

FREQUENTLY ASKED QUESTIONS ON THE REQUIREMENTS OF THE GUIDELINES ON ISSUANCE OF PRIVATE DEBT SECURITIES AND SUKUK TO RETAIL INVESTORS

1. Why is the SC issuing these new Guidelines on Issuance of Private Debt Securities and Sukuk to Retail Investors (Retail PDS and Sukuk Guidelines)?

The Lodge and Launch framework has come into effect on 15 June 2015, allowing for a new regime for unlisted capital market products being offered to sophisticated investors. The *Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework* (UCMP Guidelines) have been issued and will also take effect concurrently.

As a consequence, the current *Guidelines on Private Debt Securities* and *Guidelines on Sukuk* have been superseded and the relevant provisions for retail issuances have been consolidated into the new Retail PDS and Sukuk Guidelines.

2. What is the timeframe for approval?

Timeframe for approval of a retail PDS or sukuk is 40 business days, inclusive of the registration of the prospectus.

3. Are “combination” debt or sukuk programmes that are offered to both sophisticated and retail investors allowed?

A “combination” debt or sukuk programme will be regarded as a retail offering and will need to be approved by the SC under the Retail PDS and Sukuk Guidelines. The issuer will have to comply with all the requirements under the Retail PDS and Sukuk Guidelines for the entire programme.

4. For an issuance of PDS or sukuk to retail investors, must a prospectus be issued?

Yes, all issuances of PDS or sukuk to retail investors require a prospectus. Section 232 of the Capital Markets & Services Act 2007 (CMSA) provides that all issuances of PDS and sukuk require a prospectus, unless otherwise exempted in Schedules 6 and 7. As such, for an issuance of PDS or sukuk to retail investors, a prospectus which complies with Division 2 of the Prospectus Guidelines would need to be registered with the SC at the point of submission for approval.

5. Other than a prospectus, would an issuer still be required to issue a disclosure document under Section 212(5)(b) of the CMSA?

No. As per paragraph 1.07 of the *Guidelines on Disclosure Documents*, the registration of a prospectus with the SC is deemed to have satisfied the requirement for a disclosure document under Section 212(5)(b) of the CMSA.

6. Does an upsizing require an approval or a notification?

An upsizing, be it done prior to issuance or post-issuance, would require an approval from the SC. All documents and information as set out in Appendix 4 of the Retail PDS and Sukuk Guidelines would need to be submitted for the approval. The relevant fees for the additional portion would also apply.

7. Do all retail issuances require a trust deed?

Yes, all retail issuances require a trust deed.

8. When is a post-issuance notice required to be submitted?

A post-issuance notice is required to be submitted to the SC within 7 business days from the date of issuance. For debt or sukuk programmes, this would apply to every issuance under the programme.

9. If the issuer relies on more than one credit rating for the PDS or sukuk, can the issuer remove any of the ratings?

A retail PDS or sukuk must have at least one credit rating at all times. However, the issuer may rely on more than one credit rating, provided they fulfil the requirements under paragraph 5.05 (for PDS and sukuk that have yet to be approved) or paragraph 5.06 (for PDS and sukuk that have already been approved). If the issuer decides to remove any of the credit ratings, the issuer must comply with the requirements under paragraph 5.07.

10. What does it mean by “where the issuer decides to rely on more than one credit rating for a PDS or sukuk” under paragraphs 5.05, 5.06 and 5.07?

This refers to situations where the issuer uses more than one credit rating for the purposes of offering or marketing the PDS or sukuk to investors.

11. What are the signing procedures requirements specified by the Shariah Advisory Council, mentioned in Appendix 6?

This refers to the procedure of signing a Shariah pronouncement by the Shariah committee/Shariah adviser that was circulated by the SC via letter to the industry dated 1 August 2013.

12. What is a “government-linked company” referred in Appendix 1?

Government-Linked Companies (GLCs) are defined¹ as companies that have a primary commercial objective and in which the Malaysian Government has a direct controlling stake².

GLCs include companies:

- (a) where the Government of Malaysia controls directly through Khazanah, MOF Inc, KWAP and BNM;
- (b) where Government-Linked Investment Companies (GLICs) and/or other federal government linked agencies collectively have a controlling stake; or
- (c) where GLCs themselves have a controlling stake, i.e. subsidiaries and affiliates of GLCs.

¹ As provided in the Putrajaya Committee on GLC High Performance

² Controlling stake refers to the Government's ability (not just percentage ownership) to appoint Board members, senior management, and/or make major decisions (e.g. contract awards, strategy, restructuring and financing, acquisitions and divestments etc.) for GLCs, either directly or through GLICs.