
GUIDELINES ON ALLOWING A PERSON TO BE APPOINTED OR TO ACT AS A TRUSTEE UNDER SUBSECTION 69(2) OF THE SECURITIES COMMISSION ACT 1993

A. Purpose

The purpose of these guidelines is to set out the SC's policy in respect of the approval of persons to be appointed or to act as a trustee for debenture holders under subsection 69(2) of the Securities Commission Act 1993 (SCA). Approval of the SC is required as the trustee may be in a position of conflict of interest with the interests of the debenture holders due to the trustee's relationship with the borrower as set out in the instances described in paragraphs 69(2)(a) to (d) of the SCA.

Under these guidelines, a trustee may be eligible for approval to act or be appointed as a trustee, provided it satisfies the requirements set out in these guidelines.

B. Eligibility criteria

A person will be allowed to act as trustee if the following conditions are met –

- 1. At least 1/3 of the board of the trustee seeking approval under subsection 69(2) to act as a trustee must comprise independent directors (independent of the persons set out in paragraphs 69(2)(a)-(d) of the SCA).**

As a result of the prima facie position of conflict of interest that the trustee is placed in as described in paragraphs 69(2)(a)-(d) of the SCA, the SC is of the opinion that the presence of independent directors who are given proper empowerment to act in the best interests of the debenture holders would ensure some degree of independence at board level and provide the necessary checks and balances.

For this purpose, the Articles of Association of the trustee must state that at least 1/3 of the board must consist of independent directors. An independent director refers to a director who is independent of the management and who is free from any business or other relationship which could interfere with the exercise of the independent judgement or the ability to act in the best interests of the debenture holders. Without limiting the generality of the foregoing, an independent director is a person who:-

- (a) is not an executive director of the persons set out in paragraphs 69(2)(a)-(d);
- (b) has not been within the last 2 years and is not an officer (except as an independent director) of the persons set out in paragraphs 69(2)(a)-(d). For this

- purpose, "officer" shall have the meaning given in section 4 of the Companies Act 1965;
- (c) is not a major shareholder of the persons set out in paragraphs 69(2)(a)-(d). For this purpose:-
 - (i) "major shareholder" is defined as a person who has an interest or interests in one or more voting shares in a company and the nominal amount of that share, or the aggregate of the nominal amounts of those shares, is not less than 5% of the aggregate of the nominal amounts of all the voting shares in the company;
 - (ii) "interest in shares" shall have the meaning given in section 6A of the Companies Act 1965;
 - (d) is not a relative of any executive director, officer or major shareholder of the persons set out in paragraphs 69(2)(a)-(d). For this purpose, "relative" means the spouse, parent, brother, sister, child (including adopted or step child) and the spouse of such brother, sister or child;
 - (e) is not acting as a nominee or representative of any executive director or major shareholder of the persons set out in paragraphs 69(2)(a)-(d);
 - (f) is not engaged as a professional adviser by the persons set out in paragraphs 69(2)(a)-(d) either personally or through a firm or company of which he is a partner, director or major shareholder, as the case may be; or
 - (g) has not within the last 2 years and does not engage in any transaction with the persons set out in paragraphs 69(2)(a)-(d), whether by himself or with other persons or through a firm or company of which he is partner, director or major shareholder, as the case may be, the value of which exceeds RM250,000.

2. Legal relationship between trustee and related corporation of trustee who is a person mentioned in paragraphs 69(2)(a) - (d) must ensure some structural separation

In order to obtain an approval of the SC under these guidelines, the trustee and the persons set out in paragraphs 69(2)(a) - (d) must be separate legal entities.

3. The trustee's non-financial resources must be sufficiently independent of any of the persons set out in paragraphs 69(2)(a) – (d) or companies in their group

The officers carrying out the functions of the trustee must be subject only to the direction of its management and directors. In terms of non-financial resources which the persons referred to in paragraphs 69(2)(a)-(d) or of companies in their group provide to the trustee, such resources may be used by the trustee only if such resources are provided under binding arms length agreements on normal commercial terms which do not diminish the trustee's independence. These terms must provide that –

- (a) the trustee has unrestricted access to the relevant resources it requires to perform its functions;
- (b) the trustee keeps its information confidential, except if the trustee confirms otherwise;
- (c) unless it defaults or its term expires, the agreement may only be terminated if the trustee agrees;
- (d) if the services of the trustee are terminated, any records it has, or that are kept on its behalf, remain its property.

C. Approval

The SC grants a blanket approval to any trustee seeking to be appointed or to act as trustee under subsection 69(2) provided that the requirements of these Guidelines are met. In this respect, the board of the trustee is required to submit to the Commission a declaration in the form set out in Appendix 1 confirming the same.

It shall be a condition of approval by the Commission that the trustee must continue to meet these requirements while it acts as a trustee in respect of the particular debenture issue.

If the Commission is of the opinion that the trustee, for any reason, is unable to act independently, or has failed to comply with any term or condition attached to an approval granted under these guidelines, or has contravened any provision of the Securities Commission Act 1993, the Commission may withdraw any approval given to the trustee to act or be appointed as trustee.

APPENDIX 1

Trustee's Declaration on Compliance with the Guidelines on Allowing a Person to be Appointed or to Act as a Trustee Under Subsection 69(2) of the Securities Commission Act 1993 (SCA)

Date:

The Chairman
Securities Commission

Dear Sir

Issuer (Name of Issuer)
Proposed Issue of, Offer for Subscription or Purchase of, or Invitation to Subscribe for or Purchase RMXXX Million Private Debt Securities (to specify)

We, (Name of Trustee), have been appointed as a trustee by (Name of Issuer) on its proposal to issue, offer for subscription, or make an invitation to subscribe for or purchase, RMXXX million Private Debt Securities (to specify).

We declare that we are eligible to be appointed or to act as a trustee in respect of the above proposal and have fully complied with the Securities Commission's [Guidelines on Allowing a Person to be Appointed or to Act as a Trustee Under Subsection 69\(2\) of the Securities Commission Act 1993 \(SCA\)](#). We shall continue to comply with these requirements while we act as a trustee in respect of the above proposal.

The above declaration has been signed by me as (Designation) of (Name of Trustee Company) pursuant to authority granted to me by resolution of the Board of Trustee on (date of resolution).

Yours faithfully

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(Name)
Designation
Name of Trustee Company
Address