

GUIDELINES ON TRUST DEEDS

SC-GL/TD-2011(R1-2020)

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CONTENTS

	Page
PART A: GENERAL	
Chapter 1 INTRODUCTION	1
Chapter 2 DEFINITIONS AND INTERPRETATION	3
 PART B: REQUIREMENTS FOR TRUST DEED	
Chapter 3 PREAMBLE AND RECITALS	5
Chapter 4 DESCRIPTION OF CORPORATE BONDS OR SUKUK	6
Chapter 5 INTEREST OR PROFIT RATE	7
Chapter 6 COVENANT TO COMPLY WITH TRUST DEED AND TERMS AND CONDITIONS OF CORPORATE BONDS OR SUKUK	8
Chapter 7 ISSUER'S COVENANT TO PAY	9
Chapter 8 TAXATION	10
Chapter 9 CORPORATE BONDS OR SUKUK CERTIFICATES	11
Chapter 10 LIMITATION ON BORROWING OR FINANCING	12
Chapter 11 EVENTS CONSTITUTING DEFAULT AND REMEDY OF SUCH DEFAULT	13
Chapter 12 SINKING FUND	16

Chapter 13 COVENANTS BY THE ISSUER	17
Chapter 14 ISSUE/EXCHANGE OF SHARES IN RELATION TO CONVERTIBLE/EXCHANGEABLE CORPORATE BONDS OR SUKUK	20
Chapter 15 REPORTING COVENANTS BY THE ISSUER	22
Chapter 16 APPLICATION OF MONEYS RECEIVED IN RESPECT OF CORPORATE BONDS OR SUKUK	23
Chapter 17 POWER TO WITHHOLD, INVEST AND ACCUMULATE	24
Chapter 18 DEPOSIT OF UNCLAIMED MONEYS	25
Chapter 19 POWERS AND DUTIES OF TRUSTEE	26
Chapter 20 RELIEF, EXEMPTION AND INDEMNIFICATION OF TRUSTEE FROM LIABILITY	28
Chapter 21 MEETINGS	29
Chapter 22 CANCELLATION OF CORPORATE BONDS OR SUKUK	30
Chapter 23 MISCELLANEOUS CLAUSES	31
Chapter 24 SCHEDULES	32

PART A: GENERAL

Chapter 1

INTRODUCTION

- 1.01 The *Guidelines on Trust Deeds* (Guidelines) are issued by the Securities Commission Malaysia (SC) pursuant to section 377 of the *Capital Markets and Services Act 2007* (CMSA).
- 1.02 These Guidelines set out the minimum provisions, covenants, requirements, information and particulars to be included in a trust deed pursuant to section 259(1) of the CMSA.

Applicability

- 1.03 The requirements in these Guidelines apply to all issuers of corporate bonds or sukuk other than issuances exempted under Schedule 8 of the CMSA and, where applicable, Schedule 9 of the CMSA. For such issuances, the requirements in these Guidelines will not be mandatory but may be applied by the issuer upon considering the due interest of its investors.
- 1.04 In the case where the issuer of a corporate bond or sukuk is a special purpose vehicle, the obligations imposed under these Guidelines on the issuer shall apply, where applicable, to the obligor.
- 1.05 Where any provision stated in these Guidelines is based on a test of 'materiality' or 'substantiality', such test must 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.
- 1.06 For the purpose of these Guidelines, where relevant, references to the issuer may include references to its subsidiaries, where the affairs of its subsidiaries may impact the ability of the issuer to repay amounts due and payable under the corporate bonds or sukuk.
- 1.07 The SC may, upon application, grant an exemption from or a variation to the requirements of these Guidelines if the SC is satisfied that–
- (a) such variation is not contrary to the intended purpose of the relevant requirements in these Guidelines; or
 - (b) there are mitigating factors which justify the said exemption or variation.

Related Provisions

- 1.08 These Guidelines are in addition to and not in derogation of any other requirements as provided for under securities laws or any other guidelines issued by the SC.
- 1.09 In addition to the requirements of these Guidelines, parties to a trust deed may include any additional provisions, covenants or information in the trust deed, provided that such addition does not in any way alter or dilute the requirements of these Guidelines.
- 1.10 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.

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–

corporate bonds	means debentures as defined in the CMSA but do not include– (a) structured products; and (b) debentures issued by– (i) the Federal Government; (ii) any State Government; or (iii) Bank Negara;
development financial institution	has the meaning assigned to it in the <i>Development Financial Institutions Act 2002</i> ;
independent adviser	means an adviser who is independent of the management and board of directors of the issuer which appoints it and free from any business or other relationship which could interfere with the exercise of independent judgement by such adviser;
interested person	includes directors, major shareholders and chief executive;
issuance	refers to– (a) making available; (b) offering for subscription or purchase of; or (c) issuing an invitation to subscribe for or purchase, a corporate bond or sukuk;
issuer	means any person who makes available, offers for subscription or purchase, or issues an invitation to subscribe for or purchase a corporate bond or sukuk;
licensed bank	has the meaning assigned to it in the <i>Financial Services Act 2013</i> ;

licensed insurer	has the meaning assigned to it in the <i>Financial Services Act 2013</i> ;
licensed investment bank	has the meaning assigned to it in the <i>Financial Services Act 2013</i> ;
licensed Islamic bank	has the meaning assigned to it in the <i>Islamic Financial Services Act 2013</i> ;
licensed takaful operator	has the meaning assigned to it in the <i>Islamic Financial Services Act 2013</i> ;
major shareholder	<p>refers to a person who has an interest or interests in one or more voting shares in a corporation and the number or aggregate number of those shares, is–</p> <p>(a) 10% or more of the total number of voting shares in the corporation; or</p> <p>(b) 5% or more of the total number of voting shares in the corporation where such person is the largest shareholder of the corporation;</p> <p>For the purpose of this definition, “interest” shall have the meaning of “interest in shares” given in section 8 of the <i>Companies Act 2016</i>;</p>
obligor	means an entity that is contractually obliged to honour the financial obligations of an issuer;
sukuk	<p>means certificates of equal value evidencing undivided ownership or investment in the assets using Shariah principles and concepts endorsed by the Shariah Advisory Council of the SC;</p> <p>For avoidance of doubt, sukuk does not include sukuk issued by–</p> <p>(a) the Federal Government;</p> <p>(b) any State Government; or</p> <p>(c) Bank Negara;</p>
trustee	means a person who is registered by the SC under the <i>Guidelines on the Registration and Conduct of Capital Market Services Providers</i> .

PART B: REQUIREMENTS FOR TRUST DEED

Chapter 3

PREAMBLE AND RECITALS

- 3.01 The following must be provided in the preamble and recitals of the trust deed in relation to the issuance of the corporate bonds or sukuk:
- (a) The identities of the parties to the trust deed;
 - (b) A brief description of the corporate bonds 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 corporate bonds or sukuk, where available, and a statement stating the name of the system where the corporate bonds or sukuk will be issued, cleared and settled.

Chapter 4

DESCRIPTION OF CORPORATE BONDS OR SUKUK

4.01 The trust deed of the corporate bonds or sukuk must provide the following:

- (a) The key features of the corporate bonds or sukuk constituted by the trust deed including the tenure, redemption schedule and denomination (where applicable);
- (b) Details of the central depository and paying agent for the corporate bonds or sukuk;
- (c) Whether the corporate bonds or sukuk are secured or unsecured and if secured, the nature of the security;
- (d) Whether the corporate bonds 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 rights of the bondholders or sukukholders among all other bondholders or sukukholders, and against all other obligations of the issuer.

Chapter 5

INTEREST OR PROFIT RATE

- 5.01 Where provision is made for the payment of an interest or profit rate under the corporate bonds or sukuk, the trust deed must state—
- (a) the interest or profit rate 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 (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 it will be given and to state the agreed rate or method in which the rate/amount will be calculated.

Chapter 6

COVENANT TO COMPLY WITH TRUST DEED AND TERMS AND CONDITIONS OF CORPORATE BONDS OR SUKUK

- 6.01 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 corporate bonds or sukuk.

Chapter 7

ISSUER'S COVENANT TO PAY

- 7.01 The trust deed must provide for a covenant by the issuer to redeem or settle in full all outstanding corporate bonds or sukuk in accordance with the terms and conditions of the corporate bonds or sukuk.
- 7.02 Where the issuer has an option to redeem the corporate bonds or sukuk before the legal maturity date of such corporate bonds 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 bondholders or sukukholders of the early redemption, and if prior approval from the holders is required, to state clearly the manner in which such approval can be obtained, and to provide a reasonable notice period for bondholders or sukukholders to act.

Chapter 8

TAXATION

- 8.01 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 corporate bonds or sukuk, the trust deed must state the details of the obligation of the issuer with regard to such withholding.

Chapter 9

CORPORATE BONDS OR SUKUK CERTIFICATES

9.01 The trust deed must provide the following:

- (a) Details and particulars relating to the global certificate representing the corporate bonds or sukuk; and
- (b) The conditions under which the trustee may exchange the global certificate with definitive certificates.

Chapter 10

LIMITATION ON BORROWING OR FINANCING

10.01 Where there is a limitation on the total amount of borrowing or financing by the issuer, the trust deed must provide the following:

- (a) The detailed formula governing the limitation;
- (b) The detailed meaning or definition of each component in the formula in order to facilitate the computation and verification of such limitation from time to time; and
- (c) A report which must be submitted at least annually by the issuer to the trustee. The report must specify the following:
 - (i) Whether or not the said limitation has been complied with; and
 - (ii) The relevant details (including detailed computation for such limitation) of the compliance or non-compliance.

Chapter 11

EVENTS CONSTITUTING DEFAULT AND REMEDY OF SUCH DEFAULT

11.01 The trust deed and the terms and conditions of the corporate bonds or sukuk must provide, but shall not be limited to, the following list of events, the occurrence of any of which would entitle or oblige the trustee to declare the corporate bonds or sukuk immediately due and payable (where provision for period of grace will not be allowed):

- (a) Where there is any default in payment of any principal, premium, interest or profit under the corporate bonds or sukuk;
- (b) Where a winding up order has been made against the issuer;
- (c) Where a resolution to wind up the issuer has been passed;
- (d) Where a scheme of arrangement or any other corporate rescue mechanism under the *Companies Act 2016* has been instituted by or against the issuer;
- (e) Where a receiver, receiver and manager, judicial manager or other officer acting in a similar capacity has been appointed over the whole or a substantial part of the assets of the issuer;
- (f) Where there is a breach by the issuer of any term or condition of the corporate bonds or sukuk, or provision of the trust deed or any other document relating to the issuance of the corporate bonds or sukuk;
- (g) 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
- (h) 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 corporate bonds or sukuk, or the provisions of the trust deed or any other document relating to the issuance of the corporate bonds or sukuk.

11.02 The powers of the trustee in any of the events described in paragraph 11.01 include—

- (a) the powers of the trustee to declare the corporate bonds or sukuk immediately due and payable at its discretion;

- (b) the powers of the trustee to declare the corporate bonds or sukuk immediately due and payable as directed by a special resolution;
- (c) the powers of the trustee to enforce the provisions of the trust deed;
- (d) the circumstances under which the trustee shall be bound to enforce the provisions of the trust deed; and
- (e) the circumstances under which the bondholders or sukukholders are entitled to pursue their rights and remedies.

Materiality threshold and remedy period

11.03 In respect of the event set out in subparagraph 11.01(a), a materiality or substantiality threshold is strictly prohibited. However, remedy periods may be allowed but must not exceed seven business days from the date on which the payment is due.

11.04 Other than the event set out in subparagraph 11.01(a), a materiality or substantiality threshold and/or remedy period may be allowed, provided that the details of the threshold or remedy period are clearly stated in the trust deed.

Exclusion of events of default

11.05 Subject to paragraph 11.07, the events of default set out in subparagraph 11.01(a), (d), (e), (f), (g) and (h) may be excluded for corporate bonds or sukuk which are issued—

- (a) by the following entities to meet the requirements for regulatory capital as set out in the relevant guidelines issued by Bank Negara:
 - (i) Licensed banks;
 - (ii) Licensed Islamic banks;
 - (iii) Licensed investment banks;
 - (iv) Licensed insurers;
 - (v) Licensed takaful operators;
 - (vi) The holding company of any of the entities referred to in subparagraphs (i), (ii) and (iii); or

(vii) Any other institutions that are required to meet the requirements for regulatory capital as set out in the relevant guidelines issued by Bank Negara; or

(b) on a perpetual basis.

11.06 In the event of non-payment of any principal, premium, interest or profit in respect of the corporate bonds or sukuk referred to in paragraph 11.05, the trust deed must provide for an enforcement event in relation to the winding up of the issuer.

11.07 The exclusion of events as permitted under paragraph 11.05 is subject to the condition that there is proper disclosure to investors that the occurrence of such events does not constitute an event of default. Such disclosure can be made in any document relating to the issuance of the corporate bonds or sukuk which is made available to investors.

Chapter 12

SINKING FUND

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

- (a) the obligation to maintain a bank account, or in the case of sukuk – a Shariah-compliant account, and to state the holder(s) and operator(s) of the account;
- (b) the amounts to be paid into the account and the agreed period 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 bondholders or sukukholders.

Chapter 13

COVENANTS BY THE ISSUER

13.01 At a minimum and so long as any corporate bonds or sukuk remain outstanding, the trust deed must provide the following positive covenants in relation to the issuer:

- (a) 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) The issuer will exercise reasonable diligence in carrying out its business in a proper and efficient manner;
- (c) The issuer will ensure that the necessary approvals or relevant licences for the operation of the issuer's business are obtained and maintained;
- (d) The issuer will maintain a paying agent, or its equivalent, who is based in Malaysia in the case of ringgit-denominated corporate bonds or sukuk;
- (e) The issuer will procure the facility agent to notify the trustee 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 corporate bonds or sukuk;
- (f) The issuer will keep proper books and accounting records at all times and 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) The issuer will ensure that the provisions of an information memorandum relating to the corporate bonds or sukuk do not contain any matter which is inconsistent with the provisions of the trust deed and the terms and conditions of the corporate bonds or sukuk; and
- (h) The issuer will ensure that any conditions subsequent in relation to the issuance of the corporate bonds or sukuk are complied with in accordance with the terms and conditions of the corporate bonds or sukuk and that any request from the issuer to add, extend, vary or otherwise modify any conditions subsequent shall be subject to the approval of bondholders or sukukholders.

13.02 At a minimum and so long as any corporate bonds or sukuk remain outstanding, the trust deed must provide the following negative covenants in relation to the issuer:

- (a) 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 as a value and not as a percentage ratio), the issuer obtains certification from an independent adviser that the transaction is carried out on fair and reasonable terms;

provided that–

- a. the issuer certifies to the trustee that the transaction complies with subparagraph (i);
 - b. where applicable, the issuer has received and furnished to the trustee the certification referred to in subparagraph (ii); and
 - c. the transaction has been approved by the board of directors or shareholders in accordance with the constitution of the issuer as the case may require;
- (b) The issuer will not permit any amendment, supplement or variation to the constitution of the issuer in a manner which may be materially prejudicial to the interests of bondholders or sukukholders; and
- (c) The issuer will not change the utilisation of proceeds from the corporate bonds or sukuk where the prospectus, information memorandum or any agreement entered into in connection with the issuance sets out a specific purpose for which proceeds are to be utilised.

13.03 Notwithstanding the negative covenants set out in subparagraph 13.02(b) and (c) above, the trust deed may include a provision that allows the issuer to amend the constitution of the issuer as well as the utilisation of proceeds from the corporate bonds or sukuk, provided that the issuer has obtained the approval of bondholders or sukukholders by way of a special resolution or the written consent of the trustee (whose approval may be given, where in its opinion, it is not materially prejudicial to the interests of bondholders or sukukholders to give such approval).

Exclusion of covenants by the issuer

13.04 Where the issuer is required to comply with the applicable listing requirements of the stock exchange in relation to related party transactions, the covenant stated in

paragraph 13.02(a) may be excluded, provided that the trust deed includes the following covenants:

- (a) The issuer will ensure full compliance with the relevant listing requirements;
and
- (b) In the event the listing requirements are no longer applicable to the issuer, the issuer will comply with the requirements under subparagraph 13.02(a).

13.05 For corporate bonds or sukuk which are issued by the entities specified in subparagraph 11.05(a) to meet the requirements for regulatory capital as set out in the relevant guidelines issued by Bank Negara, the negative covenants stated in paragraph 13.02 may be excluded.

Chapter 14

ISSUE/EXCHANGE OF SHARES IN RELATION TO CONVERTIBLE/EXCHANGEABLE CORPORATE BONDS OR SUKUK

14.01 In the case of convertible corporate bonds or sukuk, the trust deed or the terms and conditions of the corporate bonds 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 bondholders or sukukholders 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 bondholders or sukukholders is not diluted;
- (c) if the bondholders or sukukholders have any right to convert the corporate bonds or sukuk into shares in the event of a take-over offer in relation to the issuer, or how the bondholders or sukukholders might participate in such a take-over offer;
- (d) the conditions under which an option to convert the corporate bonds or sukuk into shares of the issuer is exercised;
- (e) the provisions for the adjustment of the conversion price in 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 corporate bonds or sukuk.

14.02 In the case of exchangeable corporate bonds or sukuk, the trust deed or the terms and conditions of the corporate bonds or sukuk must provide—

- (a) the terms, procedures and notices of exchange;
- (b) the manner in which exchange shares are transferred to the exercising bondholders or sukukholders;
- (c) the survival of rights of bondholders or sukukholders;
- (d) the conditions under which an option to exchange the corporate bonds or sukuk into shares is exercised;

- (e) the rights of bondholders or sukukholders and responsibilities of the trustee in the event of insolvency of issuer; and
- (f) the rights of bondholders or sukukholders as well as responsibilities of issuers and trustee in the event of a take-over offer.

Chapter 15

REPORTING COVENANTS BY THE ISSUER

- 15.01 In addition to the requirements set out in the CMSA, the trust deed must include covenants to ensure that the issuer shall immediately notify the trustee if the issuer becomes aware–
- (a) of any event of default or enforcement;
 - (b) of any substantial change in the nature of the business of the issuer or its guarantors (where applicable);
 - (c) of a change in the name of the guarantors (where applicable);
 - (d) 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;
 - (e) of any change in withholding tax position; and
 - (f) of any other matter that may materially prejudice the interests of bondholders or sukukholders.
- 15.02 The trust deed must include a covenant by the issuer to send to the trustee, within a stipulated timeframe:
- (a) The annual audited accounts of the issuer;
 - (b) The semi-annual unaudited accounts of the issuer; and
 - (c) Any other account, report, notice, statement or circular issued to shareholders which are material and substantial to or necessary for bondholders or sukukholders to make informed investment decisions.
- 15.03 The trust deed must also provide for the information stipulated in paragraph 15.02 to be circulated by the trustee at its discretion to registered bondholders or sukukholders and the credit rating agency of the corporate bonds or sukuk.
- 15.04 The trust deed must include a covenant by the issuer to provide to the trustee at least annually, a certificate that the issuer has complied with its obligations under the trust deed and the terms and conditions of the corporate bonds or sukuk and that there did not exist or had not existed, from the date the corporate bonds 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.

Chapter 16

APPLICATION OF MONEYS RECEIVED IN RESPECT OF THE CORPORATE BONDS OR SUKUK

- 16.01 Where there are any moneys received by the trustee under the trust deed, the trust deed must stipulate the manner and order of priority in which these amounts are applied or payable. In cases where the moneys are disbursed to the issuer conditionally over a period of time by the trustee, the trust deed must provide the relevant thresholds, conditions, supporting documents and certificates for the trustee to manage the release of the moneys to the issuer.
- 16.02 The trust deed must provide for an account, known as Trustees' Reimbursement Account for Bondholders' Actions or, in the case of sukuk, Trustees' Reimbursement Account for Sukukholders' Actions (hereafter referred to as 'Account') with a sum of at least RM30,000¹ to be set up either by the issuer or for and on behalf of the issuer.
- 16.03 This Account shall be operated by the trustee and the money shall only be used strictly by the trustee in carrying out its duties in relation to the occurrence of events of default or enforcement 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.
- 16.04 The moneys in the Account may be invested in bank deposits or Islamic accounts, 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 corporate bonds or sukuk if no event of default or enforcement takes place.

¹ This amount is to be increased to RM100,000 effective from 1 January 2021.

Chapter 17

POWER TO WITHHOLD, INVEST AND ACCUMULATE

- 17.01 Where there is any discretion by the trustee to withhold, invest or accumulate moneys it receives, this must be stated in the trust deed.
- 17.02 Where the trustee is allowed to invest any moneys it receives, the conditions under which it is permitted to do so and the types of investments it is permitted to invest in must be stated in the trust deed.

Chapter 18

DEPOSIT OF UNCLAIMED MONEYS

18.01 There must be a provision with regard to the rights and obligations of the parties in relation to any unclaimed moneys due to the bondholders or sukukholders.

Chapter 19

POWERS AND DUTIES OF TRUSTEE

19.01 The trust deed must contain a statement by the trustee that it is registered by the SC to act as trustee.

19.02 The trust deed must 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 bondholders or sukukholders;
- (b) Where there is a breach by the issuer under the terms and conditions of the corporate bonds or sukuk or the provisions of the trust deed, the circumstances that the trustee may waive such breach provided—
 - (i) it is satisfied that it is not materially prejudicial to the interests of bondholders or sukukholders; or
 - (ii) it is authorised to do so by resolution of a stipulated majority of bondholders or sukukholders;
- (c) Where there is a request from the issuer to vary or modify any terms and conditions of the corporate bonds or sukuk or 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 the variation or modification is not materially prejudicial to the interests of bondholders or sukukholders; or
 - (ii) it is satisfied that the modification is necessary for the issuer to comply with mandatory provisions of the law or requirements imposed by the regulatory authorities; or
 - (iii) it is authorised to do so by resolution of a stipulated majority of bondholders or sukukholders.

In respect of subparagraph (i) and (ii) above, the trustee shall ensure that it has informed bondholders or sukukholders, in writing, of the issuer's request, at least three business days prior to the concurrence; and

- (d) The circumstances in which the trustee may delegate its powers.

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

Chapter 20

RELIEF, EXEMPTION AND INDEMNIFICATION OF TRUSTEE FROM LIABILITY

20.01 There must 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 corporate bonds 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.

Chapter 21

MEETINGS

- 21.01 There must be a provision in the trust deed setting out the notice period for the meeting of bondholders or sukukholders.
- 21.02 There must 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 bondholders or sukukholders.
- 21.03 There must be a quorum requirement for the transaction of business at the meetings. The quorum for the passing of special resolutions shall be explicitly stated.
- 21.04 There must be a provision in the trust deed that corporate bonds 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) or private retirement scheme;
 - (c) A licensed bank;
 - (d) A licensed investment bank;
 - (e) A licensed Islamic bank;
 - (f) A development financial institution;
 - (g) A licensed insurer; and
 - (h) A licensed takaful operator.

Chapter 22

CANCELLATION OF CORPORATE BONDS OR SUKUK

- 22.01 The trust deed must provide for corporate bonds or sukuk which are redeemed or purchased by the issuer or any subsidiary or any agent of the issuer, to be cancelled by the issuer.
- 22.02 For the purpose of paragraph 22.01 above, the issuer must confirm in writing to the trustee that–
- (a) the amounts paid in respect of such corporate bonds or sukuk as have been redeemed or paid and cancelled;
 - (b) the aggregate nominal amount and certificate numbers of those corporate bonds or sukuk which have been purchased and cancelled; and
 - (c) such corporate bonds 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 such redemption, purchase or surrender for cancellation, payment or replacement (as the case may be) takes place.

Chapter 23

MISCELLANEOUS CLAUSES

23.01 The trust deed must stipulate the following:

- (a) The conditions under which the provisions of the trust deed or the terms and conditions of the corporate bonds or sukuk may be modified;
- (b) The mode of serving notices and other documents to the issuer, the trustee and the bondholders or sukukholders;
- (c) The issuer to be responsible for paying any stamp duty on the trust deed or the corporate bonds or sukuk;
- (d) The applicable governing law;
- (e) Where the business and undertaking of a trustee is assumed by another entity pursuant to a business transfer, 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 bondholders or sukukholders is obtained;
- (f) The circumstances for the appointment, resignation and removal of the trustee and 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 bondholders or sukukholders; and
 - (ii) the issuer is notified of any removal of a trustee and subsequent appointment of a replacement trustee by bondholders or sukukholders;
- (g) The fees to be paid to the trustee for the performance of its duties as trustee and any additional services it may provide; and
- (h) Any indemnity given by the issuer to the trustee.

Chapter 24

SCHEDULES

24.01 There must be schedules in the trust deed to stipulate the following:

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