



**Suruhanjaya Sekuriti**  
Securities Commission  
Malaysia

## **TRUST DEEDS GUIDELINES**

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## **1.0 Introduction**

- 1.01 With effect from 1 July 2000, a person issuing, offering or making an invitation of debenture and Islamic securities (or sukuk) is required to enter into a trust deed, unless the issue, offer or invitation is exempted under Schedule 8 of the *Capital Markets and Services Act 2007 (CMSA)* which is attached as Appendix 1 for ease of reference. The trust deed shall contain the minimum provisions, covenants, requirements, information and particulars which are specified by the Securities Commission Malaysia (SC) in these guidelines.
- 1.02 The legal requirements stated in paragraph 1.01 above are provided under Division 4 of Part VI of the *CMSA*, which was previously set out in Division 4 of Part IV of the *Securities Commission Act 1993 (SCA)*.
- 1.03 These guidelines are issued under section 377 of the *CMSA*.
- 1.04 These guidelines supersede the *Guidelines on the Minimum Contents Requirements for Trust Deeds* dated 1 July 2000 with the main objective of enhancing disclosure and protection to the debenture and sukuk holders.
- 1.05 The requirements stated in these guidelines are in addition to all requirements imposed on a borrower or issuer, guarantor and trustee under the law which includes the provisions of the *CMSA*. It is not intended for these guidelines to derogate from any requirement of the law.
- 1.06 These guidelines do not seek to impose worded clauses in any trust deed in relation to debentures or sukuk. Therefore, parties are free to determine additional provisions, covenants or terms and conditions of debentures or sukuk and/or trust deeds over and above that stipulated in these guidelines, provided that such addition does not in any way contravene with the minimum contents requirements as specified in these guidelines.
- 1.07 For the purpose of clarification, the Minister has prescribed Islamic securities as securities for the purposes of applying the provisions of Division 4 of Part IV of the *SCA*, which are now stated in Division 4 of Part VI of the *CMSA*.
- 1.08 Listed corporations should additionally comply with such requirements pertaining to trust deeds as imposed by listing requirements and any other rules of a stock exchange.
- 1.09 For issuance, offer or invitation of sukuk which involves a special purpose vehicle as an issuer or offeror, the requirements stated in these guidelines on the issuer or offeror shall apply, where applicable, to the obligor.

## **2.0 Interpretation**

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

adviser	has the similar meaning assigned to it under the <i>Equity Guidelines</i> .
borrower	has the same meaning as in section 2 of the CMSA and is used synonymously with the term "issuer" for the purpose of these guidelines.
debenture	has the meaning assigned to it under section 2(1) of the CMSA.
FAST	means the Fully Automated System for Issuing/Tendering.
interested person	includes directors, major shareholders and chief executive.
Islamic securities	has the meaning assigned to it under the prescription order made by the Minister under section 5 of the CMSA and is used synonymously with the term "sukuk" in these guidelines.
issuer	means issuer of Islamic securities and debentures in these guidelines.
major shareholder	<p>refers to a person who has an interest or interests in one or more voting shares in a corporation and the nominal amount of that share, or the aggregate of the nominal amounts of those shares, is–</p> <p>(a) 10% or more of the aggregate of the nominal amounts of all the voting shares in the corporation; or</p> <p>(b) 5% or more of the aggregate of the nominal amounts of all the voting shares in the corporation where such person is the largest shareholder of the corporation.</p> <p>For the purpose of this definition, "interest in shares" has the meaning given in section 6A of the <i>Companies Act 1965</i>.</p>
Minister	has the meaning given in section 2 of the CMSA
obligor	refers to an entity which receives funds raised from the issuance, offer or invitation by the special purpose vehicle who is the sukuk issuer.
RENTAS	means Real Time Electronic Transfer of Funds and Securities System.

trustee means a person who can be a trustee under section 260 of the CMSA, and who is registered by the SC under *Practice Note on Registration by the Securities Commission for the Purpose of Acting as a Bond Trustee*.

### **3.0 Scope**

- 3.01 Under section 258 of the CMSA, any person who proposes to issue, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, debentures or sukuk, must enter into a trust deed that meets the minimum content requirements as specified in section 259 of the CMSA. The minimum contents required are as specified in these guidelines.
- 3.02 However, section 258 of the CMSA does not apply to any issue, offer or invitation of debentures or sukuk as provided in Schedule 8 of the CMSA. For such issue, offer or invitation, the minimum contents requirements as specified in these guidelines will not be mandatory but may be applied by the issuer to a trust deed upon considering the due interest of its investors.
- 3.03 For purposes of these guidelines, where relevant, parties may negotiate for references to issuer to include references to its subsidiaries where the affairs of its subsidiaries may impact on the ability of the issuer to repay amounts payable under the debentures or sukuk.
- 3.04 Where any provision stated in the guidelines is based on a test of 'materiality' or 'substantiality', such test shall be decided upon and finalised by the relevant parties with the relevant thresholds for the test to be clearly stated, to the extent possible, in the trust deed.

### **4.0 Preamble and recitals**

- 4.01 The following must be provided 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 or sukuk:
- (a) The identities of the parties to the trust deed;
  - (b) A brief description of the debentures or sukuk including the amount, maturity or tenure, Shariah principle (for sukuk) and interest or profit rate, where available;
  - (c) A statement confirming that the relevant board and/or shareholders' resolution(s) and regulatory approvals have been obtained; and
  - (d) The date of issue/proposed issue of the debentures or sukuk, where available, and a statement stating the name of the system where the debentures or sukuk will be issued, cleared and settled.

## **5.0 Description of debentures or sukuk**

5.01 The trust deed of the debentures or sukuk must provide the following:

- (a) The key features of the debentures or sukuk constituted by the trust deed including the tenure, redemption schedule and the denomination (where applicable);
- (b) Details of the central depository and paying agent for the debentures or sukuk;
- (c) Whether the debentures or sukuk are secured or unsecured and if secured, the nature of the security;
- (d) Whether the debentures or sukuk are callable or non-callable before the legal maturity date of the instruments and if they are callable, details of the call option; and
- (e) The ranking and voting right of the holders of debentures or sukuk among all other holders of the debentures or sukuk and as against all other obligations of the issuer.

## **6.0 Interest or profit rate**

6.01 Where provision is made for the payment of an interest or profit rate under the debentures or sukuk, the trust deed shall state–

- (a) the interest or profit rate (where applicable) payable and the frequency upon which such interest or profit payments are required to be made, the basis of calculation and the profit sharing ratio which is applicable for sukuk;
- (b) the conditions under which the stipulated interest or profit rate and its payment terms may change, if applicable;
- (c) where a default interest rate or *ta'widh* (for sukuk) has been agreed upon by the parties to the trust deed, to state the rate payable on any overdue amounts; and
- (d) where a rebate or *ibra'* (for sukuk) may be given, to state the circumstances where a rebate will be given and to state the agreed rate or method in which the rate/amount will be calculated.

## **7.0 Covenant to comply with trust deed and debentures or sukuk**

7.01 The trust deed must include a covenant by the issuer to comply at all times with the provisions of the trust deed and the terms and conditions of the debentures or sukuk at all times.

## **8.0 Issuer's covenant to pay**

- 8.01 The trust deed must provide for a covenant by the issuer to redeem or settle in full all outstanding debentures or sukuk in accordance with the terms and conditions of the debentures or sukuk.
- 8.02 Where the issuer has an option to redeem the debentures or sukuk before the legal maturity date of such debentures or sukuk, the trust deed must provide the following:
- (a) A clause setting out the conditions; and
  - (b) The procedure by which such an option can be exercised including, but not limited to, the procedure to inform the existing holders of debentures or sukuk of the early redemption, and if prior approval from the holders is required, to state clearly whether the approval can be obtained through a circular resolution (without affecting provisions on meetings of debentures or sukuk holders, if any, for the said approval) and to provide a reasonable notice period for debentures or sukuk holders to act upon the circular resolution.

## **9.0 Taxation**

- 9.01 If any withholding of taxes is required or subsequently required by law in respect of any payment to be made under the terms and conditions of the debentures or sukuk, the trust deed shall state the details of the obligation of the issuer with regard to such withholding.

## **10.0 Debenture or sukuk certificates**

- 10.01 The trust deed shall provide the following:
- (a) Details and particulars relating to the global certificate representing the debentures or sukuk; and
  - (b) The conditions under which the trustee may exchange the global certificate with definitive certificates.

## **11.0 Limitation on borrowing**

- 11.01 Where there is a limitation on the total amount of borrowing or financing by the issuer, the trust deed must provide the detailed formula governing the limitation and the detailed meanings or definition of each component in the formula in order to facilitate computation and verification of such limitation from time to time. For this limitation, the trust deed must provide for a report which shall be submitted at least annually by the issuer to the trustee. The report must state whether or not the said limitation has been complied with



as well as providing for relevant details (including detailed computation for such limitation) of the compliance or non-compliance.

## **12.0 Events constituting default and remedy of such default**

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

- (a) A list of all events, the occurrence of any of which would entitle or oblige the trustee to declare the debentures or sukuk immediately due and payable (where provision for period of grace will not be allowed while provision for remedy may be negotiated to the extent appropriate) including the following:
  - (i) Where there is any default in payment of any principal, premium, interest or profit under the debentures or sukuk;
  - (ii) Where a winding up order has been made against the issuer;
  - (iii) Where a resolution to wind up the issuer has been passed;
  - (iv) Where a scheme of arrangement under section 176 of the *Companies Act 1965* has been instituted against the issuer;
  - (v) Where a receiver has been appointed over the whole or a substantial part of the assets of the issuer;
  - (vi) Where there is a breach by the issuer of any term or condition in the debentures or sukuk or provision of the trust deed or of any other document relating to the issue, offer or invitation in respect of the debentures or sukuk;
  - (vii) Where any other indebtedness of the issuer becomes due and payable prior to its stated maturity or where the security created for any other indebtedness becomes enforceable; and
  - (viii) Where there is a revocation, withholding, invalidation or modification of a licence, authorisation or approval that impairs or prejudices the issuer's ability to comply with the terms and conditions of the debentures or sukuk or the provisions of the trust deed or any other document relating to the issue, offer or invitation in respect of the debentures or sukuk.
- (b) The powers of the trustee in any of the events described in paragraph (a) include—
  - (i) the powers of the trustee to declare the debentures or sukuk immediately due and payable at its discretion;

- (ii) the powers of the trustee to declare the debentures or sukuk immediately due and payable as directed by a special resolution;
- (iii) the powers of the trustee to enforce the provisions of the trust deed;
- (iv) the circumstances under which the trustee shall be bound to enforce the provisions of the trust deed; and
- (v) the circumstances under which the holders of the debentures or sukuk are entitled to pursue their rights and remedies.

12.02 For debentures or sukuk which are issued by a licensed banking institution to raise its Tier-I and Tier-II regulatory capital in accordance with the guidelines issued by the Bank Negara Malaysia (BNM), the list of events as provided in paragraph 12.01(a) may be excluded. However, in the event of a default in payment of any principal, premium, interest or profit under the debentures or sukuk, the trust deed must provide for an enforcement event for the winding up of the banking institution.

12.03 The exclusion of events as permitted under paragraph 12.02 for Tier-I and Tier-II capital instruments is granted by the SC on a condition that there is a proper disclosure of risks in the transaction documents of the issue, offer or invitation to investors that the occurrence of such events does not constitute an event of default.

### **13.0 Sinking fund**

13.01 Where the parties agree to the maintenance of a sinking fund, the trust deed shall provide for–

- (a) the obligation to maintain a bank account, or in the case of sukuk – an Islamic based account, and to state the holder(s) and operator(s) of the account;
- (b) the amounts to be paid into the account and the dates such payments are required to be made; and
- (c) the conditions under which the moneys in the account may be withdrawn by the issuer and used or applied by the trustee for the benefit of debentures or sukuk holders.

### **14.0 Covenants by the issuer**

14.01 At minimum and so long as any debentures or sukuk remain outstanding, the trust deed must provide the following covenants in relation to the issuer:

- (a) That the issuer will give to the trustee any information which the trustee may reasonably require in order to discharge its duties and

obligations under the trust deed relating to the issuer's affairs to the extent permitted by law;

- (b) That the issuer will exercise reasonable diligence in carrying out its business in a proper and efficient manner which shall ensure, among others, that all necessary approvals or relevant licences are obtained and maintained;
- (c) That the issuer will not enter into a transaction, whether directly or indirectly with interested persons unless—
  - (i) such transaction shall be on terms that are no less favourable to the issuer than those which could have been obtained in a comparable transaction from persons who are not interested persons; and
  - (ii) with respect to transactions involving an aggregate payment or value equal to or greater than an agreed amount (which must be stated in value term and not in a percentage ratio), or in the case of listed issuer or related corporate of a listed issuer, an agreed percentage ratio as provided in the listing requirement of the stock exchange, the issuer obtains certification from an independent adviser that the transaction is carried out on fair and reasonable terms; provided

that the issuer certifies to the trustee that the transaction complies with paragraph (i), that the issuer has received the certification referred to in paragraph (ii) (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; and

- (iii) in the case of listed issuer, with respect to transactions constituting a recurrent related-party transaction of a revenue or trading nature (RRPT) which are provided for and permitted under the listing requirements of the stock exchange, provided

that the issuer certifies to the trustee that the transaction complies with paragraph (i), that the issuer has obtained or renewed, where applicable, the shareholders' mandate in accordance with the said listing requirements and that the issuer furnishes at least one certificate to the trustee in respect of the RRPT contemplated under one shareholders' mandate;

- (d) That the issuer will maintain a paying agent or its equivalent, who is based in Malaysia in the case of ringgit-denominated debentures or sukuk;
- (e) That the issuer will procure that the paying agent shall notify the trustee, through a facility agent, if the paying agent does not receive payment from the issuer on the due dates as required under the trust deed and the terms and conditions of the debentures or sukuk;

(f) That the issuer will 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 to the extent permitted by law;

(g) That the issuer will ensure that the terms in the trust deed do not contain any matter which is inconsistent with the provisions of an information memorandum relating to the debenture or sukuk;

unless it has obtained the approval of the debenture or sukuk holders by way of a special resolution or the written consent of the trustee (which approval may be given, where in its opinion, it is not materially prejudicial to the interests of debenture or sukuk holders to give such approval) for the covenants stated in paragraphs 14.01 (h) to (i) below,

(h) That the issuer will not permit any amendment, supplement or variation to the Memorandum and Articles of Association of the issuer in a manner which may be materially prejudicial to the interests of debenture or sukuk holders; and

(i) That the issuer will not change the utilisation of proceeds from the debentures or sukuk 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.

14.02 For Tier-I and Tier-II capital instruments issued by a licensed banking institution, the covenant stated under paragraph 14.01 (c) and paragraphs 14.01 (h) to (i) may not apply to the bank.

### **15.0 Issue/exchange of shares in relation to convertible/exchangeable debentures or sukuk**

15.01 In the case of convertible debentures or sukuk, the trust deed or the terms and conditions of the debentures or sukuk must state–

(a) the terms, procedures and notices of conversion;

(b) where the issuer 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 or sukuk 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 debentures or sukuk holders is not diluted;

(c) if the holders of the debentures or sukuk have any right to convert the debentures or sukuk into shares in the event of a take-over offer in relation to the issuer, or how the holders of the debentures or sukuk might participate in such a take-over offer;

- (d) the conditions under which an option to convert the debentures or sukuk into shares of the issuer is exercised;
- (e) the provisions for the adjustment of the conversion price in the light of any changes to the issuer's share capital which is unimpaired by losses; and
- (f) the ranking of the shares arising from the conversion of the debentures or sukuk.

15.02 In the case of exchangeable debentures or sukuk, the trust deed or the terms and conditions of the debentures or sukuk must provide –

- (a) terms, procedures and notices of exchange;
- (b) manner in which exchange shares are transferred to the exercising debentures or sukuk holders;
- (c) survival of rights of debenture or sukuk holders;
- (d) the conditions under which an option to exchange the debentures or sukuk into shares is exercised;
- (e) rights of debenture or sukuk holders and responsibilities of trustee in the event of insolvency of issuer; and
- (f) rights of debenture or sukuk holders as well as responsibilities of issuers and trustee in the event a take-over offer.

## **16.0 Reporting covenants by the issuer**

16.01 The trust deed shall include covenants to ensure that the issuer shall immediately notify the trustee if the issuer becomes aware–

- (a) of any event of default;
- (b) of the happening of any event that has caused or could cause, one or more of the following:
  - (i) Any amount secured or payable under the debenture or sukuk to become immediately payable;
  - (ii) The debenture or sukuk to become immediately enforceable; or
  - (iii) Any other right or remedy under the terms, provisions or covenants of the debenture or sukuk or the trust deed to become immediately enforceable;

- (c) of any circumstance that has occurred that would materially prejudice the issuer, its guarantors (where applicable) or any security included in or created by the debentures or sukuk or the trust deed (where applicable);
- (d) of any substantial change in the nature of the business of the issuer or its guarantors (where applicable);
- (e) of a change in the name of the guarantors (where applicable);
- (f) 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;
- (g) of any change in withholding tax position;
- (h) of any change in the utilisation of proceeds from the debentures or sukuk where the prospectus, information memorandum or any agreement entered into in connection with the issue, offer or invitation which sets out a specific purpose for which proceeds are to be utilised; and
- (i) of any other matter that may materially prejudice the interests of debenture or sukuk holders.

16.02 The trust deed shall include a covenant by the issuer to send to the trustee the annual audited accounts and semi-annual unaudited accounts of the issuer within a stipulated timeframe and any other accounts, report, notice, statement or circular issued to shareholders. It shall also provide for the accounts, report, notice, statement or circular to be circulated by trustee at its discretion to the registered bondholders, investors who fall within Schedules 6 and 7 of the CMSA as well as credit rating agency of the debentures or sukuk.

16.03 The trust deed shall include a covenant by the issuer to provide to the trustee at least annually (unless otherwise provided in these guidelines), a certificate that the issuer has complied with its obligations under the trust deed and the terms and conditions of the debentures or sukuk and that there did not exist or had not existed, from the date the debentures or sukuk were issued or date of the previous certificate as the case may be, any event of default or enforcement, where applicable and if such is not the case, to specify the same.

## **17.0 Application of moneys received in respect of the debentures or sukuk**

17.01 Where there are any moneys received by the trustee under the trust deed, the trust deed shall stipulate the manner and order of priority in which these amounts are applied or payable. In case where the moneys are disbursed to the issuer conditionally over a period of time by the trustee, the trust deed

shall provide the relevant thresholds, conditions, supporting documents and certificates for the trustee to manage the release of the moneys to the issuer.

- 17.02 The trust deed shall provide for an account, known as Trustees' Reimbursement Account for Debenture holders' Actions or in the case of sukuk, Trustees' Reimbursement Account for Sukukholders' Actions (hereafter refer to as 'Account') with a sum of thirty thousand ringgit (RM30,000) to be set up from the moneys received by the issuer when the debentures or sukuk are issued. This Account shall be operated by the trustee and the money shall only be used strictly by the trustee in carrying out their duties in relation to the occurrence of events of default or enforcement events which are provided in the trust deed. This sum of money in the Account shall be maintained at all times throughout the tenure of the programme or issue.
- 17.03 The moneys in the Account may be invested in bank deposit or Islamic based account, instruments or securities (Shariah-compliant instruments or securities in the case of sukuk) as prescribed in the trust deed, with interest or profit from the investment to be accrued to the issuer. These moneys shall be returned to the issuer upon full redemption of the debentures or sukuk if no event of default or enforcement takes place.

#### **18.0 Power to withhold, invest and accumulate**

- 18.01 Where there is any discretion by the trustee to withhold, invest or accumulate moneys it receives, this must be stated in the trust deed.
- 18.02 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.

#### **19.0 Deposit of unclaimed moneys**

- 19.01 There must be a provision with regard to the rights and obligations of the parties in relation to any unclaimed moneys due to the debentures or sukuk holders.

#### **20.0 Powers and duties of trustee**

- 20.01 The trust deed shall contain a statement by the trustee that it is approved by the SC to act as trustee under the CMSA.
- 20.02 The trust deed shall set out provisions relating to the powers of the trustee. These shall include the following:
- (a) The matters which are within the powers of the trustee to decide without reference to the holders of the debentures or sukuk;

- (b) Where there is a breach by the issuer under the terms and conditions of the debentures or sukuk and the provisions of the trust deed, the circumstances that the trustee may authorise or waive such breach provided–
  - (i) it is satisfied that it is not materially prejudicial to the debentures or sukuk holders’ interests; or
  - (ii) it is authorised to do so by resolution of a stipulated majority of debentures or sukuk holders.
- (c) Where there is a request from the issuer to vary or modify any terms and conditions of the debentures or sukuk and the provisions of the trust deed, the circumstances that the trustee may concur with the issuer in making the variation or modification provided–
  - (i) it is satisfied that it is not materially prejudicial to the debentures or sukuk holders’ interests and it has informed the registered debentures or sukuk holders of the request in writing at least three business days prior to the concurrence; or
  - (ii) it is satisfied that the modification is necessary for the issuer to comply with mandatory provisions of law or requirements imposed by the regulatory authorities and it has informed the registered debentures or sukuk holders of the request in writing at least three business days prior to the concurrence; or
  - (iii) it is authorised to do so by resolution of a stipulated majority of debentures or sukuk holders.
- (d) The fees to be paid to the trustee for the performance of its duties as trustee and any additional services it may provide;
- (e) Any indemnity given by the issuer to the trustee; and
- (f) The circumstances in which the trustee may delegate its powers.

20.03 The trust deed shall incorporate provisions relating to the duties of the trustee which shall include the following:

- (a) A duty to exercise reasonable diligence to ascertain, based on the accounts, reports, certificates, circulars or opinions furnished to the trustee, whether the issuer or each guarantor (where applicable) has committed any breach of the terms and conditions of the debentures or sukuk or provisions of the trust deed or whether an event of default or enforcement, where applicable, has occurred or is continuing;
- (b) In the case where an event of default or enforcement, where applicable, has occurred and is continuing, the trustee shall exercise



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

- (c) A duty to provide necessary information to credit rating agency (deemed to be authorised by the issuer and the registered bondholders by virtue of a trust deed which has been duly executed for these debentures or sukuk) upon its reasonable inquiry over occurrence of the following material events in respect of debentures or sukuk which are rated:
  - (i) A declaration of an event of default by the trustee in accordance with the trust deed; and
  - (ii) A material breach of trust deed which has been communicated by trustee to bondholders, unless such breach would be or have been remedied by the issuer to the satisfaction of trustee.

## **21.0 Relief, exemption and indemnification of trustee from liability**

21.01 There shall 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 or sukuk shall 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.

## **22.0 Meetings**

22.01 There shall be a provision in the trust deed setting out the notice period for the meeting of debentures or sukuk holders.

22.02 There shall 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 debentures or sukuk holders.

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

22.04 There shall be a provision in the trust deed that debentures or sukuk held by the issuer or any interested person of the issuer shall not be counted for purposes of voting. For the purpose of this paragraph, interested person will not include the following major shareholders who hold the shares whether directly or indirectly for the benefit of the public:

- (a) A statutory institution who is managing funds belonging to the general public;

- (b) A closed end fund, unit trust or investment fund (but excluding an investment holding company);
- (c) A licensed institution as defined under the *Banking and Financial Institutions Act 1989*; and a development financial institution as defined under the *Development Financial Institutions Act 2002*; and
- (d) an insurance corporation whose activities are regulated by any written law relating to insurance and are subject to supervision by BNM and the said insurance corporation is managing its insurance funds (together with its own shareholders' funds or otherwise). For the purposes of this paragraph, 'insurance funds' has the meaning given in section 2 of the *Insurance Act 1996*.

### **23.0 Cancellation of debentures or sukuk**

23.01 The trust deed shall provide for debentures or sukuk which are redeemed or purchased by the issuer or by its subsidiaries or by agent(s) of the issuer who is acting for the redemption or purchase, to be cancelled by the issuer and could not be resold.

23.02 For the purpose of paragraph 23.01 above, the issuer shall confirm in writing to the trustee that (i) the amounts paid in respect of such debentures or sukuk as have been redeemed or paid and cancelled, (ii) the aggregate nominal amount and certificate numbers of those debentures or sukuk which have been purchased and cancelled, and (iii) that such debentures or sukuk have been cancelled, as soon as reasonably possible (and in any event within one month) after the end of each calendar quarter during which any such redemption, purchase and surrender for cancellation, payment or replacement (as the case may be) takes place.

### **24.0 Miscellaneous clauses**

24.01 The trust deed shall stipulate the following:

- (a) The conditions under which the provisions of the trust deed or the terms and conditions of the debentures or sukuk may be modified;
- (b) The mode of service of notices and other documents on the issuer, the trustee and the holders of the debentures or sukuk, which may include a provision for the trustee to notify debentures or sukuk holders by way of a notice published in national newspapers in the main languages, published daily and circulating generally throughout Malaysia;
- (c) The issuer to be responsible for paying any stamp duty on the trust deed or the debentures or sukuk (if applicable);
- (e) The applicable governing law;

- (f) Where the trustee company merges or converts, a 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 debentures or sukuk holders is obtained; and
- (g) The circumstances for the appointment, resignation and removal of the trustee and also provisions to ensure that–
  - (i) any removal of a trustee and subsequent appointment of a replacement trustee by the issuer must be with the consent of an agreed majority of debentures or sukuk holders; and
  - (ii) the issuer is notified of any removal of a trustee and subsequent appointment of a replacement trustee by debentures or sukuk holders.

## **25.0 Schedules**

25.01 There shall be schedules to stipulate the following:

- (a) The form and the terms and conditions of the global certificate representing the debentures or sukuk;
- (b) The form and the terms and conditions of the definitive certificate representing the debentures or sukuk; and
- (c) The provisions regulating the convening and holding of meetings of the holders of debentures or sukuk.

## Appendix 1

### ISSUES, OFFERS OR INVITATIONS UNDER SCHEDULE 8 OF THE CMSA

Issues of, offers for subscription or purchase of, or invitations to subscribe for or purchase, debentures to which Subdivision 1 of Division 4 of Part VI and section 283 of Subdivision 2 of Division 4 of Part VI shall not apply.

1. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by the Federal Government or any State Government or any statutory body.
2. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures guaranteed by the Federal Government or Bank Negara.
3. 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.
4. 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.
5. All trades in debentures effected on a stock market of a stock exchange which is approved by the Minister pursuant to sub-section 8(2).
6. All trades in debentures effected in the money market.
7. 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*.
8. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by or to Danamodal Nasional Berhad.
9. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made exclusively to persons outside Malaysia.
10. 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*.
11. An issue, offer or invitation made in relation to a foreign currency denominated debenture to—

- (a) an underwriter under an underwriting or initial purchase agreement;
  - (b) a unit trust scheme or prescribed investment scheme;
  - (c) a holder of a Capital Markets Services Licence who carries on the business of dealing in securities;
  - (d) a closed end fund approved by the Commission;
  - (e) a holder of a Capital Markets Services Licence who carries on the business of fund management;
  - (f) a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts;
  - (g) a licensed offshore bank as defined under the *Offshore Banking Act 1990*; or
  - (h) an offshore insurer as defined under the *Offshore Insurance Act 1990*.
12. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures or Islamic securities made by any person or corporation formed or incorporated or existing within or outside Malaysia, other than a special purpose vehicle which has no full recourse to another entity, with a local rating AAA or an international rating of BBB and above, assigned by a credit rating agency.

*[(12) Subs.P.U.(A)263/2008]  
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