

# **PRACTICE NOTE ON APPLICATION OF PARAGRAPH 1 OF SCHEDULE 3 OF CAPITAL MARKETS AND SERVICES ACT 2007 IN RELATION TO TRUST COMPANIES**

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**PRACTICE NOTE ON APPLICATION OF PARAGRAPH 1 OF SCHEDULE 3  
OF CAPITAL MARKETS AND SERVICES ACT 2007 IN RELATION TO  
TRUST COMPANIES**

Effective Date upon 1 <sup>st</sup> Issuance	22 May 2026
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## **Introduction**

1. This Practice Note is issued pursuant to section 377 and paragraph 1 of Schedule 3 of the *Capital Markets and Services Act 2007* (CMSA 2007).
2. The Securities Commission Malaysia (SC) is cognisant that a trust company, in carrying on the business for which it is registered under the *Trust Companies Act 1949* (TCA 1949), may carry out investments in capital market products which then may trigger the carrying on of regulated activities under the CMSA 2007.
3. Generally, the CMSA 2007 requires that any person who carries on a business in a regulated activity to be licensed or registered with the SC.
4. Notwithstanding the above, paragraph 1 of Schedule 3 of the CMSA 2007 empowers the SC to determine the type of trust company that carries on a regulated activity that is exempted from the requirement to be licensed or registered with the SC.
5. This Practice Note is issued to set out the type of trust company that is a specified person for purposes of paragraph 1 of Schedule 3 of the CMSA 2007.

### **A. Trust Company that is a Specified Person under Paragraph 1 of Schedule 3 of the CMSA 2007**

6. Pursuant to paragraph 1 of Schedule 3 of the CMSA 2007, the SC determines that any trust company carrying on any regulated activity that is solely incidental to the carrying on of a conventional trust business, is a specified person and thus exempted from licensing and registration requirement as set out under subsection 58(2) of the CMSA 2007.
7. For avoidance of doubt, any trust company that carries on a regulated activity that does not fall within the exemption as specified in paragraph 6 above, must be licensed or registered with the SC.

### **B. Solely Incidental**

8. In the context of a trust company, a "solely incidental" activity refers to where the trust company carries on a regulated activity which is ancillary to its primary business, i.e. where the regulated activity is secondary in nature and is carried on only to support the primary business. Please refer to Part D of this document for illustrations.

### **C. Conventional Trust Business**

9. Trust company typically offers two main services: estate administration<sup>1</sup> and private trust relating to succession or legacy planning purposes for benefit of specified beneficiaries (e.g. supporting dependants, protecting a minor's assets, education expenses etc.). Such

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<sup>1</sup> Estate administration deals with managing the estate of a deceased person e.g. probate, letters of administration and distribution to next of kin.

services are *not primarily for investment or profit but for wealth preservation or ensuring the fund's objective are able to be met, for the benefit of the beneficiary.*

10. For the purposes of this Practice Note, a trust business is considered as conventional trust business where all of the general features of a "conventional trust business" below are present:

<b>Features</b>	<b>Conventional Trust Business</b>
Purpose	Estate administration, succession or legacy planning purposes.
Beneficiary(ies)	For the benefit of beneficiaries, including the settlor, but does not include where the settlor is the sole beneficiary.
Tenure	Typically, any specified maturity period is based on the objective of the trust (i.e. purpose for the benefit of beneficiary).
Returns	Estimated dividends are not stated in the trust deed. The dividend/profits will typically be reinvested into the trust for wealth preservation.
Trust deed	Trust deeds are tailored according to the settlor's instructions & needs.
Amount of trust fund	The amount will be determined by the settlor based on the objective of the trust.

#### **D. Regulated Activity Solely Incidental to Conventional Trust Business**

11. Below are the illustrations of trust companies which carries on regulated activities that are solely incidental to the carrying on of a conventional trust business:

(a) Trust Company A is managing Clara's education trust for her children's future university expenses. This includes safeguarding assets and diversifying investments to ensure that the trust can adequately provide for the expenses of Clara's children. As part of its services, Trust Company A from time to time provides Clara with recommendation as to how to invest the monies including an investment plan involving capital market product, in order to preserve and grow the trust funds until her children reach the age for tertiary education; and

- (b) Trust Company B manages John's estate trust, for which it is to manage his assets until John's children reach 25 years old. As part of its estate management services, Trust Company B also invest a portion of the estate's funds into unit trust, shares or bonds, either directly or through an appointed licensed fund manager solely for the purposes of preserving and the estate's value for distribution to the beneficiaries upon them reaching the age of 25.

In both cases, Trust Company A and B have respectively engaged in the regulated activities of providing financial planning, investment advice and fund management. However, Trust Companies A and B do not need to hold a Capital Markets Services Licence (CMSL). The regulated activities carried on by the Trust Companies A and B fall within the prescribed parameters of the exemption as specified in paragraph 6 above on the basis that the regulated activity is solely incidental to the conventional trust business (i.e. management of the education or estate trust respectively). It was carried out to help fulfil the trust company's primary business purpose, i.e. to administer the trust and manage the assets according to the settlor's wishes.

12. On the other hand, below are the illustrations of trust company carrying on regulated activities but are not solely incidental to the carrying on of its conventional trust business. For example—

- (a) Trust Company C markets a standardised, one-size-fits-all trust product to the public, including to Clara. The product requires a minimum contribution of RM500,000 to set up the trust and a fee is charged for any additional contribution made after the setting up of the trust. The trust mainly invests in specific securities (e.g. unit trust, shares or bonds) and is structured for a fixed maturity period of 5 years with projected quarterly returns being paid out, independent of the trust purpose; or
- (b) Trust Company D promotes a trust to John by promising projected annual returns from investment for the benefit of John's beneficiary (which can include John as well). Whilst the mandate is to invest in any suitable investment, the fund mainly invests in capital market products such as unit trusts, shares or bonds to meet the projected investment returns. It distributes such returns to John on a yearly basis and Trust Company D also charges him a performance-based fee linked to the returns of the investment portfolio.

In both examples, Trust Companies C and D are respectively engaged in the regulated activities of dealing in securities and fund management which are not solely incidental to any conventional trust business, but are in fact undertaking regulated activities as their primary business. Accordingly, these trust companies are required to be licensed by the SC as CMSL holders.

13. However, if both Trust Companies C and D only invest in non-capital market products such as fixed deposit, real estate, investment linked insurance, gold, etc., it does not fall under the securities laws and hence it is not within the SC's purview.

## **E. Application for a licence from the SC**

14. In light of the above, all trust companies are encouraged to engage the SC as to whether their trust business will require a licence from the SC.
15. An application for a licence may be made to the SC pursuant to section 60 of the CMSA 2007. The application must be submitted together with the required forms, supporting documents and prescribed fees. Applicants are advised to review the eligibility requirements and licensing conditions in the CMSA 2007 and relevant SC guidelines before submitting their applications.
16. Further details, including the full process and checklist, can be accessed on the SC's website via the following link:

<https://www.sc.com.my/regulation/guidelines/licensing-and-registration>