



GUIDELINES FOR THE APPOINTMENT OF A RELATED-PARTY TRUSTEE

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1.0 INTRODUCTION

- 1.01 The *Guidelines for the Appointment of a Related-party Trustee* is issued by the Securities Commission (SC) under section 377 of the *Capital Markets and Services Act 2007* (CMSA). These guidelines set out the SC's policy for the approval of persons referred to under section 290(1) of the CMSA to be appointed or to act as a trustee to a unit trust fund (including real estate investment trusts and exchange-traded funds).
- 1.02 For the purpose of these guidelines, "related-party trustee" is a person referred to under section 290(1) of the CMSA. A related-party trustee may be eligible to be appointed or to act as trustee to a unit trust fund, if it can satisfy the criteria and requirements specified in these guidelines.
- 1.03 An approval granted by the SC under section 290(1) of the CMSA does not absolve the related-party trustee from its duties and responsibilities, as imposed on it under the deed of such a fund, the relevant guidelines governing the operation of unit trust schemes, the securities laws and by other general laws.

2.0 ELIGIBILITY CRITERIA AND REQUIREMENTS

- 2.01 A related-party trustee will be allowed to be appointed or to act as a trustee of a unit trust fund if the following are met:
- (a) The relationship between the trustee and its related corporation (who is a person referred to under sections 290(1)(a) to (c) of the CMSA) exhibit legal and structural separation;

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- The trustee and persons referred to under section 290(1)(a) to (c) of the CMSA must be separate legal entities.
- An approval will not be granted where the trustee is a subsidiary of the management company or vice versa.

- (b) The trustee is financially independent of, and not reliant on, support from the management company;

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- The trustee must not be reliant on any form of financial support from the management company, other than for circumstances provided under section 290(3)(a) of the CMSA relating to entitlement to monies payable under the covenants of the deed of the fund in its capacity as trustee.

- Relationships between the management company and the trustee arising from provision of deposits or loans between persons referred to under sections 290(1)(a) to (c) of the CMSA and the trustee, which are made in the ordinary course of business, on similar terms and conditions available to unrelated parties, and goods and services provided at an arm's length and on commercial terms are however acceptable.

- (c) The non-financial resources of the trustee are sufficiently independent of the non-financial resources of the management company;

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- The trustee must ensure that there is no commonality of usage and sharing of its non-financial resources with the management company. Sufficient independence and separation of non-financial resources must be established, e.g. human resource, information systems, business equipment, computer facilities, etc.
- Additionally, non-financial services provided to the trustee by persons referred to under sections 290(1)(a) to (c) of the CMSA must at all times be provided on commercial terms and at an arm's length. They should not in any way diminish the trustee's independence. Such terms must provide for the following:
 - That the trustee has unrestricted access to relevant and necessary resources it requires to perform 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 its property.

- (d) At least one-third of the trustee's board of directors comprises independent directors (independent of the persons referred to under sections 290(1)(a) to (c) of the CMSA) and this fact must be specifically stated in the trustee's articles of association;

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- 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 or the ability to act in the best interests of the unit holders.

- (e) No person is a director of both the trustee's board of directors and the management company; and
- (f) Both the trustee and the management company sign an undertaking that they will act independently of each other in their dealings with the fund.

3.0 TERMS AND CONDITIONS OF APPROVAL

- 3.01 The terms and conditions under clauses 3.02 and 3.03 must be satisfied during the tenure of appointment of the trustee.

Disclosures in Prospectuses and Annual Reports of Funds

- 3.02 There must be adequate disclosures in the fund's prospectus and annual reports, including the following:

- (a) Disclosure on the group and legal structure of the trustee and management company;
- (b) Disclosure on commercial obligations (if any) between trustee and management company of the fund and the aggregate value of commercial transactions conducted during the year;
- (c) Declaration of financial independence of trustee and management company;
- (d) The investment instruments which the fund has invested in for the period concerned, and for which the trustee is also a trustee (e.g. investments in public debt securities);
- (e) Declaration by the trustee and management company that they will carry out transactions at arm's length and on best terms for the fund, acting in the best interests of the fund's unit holders at all times;
- (f) Declaration that there are adequate procedures and processes in place to prevent or control conflicts of interest;
- (g) Declaration of events of conflict (if any) during the period concerned and what measures were taken to address such conflicts;
- (h) Disclosure by the board of directors of the trustee whether they have satisfied the requirement to fairly reflect through representation, the interests of unit holders, by way of having at least one-third of the board members as independent directors; and
- (i) Declaration by the board of directors of the trustee and management company as to whether the requirements of these guidelines have been complied with during the period concerned.

Requirements Under Guidelines and Conditions to Remain Fulfilled

- 3.03 An approval granted by the SC under section 290(1) of the CMSA and these guidelines will remain in force insofar as the requirements and conditions stated under these guidelines remain subsisting/satisfied during the tenure of appointment of the trustee.
- 3.04 Should there be a lapse in the state of compliance, or a failure to comply with the requirements imposed, or a breach of a term or condition attached to the approval, or a contravention of the CMSA, resulting in the inability of the trustee to act independently, the SC reserves the right to revoke the approval granted to a person appointed as trustee under section 290(1) of the CMSA, by virtue of section 290(6) of the CMSA. Further, nothing stated in these guidelines shall prejudice the right of the SC to enforce legal provisions and/or institute legal proceedings against trustees under section 290(7) of the CMSA.

4.0 SUBMISSION OF APPLICATION TO THE SECURITIES COMMISSION

- 4.01 Applications should be submitted to the SC in accordance with the requirements set out below. Submission of applications which do not comply with the requirements or which are unsatisfactory will be returned.
- 4.02 The submitting party has a duty of care to ensure that all SC requirements pertaining to submission of applications are met and is responsible for dealing with the SC on all matters in connection with the application.
- 4.03 The SC may, at its discretion, request for additional information and documents not specified in this schedule.
- 4.04 Submission of applications should be addressed to:

**Pengerusi
Suruhanjaya Sekuriti
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur**

Fees

- 4.05 An application must be accompanied with the appropriate fee. An application is deemed incomplete if the fee is not submitted.
- 4.06 The details of fees payable to the SC for the various types of applications requiring SC approval are set out in the *Securities Commission (Fees) (Amendment) Regulations 2004*.
- 4.07 Payment should be made in the form of a crossed cheque/draft order made in favour of "Suruhanjaya Sekuriti" or "Securities Commission".

Documents to be Submitted

- 4.07 An application should comprise the following:
 - (a) Cover letter, specifying–
 - (i) the approval sought, including particulars of the proposal(s); and
 - (ii) other approvals or clearance obtained/pending (if applicable).
 - (b) A declaration letter in the form provided in Appendix II of Schedule E, *Guidelines on Unit Trust Funds*;
 - (c) 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 officer and key management staff of the trustee;
 - (iii) Latest audited accounts and directors' report of the trustee;
 - (iv) Latest external auditors' management report (if any) of the trustee;
 - (v) The trustee's memorandum and articles of association;
 - (vi) The trustee's internal control procedures and manual;
 - (vii) A declaration by the trustee that the compliance and internal control system is in place and is adequate to ensure compliance with the requirements of the deed, these guidelines and the securities laws;

- (viii) An undertaking by the management company and the trustee that they will act independently of each other in their dealings with the fund under trusteeship;
- (ix) Information on the proposed fund to be under the trustee's trusteeship, or where it is an existing fund, a list of the fund(s) applicable;
- (x) A copy of the deed of the proposed fund (for new funds) or fund(s) proposed to be under trusteeship of the trustee (for existing funds);
- (xi) A declaration by the proposed trustee on compliance with the guidelines (in the form provided in Appendix I); and
- (xii) A letter from the management company confirming the proposed appointment of the related-party trustee.

**Trustee's Declaration on Compliance with Guidelines for the Appointment of a
Related-Party Trustee**

Date:

Chairman
Securities Commission

Dear Sir

(Name of trustee)

Proposed Appointment of Trustee for the Establishment of ...*(name of fund)*...

We ...*(name of trustee)*..., have been appointed as a trustee by ...*(name of management company)*... for ...*(name of fund)*....

We declare that we are eligible to be appointed or to act as a trustee in respect of the above fund and have fully complied with the Securities Commission's *Guidelines for the Appointment of a Related-Party Trustee*. We shall continue to comply with these requirements while we act as trustee for the above fund.

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

Yours faithfully

.....
Name:
Designation:
Name of trustee:
Address: