



**Suruhanjaya Sekuriti**  
Securities Commission

# **GUIDELINES ON THE OFFERING OF PRIVATE DEBT SECURITIES**

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## 1.0 INTRODUCTION

- 1.01 With effect from 1 July 2000, any person who issues, offers for subscription or purchase, or makes an invitation to subscribe for or purchase ("issue, offer or make an invitation"), debentures would require the approval of the SC under section 32 of the *Securities Commission Act 1993* (SCA ). This would include private debt securities, such as, bonds, notes, loan stocks and commercial papers, whether convertible into equity or not and whether redeemable or otherwise.
- 1.02 For the purposes of the *Guidelines on the Offering of Private Debt Securities*, an approval from the SC would not be required if the transaction is exempted under Schedule 1 SCA or if the instrument or transaction is exempted from the definition of "debenture" under sub-section 2(1) SCA.
- 1.03 These guidelines stipulate the criteria which must be met with regard to any issue, offer or invitation of private debt securities which comes under the ambit of the SCA. However, any issue, offer or invitation of Islamic securities would not fall under these guidelines but under the *Guidelines on the Offering of Islamic Securities* released by the SC on 26 July 2004.
- 1.04 Any person who seeks the approval of the SC under these guidelines should also ensure that such a person complies with the registration and disclosure requirements in respect of prospectuses and trust deeds as may be applicable under the SCA.
- 1.05 For the purposes of these guidelines:
- (a) the term "debenture" has the meaning assigned to it under sub-section 2(1) SCA and is used synonymously with the term "private debt securities"; and
  - (b) The terms "adviser" and "principal adviser" have the meanings assigned to it under the *Policies and Guidelines on Issue/Offer of Securities* (Issues Guidelines).

1.06 A public company should also ensure that the requirements in the Issues Guidelines applicable to it in general, are complied with in respect of all corporate transactions undertaken by it. Further, any issue, offer or invitation of private debt securities by a public company which is-

(a) capable of being converted into equity howsoever (example: convertible loan stocks, irredeemable convertible loan stocks and convertible bonds); or

(b) part of a composite scheme,

would be subject to the requirement stipulated in the Issues Guidelines.

## **2.0 SUBMISSION OF PROPOSALS UNDER THESE GUIDELINES**

2.01 Below are categories of persons that may act as principal adviser for the following types of proposals:

**Merchant banks,  
commercial banks,  
universal brokers or  
discount houses**

- All proposals of private debt securities that are not capable of being converted into equity howsoever.

**Merchant banks or  
universal brokers**

- All proposals of private debt securities that are capable of being converted into equity.
- All proposals of private debt securities together with warrants.
- All proposals of private debt securities which are part of a composite scheme.

## **3.0 OFFERINGS OF PRIVATE DEBT SECURITIES UNDER A SHELF REGISTRATION SCHEME**

3.01 Notwithstanding paragraph 1, any issue, offer or invitation of private debt securities under a shelf registration scheme can only be made in respect of private debt securities which are not capable of being converted into equity howsoever and which have no warrants attached.

3.02 Where a person seeks to issue, offer or make an invitation for private debt securities under a shelf registration scheme, such a person must comply with these *Guidelines on the Offering of Private Debt Securities* as well as the *Securities Commission (Shelf Registration Scheme for Debentures) Regulations 2000* and any guidelines in relation thereto.

#### **4.0 DOCUMENTS/INFORMATION REQUIRED**

4.01 In relation to any issue, offer or invitation made pursuant to these guidelines, the issuer and principal adviser must submit to the SC such documents and information as set out in Appendix 1 as well as declarations as set out in Appendix 2.

4.02 Additionally, where the Issues Guidelines would apply to an issue, offer or invitation of private debt securities by a public company, the issuer and principal adviser shall submit such additional information and documents as may be required under the Issues Guidelines.

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

#### **5.0 ELIGIBLE PERSONS**

5.01 Any person who is a corporation within the meaning of sub-section 2(1) SCA is eligible under these guidelines.

5.02 This 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 public 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.

## **6.0 OTHER REGULATORY APPROVALS**

6.01 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 submission of any written declarations and information to the SC under these guidelines. Any conditions imposed by such regulatory bodies, if applicable, must continue to be complied with throughout the tenor of the private debt securities approved under these guidelines.

## **7.0 RATING REQUIREMENT**

7.01 All issues, offers or invitations that come within the scope of these guidelines must be rated by a rating agency recognised by the SC. An indicative rating must have been obtained by the issuer at the time of submission of the declarations and information to the SC pursuant to paragraph 4.01.

7.02 Notwithstanding paragraph 7.01, a rating is not required for any issue, offer or invitation of-

- (a) irredeemable convertible loan stocks; or
- (b) such private debt securities-
  - (i) which are non-transferable and non-tradable; and
  - (ii) whose investors do not require a rating.

In the case of private debt securities falling under paragraph 7.02(b) the principal adviser must confirm in writing to the SC that both criteria have been met.

7.03 Where the credit rating of any issue, offer or invitation is below investment grade, the issuer must disclose the extent of credit risk to investors and their advisers in order to evaluate the risks relating to the private debt securities.

## **8.0 UNDERWRITING**

8.01 The underwriting of any issue, offer or invitation shall be decided by the issuer and its principal adviser.

8.02 In the event that the issuer and its principal adviser should decide that no underwriting or only partial underwriting is required, the issuer must state the minimum level of subscription necessary to achieve the funding objectives of the issuer.

8.03 Paragraph 8.02 need not apply where-

- (a) the utilisation of proceeds is solely for working capital purposes; and
- (b) the issuer has in place alternative funding arrangements.

8.04 Unless otherwise allowed in writing by the SC, where any issue, offer or invitation is under-subscribed and cannot meet the minimum level of subscription as required under paragraph 8.02, the issue, offer or invitation must be aborted and any consideration received for the purposes of subscription, where applicable, must be immediately returned to all subscribers.

## **9.0 MODE OF ISSUE**

9.01 All issues of private debt securities under these Guidelines must be reported and/or tendered on the Fully Automated System for Issuing/Tendering

("FAST") unless a listing is sought on any Malaysian stock exchange. The issuer and principal adviser must ensure that the issue complies with all rules and requirements of FAST.

9.02 Save for paragraph 11.01, all issues of private debt securities that are subject to these guidelines must be made under the Real Time Electronic Transfer of Funds and Securities ("RENTAS") system unless a listing is sought on any Malaysian stock exchange. The issuer and principal adviser must ensure that the issue complies with all rules and requirements of the RENTAS system.

## **10.0 UTILISATION OF PROCEEDS**

10.01 Any funds raised from any issue, offer or invitation in Malaysia must not be channelled to finance such activities as may be announced by the National Bond Market Committee from time to time.

10.02 Funds raised in Malaysia by any person, including funds raised by any non-resident and non-resident controlled company, as defined under ECM Notices 1 and 8 respectively, shall comply with any requirements and regulations as may be issued by the Controller of Foreign Exchange from time to time.

## **11.0 ADDITIONAL REQUIREMENTS FOR DEBT PROGRAMMES**

11.01 Where a debt programme involves an issuance of commercial papers or a combination of medium term notes and commercial papers-

- (a) the tenor for such programmes must not exceed 7 years; and
- (b) the issuance of private debt securities under the programme is not required to be made under the RENTAS system.

11.02 In all other debt programmes, (for example, stand-alone MTN programmes) the 7-year tenor restriction will not apply. However, issuers must state upfront the size and tenor of the programme at the point of submission to the SC.

11.03 In all debt programmes falling within paragraphs 11.01 and 11.02, issuers are also required to disclose to prospective investors the following information prior to each draw-down:

- Size of issue
- Utilisation of proceeds
- Minimum level of subscription (where applicable)
- Tenor
- Revisions of the rating, if any, since the date of the last draw-down

## **12.0 TIME FRAME FOR APPROVALS FROM THE SC**

12.01 The SC would give its approval within 14 working days from the date of receipt of all declarations, complete information and documentation as required under these Guidelines in the following cases:

- (a) Any issue, offer or invitation in respect of private debt securities that are not capable of being converted into equity howsoever;
- (b) Any issue, offer or invitation in respect of private debt securities, together with warrants, that are not capable of being converted into equity howsoever; and
- (c) Any issue, offer or invitation of private debt securities by a private company.

12.02 In circumstances where the Issues Guidelines would apply to the issue, offer or invitation of private debt securities, the time frame for approval by the SC set out under those Guidelines would apply.

12.03 Except in the case of a shelf registration scheme or a debt programme, any approval given by the SC under these guidelines must be implemented within six months from the date of the approval of the SC.

12.04 In the case of a shelf registration scheme or a debt programme, the initial draw-down must be made within 2 years from the date of the approval of the SC.

**1.0 Information 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 Asset-Backed Securities (ABS) issue;
- (b) Profile of Directors of Issuer;
- (c) A description of the transaction and structure of the issue;
- (d) Details of the utilisation of proceeds. If proceeds are to be utilised for project, details of the project;
- (e) A schedule of utilisation of the issue proceeds;
- (f) Details of expenses for the issue;
- (g) Waiver(s) from complying with PDS Guidelines and/or specific approval pursuant to the *Securities Commission Act 1993* sought and obtained from the SC for the issue (where applicable);
- (h) Conflict of interest situations and appropriate mitigating measures;
- (i) For issuances made for the purpose of refinancing an existing PDS issue, information on the existing PDS issue;
- (j) Any other material information in relation to the issue; and
- (k) Names, telephone numbers and facsimile number of the officers-in-charge of Principal Adviser for the issue.

1.02 Principal terms and conditions of the Proposal

1.03 Principal terms and conditions of warrants, in the case of a PDS issue with warrants

1.04 Issuer's and principal adviser's declaration (Appendix 2)

- 1.05 Principal adviser's confirmation on compliance with all requirements of the Controller of Foreign Exchange in accordance with the Exchange Control Guidelines
- 1.06 Latest audited accounts of the issuer
- 1.07 Compliance checklist on the *Guidelines on the Offering of Private Debt Securities*
- 1.08 In the case where the Issuer is a public company – Declarations in accordance with Chapter 4 of the Issues Guidelines
- 1.09 In the case of a PDS with warrants issue:
  - (a) Term and conditions of the warrants;
  - (b) Financial effects of the warrants issue;
  - (c) Rationale for the attachment of warrants; and
  - (d) Compliance checklist on the Issues Guidelines with respect to warrants issue.

## **2.0 Information to be Submitted after Obtaining the Approval of the SC**

- 2.01 In the case of debt programmes, issuer's notification to the SC of the following information following each draw-down:
  - (a) Size of issue;
  - (b) Mode of issue;
  - (c) Utilisation of proceeds;
  - (d) Minimum level of subscription (where applicable);
  - (e) Tenor;
  - (f) Actual yield or price; and
  - (g) Revisions of the rating, if any, since the date of the last draw-down

### **3.0 Principal Terms and Conditions of the Proposal**

#### 3.01 Background Information

- (a) Issuer
  - (i) Name
  - (ii) Address
  - (iii) Business registration no.
  - (iv) Date/place of incorporation
  - (v) Date of listing (in case of a public listed company)
  - (vi) Status : (resident/non-resident controlled company  
: Bumiputera/non-Bumiputera controlled company<sup>\*</sup>)
  - (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 asset-backed securities)
  - (i) Name
  - (ii) Address
  - (iii) Business registration no.
  - (iv) Date/place of incorporation
  - (v) Date of listing (in case of a public listed company)
  - (vi) Status : (resident/non-resident controlled company  
: Bumiputera/non-Bumiputera controlled company<sup>\*</sup>)
  - (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.

#### 3.02 Principal Terms and Conditions

- (a) Names of parties involved in the proposed transaction, (where applicable)
  - (i) Principal adviser(s)/lead arranger(s)
  - (ii) Arranger(s)
  - (iii) Valuers
  - (iv) Solicitors
  - (v) Financial adviser
  - (vi) Technical adviser

<sup>\*</sup> as defined in [Guidance Note 6 of the Issues Guidelines](#)

- (vii) Guarantor
  - (viii) Trustee
  - (ix) Facility agent
  - (x) Primary subscriber(s) and amount subscribed (where applicable)
  - (xi) Underwriter(s) and amount underwritten
  - (xii) Central Depository
  - (xiii) Paying Agent
  - (xiv) Reporting Accountant
  - (xv) Others (please specify)
- 
- (b) Facility description
  - (c) Issue size (RM)
  - (d) Issue price (RM)
  - (e) Tenor of the facility/issue
  - (f) Interest/coupon (%) (please specify)
  - (g) Interest/coupon payment frequency
  - (h) Interest/coupon payment basis
  - (i) Yield to maturity (%)
  - (j) Security/collateral (if any)
  - (k) Details on utilisation of proceeds
  - (l) Sinking fund (if any)
  - (m) Rating
    - Credit rating assigned ([Please specify if this is an indicative rating])
    - Name of rating agency
  - (n) Form and denomination
  - (o) Mode of issue
  - (p) Selling restriction

- (q) Listing status
- (r) Minimum level of subscription (RM or %)
- (s) Other regulatory approvals required in relation to the issue, offer or invitation and whether or not obtained (please specify)
- (t) Conditions precedent
- (u) Representations and warranties
- (v) Events of default
- (w) Principal terms and conditions for warrants (where applicable)
- (x) Other principal terms and conditions for the issue

**Declaration by the Issuer**

Date: ...(Date of Application)...

The Chairman  
Securities Commission

Dear Sir

**ISSUER ...(Name of Issuer)...**  
**Declaration Pursuant to:**

- **Paragraph 4.01 of the *Guidelines on the Offering of Private Debt Securities*, and**
- **Paragraph 16.02(a) of the *Policies and Guidelines on Issue/Offer of Securities* \***

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 *Policies and Guidelines on Issue/Offer of Securities*<sup>1</sup>;
- (b) The *Guidelines on the Offering of Private Debt Securities*;
- (c) The *Guidelines on the Offering of Asset-Backed Securities* as may be applicable to the issuer during the tenor of the Proposal\* ;
- (d) The requirements of the Controller of Foreign Exchange with respect to the Proposal\* ; and
- (e) Other requirements under the *Securities Commission Act 1993* as may be applicable.

4. Save as otherwise disclosed in the attachment accompanying this declaration, the Company<sup>2</sup> has not-

- (a) been convicted or charged with any offence under the securities laws, corporations laws or other laws involving fraud or dishonesty in a court of law, for the last 10 years prior to the submission; and
- (b) been subject 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 submission.

5. We declare the following:

- (a) the Proposal involves/does not involve any acquisition of substantial foreign assets, in accordance with Chapter 11 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>3</sup>;
- (b) the Proposal results/does not result in a significant change in the business direction of the listed company, in accordance with Chapter 12 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>4</sup>;
- (c) the Issuer is/is not a distressed listed company, in accordance with Chapter 13 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>5</sup>;
- (d) the Proposal is/is not a related-party transaction in accordance with Chapter 10 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>6</sup>;

6. We declare that we will ensure continuous compliance with the requirements and conditions imposed by the SC in relation to the above Proposal.

7. We undertake to provide to the SC all such information as the SC may require in relation to the Proposal.

The above Declaration has been signed by me as ...(designation of director)... of the Issuer pursuant to authority granted to me by a resolution of the Board of Directors on ...(date of resolution)...

Yours faithfully,

.....

Signature

Name:

Name of Issuer:

Date:

## Notes

- 1                   Applicable only in relation to Proposals falling under the *Policies and Guidelines on Issue/Offer of Securities*. Where an application is being made to the SC for proposals under the assessment approach and exemptions are being sought, to insert the words "except paragraph(s) ..(refer to paragraph where exemption is being sought).. where exemption(s) is/are being sought as part of the submission to the SC."
- 2                   Applicable only to proposals in relation to public companies.
- 3                   Applicable only to the issue, offer or listing of equity or equity-linked securities by public companies.
- 4, 5, 6             Applicable only to proposals in relation to listed companies.

\* To delete if not applicable

**Declaration by the Principal Adviser**

Date: ...(Date of Application)...

The Chairman  
Securities Commission

Dear Sir

**ISSUER ...(Name of Issuer)...**  
**Declaration Pursuant to:**

- **Paragraph 4.01 of the *Guidelines on the Offering of Private Debt Securities*; and**
- **Paragraph 16.02 of the *Policies and Guidelines on Issue/Offer of Securities* \***

...(Name of Issuer).... is proposing to undertake the following proposals:-

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

(hereinafter referred to as "the Proposal").

We,..(Name of Principal Adviser)...., are advising ..(Name of Issuer).. on 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 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 *Policies and Guidelines on Issue/Offer of Securities*<sup>1</sup>;
- (b) The *Guidelines on the Offering of Private Debt* ;
- (c) The *Guidelines on the Offering of Asset-Backed Securities* \* ;
- (d) The requirements of the Controller of Foreign Exchange with respect to the Proposal\* ; and
- (e) Other requirements under the *Securities Commission Act 1993* as may be applicable.

4. We declare the following:-

- (a) the Proposal involves/does not involve any acquisition of substantial foreign assets, in accordance with Chapter 11 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>2</sup>;
- (b) the Proposal results/does not result in a significant change in the business direction of the listed company, in accordance with Chapter 12 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>3</sup>;
- (c) the Issuer is/is not a distressed listed company, in accordance with Chapter 13 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>4</sup>;
- (d) the Proposal is/is not a related-party transaction in accordance with Chapter 10 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>5</sup>;

5. We undertake to immediately inform the SC if it has come to our knowledge that the Issuer has breached or failed to comply with such requirements, after submission of this declaration relating to the Proposal until the implementation of the Proposal.

6. We undertake to provide to the SC all such information as the SC may require in relation to the Proposal.

Yours faithfully

.....

Signature

Name:

Name of Principal Adviser:

Date:

\* To delete if not applicable

## Notes

- 1                   Applicable only in relation to Proposals falling under the *Policies and Guidelines on Issue/Offer of Securities*. Where an application is being made to the SC for proposals under the assessment approach and exemptions are being sought, to insert the words "except paragraph(s) ..(refer to paragraph where exemption is being sought).. where exemption(s) is/are being sought as part of the submission to the SC."
- 2                   Applicable only to the issue, offer or listing of equity or equity-linked securities by public companies.
- 3, 4, 5             Applicable only to proposals in relation to listed companies.

\* To delete if not applicable