

GUIDELINES ON UNLISTED CAPITAL MARKET PRODUCTS UNDER THE LODGE AND LAUNCH FRAMEWORK

SC-GL/4-2015

1st Issued: 9 March 2015



CONTENTS

		PAGE
SECTION A	GENERAL REQUIREMENTS	
	Chapter 1 Introduction	2
	Chapter 2 Definitions	6
	Chapter 3 Responsible Party	15
SECTION B	SPECIFIC REQUIREMENTS	
PART 1	<u>WHOLESALE FUND</u>	
	Chapter 1 General	19
	Chapter 2 Structure: Establishing a Wholesale Fund	21
	Chapter 3 Lodgement	26
	Chapter 4 Continuous Obligations	27
	Chapter 5 Revision	33
PART 2	<u>STRUCTURED PRODUCTS</u>	
	Chapter 1 General	35
	Chapter 2 Structure	38
	Chapter 3 Lodgement	40
	Chapter 4 Continuous Obligations	41
	Chapter 5 Revision	42
	Appendix 1 Information and Documents to be submitted to the SC Prior to Lodgement of the Islamic Structured Products	43

PART 3**PRIVATE DEBT SECURITIES AND SUKUK**

Chapter 1	General	45
Chapter 2	Structure	48
Chapter 3	Specific Requirements Applicable to Foreign Currency-Denominated PDS or Sukuk and NIDs or INIDs	54
Chapter 4	Lodgement	55
Chapter 5	Continuous Obligations	57
Chapter 6	Revision	59
Chapter 7	Sustainable and Responsible Investment (SRI) Sukuk	64
Appendix 2A	Information and Documents to be submitted to the SC Prior to Lodgement of Sukuk	67
Appendix 2B	Information and Documents to be submitted to the SC for Revision to Terms and Conditions of Ringgit-Denominated Sukuk	69

PART 4**ASSET-BACKED SECURITIES**

Chapter 1	General	71
Chapter 2	Structure	72
Chapter 3	Lodgement	78
Chapter 4	Continuous Obligations On Primary Collateralised Loan Obligations (CLO) Transactions	79
Appendix 3A	Minimum Content of Disclosure Document in Relation to an Issuance of ABS	84
Appendix 3B	Additional Minimum Content of Disclosure Document in Relation to a Primary CLO Transaction	86
Appendix 3C	Additional Minimum Content of Disclosure Document in Relation to Primary CLO Transactions Invested in Structured Products	87

SECTION C **ADDITIONAL REQUIREMENTS FOR SHARIAH-COMPLIANT UNLISTED CAPITAL MARKET PRODUCTS UNDER THE LODGE AND LAUNCH FRAMEWORK**

Chapter 1	Approved Shariah Principles and Concepts for Shariah-Compliant Unlisted Capital Market Products Under the Lodge and Launch Framework	90
Chapter 2	Roles and Responsibilities of Shariah Adviser	95
Chapter 3	Compliance with Shariah Rulings, Principles and Concepts	97
Chapter 4	General Shariah Rulings Applicable to Ringgit-Denominated Sukuk	98
Chapter 5	Shariah Rulings Applicable to Specific Types of Ringgit-Denominated Sukuk	104
Chapter 6	Revision to Terms and Conditions of Ringgit-Denominated Sukuk	109

SECTION D **TRANSITIONAL PROVISIONS**

Chapter 1	General	112
Chapter 2	Wholesale Fund	113
Chapter 3	Structured Products	114
Chapter 4	Private Debt Securities and Sukuk	115
Appendix 4A	Information and Documents to be submitted to the SC for Revision to Terms and Conditions of Ringgit-Denominated Sukuk	117
Appendix 4B	Information and Documents to be submitted to the SC for Revision of Principal Terms and Conditions	118

SECTION A

GENERAL REQUIREMENTS

Chapter 1

INTRODUCTION

- 1.01 The *Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework* (Guidelines) is 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 requirements that must be observed for the purposes of exclusively making available unlisted capital market products to–
- (a) sophisticated investors in Malaysia; or
 - (b) persons outside Malaysia¹.
- 1.03 For the purposes of these Guidelines, unlisted capital market products shall not include shares² and real estate investment trusts.
- 1.04 These Guidelines are divided into the following four sections:
- (a) **Section A** sets out the general requirements on the Lodge and Launch framework that apply to all unlisted capital market products and Responsible Party;
 - (b) **Section B** sets out the specific requirements for each type of unlisted capital market products' structure, the roles and responsibilities of the Responsible Party and their continuous obligations, and revision to information lodged;
 - (c) **Section C** sets out the additional requirements that apply to Shariah-compliant unlisted capital market products, as applicable; and
 - (d) **Section D** sets out the transitional provisions that apply to unlisted capital market products which have been approved or authorised by the SC prior to the Lodge and Launch framework.

¹ Applicable only to private debt securities and sukuk.

² For the purpose of these Guidelines, "shares" includes any right, option or interest in respect thereof.

- 1.05 In relation to the making available of unlisted capital market products to sophisticated investors in Malaysia and persons outside Malaysia, the following guidelines are superseded:
- (a) *Guidelines on Wholesale Funds;*
 - (b) *Guidelines on the Offering of Structured Products;*
 - (c) *Guidelines on Private Debt Securities;*
 - (d) *Guidelines on Sukuk;* and
 - (e) *Guidelines on the Offering of Asset-backed Securities.*
- 1.06 These Guidelines are in addition to and not in derogation of any other guidelines issued by the SC or any requirements as provided for under securities laws.
- 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 exemption or variation, if granted is not contrary to the intended purpose of the relevant provision in these Guidelines; or
 - (b) there are mitigating factors which justify the said exemption or variation.
- 1.08 The approval for exemption or variation under paragraph 1.07 above must be obtained prior to lodgement.
- 1.09 Failure to comply with the requirements of these Guidelines will be taken into account in the fit and proper assessment of the licensed and registered persons.

Lodge and Launch Framework

- 1.10 The Lodge and Launch framework seeks to promote process efficiency, shorten time to market and provide certainty to product offering.
- 1.11 Under the Lodge and Launch framework, unlisted capital market products will not require the SC's approval, authorisation or recognition under section 212 of the CMSA, provided all the requirements under these Guidelines are complied with.

Lodge

- 1.12 “Lodge” refers to the submission of information and documents as may be specified by the SC. Such information and documents must be true, complete and accurate.
- 1.13 For each product, the Lodgement Party is required to lodge the relevant information and documents with the SC prior to the launching of the product.
- 1.14 The information and documents that must be lodged with the SC as required under these Guidelines are set out in the Lodgement Kit.
- 1.15 Each lodgement must be accompanied by the relevant fees prescribed by the SC.

Launch

- 1.16 “Launch” refers to the–
- (a) making available;
 - (b) offering for subscription or purchase of; or
 - (c) issuing of an invitation to subscribe for or purchase,
- an unlisted capital market product and includes any issuance, publication or release of any information, notice or advertisement in respect of any of the act specified above.
- 1.17 An unlisted capital market product must be launched within the timeframe, if any, as specified under Section B of these Guidelines. If the unlisted capital market product is not launched within the specified timeframe, the lodgement will be null and void. A new lodgement must be made by the Lodgement Party accompanied by the relevant fees, before such product can be launched.

Revision

- 1.18 Any revision to the information or documents originally lodged with the SC must be made by the Lodgement Party.

- 1.19 Such Lodgement Party must immediately make a revision upon becoming aware of any change or a likelihood of any change that may render any information or document lodged with the SC or provided to investors to be false, misleading or contain any material omission.
- 1.20 All the information and documents of the initial lodgement remain valid and effective to the extent that such information or documents have been revised pursuant to any subsequent lodgement in accordance with the requirements under these Guidelines. In the event of any conflict or inconsistency between any information contained in the initial lodgement and the subsequent lodgement, the information or documents in the subsequent lodgement shall prevail.
- 1.21 Such Lodgement Party must have in place relevant systems, procedures and operational arrangements to ensure that it is, at all times, aware of changes to the information or documents lodged with the SC.
- 1.22 In addition to the requirements above, the Lodgement Party must comply with requirements for revision under Section B of these Guidelines.
- 1.23 Each revision must be accompanied by the fees prescribed by the SC.

Chapter 2

DEFINITIONS

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–

adviser means an adviser as described in the *Guidelines for the Offering, Marketing and Distribution of Foreign Funds*;

assets in relation to ABS, means such assets which are the subject matter of a securitisation transaction and which satisfy all criteria as stipulated in these Guidelines;

asset-backed securities or ABS means private debt securities or sukuk that are issued pursuant to a securitisation transaction. Such ABS shall exclude any private debt securities or sukuk with convertible or exchangeable features;

Examples of such excluded securities include exchangeable bonds and private debt securities or sukuk with attached warrants;

business day means a day on which commercial banks settle payments in Kuala Lumpur;

collective means, any arrangement where–

investment scheme (a) it is made for the purpose, or having the effect of providing facilities for persons to participate in or receive profits or income arising from the acquisition, holding, management or disposal of securities, derivatives or any other property (hereinafter referred to as scheme's assets) or sums paid out of such profits

or income;

- (b) the persons who participate in the arrangements do not have day-to-day control over the management of the scheme's assets; and
- (c) the scheme's assets are managed by an entity who is responsible for the management of the scheme's assets and is approved, authorised or licensed by a securities regulator to conduct fund management activities.

commercial paper or CP	has the meaning assigned to it under the <i>Participation and Operation Rules for Payments and Securities Services</i> issued by Malaysian Electronic Clearing Corporation Sdn Bhd (MyClear), on behalf of Bank Negara Malaysia (BNM);
credit enhancement	in relation to ABS, means one or more arrangements within a securitisation transaction to enhance the credit rating of the ABS issue by, for example, the provision of a cash collateral, profit retention, third party guarantee, over collateralisation etc;
debt programme	means a facility which allows multiple issues, offers or invitations to subscribe or purchase MTNs, CPs or a combination of CPs and MTNs, within an availability period which is disclosed to the SC and bondholders;
disclosure document	means a document as described in the <i>Guidelines on Disclosure Documents</i> ;
Exempt Regime	has the meaning assigned to it under the <i>Bursa Malaysia Main Market Listing Requirements</i> ;

foreign currency-denominated PDS or sukuk through a roadshow	means foreign currency-denominated PDS or sukuk that are– (a) issued by a foreign issuer; (b) not originated in Malaysia; and (c) issued or offered to investors in Malaysia and at least one other country or an invitation to subscribe or purchase made to investors in Malaysia and at least one other country;
fund management company	means a holder of a Capital Markets Services Licence for the regulated activity of fund management in relation to portfolio management;
interested person	has the meaning assigned to it under the <i>Trust Deeds Guidelines</i> ;
Islamic structured products	means a structured product structured in compliance with Shariah principles;
issuer	means any person who makes available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase an unlisted capital market product;
licensed bank	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> ;

Lodgement Party	means the Responsible Party specified in Section B of these Guidelines who is required to lodge the relevant information and documents with the SC;
medium-term note or MTN	has the meaning assigned to it in the <i>Participation and Operation Rules for Payments and Securities Services</i> issued by MyClear, on behalf of BNM;
NAV	in relation to a wholesale fund, means the net asset value of the fund, that is the value of all the fund's assets less the value of all the fund's liabilities, at the point of valuation;
obligor	means an entity that is contractually obliged to honor the financial obligations of a special purpose vehicle specifically set up to issue the private debt securities or sukuk;
operator	has the meaning assigned to it in the <i>Guidelines for the Offering, Marketing and Distribution of Foreign Funds</i> ;
originator	in relation to ABS, means any entity that is seeking to transfer or dispose of its assets to a special purpose vehicle in a securitisation transaction;
principal adviser	means a person licensed to carry out the regulated activity of advising on corporate finance and eligible to act as principle adviser pursuant to the <i>Principal Adviser Guidelines</i> ;

private debt securities or PDS	<p>means debentures as defined in the CMSA but do not include–</p> <p>(a) structured products; and</p> <p>(b) debentures issued by–</p> <p>(i) the Federal Government;</p> <p>(ii) any State Government; or</p> <p>(iii) Bank Negara Malaysia;</p>
product distributor	<p>means any person who markets and sells a wholesale product, who may or may not be an issuer;</p>
qualified bank	<p>refers to–</p> <p>(a) a licensed bank;</p> <p>(b) a licensed Islamic bank; or</p> <p>(c) a licensed investment bank;</p>
qualified dealer	<p>means a holder of Capital Markets Services Licence for dealing in securities under the CMSA, and which is a–</p> <p>(a) universal broker as defined in the <i>Principal Adviser Guidelines</i>;</p> <p>(b) 1+1 broker as defined in the <i>Principal Adviser Guidelines</i>; or</p> <p>(c) special scheme broker as defined in the <i>Principal Adviser Guidelines</i>;</p>
representative	<p>means a person who is appointed by an operator under the <i>Guidelines for the Offering, Marketing and Distribution of Foreign Funds</i>;</p>

Responsible Party	<p>means any person who is accountable or responsible, whether solely or jointly with other persons in the lifecycle of an unlisted capital market product and includes the following:</p> <ul style="list-style-type: none"> (a) the issuer; (b) persons licensed by, or registered, with the SC; (c) any person whose profession gives authority to a statement made by him, or is responsible or accountable for having prepared or certified any opinion or statement or report for use in connection with the unlisted capital market product; (d) any other persons identified by the issuer as having: <ul style="list-style-type: none"> (i) authority over, makes or has substantial influence in making, decisions that affect the whole or a part of the lifecycle of the unlisted capital market product; (ii) a significant role, function, accountability or responsibility in relation to an unlisted capital market product;
securitisation	<p>in relation to ABS, means an arrangement which involves the transfer of assets or risks to a third party where such transfer is funded by the issuance of private debt securities or sukuk to investors. Payments to investors in respect of such private debt securities or sukuk are principally derived, directly or indirectly, from the cash flows of the assets;</p>
servicer	<p>in relation to ABS, means any entity that is undertaking to administer the assets or perform such other services on behalf of the special purpose vehicle as may be required in a securitisation transaction;</p>

sophisticated investor	means any person who falls within any of the categories of investors set out in Part 1, Schedule 6 and 7 of the CMSA;
structured products	means any investment product that falls within the definition of "securities" under the CMSA and which derives its value by reference to the price or value of an underlying reference;
sukuk	means certificates of equal value which evidence undivided ownership or investment in the assets using Shariah principles and concepts endorsed by the Shariah Advisory Council. For avoidance of doubt, sukuk does not include sukuk issued by: (a) the Federal Government; (b) any State Government; or (c) Bank Negara Malaysia;
sukuk <i>bai' bithaman ajil</i>	refers to certificates of equal value evidencing the certificate holder's undivided ownership of the asset, including the rights to the receivables arising from the underlying contract;
sukuk <i>ijarah</i>	refers to certificates of equal value evidencing the certificate holder's undivided ownership of the leased asset and/or <i>usufruct</i> and/or services and rights to the rental receivables from the said leased asset and/or <i>usufruct</i> and/or services;

sukuk <i>istisna`</i>	refers to certificates of equal value evidencing the certificate holder's undivided ownership of the asset, including the rights to the receivables arising from the underlying contract;
sukuk <i>mudharabah</i>	refers to certificates of equal value evidencing the certificate holder's undivided ownership in the <i>mudharabah</i> venture;
sukuk <i>murabahah</i>	refers to certificates of equal value evidencing the certificate holder's undivided ownership of the asset, including the rights to the receivables arising from the underlying contract;
sukuk <i>musharakah</i>	refers to certificates of equal value evidencing the certificate holder's undivided ownership in the <i>musharakah</i> venture;
sukuk programme	means a facility which allows multiple issues, offers or invitations to subscribe or purchase Islamic MTNs, Islamic CPs or a combination of Islamic CPs and Islamic MTNs, within an availability period which is disclosed to the SC and sukukholders;
sukuk <i>wakalah bi al-istithmar</i>	refers to certificates of equal value evidencing the certificate holder's undivided ownership in the investment assets pursuant to their investment through the investment agent;
system	means such system specified by the SC for the purposes of lodgement;

underlying reference means any security, index, currency, commodity or other assets or reference, or combination of such assets or reference;

unlisted capital market product means a capital market product, whether manufactured or issued in or outside Malaysia that is not listed and traded on the stock exchange, or traded on the derivatives exchange, in Malaysia.

For the purpose of these Guidelines, "unlisted capital market product" includes PDS or sukuk under the Exempt Regime;

wholesale fund means a unit trust scheme established where the units are to be issued, offered for subscription or purchase, or for which invitations to subscribe for or purchase the units are to be made, exclusively to sophisticated investors.

Chapter 3

RESPONSIBLE PARTY

3.01 A Responsible Party must–

- (a) carry out its roles and responsibilities in relation to the unlisted capital market product;
- (b) discharge its functions with integrity, due care, knowledge, skill and diligence;
- (c) declare any conflict of interest, actual or potential, and effectively manage them in the best interest of the investors; and
- (d) have in place policies and processes to identify, monitor, manage and mitigate conflict of interest. Such policies and processes must be continuously reviewed to ensure its continued effectiveness.

3.02 A Responsible Party who is aware of any change or a likelihood of any change, that may render any information or document lodged with the SC or provided to investors to be false, misleading or contain any material omission, must immediately notify the Lodgement Party to enable the Lodgement Party to make the necessary revision.

3.03 No person shall frustrate or impede the performance of the roles and responsibilities of a Responsible Party.

Specific requirements applicable to a Lodgement Party

3.04 The Lodgement Party must identify all other Responsible Parties accountable or responsible in the lifecycle of an unlisted capital market product. In the event a Responsible Party ceases to be accountable or responsible for any of the roles or responsibilities relating to a product, the Lodgement Party must identify a new Responsible Party to undertake such role and responsibility.

- 3.05 All Responsible Parties must declare their respective roles and responsibilities in relation to the unlisted capital market product.
- 3.06 The lodgement of such information under paragraphs 3.04 and 3.05 above must be made by the Lodgement Party.
- 3.07 There must be a Lodgement Party at all times throughout the lifecycle of an unlisted capital market product.
- 3.08 In the event that the Lodgement Party is replaced by another party, the latter must undertake the roles and responsibilities of a Lodgement Party and shall be responsible for any information or document lodged subsequent to its appointment.

SECTION B

SPECIFIC REQUIREMENTS

PART 1

WHOLESALE FUND

Chapter 1

GENERAL

- 1.01 Section B, Part 1 of these Guidelines sets out the specific requirements that must be complied with in relation to a wholesale fund under the Lodge and Launch framework.

Establishment of a wholesale fund

Local wholesale fund

- 1.02 A local wholesale fund can only be established by a fund management company.

Foreign wholesale fund

- 1.03 A foreign wholesale fund can only be launched in Malaysia provided that it has been established by an operator in its home jurisdiction and complies with the requirements under the *Guidelines for the Offering, Marketing and Distribution of Foreign Funds*.
- 1.04 An operator must ensure that the investors are informed that the wholesale fund is established in a foreign jurisdiction and regulated by the regulator in that foreign jurisdiction.

Shariah-compliant wholesale fund

- 1.05 Where a local wholesale fund is to be managed and administered in accordance with Shariah principles, the fund management company must–
- (a) appoint a Shariah adviser to carry out roles and responsibilities as set out in Section C, Chapter 2 of these Guidelines; and
 - (b) comply with the relevant Shariah principles and concepts as set out in Section C, Chapter 1 of these Guidelines, the relevant rulings of the Shariah Advisory Council and any other relevant guidelines issued by the SC.

1.06 A foreign wholesale fund may be launched as a Shariah-compliant fund in Malaysia provided that–

- (a) it complies with sub-paragraphs 1.05(a) and (b) above; or
- (b) where it does not satisfy the requirement under sub-paragraphs 1.05(a) and (b) above, the operator must provide the relevant information to its investors as required under the *Guidelines for the Offering, Marketing and Distribution of Foreign Funds*.

1.07 A Shariah adviser must either be:

- (a) A person or a corporation, registered with the SC;
- (b) A licensed Islamic bank; or
- (c) A licensed bank or licensed investment bank approved to carry on Islamic banking business.

Chapter 2

STRUCTURE: ESTABLISHING A WHOLESALE FUND

Types of fund structures

- 2.01 A local wholesale fund can only be formed under the following structure:
- (a) Trust structure; or
 - (b) Custodial structure.
- 2.02 A foreign wholesale fund can only be formed under the following structure:
- (a) Trust structure;
 - (b) Custodial structure; or
 - (c) A structure that is equivalent to either a trust or a custodial structure.

Considerations in establishing a wholesale fund

- 2.03 The fund management company or the operator must ascertain the size of the wholesale fund, the investment objectives, financial situation and particular needs of its investors before structuring a wholesale fund.
- 2.04 In structuring a wholesale fund, a fund management company or an operator must take into account its resources, expertise, experience and its overall capability to carry out its duties in accordance with the acceptable and efficacious business practices within the fund management industry.
- 2.05 The name given to the wholesale fund must not be inappropriate, misleading, or in conflict with the name of another collective investment scheme.
- 2.06 In establishing a wholesale fund, the fund management company or the operator must–
- (a) determine the investment objective of the wholesale fund;

- (b) define the investment strategy of the wholesale fund including the investment parameters and types of investments to be made by the wholesale fund; and
 - (c) ensure that the liabilities of investors are limited to their investments in the wholesale fund.
- 2.07 The fund management company or the operator is permitted to allocate capital into one or more collective investment schemes (referred to as “target fund”), provided that the selection of the target fund is consistent with the investment objective and chosen strategy of the wholesale fund.
- 2.08 Where a fund invests 85% or more of its NAV in another fund, the fund manager of that other fund must be suitably authorised, regulated and supervised by a securities regulator which:
 - (a) Is a signatory to the IOSCO Multilateral Memorandum of Understanding as listed in its Appendix A; or
 - (b) Has a bilateral agreement or arrangement with the SC, in particular, with regard to co-operation on supervision, investigation, enforcement and information sharing.
- 2.09 Where the fund management company or the operator intends to use derivatives, the fund management company or the operator must possess the necessary expertise and experience on the use of derivative instruments including the following:
 - (a) Understanding the different implications of derivatives positions on the overall investment strategy; and
 - (b) Ensuring that derivatives positions are fairly priced on a consistent basis while bearing in mind the market liquidity of such positions.

- 2.10 Where the financing of the wholesale fund involves extension of credit and other forms of lending or utilises leverage, the fund management company or the operator must–
- (a) determine the borrowing parameters for the wholesale fund (including the maximum amount of leverage, duration, and whether secured or unsecured), the basis of leverage and risks involved;
 - (b) have the necessary expertise and experience in managing a wholesale fund which employs any leverage strategy; and
 - (c) understand the impact of such leverage on the overall risk of a portfolio and having the ability to monitor the use of such leverage.

Trustee or custodian of a wholesale fund

Local wholesale fund

- 2.11 In relation to a local wholesale fund which is formed under a trust structure, the fund management company must–
- (a) appoint a trustee registered with the SC; and
 - (b) ensure a deed is in force at all times.

- 2.12 In relation to a local wholesale fund which is formed under a custodial structure, the fund management company must–
- (a) appoint a custodian registered with the SC; and
 - (b) ensure a custodial agreement is in force at all times.

Foreign wholesale fund

- 2.13 In relation to a foreign wholesale fund either formed under a trust structure, custodial structure or any structure equivalent to a trust or custodial structure, the operator–

- (a) may appoint a trustee or a custodian registered with the SC; and
- (b) must ensure that a constitutive document, such as a custodial agreement or a deed, is in force at all times.

2.14 In relation to paragraph 2.13 above, the operator must inform its investors if the operator has appointed a trustee or a custodian, or any person appointed to carry out the equivalent function, who is not registered with the SC.

Distribution of income

2.15 Distribution of income should only be made from realised gains or realised income.

Fees and charges

2.16 The management fee and performance fee levied, if any, should commensurate with the degree of investment strategies and techniques employed by the fund management company or the operator to achieve the stated investment objective.

2.17 The fund management company or the operator must ensure that the calculation methodology of its fees and charges are clearly documented.

Investments of a wholesale fund

2.18 The fund management company or the operator must exercise due care and diligence when assessing, selecting and monitoring the investments of the wholesale fund.

2.19 The fund management company or the operator must identify and manage any risks that a particular investment strategy imposes.

2.20 The fund management company or the operator must observe the following requirements when establishing a wholesale fund:

- (a) The investments of the wholesale fund must not be detrimental to the interest of the investors or contrary to public interests; and
- (b) The nature and structure of the wholesale fund's investments must not result in the circumvention of any regulatory provisions or requirements that must be complied with by the fund management company or the operator.

Guidance to sub-paragraph 2.20(b):

Where a fund management company pools in clients' monies and invest through an SPV in assets other than conventional and Shariah-compliant securities, derivatives, money market instruments and deposits in conventional and Shariah-compliant deposit accounts, this is considered as circumvention.

- 2.21 Where a fund management company or operator invests in a fund managed by the fund management company or the operator, the fund management company or operator must inform its investors of such investment.

Chapter 3

LODGEMENT

Local wholesale fund

3.01 In relation to a local wholesale fund, lodgement under these Guidelines must be made by the fund management company.

Foreign wholesale fund

3.02 In relation to a foreign wholesale fund, lodgement under these Guidelines must be made by the following persons:

- (a) An adviser for the initial lodgement; and
- (b) A representative for any submission of information or documents subsequent to the initial lodgement.

Lodgement requirements

3.03 The Lodgement Party must lodge all information and documents as set out in the Lodgement Kit.

3.04 A wholesale fund must be launched within 30 business days from the date of lodgement.

Chapter 4

CONTINUOUS OBLIGATIONS

Valuation and pricing

- 4.01 The fund management company or the operator must ensure that the investments of the wholesale fund are fairly valued on a regular basis and in any event, at least once a month.
- 4.02 The fund management company or the operator must take all reasonable steps to ensure that the wholesale fund and the units in the wholesale fund are correctly valued and priced.
- 4.03 For the purpose of determining the wholesale fund's NAV, the valuation of the assets and liabilities must be–
- (a) based on a process which is consistently applied; and
 - (b) objective and capable of being verified by investors.
- 4.04 Any deviation from the valuation process, if any, must be for the purpose of ensuring the investment is fairly valued. Such deviation, in relation to a wholesale fund that is formed under a trust structure, requires prior approval from the trustee.
- 4.05 The fund management company or the operator must ensure that a valuation policy for illiquid assets or holdings, such as unlisted securities, provides for a consistent and transparent valuation of such illiquid assets. The valuation methodology must be clearly documented.
- 4.06 Notwithstanding paragraph 4.02 above, the fund management company or the operator must take immediate remedial actions to rectify any incorrect valuation or pricing of the wholesale fund or the units in the wholesale fund.
- 4.07 Where there is incorrect pricing of the units, rectification must extend to the reimbursement of money–

- (a) by the fund management company or the operator to any one or more of the following:
 - (i) The wholesale fund;
 - (ii) Investors of the wholesale fund; or
 - (iii) Former investors of the wholesale fund; or
- (b) by the wholesale fund to the fund management company or the operator.

4.08 In relation to rectification referred in paragraph 4.07 above, the rectification need not extend to reimbursements to the investors or former investors where it appears to the fund management company or the operator or trustee that the incorrect pricing is of minimal significance. The fund management company or the operator must determine at the point of establishment of the wholesale fund what constitutes minimal significance.

4.09 The fund management company or the operator must actively manage the liquidity of individual positions and the overall portfolio to ensure that the wholesale fund can meet its liquidity requirements, including where investors are permitted to withdraw from the wholesale fund.

Liquidity and dealing

4.10 The fund management company or the operator must determine the frequency of and any limitation on subscriptions and redemptions having regard to the investment objectives, financial situation and particular needs of investors.

Register

4.11 The fund management company or the representative must keep a register of investors and enter into the register the following:

- (a) Where the investor is an individual, the name, address, and the number of the identity card issued under the *National Registration Act 1959* or passport number (for foreigners);

- (b) Where the investor is a corporation, the name, registered address and registration number of the corporation;
 - (c) Where the investor is a trust, the name, registered address and registration number of the trustee company; or
 - (d) Where the investor is a unit trust scheme, pension fund or prescribed investment scheme, the name and registered address of such scheme.
- 4.12 In addition, the fund management company or the representative must enter into such register–
- (a) the number of units held by each investor;
 - (b) the date on which the name of each investor was entered in the register;
 - (c) the date on which any person ceased to be an investor in the wholesale fund; and
 - (d) any other relevant information or particulars of the investor.
- 4.13 All information entered into the register must be kept for a minimum of seven years.
- 4.14 The register of investors to the wholesale fund will be prima facie evidence of any details inserted therein in accordance with these Guidelines.

Reporting requirements

- 4.15 The fund management company or the representative must inform its investors of significant and material changes to the investment objective, investment strategy as well as any changes to the material information previously provided to the investors.
- 4.16 The fund management company or the representative must ensure that prices, fees and charges be made available to investors periodically.

- 4.17 The fund management company or the representative must submit the following documents to the SC and the investors of a wholesale fund, as the case may be, in accordance with Table 1 below:

Table 1
Reporting requirements

No.	Document	Recipient		Frequency
		Investors	SC	
1.	Statement of Accounts	✓		Monthly
2.	Statistical returns of the wholesale fund		✓	Monthly
3.	Quarterly report of the wholesale fund	✓		Within two months from the end of the period the report covers
4.	Annual report of the wholesale fund	✓	✓	Within two months from the end of the period the report covers

- 4.18 In relation to the monthly statistical returns referred to in Table 1 above:
- (a) The reporting period must cover a period starting from the first day of a month until the last day of that month. For information required at a certain cut-off, it must be as at the last day of the month;
 - (b) For a newly launched fund, the statistical returns must commence from the month in which the wholesale fund's offer period ends.

For example, if a wholesale fund was launched on 28 June and the offer period ends on 18 July, the first statistical return should be submitted for

the month of July. In this instance, the statistical returns will consist of data for more than one month, i.e. from 28 June to 31 July;

- (c) The fund management company or the representative must submit the statistical returns within seven business days following the end of the reporting month.
- (d) Should there be any errors or omissions discovered after the submission of statistical returns, the fund management company or the representative, as the case maybe, must immediately rectify and submit the amended statistical returns to the SC; and
- (e) While a wholesale fund is being wound up, the fund management company or the representative, as the case maybe, should continue to submit the statistical returns until the winding up is complete.

4.19 In relation to the quarterly and annual reports referred to in Table 1 above, the fund management company or the representative must provide all necessary information to enable investors of a wholesale fund to evaluate the performance of the fund. The quarterly and annual reports must contain at least the following:

- (a) Fund information;
- (b) Report on fund performance;
- (c) Financial statements for the accounting period (for annual report, the financial statements must be audited by an external auditor);
- (d) Auditor's report (applicable for annual report only); and
- (e) Shariah adviser's report (applicable for Shariah-compliant wholesale fund only).

Winding up

- 4.20 The fund management company or the representative must notify the SC at the earliest practicable date of the commencement and completion of the winding up of the wholesale fund.

Marketing and promotional materials

- 4.21 Any representation or communication in the marketing and promotional materials must comply with the requirements of the *Guidelines on Unit Trust Advertisements and Promotional Materials*.

Chapter 5

REVISION

- 5.01 In relation to a wholesale fund, any amendment made to the initial lodgement whether prior or subsequent to the launch of a wholesale fund is considered as a revision.
- 5.02 Any revision can be made at any time, whether prior to or subsequent to the launch of a wholesale fund.

Local wholesale fund

- 5.03 Any revision to the lodgement of a wholesale fund under these Guidelines must be made by the fund management company.

Foreign wholesale fund

- 5.04 Any revision to the lodgement of a foreign wholesale fund under these Guidelines must be made by the representative.

PART 2

STRUCTURED PRODUCTS

Chapter 1

GENERAL

1.01 Section B, Part 2 of these Guidelines sets out the specific requirements that must be complied with in relation to unlisted structured products¹ under the Lodge and Launch framework.

Eligible Issuer

1.02 The following categories of persons are eligible to issue structured products (Eligible Issuers):

- (a) A qualified bank;
- (b) A qualified dealer;
- (c) A locally incorporated special purpose vehicle (SPV) sponsored by a qualified bank or qualified dealer; and
- (d) Cagamas Bhd (Cagamas) and locally incorporated SPV sponsored by Cagamas, provided that the underlying reference of the structured product is restricted to assets originated in the domestic banking sector.

1.03 Where the structured product is issued by a locally incorporated SPV, the qualified bank, qualified dealer or Cagamas sponsoring the SPV must provide an undertaking to investors on the performance of the administrative and operational obligations of the SPV.

Structured products of foreign-related corporations

1.04 A qualified bank and qualified dealer may issue² a structured product of its foreign-related corporation, provided that such foreign-related corporation is:

¹ Some examples of structured products falling under these Guidelines include equity linked notes, bond linked notes, index linked notes, currency linked notes, interest rate linked notes, commodity (contracts) linked notes and credit linked notes.

² For the purposes of these Guidelines, the Eligible Issuer under paragraph 1.04 is the qualified bank or qualified dealer, not the foreign parent company or foreign-related corporation or SPV.

- (a) The foreign parent company or foreign-related corporation of that qualified bank or qualified dealer, and is duly licensed in its home jurisdiction as the equivalent of a qualified bank or qualified dealer; or
- (b) An SPV³ which is sponsored by the foreign parent company or foreign-related corporation of that qualified bank or qualified dealer.

1.05 The qualified bank or qualified dealer who issues the structured products of the SPV under sub-paragraph 1.04(b) above must provide an undertaking to investors on the performance of the administrative and operational obligations of that SPV.

Requirements of an SPV as an Eligible Issuer

1.06 An SPV sponsored by a qualified bank, qualified dealer or Cagamas under sub-paragraph 1.02(c) or (d) above must be a resident in Malaysia for tax purposes.

1.07 An SPV must have independent and professional directors or trustees, as the case may be.

1.08 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 an SPV in relation to the structured product programme;
- (b) An SPV must sub-contract to third parties all services that may be required by it in order 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 structured product programme; and

³ An SPV under sub-paragraph 1.04(b) may be set up in a foreign jurisdiction.

- (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.
- 1.09 Without prejudice to any applicable law, an SPV must maintain 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 structured products.
- 1.10 An SPV sponsored by a qualified bank, qualified dealer or Cagamas must only issue structured products that are fully collateralised against assets or securities, or guaranteed by a qualified bank.

Islamic structured products

- 1.11 For Islamic structured products, the Eligible Issuer must—
- (a) appoint a Shariah adviser to carry out roles and responsibilities as set out in Section C, Chapter 2 of these Guidelines; and
 - (b) comply with the relevant Shariah principles and concepts as set out in Section C, Chapter 1 of these Guidelines, the relevant rulings of the Shariah Advisory Council and any other relevant guidelines issued by the SC.
- 1.12 A Shariah adviser must either be—
- (a) a person or a corporation, registered with the SC;
 - (b) a licensed Islamic bank; or
 - (c) a licensed bank or licensed investment bank approved to carry on Islamic banking business.

Chapter 2

STRUCTURE

Requirement for credit rating

- 2.01 An Eligible Issuer issuing structured products other than those referred to in paragraph 2.02 below may obtain a rating for the structured products at its discretion, from a credit rating agency registered with the SC.
- 2.02 The issuance of the following structured products must be rated by a credit rating agency registered with the SC:
- (a) Tradable structured products;
 - (b) Structured products issued by an SPV under sub-paragraphs 1.02(c) and (d) above that are collateralised by assets or securities other than securities issued by the Malaysian Government; and
 - (c) Structured products issued by an SPV under sub-paragraph 1.04(b) above that are collateralised by assets or securities other than sovereign securities in the currency of issue of the foreign-related corporation.
- 2.03 For structured products of foreign-related corporations under paragraph 1.04 above, a rating by an international credit rating agency is also acceptable.
- 2.04 A rated structured product must be continuously rated throughout its tenure.

Programme size

- 2.05 A lodgement to the SC pursuant to these Guidelines must be made only via a structured product programme with a size of up to RM5 billion and any issuance will reduce the structured product programme size accordingly.

Tenure

- 2.06 The structured programme must be fully utilised within three years from the date of its lodgement with the SC.

Approvals

2.07 All necessary approvals in relation to the issuance of a structured product from other regulatory bodies, including BNM, must be obtained prior to the issuance of that structured product.

Roles and responsibilities of Responsible Party

2.08 An Eligible Issuer must–

- (a) ensure that information on the principal terms and conditions as well as risks associated with the structured products are disclosed to all investors; and
- (b) request a confirmation from such investors that disclosure was in fact made.

Chapter 3

LODGEMENT

- 3.01 All information and documents to be lodged are set out in the Lodgement Kit.
- 3.02 A qualified bank or a qualified dealer may make lodgement directly with the SC or through a principal adviser. However, an Eligible Issuer who is not a qualified bank or qualified dealer must make its lodgement with the SC under these Guidelines through a principal adviser.

Islamic structured products

- 3.03 In addition, the Eligible Issuers must seek the endorsement of the Shariah Advisory Council prior to the lodgement of a structured product programme for Islamic structured products. For the purpose of the endorsement, the Eligible Issuer must submit to the SC the relevant information and documents as set out in Appendix 1 of Part 2 of these Guidelines.

Chapter 4

CONTINUOUS OBLIGATIONS

- 4.01 For the issuance of structured products under a structured product programme, an Eligible Issuer or its principal adviser must submit the information and documents used in the issuance of each new structured product series⁴ under the structured product programme prior to the first issuance of that structured product series.
- 4.02 The information and documents to be submitted under paragraph 4.01 above are set out in the Lodgement Kit.
- 4.03 For structured products of foreign-related corporations under paragraph 1.04 above, the qualified bank or qualified dealer must submit further information and documents, which are set out in the Lodgement Kit.
- 4.04 Following the lodgement of a structured product programme with the SC, an Eligible Issuer is required to submit a monthly post-issuance report⁵ to the SC incorporating information as may be specified by the SC.
- 4.05 The monthly post-issuance report under paragraph 4.04 above must be submitted no later than seven calendar days from the end of the applicable month.

⁴ A new structured product series refers to structured products that have any material change in its terms and conditions such as change(s) in the class of underlying reference, change(s) in the risk(s) associated with the product or any change in regulatory requirements.

⁵ This requirement includes nil reporting, if applicable.

Chapter 5

REVISION

- 5.01 No revisions or amendments can be made to the terms and conditions of the structured product programme or the structured products issued under the structured product programme.
- 5.02 However, an Eligible Issuer or its principal adviser can make changes or update the information related to the Eligible Issuer such as the business address, directors, contact persons and credit rating of the Eligible Issuer.
- 5.03 If the changes or updates result in consequential amendments to be made in the product highlights sheet and other information and documents used in the issuance of the structured products, a replacement product highlights sheet and revised information and documents must be submitted.

APPENDIX 1

INFORMATION AND DOCUMENTS TO BE SUBMITTED TO THE SC PRIOR TO LODGEMENT OF THE ISLAMIC STRUCTURED PRODUCTS

1.01 A cover letter describing details of the transaction and structure diagram of the Islamic structured products to be addressed to:

Executive Director
Islamic Capital Market Business Group
Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur

1.02 Shariah pronouncement (including detailed reasoning/justification) where the signing procedures must comply with the requirements as specified by the Shariah Advisory Council.

1.03 Any other supporting documents or information as may be required by the SC.

1.04 All hard copies of the above documents must be submitted to the SC accompanied by electronic copy in the following manner:

- (a) Documents must be in a text searchable Portable Document Format (PDF);
- (b) The PDF-text files must be in a readable and proper condition; and
- (c) Submitted via email (up to 10 MB in size per e-mail) to the following e-mail address: ICMsubmission@seccom.com.my.

PART 3

PRIVATE DEBT SECURITIES AND SUKUK

Chapter 1

GENERAL

- 1.01 Section B, Part 3 of these Guidelines sets out the specific requirements that must be complied with in relation to a PDS or sukuk under the Lodge and Launch framework.
- 1.02 For the purpose of these Guidelines, sukuk will not include any agreement for a financing or investment where–
- (a) the financier/investor and customer/investee are signatories to the agreement; and
 - (b) the provision of financing/investment is in the ordinary course of business of financier/investor,
- including any promissory note issued pursuant to the terms of such an agreement.
- 1.03 Only a corporation within the meaning of sub-section 2(1) of the CMSA or a foreign government is eligible to issue PDS or sukuk under the Lodge and Launch framework.
- 1.04 An issuer must appoint a Shariah adviser to advise on Shariah related matters in relation to any issuance of ringgit-denominated or foreign currency-denominated sukuk.
- 1.05 The Shariah adviser appointed must carry out roles and responsibilities as set out in Section C, Chapter 2 of these Guidelines. However, the requirement under sub-paragraphs 2.01(c) and (d) of Section C of these Guidelines do not apply to Shariah adviser who advise on foreign currency-denominated sukuk.
- 1.06 For ringgit-denominated sukuk, an issuer must ensure that all Shariah advisers appointed comply with the requirements under paragraph 1.08 below.

- 1.07 For foreign currency-denominated sukuk, an issuer must ensure that at least one Shariah adviser appointed complies with the requirements under paragraph 1.08 below. This provision does not apply to an issue of foreign currency-denominated sukuk through a roadshow.
- 1.08 A Shariah adviser must either be–
- (a) a person or a corporation, registered with the SC;
 - (b) a licensed Islamic bank; or
 - (c) a licensed bank or licensed investment bank approved to carry on Islamic banking business.
- 1.09 In addition to the requirements in Section B, Part 3 of these Guidelines, issuance of ringgit-denominated sukuk must comply with the requirements set out in Section C of these Guidelines.
- 1.10 In relation to fixed-rate negotiable instruments of deposit (NIDs) or Islamic negotiable instruments of deposit (INIDs)¹ and foreign currency-denominated PDS or sukuk, Table 1 sets out the applicability of the relevant requirements to such products. Table 1 must be read together with the detailed requirements in Section B, Part 3 of these Guidelines.

¹ For the purposes of these Guidelines, NIDs or INIDs refers to an issuance of NIDs or INIDs with a tenure of more than five years by a licensed bank, licensed investment bank or licensed Islamic bank.

Table 1

Summary of relevant requirements applicable to NIDs or INIDs and foreign currency-denominated PDS and sukuk

Requirements	Foreign currency-denominated PDS or sukuk		RM-denominated and foreign currency
	Roadshows	Issuances other than roadshows	NIDs/INIDs
Shariah adviser	√	√	X
Credit rating	X	X	X
Trustee/Trust deed	X	X	X
Tenure of programmes	X	√	X
Mode of issuance	√	√	X
Other regulatory approvals	√	√	√
Disclosure of early redemption/call option	X	X	X
Pricing supplement	√	√	√
Compliance with Shariah rulings	X	X	X
Utilisation of proceeds	√	√	√
Upsizing	X	√	X
Revision to terms	√	√	X
Implementation timeframe	√	√	√
SRI Sukuk	X	√	N/A

√	To refer to the relevant requirements in Section B, Part 3 of these Guidelines.
X	The requirements are not applicable to such products.

Chapter 2

STRUCTURE

Credit rating

Requirement for credit rating

- 2.01 All ringgit-denominated PDS or sukuk must be rated by a credit rating agency registered with the SC.
- 2.02 The requirement for a credit rating does not apply to an issuance of the following:
- (a) Irredeemable convertible loan stocks or Islamic loan stocks²;
 - (b) Convertible bonds, sukuk, loan stocks or Islamic loan stocks, and exchangeable bonds or sukuk which fulfil the following requirements:
 - (i) Holders of such products are given the right to convert or exchange such products into underlying shares or units of unit trust scheme or prescribed investment scheme at any time or within a reasonable period(s) during the tenure of such products; and
 - (ii) The underlying shares or units in a unit trust scheme or prescribed investment scheme are listed on a stock exchange;
 - (c) Foreign currency-denominated PDS or sukuk; or
 - (d) PDS or sukuk–
 - (i) which are non-transferable and non-tradable; and
 - (ii) where the bondholders or sukukholders do not require for it to be rated.

² These are loan stocks structured in a Shariah-compliant manner based on approved Shariah principles and concepts and have been named appropriately.

- 2.03 In relation to sub-paragraph 2.02(d) above, the principal adviser has the obligation to ensure that the PDS or sukuk falls within sub-paragraph 2.02(d) above prior to issuance.
- 2.04 In the case of a debt or sukuk programme, where the rating is not assigned for the full amount of the programme but for part of the amount (partial rating)–
- (a) the first issuance under such programme must be rated; and
 - (b) the principal terms and conditions of such programme must include:
 - (i) A disclosure of all the pre-conditions, relevant risk factors and all material information relating to the partial rating; and
 - (ii) A provision that all subsequent issuances under the programme will be rated.
- 2.05 For the replacement of an appointed credit rating agency during the tenure of the PDS or sukuk, the issuer is required to adhere to the following:
- (a) Obtain prior consent of the bondholders or sukukholders; and
 - (b) Inform the principal adviser of the replacement.
- 2.06 An issuer must provide sufficient and relevant information to the credit rating agency for which to assess and evaluate the credit risk of a PDS or sukuk.
- 2.07 An issuer must provide information to the credit rating agency on a continuous and timely basis in particular, new or additional information that was not previously available for consideration by the credit rating agency.
- 2.08 An issuer must ensure that the rating report is published by the credit rating agency at least seven business days prior to the issuance of the PDS or sukuk.

Transferability and tradability of unrated PDS or sukuk

- 2.09 Notwithstanding sub-paragraph 2.02(d) above, an unrated PDS or sukuk may be transferable and tradable provided that–
- (a) the PDS or sukuk has been issued in the market for at least 2 years; and
 - (b) the requirements on revision to the principal terms and conditions as specified in Section B, Part 3 of these Guidelines have been complied with.
- 2.10 Where the unrated PDS or sukuk becomes transferable and tradable pursuant to paragraph 2.09 above, all exemptions previously granted under any guidelines in relation to a trust deed will cease to apply.
- 2.11 Notwithstanding paragraph 2.10 above, if the issuer of the unrated PDS or sukuk wishes to retain the exemptions granted, the issuer must make an application to the SC with justification as to why the exemptions should be retained, whilst taking into consideration the changes in the tradability and transferability status of the PDS or sukuk.
- 2.12 In the event an issuer discontinues the credit rating of a PDS or sukuk, such unrated PDS or sukuk may maintain its transferability and tradability provided that–
- (a) the PDS or sukuk has been issued in the market for at least 2 years;
 - (b) the requirements on revision to the principal terms and conditions as specified in Section B, Part 3 of these Guidelines have been complied with;
and
 - (c) at least one annual rating on the PDS or sukuk has been assigned after 1 January 2015.

Trust deed and trustee

Requirements relating to trust deed and trustee

- 2.13 Where a trustee is appointed, the trustee must be registered with the SC.
- 2.14 In the case of ringgit-denominated PDS or sukuk where a trust deed is not required, the issuer must ensure that the principal terms and conditions include provisions for the following:
- (a) In the event of any default in the payment of principal of, or interest/profit/rental on any of the PDS or sukuk issued after the said principal or interest/profit/rental becomes due the bondholders or sukukholders are entitled to declare the PDS or any payment obligation under the sukuk immediately due and payable. Where there is a provision to remedy the failure to pay principal on interest/profit/rental on any of the PDS or sukuk, the period for remedy must not exceed seven business days; and
 - (b) The issuer must cancel and cannot resell the PDS or sukuk which are redeemed or purchased by the issuer or its subsidiaries or agents of the issuer.

Obligations relating to trust deed and trustee

- 2.15 The issuer and principal adviser must involve the trustee during the documentation process of the PDS or sukuk. The trustee must likewise actively play its part by providing comments and feedback.
- 2.16 The issuer must provide the necessary assistance to facilitate the trustee in discharging its duties and obligations under the CMSA and the trust deed.

Tenure for debt or sukuk programmes

- 2.17 The tenure of a debt or sukuk programme involving an issuance of CPs or combination of both CPs and MTNs, whether conventional or Islamic, must not exceed seven years.
- 2.18 The requirement in paragraph 2.17 above does not apply to—
- (a) a stand-alone MTN programme, whether conventional or Islamic; or
 - (b) an issuance of foreign currency-denominated PDS or sukuk.

Utilisation of proceeds

- 2.19 An issuer must ensure that the proceeds from the PDS or sukuk issuance are utilised in accordance with the purposes disclosed to the SC.
- 2.20 For sukuk, the issuer must ensure that the proceeds from the sukuk issuance are utilised for Shariah-compliant purposes only.
- 2.21 Where the proceeds are utilised for a project that will generate cash flow for payments to bondholders or sukukholders, the issuer must ensure that the transaction documents relating to the PDS or sukuk include the relevant parameters, conditions, supporting documents and certificates to enable the trustee or facility agent, where applicable, to manage the release of the proceeds to the issuer.

Mode of issuance

Ringgit-denominated PDS or sukuk

- 2.22 All ringgit-denominated PDS or sukuk must be—
- (a) issued and/or tendered on the Fully Automated System for Issuing/Tendering (FAST); and

- (b) issued on scripless basis, deposited and settled in the Real Time Electronic Transfer of Funds and Securities (RENTAS) system which is operated by Malaysian Electronic Clearing Corporation Sdn Bhd (MyClear), unless a full admission to listing and trading is sought on a stock exchange.

Foreign currency-denominated PDS or sukuk

- 2.23 Foreign currency-denominated PDS or sukuk must be announced or reported on FAST.
- 2.24 Foreign currency-denominated PDS or sukuk may be issued on scripless basis, deposited and settled in the RENTAS system with MyClear as the central securities depository and Authorised Depository Institutions in Malaysia as the sub-depositories.

Other regulatory approvals and compliance with relevant laws and guidelines

- 2.25 Where applicable, an issuer must ensure that–
 - (a) it has complied with all relevant regulatory requirements from other regulatory authorities, including the Controller of Foreign Exchange, prior to its lodgement with the SC; and
 - (b) it continues to comply with any conditions imposed by such regulatory bodies throughout the tenure of the PDS or sukuk.
- 2.26 For the purpose of sub-paragraph 2.25(a) above, where an approval from the Controller of Foreign Exchange is required, such approval must be valid and subsisting at the point of the issuer's lodgement with the SC.
- 2.27 An issuer and its principal adviser must ensure that the issuance has complied with all the relevant laws.

Chapter 3

SPECIFIC REQUIREMENTS APPLICABLE TO FOREIGN CURRENCY-DENOMINATED PDS OR SUKUK AND NIDs OR INIDs

Foreign currency-denominated PDS or sukuk through a roadshow

- 3.01 An issuer of foreign currency-denominated PDS or sukuk through a roadshow must comply with the following:
- (a) The roadshow must be conducted by authorised representatives of the foreign issuer together with a principal adviser who is appointed by the foreign issuer; and
 - (b) Documentation of the proposed issuance must conform to international standards or standards which are acceptable in the Malaysian market.

NIDs or INIDs

- 3.02 For an issuance of fixed-rate NIDs or INIDs the issuer must disclose to investors the following:
- (a) The inherent risks, including credit risks and price risks, in investing in NIDs or INIDs; and
 - (b) The settlement procedures for any early redemption or termination of the issue to investors.
- 3.03 A floating rate NID or INID with tenure of more than 5 years would fall within the definition of “structured products” under Section B, Part 2 of these Guidelines.

Chapter 4

LODGEMENT

- 4.01 In the case of a ringgit-denominated sukuk, the issuer must seek the endorsement of the Shariah Advisory Council prior to lodgement. For the purpose of the endorsement, the issuer must submit to the SC the information and documents as specified in Appendix 2A of Part 3 of these Guidelines at least 10 business days prior to the date of lodgement.
- 4.02 An issuer must lodge all information and documents as set out in the Lodgement Kit prior to issuance.
- 4.03 In the case of a debt or sukuk programme, lodgement would only be required prior to the first issuance under the programme.
- 4.04 The following Responsible Party may make a lodgement for the respective type of issuer:

Type of Issuer	Responsible Party
An issuer which is: <ul style="list-style-type: none">• a multilateral development bank;• a multilateral financial institution; or• a principal adviser	<ul style="list-style-type: none">• Issuer; or• Principal adviser
An issuer issuing a foreign currency-denominated PDS or sukuk through a roadshow	<ul style="list-style-type: none">• Principal adviser
An issuer other than those listed above	<ul style="list-style-type: none">• Principal adviser

Time frame for issuance

- 4.05 All PDS or sukuk must be issued within 60 business days from the date of lodgement.
- 4.06 In the case of a debt or sukuk programme, only the first issuance under the programme would be required to be issued within 60 business days from the date of lodgement.

Post-issuance notice

- 4.07 For all issuances of PDS or sukuk, an issuer must submit a post-issuance notice to the SC within seven business days from the date of issuance.
- 4.08 The Lodgement Party is responsible for submitting the post-issuance notice.
- 4.09 The post-issuance notice must contain all information and documents as set out in the Lodgement Kit.
- 4.10 In the case of a debt or sukuk programme, submission of the post-issuance notice would apply to each issuance under the programme.
- 4.11 In the case of foreign currency-denominated PDS or sukuk through a roadshow, the post-issuance notice must be submitted only when the PDS or sukuk have been issued to bondholders or sukukholders in Malaysia.

Chapter 5

CONTINUOUS OBLIGATIONS

- 5.01 For an MTN programme, whether conventional or Islamic, lodged with the SC, the issuer must ensure that a pricing supplement is made available to its bondholders or sukukholders prior to each issue under the MTN programme.
- 5.02 The pricing supplement must include the following terms (final or indicative):
- (a) Date, size and tenure of issue;
 - (b) Credit rating;
 - (c) Coupon/interest/profit rate of the issue; and
 - (d) Utilisation of proceeds raised from the issue.
- 5.03 Paragraphs 5.01 and 5.02 above do not apply if an issue under the MTN programme, whether conventional or Islamic, is tendered through FAST or if it is issued or offered on a primary subscription basis (under a bought-deal or private placement arrangement).

Redemption and call option

- 5.04 An immediate announcement must be made where an issuer decides to-
- (a) make an early redemption of the PDS or sukuk; or
 - (b) exercise a call option to redeem its outstanding PDS or sukuk prior to the maturity date.
- 5.05 The announcement under paragraph 5.04 above must be made:
- (a) For PDS or sukuk that are traded over-the-counter, on FAST by the facility agent; or

- (b) For PDS or sukuk that are under the Exempt Regime, on the stock exchange by the issuer.
- 5.06 In addition to the announcement requirement, the issuer, facility agent and trustee may use any other means to inform the bondholders or sukukholders of such redemption as may be provided in the trust deed and other transaction documents.
- 5.07 In the case of an early redemption of the PDS or sukuk:
 - (a) Bondholders or sukukholders must be informed of the relevant details of such redemption, including details of the proposed bondholders' or sukukholders' resolution where appropriate, as soon as possible through an announcement; and
 - (b) Where prior consent from bondholders or sukukholders is required for the early redemption, another announcement shall be made at the soonest practicable opportunity after the consent from bondholders or sukukholders has been obtained.
- 5.08 Where the PDS or sukuk has been redeemed, whether in part or in full, the issuer must notify the SC within seven business days from the date of redemption.

Chapter 6

REVISION

- 6.01 Any revision to the principal terms and conditions of an issue of PDS or sukuk must not result in non-compliance with any requirements provided in Section B, Part 3 of these Guidelines.
- 6.02 The requirements in this chapter, other than paragraph 6.01 above, do not apply to revision relating to issuance of–
- (a) foreign currency-denominated PDS or sukuk by Malaysian issuer exclusively to bondholders or sukukholders outside Malaysia; or
 - (b) foreign currency-denominated PDS or sukuk through a roadshow. The responsibility to notify bondholders or sukukholders in Malaysia shall reside with the principal adviser involved.

Pre-issuance revision

- 6.03 Any revision to the information or documents in the initial lodgement to the SC, prior to issuance of PDS or sukuk to bondholders or sukukholders would require re-lodgement of all information and documents prior to the issuance of the product.
- 6.04 All information and documents re-lodged pursuant to paragraph 6.03 above shall supersede the initial lodgement and the date of re-lodgement shall be taken as the date of lodgement of the PDS or sukuk.
- 6.05 In the case of a debt or sukuk programme, revision prior to issuance would mean a revision to principal terms and conditions prior to the first issuance under the programme.

Post-issuance revision

- 6.06 The issuer must update the SC of any revision to the principal terms and conditions after issuance through its Lodgement Party within 14 business days after the proposed revision comes into effect.
- 6.07 Prior to the revision, the principal adviser must ensure that the issuer has obtained consent from all relevant parties for the proposed revision, if such consent is required.
- 6.08 Where consent from bondholders or sukukholders is required for any proposed revision to the principal terms and conditions, the principal adviser must ensure that–
- (a) due process has been observed in obtaining bondholders' or sukukholders' consent. This includes the requirement that the issuer and its interested persons abstain from voting in the meeting convened to obtain bondholders' or sukukholders' consent;
 - (b) all material information pertinent to the revision, including the impact on credit rating, has been disclosed to bondholders or sukukholders;
 - (c) for a PDS or sukuk not under the Exempt Regime, two separate announcements have been made on FAST:
 - (i) On the proposed revision, which must be announced prior to obtaining bondholders' or sukukholders' consent; and
 - (ii) On the outcome of the bondholders' or sukukholders' decision, which must be made immediately after the bondholders' or sukukholders' decision;
 - (d) For a PDS or sukuk under the Exempt Regime, the announcements under sub-paragraphs 6.08(c)(i) and (ii) above must be made on the stock exchange; and

- (e) The announcements as per sub-paragraphs 6.08(c) or (d) above, as the case may be, are copied to the SC within 2 business days from the date of the announcements.
- 6.09 Any revision to the principal terms and conditions to increase the issue size of a one-off issuance of PDS or sukuk is not allowed.
- 6.10 Paragraphs 6.03, 6.04 and 6.05 above do not apply to an upsizing of a debt or sukuk programme.

Upsizing of a debt or sukuk programme

- 6.11 An issuer may revise the principal terms and conditions to increase the size of a debt or sukuk programme subject to the following conditions:
 - (a) The voting for the debt or sukuk programme is carried out on a 'per series' basis and not on a collective basis; and
 - (b) The option to upsize must have been clearly provided for in the initial lodgement with the SC in relation to the debt or sukuk programme.
- 6.12 Any upsizing of a debt or sukuk programme either pre-issuance or post-issuance, would require an issuer to submit all information and documents for a new lodgement with the SC and comply with all relevant requirements under Section B, Part 3, Chapter 4 of these Guidelines.
- 6.13 Prior to the new lodgement, the principal adviser must ensure that the issuer has obtained consent from the relevant parties for the proposed upsizing, if such consent is required.
- 6.14 Where consent from bondholders or sukukholders is required for any proposed upsizing, the principal adviser must ensure that:
 - (a) Due process has been observed in obtaining bondholders' or sukukholders' consent. This includes the requirement that the issuer and

its interested persons abstain from voting in the meeting convened to obtain bondholders' or sukukholders' consent;

- (b) All material information pertinent to the proposed upsizing, including the impact on credit rating, has been disclosed to bondholders or sukukholders;
- (c) For a PDS or sukuk not under the Exempt Regime, two separate announcements have been made on FAST:
 - (i) On the proposed upsizing, which must be announced prior to obtaining bondholders' or sukukholders' consent; and
 - (ii) On the outcome of the bondholders' or sukukholders' decision, which must be made immediately after the bondholders' or sukukholders' decision.
- (d) For a PDS or sukuk under the Exempt Regime, the announcements under sub-paragraphs 6.14(c)(i) and (ii) above must be made on the stock exchange; and
- (e) The announcements as per sub-paragraphs 6.14(c) or (d) above, as the case may be, are copied to the SC within two business days from the date of the announcements.

6.15 An issuer must also ensure that any exercise to upsize a debt or sukuk programme does not unfairly discriminate or is otherwise prejudicial to existing bondholders or sukukholders of the debt or sukuk programme.

Revision to terms and conditions of ringgit-denominated sukuk

6.16 For an issue of ringgit-denominated sukuk, if the revision to the principal terms and conditions has any Shariah implications, the issuer through the principal adviser must first refer such matters to the Shariah Advisory Council for endorsement prior to the re-lodgement or update to the SC.

6.17 For the purpose of the endorsement under paragraph 6.16 above, the principal adviser must submit to the SC the information and documents as specified in Appendix 2B of Part 3 of these Guidelines at least 10 business days prior to the re-lodgement or update to the SC.

Chapter 7

SUSTAINABLE AND RESPONSIBLE INVESTMENT (SRI) SUKUK

7.01 This chapter sets out the additional requirements for an issuance of SRI sukuk.

7.02 For an SRI sukuk, an issuer must ensure that proceeds raised from the issuance of the SRI sukuk are utilised for the purpose of funding Eligible SRI projects as described in paragraph 7.04 below.

Eligible SRI projects

7.03 Eligible SRI projects refer to projects that aim to:

- (a) Preserve and protect the environment and natural resources;
- (b) Conserve the use of energy;
- (c) Promote the use of renewable energy;
- (d) Reduce greenhouse gas emission; or
- (e) Improve the quality of life for the society.

7.04 Only a project or physical assets/activities relating to an existing project in any of the following sectors is deemed to be an Eligible SRI project:

- (a) Natural resources – projects relating to:
 - (i) Sustainable land use;
 - (ii) Sustainable forestry and agriculture;
 - (iii) Biodiversity conservation;
 - (iv) Remediation and redevelopment of polluted or contaminated sites;
 - (v) Water infrastructure, treatment and recycling; or
 - (vi) Sustainable waste management projects,
- (b) Renewable energy and energy efficiency – projects relating to:
 - (i) New or existing renewable energy (solar, wind, hydro, biomass, geothermal and tidal);
 - (ii) Efficient power generation and transmission systems; or

- (iii) Energy efficiency which results in the reduction of greenhouse gas emissions or energy consumption per unit output,
- (c) Community and economic development – projects relating to:
 - (i) Public hospital/medical services;
 - (ii) Public educational services;
 - (iii) Community services;
 - (iv) Urban revitalisation;
 - (v) Sustainable building projects;
 - (vi) Affordable housing; or
- (d) *Waqf* properties/ assets – any projects that undertake the development of *waqf* properties/ assets.

Appointment of an independent expert

- 7.05 The issuer may appoint an independent expert to undertake an assessment of the Eligible SRI project.

Disclosure requirements

- 7.06 Where an issuer issues a disclosure document in relation to the SRI sukuk, the disclosure document must include:
- (a) Details of the Eligible SRI project and, to the extent possible, impact objectives from the Eligible SRI project; and
 - (b) A statement that the issuer has complied with the relevant environmental, social and governance standards or recognised best practices relating to the Eligible SRI project.
- 7.07 Where the independent expert has issued a report on the Eligible SRI project and the issuer is proposing to issue a disclosure document in relation to the SRI sukuk, the issuer may, subject to the consent of the independent expert, include the report in the disclosure document.

7.08 The issuer or, where the issuer is a special purpose vehicle, the obligor must provide annual reporting, via newsletters, website updates, annual report or any other communication channels, to sukukholders on the following:

- (a) The original amount earmarked for the Eligible SRI project;
- (b) The amount utilised for the Eligible SRI project;
- (c) The unutilised amount and where such unutilised amount is placed or invested pending utilisation; and
- (d) Where feasible and to the extent possible, the impact objectives from the Eligible SRI project.

**INFORMATION AND DOCUMENTS TO BE SUBMITTED TO THE SC PRIOR TO
LODGEMENT OF SUKUK**

1.01 A cover letter to the SC to be addressed to:

Executive Director
Islamic Capital Market Business Group
Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur

Such cover letter must disclose the following:

- (a) Name of parties involved in the proposal:
 - (i) Principal adviser;
 - (ii) Facility agent;
 - (iii) Solicitors;
 - (iv) Shariah adviser;
 - (v) Trustee;
 - (vi) Guarantor (if applicable).

- (b) Corporate information on the issuer and/or obligor and/or originator (if applicable):
 - (1) Name;
 - (2) Principal activities of:
 - (i) Issuer and/or obligor; and
 - (ii) Group of companies;
 - (3) If the issuer is a special-purpose vehicle company, state the name of the entity that established it.

1.02 Shariah pronouncement (including detailed reasoning/justification) where the signing procedures must comply with the requirements as specified by the Shariah Advisory Council.

- 1.03 Details of sukuk facility (for one-off issue)/ sukuk programme:
- (a) Name of Facility and facility descriptions including transaction diagram and explanatory notes;
 - (b) Shariah principles;
 - (c) Guarantee – details on guarantee (if applicable);
 - (d) Utilisation of proceeds;
 - (e) Identified asset/ Trust asset;
 - (f) Tenure (Programme and/or Issue);
 - (g) Purchase and selling price/ rental, where applicable – compliance with asset pricing requirements;
 - (h) Profit/ coupon/ rental rate (fixed or floating);
 - (i) Mechanism for convertible/ exchangeable/ call or put option (if applicable);
 - (j) Conditions precedent relating to Shariah approval;
 - (k) Recourse available to the sukukholders in the event of default and/or dissolution;
 - (l) Details of designated accounts;
 - (m) Permitted Investment;
 - (n) *Ta`widh* (Compensation); and
 - (o) *Ibra`*.
- 1.04 Any other supporting documents or information as may be required by the SC.
- 1.05 All hard copies of the above documents must be submitted to the SC accompanied by electronic copy in the following manner:
- (a) Documents must be in a text searchable Portable Document Format (PDF);
 - (b) The PDF-text files must be in a readable and proper condition; and
 - (c) Submitted via email (up to 10 MB in size per e-mail) to the following e-mail address: ICMsubmission@seccom.com.my.

INFORMATION AND DOCUMENTS TO BE SUBMITTED TO THE SC FOR REVISION TO TERMS AND CONDITIONS OF RINGGIT-DENOMINATED SUKUK

1.01 A cover letter describing the details of the revised transaction and structure diagram (where applicable) of the sukuk to be addressed to:

Executive Director
Islamic Capital Market Business Group
Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur

1.02 Shariah pronouncement (including detailed reasoning/justification) where the signing procedures must comply with the requirements as specified by the Shariah Advisory Council.

1.03 Marked-up version of the revised principal terms and conditions of the sukuk.

1.04 Any other supporting documents or information as may be required by the SC.

1.05 All hardcopies of the above documents must be submitted to the SC accompanied by electronic copy in the following manner:

- (a) Documents must be in a text searchable Portable Document Format (PDF);
- (b) The PDF-text files must be in a readable and proper condition; and
- (c) Submitted via e-mail (up to 10 MB in size per e-mail) to the following e-mail address: ICMsubmission@seccom.com.my.

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 For asset-backed sukuk, the assets that are the subject matter of the securitisation transaction must be Shariah-compliant.

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 separated 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 sub-contract to third parties all services that may be required by it in order 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 six months 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 *Trust Deeds Guidelines*, 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 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 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 in 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 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–
- (b) ensure that the above provisions are enforceable; and

- (c) 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 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 borrower(s). 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.

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 PDS 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) Rating(s) for the ABS and the definition of the rating(s);
- (j) Any fee payable by an SPV including management fees and expenses charged by the servicer; and
- (k) An explanation of any matter of significance to investors relating to the issue, offer or invitation of ABS that would enable investors to make an informed decision.

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 rating or shadow rating, which is also known as a credit estimate (indicative rating, if the necessary rating has not been finalised).

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 changes in value of the underlying reference;
 - (d) Information on the liquidity provider or other liquidity facilities (if applicable);
 - (e) A rating for the structured product and the definition of such 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.

SECTION C
ADDITIONAL REQUIREMENTS FOR SHARIAH-COMPLIANT
UNLISTED CAPITAL MARKET PRODUCTS
UNDER THE LODGE AND LAUNCH FRAMEWORK

Chapter 1

APPROVED SHARIAH PRINCIPLES AND CONCEPTS FOR SHARIAH-COMPLIANT UNLISTED CAPITAL MARKET PRODUCTS UNDER THE LODGE AND LAUNCH FRAMEWORK

The following are approved Shariah principles and concepts for Shariah-compliant unlisted capital market products under the Lodge and Launch Framework:

A. Primary principles

- *Bai` bithaman ajil (BBA) (Deferred-payment sale)*
A contract that refers to the sale and purchase of assets on a deferred and instalment basis with pre-agreed payment period.
- *Bai` inah (Sale with immediate repurchase)*
A contract which involves the sale and buy back transaction of an asset by a seller. A seller will sell the asset to a buyer on a cash basis. The seller will immediately buy back the same asset on a deferred payment basis at a price that is higher than the cash price. It could also be applied when a seller sells the asset to a buyer on a deferred basis. The seller will later buy back the same asset on a cash basis at a price which is lower than the deferred price.
- *Bai` istijrar (Supply sale)*
A contract between a client and a supplier, whereby the supplier agrees to supply a particular product on an ongoing basis, for example monthly, at an agreed price and on the basis of an agreed mode of payment.
- *Bai` salam (Advance purchase)*
A sale and purchase contract whereby the payment is made in cash at the point of contract but the delivery of the asset purchased will be deferred to a pre-determined date.

- *Bai` wafa`* (Sale and repurchase)
A contract with the condition that when the seller pays back the price of goods sold, the buyer returns the goods to the seller.
- *Ijarah* (Leasing)
A contract whereby a lessor (owner) leases out an asset to a lessee at an agreed lease rental for a predetermined lease period. The ownership of the leased asset shall always remain with the lessor.
- *Ijarah thumma bai`* (Lease to purchase)
A contract which begins with an *ijarah* contract for the purpose of renting out a lessor's asset to a lessee. Consequently, at the end of the lease period, the lessee will purchase the asset at an agreed price from the lessor by executing a purchase contract.
- *Istisna`* (Purchase order)
A purchase order contract where a buyer requires a seller or a contractor to deliver or construct the asset to be completed in the future according to the specifications given in the sale and purchase contract. The payment term can be as agreed by both parties in the contract.
- *Mudharabah* (Profit sharing)
A contract made between two parties to enter into a business venture. The parties consist of the *rabb al-mal* (capital provider) who shall contribute capital to finance the venture, and the *mudharib* (entrepreneur) who will manage the venture. If the venture is profitable, the profit will be distributed based on a pre-agreed ratio. In the event of a business loss, the loss shall be borne solely by the *rabb al-mal*, unless the loss is due to the negligence or mismanagement of the *mudharib* in managing the venture.
- *Murabahah* (Cost-plus sale)
A contract that refers to the sale and purchase of assets whereby the cost and profit margin (mark-up) are made known.

- *Musawamah* (Negotiated sale)
A contract that refers to the sale and purchase of asset where the selling price of the asset is negotiated between the seller and the buyer, with the cost price not being disclosed or made known to the latter.
- *Musharakah* (Profit and loss sharing)
A partnership arrangement between two or more parties to finance a business venture whereby all parties contribute capital either in the form of cash or in kind for the purpose of financing the said venture. Any profit derived from the venture will be distributed based on a pre-agreed profit sharing ratio, but a loss will be shared on the basis of capital contribution.
- *Qardh hasan* (Benevolent loan)
A contract of loan between two parties on the basis of social welfare or to fulfil a short-term financial need of the borrower. The amount of repayment must be equivalent to the amount borrowed. It is however legitimate for a borrower to pay more than the amount borrowed as long as it is not stated or agreed at the point of contract.
- *Tawarruq* (Tripartite sale)
Purchasing a commodity on a deferred price and then selling it to a third party for cash.
- *Wakalah* (Agency)
A contract where a party authorises another party to act on behalf of the former based on the agreed terms and conditions as long as he is alive.

B. Supplementary principles and concepts

- *Bai` dayn* (Debt trading)
A transaction that involves the sale and purchase of debt.

- *Bai` muzayadah* (Open-bidding trading)
An action by a person to sell his asset in the open market through a bidding process among potential buyers. The asset for sale will be awarded to the person who has offered the highest bid/price. This is also known as the sale and purchase transaction based on tender.
- *Kafalah* (Guarantee)
A contract of guarantee whereby a guarantor underwrites any claim and obligation that should be fulfilled by an owner of the asset. This concept is also applicable to a guarantee provided on a debt transaction in the event a debtor fails to fulfil his debt obligation.
- *Haq tamalluk* (Ownership right)
An asset in the form of ownership rights as classified by Shariah which are tradable.
- *Hibah* (Gift)
A gift awarded to a person on voluntary basis.
- *Hiwalah* (Transfer of debt)
A contract that allows a debtor to transfer his debt obligation to a third party.
- *Ibra'* (Release of rights)
An act of releasing absolutely or conditionally one's rights and claims on any obligation against another party which would result in the latter being discharged of his/its obligations or liabilities towards the former. The release may be either partially or in full.
- *Ju`alah* (Reward)
Contract of reward; a unilateral contract promising a reward for a specific act or accomplishment.

- *Rahn* (Collateral)
An act whereby a valuable asset is made as collateral for a debt. The collateral will be utilised to settle the debt when a debtor is in default.
- *Tanazul* (Waiver of rights)
Waiver of right by one party to another party in *musharakah*, *mudharabah* and *wakalah bi al-istithmar* contracts where the right waived is transferred to other party.
- *Ujrah* (Fee)
A financial fee for the utilisation of services or *manfa`ah* (usufruct). In the context of today's economy, it can be in the form of salary, allowance, commission and any other permissible form of assets.
- *Wadiah yad amanah* (Safekeeping based on trust)
Goods or deposits kept with a custodian (who is not the owner) for safekeeping based on trust. The custodian is not allowed to use the deposits nor entitled to any share of the profits.
- *Wadiah yad dhamanah* (Safekeeping with guarantee)
Goods or deposits kept with a custodian (who is not the owner) for safekeeping. When the custodian utilises the deposits, the custodian guarantees the repayment of the whole amount of the deposits or any part of it, when demanded. In this case, the rule of *qardh* shall apply and the depositors are not entitled to any return on the deposits. However, the custodian may provide rewards to the depositors as a token of appreciation in the form of *hibah*.

Chapter 2

ROLES AND RESPONSIBILITIES OF SHARIAH ADVISER

General roles and responsibilities

2.01 The Shariah adviser must carry out roles and responsibilities including:

- (a) Advising on all aspects of the Shariah-compliant unlisted capital market products under the Lodge and Launch Framework in accordance with Shariah principles;
- (b) Providing Shariah expertise and guidance on all matters, particularly in documentation, structuring and investment instruments, and ensure compliance with relevant securities laws and guidelines issued by the SC;
- (c) Ensuring that the applicable Shariah rulings, principles and concepts endorsed by the Shariah Advisory Council are complied with; and
- (d) Applying *ijtihad* (intellectual reasoning) to ensure all aspects relating to the Shariah-compliant unlisted capital market products under the Lodge and Launch Framework are in compliance with Shariah, in the absence of any rulings, principles and concepts endorsed by the Shariah Advisory Council.

Specific roles and responsibilities

Islamic structured products and ringgit-denominated sukuk

2.02 In addition to the roles and responsibilities as specified under paragraph 2.01 above, the Shariah adviser must issue a Shariah pronouncement where the signing procedures must comply with the requirements specified by the Shariah Advisory Council. The Shariah pronouncement must include the following:

- (a) Basis and rationale of the pronouncement, structure and mechanism of the Islamic structured products and ringgit-denominated sukuk issue;

- (b) The applicable Shariah rulings, principles and concepts used in the Islamic structured products and ringgit-denominated sukuk issue; and
- (c) The relevant Shariah matters relating to the documentation of the Islamic structured products and ringgit-denominated sukuk issue.

Wholesale fund

2.03 In addition to the roles and responsibilities as specified under paragraph 2.01 above, the Shariah Adviser must–

- (a) review the fund's compliance report and investment transaction report to ensure that the fund's investments are in line with Shariah principles; and
- (b) prepare a report to be included in the fund's annual reports stating its opinion whether the fund has been operated and managed in accordance with Shariah principles.

Chapter 3

COMPLIANCE WITH SHARIAH RULINGS, PRINCIPLES AND CONCEPTS

3.01 The structure of ringgit-denominated sukuk must be in compliance with the approved Shariah rulings, principles and concepts that are provided for under chapters 1, 4, 5 and 6 of Section C of these Guidelines, as well as any other Shariah rulings, principles and concepts endorsed by the Shariah Advisory Council from time to time.

3.02 Where the structure of ringgit-denominated sukuk departs from or does not comply with–

(a) the approved Shariah rulings, principles and concepts that are provided for under chapters 1, 4, 5 and 6 of Section C of these Guidelines; or

(b) any other Shariah rulings, principles and concepts endorsed by the Shariah Advisory Council from time to time,

the rulings of the Shariah Advisory Council must be obtained prior to any lodgement under these Guidelines.

Chapter 4

GENERAL SHARIAH RULINGS APPLICABLE TO RINGGIT-DENOMINATED SUKUK

Naming of ringgit-denominated sukuk

4.01 The name of ringgit-denominated sukuk must not be misleading and must be based on the following:

- (a) Where the sukuk are structured using a single Shariah principle, the sukuk must be named according to that Shariah principle. For example, sukuk that are structured under the *musharakah* principle must be named sukuk *musharakah*;
- (b) Where the sukuk are structured using multiple Shariah principles, the sukuk may be named–
 - (i) according to the name of the issuer or obligor (where applicable);
 - (ii) sukuk *istithmar* (investment); or
 - (iii) based on any other names according to the principles endorsed by the Shariah Advisory Council from time to time.
- (c) For SRI sukuk, the sukuk may be named–
 - (i) according to the name of the issuer or obligor (where applicable); or
 - (ii) SRI sukuk.

4.02 The application of the multiple Shariah principles must be disclosed in the principal terms and conditions of the sukuk.

Requirement of identified assets, ventures and/or investments

4.03 In relation to sukuk *bai` bithaman ajil*, sukuk *murabahah*, sukuk *istisna`* and sukuk *ijarah*, an asset, whether tangible or intangible, available for such sukuk issuance are subject to the following:

- (a) The identified asset and its use must comply with Shariah requirements;
- (b) If the identified asset is subject to any encumbrance or is jointly-owned with another party, prior consent must be obtained from the chargee or joint-owner; and
- (c) Where the identified asset is in the form of a receivable, it must be *mustaqir* (established and certain) and transacted on spot either in the form of cash or commodities.

4.04 In relation to sukuk *musharakah*, sukuk *mudharabah* and sukuk *wakalah bi al-istithmar*, the ventures and/or investments must comply with Shariah requirements.

Asset pricing

4.05 The purchase price for the sale and purchase of an identified asset under sukuk *bai` bithaman ajil*, sukuk *murabahah*, sukuk *istisna`* and sukuk *ijarah* must comply with the following requirements:

- (a) The purchase price must not exceed 1.51 times the market value of the asset; or
- (b) In cases where the market value of a particular asset cannot be ascertained, a fair value or any other value must be applied.

4.06 The asset pricing requirement under paragraph 4.05 above is not applicable for sukuk *ijarah* that does not involve the sale and purchase of identified assets.

***Ibra'* (Release of rights)**

4.07 *Ibra'* may be applied in the following contracts (including but not limited to):

- (a) *Bai` bithaman ajil*, *Murabahah* and *Musawamah*
Ibra' refers to release of rights on debts or amount due and payable under a contract; and

(b) Ijarah

Ibra' refers to release of rights on accrued rental.

4.08 *Ibra'* may be applied in the following situations:

(a) Early Redemption

- (i) Sukukholders may offer *ibra'* to the issuer based on the application made by the issuer for early redemption of sukuk upon occurrence of any event of default, call option, regulatory redemption or tax redemption;
- (ii) The formula for the computation of early settlement may be stated as a guide to the issuer; and
- (iii) The *ibra'* clause and the formula for the computation of early settlement may be stated in the main agreement of sukuk *bai` bithaman ajil*, sukuk *murabahah* and sukuk *ijarah*. However, the *ibra'* clause in the main agreement shall be separated from the part related to the price of the transacted asset. The *ibra'* clause shall only be stated under the section for mode of payment or settlement in the said agreement.

(b) Other Circumstances

Sukukholders may offer *ibra'* to the issuer in any circumstance that requires the sukukholders to release their rights and claim on any obligation. The circumstance may include any event that requires Tier 2 capital instrument¹ to be written-off at the point of non-viability.

4.09 Through the application of *ibra'*, variable rate mechanism may be applied to sukuk *bai` bithaman ajil* and sukuk *murabahah* which may be benchmarked to the prevailing market rates.

¹ Tier 2 capital instrument refers to an instrument that meets the requirements under the Capital Adequacy Framework for Islamic Banks (Capital Components) issued by BNM.

Ta`widh (Compensation)

- 4.10 *Ta`widh* is permissible under sukuk *bai` bithaman ajil*, sukuk *murabahah*, sukuk *istisna`* and sukuk *ijarah* only if the issuer/obligor delays the payment of any amount due and payable to the sukukholders.
- 4.11 *Ta`widh* is permissible under sukuk *musharakah* and sukuk *mudharabah* if the issuer/obligor—
- (a) fails to distribute the realised profit to the sukukholders on the agreed date. *Ta`widh* does not apply to the failure to pay expected profit; or
 - (b) delays the payment of any amount due and payable to the sukukholders upon dissolution of *musharakah* or *mudharabah* arrangement.
- 4.12 *Ta`widh* is permissible under sukuk *wakalah bi al-istithmar* if the issuer/*wakil* (agent)—
- (a) breaches its fiduciary duty as an investment manager due to its failure to distribute the realised profit to the sukukholders on the agreed date; or
 - (b) delays the payment of any amount due and payable to the sukukholders upon dissolution of *wakalah* arrangement.
- 4.13 The rate of *ta`widh* is determined by the Shariah Advisory Council from time to time and is available on the Islamic Capital Market section of the SC website.

Kafalah (Guarantee)

Parties who can guarantee

- 4.14 Under sukuk *bai` bithaman ajil*, sukuk *murabahah*, sukuk *istisna`* and sukuk *ijarah*, *kafalah* may be provided by any party, with or without the imposition of fee.
- 4.15 Under sukuk *musharakah* and sukuk *mudharabah*, *kafalah* may be provided by any third party, with or without the imposition of fee.

- 4.16 Under sukuk *wakalah bi al-istithmar*, *kafalah* may be provided by the following parties, with or without the imposition of fee:
- (a) A third party;
 - (b) *Wakil* or sub-*wakil* appointed by the issuer; or
 - (c) Related party or associated company of the issuer.
- 4.17 The *kafalah* by parties listed under sub-paragraphs 4.16(b) and (c) above must be a separate arrangement from the *wakalah*, where any termination of the *wakalah* would not affect the *kafalah* arrangement and vice-versa.
- 4.18 If *kafalah* cannot be procured from Islamic banks or *kafalah* provider, conventional guarantee is allowed to be procured.

Amount to be guaranteed

- 4.19 Under sukuk *bai` bithaman ajil*, sukuk *murabahah*, sukuk *istisna`* and sukuk *ijarah*, the amount that may be guaranteed is limited to the amount due under any obligation arising from the relevant contracts under the said sukuk issuance.
- 4.20 Under sukuk *musharakah* and sukuk *mudharabah*, the amount that may be guaranteed is limited to the following:
- (a) *Musharakah* and *mudharabah* capital; or
 - (b) The payment of any amount due and payable to the sukukholders upon dissolution of *musharakah* and *mudharabah* arrangement.
- 4.21 Under sukuk *wakalah bi al-istithmar*, the amount that may be guaranteed is limited to the following:
- (a) By third party:

- (i) Nominal amount of the sukuk and/or profit/rental arising from contracts under the Shariah principles of *bai` bithaman ajil*, *murabahah*, *istisna`* and *ijarah*;
 - (ii) Principal amount arising from contracts under the Shariah principles of *musharakah*, *mudharabah* and *wakalah*; or
 - (iii) Any amount due and payable to the sukukholders upon dissolution of *wakalah* arrangement.
- (b) By *wakil* or sub-*wakil* appointed by the issuer, its related party or associated company:
- (i) Amount due under any obligation arising from contracts under the Shariah principles of *bai` bithaman ajil*, *murabahah*, *istisna`* and *ijarah*; or
 - (ii) The payment of any amount due and payable to the sukukholders upon dissolution of *wakalah* arrangement.

Chapter 5

SHARIAH RULINGS APPLICABLE TO SPECIFIC TYPES OF RINGGIT-DENOMINATED SUKUK

Shariah rulings applicable for sukuk ijarah

Rate of lease and lease period

5.01 The rate of lease rental and lease period must be determined upon the *`aqd* (contract).

Usage of leased asset

5.02 The leased asset must be used for the purpose of Shariah-compliant activities only.

Sub-lease of leased asset to third party by lessee

5.03 The lessee may sub-lease the leased asset to a third party provided that–

- (a) there is no objection from the owner of the asset; and
- (b) the sub-lease period must not be longer than the initial or primary lease.

Lease of a leased asset to third party by owner of asset

5.04 The owner of the leased asset must not lease the asset to a third party while the same asset is being leased to another party during the lease period.

Implied sub-lease

5.05 In the event the asset of an existing lease is sold by the original owner/lessor to the purchaser, the original owner/lessor must provide prior written notification to the existing lessee on the sale of the asset.

5.06 Upon purchase of the asset, if the same asset is leased back (new lease) by the purchaser to the original owner/new lessee, the existing lease will be considered as implied sub-lease whilst the new lease will be considered as head-lease.

5.07 The notification provided under paragraph 5.05 above does not terminate the existing lease.

Maintenance of leased asset

5.08 The lessor is responsible for maintaining the leased asset. However, the maintenance of leased asset may also be determined as agreed by both parties as stated in the terms and conditions of the *ijarah* agreement. The lessor can also assign the responsibility to the lessee as service agent at the lessor's cost.

Ijarah mawsufah fi zimmah (Forward lease)

5.09 An *ijarah mawsufah fi zimmah* is a permissible contract for the issuance of sukuk.

5.10 An *ijarah mawsufah fi zimmah* is a lease contract where the asset will be delivered in the future. The contract must state the following:

- (a) The rate of lease rental;
- (b) The nature of the leased asset;
- (c) The lease period; and
- (d) The method of lease payment.

5.11 However, if upon delivery, the lessor fails to deliver the asset based on the agreed specification, the lessee is entitled to either–

- (a) demand a replacement of the asset with another asset that conforms to agreed specifications; or
- (b) terminate the *ijarah* contract, and if the lessee has paid the advance rental, the lessor must refund the amount paid.

Variable rate mechanism

- 5.12 The rate of lease rental may be based on variable rates. In the case of variable rate, the effective lease period and the lease rental computation must be agreed upon *‘aqd*.

Transfer of ownership of leased asset

- 5.13 At the end of the lease period, the ownership of the leased asset may be transferred from the lessor to the lessee or to any third party through any one of the following methods:
- (a) By way of selling the leased asset at an agreed price; or
 - (b) By way of *hibah* (gift) of the leased asset.

Requirement of takaful for identified asset

- 5.14 All identified assets must be insured by *takaful* scheme. However, if the *takaful* scheme is not available (or is not commercially viable), conventional insurance is allowed to be procured.
- 5.15 If the asset has been insured under conventional insurance policy upon entering into the contract, the said insurance policy can still be used until its expiry date. Upon its expiry, the asset owner must renew it with *takaful* scheme if it is available.

Shariah rulings applicable for sukuk musharakah

Musharakah capital

- 5.16 Capital contributed by each of the *musharik* (partners) must be in the form of cash, in kind or a combination of both.

Musharakah partners

5.17 There must be at least two partners to form a *musharakah*. However, there is no minimum number of *musharakah* partners (i.e. investors) in the secondary market.

Profit and loss

5.18 The profit from *musharakah* venture will be distributed among the partners according to the pre-agreed profit sharing ratio. However, any loss must be shared among the partners according to their respective capital contribution.

Tanazul (Waiver of right)

5.19 A partner may waive his right on the profit payment from the *musharakah* venture.

Management of the musharakah venture

5.20 One of the partners or issuer or a third party may be appointed as the manager to manage the *musharakah* venture.

Shariah rulings applicable for sukuk mudharabah

Mudharabah capital

5.21 Capital contributed by a *rabb al-mal* (capital provider) must be in the form of cash, in kind or a combination of both.

Rahn (Collateral)

5.22 The *rabb al-mal* may request *mudharib* (entrepreneur) to place *rahn* as protection from possibility of loss on capital that may occur as a result of negligence and misconduct by the *mudharib*.

Profit and loss

5.23 The profit from *mudharabah* venture must be distributed between the *rabb al-mal* and the *mudharib* according to the pre-agreed profit sharing ratio. However, any loss must be borne in entirety, solely by the *rabb al-mal*, unless the loss is due to the negligence or mismanagement of the *mudharib* in managing the *mudharabah* venture.

Tanazul (Waiver of Right)

5.24 A partner may waive his right on the profit payment from the *mudharabah* venture.

Management of the mudharabah venture

5.25 The management of the *mudharabah* venture may be carried out by the *mudharib* or a third party appointed by the *mudharib*.

Shariah rulings applicable for sukuk wakalah bi al-istithmar

Wakalah (agency) appointment

5.26 There must be a *wakalah* agreement between the investors and the issuer, appointing the issuer as *wakil* for the purpose of investment. In the absence of a *wakalah* agreement, a clause for the appointment of the *wakil* must be provided in the trust deed.

Tanazul (Waiver of Right)

5.27 Sukukholders may waive their rights to the profit payment from the *wakalah* arrangement.

Chapter 6

REVISION TO TERMS AND CONDITIONS OF RINGGIT-DENOMINATED SUKUK

Revision of profit rate

6.01 In the case of sukuk *bai` bithaman ajil*, sukuk *murabahah* and sukuk *istisna`* -

- (a) a revision to reduce the profit rate may only be effected by applying the principle of *ibra`* without the need to execute a supplemental contract; and
- (b) a revision to increase the profit rate through a selling price in a new contract may only be effected by executing a new and separate contract to incorporate the new profit rate, after which the outstanding obligation under the initial contract will be settled and terminated. This arrangement must be carried out before the maturity of the deferred payment in the initial contract.

6.02 In the case of sukuk *musharakah*, sukuk *mudharabah*, sukuk *wakalah bi al-istithmar* and sukuk *ijarah*, the revision to the profit rate/ratio (either increasing or reducing the profit rate/ratio) may only be effected by executing a supplemental contract subject to agreement by all contracting parties.

6.03 In the case of sukuk *musharakah*, sukuk *mudharabah* and sukuk *wakalah bi al-istithmar*, the revision of the expected profit rate (either increasing or reducing the expected profit rate) may be effected by executing a supplemental contract subject to agreement by all contracting parties.

6.04 In the case of sukuk *ijarah*, the revision of the rental (either increasing or reducing the rental) may be effected by executing a supplemental contract subject to agreement by all contracting parties.

Revision of profit sharing ratio

6.05 In the case of sukuk *musharakah* and sukuk *mudharabah*, the revision of the profit sharing ratio (either increasing or reducing the profit sharing ratio) may be effected

by executing a supplemental contract subject to agreement by all contracting parties.

Revision to maturity date

6.06 A revision to the maturity date, in the case of sukuk *bai` bithaman ajil*, sukuk *murabahah* and sukuk *istisna`*, may be effected by executing a supplemental contract subject to the following conditions:

- (a) The revision is agreed by all contracting parties; and
- (b) There is no revision to increase the selling price.

6.07 A revision to the maturity date, in the case of sukuk *musharakah*, sukuk *mudharabah*, sukuk *wakalah bi al-istithmar* and sukuk *ijarah*, may be effected by executing a supplemental contract subject to agreement by all contracting parties.

6.08 Supplemental contract executed under paragraphs 6.02, 6.03, 6.04, 6.05, 6.06 and 6.07 above does not terminate the initial contract of the sukuk *bai` bithaman ajil*, sukuk *murabahah*, sukuk *istisna`*, sukuk *musharakah*, sukuk *mudharabah*, sukuk *wakalah bi al-istithmar* and sukuk *ijarah* (as the case may be).

SECTION D
TRANSITIONAL PROVISIONS

Chapter 1

GENERAL

1.01 All unlisted capital market products, which have been approved, authorised or recognised before the effective date of these Guidelines shall–

- (c) continue to remain as an approved, authorised or recognised unlisted capital market product; and
- (d) comply with all requirements under these Guidelines, where applicable.

Chapter 2

WHOLESALE FUND

- 2.01 Any revision to wholesale fund that has been approved, authorised or recognised prior to the effective date must be submitted via the system.

Chapter 3

STRUCTURED PRODUCTS

3.01 Structured product programmes that have been–

- (a) approved by the SC under the *Guidelines on the Offering of Structured Products; or*
- (b) authorised or recognised under the *Guidelines on Unlisted Capital Market Products: Structured Products and Unit Trust Schemes,*

will remain valid until the full utilisation of the structured product programme. New structured products issued under such existing structured product programmes must comply with the requirements of these Guidelines with effect from the effective date.

3.02 In addition, the structured product programmes stated in paragraph 3.01 above must be fully utilised within the following timeframe:

- (a) Within two years from the effective date of these Guidelines for structured product programmes outstanding for more than five years from the date of the SC's approval or authorisation; and
- (b) Within three years from the effective date of these Guidelines for structured product programmes outstanding for five years or less from the date of the SC's approval or authorisation.

3.03 A structured product programme that was previously approved by the SC is required to comply with the monthly post-issuance reporting requirement under paragraph 4.04 of Part 2 of Section B these Guidelines.

Chapter 4

PRIVATE DEBT SECURITIES AND SUKUK

- 4.01 For any debt or sukuk programme that was previously approved by the SC, a post-issuance notice is required to be submitted to the SC for every issuance under the programme after the coming into effect of the Lodge and Launch framework.
- 4.02 For the purposes of paragraph 4.01 above, the submission is to be made via the system.
- 4.03 Any revision to the principal terms and conditions of a PDS or sukuk issuance previously approved or authorised by the SC but has yet to be issued, requires SC's approval. For a debt or sukuk programme, this requirement applies where the first issuance under the programme has not taken place.
- 4.04 Any revision to the principal terms and conditions of a PDS or sukuk issuance previously approved or authorised by the SC and has already been issued requires the issuer to notify the SC of such revision within 14 business days of the effective date of the proposed revision.
- 4.05 In relation to an issuance of ringgit-denominated sukuk, if the revision to the principal terms and conditions has any Shariah implications, the issuer through the principal adviser must first refer such matters to the Shariah Advisory Council for endorsement prior to seeking approval from, or submission of notification, to the SC referred to in paragraphs 4.03 and 4.04 above.
- 4.06 For the purpose of the endorsement under paragraph 4.05 above, the principal adviser must submit to the SC the information and documents as specified in Appendix 4A of Section D of these Guidelines at least 10 business days prior to the approval or notification to the SC.
- 4.07 For the purposes of paragraphs 4.03 and 4.04 above, all submissions for SC's approval or notification must be made in accordance to Appendix 4B of Section D of these Guidelines and made by–

- (a) the issuer, through its principal adviser; or
- (b) the multilateral development bank (MDB) or multilateral financial institution (MFI), where the MDB or MFI had submitted its application directly to the SC.

4.08 Any upsizing for a debt or sukuk programme previously approved or authorised by the SC would require the issuer to submit all information and documents for a new lodgement with the SC and comply with all the requirements under Section B, Part 3 of these Guidelines.

Information and Documents to be submitted to the SC for Revision to Terms and Conditions of Ringgit-denominated Sukuk

- 1.01 A cover letter describing the details of the revised transaction and structure diagram (where applicable) of the sukuk to be addressed to:

Executive Director
Islamic Capital Market Business Group
Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur

- 1.02 Shariah pronouncement (including detailed reasoning/justification) where the signing procedures must comply with the requirements as specified by the Shariah Advisory Council.
- 1.03 Marked-up version of the revised principal terms and conditions of the sukuk.
- 1.04 Any other supporting documents or information as may be required by the SC.
- 1.05 All hardcopies of the above documents must be submitted to the SC accompanied by electronic copy in the following manner:
- (a) Documents must be in a text searchable Portable Document Format (PDF);
 - (b) The PDF-text files must be in a readable and proper condition; and
 - (c) Submitted via e-mail (up to 10 MB in size per e-mail) to the following e-mail address: ICMsubmission@seccom.com.my.

Information and documents to be submitted to the SC for Revision of Principal Terms and Conditions

Legend for Appendix 4B

*** : Applicable only for ringgit-denominated sukuk**

1.01 A soft copy (clean version in PDF format) of the following documents to be e-mailed to DS@seccom.com.my:

(a) Revised principal terms and conditions in the following format:

- (i) Font - Arial
- (ii) Font size - 11
- (iii) Margins (Top, Down, Right, Left) - 1.25"
- (iv) Spacing - single

(b) Where applicable, the supplementary information memorandum, supplementary offering circular, executed supplementary trust deed and other offer documents.

1.02 Two hard copies of the following:

(a) A letter to the SC on the revision which includes the following:

- (i) Rationale for each revision;
- (ii) Confirmation that the relevant requirements of (*to specify the relevant Chapter of these Guidelines*) have been duly complied with by the issuer; and
- (iii) Details of the contact person of the principal adviser including name, telephone number, facsimile number and e-mail address;

(b) A marked-up version copy of the revised principal terms and conditions;

- (c) A copy of the written consent from the relevant parties in relation to the revision;
- (d) The following documents, where applicable:
 - (i) Supplementary information memorandum;
 - (ii) Supplementary offering circular;
 - (iii) Executed supplementary trust deed;
 - (iv) Shariah Pronouncement*; and
 - (v) Other offer documents;
- (e) Any other material information in relation to the revision.