD-ROM containing the electronic images of prospectus in portable document format (pdf). The CD-ROM shall be labeled with a description of what the electronic images relate to and the date of lodgement.

#### **2.04 Fees Payable to SC**

- (1) The details of fees payable to the SC for registration and lodgement of prospectus and supplementary prospectus are set out in the *Securities Commission (Fees) (Amendment) Regulations 2004 or any other Fees Regulations gazetted from time to time.*
- (2) Payment shall be in the form of a crossed cheque/draft order made in favour of "Suruhanjaya Sekuriti" or "Securities Commission" in accordance with the amount stipulated in the *Securities Commission (Fees) (Amendment) Regulations 2004 or any other Fees Regulations gazetted from time to time.*