

# **GUIDELINES ON THE REGISTRATION AND CONDUCT OF CAPITAL MARKET SERVICES PROVIDERS**

**SC-GL/5-2018 (R3-2022)**

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**GUIDELINES ON THE REGISTRATION AND CONDUCT OF  
CAPITAL MARKET SERVICES PROVIDERS**

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<sup>1</sup> Save for the requirement to have policies and procedures on anti-corruption and whistleblowing under subparagraphs 4.05(b)(iia) and 9.02(b)(ii) of these Guidelines, which will take effect on 1 June 2020.

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## CHAPTER 1

### INTRODUCTION

- 1.01 The *Guidelines on the Registration and Conduct of Capital Market Services Providers* (Guidelines) are issued by the Securities Commission Malaysia (SC) pursuant to section 377 of the *Capital Markets and Services Act 2007* (CMSA).
- 1.02 As the capital market evolves and become more developed, there are activities undertaken by capital market service providers that while activities do not constitute the carrying out of a "regulated activity" under the CMSA, these activities are important in ensuring the smooth operation of the capital market.
- 1.03 As these capital market services complement a regulated activity or complete a capital market transaction, they are to be registered under section 76A of the CMSA.
- 1.04 Capital market services undertaken by the entities below are specified to be a capital market service for the purposes of section 76A of the CMSA:
- (a) Any entity providing trustee services for a unit trust scheme (UTS) and prescribed investment scheme, private retirement scheme (PRS), corporate bond, sukuk or any other products as may be specified by the SC; and
  - (b) An issuing house.
- 1.05 Unless otherwise stated, any person providing capital market services as specified in paragraph 1.04 is required to be registered under these Guidelines.

#### **Guidance to paragraph 1.05**

In considering an application under these Guidelines for any person wishing to provide capital market service, the SC will not grant its authorisation unless the application is in the best interest of Malaysia. In determining the best interest of Malaysia, the SC will give regard to any one or more of the following:

- (a) the area of specialisation and level of expertise that can be offered to the capital market including the effect on productivity, transference of skills and efficiency and quality of capital market services;
- (b) the risk posed on the systemic stability of the capital market including activities and conduct that will likely impact the orderly functioning of the capital market;
- (c) contribution towards attracting investments, enhancing market linkages and promoting vibrancy in the capital market;

- (d) ability in developing strategic or nascent sectors in the capital market; or
- (e) the degree and significance of participation of Malaysians in the capital market.

- 1.06 Trustees registered under these Guidelines are deemed approved to act as trustees in relation to sections 139ZC, 260, 289 or 290 of the CMSA and the Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework.
- 1.07 Apart from setting out the registration requirements, these Guidelines also stipulate standards of conduct for registered capital market services providers.
- 1.08 These Guidelines are in addition to and not in derogation of any requirements as provided for under the securities laws or other guidelines issued by the SC.
- 1.09 The requirements in relation to the trustees in these Guidelines shall supersede the relevant requirements in the respective guidelines below:
  - (a) *Guidelines on Unit Trust Funds;*
  - (b) *Guidelines on Private Retirement Schemes;*
  - (c) *Guidelines on Real Estate Investment Trusts;*
  - (d) *Guidelines on Listed Real Estate Investment Trusts;*
  - (e) *Guidelines on Issuance of Corporate Bonds and Sukuk to Retail Investors;*
  - (f) Practice Note issued pursuant to the *Guidelines on the Offering of Private Debt Securities*, and the *Guidelines on the Offering of Islamic Securities;*
  - (g) *Guidelines on Allowing a Person to be Appointed or to Act as a Trustee Under Subsection 69(2) of the Securities Commission Act 1993;* and
  - (h) *Guidelines for the Appointment of a Related-Party Trustee.*
- 1.10 The SC may, upon an application, grant an exemption from or a variation to the requirements of these Guidelines, subject to any terms and conditions as it deems necessary if the SC is satisfied that–
  - (a) such variation is not contrary to the intended purpose of the relevant provisions in these Guidelines; or
  - (b) there are mitigating factors which justify the said exemption or variation.

1.11 Guidance on the application of the requirements of these Guidelines has been provided, where appropriate. Any departure from the Guidance will be taken into consideration in the SC's assessment on whether a breach of these Guidelines had occurred.

## CHAPTER 2

### DEFINITIONS AND INTERPRETATION

2.01 Unless otherwise defined, all words used in these Guidelines shall have the same meaning as defined in the CMSA. In these Guidelines, unless the context otherwise requires–

chief executive	means an individual appointed by the entity seeking registration under these Guidelines who is primarily responsible and accountable for the activities carried out by the entity;
controller	means, a person who–  (a) is entitled to exercise, or control the exercise of, not less than 15% of the votes attached to the voting shares of the entity;  (b) has the power to appoint or cause to be appointed a majority of the directors of the entity; or  (c) has the power to make or cause to be made, decisions in respect of the business or administration of such entity, and to give effect to such decisions or cause them to be given effect to;
delegation	means the assignment of any responsibility or authority to another person or corporation to carry out specific functions or activities;
entity	means the trustee or issuing house registered under these Guidelines;
financial institution	has the same meaning assigned in the <i>Financial Services Act 2013</i> ;
foreign trustee	means a trustee approved under section 260(1)(b) of the CMSA in relation to a foreign currency denominated corporate bond or sukuk;
fund management company	means a holder of a Capital Markets Services Licence for the regulated activity of fund management in relation to portfolio management;
group	means the trustee’s direct or ultimate holding corporation or any of its related corporation;
investor	means, in relation to trustee, a person who is–  (a) a holder of a corporate bond or sukuk; or

	(b) a unit holder of UTS or prescribed investment scheme, including unit trust fund, real estate investment trust (REIT), exchange-traded fund and wholesale fund; or
	(c) a member of a PRS;
issuing house	means a corporation whose primary activities include arranging the details of an issue of shares and other securities, including facilitating the purchase of such shares or securities pursuant to initial public offerings;
management company	has the same meaning assigned in the CMSA and includes a fund management company;
outsourced functions	have the same meaning assigned in the <i>Licensing Handbook</i> ;
PRS Regulations	means the <i>Capital Markets and Services (Private Retirement Scheme Industry) Regulations 2012</i> ;
related-party trustee	means a person referred to in subsections 260(2) and 290(1) of the CMSA;
securities laws	has the same meaning assigned to it in the <i>Securities Commission Malaysia Act 1993</i> and include any guidelines, written notices and circulars issued by the SC;
senior management	means a person, other than a director, having authority and responsibility for planning, directing or controlling the activities of a trustee, including the chief executive, chief operating officer, chief financial officer, members of decision making committees and other key persons performing functions such as risk management, compliance, internal audit or other functions as may be specified by the SC;
sub-contracting	has the same meaning assigned in the <i>Licensing Handbook</i> ;
trustee	means a trustee that is required to be appointed under sections 139ZC, 258 and 288 of the CMSA and the <i>Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework</i> , to carry out trustee functions in relation to capital market products;
unit trust scheme (UTS)	has the same meaning assigned in the CMSA but excludes business trust.



## **PART A: TRUSTEES**

### **CHAPTER 3**

#### **TRUSTEES**

##### **General**

- 3.01 A trustee must carry out its roles and responsibilities as set out in the securities laws, these Guidelines and other relevant guidelines issued by the SC.
- 3.02 A trustee seeking to be registered under these Guidelines must be—
- (a) a trust company registered under the *Trust Companies Act 1949*;
  - (b) incorporated under the *Public Trust Corporation Act 1995*;
  - (c) incorporated under *Labuan Trusts Act 1996*; or
  - (d) in the case of a foreign trustee, the trustee must be a corporation that is a public company under—
    - (i) the *Companies Act 2016*; or
    - (ii) the laws of any other country.
- 3.03 In registering a trustee, the SC may impose terms and conditions on the trustee as it deems necessary.

## CHAPTER 4

### REQUIREMENTS FOR REGISTRATION OF TRUSTEES

- 4.01 The registration requirements under this chapter are applicable to a trustee referred to in paragraphs 3.02(a) and (b).
- 4.02 Only one trustee may be appointed for each UTS or PRS, as the case may be.
- 4.03 A trustee must be independent from the management company, the PRS provider or the issuer.
- 4.04 The SC may refuse the application of the trustee and its chief executive if any of the fit and proper requirements set out in Appendix 1 of these Guidelines are not met.
- 4.05 In considering the application to register a trustee, the SC would take into account among others, the following:

(a) Structure

A trustee must ensure that there are adequate governance systems with clear lines of accountability, responsibility, authority, and clear segregation of duties to avoid any potential conflict.

(b) Competence

A trustee must have controls, processes and procedures in place that ensures investors' interest are always protected. A trustee must be able to demonstrate that—

- (i) the organisational structure supports the segregation of duties to manage potential conflict of interest;
- (ii) there are adequate internal controls, compliance and risks management system, framework or functions, including having in place a business continuity plan and processes;
- (ia) there are policies and procedures on anti-corruption and whistleblowing that are appropriate to the nature, scale and complexity of its business;
- (iii) there are adequate data management and reporting systems; and
- (iv) there are adequate IT and administrative systems to support the activities.

**Guidance to subparagraph 4.05(b)(ia)**

The policies and procedures on anti-corruption should be guided by the *Guidelines on Adequate Procedures* issued pursuant to section 17A(5) of the *Malaysian Anti-Corruption Commission Act 2009*.

(c) Resource Capabilities

A trustee must ensure they have adequate human resources with the necessary qualification, expertise, experience and skills to carry on business as a trustee.

**Financial Requirements**

- 4.06 A trustee must have sufficient financial resources to operate efficiently and to be able to meet operational requirements and liabilities.
- 4.07 A trustee must have a minimum issued and paid-up capital of not less than RM500,000 and minimum shareholders' funds of RM1 million at all times.

**Professional Indemnity Insurance**

- 4.08 A trustee must obtain professional indemnity insurance (PII) that is adequate and commensurate with the nature, activity, complexity and risk of the business undertaken.
- 4.09 For the purpose of paragraph 4.08, a trustee for a PRS or corporate bond or sukuk must obtain a PII coverage of at least RM10 million.
- 4.10 A PII as required under paragraph 4.08 and 4.09 may be obtained at the group or its related company level.

**Board of Directors and Senior Management**

- 4.11 Board of directors and senior management must demonstrate adequate level of competence to carry out their functions as outlined in these Guidelines.
- 4.12 In determining where responsibility lies and the degree of responsibility of a particular person in the board of directors and senior management, the SC shall have regard to the person's authority and position in the organisation, the scope of their responsibilities and the level of control or knowledge they may have.
- 4.13 Board of directors and senior management must satisfy the fit and proper requirements set out in Appendix 1 of these Guidelines.

## **Chief Executive**

4.14 The chief executive is responsible for undertaking the following functions:

- (a) Ensure continuous compliance of all requirements under these Guidelines, securities laws, relevant guidelines, trust deed or documents submitted with the SC and any other relevant laws;
- (b) Notify the SC of any material change to the information submitted to the SC within 10 business days from the date of such change; and
- (c) Undertake the role of the main contact person for the purpose of liaising with the SC.

4.15 A person shall not be appointed as the chief executive without the prior approval of the SC.

4.16 A chief executive must have—

- (a) a minimum of eight years of relevant experience, at a management level; and
- (b) the appropriate level of skills, qualifications and competence.

4.17 In determining whether a person is fit and proper to be designated as a chief executive, the following shall be considered:

- (a) His probity, competence and soundness of judgement in fulfilling the responsibilities of a chief executive;
- (b) Diligence with which he is fulfilling or likely to fulfil those responsibilities; and
- (c) Whether the interests of investors, if any, are or are likely to be, in any way threatened by his holding of that position.

4.18 In approving the chief executive, the SC may impose terms and conditions.

4.19 If any key management personnel or chief executive position becomes vacant, the trustee must take necessary steps to recruit a new candidate within three months from the date of vacancy.

## **Related-Party Trustees**

4.20 An application by a related-party trustee must comply with the criteria set out in Appendix 2 of these Guidelines.

- 4.21 A related-party trustee is required to appoint an external auditor registered with the Audit Oversight Board to conduct an independent assessment of the trustee's internal controls, processes and systems, once in every two years.
- 4.22 The related-party trustee must, prior to the commencement of the independent assessment, submit to the SC the scope of the said assessment for approval.
- 4.23 The assessment report must be submitted to the SC one month prior to the anniversary date.

## **CHAPTER 5**

### **REQUIREMENTS FOR REGISTRATION OF FOREIGN TRUSTEES THROUGH RECOGNITION FRAMEWORK**

#### **General**

- 5.01 This Chapter provides the registration requirements applicable to a trustee referred to in paragraph 3.02(c) and (d).
- 5.02 For the purpose of registering a foreign trustee, the SC may recognise an entity which is licenced, authorised or otherwise regulated by a comparable or equivalent regulatory authority listed under Appendix A of the IOSCO MMOU.
- 5.03 The foreign trustee must be registered by the SC before accepting any nomination for the appointment as a trustee.
- 5.04 A foreign trustee registered with the SC, must ensure compliance with all relevant requirements under these Guidelines.

#### **Fit and proper criteria**

- 5.05 Foreign trustee who applies for registration with the SC must satisfy the fit and proper requirements set out in Appendix 1 of these Guidelines.
- 5.06 For the purpose of determining compliance with paragraph 5.05, the SC will take into account whether the foreign trustee have, among others–
- (a) any enforcement action taken or sanction imposed by any relevant regulatory authority in or outside Malaysia; or
  - (b) any form of disciplinary proceedings or actions taken by any relevant regulatory authority in or outside Malaysia; or
  - (c) any form of non-compliance with rules and regulation, ethical and other assurance standards applicable in the foreign trustee’s jurisdiction.

#### **Ongoing Obligations**

- 5.07 The SC may, upon registration, impose such terms and conditions as it deems necessary. From time to time, the SC may also amend any such terms and conditions or impose new or additional terms and conditions on the registered foreign trustee.
- 5.08 The foreign trustee must satisfy the following:
- (a) Comply with all rules and regulations, relevant guidelines any, other applicable laws, ethical and other assurance standards that may govern the activities carried on by the foreign trustee;

- (b) Carry out the trustee business honestly, competently and with due care;
- (c) Provide any information requested by the SC from time to time;
- (d) Inform the SC within 10 business days when there is any change in the particulars submitted to the SC;
- (e) Ensure that the firm registered with the SC remain fit and proper at all times.

## **CHAPTER 6**

### **DUTIES OF TRUSTEES**

#### **General Duties**

6.01 In carrying out its roles and responsibilities, a trustee must–

- (a) act honestly and in the best interest of the investor, and if there is a conflict between investors' interests and its own interests, give priority to investors' interest;
- (b) safeguard the rights and interests of investors, exercise due diligence and vigilance in carrying out its functions and duties as trustee and act with care, skill and diligence as can be reasonably expected from a person exercising the position of a trustee;
- (c) take all reasonable steps to ensure fair treatment of investors;
- (d) not gain an advantage for itself or another person;
- (e) not cause detriment to investors;
- (f) comply with any other duty that is conferred on the trustee by the trust deed, provided that such duty is not contrary with the securities laws and these Guidelines; and
- (g) carry out any other duties or responsibilities as may be specified by the SC.

#### **Trustee's Oversight Functions over the management of the UTS and PRS**

6.02 A trustee must take custody and control of the UTS and PRS asset and hold in trust for the investors. With respect to the asset of the UTS and PRS which by nature cannot be held in custody, the trustee must maintain a proper record of such asset in its books under the name of the fund.

6.03 A trustee must ensure that the assets of UTS and PRS are–

- (a) clearly identified as the UTS or PRS' assets;



- (b) held separately from any other asset or property held by or entrusted to the trustee; and
  - (c) registered–
    - (i) in the name of trustee; or
    - (ii) where the custodial function is delegated, in the name of the custodian to the order of the trustee.
- 6.04 A trustee must not hold units or have other interests in the UTS, PRS and any funds under the UTS and PRS.
- 6.05 A trustee must actively monitor the UTS and PRS operations and management by the management company and the PRS provider respectively, including conducting independent reviews and not only depend on information submitted by the management company and the PRS provider.
- 6.06 A trustee must, at all times, through proper and adequate supervision, ensure that the UTS and PRS is operated and managed by the management company or the PRS provider, as the case may be, in accordance with–
- (a) the trust deed;
  - (b) documents lodged with the SC such as the prospectus, information memorandum, disclosure document, product highlights sheet; and
  - (c) any other relevant guidelines and securities laws.
- 6.07 A trustee must take all steps to effect any instruction properly given by the management company and the PRS provider, in relation to–
- (a) acquisitions or disposals of, or the exercise of the rights attached to, UTS and PRS assets; and
  - (b) creation, cancellation and dealing in units of the UTS and PRS,
- in so far where such instruction is not contrary to any requirement of the securities laws, relevant guidelines, trust deed or documents lodged with the SC.
- 6.08 A trustee must ensure that–

- (a) the systems, procedures and processes employed by the management company and the PRS provider are adequate to ensure that the UTS and PRS assets and the UTS and PRS units are correctly valued and priced in line with provisions of the relevant standards, securities laws, relevant guidelines, trust deed or documents lodged with the SC; and

**Guidance to paragraph 6.08(a)**

Relevant standards include property valuation standards and accounting standards.

- (b) the management company and the PRS provider does not make improper use of its position in managing the UTS and PRS assets to gain, directly or indirectly, an advantage for itself or for any other person or to cause detriment to the interests of investors of the UTS and PRS.
- 6.09 In performing its duties as stipulated under the CMSA, a trustee must ensure—
- (a) that the UTS and PRS has, at all times, an approved management company and PRS provider, where applicable; and
  - (b) that for the duration of the UTS and PRS, there is a registered trust deed in force at all times.
- 6.10 The trustee must ensure that it is fully informed of the investment policies of the UTS and PRS, set by the management company or the PRS provider respectively, and keeps itself up-to-date with any changes made. If the trustee is of the opinion that the policies are not in the interests of investors, it must, after considering any representation made by the management company or PRS provider, instruct the management company or the PRS provider to take appropriate action as the trustee deems fit and/or summon an investors' meeting to give such instructions to the trustee as the meeting thinks proper.
- 6.11 Where a fund is to be managed in accordance with specific principles or objectives, a trustee must—
- (a) ensure that the fund is managed in accordance with such principles or objectives; and
  - (b) provide a transaction report of the fund to the Shariah adviser or panel of advisers, where applicable. If the transaction report is prepared by the management company or the PRS provider, the trustee must approve the transaction report prior to it being submitted to the relevant adviser.

- 6.12 A trustee must have in place adequate compliance and monitoring mechanism for regular review which includes monitoring and checking of compliance with investment limits as well as processes for reconciliation.
- 6.13 A trustee of a private retirement scheme must–
- (a) ensure that provisions of a disclosure document relating to the private retirement scheme do not contain any matter which is inconsistent with the provisions and covenants of the trust deed;
  - (b) exercise reasonable diligence to ascertain whether the PRS provider has committed any breach of the provisions or covenants of the trust deed or has contravened any of the provision of the CMSA, regulation or any guidelines issued by the SC;
  - (c) must do everything in its power to ensure that the PRS provider remedies any breach known to the trustee of the provisions or covenants of the trust deed, any contravention of the provisions of the CMSA, any regulation or any guidelines issued by the SC;
  - (d) give the members a statement explaining the effect of any proposal that is submitted to the members before any meeting that–
    - (i) the court orders in relation to a scheme of arrangement or compromise under section 366 of the *Companies Act 2016*; or
    - (ii) the trustee may call under Regulation 21 of the PRS Regulations; and
  - (e) comply with any direction given to the trustee at a members’ meeting referred to in Regulation 20, 21 or 22 of the PRS Regulations unless–
    - (i) the direction is inconsistent with any provision or covenant of the trust deed or the provision of the CMSA, any regulation or guidelines issued by the SC or is otherwise objectionable; and
    - (ii) the trustee has either obtained, or is in the process of obtaining, an order from the court under Regulation 23 of the PRS Regulations to set aside or vary that direction.
- 6.14 For avoidance of doubt, similar duties as set out in paragraph 6.13 for UTS trustees are provided for in the CMSA.
- 6.15 In the case of REIT trustee, the trustee must ensure that–
- (a) where a property manager is appointed, the trustee approves such appointment; and

- (b) where the real estate acquired is occupied partly or wholly by related parties–
  - (i) the terms and conditions of the tenancy agreements are reasonable under prevailing market conditions; and
  - (ii) the rental rates for related tenants are reasonable and be guided by the recommendation of an independent valuer.

## CHAPTER 7

### CONTINUOUS OBLIGATIONS

7.01 The trustee and its approved chief executive must satisfy the fit and proper requirements set out in Appendix 1 of these Guidelines.

#### Reporting to the SC

7.02 A trustee is required to submit to the SC its audited financial statements within three months of its financial year end.

7.03 A trustee must appoint an external auditor that is registered with the Audit Oversight Board to prepare the annual audited financial statements.

7.04 A trustee is required to submit the following:

- (a) A report, as specified by the SC, on each anniversary date of its registration as a trustee; and
- (b) An annual data reporting within 14 business days from 31 December.

#### Changes Requiring SC's Prior Approval

7.05 A trustee must obtain the SC's prior approval in circumstances where any proposed change to the shareholding will result in a direct or indirect change in the trustee's controller.

7.06 If a trustee intends to provide trustee services for additional classes of product, the trustee must seek SC's approval by way of an application for variation of registration.

Illustration:

At the point of registration, Trustee A provides trustee services for unit trust and PRS. The following year, Trustee A expands its business to include trustee services for corporate bond and sukuk. Trustee A is required to submit an application for variation to the SC of the additional trustee service.

## Notification to the SC

7.07 A trustee must inform the SC immediately of any occurrence of the following events:

- (a) Where there has been a misappropriation of investors' funds or any act committed that is detrimental to the interests of investors and unit holders;
- (b) Where its directors or senior management are no longer fit and proper;
- (c) Where the trustee believes that the management company, PRS provider, service provider, issuer or fund management company has not undertaken its role in the best interest of the investors and may jeopardize investors' assets;
- (d) Where there is a change of its board of directors and senior management; or
- (e) Where there is an occurrence of any event which would trigger the activation or execution of the business continuity plan, in such form and manner as may be specified by the SC.

7.08 A trustee is required to notify the SC, within 10 business days, of one or more of the following:

- (a) Where any litigation has been instituted or court decision obtained against the trustee;
- (b) Changes to its core business; or
- (c) Any other material changes.

7.09 A trustee of a private retirement scheme must also immediately notify the SC on the occurrence of any of the following events:

- (a) Where the PRS provider is in the course of being wound up or otherwise dissolved;
- (b) Where a receiver, a receiver and manager or an equivalent has been appointed, within or outside Malaysia, over the whole or substantial part of the assets or undertaking of the PRS provider;
- (c) Where the PRS provider has, whether within or outside Malaysia entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
- (d) Where the PRS provider has failed or refused to act as the PRS provider in accordance with the provisions or covenants of the trust deed, the provisions of the CMSA, any regulations or guidelines issued by the SC;
- (e) Where there is any irregularity, any breach of the provisions or covenants of the trust deed or any contravention of the provisions of the CMSA, any regulations or any guidelines issued by the SC; or

- (f) Where there is any inconsistency between the provisions of the disclosure document and the provisions or covenants of the trust deed.
- 7.10 For avoidance of doubt, similar duties as set out in paragraphs 7.09(e) and (f) for UTS trustee are provided for in the CMSA.
- 7.11 A trustee of corporate bond and sukuk are required to report material events and events of default to the SC within 10 business days of the occurrence of the event. Examples of such material events are—
- (a) substantial change in the nature of the issuer’s business;
  - (b) declaration of event of default by the bondholders;
  - (c) grant of waiver of indulgence by the bondholders;
  - (d) winding-up of the issuer or trustee;
  - (e) replacement of trustee;
  - (f) non-payment of coupon or redemption proceeds; or
  - (g) breach of trust deed or financial covenants.

## **Training**

- 7.12 A trustee must provide training to its officers to ensure that they continuously improve and upgrade their skills and expertise.

## **Cessation of Business**

- 7.13 A trustee who intends to cease its business must ensure proper arrangements are in place for the safekeeping of investors’ assets and immediately notify the following:
- (a) The SC;
  - (b) Investors; and
  - (c) Where relevant, the management company, PRS provider or issuer.
- 7.14 The cessation of business will not take effect until the SC is satisfied that all the requirements stated in the securities laws, relevant guidelines issued by the SC and any other relevant laws or requirements, have been fulfilled.

## **CHAPTER 8**

### **CONDUCT REQUIREMENTS FOR TRUSTEES**

#### **Key Responsibilities of the Board of Directors and Senior Management**

- 8.01 The board of directors and senior management of a trustee shall be primarily responsible and accountable for–
- (a) defining and overseeing the business plan and strategy of the trustee that is appropriate to its objective, size, structure and risk profile; and
  - (b) approving and overseeing all key policies including those relating to risk management, internal controls and compliance with the requirements as provided under securities laws, relevant guidelines, trust deed or documents lodged with the SC and any other relevant laws.
- 8.02 The board of directors of a trustee shall ensure that–
- (a) the entity must observe the best of corporate governance standards;
  - (b) a comprehensive operation system that commensurate with its business is in place;
  - (c) the trustee is in compliance with requirements imposed under securities laws, relevant guidelines, trust deed or documents lodged with the SC and any other relevant laws;
  - (d) implementation and maintenance of a comprehensive governance framework, including compliance, risk management and internal audit function which commensurate with its business is in place;
  - (e) effective internal controls to safeguard investors' assets from inappropriate use;
  - (f) at least yearly review is being conducted on the effectiveness of its internal control framework; and
  - (g) appropriate mechanisms to facilitate the maintenance of assets that would enable the identification of assets to the respective UTS, PRS, corporate bond or sukuk holder, where applicable.
- 8.03 The internal controls must be adequate and effective to identify, monitor and manage all material risks that may pose a threat to the investors' assets.



8.04 The senior management of a trustee must–

- (a) implement and adhere to the policies, practices and standards approved by the board of directors;
- (b) manage risks associated with the business of a trustee including performing periodic evaluation of its risk management process;
- (c) frequently and adequately apprise the board of directors on the operations of the trustee and ensuring that the registered entity complies with securities laws, relevant guidelines, trust deed or documents lodged with the SC and any other relevant laws;
- (d) ensure records are accurate, properly secured and retained; and
- (e) comply with all the reporting requirements and submit accurate information that is required by the SC in a timely manner.

8.05 In addition, a chief executive, must at all times–

- (a) ensure continuous compliance of all requirements under these Guidelines, securities laws, relevant guidelines, trust deed or documents lodged with the SC and any other relevant laws;
- (b) notify the SC of any material change to the information submitted to the SC within 10 business days from the date of such change; and
- (c) undertake the role of the main contact person for the purpose of liaising with the SC.

### **Conflict of Interest**

8.06 A trustee must have processes and procedures to establish, maintain and implement an internal control policy that–

- (a) identifies, monitors, mitigates and manages situations and potential situations which may give rise to conflicts of interest; and
- (b) requires disclosure of any conflict or potential conflict of interest.

8.07 A trustee must avoid any conflict of interest. Where a conflict cannot be avoided, appropriate safeguards must be put in place to protect the interests of the investors and ensure that the UTS, PRS, corporate bond and sukuk are not disadvantaged by the transaction concerned.

- 8.08 A trustee must maintain a record on disclosure of conflict or potential conflict of interest.
- 8.09 A trustee must ensure that there is no conflict of interest between the trustee (which includes any person or legal entity that may be connected to the trustee in any one or more ways including, but not limited to, connections through shareholding, agency, or any other point of commonality that would arouse doubt as to substantive independence and objectivity between the trustee and such person) and the transaction parties in relation to the bond issue.

## **Compliance**

- 8.10 A trustee must have a compliance function to undertake compliance matters in relation to the capital market services carried out.
- 8.11 The compliance framework should among others include the following:
- (a) An outline of the compliance function, system and framework;
  - (b) The purpose, responsibility, authority and reporting lines;
  - (c) Role of the board of directors and senior management in inculcating and promoting a compliance culture in the organisation, including active participation in compliance reporting;
  - (d) Adequate resources and support with necessary qualifications and working experience to administer independently and effectively the trustee's compliance with the internal policies, the reporting of non-compliances, checking of compliance with investment limits as well as processes for reconciliation; and
  - (e) Duties and responsibilities of personnel carrying out the compliance function.

## **Internal Audit**

- 8.12 A trustee must maintain an internal audit function independent from its operations, to report directly to the board of directors on the adequacy, effectiveness and efficiency of the management, operations, risk management and internal controls.

### **Guidance to paragraph 8.12**

In the case of the trustee appointing an external service provider, the party carrying out the internal audit function shall report directly to the trustee's board of directors.

- 8.13 Notwithstanding that the internal audit function of the trustee may be outsourced, the board of directors must ensure that the internal audit framework includes–
- (a) clearly defined terms of the internal audit framework which sets out the scope, objectives, approach and reporting requirements;
  - (b) adequate planning, controlling and recording all audit work performed, and record the findings, conclusions and if any, recommendations made;
  - (c) issuance of an internal audit report at the conclusion of each internal audit performed; and
  - (d) ensuring matters are highlighted in the internal audit report are satisfactorily resolved in a timely manner and does not jeopardise or prejudice the investors' interest.
- 8.14 The internal audit framework must be approved by the trustee's board of directors.

### **Risk Management**

- 8.15 The trustee must establish a risk management framework to identify, assess, monitor, control and report all material risks to which the trustee could be exposed to.
- 8.16 The risk management framework must–
- (a) commensurate with the nature, scale and complexity of the operations of the trustee;
  - (b) be documented and communicated to all staff and relevant parties;
  - (c) be periodically reviewed by the board of directors;
  - (d) continuously identify, assess, monitor and manage the trustee's risks; and
  - (e) include mitigation actions to address such risks.

### **Records and Data Management**

- 8.17 A trustee must maintain and ensure that the management company and the PRS provider maintains proper accounting records and other records to sufficiently explain the transactions and financial position of the UTS and PRS and enable true and fair financial statements to be prepared from time to time.

- 8.18 A trustee that utilises any service, expertise and assets available, within its group or external service provider, must have controls in place to ensure that confidentiality of information is maintained and protected at all times.
- 8.19 A trustee must ensure that records are kept in such manner that enables it to be properly audited.
- 8.20 A trustee must submit or make available any statement, document, book, record and other information kept by itself relating to the UTS or PRS and the business of the trustee which may be required by the SC from time to time.
- 8.21 A trustee must maintain records as referred to in paragraph 8.20 for a period of at least seven years.

## PART B: ISSUING HOUSE

### CHAPTER 9

#### ISSUING HOUSE

9.01 Only an entity that is registered with the SC in accordance with these Guidelines can carry out the services of an issuing house in relation to capital market activities.

#### Eligibility Requirements

9.02 In considering an application for registration, SC shall give regard to, among others:

(a) Eligibility

To be eligible for registration under these Guidelines, the applicant must be a company incorporated under the *Companies Act 2016* and have its operations in Malaysia.

(b) Organisational competence

The applicant must ensure that its business is properly established to include—

- (i) adequate governance systems with clear lines of accountability, responsibility and authority, including clear segregation of duties to avoid any potential conflicts;
- (ii) policies and procedures on conflict management, anti-corruption, whistleblowing and the monitoring of unethical conduct that are appropriate to the nature, scale and complexity of its business;
- (iii) risk management policies and procedures, including having in place a business continuity plan and processes;
- (iv) adequate internal control systems; and
- (v) necessary information technology (IT) systems and infrastructure including policies and procedures for IT audit, and plans for continuous investment in systems development and security system.

**Guidance to subparagraph 9.02(b)(ii)**

The policies and procedures on anti-corruption should be guided by the Guidelines on Adequate Procedures issued pursuant to section 17A(5) of the *Malaysian Anti-Corruption Commission Act 2009*.

(c) Resource capabilities

The applicant's members of staff must ensure they have the appropriate level of experience, knowledge and skills to perform the functions of an issuing house and carry out their duties efficiently, honestly and fairly.

### **Financial Requirements**

9.03 An entity providing issuing house services must have sufficient financial resources to operate efficiently and to be able to meet operational requirements and liabilities.

9.04 The entity must have minimum shareholders' funds of not less than RM2 million, which must be maintained at all times.

### **Board of Directors and Senior Management**

9.05 The board of directors and senior management of an issuing house must demonstrate an adequate level of competence to carry out their functions.

9.06 In determining where responsibility lies and the degree of responsibility of a particular person in the board of directors and senior management, the SC shall have regard to the person's authority and position in the entity, the scope of their responsibilities and the level of control or knowledge they may have.

### **Chief Executive**

9.07 A chief executive of the issuing house is responsible to undertake the following functions–

- (a) ensure the issuing house's continuous compliance of all requirements under these Guidelines and any other relevant laws, rules and regulations, as the case may be;
- (b) ensure the issuing house's adherence of its obligations and reporting requirements in a timely manner; and
- (c) undertake the role as the main contact person for the purpose of liaising with the SC.

9.08 A chief executive must–

- (a) have a minimum of eight years of relevant experience; and
- (b) have the appropriate level of skills, qualifications and competence.

- 9.09 In determining whether a person is fit and proper to be designated as a chief executive, regard shall be had to his probity, to his competence and soundness of judgement of fulfilling the responsibilities of a chief executive, to the diligence with which he is fulfilling or likely to fulfil those responsibilities, and to whether the interests of the issuing house' clients, if any, are or are likely to be, in any way threatened by his holding of that position.
- 9.10 In approving the chief executive, the SC may impose terms and conditions.
- 9.11 Any vacancy in relation to the position of a chief executive shall be filled within three months from the date of the departure of the former chief executive in compliance with this chapter.

### **Obligations of an Issuing House**

- 9.12 The issuing house must appoint an external auditor that is registered with the Audit Oversight Board to prepare its audited financial statements.
- 9.13 The issuing house must submit to the SC its audited financial statements within three months after the close of its financial year end.
- 9.14 The issuing house is required to submit to the SC an anniversary report on each anniversary date of its registration with the SC. A format of the report is as provided on the SC's website.
- 9.15 The issuing house is required to observe the following continuing obligations:
- Prior approval of the SC
- (a) The issuing house must obtain the SC's prior approval–
- (i) in circumstances where any proposed change to the shareholding will result in a direct or indirect change in the entity's controller; and
  - (ii) on the appointment of a chief executive.

#### Notification to the SC

- (b) The issuing house must inform the SC–
- (i) immediately of any information that comes to the attention of the entity that may affect the entity's ability to carry out its activities;
  - (ii) immediately where its directors or senior management are no longer fit and proper;
  - (iii) immediately where the chief executive has vacated his position;

- (iv) within 10 business days of changes to the Board of directors. The information submitted should include the change, basis for the changes and implications on the activities registered;
- (v) within 10 business days of material changes with regard to any details that were submitted to the SC, including changes to the activities of the entity, operational requirements and regulatory changes;
- (vi) within 10 business days where any litigation has been instituted or court decision obtained against the issuing house;
- (vii) where there is an occurrence of any event that would trigger the activation or execution of the business continuity plan, in such form and manner as may be specified by the SC.

### **Cessation of Business**

- 9.16 An issuing house that intends to cease its business must ensure proper arrangements are in place and immediately notify the SC and other relevant authorities and parties concerned of its intention to cease business.
- 9.17 The cessation of business may not take effect until the SC is satisfied that all adequate arrangements have been made.

### **Key Responsibilities of the Board of Directors and Senior Management**

- 9.18 The board of directors and senior management of an issuing house shall be primarily responsible and accountable for–
- (a) defining and overseeing the business plan and strategy of the entity that is appropriate to its objective, size, structure and risk profile; and
  - (b) approving and overseeing all key policies including those relating to risk management, internal controls and compliance with the requirements of these Guidelines and any other relevant laws, rules and regulations, as the case may be.
- 9.19 The board of directors of an issuing house shall ensure that–
- (a) a comprehensive operation system that commensurate with its business is in place;
  - (b) the entity is in compliance with requirements imposed under these Guidelines and any other relevant laws, rules and regulations, as the case may be;
  - (c) implementation and maintenance of a comprehensive governance framework, and effective internal controls that commensurate with its business is in place; and



- (d) at least yearly review is conducted on the effectiveness of its internal control framework.
- 9.20 The internal controls must be adequate and effective to identify, monitor and manage all material risks that may pose a threat to its clients' corporate exercise and integrity of the capital market.
- 9.21 The senior management of an issuing house must–
- (a) implement and adhere to the policies, practices and standards approved by the board of directors;
  - (b) manage the risks associated with the business of an issuing house performing periodic evaluation of its risk management process, where relevant;
  - (c) frequently and adequately apprise the board of directors on the operations of the issuing house and ensuring that it complies with the requirements of these Guidelines and any other relevant laws, rules and regulations, as the case may be;
  - (d) ensure records are accurate, properly secured and retained; and
  - (e) comply with all the reporting requirements and submit accurate information that is required by the SC in a timely manner.

### **Conflict of Interest**

- 9.22 An issuing house must have processes and procedures to establish, maintain and implement an internal control policy that–
- (a) identify, monitor, mitigate, manage situations and potential situations which may give rise to conflict of interest; and
  - (b) require disclosure of any conflict or potential conflict of interest.
- 9.23 An issuing house must avoid any conflict of interest. Where a conflict cannot be avoided, appropriate safeguards must be put in place to protect the interests of the clients and ensure that the clients are not disadvantaged by the transaction concerned.
- 9.24 An issuing house must maintain a record on disclosure of conflict or potential conflict of interest.

### **Risk Management**

- 9.25 The issuing house must establish a risk management framework to identify, assess, monitor, control and report all material risks to which it could be exposed to.

- 9.26 The risk management framework must–
- (a) commensurate with the nature, scale and complexity of the operations of the issuing house;
  - (b) be documented and communicated to all staff and relevant parties;
  - (c) be periodically reviewed by the board of directors;
  - (d) continuously identify, assess, monitor and manage the entity's risks; and
  - (e) include mitigation actions to address such risks.

### **Records and Data Management**

- 9.27 An issuing house must maintain proper records to enable true and fair financial statements to be prepared from time to time.
- 9.28 An issuing house must have controls in place to ensure that confidentiality of information is maintained and protected at all times.
- 9.29 An issuing house must ensure that records are kept in such manner that enables it to be properly audited.
- 9.30 An issuing house must submit or make available any statement, document, book, record and other information kept by itself or, if applicable, any third party service provider, which may be required by the SC from time to time.
- 9.31 An issuing house must maintain records referred to in paragraph 9.30 above for a period of at least seven years.

## **PART C – GENERAL**

### **CHAPTER 10**

#### **OUTSOURCING AND DELEGATION**

##### **General**

10.01 This Chapter sets out the requirements for outsourcing and delegation of processes, services or activities by entity registered under these Guidelines to its service providers. The entity must select an appropriate and efficient service provider as well as to monitor the outsourcing and delegation arrangements on a continuous basis to ensure that it does not lead to business disruption and negative consequences to the investors.

10.02 Except for the functions set out under paragraph 10.03, all functions of the entity can be outsourced or delegated subject to the requirements of this Chapter.

10.03 The entity is not allowed to outsource any function that involves–

- (a) the decision making functions of the entity; or
- (b) any interaction or direct contact with–
  - (i) the entity’s clients; and
  - (ii) investors

10.04 The service provider and delegate must avoid any conflicts of interest. Where a conflict cannot be avoided, appropriate safeguards must be put in place to protect the interests of the investors, clients and ensure that the UTS, PRS, corporate bond and sukuk are not disadvantaged by the transaction concerned.

##### **Outsourcing**

10.05 The outsourcing of the following functions by the entity is considered as material outsourcing arrangement and can only be outsourced to the following service provider:

- (a) Internal audit function to its group or an external auditor, where applicable;
- (b) Compliance function to its group, where applicable; or
- (c) Risk management function to its group or an external service provider in the area of risk management.

10.06 Other than the material functions set out in the paragraph 10.05, other outsourcing arrangements will also be considered as material outsourcing arrangement in the following circumstances:

- (a) There may be a financial, reputational or operational impact on the entity in the event of a default or failure of the service provider or the delegate;
- (b) The entity's services or support rendered to its investors or clients may be potentially impacted by the outsourcing arrangement;
- (c) The entity's ability and capacity to comply with regulatory requirements may be impacted by the outsourcing arrangement; and
- (d) If the appointed service provider may not be able to perform the outsourced function, there is a degree of difficulty and time required for the entity to select an alternative service provider, or to bring the outsourced function in-house.

10.07 Where applicable, the internal audit, compliance and risk management functions which have been outsourced cannot be further sub-contracted.

### **Delegation**

10.08 In the case of a trustee, the trustee may delegate the custodial function to a custodian as specified under Paragraph 10.10 of these Guidelines.

### **Oversight function outsourced and delegated**

10.09 An entity must select an appropriate service provider and delegate as well as monitor the outsourcing or delegation arrangements on a continuous basis to ensure that it does not lead to business disruption and negative consequences to the investors for issuing house, the clients.

10.10 The entity must ensure that–

- (a) adequate procedures are in place to monitor the conduct of the service provider or delegate and to ensure that the function outsourced or delegated is performed in a proper and efficient manner; and
- (b) the delegate or service provider, as the case may be, has controls in place to ensure compliance with the securities laws, these guidelines, other relevant guidelines, trust deed or documents lodged with the SC.

10.11 In appointing the service provider or delegate, the entity must also ensure that the person appointed is suitable to undertake the particular function, including that it–

- (a) is duly licensed or authorised by the relevant authority;
- (b) has adequate financial resources;
- (c) has an adequate track record in the performance of the function; and
- (d) has adequate and appropriate human resources, systems, procedures and processes, including compliance with applicable requirements, policies and procedures on internal controls, to carry out the function.

10.12 The trustee's delegate must observe the best of corporate governance standards.

10.13 The service agreement governing the appointment of the service provider or a delegate must, among others, contain clear provisions on–

- (a) the services to be provided;
- (b) the fees, remuneration and other charges;
- (c) any restriction or prohibition regarding the performance of the function to be undertaken; and
- (d) reporting requirements, including the line of reporting to the entity, and means of evaluating the performance of the delegate.

10.14 Outsourcing or delegation to third parties, group or related companies does not relieve the entity from the responsibility for proper conduct of the outsourced and delegated activities. The entity's board of directors remains accountable for all outsourced and delegated functions.

10.15 Where applicable, for the function that is delegated or outsourced, the entity must ensure that–

- (a) it retains control of the investors' assets at all times;
- (b) there are adequate arrangements to prevent the delegate from releasing the custody or control of the investors' assets without the entity's prior consent;
- (c) such service will not affect the entity in carrying its obligations as provided; and
- (d) in the case of a trustee's delegate, the remuneration of the delegate must be paid by the trustee and not be charged to the UTS or PRS. However, remuneration

relating to the custodial function for the PRS or UTS' assets outside Malaysia may be charged to the UTS or PRS respectively.

10.16 Where functions are outsourced or delegated, the entity's risk framework must include–

- (a) performing due diligence on the nature, scope and complexity of the outsourcing or delegation to identify key risk areas and risk mitigation strategies;
- (b) conducting review of its outsourcing or delegation arrangement and identifying new risks which may arise;
- (c) analysing the impact of the outsourcing or delegation arrangement on the overall risk profile of the entity; and
- (d) determining whether there are adequate measures and resources in place to mitigate the risks identified.

10.17 Where a service provider is located outside Malaysia, the entity must–

- (a) analyse the economic, legal and political conditions of the country that the service provider are operating from, which may impact the undertaking of any outsourced or delegated functions;
- (b) commit to retrieve information readily available from the service provider should the SC request for such information; and
- (c) inform the SC if any foreign authority were to seek access to its investors' information.

10.18 The entity must enter into a service level agreement for any material outsourcing and delegation arrangement and shall notify the SC within 10 business days upon signing of the same.

10.19 The entity must perform an assessment on a service provider and delegate, the group or its related companies on a periodic basis, as part of its monitoring mechanism and submit a report of the assessment to its board of directors and senior management.

10.20 This assessment must be performed by the entity's internal audit or external auditor and the report must be submitted to the SC as and when requested.

10.21 This assessment must take into account any new material risk arising from the outsourcing or delegation arrangement and strategies for managing such risk.

## **Notification to the SC**

- 10.22 The information required in the notification of material outsourcing arrangement is set out under Appendix 3 of these Guidelines and the template can be found on the SC's website.
- 10.23 A letter of undertaking is also required from the service provider or delegate stating that the SC will have access to all information, records and documents relating to the material outsourced or delegation arrangement(s). The letter of undertaking must be submitted together with the notification.
- 10.24 The entity must notify the SC of any variation or termination of the material outsourcing or delegation arrangement or any adverse development arising in such arrangement that could significantly affect the entity, within 10 business days from the occurrence of the event.
- 10.25 The entity must also notify the SC of any adverse development arising in the outsourcing or delegation arrangement of any outsourced function that could significantly affect the entity, within 10 business days from the occurrence of the event.

## **CHAPTER 11**

### **SUBMISSION PROCEDURE**

11.01 Applications under these Guidelines must be submitted in–

- (i) hard copies; and
- (ii) electronic copy, where the electronic copy must be in text-searchable format (PDF-text) in an electronic storage medium;

Submission of documents in hard copies must be addressed to:

Chairman  
Securities Commission Malaysia  
3 Persiaran Bukit Kiara  
Bukit Kiara  
50490 Kuala Lumpur

(Attention: Authorisation and Licensing Department)

11.02 Upon satisfying relevant criteria as set out in these Guidelines, the applicant must complete and submit the relevant forms available on the SC website.

11.03 The SC may require any other information or document where appropriate.

#### **Fees and charges**

11.04 Each application must be accompanied by the relevant fees prescribed by the SC and the fee checklist provided on the SC website. An application is deemed incomplete if the appropriate fee is not submitted.

11.05 Payment should be made in the form of a crossed cheque/draft order made in favour of "Suruhanjaya Sekuriti Malaysia" or "Securities Commission Malaysia".



## **CHAPTER 12**

### **REFUSAL OF REGISTRATION, DEREGISTRATION AND CESSATION**

#### **Refusal of Registration**

- 12.01 The SC may refuse an application for registration and approval if any of the criteria in Appendix 1 of these Guidelines are not met.
- 12.02 Notwithstanding Paragraph 12.01, the SC may reject any application if the SC has any reason to believe that to approve such application would be contrary to the interests of the public.

#### **Deregistration**

- 12.03 The SC may suspend, withdraw, or vary the conditions of, the registration if there are circumstances or events involving the registered entity that may jeopardise the interests of the investors or the integrity of the capital market, including, but not limited to, the following:
- (a) Fails or ceases to carry on the business in which it was a registered for;
  - (b) A winding-up petition is filed against the entity and is not dismissed or withdrawn within 90 days from the date of filing;
  - (c) The entity commits an act, error or omission which is negligent, reckless or unethical, and is not remedied to the SC's satisfaction within 30 days from the date that the entity becomes aware of such act, error or omission;
  - (d) The entity commits a breach of, or does not comply with, any of the SC's requirements, whether in these Guidelines, in respect of any direction issued by the SC or otherwise, and is not remedied to the SC's satisfaction within 30 days from the date that the entity becomes aware of such breach or non-compliance;
  - (e) The entity does not comply with any other written notice, circular or direction of the SC, and is not remedied to the SC's satisfaction within 14 days from the date that the entity becomes aware of such non-compliance; or
  - (f) If the entity or the board of directors or the senior management fails to satisfy the fit and proper requirements set out in Appendix 1 of these Guidelines.

12.04 The SC will not exercise its power to deregister without first giving the affected person an opportunity to be heard.

### **Cessation of business**

12.05 Registration status may be ceased by notifying the SC in writing.

12.06 The notification of cessation to the SC will not take effect until and unless the SC is satisfied that adequate arrangements have been made to meet all obligations that are outstanding in relation to the role as a trustee.

12.07 Notwithstanding the above, SC has the sole discretion in determining the effective date of the notification of withdrawal.

### FIT AND PROPER CRITERIA – ENTITY

In considering the fitness and probity of an applicant or registered person (referred to in this Appendix as 'Relevant Person'), the SC would take into account the following:

- (a) The Relevant Person is not in the course of being wound up or otherwise dissolved;
- (b) There is no execution against the Relevant Person in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (c) No receiver, a receiver and manager or an equivalent person has been appointed within or outside Malaysia, or in respect of any property of the Relevant Person;
- (d) The Relevant Person has not, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
- (e) The Relevant Person or any of its shareholders, directors, senior management or controller–
  - (i) has not been convicted, whether within or outside Malaysia, of an offence involving fraud or other dishonesty or violence or the conviction of which involved a finding that it or he acted fraudulently or dishonestly;
  - (ii) has not been convicted of an offence under the securities laws or any law outside Malaysia relating to capital market;
  - (iii) has not been subjected to any action taken by the SC and under sections 354, 355 or 356 of CMAA;
  - (iv) has not been charged for any offence or had any civil action initiated against the Relevant Person, in any court of law;
  - (v) has not contravened any provision made by or under any written law whether within or outside Malaysia appearing to the SC to be enacted for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies;

- (vi) has not engaged in any business practices appearing to the SC to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on its or his method of conducting business;
- (vii) has not engaged in or has been associated with any other business practices or otherwise conducted itself or himself in such a way as to cast doubt on its or his competence and soundness of judgment; or
- (viii) is not an undischarged bankrupt whether within or outside Malaysia;
- (f) Whether the SC has any reason to believe that the Relevant Person or any of its directors, chief executive, managers or controller may not be able to act in the best interest of its investors or clients having regard to their reputation, character, financial integrity and reliability;
- (g) The SC is satisfied as to the financial standing of the Relevant Person or the manner in which the Relevant Person's business is to be conducted;
- (h) The SC is satisfied as to the record of past performance or expertise of the Relevant Person having regard to the nature of the business which the Relevant Person may carry on in connection with the registration;
- (i) There are other circumstances which are likely to—
  - (i) lead to the improper conduct of business by the Relevant Person or by any of its shareholders, directors, senior management or controller; or
  - (ii) reflect discredit on the manner of conducting the business of the Relevant Person or its controller;
- (j) Whether the SC has reason to believe that the Relevant Person or any of its shareholders, directors, senior management will not carry on the capital market service activity efficiently, honestly or fairly.

## **Fit and Proper Criteria – Individual**

In considering the fitness and probity of an applicant or registered person (referred to in this Appendix as 'Relevant Person'), the SC would take into account the following:

- (a) The Relevant Person is not an undischarged bankrupt whether within or outside Malaysia;
- (b) There is no execution against the Relevant Person in respect of a judgment debt has been returned unsatisfied in whole or in part;
- (c) The Relevant Person has not, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with his creditors, being a compromise or scheme of arrangement that is still in operation;
- (d) The Relevant Person has not–
  - (i) been convicted, whether within or outside Malaysia, of an offence involving fraud or other dishonesty or violence or the conviction of which involved a finding that he acted fraudulently or dishonestly;
  - (ii) been convicted of an offence under the securities laws or any law outside Malaysia relating to capital market;
  - (iii) been subjected to any action taken by the SC under sections 354, 355 or 356;
  - (iv) been charged for any offence or had any civil action initiated against the Relevant Person, in any court of law;
  - (v) contravened any provision made by or under any written law whether within or outside Malaysia appearing to the SC to be enacted for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
  - (vi) engaged in any business practices appearing to the SC to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business; or
  - (vii) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment;

- (e) Whether the SC is satisfied as to the educational or other qualification or experience of the Relevant Person having regard to the nature of the duties he is to perform in connection with the registration;
- (f) Whether the SC has reason to believe that the Relevant Person may not be able to act in the best interests of the investors or clients having regard to his reputation, character, financial integrity and reliability;
- (g) The SC is satisfied as to the record of past performance or expertise of the Relevant Person having regard to the nature of the duties which he may perform in connection with the registration of the entity;
- (h) Whether there are other circumstances which are likely to lead to the improper conduct of business by, or reflect discredit on the manner of conducting the business of, the Relevant Person or any person employed by or associated with him for the purpose of his business;
- (i) Whether the SC has reason to believe that the Relevant Person will not carry on the capital market service activity efficiently, honestly or fairly.

## **REQUIREMENTS ON THE APPOINTMENT OF RELATED-PARTY TRUSTEE**

### **Introduction**

1. A related-party trustee may be eligible to be appointed to act as trustee for corporate bonds, sukuk and UTS, if it satisfies the criteria and requirements specified in this Appendix.

### **Eligibility Criteria and Requirements**

2. The SC may register a related-party trustee subject to the following conditions:
  - (a) The trustee is within the financial group of a financial institution;
  - (b) Notwithstanding subparagraph 2(a)–
    - (i) in the case of a trustee for UTS, the registration will not be granted where the trustee is a subsidiary of the management company or vice versa; or
    - (ii) in the case of a trustee for corporate bond or sukuk, the registration will not be granted where the trustee is a subsidiary of the borrower or vice versa;
  - (c) The relationship between the trustee and its related corporation (who is a person referred to under paragraphs 260(2)(a) to (d) and 290(1)(a) to (c) of the CMSA) exhibits legal and structural separation;
  - (d) The trustee is financially independent of, and not reliant on, support from the management company or borrower;

### **Guidance**

- The trustee must not be reliant on any form of financial support from the management company or the borrower other than for circumstances provided under paragraphs 260(4)(a) and 290(3)(a) of the CMSA relating to entitlement to monies payable under the covenants of the trust deed in its capacity as a trustee.
- Relationships between the trustee and the management company or the borrower (persons referred to under paragraphs 260(2)(a) to (d) and 290(1)(a) to (c) of the CMSA) which arises from the provision of deposits or loans, are acceptable if they are made in the following manner:
  - in the ordinary course of business;
  - on similar terms and conditions available to unrelated parties;  
and
  - goods and services provided at an arm's length and on commercial terms.

- (e) The non-financial resources of the trustee are sufficiently independent of the non-financial resources of the management company or borrower;
- (f) The non-financial resources of the trustee are sufficiently independent of the non-financial resources of the management company or borrower



### **Guidance**

- The trustee must ensure that there is no commonality of usage and sharing of its non-financial resources with the management company or borrower. Sufficient independence and separation of non-financial resources must be established, e.g. human resources, information systems, business equipment, computer facilities, etc.
- Additionally, non-financial services provided to the trustee by the management company or borrower as the case may be, or any of its related corporation must at all times be provided on commercial terms and conducted at arm's length. They should not in any way diminish the trustee's independence. Such terms must among others, provide for the following:
  - That the trustee has unrestricted access to relevant and necessary resources it requires for the performance of its functions;
  - That the trustee keeps its information confidential, except if the trustee authorises otherwise;
  - Unless it defaults or its term expires, the agreement may only be terminated if the trustee agrees; and
  - If the trustee is terminated, all its records remain the trustee's property.

- (g) At least one-third of the trustee's board of directors comprises independent directors and this must be specifically stated in the trustee's constituting documents;

### **Guidance**

An independent director is one who is independent of management and free from any business or other relationships which could interfere with the exercise of independent judgment when acting as a member of the board and is able to act in the best interests of the investors.

- (h) No person is a director of both the trustee's board of directors and the management company or the borrower, as the case may be; and
- (i) The trustee and the management company or the borrower, as the case may be sign an undertaking that they will act independently of each other in their dealings with respect to the relevant product.

Documents to be submitted

3. An application should comprise the following:

- (a) Cover letter, specifying the approval sought, including particulars of the proposal; and
- (b) The following supporting documents:
  - (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 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) of the trustee;
  - (v) The trustee's internal control procedures and manual;
  - (vi) 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 trust deed, these Guidelines and the securities laws; and
  - (vii) An undertaking by the management company, the borrower and the trustee that they will act independently of each other in their dealings with the UTS or corporate bond or sukuk under trusteeship or custodianship.

**NOTIFICATION OF MATERIAL OUTSOURCING ARRANGEMENTS**

<b>No.</b>	<b>Description</b>
1.	<p>A notification form signed by either the chief executive or executive director (please refer to the template at <a href="http://www.sc.com.my">www.sc.com.my</a>) which sets out the following:</p> <p>(a) A brief description of the material outsourced functions; and</p> <p>(b) A brief explanation on the rationale to outsource to service provider or sub-contractor outside Malaysia and explanation on why the particular function could not be undertaken domestically (if applicable).</p>
2.	<p>The notification form should be addressed and sent to:</p> <p style="padding-left: 40px;">Intermediary and Fund Supervision Securities Commission Malaysia 3 Persiaran Bukit Kiara Bukit Kiara 50490 Kuala Lumpur</p>
3.	<p>Letter of undertaking from the service provider or sub-contractor addressed to:</p> <p style="padding-left: 40px;">Intermediary and Fund Supervision Securities Commission Malaysia 3 Persiaran Bukit Kiara Bukit Kiara 50490 Kuala Lumpur</p>