



Suruhanjaya Sekuriti
Securities Commission
Malaysia

GUIDELINES ON PRIVATE DEBT SECURITIES

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PART A: GENERAL

Chapter 1

INTRODUCTION

- 1.01 These Guidelines on Private Debt Securities are issued by the SC under section 377 of the *Capital Markets and Services Act 2007* (CMSA).
- 1.02 These Guidelines comprise the following parts:
- (a) Requirements for an issuance, offering or invitation to subscribe or purchase private debt securities (PDS) as set out in Part B of these Guidelines;
 - (b) Approval for an issuance, offering or invitation to subscribe or purchase PDS as set out in Part C of these Guidelines; and
 - (c) Requirements for an issuance, offering or invitation to subscribe or purchase retail PDS as set out in Part D of these Guidelines.
- 1.03 These Guidelines shall come into force on 28 August 2014 and shall replace the *Guidelines on Private Debt Securities* issued on 8 January 2014 (previous Guidelines). Notwithstanding, Chapter 4A of these Guidelines shall only take effect on 1 January 2015.
- 1.04 Any issue, offer or invitation to subscribe or purchase PDS under the previous Guidelines shall comply with the corresponding provisions in these Guidelines.
- 1.05 These Guidelines shall be read together with other relevant SC guidelines. The table below sets out the application of the relevant guidelines on the respective capital market products:

Capital Market Product	<i>Guidelines on Private Debt Securities</i>	<i>Guidelines on the Offering of Asset-Backed Securities</i>	<i>Guidelines on Sukuk</i>
PDS	√	-	-
Asset-backed securities	√	√	-
Combination of sukuk and PDS	√	-	√

Note: These Guidelines do not apply to sukuk and structured products, as these capital market products are subject to their own respective guidelines.

1.06 Any issue, offer or invitation to subscribe or purchase PDS by a public company that is–

- (a) capable of being converted or exchanged into new equity of a public listed company (e.g. convertible loan stock, convertible bonds and irredeemable convertible loan stock); or
- (b) issued together with warrants,

will also be subjected to the additional requirements stipulated in the Listing Requirements of Bursa Securities.

Chapter 2

DEFINITIONS

2.01 In these Guidelines, the following words and expressions have the following meanings, unless the context otherwise requires –

approval	means an approval, authorisation or recognition under Part VI of the CMSA as the case may be.
Bursa Securities	means Bursa Malaysia Securities Bhd.
business day	means a day (other than Saturday or Sunday) on which commercial banks settle payments in Kuala Lumpur.
commercial paper (CP)	has the meaning assigned to it under the Participation and Operation Rules for Payments and Securities Services issued by Malaysian Electronic Clearing Corporation Sdn Bhd (MyClear), on behalf of Bank Negara Malaysia.
corporation	has the meaning assigned to it under sub-section 2(1) of the CMSA.
debt programme	means a facility which allows multiple issues, offers or invitations to subscribe or purchase medium-term notes (MTN), CPs or a combination of CPs and MTNs, within an availability period which is specified to the SC and in the offer document.
foreign currency-denominated private debt securities through a roadshow	refers to foreign currency-denominated PDS 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 (d) an invitation to subscribe or purchase made to investors in Malaysia and at least one other country.
interested person	has the meaning assigned to it under the <i>Trust Deeds Guidelines</i> .

international credit rating agency	refers to a credit rating agency that operates in more than one international financial centre, is either licensed or registered by a relevant authority, and is capable of assigning international ratings that are widely accepted by international investors.
investment bank	has the meaning assigned to it under the <i>Principal Adviser Guidelines</i> .
licensed bank	means a bank licensed under the <i>Banking and Financial Institutions Act 1989</i> .
licensed institution	has the meaning assigned to it under sub-section 2(1) of the <i>Banking and Financial Institutions Act 1989</i> .
medium-term note (MTN)	has the meaning assigned to it under the Participation and Operation Rules for Payments and Securities Services issued by MyClear, on behalf of Bank Negara Malaysia.
originator	has the meaning assigned to it under the <i>Guidelines on the Offering of Asset-Backed Securities</i> .
principal adviser	has the meaning assigned to it under the <i>Principal Adviser Guidelines</i> .
private debt securities (PDS)	means debentures as defined under sub-section 2(1) of the CMSA but do not include– <ul style="list-style-type: none"> (a) structured products; and (b) debentures issued by– <ul style="list-style-type: none"> (i) the Federal Government; (ii) any State Government; or (iii) Bank Negara Malaysia.
retail investors	have the meaning assigned to it under the <i>Guidelines on Sales Practices of Unlisted Capital Market Products</i> .
retail PDS	means PDS that are proposed to be issued or offered to retail investors and include an invitation to subscribe or purchase PDS that are made to retail investors.

sophisticated investors	means any person specified under Schedule 1 of the <i>Guidelines on Sales Practices of Unlisted Capital Market Products</i> .
special scheme brokers	has the meaning assigned to it under the <i>Principal Adviser Guidelines</i> .
stock exchange	has the meaning assigned to it under sub-section 2(1) of the CMSA.
structured product	has the meaning assigned to it under the <i>Guidelines on the Offering of Structured Products</i> .
universal brokers	has the meaning assigned to it under the <i>Principal Adviser Guidelines</i> .

PART B: REQUIREMENTS FOR AN ISSUANCE, OFFERING OR INVITATION TO SUBSCRIBE OR PURCHASE PRIVATE DEBT SECURITIES

Chapter 3

ISSUER AND PRINCIPAL ADVISER

- 3.01 A corporation within the meaning of sub-section 2(1) of the CMSA and a foreign government are eligible to issue, offer or make an invitation to subscribe or purchase PDS.
- 3.02 Any person who is eligible to issue, offer or make an invitation to subscribe or purchase PDS can only do so upon obtaining the SC's approval under these Guidelines.
- 3.03 Only institutions specified by the SC in the Principal Adviser Guidelines can act as a principal adviser.
- 3.04 Unless otherwise specified, an issuer of PDS and its principal adviser must comply with all the requirements set out in these Guidelines.

RATING REQUIREMENTS

Credit rating

- 4.01 All issues, offers or invitations to subscribe or purchase PDS must be rated by a credit rating agency.
- 4.02 The final rating for the PDS must be made available to the SC at the time when the submission for approval to issue, offer or make an invitation to subscribe or purchase PDS is made to the SC.
- 4.03 Where the final rating is not available, an indicative rating must be submitted to the SC.
- 4.04 In the case of a debt programme where the rating is not assigned for the full amount but for part of the amount (partial rating)–
- (a) the first issue under the debt programme must be rated; and
 - (b) the principal terms and conditions of the debt 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 states all subsequent issues of the debt programme will be rated.

Appointment of credit rating agency

- 4.05 PDS rated on a local rating scale must be rated by a credit rating agency which is registered with the SC.
- 4.06 PDS rated on an international or regional rating scale must be rated by an international credit rating agency.
- 4.07 An issuer incorporated in Malaysia may appoint an international credit rating agency to assign a rating for its ringgit-denominated PDS, provided that–
- (a) the issuer had previously issued a foreign currency-denominated PDS for which an international or regional rating has been assigned;
 - (b) the issuer is appointing the same international credit rating agency; and

- (c) any existing international or regional rating of the issuer's PDS by that international credit rating agency is still valid on the date of submission to the SC.

Issuer's obligations

- 4.08 An issuer must provide relevant information on a continuous and timely basis to the credit rating agency. This is to ensure that the credit rating agency can continuously make available to investors the rating for the PDS.
- 4.09 An issuer must ensure that the rating report is published by the credit rating agency as soon as the rating has been finalised, or at least seven business days prior to the issuance of the PDS.
- 4.10 The issuer of the PDS must not replace the appointed credit rating agency during the tenure of the PDS unless investors' consent has been obtained.

Non-application of requirements

- 4.11 This chapter does not apply to an issue, offer or invitation to subscribe or purchase the following types of PDS:
 - (a) irredeemable convertible loan stocks;
 - (b) foreign currency-denominated PDS;
 - (c) convertible bonds or loan stocks and exchangeable bonds which fulfill the following requirements:
 - (i) investors of the bonds or loan stocks are given the right to convert or exchange the instruments into the underlying shares at any time or within a reasonable period or periods during the tenure of the bond issue; and
 - (ii) the underlying shares are listed on a stock exchange;
 - (d) PDS –
 - (i) which are non-transferable and non-tradable; and
 - (ii) whose investors do not require a rating.
- 4.12 In relation to sub-paragraph 4.11(d), the principal adviser must ensure that both criteria are met prior to the issue, offer or invitation to subscribe or purchase the PDS and confirm this in writing to the SC.

This Chapter shall come into effect on 1 January 2015.

TRANSFERABILITY AND TRADABILITY OF UNRATED PRIVATE DEBT SECURITIES

- 4A.1 An unrated PDS under sub-paragraph 4.11(d) may be transferable and tradable provided that:
- (a) The PDS has been issued in the market for at least two years;
 - (b) The PDS is only offered to sophisticated investors; and
 - (c) The requirements on revision to the principal terms and conditions as specified in Chapter 12 of these Guidelines have been complied with.
- 4A.2 Where the unrated PDS becomes transferable and tradable as allowed under paragraph 4A.1, all exemptions under any guidelines relating to trust deeds that were previously granted to the unrated PDS will no longer apply.
- 4A.3 Notwithstanding paragraph 4A.2, if the issuer of the unrated PDS wishes to retain the exemptions granted, the issuer must make an application to the SC with justifications as to why the exemption should be retained, while taking into consideration the changes in the tradability and transferability status of the PDS. A supplementary trust deed must be issued prior to any transfer or trade of the unrated PDS.
- 4A.4 An issuer may discontinue the credit rating of a PDS and maintain tradability and transferability provided that:
- (a) The PDS has been issued in the market for at least two years;
 - (b) The PDS is only offered to sophisticated investors;
 - (c) The requirements on revision to the principal terms and conditions as specified in Chapter 12 of these Guidelines have been complied with; and
 - (d) At least one annual rating review on the PDS has been completed after 1 January 2015.

BOND TRUSTEE AND TRUST DEED REQUIREMENTS

- 5.01 As set out under section 258 of the CMSA, an issuer of PDS must enter into a trust deed, appoint a bond trustee and comply with the requirements of Division 4 of Part VI of the CMSA, unless the issue is exempted under Schedule 8 of the CMSA.
- 5.02 During the documentation process for any PDS, the principal adviser must engage the bond trustee who must actively play its part by providing comments and feedback.

Obligations of the issuer where a trust deed is not required

- 5.03 In the case of ringgit-denominated PDS where a trust deed is not required as provided for under Schedule 8 of the CMSA, the issuer must ensure that the principal terms and conditions include provisions for the following:
- (a) In the event of non-payment of interest or principal due on the PDS, the investors are entitled to declare the PDS immediately due and payable. A remedy period may be allowed but must not exceed seven business days; and
 - (b) The issuer must cancel and cannot resell the PDS which are redeemed or purchased by the issuer or its subsidiaries or agents of the issuer.

OTHER REGULATORY APPROVALS AND COMPLIANCE WITH RELEVANT LAWS AND GUIDELINES

- 6.01 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 submission for approval to the SC to issue, offer or make an invitation to subscribe or purchase PDS; and
 - (b) it continues to comply with any conditions imposed by such regulatory bodies throughout the tenure of the PDS.
- 6.02 For the purpose of sub-paragraph 6.01(a) where an approval from the Controller of Foreign Exchange is required, such approval must be obtained within two years before the time of the issuer's submission to the SC.
- 6.03 An issuer and its principal adviser must ensure that the issue, offer or invitation to subscribe or purchase PDS has complied with all the relevant laws which govern the proposal, including:
- (a) the CMSA;
 - (b) the *Companies Act 1965*; and
 - (c) all other relevant SC guidelines.

Chapter 7

TENURE FOR DEBT PROGRAMMES INVOLVING COMMERCIAL PAPERS

7.01 Where a debt programme involves an issuance of CPs or a combination of MTNs and CPs, the tenure for such debt programme must not exceed seven years.

7.02 The requirement in paragraph 7.01 does not apply to–

- (a) a stand-alone MTN programme; or
- (b) an issue, offer or invitation to subscribe or purchase foreign currency-denominated PDS.

Chapter 8

IMPLEMENTATION TIME FRAME

- 8.01 Any PDS approved under these Guidelines must be implemented within one year from the date of SC's approval except in the case of a debt programme.
- 8.02 For a debt programme, the first issuance must be made within two years from the date of the SC's approval.

MODE OF ISSUE

Ringgit-denominated private debt securities

- 9.01 All ringgit-denominated PDS must be issued and/or tendered on the Fully Automated System for Issuing/Tendering (FAST), unless a full admission to listing and trading is sought on a stock exchange.
- 9.02 All ringgit-denominated PDS must be issued on scripless basis, deposited and settled in the Real Time Electronic Transfer of Funds and Securities (RENTAS) system which is operated by MyClear, unless a full admission to listing and trading is sought on a stock exchange.

Foreign currency-denominated private debt securities

- 9.03 Foreign currency-denominated PDS must be announced or reported on FAST.
- 9.04 Foreign currency-denominated PDS 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-depositaries.

UTILISATION OF PROCEEDS

- 10.01 An issuer must ensure that proceeds from the approved PDS are utilised in accordance with the purposes disclosed to the SC.

- 10.02 Where the proceeds are utilised for a project which will generate cash flow for payments to investors, the issuer must ensure that the transaction documents relating to the PDS include the relevant parameters, conditions, supporting documents and certificates to enable the bond trustee or facility agent, where applicable, to manage the release of the proceeds to the issuer.

DISCLOSURE OF MATERIAL INFORMATION

Debt programme

11.01 For any debt programme approved by the SC, the issuer must–

- (a) make available the latest annual audited financial statements to its investors throughout the availability period of the debt programme; and
- (b) announce through FAST that the said annual audited financial statements have been made available and specify where investors can obtain a copy of the annual audited financial statements.

11.02 For a MTN programme approved by the SC, the issuer must ensure that a pricing supplement is made available to its investors prior to each issue under the MTN programme.

11.03 The pricing supplement must include the following terms (final or indicative):

- (a) Date, size and tenure of issue;
- (b) Credit rating;
- (c) Coupon/interest rate of the issue; and
- (d) Utilisation of proceeds raised from the issue.

11.04 Paragraphs 11.02 and 11.03 do not apply if an issue under the MTN programme is tendered through FAST or if it is issued or offered on a primary subscription basis (under a bought-deal or private placement arrangement).

11.05 Paragraph 11.01 will not apply under the following circumstances where financial statements are already made available on Bursa Securities:

- (a) If the issuer is listed on Bursa Securities, or
- (b) If the CPs or MTNs issued under a debt programme is listed on Bursa Securities.

Early redemption and call option

- 11.06 An immediate announcement must be made where an issuer decides to–
- (a) make an early redemption of the PDS; or
 - (b) exercise a call option to redeem its outstanding PDS prior to the maturity date.
- 11.07 The immediate announcement must be made on–
- (a) FAST by the facility agent, for PDS that are traded over-the-counter; or
 - (b) the stock exchange by the issuer, for PDS that are listed and traded on the stock exchange.
- 11.08 In addition to the announcement requirement, the issuer, facility agent or bond trustee may use any other means to inform the investors of such redemption as may be provided in the trust deed and other transaction documents.
- 11.09 In the case of an early redemption of the PDS–
- (a) investors must be informed of the relevant details of such redemption, including broad details of the proposed investors' resolution where appropriate, as soon as possible through an announcement; and
 - (b) where prior consent from investors is required for the early redemption, another announcement shall be made soonest practicable after the consent from investors has been obtained.

Non-application of requirements

- 11.10 The requirements under paragraphs 11.06, 11.07, 11.08 and 11.09 do not apply to an issue, offer or invitation to subscribe or purchase foreign currency-denominated PDS.

REVISION TO PRINCIPAL TERMS AND CONDITIONS

General requirements

12.01 Any revision to the principal terms and conditions of a PDS issue must not result in non-compliance with any requirements provided in these Guidelines.

Approval required

12.02 Any revision made to the principal terms and conditions of an issue or offer of PDS which has been approved by the SC but not yet issued, requires SC's prior approval. In the case of a debt programme, the first issuance under the debt programme must not have taken place.

12.03 In the case of any revision to the principal terms and conditions to increase the size of a debt programme, such upsizing would require SC's approval and would not fall under paragraph 12.05, but must comply with the requirements under paragraphs 12.11, 12.12, 12.13 and 14.05(d) of these Guidelines.

12.04 Any revision to the principal terms and conditions to increase the issue size of a one-off issuance of PDS is not allowed.

Notification required

12.05 Subject to paragraph 12.06, the SC's prior approval is not required for any revision to principal terms and conditions of PDS in the following circumstances:

- (a) PDS which has been approved or deemed approved by the SC and has already been issued; or
- (b) PDS which has been deemed approved by the SC but not yet issued.

12.06 The issuer must notify the SC of such revision through its principal adviser within 14 business days after the date of the proposed revision comes into effect.

12.07 Notification to the SC is made by submitting to the SC the relevant documents and information as set out in Appendix 1 of these Guidelines.

- 12.08 Prior to submitting the documents and information as required under paragraph 12.07, the principal adviser must ensure that the issuer has obtained consent from the relevant parties for the proposed revision to principal terms and conditions, if such consent is required.
- 12.09 Where consent from investors 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 investors' approval. This includes the requirement that the issuer or any interested persons of the issuer abstain from voting in the meeting convened to obtain investors' approval;
 - (b) all material information pertinent to the revision, including the impact on credit rating, has been disclosed to investors;
 - (c) two separate announcements, where applicable, have been made on FAST – one on the proposed revision which must be announced prior to obtaining investors' approval and another on the outcome of the investors' decision which must be made immediately after the investors' decision. For a PDS that is listed and traded on the stock exchange, these announcements must be made on the stock exchange; and
 - (d) the announcements made on FAST or the stock exchange are copied to the SC within two business days from the date of the announcements.

Non-application of requirements

- 12.10 The requirements in this chapter, except for paragraph 12.01, do not apply to revisions made to foreign currency-denominated PDS which is:
- (a) issued or offered by Malaysian issuer exclusively to investors outside Malaysia; or
 - (b) an issue, offer or invitation to subscribe or purchase foreign currency-denominated PDS in Malaysia through a roadshow. The responsibility to notify investors in Malaysia shall reside with the principal adviser involved.

Approval for upsizing of a debt programme

- 12.11 The SC may grant its approval for an upsizing of a debt programme, subject to the following conditions:

- (a) The voting for the debt 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 application submitted to the SC in relation to the debt programme.

12.12 An issuer whose existing debt programme had been earlier approved by the SC is allowed to upsize its existing debt programme, provided that the conditions stipulated in paragraph 12.11(a) are complied with and the issuer has obtained consent from the relevant parties (including investors) for the proposed upsizing.

12.13 Notwithstanding the above, an issuer must ensure that any exercise to upsize a debt programme shall not unfairly discriminate against or is otherwise prejudicial to existing investors of the debt programme.

PART C: APPROVAL FOR AN ISSUANCE, OFFERING OR INVITATION TO SUBSCRIBE OR PURCHASE PRIVATE DEBT SECURITIES

Chapter 13

APPROVAL

SC Approval

General

- 13.01 The SC may grant its approval for a proposed issue, offer or invitation to subscribe or purchase PDS within 14 business days from the date of receipt of complete documents and full compliance with relevant requirements as provided in these Guidelines.
- 13.02 The approval from the SC for a debt programme is granted on the basis of continuous compliance by the issuer with all the relevant terms and conditions stated in these Guidelines. In the event of a non-compliance with any requirement in these Guidelines by the issuer of a debt programme, the SC may impose further terms and conditions, including restricting the issuer from making further issues, offers or invitations to subscribe or purchase PDS under the debt programme until such non-compliance is remedied to the SC's satisfaction.

Foreign currency-denominated private debt securities through a roadshow

- 13.03 A proposed issue, offer or invitation to subscribe or purchase foreign currency-denominated PDS through a roadshow may be approved by the SC subject to the following conditions:
- (a) the roadshow must be conducted by authorised representatives of the foreign issuer with a Malaysian adviser who is appointed by the foreign issuer; and
 - (b) documentation of the proposed issue or offer must conform to international standards or standards which are acceptable in the Malaysian market.

Deemed Approved

Ringgit-denominated and foreign currency-denominated private debt securities

- 13.04 A proposed issue, offer or invitation to subscribe or purchase PDS by a Multilateral Development Bank (MDB) or Multilateral Financial Institution (MFI) will be deemed approved by the SC.
- 13.05 In the case of any other proposed issue, offer or invitation to subscribe or purchase PDS, it will be deemed approved by the SC upon fulfilling the following conditions:
- (a) In the case of a ringgit-denominated PDS, it has been assigned–
 - (i) a local rating of AAA by a domestic credit rating agency registered with the SC; or
 - (ii) an international rating of at least BBB- (or its equivalent) or a regional rating of AAA by an international credit rating agency. The use of an international rating or regional rating is subject to the requirements set out under paragraph 4.07;
 - (b) In the case of a foreign currency-denominated PDS which is originated in Malaysia, it has been assigned an international rating of at least BBB- (or its equivalent) on the date of application; or
 - (c) In the case of a multi-currency PDS which includes both ringgit-denominated and foreign currency-denominated PDS, the requirements under sub-paragraph 13.05(a) and 13.05(b) have been and continue to be complied with.
- 13.06 For the purpose of sub-paragraph 13.05(b), a proposed issue, offer or invitation to subscribe or purchase foreign currency-denominated PDS is considered to be originated in Malaysia if the following conditions are fulfilled:
- (a) A licensed bank, investment bank, universal broker or special scheme broker in Malaysia is appointed as a main adviser or co-adviser and this must be clearly stated in an information memorandum or offer document for the proposed issue, offer or invitation to subscribe or purchase the foreign currency-denominated PDS; and
 - (b) The marketing and placement of the PDS in Malaysia is performed by the Malaysian adviser.

13.07 The deemed approved process does not apply to an issue, offer or invitation to subscribe or purchase–

- (a) asset-backed securities (ABS); and
- (b) PDS where the issuer is a special purpose vehicle with all of the following characteristics:
 - (i) it does not employ any officer or manager for its business operations;
 - (ii) it does not actively carry out any business activity; and
 - (iii) investors of the PDS do not have any full financial recourse to any entity¹ that is assigned a local rating of AAA by a domestic credit rating agency or an international rating of at least BBB- (or its equivalent) by an international credit rating agency.

For the purpose of sub-paragraph 13.07(b)(iii), the term “full financial recourse” means irrevocable and unconditional guarantee from a corporation, licensed institutions or other financial institutions on the full amount of a debt programme or any issue, offer or invitation to subscribe or purchase PDS.

Negotiable instruments of deposit programme by licensed institutions

13.08 A proposed issue, offer or invitation to subscribe or purchase negotiable instruments of deposit (NID) with a tenure of more than five years² by licensed institutions will be deemed approved by the SC.

13.09 For a fixed-rate NID with a tenure of more than five years issued or offered by a licensed institution, the licensed institution must continuously comply with the following requirements for the approval to be considered valid throughout the tenure of the programme:

- (a) The licensed institution must disclose to investors the inherent risks, including credit risks and price risks, in investing in NIDs; and
- (b) The licensed institution must state clearly to investors the settlement procedures for any early redemption or termination of the issue.

¹ Inclusive of an entity with senior unsecured obligation which is rated either local rating of AAA or international rating of at least BBB- or its equivalent, where applicable.

² To be read together with *Securities Commission (Non-Application of the Definition of Debenture) Order 2007*.

- 13.10 Other than the requirements stated in paragraphs 13.09, 14.03, 14.04 and 14.05, the other requirements in these Guidelines are not applicable to fixed-rate NIDs with a tenure of more than five years issued by a licensed institution.
- 13.11 Floating-rate NIDs with a tenure of more than five years and fall within the definition of structured products are subject to the Guidelines on the Offering of Structured Products and not these Guidelines.

SUBMISSION OF APPLICATION FOR APPROVAL

- 14.01 An issuer of a PDS must submit its application for approval to the SC through a principal adviser.
- 14.02 An MDB or MFI may however submit its application for approval directly to the SC or through a principal adviser.
- 14.03 All documents to be submitted to the SC must be in two hard copies and one electronic copy.
- 14.04 Any submission in electronic copy must be prepared in the manner specified in Appendix 2 of these Guidelines.
- 14.05 The documents and information to be submitted to the SC for the purpose of approval are set out in the following appendices:
- (a) Appendix 3 – SC approval and deemed approval
 - (b) Appendix 4 – SC approval for foreign currency-denominated PDS through a roadshow
 - (c) Appendix 5 – Deemed approval for NID programme
 - (d) Appendix 7 – SC approval for upsizing of debt programme
- 14.06 An issuer and its principal adviser must furnish any other documents or information, as requested by the SC.

SUBMISSION OF INFORMATION TO THE SC POST APPROVAL

15.01 Upon obtaining an approval from the SC, the documents and information specified in Appendix 6 of these Guidelines must be submitted to the SC by–

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

PART D: REQUIREMENTS FOR AN ISSUANCE, OFFERING OR INVITATION TO SUBSCRIBE OR PURCHASE RETAIL PRIVATE DEBT SECURITIES

Chapter 16

RETAIL PRIVATE DEBT SECURITIES

16.01 This chapter sets out the additional requirements for retail PDS.

16.02 Unless otherwise specified, all other requirements stated in these Guidelines are applicable to retail PDS.

Retail PDS issuers

16.03 Notwithstanding the eligible issuers specified in paragraph 3.01, a retail PDS can only be issued by–

- (a) a public company whose shares are listed on Bursa Securities;
- (b) a financial institution licensed under the *Banking and Financial Institutions Act 1989* or *Islamic Banking Act 1983*;
- (c) Cagamas Bhd; or
- (d) a public company whose shares are not listed on Bursa Securities, provided that the PDS is irrevocably and unconditionally guaranteed in full by –
 - (i) any of the entities referred to in the above sub-paragraph (a), (b) or (c);
 - (ii) Danajamin Nasional Bhd; or
 - (iii) Credit Guarantee and Investment Facility.

Eligible PDS

16.04 For an issue, offer or invitation to subscribe or purchase PDS to retail investors, a PDS must be denominated in ringgit Malaysia with a tenure of more than one year and must have the following characteristics:

- (a) fixed term with principal and any accrued interest/returns payable at expiry;
- (b) fixed or variable rate of return;
- (c) except for zero-coupon PDS, interest/returns to be paid periodically on certain specified intervals from the issue date;
- (d) rank at least equally with amounts owing to unsecured and unsubordinated creditors; and
- (e) does not embed any swaps, options or other derivatives, except in the case of convertible or exchangeable PDS where the option is to convert or exchange the PDS into shares:
 - (i) the option is at the discretion of the investor; and
 - (ii) the underlying shares are listed on Bursa Securities.

16.05 Notwithstanding paragraph 16.04, retail PDS must not include–

- (a) ABS that fall within the definition of “asset-backed securities” under the Guidelines on the Offering of Asset-Backed Securities (“ABS Guidelines”); or
- (b) PDS that is structured like ABS, where the PDS is without recourse to an originator or obligor, or where the ability to meet obligations under the senior tranche is enhanced by the less senior tranche(s), but does not fall under the purview of the ABS Guidelines.

Approval

16.06 Chapter 13 of these Guidelines is not applicable to retail PDS.

16.07 The SC may grant its approval and register the prospectus/disclosure document for a proposed issue, offer or invitation to subscribe or purchase retail PDS subject to receipt of complete documents and full compliance with relevant requirements as provided in these Guidelines.

16.08 For the purpose of paragraph 16.07, a complete set of documents must include–

- (a) the documents and information set out in Appendix 3 of these Guidelines; and

- (b) a registrable prospectus/disclosure document (except where an abridged prospectus or a modified prospectus complying with the form and content of an abridged prospectus is applicable, in which case Chapter 3 of Part II of the Prospectus Guidelines will apply).

16.09 The registrable prospectus/disclosure document submitted to the SC must be complete and complies in full with the requirements of Division 2 of the SC's Prospectus Guidelines/Guidelines on Disclosure Documents and Offering Documents.

16.10 An issuer of a retail PDS must disclose in its submission to the SC the–

- (a) indicative size of the retail portion; and
- (b) method of distribution.

16.11 Notwithstanding paragraph 16.08, the SC may approve a retail PDS under an existing approved debt programme provided that the issuer submits to the SC–

- (a) a marked-up copy of the revised principal terms and conditions; and
- (b) a registrable prospectus/disclosure document; or
- (c) a base prospectus/disclosure document together with the pricing supplement, in relation to the retail PDS.

Summary advertisement of prospectus/disclosure document

16.12 The issuer is required to publish a summary advertisement of its prospectus/disclosure document in at least one national newspaper which is widely circulated.

16.13 The summary advertisement must include the following statement and information:

- (a) a statement advising investors to read and understand the contents of the prospectus/disclosure document before investing and to make their own risk assessment and seek professional advice, where necessary;
- (b) brief description of the retail PDS;
- (c) the risks specific to the retail PDS referred to in the advertisement;
- (d) the date of the prospectus/disclosure document;

- (e) the opening and closing dates of the application for subscription of the retail PDS; and
- (f) where a copy of the prospectus/disclosure document can be obtained.

Continuous disclosure obligations

16.14 Where the retail PDS is to be offered via the stock exchange, the issuer must comply with the continuous disclosure obligations set out in the Listing Requirements of Bursa Securities.

16.15 Where the retail PDS is to be offered to retail investors over-the-counter (OTC), the issuer must disclose on a platform as may be specified by the SC, any information which may have a material effect on–

- (a) the price or value of the retail PDS; or
- (b) an investor's decision whether to invest in that retail PDS.

16.16 In addition to paragraph 16.15, the issuer must immediately announce the following on the platform specified by the SC:

- (a) any issuance of a new tranche or programme by the issuer;
- (b) any change in the terms of the retail PDS;
- (c) any redemption or cancellation of the retail PDS;
- (d) any amendment to the trust deed;
- (e) any appointment or replacement of bond trustee or where applicable, paying agent;
- (f) any occurrence of an event of default under the trust deed;
- (g) credit rating of the retail PDS, including a summary of the rating report relevant to the retail PDS published by a credit rating agency;
- (h) any event which requires an immediate notification to the bond trustee under the trust deed; and
- (i) any meeting of investors (other than a meeting convened to pass a special resolution), at least 14 days before such meeting is held, and in the case of a meeting convened to pass a special resolution, at least 21 days before such meeting is held. The announcement must include the date of the Record of Depositors which determines whether a depositor shall be regarded as a PDS holder, hence entitled to attend, speak and vote at the meeting of the investors.

16.17 The issuer must announce the maturity date of each issuance of the retail PDS at least one month before the maturity date.

Non-application of requirements

16.18 The requirements under paragraphs 16.07, 16.09, 16.12 and 16.13 shall not apply to a retail PDS that is traded on the secondary market if a prospectus/base prospectus/disclosure document has already been registered with the SC in relation to the issue of retail PDS in the primary market.

DOCUMENTS AND INFORMATION TO BE SUBMITTED TO THE SC FOR REVISION OF PRINCIPAL TERMS AND CONDITIONS

- 1.01 A notification letter to the SC on the revision which includes the following:
- (a) Rationale for each revision;
 - (b) Confirmation that the relevant requirements (as set out in Chapter 12 of these Guidelines) have been duly complied with by the issuer; and
 - (c) Details of the contact person of the principal adviser including name, telephone number, facsimile number and e-mail address.
- 1.02 A marked-up version copy of the revised principal terms and conditions.
- 1.03 A copy of the written consent from the relevant parties in relation to the revision.
- 1.04 The following documents, where applicable:
- (a) supplementary information memorandum;
 - (b) supplementary offering circular;
 - (c) executed supplementary trust deed; and
 - (d) other offer documents.
- 1.05 Any other material information in relation to the revision.
- 1.06 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-
 - Font - Arial
 - Font size - 11
 - Margins (Top, Down, Right, Left) - 1.25"
 - Spacing - single
 - (b) where applicable, the supplementary information memorandum, supplementary offering circular, executed supplementary trust deed and other offer documents.

ELECTRONIC SUBMISSIONS

- 1.01 All correspondences to be submitted to the SC (except e-mails) must be accompanied by electronic copy in text-searchable format PDF (PDF-text) file in the following manner, unless otherwise stated in these Guidelines:
- (a) All signed correspondences (including appendices), such as cover letters, declarations, reports, etc, must be scanned with OCR (optical character recognition) and saved as PDF-text files; and
 - (b) The PDF-text files can be submitted to the SC via a CD or e-mail (up to 10 MB in size per e-mail). The e-mail address is bondsubmission@seccom.com.my. Please indicate in the cover letters on how the PDF-text files are to be submitted concurrently, as well as the particulars of the e-mail if relevant (i.e. sender, subject, date and time sent).

The electronic copy of the main applications, including the registerable prospectus/disclosure document and supporting documents, must be submitted in text- searchable format PDF-text files. Please ensure that the PDF-text files must be in a readable and proper condition.

DOCUMENTS AND INFORMATION TO BE SUBMITTED TO THE SC FOR SC APPROVAL AND DEEMED APPROVAL

PART 1: APPLICATION

- 1.01 An application letter which includes the following:
- (a) Background information on the issuer;
 - (b) Background information on the originator in the case of an ABS issue/programme, where applicable;
 - (c) Profile of directors of issuer, including–
 - (i) National Registration Identity Card numbers for Malaysian directors; and
 - (ii) passport numbers for non-Malaysian directors;
 - (d) A description of the transaction and structure of the issue or debt programme. In addition, specify whether it is a one-time issue or a debt programme;
 - (e) Details of the utilisation of proceeds, including its schedule where applicable;
 - (f) Primary and secondary sources of repayment;
 - (g) Detailed breakdown of all upfront and recurring fees and expenses for the issue/debt programme;
 - (h) Waivers from complying with these Guidelines and other relevant guidelines of the SC obtained for the proposed issue/debt programme (if any);
 - (i) Conflict-of-interest situations and appropriate mitigating measures;
 - (j) Detailed information of the existing PDS issue and/or loans to be refinanced by the proposed issue/debt programme, where applicable;
 - (k) A copy of the letter from credit rating agencies pertinent to the credit rating for the issue or offer;
 - (l) Any other material information in relation to the issue/debt programme; and

- (m) Name, telephone number, facsimile number and e-mail address of the officer-in-charge for the issue/debt programme.
- 1.02 Principal terms and conditions of the proposal (as per Part 2 of Appendix 3).
- 1.03 Copies of approval letters from all other relevant regulatory authorities.
- 1.04 Compliance checklist on these Guidelines.

Additional documents to be submitted for SC Approval

- 1.05 The following additional documents are to be submitted:
 - (a) Issuer's declaration (as per Part 3 of Appendix 3); and
 - (b) Latest audited financial statements of the issuer.

PART 2: PRINCIPAL TERMS AND CONDITIONS OF THE PROPOSAL

2.01 Background information

- (a) Issuer:
- (i) Name;
 - (ii) Address;
 - (iii) Business registration number;
 - (iv) Date and place of incorporation;
 - (v) Date of listing, where applicable;
 - (vi) Status on residence, i.e. whether it is a resident controlled company or non-resident controlled company;
 - (vii) Principal activities;
 - (viii) Board of directors;
 - (ix) Structure of shareholdings and names of shareholders or, in the case of a public company, names of all substantial shareholders;
 - (x) Authorised, issued and paid-up capital; and
 - (xi) Disclosure of the following:
 - If the issuer or its board members have been convicted or charged with any offence under the securities laws, corporation laws or other laws involving fraud or dishonesty in a court of law, for the past five years prior to the date of application; and
 - If the issuer has been subjected to any action by the stock exchange for any breach of the listing requirements or rules issued by the stock exchange, for the past five years prior to the date of application.

Where the issuer is a special purpose vehicle and is a conduit to another entity which receives proceeds from the proposed issue or offer, the information as set out in sub-paragraph 2.01(a) must also be provided on the said entity.

- (b) Originator (in the case of ABS):
- (i) Name;
 - (ii) Address;

- (iii) Business registration number;
- (iv) Date and place of incorporation;
- (v) Date of listing, where applicable;
- (vi) Status on residence, i.e. whether it is a resident controlled company or non-resident controlled company;
- (vii) Principal activities;
- (viii) Board of directors;
- (ix) Structure of shareholdings and names of shareholders or, in the case of a public company, names of all substantial shareholders; and
- (x) Authorised, issued and paid-up capital.

2.02 Principal terms and conditions

- (a) Names of parties involved in the proposal, where applicable:
 - (i) Principal adviser;
 - (ii) Lead arranger;
 - (iii) Co-arranger;
 - (iv) Solicitor;
 - (v) Financial adviser;
 - (vi) Technical adviser;
 - (vii) Bond trustee;
 - (viii) Guarantor;
 - (ix) Valuer;
 - (x) Facility agent;
 - (xi) Primary subscriber (under a bought-deal arrangement) and amount subscribed;
 - (xii) Underwriter and amount underwritten;
 - (xiii) Central depository;
 - (xiv) Paying agent;
 - (xv) Reporting accountant;

- (xvi) Calculation agent; and
- (xvii) Others (please specify);
- (b) Facility description;
- (c) Issue/debt programme size;
- (d) Tenure of issue/debt programme;
- (e) Availability period of debt programme;
- (f) Interest/coupon rate;
- (g) Interest/coupon payment frequency;
- (h) Interest/coupon payment basis;
- (i) Security/collateral, where applicable;
- (j) Details on utilisation of proceeds by issuer and originator (in the case of ABS). If proceeds are to be utilised for project or capital expenditure, description of the project or capital expenditure, where applicable;
- (k) Sinking fund and designated accounts, where applicable;
- (l) Rating:
 - Credit ratings assigned and whether the rating is final or indicative. In the case of a debt programme where the credit rating is not assigned for the full amount, disclosures set out in paragraph 4.04 of these Guidelines must be made: and
 - Name of credit rating agencies;
- (m) Mode of issue;
- (n) Selling restriction, including tradability, i.e. whether tradable or non-tradable;
- (o) Listing status and types of listing, where applicable;
- (p) Other regulatory approvals required in relation to the issue, offer or invitation to subscribe or purchase PDS, and whether or not obtained;
- (q) Conditions precedent;
- (r) Representations and warranties;
- (s) Events of default and enforcement event, where applicable;
- (t) Covenants;

- (u) Provisions on buy-back and early redemption of PDS; and
- (v) Other principal terms and conditions for the proposal.

PART 3: DECLARATION BY THE ISSUER

Date

The Chairman
Securities Commission Malaysia

ISSUER ...(Name of Issuer)... Declaration under–

- the *Guidelines on Private Debt Securities* and
- the *Equity Guidelines**¹

We, ...(Name of Issuer)... are proposing to undertake the following proposals-

- (a)
- (b)
- (c)

(hereinafter referred to as "the Proposal").

2. We confirm that after having made all reasonable enquiries, and to the best of our knowledge and belief, there is no false or misleading statement contained in, or material omission from, the information that is provided to the adviser(s)/expert(s) or to the SC in relation to the above Proposal.
3. We declare that we are satisfied after having made all reasonable enquiries that the Proposal is in full compliance/will be in full compliance with the following:
 - (a) *Guidelines on Private Debt Securities*;
 - (b) *Guidelines on Sukuk**;
 - (c) *Guidelines on the Offering of Asset-Backed Securities**;
 - (d) *Trust Deeds Guidelines**;
 - (e) *Equity Guidelines**¹;
 - (f) The requirements of the Controller of Foreign Exchange with respect to the Proposal*; and
 - (g) Other requirements under the *Capital Markets and Services Act 2007* as may be applicable.
4. (Save as otherwise disclosed in the attachment accompanying this declaration)*, the Company has not been-
 - (a) convicted or charged with any offence under the securities laws, corporations laws or other laws involving fraud or dishonesty in a

court of law, for the past ten years prior to the submission/since incorporation (if less than ten years)*;

(b) subjected to any action by the stock exchange for any breach of the listing requirements or rules issued by the stock exchange, for the past five years prior to the submission².

5. We declare the following in accordance with the Equity Guidelines-

(a) The Proposal results/does not result in a significant change in the business direction or policy of the listed company³; and

(b) The Proposal is/is not a related-party transaction⁴.

6. We declare that we will ensure continuous compliance with the requirements and conditions imposed by the SC in relation to the above Proposal and agree that we will continuously submit annual audited financial statements if the documents are required by the SC under the *Capital Markets and Services Act 2007*.

7. We undertake to provide all such information as the SC may require in relation to the Proposal.

The above Declaration has been signed by me as ...(designation of authorised signatory)... of the Issuer under the authority granted to me by a resolution of....(the Board of Directors).... on ...(date of resolution)...

Yours faithfully,

.....
Signature
Name -
Name of Issuer –
Date -

Notes

¹ Applicable only in relation to Proposals falling under the Equity Guidelines.

^{2, 3, 4} Applicable only to proposals for listed companies.

* To delete if not applicable

DOCUMENTS AND INFORMATION TO BE SUBMITTED TO THE SC FOR SC APPROVAL OF FOREIGN CURRENCY-DENOMINATED PRIVATE DEBT SECURITIES THROUGH A ROADSHOW

- 1.01 An application letter which includes the following:
- (a) Background information on the issuer;
 - (b) Profile of directors of issuer, including:
 - (i) National Registration Identity Card numbers for Malaysian directors; and
 - (ii) passport numbers for non-Malaysian directors;
 - (c) A description of the transaction and structure of the issue or debt programme. In addition, specify whether it is a one-time issue or a debt programme;
 - (d) Details of the utilisation of proceeds, including its schedule where applicable;
 - (e) Name, telephone number, facsimile number and e-mail address of the officer-in-charge for the issue/programme; and
 - (f) Any other material information in relation to the issue/programme.
- 1.02 Term sheet or offer documents such as offering circular.
- 1.03 Declaration from the Malaysian principal adviser that the requirements under paragraph 13.03 have been complied with.
- 1.04 An undertaking by the issuer that the rating report (if applicable) and amount issued to investors in Malaysia will be submitted to the SC within seven business days after the issue.

DOCUMENTS AND INFORMATION TO BE SUBMITTED TO THE SC FOR DEEMED APPROVAL OF NEGOTIABLE INSTRUMENTS OF DEPOSIT PROGRAMME BY LICENSED INSTITUTIONS

- 1.01 An application letter which is addressed to the SC and signed by the authorised officers of the issuer.
- 1.02 The application letter must include the following information:
 - (a) Size of programme;
 - (b) Maturity date of programme; and
 - (c) Prevailing credit rating of the licensed institution.

DOCUMENTS AND INFORMATION TO BE SUBMITTED TO THE SC POST SC APPROVAL AND DEEMED APPROVAL

1.01 The principal advisers must submit the following information and documents to the SC via DS@seccom.com.my prior to the issue date of PDS or the first issue under a programme:

- (a) Date, size and tenure of issue; and
- (b) Soft copy of the following documents (clean version in 'PDF' format):
 - (i) Information memorandum, where applicable;
 - (ii) Global MTN base prospectus/disclosure document, where applicable, if the information memorandum or offering circular is to be read together with the base prospectus;
 - (iii) Executed trust deed, where applicable; and
 - (iv) Principal terms and conditions in the following format:
 - Font - Arial
 - Font size - 11
 - Margins (Top, Down, Right, Left) - 1.25"
 - Spacing - single

1.02 The principal advisers must also submit a hard copy of the following information and documents to the SC prior to the issue date (or the first issue if under a programme):

- (a) Date of issue;
- (b) Size of issue;
- (c) Tenure of issue;
- (d) Mode of issue;
- (e) Coupon/interest rate of the issue;
- (f) Names of the primary subscribers/placees/investors and the respective amounts subscribed, primary subscription rates/yield-to-maturity;
- (g) List of tender panel members, if any;
- (h) Utilisation of proceeds raised from the issue;
- (i) A certified true copy of the executed trust deed, where applicable; and

- (j) A copy of the rating report. If the issue is unrated, confirmation from the principal adviser that the PDS is non-transferable and non-tradable, and the investors do not require a rating.

1.03 Confirmation from the principal adviser that–

- (a) designated accounts, if any, have been duly established and the authorised signatories to those accounts have undertaken/agreed to administer the designated accounts in accordance with the provisions stated in the principal terms and conditions of the proposal;
- (b) prospective investors and relevant parties have been informed of any instance where a conflict of interest situation may arise together with the relevant mitigating measures, including the agreement from the Board of Directors of the issuer to proceed with such arrangements;
- (c) with respect to PDS issues/debt programmes issued by a private company, the PDS issue/debt programme shall not constitute an offer to the public within the meaning of section 4(6) of the *Companies Act 1965*, and are not offered/sold, directly or indirectly other than to a person falling under Schedule 6 or section 229(1)(b) and Schedule 7 or section 230(1)(b), read together with Schedule 9 or section 257(3) of the CMSA; and
- (d) all other conditions of approval that has been/may be imposed by the SC has been/will be complied with.

DOCUMENTS AND INFORMATION TO BE SUBMITTED TO THE SC FOR APPROVAL TO UPSIZE A DEBT PROGRAMME

- 1.01 The principal adviser must submit two hard copies and one soft copy (in accordance with Appendix 2) of the following information and documents:
- (a) An application letter which includes the following:
 - (i) Background information on the issuer;
 - (ii) Current amount of debt outstanding under the debt programme;
 - (iii) Justification for the proposed upsizing;
 - (iv) Proposed new issuance limit under the programme;
 - (v) Proposed utilisation of proceeds;
 - (vi) Confirmation that the option to upsize was disclosed in the initial application or confirmation that consent from all relevant parties (to disclose identity of relevant parties) have approved the proposed upsizing of the programme;
 - (vii) Any conflict-of-interest situations and appropriate mitigating measures;
 - (viii) Any other material information in relation to the proposed upsizing;
 - (ix) Name, telephone number, facsimile number and email address of the officer-in-charge for the proposed upsizing of the programme;
 - (b) Copies of approval letters from all other relevant regulatory authorities, if applicable;
 - (c) Issuer's declaration (as per Part 3 of Appendix 3); and
 - (d) Latest audited financial statements of the issuer.