



PRACTICE NOTE 1A issued pursuant to the Guidelines on the Offering of Private Debt Securities

Date Issued : 27 March 2007

Issuance of Foreign Currency-Denominated Bonds by Qualified Issuers

Introduction

1. This Note seeks to dis-apply, unless otherwise stated, the application of the Guidelines on the Offering of Private Debt Securities (“PDS Guidelines”) and to set out specific provisions governing the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, foreign currency-denominated bonds originated in Malaysia by qualified issuers.

Definition

2. For the purposes of this Note:
 - 2.1 a “qualified issuer” means:
 - (a) a multilateral development bank or a multilateral financial institution;
 - (b) a foreign government;
 - (c) an agency or organisation of the Malaysian Government;
 - (d) an agency or organisation of a foreign government as defined in Practice Note 2A to the PDS Guidelines;

- (e) a foreign multinational corporation, being an entity or a company or part of a group¹ of entities or companies formed or incorporated outside Malaysia, and having significant business operations in two or more other countries; and
- (f) a Malaysian public company.

Mode of Issue

- 3. Foreign currency-denominated bonds issued pursuant to this Note shall be issued on a scripless basis via the Fully Automated System for Issuing/Tendering ("FAST"). The qualified issuer and principal adviser shall ensure that the issue complies with all the rules and requirements of FAST.
- 4. Foreign currency-denominated bonds issued pursuant to this Note shall be deposited with the Real Time Electronic Transfer of Funds and Securities ("RENTAS") system with Bank Negara Malaysia as the central depository agent for the bonds and Authorised Depository Institutions in Malaysia as sub-depositaries. The qualified issuer and principal adviser shall ensure that the issue complies with the rules of the RENTAS system in relation to this depository requirement.

Credit Rating Requirement

- 5. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase foreign currency-denominated bonds in Malaysia by a qualified issuer ("issue, offer or invitation under this Note") shall be accompanied by at least one foreign currency credit rating, which is to be made available throughout the tenure of the issue or programme. In this regard, a foreign currency credit rating assigned by an international credit rating agency for the issue or programme is acceptable.

Governing Law

- 6. The laws of Malaysia, England or the United States may be used in the legal documentation of an issue, offer or invitation under this Note.
- 7. Notwithstanding the above, the relevant provisions of the Securities Commission Act 1993 (SCA) and the Securities Industry Act 1983 (SIA) in relation to the issuance,

¹ Includes a subsidiary, whether incorporated in Malaysia under the Companies Act 1965 or incorporated outside Malaysia, of a foreign multinational corporation.

subscription and trading of bonds in Malaysia shall apply, and are to be complied with at all times.

8. For avoidance of doubt, the provisions of Division 4, Part IV of the SCA² do not apply to an issue, offer or invitation that is:
- (a) made by the Federal or any State Government or any statutory body of Malaysia or guaranteed by the Federal Government of Malaysia;
 - (b) made by a AAA-rated multilateral development bank or multilateral financial institution, a foreign government, an agency or organisation of a foreign government as defined in Practice Note 2A to the PDS Guidelines; or
 - (c) made by a qualified issuer to:
 - (i) an underwriter under an underwriting or initial purchase agreement;
 - (ii) a unit trust scheme or prescribed investment scheme;
 - (iii) a person licensed as a dealer under the SIA;
 - (iv) a closed end fund approved by the Securities Commission (SC);
 - (v) a person licensed as a fund manager under the SIA or a person declared to be an exempt fund manager under the SIA;
 - (vi) a corporation with total net assets exceeding ten million ringgit, or its equivalent in foreign currencies, based on the last audited accounts;
 - (vii) a licensed offshore bank as defined under the Offshore Banking Act 1990;
 - (viii) an offshore insurer as defined under the Offshore Insurance Act 1990; and
 - (ix) an eligible investor of foreign jurisdiction.

Deemed Approval by the SC

9. An issue, offer or invitation of foreign currency-denominated bonds under this Note, including those that is made under a programme, by a qualified issuer is deemed approved by the SC upon fulfilling the following conditions:

² Division 4, Part IV of the SCA contains the statutory provisions relating to debentures and includes the requirement to appoint a trustee and enter into a trust deed, and the statutory duties of trustees and of issuers.

- (i) the issue-specific credit rating of the qualified issuer is at least 'A-' on the foreign currency rating scale on the date of application;
 - (ii) the documents specified in paragraph 10 below are filed, in both hard copy and soft copy, with the SC at least two working days prior to such issuance, offer or invitation;
 - (iii) the relevant requirements in this Note have been fully complied with; and
 - (iv) all necessary approvals in relation to the issue, offer or invitation from other regulatory bodies, including the Controller of Foreign Exchange, must be obtained prior to the filing of the said application to the SC under this Note.
10. The following documents are to be filed with the SC by a local adviser³:
- (a) the full set of offering documents, including the information memorandum⁴; and
 - (b) a copy of the summary issuance information, as attached in the Appendix.
11. A filing of offering documents under this Note shall be deemed to be a deposit of the same with the SC for the purposes of section 38(4) or section 39(4) of the SCA, where applicable.
12. A filing fee shall be payable to the SC in accordance with the Securities Commission (Fees and Charges) Regulations when the specified documents are filed with the SC⁵.

Approval Process for Other Applications

13. In the case of an issue, offer or invitation of foreign currency-denominated bonds which does not meet the criteria for deemed approval, the application shall be submitted to the SC in compliance with the requirements in the PDS Guidelines.

³ Local adviser includes:

- (a) Commercial banks licensed under the Banking and Financial Institutions Act 1989 (BAFIA), except if the proposals are capable of being converted into equity or are issued together with warrants of Malaysian public companies; and
- (b) Investment banks licensed both as a Dealer pursuant to section 12 of the SIA and a merchant bank pursuant to section 5 of BAFIA, and duly established pursuant to the Guidelines on Investment Banks jointly issued by BNM and the SC.

⁴ "Information memorandum" is described in section 38(3) of the SCA, and this could include documents that are referred to as an offering circular, prospectus, or any other name used in other jurisdictions.

⁵ The filing fee is RM500.00 in accordance with Schedule 2 of the Securities Commission (Fees and Charges) (Amendment) Regulations 2004

14. Notwithstanding paragraph 13 above, the issuance requirements on mode of issue, credit rating and governing law, as specified in this Note, shall continue to apply to these applications. In addition, the declarations to the SC as required in the PDS Guidelines are waived for these applications.
15. Pursuant to the PDS Guidelines, the SC will give its approval to the above applications within 14 working days from the date of receipt of complete information and documentation.

Post-issuance Notification to the SC

16. The qualified issuer and adviser shall undertake to inform the SC of any material changes or amendments, if any, made from time to time to the terms and conditions in the offering documents filed with the SC, and the transaction documents for the applicable issue, offer or invitation.
17. For an issue, offer or invitation under this Note made on a programme basis, an annual update of the material information of the programme shall be filed with the SC on every anniversary of the issue date of the programme.
18. A soft copy of the specified documents to be filed with or submitted to the SC and an annual update of the programme, where applicable, shall be forwarded by an adviser to the SC, as follows:
 - (a) via an e-mail to the following address: DS@seccom.com.my; or
 - (b) via CD-ROM or diskette to the following address:

Bond Market Department
Market Supervision Division
Securities Commission
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur
Malaysia

Compliance with Other Regulatory Requirements

19. The qualified issuer shall obtain all necessary approvals in relation to the issue, offer or invitation under this Note as required by other regulatory bodies, including the

Controller of Foreign Exchange of Malaysia and the securities regulators in the home country of qualified issuer (where applicable), prior to the filing or submission of documents with the SC under this Note. Any conditions imposed by such regulatory bodies, if applicable, shall continue to be complied with throughout the tenor of the bonds approved under these Guidelines.

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**Application for Issuance of Foreign Currency-denominated Bonds in Malaysia
by Qualified Issuers**

- Information to be disclosed in application

- (a) Name of issuer and brief description of issuer's business
- (b) Credit rating of issuer and name of credit rating agency
- (c) Size of issuance
- (d) Interest rate benchmark (e.g. Fixed, Floating [Benchmark])
- (e) Interest payment frequency
- (f) Tenor
- (g) Type of bonds
- (h) Lead manager/Lead arranger/Adviser
- (i) Other manager (if any)
- (j) Underwriter (if any)
- (k) Purpose of issuance
 - (i) For use in Malaysia
 - (ii) For use abroad
- (l) Proposed hedging counter-party (if any)
- (m) Method of issuance (e.g. open tender, book-building, private placement)
- (n) Name of contact person:
 - (i) Malaysia
 - (ii) Abroad
- (o) Embedded option contracts (e.g. buy-back option)

Information to be provided if proceeds of issuance are to be on-lent wholly or partly to resident:

- (p) Name of counterparty/borrower
- (q) Relationship of issuer with counterparty/borrower (if any)
- (r) Purpose of financing/loan utilisation
- (s) Terms of financing/loan
 - (i) Amount
 - (ii) Interest rate
 - (iii) Tenor
 - (iv) Bearer of withholding tax (if any)
 - (v) Repayment period
 - (vi) Prepayment/callable option