



Suruhanjaya Sekuriti
Securities Commission
Malaysia

ISLAMIC SECURITIES GUIDELINES (SUKUK GUIDELINES)

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1.0 INTRODUCTION

- 1.01 With effect from 1 July 2000, any person who proposes to issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase (issue, offer or make an invitation) Islamic securities or sukuk, under section 212 of the *Capital Markets and Services Act 2007 (CMSA)*¹, will require an approval from the Securities Commission Malaysia (SC).
- 1.02 In facilitating fund-raising activities through the issuance of Islamic securities or sukuk in Malaysia, the *Islamic Securities Guidelines* (Sukuk Guidelines) will regulate any issue, offer or invitation of sukuk including Islamic medium-term notes, Islamic commercial papers and sukuk programmes that are specified in, but not limited to, the following scope:
- (a) Sukuk which are offered by local or foreign entities;
 - (b) Sukuk which are denominated in ringgit or in foreign currencies; and
 - (c) Sukuk which are listed, convertible, exchangeable, redeemable or otherwise.
- 1.03 These guidelines replace the *Guidelines on the Offering of Islamic Securities* issued on 26 July 2004 as part of the SC's efforts to enhance the efficiency and competitiveness of the Malaysian sukuk market through the following measures:
- (a) Providing greater clarity to ensure compliance of Shariah rulings and principles endorsed by the Shariah Advisory Council (SAC) of the SC;
 - (b) Expediting time-to-market for issuance or offer of sukuk by–
 - (i) expanding the deemed approval process to a wider scope of highly-rated issuers from within and outside Malaysia,
 - (ii) allowing revision to terms and conditions without prior approval from the SC upon complying with a set of transparent requirements; and
 - (iii) removing mandatory rating requirement for selected issues or offers.
 - (c) Providing sukuk holders with greater disclosure of relevant information that could facilitate investment decision-making process;
 - (d) Enabling the issuance and documentation standards for domestic sukuk issues to be comparable with international best practices; and

¹ Section 212 of the CMSA came into force on 28 September 2007 for section 32 of the *Securities Commission Act 1993*.

- (e) Enhancing the effective role and responsibilities of key transaction parties, namely principal adviser, advisers, credit rating agencies and sukuk trustees for the benefit of sukuk holders.
- 1.04 A programme which combines issuances of both sukuk and debenture will require an approval under these guidelines and the *Private Debt Securities Guidelines*.
- 1.05 Notwithstanding paragraph 1.01, the SC's approval is not required under the following circumstances:
- (a) If the proposal is exempted under schedule 5 of the CMSA; or
 - (b) If the instrument or transaction is exempted from the definition of "Islamic securities" or "sukuk" under these guidelines.
- 1.06 These guidelines are issued under section 377 of the CMSA.
- 1.07 Under these guidelines, the SC adopts a disclosure-based regulatory approach on the issue, offer or invitation of sukuk, for which an approval from the SC will be granted when the following requirements are met:
- (a) By submitting to the SC a full set of documents and relevant information which is clearly outlined in the guidelines and which will allow investors to make informed decisions;
 - (b) By meeting a set of transparent criteria under these guidelines; and
 - (c) By complying with any additional requirements that may be imposed by the SC for purposes of protecting the interest of sukuk holders (for example, in an issue, offer or invitation of sukuk to investors who do not fall within schedule 6 and schedule 7 of the CMSA) and ensuring an orderly functioning of the market place.
- 1.08 These guidelines also set out the relevant Shariah rulings and principles to be complied with by all issuances of ringgit-denominated sukuk. The Shariah rulings and principles have been endorsed by the SAC whose functions are provided for under section 316B of the CMSA.
- 1.09 All Shariah principles and concepts applied in structuring an issue, offer or invitation of ringgit-denominated sukuk under these guidelines must be consistent with the Shariah rulings, principles or concepts in accordance with paragraphs 8.0 to 9.0 and Appendix 1 as well as any other Shariah rulings, principles and concepts endorsed by the SAC from time to time.
- 1.10 Where any Shariah ruling, principle or concept applied in the structuring of an issue, offer or invitation of ringgit-denominated sukuk is based on a Shariah ruling, principle or concept other than which is stated in paragraphs 8.0 to 9.0 and Appendix 1, the advice or ruling of the SAC must be obtained through the SC prior to any submission of declarations and information under these guidelines.

1.11 The naming of sukuk shall not be misleading and must be based on the following principles:

- (a) Where the sukuk is structured using a single Shariah principle, the sukuk shall be named according to the underlying Shariah contract. For example, sukuk which are issued under the *musharakah* principle shall be named sukuk *musharakah*; or
- (b) Where the sukuk is structured using multiple Shariah principles, the sukuk shall be named according to–
 - (i) the name of the issuer or obligor (where applicable);
 - (ii) sukuk *istithmar* (investment); or
 - (iii) any other names based on principles or concepts endorsed by the SAC from time to time,

where appropriate. The multiple Shariah principles applied shall be disclosed in the body of the relevant transaction documents and offering documents.

1.12 For the purposes of these guidelines:

- (a) All issues, offers or invitation of sukuk must comply with Division 4 of Part VI of the CMSA; and
- (b) The terms `debenture' and `borrower' in Division 4 of Part VI of the CMSA refer to "Islamic securities" and "issuer" of Islamic securities respectively.

1.13 An issuer or offeror must also comply with other regulatory requirements in the CMSA and other relevant guidelines issued and/or administered by the SC for all corporate transactions undertaken by the issuer or offer or in relation to the issue, offer or invitation.

1.14 For ease of reference, any issue, offer or invitation of sukuk by a public company which is–

- (a) capable of being converted or exchanged into new equity of a public listed company; or
- (b) issued together with warrants,

will be subjected to the additional requirements stipulated in the *Listing Requirements of Bursa Securities*.

1.15 For sukuk issued following an asset-backed securitisation transaction, the *Guidelines on the Offering of Asset-Backed Securities* will also apply.

2.0 DEFINITIONS

2.01 In these guidelines, the following words and expressions have the following meanings, unless the context otherwise requires–

adviser	has the similar meaning assigned to it under the <i>Equity Guidelines</i> .
Bursa Securities	means Bursa Malaysia Securities Bhd.
commercial paper (CP)	has the meaning assigned to it under the Participation and Operation Rules for Payments and Securities Services which is issued by Malaysian Electronic Clearing Corporation Sdn Bhd or MyClear, on behalf of Bank Negara Malaysia.
corporation	has the meaning assigned to it under subsection 2(1) of the CMSA.
<i>ijtihad</i>	refers to reasoning by qualified scholars to obtain rulings from the Shariah sources.
international credit rating agency	refers to a credit rating agency which operates in more than one international financial centre and is either licensed or registered by a relevant authority as well as capable of assigning international rating that are widely accepted by international investors.
interested person	has the similar meaning assigned to it under the <i>Trust Deeds Guidelines</i> .
investment bank	has the similar meaning assigned to it under the <i>Principal Adviser Guidelines</i> .
Islamic bank	means a bank licensed under the <i>Islamic Banking Act 1983</i> .
Islamic securities	has the meaning assigned to it under the prescription order made by the Minister under section 5 of the CMSA and is used interchangeably with the term "sukuk" in these guidelines.
licensed bank	means a bank licensed under the <i>Banking and Financial Institutions Act 1989</i> .
licensed institution	has the meaning assigned to it under subsection 2(1) of the <i>Banking and Financial Institutions Act 1989</i> .

medium-term note (MTN)	has the meaning assigned to it under the Participation and Operation Rules for Payments and Securities Services which is issued by Malaysian Electronic Clearing Corporation Sdn Bhd or MyClear, on behalf of Bank Negara Malaysia.
principal adviser	has the meaning assigned to it under the <i>Principal Adviser Guidelines</i> .
Shariah Advisory Council	has the meaning assigned to it under subsection 2(1) of the CMSA.
special scheme brokers	has the similar meaning assigned to it under the <i>Principal Adviser Guidelines</i> .
sukuk	refers to certificates of equal value which evidence undivided ownership or investment in the assets using Shariah principles and concepts approved by the SAC.
sukuk BBA, <i>murabahah</i> and <i>istisna</i>	are certificates of equal value which evidence undivided ownership of the certificate holders to the asset including the rights to the receivables arising from the underlying contracts of exchange.
sukuk <i>ijarah</i>	are certificates of equal value which evidence undivided ownership of the certificate holders to the leased asset and/or usufruct and/or services and rights to the rental receivables from the said leased asset and/or usufruct and/or services.
sukuk <i>mudharabah</i>	are certificates of equal value which evidence undivided ownership of the certificate holders in the <i>mudharabah</i> venture.
sukuk <i>musharakah</i>	are certificates of equal value which evidence undivided ownership of the certificate holders in the <i>musharakah</i> venture.
sukuk programme	refers to a facility which allows multiple issues, offers or invitations of sukuk, including Islamic MTNs, Islamic CPs or a combination of Islamic CPs and Islamic MTNs, within a validity period which is specified to the SC.
universal brokers	has the similar meaning assigned to it under the <i>Principal Adviser Guidelines</i> .

3.0 ISSUERS

- 3.01 Any person who is a corporation within the meaning of sub-section 2(1) of the CMSA or a foreign government is eligible to issue, offer or make an invitation on sukuk upon seeking the SC's approval under these guidelines.
- 3.02 As stated in sub-section 2(1) of the CMSA, 'corporation' means any body corporate formed or incorporated or existing within Malaysia or outside Malaysia and includes any foreign company but does not include—
- (a) any body corporate that is incorporated within Malaysia and is by notice of the Minister published in the *Gazette* declared to be a public authority or an instrumentality or agency of the government of Malaysia or of any State or to be a body corporate which is not incorporated for commercial purposes;
 - (b) any corporate sole;
 - (c) any society registered under any written law relating to co-operative societies; or
 - (d) any trade union registered under any written law as a trade union.

4.0 SUBMISSION OF PROPOSALS

- 4.01 An issuer must appoint a principal adviser to seek an approval of the SC for the proposed issue, offer or invitation of sukuk under these guidelines. In this regard, only institutions which are specified by the SC in the *Principal Adviser Guidelines* could act as a principal adviser for different types of proposals, as follows (non-exhaustive):

Islamic banks, investment banks or universal brokers	All proposals of sukuk
Licensed banks	All proposals of sukuk, except for any of the following: <ul style="list-style-type: none">• Sukuk of Malaysian-incorporated public companies or foreign corporations that are capable of being converted into equity; and• Sukuk of Malaysian-incorporated public companies or foreign corporations that are issued together with warrants
Special scheme brokers	Proposals for the offering of sukuk of listed or unlisted foreign issuers to investors identified under schedule 6 and schedule 7 of the CMSA

4.02 The requirement to appoint a principal adviser in paragraph 4.01 does not apply to a Multilateral Development Bank (MDB) or Multilateral Financial Institution (MFI) for their proposed issue, offer or invitation of sukuk under these guidelines. The MDB or MFI may submit the information and documents which are specified in these guidelines, directly to the SC or through an adviser.

5.0 APPROVAL PROCESS

5.01 The SC will grant its approval for all proposed issue, offer or invitation of sukuk (including a sukuk programme) within 14 working days from the date of receipt of complete documents as required under paragraph 6.01 and upon full compliance with relevant regulatory requirements as provided in these guidelines.

Exemption for issue, offer or invitation of foreign currency-denominated sukuk in Malaysia

5.02 For an issue, offer or invitation of foreign currency-denominated sukuk, the requirements in paragraphs 8, 9, 11, 12, 15, 16, 20² and 21 will be exempted for the purpose of seeking an approval from the SC as provided under paragraph 5.01. However, for an issue, offer or invitation of foreign currency-denominated sukuk by a non-Malaysian issuer which involves placement of a portion of its securities issue or offer to investors in Malaysia (placement basis), the following requirements must be met:

- (a) Presentation or road show, if any, to brief investors in Malaysia of the sukuk issue or offering must be conducted by authorised representatives of foreign issuer with a Malaysian adviser who is appointed by the foreign issuer; and
- (b) Documentation of the proposed issue or offer must conform with international standards or standards which are acceptable in the Malaysian market.

Deemed approval process for ringgit-denominated sukuk

5.03 Notwithstanding paragraph 5.01, a proposed issue, offer or invitation of ringgit-denominated sukuk (including a sukuk programme) will be deemed approved by the SC on the date of receipt of all information and documents, and upon fulfilling the following conditions:

- (a) The issue, offer or invitation has either (i) been assigned a local rating of AAA by a domestic credit rating agency registered with the SC or, (ii) subject to the requirements stated in paragraph 5.05, been assigned an international rating of at least BBB- (or its equivalent) or a regional rating of AAA by an international credit rating agency;

² Subject to compliance with schedule 8 of the CMSA.

- (b) Documents as specified in paragraph 6.04 have been submitted; and
 - (c) All relevant requirements stated in these guidelines have been fully complied with and any waiver in respect thereof has been obtained from the SC.
- 5.04 Prior to seeking the SC's deemed approval as specified under paragraph 5.03, the issuer, through principal adviser, shall refer to the SAC on the Shariah compliance of the proposed issue, offer or invitation of ringgit-denominated sukuk as stated in these guidelines. For this purpose, the relevant documents as specified in paragraph 6.05 shall be submitted to the SC.
- 5.05 For the purpose of paragraph 5.03(a), an issuer incorporated in Malaysia will be allowed to use a new international or regional rating to be assigned by the same international credit rating agency for its issue, offer or invitation of ringgit-denominated sukuk, if the following requirements are met:
- (a) The corporation had previously issued foreign currency-denominated sukuk for which an international or regional rating has been assigned; and
 - (b) The existing international or regional rating is still valid on the date of submission to the SC.

Deemed approval process for foreign currency-denominated sukuk

- 5.06 Notwithstanding paragraph 5.01, a proposed issue, offer or invitation of foreign currency-denominated sukuk (including a sukuk programme) which is originated in Malaysia will be deemed approved by the SC upon fulfilling the following conditions:
- (a) The issue, offer or invitation has been assigned an international rating of at least BBB- or its equivalent on the date of application;
 - (b) Documents as specified in paragraph 6.04 have been submitted; and
 - (c) All relevant requirements stated in these guidelines have been fully complied with and any waiver required in respect thereof has been obtained from the SC.

For the purpose of paragraphs 5.01 and 5.06 as well as other provisions in these guidelines, a proposed issue, offer or invitation of foreign currency-denominated sukuk is considered to be originated in Malaysia if the following conditions are complied with:

- (i) An Islamic bank, licensed bank, investment bank, universal broker or special scheme broker in Malaysia is appointed at least as a main adviser or co-adviser and which is clearly stated in an information memorandum or offering circular for the proposed issue, offer or invitation; and

- (ii) The Malaysian adviser will co-ordinate or actively participate in the marketing and placement of the sukuk in Malaysia.

Additional requirements for deemed approval process for ringgit and foreign currency-denominated sukuk

- 5.07 The deemed approval process stated in paragraphs 5.03 and 5.06 will not apply to an issue, offer or invitation of asset-backed securities, and sukuk where the issuer or offeror is a special purpose vehicle with all of the following characteristics:
- (a) It does not employ any officer or manager for its business operations;
 - (b) It does not actively carry out any business activity; and
 - (c) Investors of the sukuk do not have any full financial recourse to any entity³ that is assigned a local rating of AAA by a domestic credit rating agency or an international rating of at least BBB- or its equivalent by an international credit rating agency.

For the purpose of paragraph 5.07(c), the term “full financial recourse” means irrevocable and unconditional guarantee from a corporation, licensed institution(s) or other financial institutions on the full amount of the sukuk programme or any issue, offer or invitation of sukuk.

- 5.08 For the purpose of clarification, the SC will deem approve a multi-currency issue, offer or invitation of sukuk which includes both ringgit-denominated and foreign currency-denominated sukuk. Such approval will be granted if the requirements applicable to both ringgit-denominated and foreign currencies-denominated sukuk have been and continue to be complied with.
- 5.09 An issue, offer or invitation of sukuk, whether denominated in ringgit or foreign currency, by a MDB or MFI will be deemed approved by the SC under paragraphs 5.03 and 5.06 of these guidelines, except that the requirements stated in paragraphs 5.03(a) and 5.06(a) do not apply for the MDB or MFI.

Deemed approval process for Islamic Negotiable Instruments of Deposit Programme by licensed institutions or Islamic banks

- 5.10 Notwithstanding paragraph 5.01, a programme for issuance, offer or invitation of Islamic negotiable instruments of deposit (INID) with tenure of more than five years⁴ by a licensed institution or Islamic bank will be deemed approved upon submission of the following documents and information to the SC:
- (a) An application letter for the proposal which is addressed to the SC and

³ Inclusive of an entity with senior unsecured obligation which is rated either local rating of AAA or at least international rating of BBB, where applicable.

⁴ To be read together with *Securities Commission (Non-Application of the Definition of Debenture) Order 2001*.

signed by the authorised officer(s) of the issuer or offeror;

- (b) Size of programme;
- (c) Maturity date of the programme; and
- (d) Prevailing credit rating of the licensed institution or Islamic bank.

In addition, the licensed institution or Islamic bank must continuously comply with the following requirements for the approval to be considered valid throughout the tenure of the programme:

- (e) The licensed institution or Islamic bank must disclose to the investors of the inherent risks, including credit risks and price risks, in investing in the INIDs; and
- (f) The licensed institution or Islamic bank must state clearly to the investors the settlement procedures for any early redemption or termination of the issue.

5.11 Save for the requirements stated in paragraph 5.10, these guidelines do not apply to an issue or offer of INID with tenure of more than five years by a licensed institution or Islamic bank.

5.12 Floating-rate INID with tenure of more than five years which fall within the definition of structured products under the *Guidelines on the Offering of Structured Products* (SP Guidelines) will be subjected to the SP Guidelines and not these guidelines.

Other requirements

5.13 The SC may reject any proposed issue, offer or invitation of sukuk which does not fully comply with any requirements stated under these guidelines.

6.0 DOCUMENTS AND INFORMATION REQUIRED

6.01 A set of documents which is set out in Appendix 2 and a declaration letter from the issuer which is provided in Appendix 3 are required to be submitted by the principal adviser(s) to the SC for an issue, offer or invitation of sukuk to be approved by the SC under paragraph 5.01 of these guidelines. The documents must be submitted in two hard copies and one electronic copy. The submission in electronic copy shall be prepared in accordance with the format specified by the SC in Appendix 4.

6.02 Upon obtaining an approval from the SC which is granted under paragraph 5.01, the issuer must submit a set of documents as specified in Appendix 5 to the SC through its principal adviser.

6.03 Notwithstanding paragraphs 6.01 and 6.02, the following documents (in hard copy and electronic copy) will be required to be submitted by the principal adviser(s) to the SC for an issue, offer or invitation of foreign-currency sukuk

securities on the placement basis by non-Malaysian issuers in obtaining SC's approval:

- (i) Term sheet or offering circular before the placement of foreign-currency sukuk securities;
- (ii) Applicant letter for the placement (as set out in Appendix 1) and declaration from the adviser that the requirements stated in paragraph 5.02 have been complied with; and
- (iii) An undertaking that the rating report (if applicable) and amount issued to Malaysian investors will be submitted to the SC within seven working days after the placement of foreign-currency sukuk securities.

6.04 Any persons, including MDB or MFI who seek a deemed approval from the SC under paragraphs 5.03 and 5.06 must submit an information memorandum and other documents as specified in Appendix 6 to the SC. The documents must be submitted in one hard copy and in one electronic copy in accordance with the format specified in Appendix 4. Prior to the issue date of the sukuk or first issue under a sukuk programme, the issuer must also submit the following documents and information to the SC through its principal adviser (except for MDB or MFI whereby submission may be made directly to the SC):

- (i) Documents and information as set out in paragraphs 1.02 and 1.03 of Appendix 5; and
- (ii) Date, size and tenure of the issue (through e-mail to DS@seccom.com.my by its principal adviser).

6.05 A set of documents which is set out in Appendix 6(a) are required to be submitted by the principal adviser(s) pursuant to paragraph 5.04.

6.06 The SC may require additional information from any issuer and its principal adviser, including due-diligence reports and rating reports if applicable, for post-vetting purposes at any time.

7.0 APPOINTMENT OF SHARIAH ADVISER

7.01 The issuer must, with the concurrence of the principal adviser, appoint a Shariah adviser to carry out the following primary responsibilities:

- (a) Advise on all aspects of the sukuk including documentation and structuring;
- (b) Issue a Shariah certification which outlines the basis and rationale of the certification, structure and mechanism of the sukuk issue, the applicable Shariah principles used by the sukuk issue and relevant Shariah matters relating to the documentation of the sukuk issue;
- (c) Ensure that the applicable Shariah principles and any relevant resolutions and rulings endorsed by the SAC are complied with; and

- (d) Apply *ijtihad* to ensure all aspects relating to sukuk issuance are in compliance with Shariah principles, in the absence of any rulings endorsed by the SAC.

7.02 The Shariah adviser must be either–

- (a) a registered Shariah adviser who meets the criteria as stipulated under the SC's *Registration of Shariah Adviser Guidelines*, or
- (b) an Islamic bank or a financial institution approved by Bank Negara Malaysia to carry out Islamic Banking Scheme or Skim Perbankan Islam.

7.03 For foreign currency-denominated sukuk, any foreign Shariah adviser can be appointed subject to compliance with the relevant requirements stated in the SC's *Registration of Shariah Adviser Guidelines*.

8.0 SHARIAH RULINGS APPLICABLE TO ALL TYPES OF SUKUK

8.01 Requirement of underlying asset

Under *`uqud mu`awadhat* or contracts of exchange (such as *bai` bithaman ajil, murabahah, istisna`* and *ijarah*), an asset, whether tangible or intangible, must be made available for sukuk to be issued subject to the following:

- (a) The underlying asset and its use must comply with the requirements of Shariah.
- (b) An encumbered asset, such as an asset charged to a financial institution, or an asset that is jointly-owned with another party, can only be used as underlying asset provided the issuer has obtained consent from the chargee or joint-owner.
- (c) Where receivables are used as the underlying asset, they must be *mustaqir* (established and certain) and transacted on cash basis (on spot).

8.02 Asset pricing ⁵

Sukuk under *`uqud mu`awadhat* involves the sale and purchase of underlying assets. When the investors purchase the underlying assets, the purchase price must comply with the following SAC pricing guidelines:

- (a) The purchase price should not exceed 1.51 times of the market value of the asset; and

⁵ This ruling is applicable to *`uqud mu`awadhat* (contracts of exchange) namely BBA, murabahah, *ijarah* and *istisna`*.

- (b) In cases where the market value of a particular asset could not be ascertained, a fair value or any other value must be applied.

8.03 **Ibra' (Rebate)**

- (a) Provision for *ibra'* may be stipulated in the primary legal document provided that such provision shall not be part of the pricing section.
- (b) Through the application of *ibra'*, variable rate mechanism may be applied to sukuk BBA, *murabahah* and *istisna'* which may be benchmarked to the prevailing market rates.

8.04 **Ta`widh (Compensation)**

- (a) *Ta`widh* is permissible under both *`uqud mu`awadhat* and *`uqud ishtirak* only in the event of delay in payment. However, under *`uqud ishtirak*, *ta`widh* is limited to the failure of the issuer/obligor to distribute the realised profit on time. *Ta`widh* does not apply to expected profit.
- (b) The rate of *ta`widh* should be as prescribed by the SAC from time to time and is available on the Islamic Capital Market section of the SC website.

9.0 **SHARIAH RULINGS APPLICABLE TO SPECIFIC TYPES OF SUKUK**

9.01 The following Shariah rulings are applicable to the issuance of sukuk *ijarah*:

- (a) Rate of lease rental and lease period

The rate of lease rental and lease period should be determined upon the *`aqd*.

- (b) Usage of leased asset

The leased asset should be used for Shariah-compliant activities only.

- (c) Sub-lease of leased asset to third party by lessee

The lessee can sub-lease the leased asset to a third party provided that the sub-lease period should not be longer than the initial lease.

- (d) Lease of leased asset to third party by owner of asset

The owner of the leased asset should not lease the asset to a third party while the same asset is being leased to another party during the lease period.

- (e) Maintenance of leased asset

The lessor is responsible for maintaining the leased asset. However,

the maintenance of *ijarah* asset may also be determined as agreed by both parties as stated in the terms and conditions of the *ijarah* agreement. The lessor can also assign the responsibility to the lessee as service agent at the lessor's cost.

(f) Forward lease (*Ijarah mawsufah fi zimmah*)

- (i) A forward lease is a permissible contract for the issuance of sukuk.
- (ii) A forward lease is an *ijarah* contract on an asset that will exist in future. The rate of lease rental, the nature of the leased asset, the lease period and the method of lease payment are to be clearly stated in the contract as agreed between the contracting parties.
- (iii) However, if upon delivery, the lessor fails to deliver the asset based on the agreed specification, the lessee is entitled to reject the asset and either–
 - demand replacement of the asset that conforms to agreed specifications; or
 - terminate the *ijarah* contract, and if the lessee has paid the advance rental, the lessor should refund the amount paid.

(g) Variable rate mechanism

The rate of lease rental may be based on fixed or variable rates. In the case of variable rate, the effective lease period and the lease rental computation must be agreed upon *'aqd*.

(h) Transfer of ownership of leased asset

At the end of the lease period, the ownership of the leased asset may be transferred from the lessor to the lessee or to any third party through any one of the following methods–

- (i) By way of selling the leased asset at an agreed price; or
- (ii) By way of *hibah* (gift) of the leased asset.

9.02 The following Shariah rulings are applicable to the issuance of sukuk *musharakah*:

(a) *Musharakah* Capital

Capital contributed by each of the *musharik* (partners) should be in the form of cash, in kind or a combination of both.

- (b) *Kafalah* (guarantee) on *musharakah* capital

Kafalah on *musharakah* capital may be provided by way of a third-party guarantee, with or without imposition of fee.

- (c) *Musharakah* partners

There should be at least two (2) partners to form a *musharakah*. However, there is no minimum number of *musharakah* partners (i.e. sukuk investors) in the secondary market.

- (d) Profit and loss

The profit from *musharakah* venture will be distributed among the partners according to the pre-agreed profit sharing ratio. However, any loss should be shared among the partners according to their respective capital contribution.

- (e) *Tanazul* (Waiver of Right)

A partner may waive his right on the profit payment from the *musharakah* venture, if he so desires.

- (f) Management of the venture

One of the partners or issuer or a third party may be appointed as the manager to manage the venture.

9.03 The following Shariah rulings are applicable to issuance of sukuk *mudharabah*:

- (a) *Mudharabah* Capital

Capital contributed by a *rabb al-mal* (capital provider) should be in the form of cash, in kind or a combination of both.

- (b) *Kafalah* (Guarantee) on *mudharabah* capital

Kafalah on *mudharabah* capital may be provided by way of a third-party guarantee, with or without imposition of fee.

- (c) *Rahn* (Collateral)

The *rabb al-mal* may request *mudharib* (entrepreneur) to place *rahn* as protection from possibility of loss on capital that may occur as a result of negligence and misconduct by the *mudharib*.

- (d) Profit and loss

The profit from *mudharabah* venture should be distributed between the *rabb al-mal* and the *mudharib* according to the pre-agreed profit sharing ratio. However, any loss should be borne in entirety, solely by

the *rabb al-mal*.

(e) *Tanazul* (Waiver of right)

A partner may waive his right on the profit payment from the *mudharabah* venture, if he so desires.

(f) Management of the venture

The management of the venture may be carried out by the *mudharib* or a third party appointed by the *mudharib*.

10.0 RATING REQUIREMENT

10.01 All sukuk programmes or issues, offers or invitations of sukuk (excluding Islamic asset-backed securities) that come within the scope of these guidelines must be rated in the full amount by a credit rating agency.

10.02 Notwithstanding paragraph 10.01, if the credit rating is not assigned for the full amount in the case of sukuk programmes (including circumstances where the programmes are structured in a manner that there will be different rights and risks for different classes or tranches of sukuk issues), all the pre-conditions, relevant risk factors to investors and all material information relating to this partial rating requirement must be disclosed upfront to the investors in the offering documents.

10.03 The indicative rating(s), where applicable, for a sukuk programme or an issue, offer or invitation of sukuk must be made available to the SC by the issuer at the time of submission of the documents and information.

10.04 For an issue or offer of sukuk which is rated on a local rating scale, the credit rating must be assigned by a credit rating agency which is registered with the SC.

10.05 For the purpose of these guidelines, use of international rating is allowed for a proposed issue or offer from foreign issuers, and Malaysian-incorporated issuers as provided in paragraph 5.05.

10.06 The issuer must ensure that a credit rating is made available throughout the tenure of the sukuk programme or issue of sukuk, unless the rating is suspended or withdrawn by the credit rating agency. In this regard, the issuer must undertake to provide relevant information on continuous basis to the credit rating agency involved, in accordance with the format and frequency as agreed with the credit rating agency, so that timely dissemination of relevant information and rating analysis can be made available to investors.

10.07 There must not be any provision in any transaction documents that allows replacement of the credit rating agency during the tenure of the programme or issue, unless the replacement is made on condition that the necessary approval has been obtained from the investors.

- 10.08 The issuer shall ensure that rating report for its initial rating for the sukuk programme or issue of sukuk is published by a credit rating agency as soon as the ratings have been finalised, or at least seven working days prior to the issuance of sukuk.
- 10.09 The rating requirements in paragraph 10.0 do not apply to an issue, offer or invitation of the following sukuk:
- (a) Irredeemable convertible Islamic loan stocks⁶;
 - (b) Foreign currency-denominated sukuk;
 - (c) Convertible sukuk or Islamic loan stocks and exchangeable sukuk which fulfil the following requirements:
 - (i) Investors of the sukuk or Islamic loan stocks are given the right to convert or exchange the instruments into the underlying shares at any time or within a reasonable period or periods during the tenure of the sukuk issue; and
 - (ii) The underlying shares are listed on a stock exchange.
 - (d) Sukuk–
 - (i) which are non-transferable and non-tradable;
 - (ii) whose investors would not require a rating; and
 - (iii) the principal adviser to ensure that both criteria above are met prior to the applicable issue, offer or invitation.

11.0 DISCLOSURE OF MATERIAL INFORMATION

- 11.01 The issuer, other than MDB and MFI, must disclose the following information in an information memorandum or any document relating to the offer, issue or invitation (where applicable):
- (a) If the issuer or its board members have been convicted or charged with any offence under the securities laws, corporation laws or other laws involving fraud or dishonesty in a court of law, for the last five years prior to the date of information memorandum or any document relating to the offer, issue or invitation;
 - (b) If the issuer has been subjected to any action by the stock exchange for any breach of the listing requirements or rules issued by the stock exchange, for the past five years prior to the date of information memorandum or any document relating to the offer, issue or

⁶ These are loan stocks structured in a Shariah-compliant manner based on any permissible Shariah principles and have been named appropriately.

invitation; and

(c) Any other information which is material to investors.

11.02 Where trust deed is not entered into for an issuance of sukuk, there must be a provision in its transaction documents that the occurrence of an event of default would entitle the sukuk holders to declare the sukuk immediately due and payable without any provision for period of grace, while provision for remedy may be negotiated to the extent appropriate.

11.03 Where trust deed is not entered into for an issuance of sukuk, there must be a provision in its transaction documents that the issuer would cancel sukuk which are redeemed or purchased by the issuer or by its subsidiaries or by agent(s) of the issuer who is acting for the redemption or purchase and that the sukuk could not be resold.

12.0 UNDERWRITING

12.01 The underwriting of any issue, offer or invitation will be decided by the issuer.

13.0 MODE OF ISSUE

13.01 All ringgit-denominated sukuk must be issued and/or tendered on the Fully Automated System for Issuing/Tendering (FAST), unless a full admission to listing and trading is sought on any Malaysian stock exchange.

13.02 All ringgit-denominated sukuk must be issued on scripless basis, deposited and settled in the Real Time Electronic Transfer of Funds and Securities (RENTAS) system which is operated by Malaysian Electronic Clearing Corporation Sdn Bhd (a subsidiary of Bank Negara Malaysia), unless a full admission to listing and trading is sought on any Malaysian stock exchange.

13.03 Foreign currency-denominated sukuk must be announced or reported on FAST.

13.04 Foreign currency-denominated sukuk may be issued on scripless basis, deposited and settled in the RENTAS system with Malaysian Electronic Clearing Corporation Sdn Bhd as the central securities depository and authorised depository institutions in Malaysia as the sub-depositories.

14.0 UTILISATION OF PROCEEDS

14.01 Funds which are raised from any issue, offer or invitation of sukuk must be utilised for Shariah-compliant purposes.

14.02 Funds which are raised from any issue, offer or invitation of sukuk must be utilised by issuer in accordance with the purposes disclosed to the SC.

14.03 In situations where the funds are disbursed to the issuer for a project which

will generate cash flows for payments to sukuk holders, the transaction documents shall provide for the relevant parameters, conditions, supporting documents and certificates for the sukuk trustee or facility agent, where applicable, to manage the release of the funds to the issuer.

15.0 ADDITIONAL REQUIREMENTS FOR SUKUK PROGRAMMES

- 15.01 Where a sukuk programme involves an issuance of Islamic CPs or a combination of Islamic MTNs and Islamic CPs, the tenure for such programmes must not exceed seven years. For a stand-alone Islamic MTN programme, the 7-year tenure restriction does not apply.
- 15.02 The approval from the SC for a sukuk programme is granted on the basis of continuous compliance by the issuer with all of the relevant terms and conditions stated in these guidelines. In the event of a non-compliance with any requirement in these guidelines by the issuer of a sukuk programme, the SC may impose further terms and conditions which could restrict the issuer from making further issues, offers or invitations under the sukuk programme until such non-compliance is remedied to the SC's satisfaction.
- 15.03 For any sukuk programme approved by the SC, the issuer must make available the following information and documents to its investors throughout the availability period of the sukuk programme:
- (a) For Islamic MTN, a pricing supplement which provides the indicative terms (which includes, but not limited to issue date, size, tenure, credit rating, coupon payment and utilisation of proceeds) of a specific issue or offer under the programme prior to such issue or offer to its targeted investors, except if the said Islamic MTN are tendered through FAST or if the Islamic MTN are issued or offered on primary subscription basis; and
 - (b) The latest annual audited financial statements.
- 15.04 The issuer shall through a facility agent or an authorised agent, disseminate the latest annual audited financial statements, as stated in the paragraph 15.02(b), in the following manner:
- (a) Announce through FAST that the said annual audited financial statements have been made available in a public domain and specify the website address of the public domain; or
 - (b) Deliver a soft copy of these annual audited financial statements to the SC through DS@seccom.com.my⁷ not later than 180 days after the annual financial close.

⁷ Refers to the online database on information memoranda, trust deeds and other relevant documents of both ringgit and foreign currency-denominated private debt securities and sukuk issues, which is maintained by the SC (through Bond Market Department) and made available to sophisticated investors who fall within the categories listed under schedule 6 and 7 of the CMSA. Further details of the online database could be found in the SC's press statement dated 5 December 2005.

15.05 The continuous disclosure requirement for the latest audited financial statements as provided in paragraphs 15.03 and 15.04 will not apply under the following circumstances:

- (a) If the issuer is listed on the Bursa Securities on the basis that the disclosure will be made available in the public domain in accordance with the *Listing Requirement of Bursa Securities* or any stock exchange which provides for similar disclosure and listing requirement; or
- (b) If the sukuk programme is listed on Bursa Securities and such financial statements are required to be published.

16.0 EARLY REDEMPTION OF SUKUK

16.01 If an issuer decides to make an early redemption or exercise a call option to redeem its outstanding sukuk prior to the maturity date of the sukuk, the facility agent for the sukuk must inform sukuk holders as soon as possible through an announcement in the FAST system of the relevant details of such redemption (including broad details of the proposed sukuk holders' resolution, where appropriate). Further, if prior consent from sukuk holders is required for the early redemption, another announcement shall be made soonest practicable on FAST after the consent from sukuk holders has been obtained. This requirement applies for all issues of sukuk approved before or after the issue date of these guidelines.

16.02 In addition to the announcement through FAST, the issuer, facility agent or trustee may use other means to inform the sukuk holders of such redemption as may be provided in the trust deed and other transaction documents.

17.0 IMPLEMENTATION TIME FRAME FOR SUKUK PROGRAMME OR SUKUK ISSUANCE

17.01 Except in the case of a shelf registration scheme or a sukuk programme, any approval given by the SC under these guidelines must be implemented within one year from the date of the approval of the SC.

17.02 In the case of a shelf registration scheme or a sukuk programme, the initial issuance must be made within two years from the date of the approval of the SC.

18.0 OTHER REGULATORY APPROVALS AND COMPLIANCE WITH RELEVANT LAWS

18.01 All the relevant requirements and approvals from other regulatory authorities, including the Controller of Foreign Exchange, in relation to the issue, offer or invitation of sukuk must be complied with and obtained prior to the

submission of a proposal to the SC.

- 18.02 The approval from the Controller of Foreign Exchange as provided in paragraph 18.01 for the issue, offer or invitation of sukuk must not be dated more than two calendar years at the time the proposal is submitted to the SC.
- 18.03 Any conditions imposed by such regulatory bodies, if applicable, must continue to be complied with throughout the tenure of the sukuk as approved under these guidelines.
- 18.04 A person who proposes an issue, offer or invitation of sukuk and its principal adviser must ensure that the issue, offer or invitation has complied with all the relevant laws, including the CMSA and the *Companies Act 1965* which govern the proposal.

19.0 REVISION TO TERMS AND CONDITIONS

- 19.01 Any revision made to the principal terms and conditions of an issue or offer of sukuk which has been approved by the SC and has already been issued or implemented will not require a prior approval from the SC.
- 19.02 For the provision in paragraph 19.01 to take into effect, the principal adviser must notify the SC of such revision in accordance with paragraphs 19.07 and 19.08 below.
- 19.03 Paragraph 19.01 does not apply if the revision of terms and conditions relates to Shariah matters, for which the issuer, through principal adviser, shall refer to the SAC on the Shariah compliance of such revision. For this purpose, the relevant documents as set out in Appendix 7(a) must be submitted to the SC.
- 19.04 Notwithstanding paragraph 19.01, any revision to increase the size of a sukuk will not be allowed.
- 19.05 Any other revision made to an issue or offer of sukuk which has been approved by the SC but not yet drawn down or issued will require SC's prior approval.
- 19.06 The provision in paragraph 19.05 will not apply to any revision to the principal terms and conditions of an issue or offer of sukuk which has been deemed approved by the SC, if relevant documents and information as set out in Appendix 7 have been submitted to the SC.
- 19.07 The notification to the SC must be made by the principal adviser upon compliance with the following requirements:
 - (a) Consent has been obtained, where applicable, from the sukuk holders, Shariah adviser, trustee, other regulatory authorities and/or other relevant parties;
 - (b) Due process is to be observed in obtaining sukuk holders' approval for

the proposed revision, where applicable. This would include the requirement for the issuer or any interested person of the issuer to abstain from voting;

- (c) All material information pertinent to the revision, including the impact on credit rating and the Shariah adviser's opinion on whether or not such revision complies with the principles of Shariah together with the Shariah basis and rationale, has been communicated and disclosed to sukuk holders;
 - (d) Two separate announcements, where applicable, must be made on the Fully Automated System For Issuing/Tendering (FAST) – one on the proposed revision (to be announced on FAST prior to obtaining the approval from sukuk holders) and another on the outcome of the sukuk holders' decision (to be announced on FAST immediately after the sukuk holders have decided on the proposed revision); and
 - (e) The announcements made on FAST on the proposed revision must be copied to the SC within two working days from the date of the announcement. For a sukuk issue that is listed and traded on Bursa Securities, the requirement to announce the proposed revision on FAST does not apply.
- 19.08 The notification to the SC by the principal adviser must be made within 14 working days from the date of implementation of the proposed revision. Such notification must be accompanied by documents and information as set out in Appendix 7.
- 19.09 Any revision to the principal terms and conditions of a sukuk issue must not result in non-compliance with any regulatory requirements provided in these guidelines.
- 19.10 During the tenure of a sukuk, any revision to the terms in the sukuk document such as the maturity date and the profit rate can only be implemented after cancellation of the initial contract. Thereafter, a new *'aqd* (contract) stating the new maturity date and profit rate have to be executed to replace the previous contract.
- 19.11 The requirements in paragraph 19.0 (save for paragraph 19.09) do not apply to the following:
- (a) Revision made to foreign currency-denominated sukuk issue which is (i) issued or offered exclusively by Malaysian issuer to investors outside Malaysia, or (ii) placement by foreign issuer in Malaysia pursuant to paragraph 5.02, where the responsibility to notify investors in Malaysia shall reside with the adviser involved; and
 - (b) Revision made to facilitate the listing of sukuk on Bursa Securities in which the principal adviser shall forthwith notify the SC of the revision and e-mail the revised principal terms and conditions as prescribed in paragraph (e)(i) of Appendix 7 to DS@seccom.com.my.

19.12 The requirements provided in this paragraph 19.0 will take effect from the issue date of these guidelines.

20.0 REQUIREMENT FOR SUKUK TRUSTEE

20.01 An issue, offer or invitation of sukuk which complies with schedule 8 of the CMSA will be exempted from the mandatory requirements on trust deed, trustee and other provisions as stated in the CMSA.

20.02 Where a sukuk trustee is required to be appointed for a sukuk programme or an issue or offer of sukuk under section 258 of the CMSA, the sukuk trustee must have been registered with the SC pursuant to a practice note which has been issued by the SC.

20.03 In enhancing the role and effectiveness of sukuk trustee in an issue or offer of sukuk, principal adviser must actively engage the sukuk trustee in the documentation processes of a sukuk programme or an issue or offer of sukuk on a timely basis. The trustee must actively play its part in this process by providing comments and feedback to the documentation on a timely basis.

21.0 OFFERINGS OF SUKUK UNDER A SHELF REGISTRATION SCHEME

21.01 For the purpose of this paragraph, any issue, offer or invitation of sukuk under a shelf registration scheme can only be made for sukuk which are not capable of being converted into equity howsoever and which have no warrants attached.

21.02 Where an applicant seeks to issue, offer or make an invitation for sukuk under a shelf registration scheme, such person must comply with these guidelines as well as the *Securities Commission (Shelf Registration Scheme for Debentures) Regulations 2000* and any other related guidelines.

22.0 TRANSITIONAL ARRANGEMENTS

22.01 Unless otherwise stated, the requirements in these new guidelines will take effect from 12 August 2011 and supersede the *Guidelines on the Offering of Islamic Securities* issued by the SC on 26 July 2004 (superseded guidelines) as well as all the practice notes issued under the superseded guidelines, except for (i) *Guidelines on Registration of Credit Rating Agencies* and (ii) *Practice Note on Registration by the Securities Commission for the Purpose of Acting as a Bond Trustee*.

22.02 Following from paragraph 22.01 above, a proposed issue, offer or invitation of sukuk to be approved by the SC between 12 July 2011 and 12 August 2011 under paragraph 5.01 of these new guidelines will still be subjected to the superseded guidelines, unless otherwise decided by the issuer to seek the SC's approval under these new guidelines.

22.03 These new guidelines will take into effect immediately for a proposed issue,

offer or invitation of sukuk which is subject to the deemed approval from the SC under paragraph 5.03 and 5.06 of the guidelines.

22.04 Issue, offer or invitation of sukuk which is approved by the SC prior to 12 July 2011 will still be subjected to the superseded guidelines, except for the following:

- (i) It is specifically requested by the issuer to subject its issue, offer or invitation to these new guidelines; and
- (ii) The requirements provided in paragraph 16.0, paragraph 18.02 and paragraph 19.0 shall apply to all issue, offer or invitation of sukuk approved before or after the issue date of these new guidelines.

APPENDIX 1

APPROVED SHARIAH CONCEPTS AND PRINCIPLES FOR THE PURPOSE OF STRUCTURING, DOCUMENTING AND TRADING OF SUKUK

The following are acceptable Shariah concepts and principles for sukuk:

A. Primary principles

- ***Bai` bithaman ajil (BBA) (Deferred-payment sale)***
A contract that refers to the sale and purchase of assets on a deferred and instalment basis with preagreed payment period.
- ***Bai` 'inah (Sale with immediate repurchase)***
A contract which involves the sale and buy back transaction of an asset by a seller. A seller will sell the asset to a buyer on a cash basis. The seller will immediately buy back the same asset on a deferred payment basis at a price that is higher than the cash price. It could also be applied when a seller sells the asset to a buyer on a deferred basis. The seller will later buy back the same asset on a cash basis at a price which is lower than the deferred price.
- ***Bai` istijrar (Supply sale)***
A contract between a client and a supplier, whereby the supplier agrees to supply a particular product on an ongoing basis, for example monthly, at an agreed price and on the basis of an agreed mode of payment.
- ***Bai` salam (Advance purchase)***
A sale and purchase contract whereby the payment is made in cash at the point of contract but the delivery of the asset purchased will be deferred to a pre-determined date.
- ***Bai` wafa' (Sale and repurchase)***
A contract with the condition that when the seller pays back the price of goods sold, the buyer returns the goods to the seller.
- ***Ijarah (Leasing)***
A contract whereby a lessor (owner) leases out an asset to a lessee at an agreed lease rental for a predetermined lease period. The ownership of the leased asset shall always remain with the lessor.
- ***Ijarah thumma bai` (Lease to purchase)***
A contract which begins with an *Ijarah* contract for the purpose of renting out a lessor's asset to a lessee. Consequently, at the end of the lease period, the lessee will purchase the asset at an agreed price from the lessor by executing a purchase contract.
- ***Istisna` (Purchase order)***
A purchase order contract where a buyer requires a seller or a contractor to deliver or construct the asset to be completed in the future according to the specifications given in the sale and purchase contract. The payment term can be as agreed by both parties in the contract.

- ***Mudharabah* (Profit sharing)**
A contract made between two parties to enter into a business venture. The parties consist of the *rabb al-mal* (capital provider) who shall contribute capital to finance the venture, and the *mudharib* (entrepreneur) who will manage the venture. If the venture is profitable, the profit will be distributed based on a preagreed ratio. In the event of a business loss, the loss shall be borne solely by the provider of the capital.
- ***Murabahah* (Cost-plus sale)**
A contract that refers to the sale and purchase of assets whereby the cost and profit margin (mark-up) are made known.
- ***Musharakah* (Profit and loss sharing)**
A partnership arrangement between two or more parties to finance a business venture whereby all parties contribute capital either in the form of cash or in kind for the purpose of financing the said venture. Any profit derived from the venture will be distributed based on a preagreed profit sharing ratio, but a loss will be shared on the basis of capital contribution.
- ***Qardh hasan* (Benevolent loan)**
A contract of loan between two parties on the basis of social welfare or to fulfill a short-term financial need of the borrower. The amount of repayment must be equivalent to the amount borrowed. It is however legitimate for a borrower to pay more than the amount borrowed as long as it is not stated or agreed at the point of contract.
- ***Tawarruq* (Tripartite sale)**
Purchasing a commodity on a deferred price and then selling it to a third party for cash.
- ***Wakalah* (Agency)**
A contract where a party authorises another party to act on behalf of the former based on the agreed terms and conditions as long as he is alive.

B. Supplementary concepts and principles

- ***Bai` dayn* (Debt trading)**
A transaction that involves the sale and purchase of securities or debt certificates that conforms with Shariah. Securities or debt certificates will be issued by a debtor to a creditor as an evidence of indebtedness.
- ***Bai` muzayadah* (Open-bidding trading)**
An action by a person to sell his asset in the open market through a bidding process among potential buyers. The asset for sale will be awarded to the person who has offered the highest bid/price. This is also known as the sale and purchase transaction based on tender.
- ***Kafalah* (Guarantee)**
A contract of guarantee whereby a guarantor underwrites any claim and obligation that should be fulfilled by an owner of the asset. This concept is also applicable to a guarantee provided on a debt transaction in the event a

debtor fails to fulfill his debt obligation. The same definition can be applied for *Dhaman*.

- ***Haq tamalluk (Ownership right)***
An asset in the form of ownership rights as classified by Shariah which are tradable.
- ***Hibah (Gift)***
A gift awarded to a person on voluntary basis.
- ***Hiwalah (Remittance)***
A contract that allows a debtor to transfer his debt obligation to a third party.
- ***Ibra' (Rebate)***
An act by a person to withdraw his rights to collect payment from a person who has the obligation to repay the amount borrowed from him.
- ***Ittifaq dhimni (Pre-agreed contract)***
A sale and re-purchase of the underlying asset of which the prices are agreed by the parties prior to the completion of the contract. This is an external agreement which must be reached before the contract can be concluded to allow for the bidding process (*bai` al-muzayadah*) to take place.
- ***Rahn (Collateral)***
An act whereby a valuable asset is made as a collateral for a debt. The collateral will be utilised to settle the debt when a debtor is in default.
- ***Ujrah (Fee)***
A financial charge for the utilisation of services or *manfaat*. In the context of today's economy, it can be in the form of salary, allowance, commission and any other permissible form of assets.

APPENDIX 2

A. DOCUMENTS TO BE SUBMITTED FOR THE PURPOSE OF OBTAINING THE APPROVAL OF THE SC

1.01 Application letter disclosing the following items:

- (a) Background information on the Issuer and/or Originator in the case of an Islamic asset-backed securities (ABS) issue/programme*;
- (b) Profile of directors of issuer, including IC numbers (for its Malaysian Directors) and passport numbers (for its non-Malaysian Directors)*;
- (c) A description of the transaction and structure of the issue/offer or programme (to specify clearly whether it is a one-time issue/offer or a sukuk programme)*;
- (d) Details of the utilisation of proceeds, including its schedule where applicable*;
- (e) Primary and secondary sources of repayment;
- (f) Detailed breakdown of all upfront and recurring fees and expenses for the issue/programme;
- (g) Waiver(s) from complying with *Sukuk Guidelines* and other relevant guidelines of the SC obtained for the proposed issue/programme (if any);
- (h) Specific approval sought and obtained from the SC in relation to the appointment of an independent Shariah adviser and/or applicable Shariah principle or concept;
- (i) Conflict-of-interest situations and appropriate mitigating measures;
- (j) Detailed information of the existing PDS, sukuk issue and/or loans to be refinanced by the proposed issue/programme, where applicable;
- (k) A copy of the letter from credit rating agency(s) pertinent to the credit rating for the issue or offer;
- (l) Shariah certification issued by Shariah adviser in relation to the sukuk issue (in the manner prescribed in paragraph 7.01(b) of the guidelines)*;
- (m) Any other material information in relation to the issue/programme*;
and
- (n) Names, telephone numbers, facsimile number and e-mail address of the officers-in-charge for the issue*.

1.02 Principal terms and conditions of the Proposal (as per Part B below)

- 1.03 Issuer's declaration (as provided in Appendix 3)
- 1.04 Copies of approval letters from all other relevant regulatory authorities
- 1.05 Latest audited financial statements of the issuer
- 1.06 Compliance checklist on the *Sukuk Guidelines*

B. PRINCIPAL TERMS AND CONDITIONS OF THE PROPOSAL

2.01 Background Information

- (a) Issuer (where the issuer is a special purpose vehicle and is a conduit to another entity which receives proceeds from the proposed issue or offer, the following information on the said entity shall also be provided):
 - (i) Name
 - (ii) Address
 - (iii) Business registration no.
 - (iv) Date and place of incorporation
 - (v) Date of listing
 - (vi) Status – (please indicate either resident controlled company or non-resident controlled company)
 - (vii) Principal activities
 - (viii) Board of directors
 - (ix) Structure of shareholdings and names of shareholders or, in the case of a public company, names of all substantial shareholders
 - (x) Authorised and paid-up capital
- (b) Originator (in the case of ABS)
 - (i) Name
 - (ii) Address
 - (iii) Business registration no.
 - (iv) Date and place of incorporation
 - (v) Date of listing
 - (vi) Status – (please indicate either resident controlled company or non-resident controlled company)
 - (vii) Principal activities
 - (viii) Board of directors
 - (ix) Structure of shareholdings and names of shareholders or, in the case of a public company, names of all substantial shareholders
 - (x) Authorised and paid-up capital

2.02 Principal Terms and Conditions

- (a) Names of parties involved in the proposed transaction, (where applicable)
 - (i) Principal adviser
 - (ii) Lead arranger
 - (iii) Co-arranger
 - (iv) Solicitor
 - (v) Financial adviser
 - (vi) Technical adviser

- (vii) Trustee
 - (viii) Guarantor
 - (ix) Valuer
 - (x) Facility agent
 - (xi) Primary subscriber (under a bought-deal arrangement) and amount subscribed
 - (xii) Underwriter and amount underwritten
 - (xiii) Shariah adviser
 - (xiv) Central depository
 - (xv) Paying agent
 - (xvi) Reporting accountant
 - (xvii) Calculation agent
 - (xviii) Others (please specify)
- (b) Facility description (including the description of Islamic principle)
 - (c) Issue/programme size
 - (d) Tenure of issue/sukuk programme (or facility)
 - (e) Availability period of sukuk programme (or facility)
 - (f) Profit/coupon/rental rate
 - (g) Profit/coupon/rental payment frequency
 - (h) Profit/coupon/rental payment basis
 - (i) Security/collateral (if any)
 - (j) Details on utilisation of proceeds by issuer/obligor and originator (in the case of ABS). If proceeds are to be utilised for project or capital expenditure, description of the project or capital expenditure, where applicable
 - (k) Sinking fund and designated accounts (if any)
 - (l) Rating
 - Credit rating(s) assigned (Please specify if this is an indicative rating or if the credit rating is not assigned for the full amount in the case of sukuk programme, adequate disclosures under paragraph 10.02 of these guidelines to be made)
 - Name of rating agency
 - (m) Mode of issue
 - (n) Selling restriction, including tradability (i.e. tradable or non-tradable)
 - (o) Listing status and types of listing
 - (p) Other regulatory approvals required in relation to the issue, offer or invitation and whether or not obtained (please specify)
 - (q) Conditions precedent
 - (r) Representations and warranties
 - (s) Events of default (or enforcement event, where applicable)
 - (t) Covenants
 - (u) Provisions on buy-back and early redemption of sukuk
 - (v) Other principal terms and conditions for the issue

* Applicable to placement issue as stated under paragraph 6.03 of these guidelines.

APPENDIX 3

DECLARATION BY THE ISSUER

Date

The Chairman
Securities Commission Malaysia

ISSUER ...(Name of Issuer)...

Declaration under–

- **the *Sukuk Guidelines*; and**
- **the *Equity Guidelines**¹**

We, ...(Name of Issuer).... are proposing to undertake the following proposals--

- (a)
- (b)
- (c)

(hereinafter referred to as "the Proposal").

2. We confirm that after having made all reasonable enquiries, and to the best of our knowledge and belief, there is no false or misleading statement contained in, or material omission from, the information that is provided to the adviser(s)/expert(s) or to the SC in relation to the above Proposal.

3. We declare that we are satisfied after having made all reasonable enquiries that the Proposal is in full compliance with the following:

- (a) The *Equity Guidelines*¹;
- (b) The *Sukuk Guidelines*;
- (c) The *Guidelines on the Offering of Asset-Backed Securities**;
- (d) *The Trust Deeds Guidelines**;
- (e) The requirements of the Controller of Foreign Exchange with respect to the Proposal* ; and
- (f) Other requirements under the *Capital Markets and Services Act 2007* as may be applicable.

4. (Save as otherwise disclosed in the attachment accompanying this declaration)*, the Company has not–

APPENDIX 4

FORMAT FOR ELECTRONIC SUBMISSION

- 1.01 All correspondences to be submitted to the SC (except e-mails) must be accompanied by electronic copy in text-searchable format PDF (PDF-text) file in the following manner, unless otherwise stated in these guidelines:
- (a) All signed correspondences (including appendices), such as cover letters, declarations, reports, etc, should be scanned with OCR (optical character recognition) and saved as PDF-text files; and
 - (b) The PDF-text files can be submitted to the SC via a CD or e-mail (up to 10 MB in size per e-mail). The e-mail address is bondsubmission@seccom.com.my. Please indicate in the cover letters on how the PDF-text files are to be submitted concurrently, as well as the particulars of the e-mail if relevant (i.e. sender, subject, date and time sent).
- 1.02 The electronic copy of the main applications, including the registerable prospectuses and supporting documents, must be submitted in text-searchable format PDF-text files. Please ensure that the PDF-text files should be in a readable and proper condition.

APPENDIX 5

DOCUMENTS TO BE SUBMITTED AFTER OBTAINING THE APPROVAL FROM THE SC

1.01 The principal adviser(s) must submit the following information and documents to the SC via DS@seccom.com.my prior to the issue date of sukuk or the first issue under a programme:

- (a) Date of issue, size of issue and tenure of issue; and
- (b) Soft copy of the following documents (clean version in 'PDF' format):
 - (i) Information memorandum, where applicable;
 - (ii) Global Islamic MTN base prospectus, where applicable, if the information memorandum or offering circular is prepared using the base prospectus;
 - (iii) Executed trust deed, where applicable; and
 - (iv) Principal terms and conditions in the following format:
 - Font: Arial
 - Font size: 11
 - Margins (Top, Down, Right, Left): 1.25"
 - Spacing: single

1.02 The principal adviser(s) must also submit a hard copy of the following information and documents to the SC prior to the issue date (or the first issue if under a sukuk programme):

- (a) Date of issue;
- (b) Size of issue;
- (c) Tenure of issue;
- (d) Mode of issue;
- (e) Profit/coupon rate of the issue;
- (f) Names of the primary subscriber(s)/placee(s)/investor(s) and the respective amounts subscribed, primary subscription rates/yield-to-maturity;
- (g) List of tender panel members, if any;
- (h) Utilisation of the proceeds raised from the issue;

- (i) A certified true copy of the executed trust deed, if applicable;
- (j) A copy of the rating report if the issue is rated or, if the issue is unrated because it is non-transferable and non-tradable and the investor(s) does/do not require a rating, confirmation from the principal adviser(s) that both the criteria have been met; and

1.03 Confirmation from the principal adviser(s) that–

- (a) designated account(s), if any, has/have been duly established and the authorised signatory(s) to those accounts has/have undertaken/agreed to administer the designated account(s) in accordance with the provisions stated in the principal terms and conditions of the proposal;
- (b) prospective investors and relevant parties have been informed of any instance where a conflict of interest situation may arise together with the relevant mitigating measures, including the agreement from the Board of Directors of the issuer to proceed with such arrangements;
- (c) the principal adviser has notified the SC of any variation to or substitution/replacement of the underlying assets and confirmed to the SC that the Shariah adviser has given its approval for the variation or the substitution/replacement;
- (d) the principal adviser undertakes the necessary internal measures that prior to each issuance/drawdown under the proposed sukuk programme, the issuance/drawdown is in full compliance with Shariah principles;
- (e) the principal adviser has fully and clearly disclosed to all prospective investors and relevant parties of the sukuk, the details of the transaction structure, including but not limited to the risk factors of investing in the sukuk, and if any, the profit and loss sharing entitlement ratio between the investors/sukuk holders, the advance payment and purchase undertaking mechanism and the recourse available to the investors/sukuk holders; and
- (f) all other conditions of approval that has been/may be imposed by the SC has been/will be complied with.

1.04 The principal adviser(s) must submit to the SC confirmation from the Shariah adviser prior to the issue date of sukuk or the first issue under a programme, confirming that–

- (a) all documentation for the sukuk issuance have been vetted;
- (b) all documentation for the sukuk issuance have been executed in proper sequence; and
- (c) all documentation comply with Shariah requirements.

APPENDIX 6

DOCUMENTS TO BE SUBMITTED FOR OBTAINING THE APPROVAL FROM THE SC UNDER DEEMED APPROVAL PROCESS

- 1.01 An application letter for the proposal is addressed to the SC and signed by the authorised officer(s) of principal adviser, or in the case of MDB or MFI, signed by authorised officer(s) of the issuer or its adviser. The letter shall provide for the following information:
- (a) Background information on the issuer;
 - (b) Profile of directors of issuer, including IC numbers (for its Malaysian Directors) and passport numbers (for its non-Malaysian Directors);
 - (c) A description of the transaction and structure of the issue/programme;
 - (d) Details of the utilisation of proceeds, including its schedule where applicable;
 - (e) Detailed breakdown of all upfront and recurring fees and expenses for the issue/programme;
 - (f) Waiver(s) from complying with *Sukuk Guidelines* obtained for the proposed issue/programme (if any);
 - (g) Conflict-of-interest situations and appropriate mitigating measures;
 - (h) Any other material information in relation to the issue/programme; and
 - (i) Name, telephone number, facsimile number and e-mail address of the officers-in-charge for the issue;
- 1.02 Principal terms and conditions of the proposal (as per Part B of Appendix 2)
- 1.03 An information memorandum or an offering circular that provides relevant information of the sukuk programme or the issue or offer of sukuk;
- 1.04 The global Islamic MTN base prospectus, where applicable, if the information memorandum or offering circular to be read together with the base prospectus. For the purpose of these guidelines, this offering document would not be considered as a prospectus and not subjected to the legal provisions relating to a prospectus under the CMSA, except for sub-section 229(3) or 230(3) of the CMSA, if the sukuk programme or the issue, offer or invitation is made under sub-section 229(1) or 230(1) of the CMSA; and
- 1.05 A soft copy of the documents in PDF format as specified in paragraphs 1.02, 1.03 and 1.04 must also be submitted to the SC by addressing to DS@seccom.com.my.

APPENDIX 6(a)

DOCUMENTS RELATING TO SHARIAH COMPLIANCE TO BE SUBMITTED PRIOR TO SEEKING DEEMED APPROVAL PROCESS

- 1.01 A cover letter addressed to the SC* disclosing the following:
 - (a) Background information on the Issuer and/or Obligor; and
 - (b) A description of the transaction and structure diagram of the sukuk.
- 1.02 Shariah Pronouncement including detailed reasoning/justification.
- 1.03 Indicative principal terms and conditions of the Proposal (as per Part B of Appendix 2).
- 1.04 Any other supporting documents/information as may be required by the SC.

* To be addressed to Executive Director of Islamic Capital Market.

APPENDIX 7

DOCUMENTS AND INFORMATION TO BE PROVIDED TO THE SC FOR REVISION OF PRINCIPAL TERMS AND CONDITIONS

- 1.01 A letter notifying the SC of the revision and rationale for each revision, accompanied by a confirmation that the relevant requirements (as set out in paragraph 19 of these guidelines) have been duly complied with by the issuer. Also, the name, telephone number, facsimile number and e-mail address of the contact person of the principal adviser are to be disclosed in the letter should the SC require further clarification on the revision;
- 1.02 A marked-up version copy of the revised principal terms and conditions and, where applicable, the supplemental information memorandum, supplemental offering circular, executed supplemental trust deed and other issue documents;
- 1.03 Any other material information in relation to the revision including the Shariah adviser's opinion on whether or not such revision complies with the principles of Shariah together with the Shariah basis and rationale;
- 1.04 A copy of the written consent from the relevant parties in relation to the revision; and
- 1.05 A soft copy (clean version in PDF format) of the following documents to be e-mailed to DS@seccom.com.my:
 - (a) Revised principal terms and conditions in the following format:
 - Font: Arial
 - Font size: 11
 - Margins (Top, Down, Right, Left): 1.25"
 - Spacing: single
 - (b) Where applicable, the supplementary information memorandum, supplementary offering circular, executed supplementary trust deed and other issue documents.

APPENDIX 7(a)

DOCUMENTS AND INFORMATION ON SHARIAH COMPLIANCE TO BE SUBMITTED PRIOR TO NOTIFICATION

- 1.01 A cover letter addressed to the SC* disclosing the detailed description of the revised transaction and structure diagram (where applicable) of the sukuk.
- 1.02 Shariah Pronouncement including detailed Reasoning/Justification⁸.
- 1.03 Revised principal terms and conditions of the Proposal.
- 1.04 Any other supporting documents/information as may be required by the SC.

⁸ Detailed Shariah reasoning/justification is required if the revision involves changes to the structure earlier approved by the SC. For a revision which does not affect the structure of the sukuk, consent from the Shariah Adviser is required to be submitted.

* To be addressed to Executive Director of Islamic Capital Market.