



**Suruhanjaya Sekuriti**  
Securities Commission

# **GUIDELINES ON THE OFFERING OF ASSET-BACKED SECURITIES**

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## **1.0 INTRODUCTION**

1.01 Securitisation brings much benefit to both issuers and investors. For issuers, it potentially offers cheaper and more efficient funding for operations combined with greater balance sheet flexibility. For investors, securitisation provides a broad selection of fixed income alternatives. In order to facilitate the issuance of asset-backed securities in the Malaysian capital market, the *Guidelines on the Offering of Asset-Backed Securities* sets out clear and transparent criteria for securitisation transactions as required by the SC pursuant to section 32 of the *Securities Commission Act 1993* (SCA).

## **2.0 SCOPE**

2.01 Any person who wishes to issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase ("issue, offer or invitation"), asset-backed securities must seek the approval of the SC under section 32 SCA by complying with the criteria under these Guidelines as well as the *Guidelines on the Offering of Private Debt Securities* (PDS Guidelines) or the *Guidelines on the Offering of Islamic Securities* (IS Guidelines), where applicable.

## **3.0 INTERPRETATION**

3.01 In these Guidelines, unless the context otherwise requires, the following words and expressions shall have the following meaning:

asset-backed securities or ABS	means private debt securities or Islamic securities that are issued pursuant to a securitisation transaction. Such securities shall exclude all debt securities or Islamic securities that are capable of being converted into equity howsoever and whether redeemable or otherwise. Examples of such excluded securities include exchangeable bonds and private debt securities or Islamic securities with attached warrants.
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assets	refers to such assets which are the subject matter of a securitisation transaction and which
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satisfy all criteria as stipulated in these guidelines.

credit enhancement

refers to 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.

originator

refers to any entity that is seeking to transfer or dispose of its assets to a special purpose vehicle in a securitisation transaction.

securitisation transaction

means an arrangement which involves the transfer of assets or risks to a third party where such transfer is funded by the issuance of debt securities or Islamic securities to investors. Payments to investors in respect of such debt securities or Islamic securities are principally derived, directly or indirectly, from the cash flows of the assets.

servicer

refers to 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.

special purpose vehicle or SPV

means any entity which issues asset-backed securities and which satisfies all criteria stipulated under these guidelines.

#### **4.0 REQUIREMENTS FOR ASSETS THAT MAY BE SECURITISED**

4.01 The assets that are the subject matter of a securitisation transaction must fulfil all of the following criteria:

- (1) The assets must generate cash flow;
- (2) The Originator has a valid and enforceable interest in the assets and in the cash flows of the assets prior to any securitisation transaction;
- (3) 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-
  - (a) that the necessary regulatory or contractual consents have been obtained in order to effect the transfer of such assets from an Originator to an SPV;
  - (b) that 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;
- (4) The assets are transferred at a fair value;
- (5) No trust or third party's interest appears to exist in competition with an originator's interest over the assets; and
- (6) 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.

4.02 Where the issue, offer or invitation of ABS is Islamic in nature, the assets that are the subject matter of the securitisation transaction must be acceptable in accordance with Syariah principles. In the event of doubt, clarification should be sought from the Syariah Advisory Council of the SC.

## **5.0 THE ORIGINATOR**

- 5.01 An originator must be an entity incorporated in Malaysia.
- 5.02 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.
- 5.03 Any transfer of assets by an originator to an SPV must comply with the true sale criteria that are set out in section 6 of these guidelines.
- 5.04 Save for paragraph 5.05, 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.
- 5.05 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.
- 5.06 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.

## **6.0 TRUE SALE CRITERIA**

- 6.01 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.
- 6.02 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.

- 6.03 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.
- 6.04 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.
- 6.05 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.
- 6.06 Notwithstanding the provisions of paragraphs 6.01 to 6.05:
- (a) Where such assets have declined to a level that renders the asset securitisation transaction uneconomical to carry on, an originator may retain a first right of refusal to repurchase assets from an SPV at a fair value; or
  - (b) The originator may repurchase assets from the SPV 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.

## **7.0 THE SPECIAL PURPOSE VEHICLE (SPV)**

- 7.01 An SPV must be resident in Malaysia for tax purposes.
- 7.02 An SPV must have independent and professional directors or trustees as the case may be.
- 7.03 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.

7.04 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.

7.05 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 issue, offer or invitation of ABS.

7.06 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 approved by 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.

7.07 Where an SPV is constituted as a trust, the SPV need not comply with the "eligible persons" provision under paragraph 5.01 of the PDS Guidelines.



## **8.0 ADDITIONAL TRUST DEED REQUIREMENTS**

8.01 In addition to the requirements imposed under the *Guidelines on Minimum Content Requirements for Trust Deeds*, the trust deed documentation in any securitisation transaction must also provide for the following:

- (a) Covenants should be imposed 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.

## **9.0 DISCLOSURE REQUIREMENTS**

9.01 Where a prospectus is not required, an information memorandum must be made available to the investors in relation to any issue, offer or invitation of ABS. The information memorandum 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 private debt securities or Islamic securities;
  - (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.

9.02 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.

- 9.03 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.
- 9.04 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.
- 9.05 Where an Originator intends to subscribe or tender for the ABS, this must be clearly disclosed to investors.

## **10.0 SERVICER**

10.01 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.

## **11.0 SUBMISSION OF APPLICATION TO THE SC**

11.01 The application for approval of the securitisation transaction must, in addition to the requirements specified in the PDS Guidelines, include the following:

- (a) A description of the structure of the securitisation transaction;

- (b) The preliminary rating report;
- (c) A copy of the constituent document, such as the Memorandum and Articles of Association of an SPV;
- (d) A legal opinion as to whether the true sale criteria has been met;
- (e) A copy of all other required regulatory approvals;
- (f) A valuation report by independent, registered valuers in the event that the assets which are the subject matter of a securitisation transaction include real property;
- (g) Compliance checklist on the ABS, PDS and IS Guidelines by principal advisers; and
- (h) All duly executed declarations as per Appendix 1 of these guidelines which shall supersede the required declarations under the PDS and IS Guidelines, where applicable.

11.02 Where the issue, offer or invitation of ABS is Islamic in nature, such issue, offer, or invitation must continue to comply with the IS Guidelines.

## **12.0 UTILISATION OF PROCEEDS**

12.01 Funds raised from any issue, offer or invitation of ABS under these guidelines must not be channelled by the originator and the SPV to finance such activities as may be announced by the National Bond Market Committee from time to time.

## **13.0 TIME FRAME FOR APPROVAL FROM THE SC**

13.01 The SC would give its approval within 28 working days from the date of receipt of all declarations, complete information and documentation required under these Guidelines.

13.02 Where the *Policies and Guidelines on Issue/Offer of Securities* (Issues Guidelines) would also apply to a securitisation transaction, the time frame for approval stated in paragraph 13.01 shall not apply.

#### **14.0 OTHER REGULATORY APPROVALS**

14.01 All necessary approvals in relation to the issue, offer or invitation of ABS from other regulatory bodies must be applied for and approved prior to the submission of any written declarations and information made to the SC under these guidelines. Any condition imposed by such regulatory bodies, if applicable, must continue to be complied with throughout the tenor of the ABS approved under these guidelines.

**Declaration by the Issuer**

Date: ...(Date of Application)...

The Chairman  
Securities Commission

Dear Sir

**ISSUER ...(Name of Issuer)...**  
**Declaration Pursuant to:**

- **Paragraph 11.01 of the *Guidelines on the Offering of Asset-Backed Securities*, AND**
- **Paragraph 16.02 of the *Policies and Guidelines on Issue/Offer of Securities* \***

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 with the following:

- (a) The *Policies and Guidelines on Issue/Offer of Securities*<sup>1</sup>;
- (b) The *Guidelines on the Offering of Private Debt Securities*<sup>\*</sup>;
- (c) The *Guidelines on the Offering of Islamic Securities*<sup>\*</sup>;
- (d) The *Guidelines on the Offering of Asset-Backed Debt Securities* as may be applicable to the issuer during the tenor of the Proposal<sup>\*</sup>;
- (e) The requirements of the Controller of Foreign Exchange with respect to the Proposal<sup>\*</sup>; and
- (f) Other requirements under the *Securities Commission Act 1993* as may be applicable.

\* To delete if not applicable

4. Save as otherwise disclosed in the attachment accompanying this declaration, the Company<sup>2</sup> has not-

- (a) been 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 last 10 years prior to the submission; and
- (b) been subject 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 submission.

5. We declare the following:

- (a) The Proposal involves/does not involve any acquisition of substantial foreign assets, in accordance with Chapter 11 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>3</sup>;
- (b) The Proposal results/does not result in a significant change in the business direction of the listed company, in accordance with Chapter 12 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>4</sup>;
- (c) The Issuer is/is not a distressed listed company, in accordance with Chapter 13 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>5</sup>;
- (d) The Proposal is/is not a related-party transaction in accordance with Chapter 10 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>6</sup>;

6. We declare that we will ensure continuous compliance with the requirements and conditions imposed by the SC in relation to the above Proposal.

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

The above Declaration has been signed by me as ...(designation of director)... of the Issuer pursuant to 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 *Policies and Guidelines on Issue/Offer of Securities*. Where an application is being made to the SC for proposals under the assessment approach and exemptions are being sought, to insert the words "except paragraph(s) ..(refer to paragraph where exemption is being sought).. where exemption(s) is/are being sought as part of the submission to the SC."
  
- 2                         Applicable only to proposals in relation to public companies.
  
- 3                         Applicable only to the issue, offer or listing of equity or equity-linked securities by public companies.
  
- 4, 5, 6                   Applicable only to proposals in relation to listed companies.

\* To delete if not applicable



**Declaration by the Principal Adviser**

Date: ...(Date of Application)...

The Chairman  
Securities Commission

Dear Sir

**ISSUER ...(Name of Issuer)...**  
**Declaration Pursuant to:**

- **Paragraph 11.01 of the *Guidelines on the Offering of Asset-Backed Securities*, and**
- **Paragraph 16.02 of the *Policies and Guidelines on Issue/Offer of Securities*\***

...(Name of Issuer).... is proposing to undertake the following proposals:

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

(hereinafter referred to as "the Proposal").

We,..(Name of Principal Adviser)...., are advising ..(Name of Issuer).. on 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 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 with the following:-

- (a) The *Policies and Guidelines on Issue/Offer of Securities*<sup>1</sup>;
- (b) The *Guidelines on the Offering of Private Debt Securities* as maybe applicable to the principal adviser\*;
- (c) The *Guidelines on the Offering of Islamic Securities* as maybe applicable to the principal adviser\*;
- (d) The *Guidelines on the Offering of Asset-Backed Debt Securities* as may be applicable to the principal adviser\*;
- (e) The requirements of the Controller of Foreign Exchange with respect to the Proposal\*; and

- (f) Other requirements under the *Securities Commission Act 1993* as may be applicable.

\* To delete if not applicable

4. We declare the following:

- (a) The Proposal involves/does not involve any acquisition of substantial foreign assets, in accordance with Chapter 11 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>2</sup>;
- (b) The Proposal results/does not result in a significant change in the business direction of the listed company, in accordance with Chapter 12 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>3</sup>;
- (c) The Issuer is/is not a distressed listed company, in accordance with Chapter 13 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>4</sup>;
- (d) The Proposal is/is not a related-party transaction in accordance with Chapter 10 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>5</sup>;

5. We undertake to immediately inform the SC if it has come to our knowledge that the Issuer has breached or failed to comply with such requirements, after submission of this declaration relating to the Proposal until the implementation of the Proposal.

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

Yours faithfully

.....

Signature:

Name:

Name of Principal Adviser:

Date:

## Notes

- 1                   Applicable only in relation to Proposals falling under the *Policies and Guidelines on Issue/Offer of Securities*. Where an application is being made to the SC for proposals under the assessment approach and exemptions are being sought, to insert the words "except paragraph(s) ..(refer to paragraph where exemption is being sought).. where exemption(s) is/are being sought as part of the submission to the SC."
- 2                   Applicable only to the issue, offer or listing of equity or equity-linked securities by public companies.
- 3, 4, 5             Applicable only to proposals in relation to listed companies.

\* To delete if not applicable

**Declaration by the Originator**

Date: ...(Date of Application)...

The Chairman  
Securities Commission

Dear Sir

**ISSUER ...(Name of Issuer)...**  
**Declaration Pursuant to:**

- **Paragraph 11.01 of the *Guidelines on the Offering of Asset-Backed Securities*, or**
- **Paragraph 16.02(a) of the *Policies and Guidelines on Issue/Offer of Securities***

We, (Name of originator), are the originator seeking to transfer our assets to the Special Purpose Vehicle (SPV), (Name of the SPV or Issuer), who proposes to issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, RMXX Million Private Debt Securities or Islamic Securities (to specify) (the "ABS") of which the terms and conditions are specified in the Principal Terms and Conditions of the proposal.

2. We declare that we are satisfied after having made all reasonable enquiries that the proposed issue, offer or invitation is in full compliance with the requirements as stated in the *Guidelines on the Offering of Asset-Backed Securities*, *Guidelines on the Offering of Private Debt Securities*, *Guidelines on the Offering of Islamic Securities* as well as other requirements under the *Securities Commission Act 1993*, as may be applicable. We undertake that –

- (a) to the extent that such requirements are imposed on us, we shall continue to comply therewith during the tenor of the ABS; and
- (b) to the extent that such requirements are imposed on the Issuer, we shall ensure continuous compliance therewith up to the date on the ABS shall be issued.

3. We also declare that we have complied with all the requirements of the Controller of Foreign Exchange in respect to the proposed issue, offer or invitation.

4. 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 or material omission from the information that is provided to the principal adviser, (Name of Principal Adviser), or the SC.

5. We further undertake to provide the SC all such information as the SC may require in relation to the proposed issue, offer or invitation in respect of the RMXXX million Private Debt Securities or Islamic Securities (to specify)\*.

6. Save as otherwise disclosed in the attachment accompanying this declaration, the Company<sup>1</sup> has not-

- (a) been 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 last 10 years prior to the submission; and
- (b) been subject to any action by the stock exchange for any breach of the listing requirements or rules issued by the stock exchange, for the past 5 years prior to the submission.

7. We declare the following:

- (a) The Proposal involves/does not involve any acquisition of substantial foreign assets, in accordance with Chapter 11 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>2</sup>;
- (b) The Proposal results/does not result in a significant change in the business direction of the listed company, in accordance with Chapter 12 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>3</sup>;
- (c) The Issuer is/is not a distressed listed company, in accordance with Chapter 13 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>4</sup>;
- (d) The Proposal is/is not a related-party transaction in accordance with Chapter 10 of the *Policies and Guidelines on Issue/Offer of Securities*<sup>5</sup>;

The above Declaration has been signed by me as (Designation) of (Name of Originator) pursuant to the authority granted to me by resolution of the Board of Directors of (Name of Originator) on (Date of Resolution).

.....

Signature

Name:

Originator:

Date:

\* In the case of a Licensed Financial Institution, only to the extent as may be permitted by the *Banking and Financial Institutions Act 1989*

## Notes

- 1                   Applicable only to proposals in relation to public companies.
- 2                   Applicable only to the issue, offer or listing of equity or equity-linked securities by public companies.
- 3, 4, 5            Applicable only to proposals in relation to listed companies.