



Suruhanjaya Sekuriti
Securities Commission

GUIDELINES ON UNIT TRUST FUNDS

**GUIDELINES ON ALLOWING A PERSON TO BE APPOINTED
OR TO ACT AS TRUSTEE UNDER SUBSECTION 99(1)
OF THE SECURITIES COMMISSION ACT 1993**

**GUIDELINES ON ALLOWING
A PERSON TO BE APPOINTED OR TO ACT
AS TRUSTEE UNDER SUBSECTION 99(1) OF
THE SECURITIES COMMISSION ACT 1993**

Issued By:

Securities Commission

2nd Edition: 1 April 2003

Updated: 30 September 2003

CONTENTS

	PAGE
Chapter 1 GENERAL	1-1
Chapter 2 APPLICATION	2-1
Chapter 3 ELIGIBILITY CRITERIA AND REQUIREMENTS	3-1
Chapter 4 TERMS AND CONDITIONS OF APPROVAL	4-1
Chapter 5 PROCEDURES AND FORMAT OF SUBMISSIONS OF APPLICATIONS/DOCUMENTS	5-1
APPENDIX 1	A-1

Chapter 1

GENERAL

- 1.01 The purpose of these guidelines is to set out the policy of the Securities Commission (SC) in relation to the approval of persons to be appointed or to act as trustees for unit trust funds under subsection 99(1) of the *Securities Commission Act 1993* (SCA). The approval of the SC is required in situations where conflict of interests arises from the position of the trustee with the interests of unit holders, by virtue of the relationship between the trustee and the management company in the instances set out in subsections 99(1)(a) to (c) SCA.
- 1.02 An approval granted by the SC under subsection 99(1) SCA and these guidelines shall not, however, absolve trustees appointed to act as trustees of unit trust funds from their duties and responsibilities as trustees, as imposed on them under the deeds of such funds, the relevant guidelines governing the operation of unit trust funds, the securities laws and by other general laws.

Chapter 2

APPLICATION

- 2.01 These guidelines will apply in relation to trustees to be appointed or to act as trustees of unit trust funds. Under these guidelines, a trustee may be eligible to be appointed or to act as a trustee of a unit trust fund, provided that it can satisfy the criteria and requirements as specified in Chapter 3 of these guidelines. An approval granted under these guidelines will also be made subject to the conditions set out in Chapter 4 herewith.
- 2.02 The application for approval to be appointed or to act as trustee by a person referred to in subsection 99(1) SCA shall be made in accordance with the procedures specified under Chapter 5 of these guidelines, together with the documents specified hereunder.

Chapter 3

ELIGIBILITY CRITERIA AND REQUIREMENTS

3.01 A person will be allowed to be appointed or to act as a trustee of a unit trust fund if the following are met:

- (1) The relationship between the trustee seeking approval and related corporation of the trustee who is a person referred to in subsection 99(1)(a) to (c) SCA must exhibit legal and structural separation;

Note

- (a) In order to obtain an approval of the SC under these guidelines, the trustee and the persons set out under subsection 99(1)(a) to (c) SCA must be separate legal entities.
 - (b) An approval under these guidelines will not be granted where the trustee is a subsidiary of the management company or vice versa.
- (2) The trustee seeking approval must be financially independent of, and not reliant on, support from the management company;

Note

- (a) In order to obtain an approval of the SC under these guidelines, the trustee must not be reliant on any form of financial support from the management company, other than under the circumstances provided under subsection 99(3)(a) SCA relating to entitlement to monies payable under the provisions and covenants of the deed of the fund in its capacity as trustee. This would include a beneficial debtor-creditor relationship between

the management company and the trustee (including by way of a loan facility or other financial accommodation). Nonetheless, relationships between the management company and the trustee arising from provision of deposits or loans between persons referred to in subsections 99(1)(a) to (c) SCA and the trustee which are made in the ordinary course of business on similar terms and conditions available to unrelated parties and goods and services provided on an arm's length basis and on commercial terms are excluded, and therefore regarded as acceptable.

- (3) The non-financial resources of the trustee seeking approval must be sufficiently independent of the non-financial resources of the management company;

Note

- (a) In order to obtain an approval of the SC under these guidelines, the trustee must ensure that there is no commonality of usage and sharing of its non-financial resources with the management company. There must be established, sufficient independence and separation of its non-financial resources, such as human resources, information systems, business equipment, computer facilities, etc., from the non-financial resources of the management company.
- (b) With regard to non-financial services provided by the persons referred to in subsections 99(1)(a) to (c) SCA to the trustee, such services must at all times be provided on commercial terms and an arm's length basis, which would not in any way diminish the trustee's independence. Such terms must provide for the following:

- (i) That the trustee has unrestricted access to the relevant resources it requires to perform its functions;
 - (ii) That the trustee keeps its information confidential, except if the trustee authorises otherwise;
 - (iii) Unless it defaults or its term expires, the agreement may only be terminated if the trustee agrees; and
 - (iv) If the trustee is terminated, any records it has, or that are kept on its behalf, remain its property.
- (4) At least one-third of the directors on the board of directors of the trustee seeking approval must comprise independent directors (independent of the persons set out in subsections 99(1)(a) to (c) SCA);

Note

- (a) In order to obtain the approval of the SC under these guidelines, at least one-third of the board of directors of the trustee must consist of independent directors. This is to be specifically stipulated in the trustee's articles of association. An independent director refers to a person who is independent from management and who is free from any business or other relationship which could interfere with the exercise of independent judgement when acting as member of the board or the ability to act in the best interests of the unit holders.
- (b) For purposes of clarity, but without limiting the generality of the foregoing, an independent director is a person who–
 - (i) is not an executive director of the persons set out in subsections 99(1)(a) to (c) SCA;

- (ii) has not been, within the last two years, and is not an officer (except as an independent director) of the persons set out in subsections 99(1)(a) to (c) SCA. For this purpose, "officer" has the same meaning as is assigned to that expression in section 4 of the *Companies Act 1965*;
- (iii) is not a major shareholder of the persons set out in subsections 99(1)(a) to (c) SCA. For this purpose:
 - "Major shareholder" is defined as a person who has an interest or interests in one or more voting shares in a company and the nominal amount of that share, or the aggregate of the nominal amounts of those shares, is not less than 5% of the aggregate of the nominal amounts of all the voting shares in the company; and
 - "Interest in shares" has the same meaning to that expression in section 6A of the *Companies Act 1965*;
- (iv) is not a relative of any executive director, officer or major shareholder of the persons set out in subsections 99(1)(a) to (c) SCA. For this purpose, "relative" means the spouse, parent, brother, sister, child (including adopted or step child) and the spouse of such brother, sister or child;
- (v) is not acting as a nominee or representative of any executive director or major shareholder of the persons set out in subsections 99(1)(a) to (c) SCA;
- (vi) is not engaged as a professional adviser by the persons set out in subsections 99(1)(a) to (c) SCA either personally or through a firm or company of

which he is a partner, director or major shareholder, as the case may be; or

(vii) has not within the last two years and does not engage in any transaction with the persons set out in subsections 99(1)(a) to (c) SCA, whether by himself or with other persons or through a firm or company of which he is a partner, director or major shareholder, as the case may be, the value of which exceeds RM250,000.

(5) No person is a director of both the board of directors of the trustee seeking approval and the management company; and

Note

(a) In order to obtain an approval of the SC under these guidelines, there must be no common directors sitting on both the boards of directors of the trustee and the management company.

(6) Both the trustee seeking approval and the management company must sign an undertaking that they will act independently of each other in their dealings with the fund.

Note

(a) In order to obtain an approval of the SC under these guidelines, an undertaking must be executed between the trustee and management company that they will act independently of each other in their dealings with the fund under trusteeship.

Chapter 4

TERMS AND CONDITIONS OF APPROVAL

4.01 The terms and conditions under clauses 4.02 and 4.03 must be satisfied during the tenure of the appointment of the trustee for the approval under subsection 99(1) SCA and these guidelines to subsist.

4.02 Disclosures in Prospectuses and Annual Reports of Funds

- (1) There must be adequate disclosures in the prospectuses and annual reports of funds (where applicable), including the following:
 - (a) Disclosure on the group and legal structure of the trustee and management company;
 - (b) Disclosure on commercial obligations (if any) between the trustee and management company of the fund and the aggregate value of commercial transactions conducted during the year;
 - (c) Declaration of financial independence of the trustee and management company;
 - (d) The investment instruments which the fund has invested in for the period concerned, for which the trustee is also a trustee of (e.g. investments in public debt securities);
 - (e) Declaration by the trustee and the management company that they will carry out transactions on an arm's length basis and on terms which are best available for the fund, as well as act at all times in the best interests of the fund's unit holders;

- (f) Declaration that there are adequate procedures and processes in place to prevent or control conflicts of interest;
- (g) Declaration of events of conflict (if any) during the period concerned and what measures were taken to address such conflicts;
- (h) Disclosure by the board of directors of the trustee whether they have satisfied the requirement to fairly reflect through representation, the interests of unit holders, by way of having at least one-third of the board members as independent directors; and
- (i) Declaration by the board of directors of the trustee and management company as to whether the requirements of these guidelines have been complied with during the period concerned.

4.03 Requirements under Guidelines and Conditions to Remain Fulfilled

- (1) An approval granted under subsection 99(1) SCA and these guidelines shall remain in force insofar as the requirements and conditions stated under these guidelines remain subsisting/satisfied during the tenure of appointment of the trustee.
- (2) Should there be a lapse in the state of compliance, or a failure to comply with the requirements imposed, or a breach of a term or condition attached to the approval, or a contravention of the SCA, resulting in the inability of the trustee to act independently, the SC reserves the right to revoke the approval granted in respect of a person appointed to act as trustee under subsection 99(1) SCA, by virtue of subsection

99(6) SCA. Further, nothing stated in these guidelines shall prejudice the right of the SC to enforce legal provisions and/or institute legal proceedings against trustees under subsection 99(7) SCA.

Chapter 5

PROCEDURES AND FORMAT FOR SUBMISSIONS OF APPLICATIONS/DOCUMENTS

5.01 General

- (1) Pursuant to clause 2.02 of these guidelines, the submitting party must submit to the SC the application/documents according to the requirements stated below or any other requirements that the SC may specify from time to time.
- (2) The submitting party should ensure that the submission complies with the requirement for supporting documents before such submission is made to the SC. Should the SC feel that the submission made is not satisfactory or incomplete, the SC reserves the right to return the submission.
- (3) The SC reserves the right to request for additional information and any other form of undertaking, as the case may be, from the submitting party, to support the submission, where deemed necessary.

5.02 Procedures for Submissions

- (1) Submissions to the SC should be made in *two sets*, which comprise at least the following:
 - (a) Covering letter specifying–
 - (i) the approval sought; and
 - (ii) summary of proposal;

- (b) Letter by the proposed management company (for new funds) or the management company (for existing funds) confirming the proposed appointment of the trustee;
- (c) A declaration letter, as per Appendix I of Schedule B of the *Guidelines on Unit Trust Funds*; and
- (d) Supporting documents, including–
 - (i) corporate information of the trustee as well as information on structure and operations of the trustee;
 - (ii) detailed curriculum vitae (including addresses, qualifications and working experience) of the directors, chief executive officer, and key management staff of the trustee;
 - (iii) latest audited accounts and directors' report of the trustee;
 - (iv) latest external auditors' management report, if any, on the trustee;
 - (v) the trustee's memorandum and articles of association;
 - (vi) the trustee's internal control procedures and manual;
 - (vii) a declaration by the trustee that the compliance and internal control system is in place and is adequate to ensure compliance with the requirements of the deed, these guidelines and the securities laws;

- (viii) an undertaking by the management company and the trustee that they will act independently of each other in their dealings with the fund under trusteeship;
 - (ix) information on the proposed fund to be under the trustee's trusteeship, or where it is an existing fund, a list of the fund(s) applicable;
 - (x) a copy of the deed of the proposed fund (for new funds) or fund(s) proposed to be under trusteeship of the trustee (for existing funds); and
 - (xi) a declaration by the proposed trustee on compliance with the guidelines (in the form provided in Appendix I).
- (2) Payment, 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) Regulations 2000*.

Trustee's Declaration on Compliance with Guidelines on Allowing a Person to Be Appointed or to Act as Trustee under Subsection 99(1) of the Securities Commission Act 1993

Date:

The Chairman
Securities Commission

Dear Sir

(Name of trustee)

Proposed Appointment of Trustee for the Establishment of (name of fund) **comprising ____ Million Units of RM____ each** (where proposal relates to new unit trust scheme); or **Proposed Appointment of Trustee for** (name of fund) (where proposal relates to existing scheme).

(Where the appointment of a trustee in respect of the establishment of a new unit trust scheme):

We (name of trustee), have been appointed as a trustee by (name of management company) on its proposal to establish _____ Fund comprising _____ million units of RM____ each.*

(Where the appointment of a trustee in respect of an existing unit trust scheme):

We (name of trustee), have been appointed as a trustee by (name of management company) in respect of _____ Fund.*

We declare that we are eligible to be appointed or to act as a trustee in respect of the above scheme and have fully complied with the Securities Commission's *Guidelines on Allowing a Person to Be Appointed or to Act as Trustee under Subsection 99(1) of the Securities Commission Act 1993*. We shall continue to comply with these requirements while we act as trustee in respect of the above scheme.

The above declaration has been signed by me as (designation) of (name of trustee) pursuant to the authority granted to me by a resolution of the board of directors of the trustee on (date of resolution).

Yours faithfully

.....

Name:

Designation:

Name of trustee:

Address:

**Delete if paragraph is not applicable*

