

PART 4

ASSET-BACKED SECURITIES

Chapter 1

GENERAL

- 1.01 Section B, Part 4 of these Guidelines sets out the specific requirements that must be complied with in relation to ABS under the Lodge and Launch framework. In addition to the requirements under this Part 4, any issuance of ABS must comply with the requirements under Section B, Part 3 of these Guidelines.
- 1.02 For the purpose of this Part 4, SPV means any entity which issues ABS and satisfies all the criteria set out under this Part 4.

Chapter 2

STRUCTURE

Assets that may be securitised

2.01 The assets that are the subject matter of a securitisation transaction must fulfil all of the following criteria:

- (a) The assets must generate cash flow;
- (b) The originator has a valid and enforceable interest in the assets and in the cash flows of the assets prior to any securitisation transaction;
- (c) There are no impediments (contractual or otherwise) that prevent the effective transfer of the assets or the rights in relation to such assets from an originator to an SPV. For example:
 - (i) The necessary regulatory or contractual consents have been obtained in order to effect the transfer of such assets from an originator to an SPV;
 - (ii) The originator has not done or omitted to do any act which enables a debtor of the originator to exercise the right of set-off in relation to such assets;
- (d) The assets are transferred at a fair value;
- (e) No trust or third party's interest appears to exist in competition with an originator's interest over the assets; and
- (f) Where the interest of an originator in the assets is as a chargee, the charge must have been created for a period of more than six months before the transfer.

2.02 [Deleted]

Originator

- 2.03 An originator must be an entity incorporated in Malaysia.
- 2.04 An originator must be a going concern at the date of transfer of any assets to an SPV. For the purposes of these Guidelines, an originator will not be considered as a going concern if it is unable to pay any of its debts as they fall due or when it suspends payment of any of its debt obligations.
- 2.05 Any transfer of assets by an originator to an SPV must comply with the true sale criteria that are set out in paragraphs 2.09 to 2.14 of these Guidelines.
- 2.06 Save for paragraph 2.07 below, the originator may only purchase ABS issued by an SPV up to 10% of the original amount of the ABS issued by the SPV at market value at any time unless otherwise permitted by the SC. These Guidelines do not impose any limits with respect to the holdings of subordinated securities by an originator.
- 2.07 Where an originator is the only primary subscriber resulting in the originator holding more than 10% of the ABS, the originator must make best endeavours to place out such excess ABS within a period of not more than three months from the date of issuance of such ABS.
- 2.08 An originator should also have internal systems to ensure that funds due to the SPV are separate and "ring-fenced" from other funds due to the originator as soon as practicable.

True sale criteria

- 2.09 The underlying assets must have been isolated from an originator i.e. put beyond the reach of the originator and its creditors even in receivership or bankruptcy as far as possible.
- 2.10 The risk that a transfer of assets by an originator to an SPV might be re-characterised as a financing transaction rather than a sale of assets should be minimised as far as

possible. In this regard, the originator must effectively transfer all rights and obligations in the underlying assets to the SPV.

- 2.11 An originator must not hold any equity stake, directly or indirectly, in an SPV. In addition, the originator must not be in a position to exercise effective control over the decisions of the SPV in relation to the securitisation transaction.
- 2.12 An SPV must have no recourse to an originator for losses arising from those assets save for any credit enhancement provided by the originator at the outset of the securitisation transaction.
- 2.13 Where an originator is also the servicer, the services must be provided on an arm's length basis, on market terms and conditions. In addition, there must be no obligation imposed on the originator to remit funds to the SPV unless and until they are received from the debtor of the originator in respect of the underlying assets.
- 2.14 Notwithstanding the provisions of paragraphs 2.09 to 2.13 above, an originator may repurchase assets from an SPV in the following circumstances:
- (a) Where such assets have declined to a level that renders the asset securitisation transaction uneconomical to carry on, under which an originator may retain a first right of refusal to repurchase these assets at a fair value; or
 - (b) Where the originator is under an obligation to do so under a securitisation transaction when it has breached any conditions, representation or warranty in respect of the securitisation transaction.

Special Purpose Vehicle (SPV)

- 2.15 An SPV must be resident in Malaysia for tax purposes.
- 2.16 An SPV must have independent and professional directors or trustees, as the case may be.

- 2.17 In determining whether an SPV is sufficiently “bankruptcy remote”, the following must be taken into account:
- (a) An SPV cannot include in its objectives, the power to enter into any other activities that are not incidental to its function as a special purpose vehicle in relation to the securitisation transaction;
 - (b) An SPV must subcontract to third parties all services that may be required by it to maintain the SPV and its assets;
 - (c) An SPV is not permitted to have employees or incur any fiduciary responsibilities to third parties other than to parties involved in the securitisation transaction; and
 - (d) All the liabilities, present or future, of an SPV (including tax) must be quantifiable and capable of being met out of resources available to it.
- 2.18 An SPV must be responsible for the acts and omissions of all persons to whom it delegates any of its functions. Thus, an SPV is ultimately responsible to ensure that its assets are managed with due care and in the best interests of ABS holders.
- 2.19 Without prejudice to any applicable law, an SPV must cause to be maintained proper accounts and records to enable a complete and accurate view to be formed of its assets, liabilities, income and expenditure and to comply with all other regulatory reporting requirements in respect of the issuance of ABS.
- 2.20 An SPV must be dissolved when the following circumstances arise:
- (a) It refuses to accept transfers of the assets or issue ABS within 90 business days from the date on which the securitisation transaction is lodged with the SC or such other period as may be specified by the SC; or
 - (b) More than 75% of ABS holders have resolved, in accordance with the terms and conditions agreed by all the relevant parties in a securitisation transaction, that the SPV shall be dissolved and the SC has been notified of this resolution.

In addition, more than 50% of the senior classes of ABS holders must consent to the dissolution; or

- (c) Upon full repayment of the ABS in accordance with the terms and conditions of the securitisation transaction.

2.21 Where an SPV is constituted as a trust, the SPV need not comply with paragraph 1.03 of Part 3 of Section B of these Guidelines.

2.22 The SPV and the ABS issued by the SPV must not carry the same name as the originator or be similarly identified with the originator.

Servicer

2.23 The duties of any servicer of the assets must include the following:

- (a) The servicer must keep proper accounts;
- (b) The trustee must be informed of any change of servicer;
- (c) The servicer must have adequate operational systems and resources to administer the asset portfolio. In particular, these internal systems should ensure that the cash flows belonging to the SPV are "ring-fenced" and segregated in relation to a securitisation transaction; and
- (d) Where there is any change of servicer, provision must be made in the legal documentation for the periodic transfer of the necessary information from the originator to the substitute servicer to enable the monitoring of the asset portfolio, its performance analysis and collections from debtors of the originator.

Additional trust deed requirements

2.24 In addition to the requirements imposed under the *Guidelines on Trust Deeds*, the trust deed in any securitisation transaction must also provide for the following:

- (a) Covenants on an SPV which give effect to the requirements of these guidelines on the “bankruptcy remoteness” status of the SPV; and
- (b) That the trustee shall be entitled to appoint a receiver in respect of the underlying assets of the SPV in default circumstances as may be provided for in the trust deed.

Disclosure requirements

- 2.25 Where a disclosure document is made available to the investors in relation to any issuance of ABS, the disclosure document must contain the following minimum information contained in Appendix 3A of Part 4 of these Guidelines.
- 2.26 Where an originator is a licensed financial institution, investors must be clearly informed that the securities that they invest in do not represent deposits or continued liabilities of the licensed financial institution.
- 2.27 Investors must be clearly informed that an originator does not in any way stand behind the ABS issued by the SPV except to the extent specified in the asset securitisation documentation and such credit enhancement as may be provided by the originator.
- 2.28 Where an originator intends to subscribe or tender for the ABS, this must be clearly disclosed to investors.

Chapter 3

LODGEMENT

- 3.01 The issuer, through its Lodgement Party, must lodge all information and documents as set out in the Lodgement Kit.

Chapter 4

CONTINUOUS OBLIGATIONS ON PRIMARY COLLATERISED LOAN OBLIGATIONS TRANSACTIONS

- 4.01 This chapter sets out specific regulatory and disclosure requirements to be met by a principal adviser and an originating bank in a primary collateralised loan obligations (CLOs) transaction. These additional regulatory and disclosure requirements are put in place to enhance transparency and clarity of information to investors and parties involved in a primary CLOs transaction.
- 4.02 For the purpose of this chapter,
- (a) “primary CLOs transaction” refers to a securitisation transaction that involves newly originated corporate loans which are granted by an SPV to a pool of companies as borrowers or obligors; and
 - (b) “originating bank” refers to a licensed bank, licensed investment bank or licensed Islamic bank which is responsible in originating and structuring corporate loans in a CLOs transaction.
- 4.03 This chapter is intended to govern all primary CLOs transactions, except for those which are fully guaranteed by a financial institution, resulting in the credit rating of the CLOs transaction fully reflecting the credit rating of the financial institution providing the guarantee. Further, the SC may impose or disapply certain provisions in this chapter on a proposed secondary CLOs transaction which involves a securitisation of existing or outstanding corporate loans already granted by an originating bank.

Due consideration in selection of borrowers

- 4.04 A principal adviser and an originating bank for a CLOs transaction are required to exercise due diligence in selecting borrowers and determining whether these borrowers are suitable to participate in a CLOs transaction. Arising from this requirement, the principal adviser and originating bank must adopt the industry

standards and best practices when originating the loans. Among others, the principal adviser and originating bank must give due considerations on the credit standing and credit history of each borrower. In addition, the principal adviser and originating bank must consider whether it is appropriate to impose the following terms and conditions on the borrowers after taking into account the above factors:

- (a) Sinking fund requirements in repaying the loans;
- (b) Negative covenants such as gearing ratio and additional indebtedness; and
- (c) Security coverage for the loans, if any.

Additional disclosures to investors

- 4.05 In line with paragraph 2.25 above, on the disclosure of relevant information to investors, the principal adviser and originating bank must disclose in a disclosure document the lending policies involved as well as the extent of terms and conditions which are set on borrowers in accordance with paragraph 4.04 above. Such disclosure can be made on anonymous and aggregated basis on the borrowers.
- 4.06 The principal adviser and originating bank must provide the following minimum information pertinent to each borrower as prescribed in Appendix 3B of Part 4 of these Guidelines in the disclosure document.
- 4.07 In order to facilitate the above disclosure by the borrowers, the principal adviser and originating bank shall obtain permission in writing from these borrowers, as provided under the *Financial Services Act 2013* and *Islamic Financial Services Act 2013* to disclose the said information.
- 4.08 The following information on the borrowers, based on an aggregate of all borrowers, shall also be provided by the principal adviser and originating bank in the disclosure document:

- (a) Utilisation of proceeds, in amount (on projected or actual basis, where applicable); and
 - (b) Sources of repayment, in percentage term.
- 4.09 The principal adviser must disclose in the disclosure document whether early repayment or prepayment by the borrowers is allowed and if it is allowed, the relevant terms and conditions for the early repayment or prepayment.
- 4.10 If proceeds from the issuance of CLOs are invested in structured products, the principal adviser must disclose in the disclosure document a list of minimum information as set out in Appendix 3C of Part 4 of these Guidelines.

Terms and conditions on borrowers

- 4.11 The principal adviser and originating bank must ensure that there are adequate provisions in the loan agreements or facility agreements that require borrowers to comply with the following minimum requirements:
- (a) Submission of financial statements including semi-annual accounts and audited annual accounts, to trustee, portfolio manager and credit rating agency on a timely basis. As a guide, the audited annual accounts and semi-annual accounts shall be submitted no later than 180 days from Financial Year End closing and 30 days from the closing of semi-annual accounts respectively;
 - (b) Provide immediate notice to inform trustee and credit rating agency of material changes to the nature of business and shareholding structure;
 - (c) Response to any enquiry from trustee on material terms and conditions relating to the loans;
 - (d) Attendance of meeting, if duly notified, with trustee and/or ABS holders on material terms and conditions relating to their loans; and

- (e) Any other standard terms and conditions that a bank will impose on their customers for loans of similar terms and conditions.
- 4.12 The principal adviser and originating bank must–
- (a) ensure that the above provisions are enforceable; and
 - (b) impose various forms of penalties, which are applicable to other corporate loans, on borrowers for material breaches of terms and conditions. The penalties, including variation of lending rate and termination of loans, must be clearly provided in the loan agreements and disclosed in a disclosure document. Such penalties must be consistent with the SPV's recourse to the borrowers for breaches of their contractual obligations.
- 4.13 For the purpose of clarity, both the date of repayment by borrowers to the SPV and the maturity date of CLOs must be clearly specified in the principal terms and conditions submitted to the SC, loan agreements and disclosure document. To facilitate redemption of CLOs, the date of repayment by borrowers shall precede the maturity date of CLOs by taking into account the time required to transfer funds between banks and the paying agent.
- 4.14 The borrowers must be fully informed of the risks of their investment in subordinated bonds, if any, which are structured to provide credit enhancement to a CLOs transaction. In this regard, the borrowers shall be aware that there are certain rights which are granted to investors of senior tranches of CLOs and are not privy to holders of subordinated bonds.
- 4.15 Any subordinated bonds which are held by a defaulted borrower must be cancelled when no remedial action is taken by the defaulted borrower to repay the SPV within a reasonable period or any timeframe which is stipulated in the facility agreement.

Other requirements

- 4.16 The responsibilities of all transaction parties, including principal adviser, originating bank, solicitor, portfolio manager, trustee and technical adviser (if any), under a CLOs transaction must be clearly outlined in the principal terms and conditions and the disclosure document. In particular, the principal adviser must ensure that the following responsibilities have been assigned to lead a transaction party and the relevant transaction parties prior to the issuance of CLOs:
- (a) Monitor and review compliance of terms and conditions imposed on borrowers pursuant to the loan agreements;
 - (b) Matters relating to the recovery of assets upon default of borrowers; and
 - (c) Advice to trustee and ABS holders on borrowers' request for variation to any terms and conditions.
- 4.17 The principal adviser must ensure that a sufficient amount of legal fees is provided to the relevant transaction parties in undertaking legal actions to recover assets or money from defaulting of defaulted borrowers. To expedite this recovery process, a set of procedures such as letter of demand and notice of demand, must be put in place prior to the issuance of CLOs.

APPENDIX 3A

MINIMUM CONTENT OF DISCLOSURE DOCUMENT IN RELATION TO AN ISSUANCE OF ABS

- 1.01 Where a disclosure document is made available to the investors in relation to any issuance of ABS, the disclosure document must contain the following minimum information:
- (a) Risk factors of investing in the ABS;
 - (b) Detailed description of the structure of the securitisation transaction and all significant agreements relevant to the structure;
 - (c) Corporate profile of all parties involved;
 - (d) Detailed description of the securitised assets including the cash flow profile, ageing of cash flows, and (if available) historic levels of arrears or rates of default for the portfolio of assets and stress levels of cash flows;
 - (e) An explanation on the flow of funds stating–
 - (i) how the cash flow from the assets is expected to meet an SPV's obligations to ABS holders;
 - (ii) an indication of any investment parameters for the investment of temporary liquidity surpluses;
 - (iii) how payments are collected in respect of the assets;
 - (iv) the order of priority of payments to the holders of different classes of corporate bonds or sukuk;

- (v) details of any other arrangements upon which payments of interest or profit and principal to investors are dependent;
 - (vi) information regarding the accumulation of surpluses in an SPV; and
 - (vii) details of any subordinated securities;
- (f) Measurement of the fair value of securitised assets including the methodology used in determining such fair value and the key assumptions involved;
- (g) Terms and conditions of the ABS;
- (h) Information on credit enhancement and liquidity facilities, if any, provided to the securitisation transaction including an indication of where material potential shortfalls are expected to occur;
- (i) Credit rating for the ABS and the definition of the credit rating;
- (j) Any fee payable by an SPV including management fees and expenses charged by the servicer; and
- (k) An explanation on any matter of significance to investors relating to the issue, offer or invitation of ABS that would enable investors to make an informed decision.

APPENDIX 3B

**ADDITIONAL MINIMUM CONTENT OF DISCLOSURE DOCUMENT IN RELATION TO
A PRIMARY CLO TRANSACTION**

1.01 The following minimum information:

- (a) Full name, address and corporate profile;
- (b) Shareholding profile, if the borrower is not listed on Bursa Malaysia Securities;
- (c) Amount borrowed;
- (d) Whether the borrower has defaulted or restructured its loans in the past; and
- (e) Published credit rating or shadow rating, which is also known as a credit estimate (indicative credit rating, if the necessary credit rating has not been finalised).

APPENDIX 3C

ADDITIONAL MINIMUM CONTENT OF DISCLOSURE DOCUMENT IN RELATION TO PRIMARY CLO TRANSACTIONS INVESTED IN STRUCTURED PRODUCTS

- 1.01 A risk disclosure statement which include the following information:
- (a) A clear explanation highlighting all material risk factors of investing in the structured product;
 - (b) Recent price trends of the underlying reference (if applicable);
 - (c) Scenarios showing a range of potential gains or losses resulting from the changes in value of the underlying reference;
 - (d) Information on the liquidity provider or other liquidity facilities (if applicable);
 - (e) A credit rating for the structured product and the definition of such credit rating (if applicable);
 - (f) Other material information relating to the structured products that would enable or assist investors to make an informed decision; and
 - (g) Material information regarding the Eligible Issuer (as defined under Section B, Part 2 of these Guidelines) for the structured product and arrangements made for the performance of such Eligible Issuer's obligations.
- 1.02 The following minimum information is also to be provided by a primary seller together with the risk disclosure statement to investors:
- (a) A detailed description of the structure of the transaction;

- (b) Principal terms and conditions of the transaction, including investment terms (e.g. early withdrawal by investor, early termination by issuer, transfer and/or selling restrictions, etc.);
- (c) Where an Eligible Issuer is an SPV, transaction costs transferred to the investors (if any); and
- (d) A copy of the undertaking in paragraph 1.03 of Part 2 of Section B by an Eligible Issuer that is an SPV.

For the purposes of these Guidelines, a primary seller is the party that offers, makes an invitation for, or makes available the structured product to investors at the primary market, and that may be the Eligible Issuer itself and in the case of tradable structured product, may also include its adviser and subscriber.