

FREQUENTLY ASKED QUESTIONS
GUIDELINES FOR REGISTRATION AND CONDUCT OF CAPITAL MARKET SERVICES
PROVIDERS

(Issued: 19 October 2018)

1.0 APPLICATION OF THE GUIDELINES

1.01 When will the *Guidelines for Registration and Conduct of Capital Market Services Providers (Guidelines)* take effect?

The Guidelines will come into effect on 2 January 2019 (Effective Date).

1.02 In light of the issuance of the Guidelines, are the existing requirements for registered trustees still applicable?

From the Effective Date of the Guidelines, the requirements in relation to the trustees shall supersede the relevant requirements in the following respective guidelines:

- (a) *Guidelines on Unit Trust Funds;*
- (b) *Guidelines on Private Retirement Schemes;*
- (c) *Guidelines on Real Estate Investment Trusts;*
- (d) *Guidelines on Listed Real Estate Investment Trusts;*
- (e) *Guidelines on Issuance of Corporate Bonds and Sukuk to Retail Investors;*
- (f) *Practice Note issued pursuant to the Guidelines on the Offering of Private Debt Securities, and the Guidelines on the Offering of Islamic Securities;*
- (g) *Guidelines on Allowing a Person to be Appointed or to Act as a Trustee Under Subsection 69(2) of the Securities Commission Act 1993; and*
- (h) *Guidelines for the Appointment of a Related-Party Trustee.*

For avoidance of doubt, in relation to trustee's requirements related to a specific product, those requirements are still applicable in the respective product guidelines. For example, other requirements imposed upon the PRS trustee in the PRS Guidelines that are not mentioned in these Guidelines, are still applicable for PRS trustee.

1.03 Under the new regulatory framework for capital market services providers, where should applications for registration for capital market services providers such as trustees and issuing house be submitted to?

All applications must be addressed to:

Chairman
Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur

(Attention: Authorisation and Licensing Department)

1.04 What are the fees applicable under these Guidelines?

All registered entities under these guidelines would have to pay fees specified by the SC.

1.05 Is the new regulatory framework applicable to private trust companies offering private trust services?

No, the registration framework is not applicable to private trust companies that do not offer capital market services.

1.06 Is a registered trustee required to notify the SC of all outsourcing arrangements?

No, notification to the SC is only required for outsourced functions that are deemed as material. Outsourced functions that are determined as non-material will not require a notification to the SC. A registered trustee should refer to requirements specified under Chapter 10 of the Guidelines in determining whether the outsourced function is a material or a non-material function. The assessment process to determine materiality of the function being outsourced should be documented.

1.07 Is a registered trustee required to notify the SC for its delegation arrangement?

No, the delegation arrangement does not require the SC's approval. However, the trustee is expected to monitor the delegation arrangements on a continuous basis to ensure that it does not lead to business disruption and negative consequences to the investors. A registered trustee should refer to requirements specified under Chapter 10 of the Guidelines on the delegation requirements.

1.08 What does a registered entity need to do if it is unable to fulfil the requirements under these Guidelines?

A registered entity is required to write to the SC on the following:

- (i) Identifying the areas in which they are unable to comply;
- (ii) Stating reasons for non-compliances; and
- (iii) Time frame required in enabling compliance with the requirements stipulated in these Guidelines.

2.0 TRANSITIONAL ARRANGEMENT

2.01 What is the transitional arrangement for existing trustees upon Effective Date?

Existing trustees will be treated as having been registered under this new framework without submitting a new application. The SC may require additional information.

2.02 What is the registration treatment for applications of renewal of registration for existing trustees prior to the Effective Date?

Applications to the SC submitted before the Effective Date will be assessed in accordance to the existing registration regime, i.e. the Guidelines as specified under item 1.02. From the Effective Date onwards, all applications must be made based on the new *Guidelines*.

2.03 When does the registered trustee need to comply with these Guidelines?

These registered trustees must comply with the existing requirements contain in the Guidelines as specified under item 1.02. For the additional requirements in these Guidelines, the registered trustee must comply within one year from the Effective Date. A summary of amendments is available on the SC's website.

2.04 As at the date of issuance of the Guidelines, are the existing issuing houses required to make a formal application for registration as a capital market services provider under the Guidelines?

The issuing houses would be deemed to have been registered under the Guidelines as at the Effective Date. While they do not need to submit a new application for registration, they are required to submit updated information, as may be specified by the SC.

2.05 What is the status of the licence held by the current issuing houses under the new regulatory framework for capital markets services providers (CMSP)?

Upon the registration of the issuing houses under the new regulatory framework for CMSP, their licences would cease upon the Effective Date of the Guidelines.

2.06 What is the SC's rationale to move issuing houses from being a licensed entity carrying out a regulated activity to a registered entity providing capital market services under section 76A of the CMSA?

The main service provided by an issuing house is not regarded as a regulated activity under the CMSA, and is considered as ancillary and enabling services that complement a regulated activity or complete a capital market transaction.

3.0 OTHER AREAS

No	Area	SC's Expectations/Remarks
1.	Competency of a trustee staff.	For the purpose of Paragraph 4.05(c) of these Guidelines, a registered trustee should ensure that it has qualified and competent staff to handle all matters pertaining to product issues; and ensure that its officers maintain a sufficient level of monitoring rigour, and in this regard, consider the number of products that can be effectively covered by a particular trustee officer, taking into account a broad spectrum of variables, including the complexity of the particular product structure and the experience and expertise of the trustee officer.

No	Area	SC's Expectations/Remarks
2.	Independent Assessment by an External Auditor for related-party trustees (RPT)	<p>The RPT is required to submit the Independent Assessment Report to the SC once in every two (2) years, one month before the anniversary date of the RPT. The scope of the assessment will be subjected to the SC's approval. The RPT is responsible to ensure sufficient time to complete the Independent Assessment before the anniversary date, including obtaining the SC's approval for the scope of assessment.</p> <p>The financial auditor of the RPT can also be appointed as the external auditor to conduct the assessment.</p>
3.	The registered RPT and the management company may sign an undertaking that they will act independently of each other.	A letter of undertaking is also required from the registered RPT and the management company stating that they will act independently of each other in their dealings with respect to the fund. The letter of undertaking for registered RPT must be attached to the RPT application form and the letter of undertaking from the management company must be attached to the product application form.
4.	Annual reporting	<p>The registered entity is expected to submit an annual reporting within 10 business days from 31 December based on the template provided by the SC.</p> <p>The first submission of the annual reporting will be within 10 business days from 31 December 2019.</p>
5.	Registration of foreign trustee via recognition under Chapter 5 of these Guidelines.	In accordance with the requirements specified in Chapter 5 of these Guidelines, only foreign trustee for corporate bond and sukuk is subjected to the new registration framework and the new Guidelines.

No	Area	SC's Expectations/Remarks
6.	Permitted foreign funds under the <i>Guidelines for the Offering, Marketing and Distribution of Foreign Funds (OMD Guidelines)</i> .	Unless otherwise stated in the <i>OMD Guidelines</i> , a trustee or fund supervisor or custodian, as the case may be, of a permitted foreign fund is <u>not</u> subjected to the requirements under these Guidelines.
7.	How about treatment for foreign trustee from jurisdiction that do not regulate a trustee?	Such foreign trustee shall not be registered under Chapter 5 of these Guidelines. The foreign trustee would be registered under Chapter 4 of these Guidelines.
8.	Is registered foreign trustee subject to all requirements specified in the Guidelines?	<p>A foreign trustee registered with the SC, must ensure compliance with all relevant requirements under these Guidelines.</p> <p>However, Chapter 4 on Requirements for Registration of Trustees and Chapter 9 on Issuing House under these Guidelines are NOT applicable to registered foreign trustee.</p>
9.	Where the requirements in these Guidelines are stricter than the requirements prescribed by other competent Regulator, which requirements should a registered trustee comply with?	The registered trustee must ensure compliance with these Guidelines and the requirements imposed by the competent Regulator. Where the two sets of requirements differ, the registered trustee must comply with the stricter one.