



Suruhanjaya Sekuriti
Securities Commission

GUIDELINES ON THE MINIMUM CONTENTS REQUIREMENTS FOR TRUST DEEDS

1st July 2000

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1. Introduction

1.1 With effect from 1st July 2000, the new provisions under Division 4 of Part IV of the Act alter the present regulatory scheme for trust deeds in a number of ways:

- Where a debenture issue, offer or invitation is made by any corporation (including public or private limited companies), there is now a positive requirement for such issue, offer or invitation to have a trust deed; and
- These Guidelines provide for the minimum contents requirements for such trust deed.

1.2 The requirements as stipulated under these Guidelines are in addition to all requirements imposed on a borrower, guarantor and trustee under the law which includes the provisions of the Act. It is not intended for these Guidelines to derogate from any requirement of the law.

1.3 These Guidelines seek to strengthen protection given to debenture holders. However, they do not seek to impose worded clauses in any trust deed in relation to debentures. Therefore, parties are free to determine additional provisions, covenants or terms and conditions of debentures and/or trust deeds over and above that which is stipulated in these Guidelines.

1.4 Listed corporations should additionally comply with such requirements pertaining to trust deeds as may be required by rules of any Malaysian stock exchange.

2. Interpretation

2.1 In these Guidelines unless the contrary is expressly stated, the following words have the following meanings:

“Act” means the Securities Commission Act 1993;

“debenture” has the same meaning as in section 2 of the Act;

“borrower” has the same meaning as in section 2 of the Securities Commission Act 1993. In the case of Islamic debentures, the term “borrower” in these Guidelines refers to the entity who receives proceeds or money from the debenture issue, offer or invitation.

“FAST means the Fully Automated System for Tendering;

“RENTAS” means Real Time Electronic Transfer of Funds and Securities System.

3. Scope

3.1 Pursuant to section 67 of the Act, any person who proposes to issue, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, debentures, must enter into a trust deed that meets the requirements of section 68 of the Act and these Guidelines.

3.2 These Guidelines do not apply to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures as specified in Schedule 4 of the Act which is attached as Appendix 1 for ease of reference.

3.3 For purposes of these Guidelines, where relevant, parties may negotiate for references to borrower to include references to its

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subsidiaries where the affairs of its subsidiaries may impact on the ability of the borrower to repay amounts payable under the debentures.

- 3.4 Where any provision stated in the Guidelines is based on a test of “materiality”, that test shall be decided upon by the relevant parties.

4. Preamble and Recitals

- 4.1 The following must be provided for in the preamble and recitals of the trust deed in relation to the issue of, offer for subscription or purchase of, or an invitation to subscribe for or purchase, debentures:

- (i) the identities of the parties to the trust deed;
- (ii) a brief description of the debentures including the amount and maturity of the debentures as well as the interest or profit rate (where applicable);
- (iii) a statement confirming that the relevant board and/or shareholders’ resolution(s) and regulatory approvals have been obtained;
- (iv) the date of issue/proposed issue for the debentures and whether the debentures will be issued/tendered under FAST and/or RENTAS.

5. Description of Debentures

5.1 The trust deed or the terms and conditions of the debentures must provide for the following:

- (i) the key features of the debentures constituted by the trust deed including the interest or profit rate (where applicable), the maturity date or redemption schedule, and the denomination of the debentures (where applicable);
- (ii) details of the central depository and paying agent for the debentures;
- (iii) whether the debentures are secured or unsecured and if secured, the nature of the security;
- (iv) the ranking of the holders of debentures amongst all other holders of the debentures and as against all other obligations of the borrower.

6. Interest or Profit Rate

6.1 Where provision is made for the payment of an interest or profit rate under the debentures, the trust deed or the terms and conditions of the debentures, should state:

- (i) the interest or profit rate (where applicable) payable on the debentures and the frequency upon which such interest payments are required to be made;

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- (ii) the conditions under which the stipulated interest or profit rate (where applicable) and its payment terms may change; and
- (iii) where a default interest or profit rate (where applicable) has been agreed upon by the parties to the trust deed, to state the rate payable on any overdue amounts.

7. Covenant To Comply with Trust Deed And Debentures

- 7.1 The trust deed must provide for a covenant by the borrower to comply with the provisions of the trust deed and the terms and conditions of the debentures.

8. Borrower's Covenant To Pay

- 8.1 The trust deed must provide for a covenant by the borrower to redeem in full all outstanding debentures in accordance with the terms and conditions of the debentures;
- 8.2 Where the borrower has an option to redeem the debentures before the maturity date of such debentures, the trust deed must provide for a clause setting out the conditions and the procedure by which such an option can be exercised.

9. Taxation

- 9.1 In the event of any withholding of taxes required or being subsequently required by law in respect of any payment to be made pursuant to the terms and conditions of the debentures, the trust deed

should state what is the obligation of the borrower with regard to such withholding.

10. Debenture Certificates

10.1 In the case of scripless debentures, the trust deed or the terms and conditions of the debentures should provide for the following:

- (i) details and particulars relating to the global certificate representing the debentures;
- (ii) the conditions under which the trustee may exchange the global certificate with definitive certificates.

10.2 In the case of debentures in scrip-based form, there should be provision for the manner in which a worn out, defaced, lost, stolen, mutilated or destroyed certificate should be replaced by the borrower or any agent on behalf of the borrower and the fee payable, where applicable.

11. Limitation on Borrowing

11.1 Where the parties agree that there should be a provision for limitation on the borrowings of a borrower, the trust deed should state:

- (i) whether there is a limitation on the total amount of borrowings by the borrower; and
- (ii) whether the borrower has any right to create additional charges over any of its assets and the priority of ranking of such

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charges, and if there is such a right, details of its nature and extent.

12. Events constituting default and remedy of such default

12.1 The trust deed and the terms and conditions of debentures must provide for, but should not be limited to, the following:

- (i) a list of all events, the occurrence of any of which would entitle or oblige the trustee to declare the debentures immediately due and repayable (to the extent appropriate and subject to any materiality thresholds and provision for remedy or period of grace which may be negotiated) including the following:
 - where there is any default in payment of any principal, premium or interest or profit rate (where applicable) under the debentures;
 - where a winding up order has been made against the borrower or a resolution to wind up the borrower has been passed;
 - where a scheme of arrangement under section 176 of the Companies Act 1965 has been instituted against the borrower;
 - where a receiver has been appointed over the whole or a substantial part of the assets of the borrower;
 - where there is a breach by the borrower of any term or condition in the debentures or provision of the trust deed

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or of any other document relating to the issue, offer or invitation in respect of the debentures;

- where any other indebtedness of the borrower becomes due and payable prior to its stated maturity or where the security created for any other indebtedness becomes enforceable;
- where there is a revocation, withholding or modification of a licence, authorisation or approval that impairs or prejudices the borrower's ability to comply with the terms and conditions of the debentures or the provisions of the trust deed or any other document relating to the issue, offer or invitation in respect of the debentures.

(ii) the powers of the trustee upon the occurrence of any event described in subparagraph (i) including:

- the powers of the trustee to declare the debentures immediately due and repayable;
- the powers of the trustee to enforce the provisions of the trust deed;
- the circumstances under which the trustee shall be bound to enforce the provisions of the trust deed; and
- the circumstances under which the holders of the debentures are entitled to pursue their rights and remedies.

13. Sinking Fund

13.1 Where the parties agree to the maintenance of a sinking fund, the trust deed should provide for:

- (i) the obligation to maintain an interest bearing account, or in the case of Islamic debentures – an Islamic based account, and to state the holder(s) and operator(s) of the account;
- (ii) the amounts to be paid into the account and the dates such payments are required to be made;
- (iii) the conditions under which the moneys in the account may be withdrawn by the borrower; and
- (iv) the conditions under which the moneys in the account may be used or applied by the trustee or the borrower.

14. Covenants by the Borrower

14.1 As a minimum, the trust deed must provide for the following covenants of the borrower:

- (i) that the borrower will give to the trustee any information which the trustee may require in order to discharge its duties and obligations as trustee under the trust deed relating to the borrower's affairs to the extent permitted by law;
- (ii) that the borrower will exercise reasonable diligence in carrying out its business in a proper and efficient manner which should

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ensure, amongst others, that all necessary approvals or relevant licences are obtained;

(iii) that the borrower will not enter into a transaction, whether directly or indirectly with interested persons (including a director, substantial shareholder or persons connected with them) unless -

(a) such transaction shall be on terms that are no less favourable to the borrower than those which could have been obtained in a comparable transaction from persons who are not interested persons; and

(b) with respect to transactions involving an aggregate payment or value equal to or greater than an agreed sum, the borrower obtains certification from an independent adviser that the transaction is carried out on fair and reasonable terms; PROVIDED

that the borrower certifies to the trustee that the transaction complies with paragraph (a), that the borrower has received the certification referred to in paragraph (b) (where applicable) and that the transaction has been approved by the majority of the board of directors or shareholders in a general meeting as the case may require;

(iv) to maintain a paying agent in Malaysia;

(v) to procure that the paying agent shall notify the trustee in the event that the paying agent does not receive payment from the borrower on the due dates as required under the trust deed and the terms and conditions of the debentures;

- (vi) to keep proper books and accounts at all times and to provide the trustee and any person appointed by it (e.g. auditors) access to such books and accounts.

15. Issue of Shares in relation to Convertible Debentures

15.1 In the case of convertible debentures, the trust deed or the terms and conditions of the debentures must state:

- (i) the terms of conversion;
- (ii) where the borrower reserves the right to issue shares or other securities to shareholders or to any other persons for cash or as a bonus distribution or otherwise, that the holders of the debentures must have either participation rights in respect of such issue or provision must be made for an appropriate adjustment of the conversion price to ensure that the conversion privilege of the debenture holder is not diluted;
- (iii) if the holders of the debentures have any right to convert the debentures into shares in the event of a take-over offer in relation to the borrower, or how the holders of the debentures might participate in such a take-over offer;
- (iv) the conditions under which a borrower has an option, if any, to convert the debentures into shares of the borrower and the rights of debenture holders when such an option is exercised;
- (v) provisions for the adjustment of the conversion price in the light of any changes to the borrower's share capital;

- (vi) the ranking of the shares arising from the conversion of the debentures.

16. Reporting Covenants by the Borrower

16.1 The trust deed should provide for covenants to ensure that the borrower shall immediately notify the trustee in the event that the borrower becomes aware:

- (i) of any event of default or that such other right or remedy under the terms, provisions and covenants of the debentures and trust deed have become immediately enforceable;
- (ii) of any circumstance that has occurred that would materially prejudice the borrower, its guarantors (where applicable) or any security included in or created by the debentures or the trust deed (where applicable);
- (iii) of any substantial change in the nature of the business of the borrower or its guarantors (where applicable);
- (iv) of a change in the name of the guarantors (where applicable);
- (v) of any cessation of liability of guarantors (where applicable) for the payment of the whole or part of the moneys for which they were liable under the guarantee;
- (vi) of any change in withholding tax position or taxing jurisdiction of the borrower (where applicable);

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- (vii) of any change in the utilisation of proceeds from the debentures where the prospectus, information memorandum or any agreement entered into in connection with the issue, offer or invitation sets out a specific purpose for which proceeds are to be utilised;
- (viii) of any other matter that may materially prejudice the interests of debenture holders.

16.2 The trust deed should provide for a covenant by the borrower to send to the trustee the annual audited accounts of the borrower within a stipulated timeframe and any other accounts, report, notice, statement or circular issued to shareholders.

16.3 The trust deed should provide for a covenant by the borrower to provide to the trustee at least annually, a certificate that the borrower has complied with its obligations under the trust deed and the terms and conditions of the debentures and that there did not exist or had not existed, from the date the debentures were issued or date of the previous certificate as the case may be, any event of default and if such is not the case, to specify the same.

17. Application of Moneys received in respect of the Debentures

17.1 Where there are any moneys received by the trustee under the trust deed, the trust deed should provide for the manner and order of priority in which these amounts are applied or payable.

18. Power to withhold, invest and accumulate

18.1 Where there is any discretion by the trustee to withhold, invest and accumulate moneys it receives, this must be stated in the trust deed.

18.2 Where the trustee is allowed to invest any moneys received by the trustee, the conditions under which it is permitted to do so and the types of investment the trustee is permitted to invest in must be stated in the trust deed.

19. Deposit of Unclaimed Moneys

19.1 There must be a provision with regard to the rights and obligations of the parties in relation to any unclaimed moneys due to the debenture holders.

20. Powers and Duties of Trustee

20.1 The trust deed should contain a statement by the trustee that it is duly qualified to act as trustee under the Act.

20.2 The trust deed should set out provisions relating to the powers of the trustee. These should include the following:

- (i) the matters which are within the powers of the trustee to decide without reference to the holders of the debentures;
- (ii) where there is a breach by the borrower under the terms and conditions of the debentures and the provisions of the trust deed, the circumstances that the trustee may authorise or waive such breach provided:

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- (a) it is satisfied that there is no material prejudice to the debenture holders' interests or any security for the debentures; or
 - (b) it is authorised to do so by resolution of a stipulated majority of debenture holders.
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- (iii) the fees to be paid to the trustee for the performance of its duties as trustee and any additional services it may provide;
 - (iv) any indemnity given by the borrower to the trustee;
 - (v) the circumstances in which the trustee may delegate its powers;
 - (vi) whether or not the trustee is bound to disclose any confidential or other information made available to the trustee by the borrower or guarantor (where applicable) in connection with the trust deed;

20.3 The trust deed should provide for provisions relating to the duties of the trustee which should include the following:

- (i) a duty to exercise reasonable diligence to ascertain, based on the accounts, reports, certificates, circulars or opinions furnished to the trustee, whether the borrower or each guarantor (where applicable) has committed any breach of the terms and conditions of the debentures or provisions of the trust deed or whether an event of default has occurred or is continuing;
- (ii) in the case where an event of default has occurred and is continuing, the trustee shall exercise such rights and powers

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vested in it by the trust deed and use a reasonable degree of skill and diligence in exercising such rights and powers.

21. Relief, Exemption and Indemnification of trustee from liability

21.1 There should be a provision in the trust deed that states that no provision or covenant in the trust deed or the terms and conditions of the debentures should be construed as relieving, exempting or indemnifying a trustee from liability for breach of trust or for failure to show a degree of care and diligence required of it as trustee.

22. Meetings

22.1 There should be a provision in the trust deed setting out the notice period for the meeting of debenture holders.

22.2 There should be a provision in the trust deed stating that the meetings may be convened at the request of the issuer, trustee or an agreed percentage of debenture holders.

22.3 There should be a quorum requirement for the transaction of business at the meetings. The quorum for the passing of special resolutions should be explicitly stated.

22.4 There should be a provision in the trust deed that debentures held by the borrower or any related corporation of the borrower shall not be counted for purposes of voting.

23. Miscellaneous clauses

23.1 The trust deed should provide for the following:

- (i) the conditions under which the provisions of the trust deed or the terms and conditions of the debentures may be modified;
- (ii) the mode of service of notices and other documents on the borrower, the trustee and the holders of the debentures, which should include a provision for the trustee to notify debenture holders by way of a notice published in national newspapers in the main languages, published daily and circulating generally throughout Malaysia;
- (iii) the borrower to be responsible for paying any stamp duty on the trust deed or the debentures (if applicable);
- (iv) that the governing law is Malaysian law;
- (v) where the trustee company merges or converts, provision must be made for the new entity to be its successor under the trust deed or for the appointment of another trustee, provided that in either case they are qualified to act as trustee and that the approval of a stipulated majority of debenture holders is obtained.
- (vi) the conditions for the appointment, resignation and removal of the trustee, which should ensure that –
 - (a) any removal of a trustee and subsequent appointment of a replacement trustee by the borrower must be with the consent of an agreed majority of debenture holders; and

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- (b) the borrower is notified of any removal of a trustee and subsequent appointment of a replacement trustee by debenture holders.

24. Schedules

24.1 There should be schedules to provide for the following:

- (i) the form and the terms and conditions of the global certificate representing the debentures;
- (ii) the form and the terms and conditions of the definitive certificate representing the debentures;
- (iii) the provisions regulating the convening and holding of meetings of the holders of debentures.

Appendix 1

Issues, Offers or Invitations under Schedule 4 of the Act

- An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by the Federal or any State Government or any statutory body.
- An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures guaranteed by the Federal Government or the Central Bank of Malaysia.
- An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures which by their terms may only be held by members of the issuer.
- An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures which by their terms may only be held by a single holder of those debentures.
- An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made in relation to trades in securities effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2) of the Securities Industry Act 1983.
- An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures in respect of trades in debentures effected in the money market.
- An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made pursuant to a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998.
- An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by or to Danamodal Nasional Berhad.
- An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made exclusively to persons outside Malaysia.

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- An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures to existing members of a company within the meaning of section 270 of the Companies Act 1965.