

# **GUIDELINES ON ISSUANCE OF PRIVATE DEBT SECURITIES AND SUKUK TO RETAIL INVESTORS**

**SC-GL/5-2015**

1<sup>st</sup> Issued: 15 June 2015

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## **PART A: GENERAL**

### **Chapter 1**

#### **INTRODUCTION**

1.01 The *Guidelines on Issuance of Private Debt Securities and Sukuk to Retail Investors* is issued by the Securities Commission Malaysia (SC) under section 377 of the *Capital Markets and Services Act 2007* (CMSA).

1.02 These Guidelines set out the requirements for an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase private debt securities (PDS) or sukuk to retail investors.

1.03 These Guidelines shall supersede the *Guidelines on Private Debt Securities and Guidelines on Sukuk*.

1.04 Any issue of PDS or sukuk 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 or convertible Islamic loan stock<sup>1</sup>, convertible bonds or convertible sukuk and irredeemable convertible loan stock or irredeemable convertible Islamic loan stock); or

(b) issued together with warrants,

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

1.05 For the purpose of these Guidelines, sukuk shall 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,

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<sup>1</sup> These are loan stocks structured in a Shariah-compliant manner based on approved Shariah principles and concepts and have been named appropriately.

including any promissory note issued pursuant to the terms in sub-paragraphs 1.05(a) and (b) above.

- 1.06 All issuances of sukuk must comply with the requirements set out in Part D of these Guidelines. In addition to the requirements in Part D, issuances of Sustainable and Responsible Investment (SRI) sukuk must also comply with the requirements under Part E of these Guidelines.

## Chapter 2

### DEFINITIONS

2.01 Unless otherwise defined, all words used in these Guidelines shall have the meaning as defined in the CMSA. In these Guidelines, unless the context otherwise requires–

approval	means an approval, authorisation or recognition granted under Part VI of the CMSA as the case may be;
Bursa Securities	means Bursa Malaysia Securities Bhd;
business day	means a day on which commercial banks settle payments in Kuala Lumpur;
debt programme	means a facility which allows multiple issues, offers or invitations to subscribe or purchase MTNs within an availability period which is disclosed to the SC and bondholders;
Exempt Regime	has the meaning assigned to it under the <i>Bursa Malaysia Main Market Listing Requirements</i> ;
interested person	has the meaning assigned to it under the <i>Trust Deeds Guidelines</i> ;
issuance	refers to (a) making available; (b) offering for subscription or purchase of; or (c) issuing of an invitation to subscribe for or purchase, a PDS or sukuk;
issuer	means any person who makes available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase a PDS or sukuk;

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> ;
medium-term note or 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;
obligor	means an entity that is contractually obliged to honour the financial obligations of a special purpose vehicle specifically set up to issue the PDS or sukuk;
originator	means any entity that is seeking to transfer or dispose of its assets to a special purpose vehicle in a securitisation transaction;
platform	means a platform as may be specified by the SC;
principal adviser	means a person licensed to carry out the regulated activity of advising on corporate finance and eligible to act as principal adviser pursuant to the <i>Principal Adviser Guidelines</i> ;
private debt securities (PDS)	means debentures as defined in the CMSA but do not include– <ul style="list-style-type: none"> <li>(a) structured products; and</li> <li>(b) debentures issued by– <ul style="list-style-type: none"> <li>(i) the Federal Government;</li> <li>(ii) any State Government; or</li> <li>(iii) Bank Negara Malaysia;</li> </ul> </li> </ul>

Responsible Party	<p>means any person who is accountable or responsible, whether solely or jointly with other persons in the lifecycle of a PDS or sukuk, and includes the following:</p> <ul style="list-style-type: none"> <li>(a) The issuer;</li> <li>(b) Persons licensed by, or registered with the SC;</li> <li>(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 PDS or sukuk;</li> <li>(d) Any other persons identified by the issuer as having- <ul style="list-style-type: none"> <li>(i) authority over, makes or has substantial influence in making decisions that affect the whole or a part of the lifecycle of the PDS or sukuk;</li> <li>(ii) a significant role, function, accountability or responsibility in relation to a PDS or sukuk;</li> </ul> </li> </ul>
retail investors	<p>has the meaning assigned to it under the <i>Guidelines on Sales Practices of Unlisted Capital Market Products</i>;</p>
sukuk	<p>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;</p> <p>For avoidance of doubt, sukuk does not include sukuk issued by:</p> <ul style="list-style-type: none"> <li>(a) the Federal Government;</li> <li>(b) any State Government; or</li> <li>(c) Bank Negara Malaysia;</li> </ul>



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, 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;

## Chapter 3

### RESPONSIBLE PARTY

- 3.01 A Responsible Party must–
- (a) carry out its roles and responsibilities in relation to the PDS or sukuk;
  - (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 bondholder or sukukholder; 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 likelihood of any change, that may render any information or document submitted to the SC or provided to bondholders or sukukholders to be false, misleading or contain any material omission, must immediately inform the principal adviser to enable the principal adviser or lead arranger to make the necessary revision.
- 3.03 No person shall frustrate or impede the performance of the roles and responsibilities of a Responsible Party.
- 3.04 The principal adviser must identify all other Responsible Parties accountable or responsible in the lifecycle of a PDS or sukuk. In the event a Responsible Party ceases to be accountable or responsible for any of the roles or responsibilities relating to a PDS or sukuk, the principal adviser must identify a new Responsible Party to undertake such a role and responsibility.
- 3.05 All Responsible Parties must set out their respective roles and responsibilities in relation to the PDS or sukuk.

### **Requirement applicable to issuer, principal adviser and lead arranger**

3.06 An issuer, principal adviser and lead arranger must make timely disclosure of material information and ensure the accuracy and completeness of such information to enable investors to make an informed assessment of the issuer and the issuance.

## **PART B: REQUIREMENTS FOR ISSUANCE OF PRIVATE DEBT SECURITIES OR SUKUK**

### **Chapter 4**

#### **ELIGIBILITY**

##### **Issuers**

4.01 Only the following issuers are eligible to issue a PDS or sukuk under these Guidelines:

- (a) A public company whose shares are listed and quoted on a stock exchange;
- (b) A licensed bank, licensed investment bank or licensed Islamic bank;
- (c) Cagamas Bhd; or
- (d) A public company whose shares are not listed and quoted on a stock exchange, provided that the PDS or sukuk is irrevocably and unconditionally guaranteed in full by–
  - (i) any of the entities referred to in the above sub-paragraphs (a), (b) or (c);
  - (ii) Danajamin Nasional Bhd; or
  - (iii) Credit Guarantee and Investment Facility (CGIF).

##### **PDS or sukuk**

4.02 A PDS or sukuk must have the following characteristics:

- (a) Denominated in ringgit Malaysia;
- (b) A tenure of more than one year;
- (c) Fixed term with principal and any accrued interest/returns/profit payable at expiry;

- (d) Fixed or variable rate of return/profit rate;
- (e) Interests/returns/profits to be paid periodically on certain specified intervals from the issue date, except for zero-coupon PDS or sukuk without periodic distribution;
- (f) Rank at least equally with amounts owing to unsecured and unsubordinated creditors; and
- (g) Does not embed any swaps, options<sup>2</sup> or other derivatives, except in the case of convertible or exchangeable PDS or sukuk where:
  - (i) the option is to convert or exchange the PDS or sukuk into shares;
  - (ii) the option to convert or exchange the PDS or sukuk into shares is at the discretion of the investor; and
  - (iii) the underlying shares are listed and quoted on a stock exchange.

4.03 Notwithstanding paragraph 4.02 above, the following are not considered as eligible PDS or sukuk under these Guidelines:

- (a) Asset-backed securities (ABS) as defined under the *Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework*; or
- (b) PDS or sukuk that is structured like an ABS, which has the following features, but does not fall under the purview of the *Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework*:
  - (i) where the PDS or sukuk is without recourse to an originator or obligor; or
  - (ii) where the ability to meet obligations under the senior tranche is enhanced by the less senior tranche(s).

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<sup>2</sup> An option does not include any purchase and sale undertakings under a sukuk structure.

## Chapter 5

### RATING REQUIREMENTS

#### Credit rating

- 5.01 All PDS or sukuk must be rated by a credit rating agency registered with the SC.
- 5.02 This chapter does not apply to an issuance of the following:
- (a) Irredeemable convertible loan stocks or Islamic loan stocks; and
  - (b) convertible bonds, sukuk, loan stocks or Islamic loan stocks, and exchangeable bonds or sukuk which fulfill the following requirements:
    - (i) Holders of such products are given the right to convert or exchange such products into underlying shares at any time or within a reasonable period(s) during the tenure of such products; and
    - (ii) the underlying shares are listed and quoted on a stock exchange.
- 5.03 The final rating for the PDS or sukuk must be made available as part of the submission for approval that is made to the SC. Where the final rating is not available, an indicative rating must be submitted to the SC.
- 5.04 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 the debt or sukuk programme must be rated; and
  - (b) the principal terms and conditions of the debt or sukuk 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 issuances of the debt or sukuk programme will be rated.
- 5.05 In the case where the issuer decides to rely on more than one credit rating for a PDS or sukuk for the purposes of offering the PDS or sukuk, the issuer must disclose such credit ratings in its application for approval to the SC.
- 5.06 In the case where the issuer decides to rely on more than one credit rating for a PDS or sukuk that has been approved by the SC, a revision of terms and conditions is required and the issuer must:
  - (a) Comply with all requirements under Chapter 13 of these Guidelines; and
  - (b) In the case where the PDS or sukuk has been issued, inform all bondholders or sukukholders immediately prior to submission of notification to the SC for the revision.
- 5.07 In the case where the issuer has relied on more than one credit rating for a PDS or sukuk, and subsequently decides to remove any of the credit rating, a revision to terms and conditions is required and the issuer must–
  - (a) comply with all relevant requirements under Chapter 13 of these Guidelines; and
  - (b) in the case where the PDS or sukuk has been issued, obtain prior consent of the bondholders or sukukholders.
- 5.08 For the replacement of an appointed credit rating agency during the tenure of the PDS or sukuk, the issuer must–
  - (a) obtain prior consent of the bondholders or sukukholders; and
  - (b) inform the principal adviser of the replacement.
- 5.09 An issuer must provide sufficient and relevant information to the credit rating agency for the purpose of assessing and evaluating the credit risk of a PDS or sukuk.

- 5.10 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.
- 5.11 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.



## **Chapter 6**

### **TRUSTEE AND TRUST DEED REQUIREMENTS**

- 6.01 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.
- 6.02 The issuer must provide the necessary assistance to facilitate the trustee in discharging its duties and obligations under the CMSA and the trust deed.

## **Chapter 7**

### **IMPLEMENTATION TIME FRAME**

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

## **Chapter 8**

### **UTILISATION OF PROCEEDS**

- 8.01 An issuer must ensure that proceeds from the approved PDS and sukuk are utilised in accordance with the purposes disclosed.
- 8.02 For sukuk, the issuer must ensure that the proceeds from the sukuk issuance are utilised for Shariah-compliant purposes only.
- 8.03 Where the proceeds are utilised for a project which 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.

## Chapter 9

### MODE OF ISSUANCE

9.01 All 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 MyClear,

unless a full admission to listing and quotation is sought on a stock exchange.

## Chapter 10

### **OTHER REGULATORY APPROVALS AND COMPLIANCE WITH RELEVANT LAWS AND GUIDELINES**

10.01 Where applicable, an issuer must ensure that–

- (a) it has complied with all relevant regulatory requirements from other regulatory authorities prior to its submission for approval to the SC; and
- (b) it continues to comply with any conditions imposed by such regulatory bodies throughout the tenure of the PDS and sukuk.

10.02 For the purpose of sub-paragraph 10.01(a) where an approval from the Controller of Foreign Exchange is required, such approval must be valid and subsisting at the point of submission to the SC.

10.03 An issuer and its principal adviser must ensure that the issuance has complied with all the relevant laws.

## **PART C: APPROVAL FOR AN ISSUANCE OF PRIVATE DEBT SECURITIES OR SUKUK**

### **Chapter 11**

#### **APPROVAL**

##### **General**

11.01 The SC may grant its approval and register the prospectus for a proposed issue of PDS or sukuk subject to receipt of complete set of documents, including prospectus, and full compliance with relevant requirements as provided in these Guidelines.

11.02 The approval from the SC for a debt or sukuk programme is granted on the basis of continuous compliance by the issuer with all the requirements in these Guidelines.

11.03 For the purpose of paragraph 11.01, a complete set of documents must include—

- (a) the information and documents as set out in Appendix 1 of these Guidelines; and
- (b) a registrable prospectus (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).

11.04 The registrable prospectus submitted to the SC must be complete and fully comply with the requirements of Division 2 of the Prospectus Guidelines.

##### **Post-issuance notice**

11.05 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.

11.06 The principal adviser is responsible for submitting the post-issuance notice.

11.07 The post-issuance notice must contain all information and documents as set out in Appendix 2.

11.08 In the case of a debt or sukuk programme, submission of the post-issuance notice would apply to each issuance under the programme.

## Chapter 12

### CONTINUOUS DISCLOSURE OBLIGATIONS

#### PDS or Sukuk Offered Over-the-Counter

12.01 Where the PDS or sukuk is to be offered over-the-counter (OTC), the issuer must disclose any information which may have a material effect on–

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

on the platform.

12.02 In addition to paragraph 12.01 above, the issuer must immediately announce the following on the platform:

- (a) any issuance of a new tranche or programme by the issuer;
- (b) any change in the terms and conditions of the PDS or sukuk;
- (c) any redemption or cancellation of the PDS or sukuk;
- (d) any amendment to the trust deed;
- (e) any appointment or replacement of the trustee or where applicable, paying agent;
- (f) for sukuk, any replacement of the Shariah adviser appointed by the issuer;
- (g) any occurrence of an event of default under the trust deed;
- (h) credit rating of the PDS or sukuk, including a summary of the rating report relevant to the PDS or sukuk published by a credit rating agency;
- (i) any event which requires an immediate notification to the trustee under the trust deed; and
- (j) any meeting of bondholders or sukukholders (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 bondholder or



sukukholder, hence entitled to attend, speak and vote at the meeting of the bondholder or sukukholder; and

- (k) make available the latest annual audited financial statements to its bondholder or sukukholder throughout the tenure of the PDS or sukuk.

12.03 Sub-paragraph 12.02(k) above will not apply under the following circumstances where financial statements are already made available on the stock exchange:

- (a) If the issuer is listed and quoted on the stock exchange; or
- (b) If the PDS or sukuk is listed on the Exempt Regime.

### **PDS or sukuk offered on the stock exchange**

12.04 Where the PDS or sukuk is to be offered on the stock exchange, the issuer must also comply with the continuous disclosure obligations set out in the Listing Requirements of Bursa Securities.

### **Additional continuous disclosure obligations**

12.05 The issuer must announce the maturity date of each issuance of the PDS or sukuk at least one month before the maturity date.

12.06 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 broad details of the proposed bondholders' or sukukholders' resolution where appropriate, as soon as possible through an announcement via-
  - (i) the platform, for PDS and sukuk offered OTC; or
  - (ii) the stock exchange, for PDS and sukuk offered on the stock exchange; and
- (b) another announcement must be made soonest practicable after consent from bondholders or sukukholders has been obtained for the early redemption (where applicable).

12.07 In the case of a debt or sukuk programme approved by the SC, the issuer must ensure that a pricing supplement is made available to its bondholders or sukukholders prior to each issuance under the debt or sukuk programme.

12.08 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 issuance; and
- (d) Utilisation of proceeds raised from the issuance.

12.09 Paragraphs 12.07 and 12.08 above do not apply if an issuance under the debt or sukuk programme is issued or offered on a primary subscription basis (under a bought-deal or private placement arrangement).

## **Chapter 13**

### **REVISION TO PRINCIPAL TERMS AND CONDITIONS**

#### **General requirements**

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

#### **Approval required**

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

#### **Notification required**

13.03 The SC's prior approval is not required for any revision to principal terms and conditions of PDS or sukuk which has been approved by the SC and has already been issued.

13.04 Notwithstanding paragraph 13.03 above, 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.

13.05 Notification to the SC is made by submitting to the SC the relevant information and documents as set out in Appendix 3 of these Guidelines.

13.06 Prior to the revision, 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.

13.07 Where consent from bondholders or sukukholders is required for any proposed revision to the principal terms and conditions, the principal adviser must ensure the following:

- (a) Due process has been observed in obtaining bondholders' or sukukholders' consent. This includes the requirement that the issuer and any interested persons of the issuer 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 offered OTC, two separate announcements have been made on the platform:
  - (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 offered on the stock exchange, the announcements under sub-paragraphs 13.07(c)(i) and (ii) above must be made on the stock exchange; and
- (e) The announcements as per sub-paragraphs 13.07(c) or (d) above, as the case may be, are copied to the SC within 2 business days from the date of announcements.

### **Upsizing of a debt or sukuk programme**

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

13.09 An issuer may revise the principal terms and conditions to increase the size of a debt or sukuk programme, either pre-issuance or post-issuance, 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

application submitted to the SC in relation to the debt or sukuk programme.

13.10 Such upsizing, either pre-issuance or post-issuance under paragraph 13.09 above, would require the SC's approval and must comply with the requirements under paragraphs 13.11 to 13.14 below of these Guidelines.

13.11 Any upsizing of a debt or sukuk programme, either pre-issuance or post-issuance, would require an issuer to submit all information and documents as specified in Appendix 4 of these Guidelines and comply with all relevant requirements under Chapter 11 of these Guidelines.

13.12 Prior to the upsizing, the principal adviser must ensure that the issuer has obtained consent from the relevant parties for the upsizing, if such consent is required.

13.13 Where consent from bondholders or sukukholders is required for any proposed upsizing, the principal adviser must ensure the following –

- (a) due process has been observed in obtaining bondholders' or sukukholders' consent. This includes the requirement that the issuer and any interested persons of the issuer abstain from voting in the meeting convened to obtain bondholders' or sukukholders' consent;
- (b) all material information pertinent to the upsizing, including the impact on credit rating, has been disclosed to bondholders or sukukholders;
- (c) for a PDS or sukuk offered OTC, two separate announcements have been made on the platform in relation to the following:
  - (i) The proposed upsizing, which must be announced prior to obtaining bondholders' or sukukholders' consent; and
  - (ii) 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 offered on the stock exchange, the announcements under sub-paragraphs 13.13(c)(i) and (ii) above must be made on the stock exchange; and
- (e) the announcements under sub-paragraphs 13.13(c) or (d) above, as the case may be, are copied to the SC within 2 business days from the date of announcements.

13.14 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 sukuk**

13.15 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.

13.16 For the purpose of the endorsement under paragraph 13.15 above, the principal adviser must submit to the SC the information and documents as specified in Appendix 6 these Guidelines.

## **Chapter 14**

### **SUBMISSION TO THE SC**

- 14.01 All submissions to the SC must be made by an issuer through a principal adviser.
- 14.02 All documents to be submitted to the SC must be made in two hard copies and one electronic copy.
- 14.03 Any submission in electronic copy must be prepared in the manner specified in Appendix 5 of these Guidelines.
- 14.04 The information and documents to be submitted to the SC for the purpose of the SC's approval are set out in the following appendices:
- (a) Appendix 1 – Approval for issuance
  - (b) Appendix 2 – Post-issuance notice
  - (c) Appendix 3 – Revision to principal terms and conditions post-issuance
  - (d) Appendix 4 – Approval for upsizing
- 14.05 An issuer and the principal adviser must furnish any other information or documents as requested by the SC.

## **PART D: ADDITIONAL SHARIAH REQUIREMENTS FOR SUKUK**

### **Chapter 15**

#### **GENERAL**

15.01 An issuer must appoint a Shariah adviser to carry out the roles and responsibilities as set out in this chapter.

15.02 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.

#### **Roles and responsibilities of Shariah adviser**

15.03 The Shariah adviser must carry out roles and responsibilities including–

- (a) advising on all aspects of the issuance of sukuk 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 sukuk are in compliance with Shariah, in the absence of any rulings, principles and concepts endorsed by the Shariah Advisory Council.

15.04 In addition to the roles and responsibilities specified under paragraph 15.03 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 sukuk issue;
- (b) The applicable Shariah rulings, principles and concepts used in the sukuk issue; and
- (c) The relevant Shariah matters relating to the documentation of the sukuk issue.

## Chapter 16

### COMPLIANCE WITH SHARIAH RULINGS, PRINCIPLES AND CONCEPTS

16.01 The structure of sukuk must be in compliance with the approved Shariah rulings, principles and concepts that are provided for under chapters 17, 18 and 19 and Appendix 7 of these Guidelines, as well as any other Shariah rulings, principles and concepts endorsed by the Shariah Advisory Council from time to time.

16.02 Where the structure of sukuk departs from or does not comply with–

- (a) the approved Shariah rulings, principles and concepts that are provided for under chapters 17, 18 and 19 and Appendix 7 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 submission of information and documents for approval under these Guidelines.

## Chapter 17

### GENERAL SHARIAH RULINGS APPLICABLE TO SUKUK

#### Naming of sukuk

17.01 The name of 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.

17.02 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**

17.03 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.

17.04 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**

17.05 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.

17.06 The asset pricing requirement under paragraph 17.05 above is not applicable for sukuk *ijarah* that does not involve the sale and purchase of identified assets.

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

17.07 *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.

17.08 *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 instrument<sup>3</sup> to be written-off at the point of non-viability.

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<sup>3</sup> Tier 2 capital instrument refers to an instrument that meets the requirements under the Capital Adequacy Framework for Islamic Banks (Capital Components) issued by Bank Negara Malaysia.

17.09 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.

### ***Ta`widh* (Compensation)**

17.10 *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.

17.11 *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.

17.12 *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.

17.13 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**

17.14 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.

17.15 Under sukuk *musharakah* and sukuk *mudharabah*, *kafalah* may be provided by any third party, with or without the imposition of fee.

17.16 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.

17.17 The *kafalah* by parties listed under sub-paragraphs 17.16(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.

17.18 If *kafalah* cannot be procured from Islamic banks or *kafalah* provider, conventional guarantee is allowed to be procured.

#### **Amount to be guaranteed**

17.19 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.

17.20 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.

17.21 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 18

### SHARIAH RULINGS APPLICABLE TO SPECIFIC TYPES OF SUKUK

#### Shariah rulings applicable for *sukuk ijarah*

##### *Rate of lease and lease period*

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

##### *Usage of leased asset*

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

##### *Sub-lease of leased asset to third party by lessee*

18.03 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*

18.04 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*

18.05 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.

18.06 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.

18.07 The notification provided under paragraph 18.05 above does not terminate the existing lease.

### ***Maintenance of leased asset***

18.08 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)***

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

18.10 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.

18.11 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***

18.12 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***

18.13 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***

18.14 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.

18.15 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***

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

#### ***Musharakah partners***

18.17 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***

18.18 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)***

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

### ***Management of the musharakah venture***

18.20 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***

18.21 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)***

18.22 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***

18.23 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)***

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

### ***Management of the mudharabah venture***

18.25 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***

18.26 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)***

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

## Chapter 19

### REVISION TO TERMS AND CONDITIONS OF SUKUK

#### Revision of profit rate

19.01 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.

19.02 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.

19.03 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.

19.04 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

19.05 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**

19.06 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.

19.07 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.

19.08 Supplemental contract executed under paragraphs 19.02, 19.03, 19.04, 19.05, 19.06 and 19.07 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).

## **PART E: REQUIREMENTS FOR AN ISSUANCE OF SUSTAINABLE AND RESPONSIBLE INVESTMENT SUKUK**

### **Chapter 20**

#### **SUSTAINABLE AND RESPONSIBLE INVESTMENT (SRI) SUKUK**

20.01 This Chapter sets out the additional requirements for an issuance of SRI sukuk.

20.02 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 20.04 below.

#### ***Eligible SRI projects***

20.03 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.

20.04 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; or
  - (vi) Affordable housing; or
- (d) *Waqf* properties/ assets – any projects that undertake the development of *waqf* properties/ assets.

***Appointment of an independent expert***

20.05 The issuer must appoint an independent expert to undertake an assessment of the Eligible SRI project.

***Disclosure requirements***

20.06 Where an issuer issues a prospectus in relation to the SRI sukuk, the prospectus 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.

20.07 The independent expert must issue a report on the Eligible SRI project and such report must be included in the prospectus.

20.08 The issuer 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 FOR SC'S APPROVAL**

*Notes:*

*\* Applicable only for sukuk*

**PART 1: APPLICATION**

1.01 An application letter which includes the following:

- (a) Background information on the issuer including ultimate shareholder(s), whether the issuer is a related corporation of any Malaysian public listed company (PLC) and whether the issuer is a Malaysian government-linked company;
- (b) Profile of directors of issuer, including–
  - (i) National Registration Identity Card numbers for Malaysian directors; and
  - (ii) passport numbers for non-Malaysian directors;

Where the PDS or sukuk involves obligor(s) and guarantor(s), the information set out in sub-paragraphs 1.01 (a) and (b) must also be provided on the said entities.

- (c) A description of the transaction and structure of the facility (one-time issue) or programme. In addition, specify whether it is a one-time issue or a programme;
- (d) Details of the utilisation of proceeds, including its schedule where applicable;
- (e) Primary and secondary sources of repayment;
- (f) Detailed breakdown of all upfront and recurring fees and expenses for the facility/programme;

- (g) Waivers from complying with these Guidelines and other relevant guidelines of the SC obtained for the facility/programme, if any;
- (h) Conflict-of-interest situations and appropriate mitigating measures, if any;
- (i) Detailed information of the existing PDS or sukuk issue or loans/financing to be refinanced by the facility/programme, if applicable;
- (j) Details of approval from other relevant regulatory authorities, if any;
- (k) Any other material information in relation to the issuer, facility/programme;
- (l) Name, telephone number, facsimile number and e-mail address of the officer-in-charge for the facility/programme;
- (m) Name, designation and contact details of the contact person of the issuer; and
- (n) Name, designation and contact details of the contact person of the key management personnel of the issuer.

1.02 Principal terms and conditions of the proposal (as per Part 2 of Appendix 1)

1.03 Parties to the Transaction

Names of all parties involved in the lifecycle of the PDS or sukuk (i.e. origination, at the point of distribution and after distribution) and their roles and responsibilities.

1.04 Rating letter

1.05 Latest audited financial statements<sup>4</sup>

1.06 Copies of approval from other relevant regulatory authorities, if any

1.07 Compliance checklist with these Guidelines

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<sup>4</sup> The audited financial statements must be in accordance with the approved accounting standards as defined in the *Financial Reporting Act 1997*.

- 1.08 Declaration by issuer (as per Part 3 of Appendix 1)
- 1.09 Declaration by Trustee (where the appointment of trustee falls under sub-section 260(2) of the CMSA)
- 1.10 Shariah pronouncement (including detailed reasoning/justification) where the signing procedures must comply with the requirements as specified by the Shariah Advisory Council\*
- 1.11 Diagram illustrating the flow of monies in the designated account(s), if applicable
- 1.12 Any other documents

## PART 2: PRINCIPAL TERMS AND CONDITIONS OF THE PROPOSAL

### 2.01 Background information

- (a) Issuer:
- (i) Name;
  - (ii) Date of incorporation;
  - (iii) Place of incorporation;
  - (iv) Address;
  - (v) Business registration number;
  - (vi) Residence status;
  - (vii) Place of listing, if applicable;
  - (viii) Date of listing, if applicable;
  - (ix) Industry sector of the issuer<sup>5</sup>;
  - (x) Principal activities;
  - (xi) Principal activities of issuer's subsidiaries, where applicable<sup>6</sup>;
  - (xii) If the issuer is a special-purpose vehicle company (SPV), state the name of the entity that established it;
  - (xiii) Authorised, issued and paid-up capital;
  - (xiv) Structure of shareholdings and names of shareholders or, in the case of a public company, names of all substantial shareholders;
  - (xv) Board of directors;
  - (xvi) Disclosure of the following:
    - If the issuer or its board members have been convicted or charged with any offence under any securities laws, corporation laws or other laws involving fraud or dishonesty in a court of law, or if any action has been

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<sup>5</sup> For public listed companies, to specify sectors as indicated in Bursa Malaysia Securities Berhad (Bursa Securities). For unlisted and foreign companies, to specify based on Bursa Securities' list of sectors that best describes the company's principal activities.

<sup>6</sup> In the event where the issuer's principal activity is investment holding.

initiated against the issuer or its board members for breaches of the same, for the past ten years prior to the date of application/since incorporation (for issuer incorporated less than 10 years); 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 PDS or sukuk involves obligor(s) and guarantor(s), the information as set out in sub-paragraph 2.01(a) must also be provided on the said entities.

## 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) Trustee;
  - (viii) Shariah adviser\*;
  - (ix) Guarantor;
  - (x) Valuer;
  - (xi) Facility agent;
  - (xii) Primary subscriber (under a bought-deal arrangement) and amount subscribed;
  - (xiii) Underwriter and amount underwritten;
  - (xiv) Central depository;

- (xv) Paying agent;
  - (xvi) Reporting accountant;
  - (xvii) Calculation agent; and
  - (xviii) Others (please specify);
- (b) Name of facility;
  - (c) One-time issue or programme;
  - (d) Shariah principles\*;
  - (e) Facility description (including transaction diagram and explanatory notes\*);
  - (f) Identified/trust asset\*;
  - (g) Purchase and selling price/rental (where applicable), including statement on compliance with asset pricing requirements\*;
  - (h) Expected facility/programme size (for programme, to state the option to upsize);
  - (i) Tenure of facility/programme;
  - (j) Availability period of PDS or sukuk programme;
  - (k) Interest/profit/coupon/rental rate;
  - (l) Interest/profit/coupon/rental payment frequency;
  - (m) Interest/profit/coupon/rental payment basis;
  - (n) Details of security/collateral pledged, if applicable;
  - (o) Details of guarantee, if applicable;
  - (p) Details on utilisation of proceeds:
    - (i) Purpose;
    - (ii) Amount to be utilised;
    - (iii) Details of conditions imposed on the utilisation; and
    - (iv) If proceeds are to be utilised for project or capital expenditure, description of the project or capital expenditure, where applicable;
  - (q) Sinking fund, if applicable;



- (r) Details of designated account(s), if applicable, including:
  - (i) names of account;
  - (ii) parties responsible for opening the account;
  - (iii) parties responsible for maintaining/operating the account;
  - (iv) signatories to the account;
  - (v) sources and utilisation of funds; and
  - (vi) conditions for disbursements, if any;
- (s) Rating:
  - (i) Credit rating(s) assigned (state whether the rating is final or indicative). In the case of a debt or sukuk programme where the credit rating is not assigned for the full amount, disclosures set out in paragraph 5.04 of these Guidelines must be made; and
  - (ii) Name of credit rating agency(ies);
- (t) Method of distribution (whether OTC or on the stock exchange);
- (u) Name of stock exchange or trading platform;
- (v) Mode of issue;
- (w) Clearing and settlement platform;
- (x) Other regulatory approvals required in relation to the PDS or sukuk, and whether or not obtained;
- (y) Conditions precedent;
- (z) Representations and warranties;
- (aa) Events of defaults and enforcement events, where applicable, including recourse available to investors;
- (bb) Provisions on buy-back, if applicable;
- (cc) Provisions on early redemption, if applicable;
- (dd) Call option and details, if applicable;
- (ee) Put option and details, if applicable;
- (ff) Convertibility of issuance and details of the convertibility;
- (gg) Exchangeability of issuance and details of the exchangeability;

- (hh) Governing laws;
- (ii) Voting;
- (jj) Permitted investments, if applicable;
- (kk) *Ta'widh* (compensation), if applicable\*;
- (ll) *Ibra'*, if applicable\*; and
- (mm) Other terms and conditions.

### **PART 3: DECLARATION BY ISSUER**

**Notes:**

**^ : To delete if not applicable**

**# : Applicable only to proposals by public listed companies**

Date

The Chairman

Securities Commission Malaysia

**ISSUER ...(Name of Issuer)...**

**Declaration for the proposed issuance of ....(Facility/Programme)...**

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 Securities Commission Malaysia (SC) in relation to the above Proposal.

3. We declare that we are satisfied after having made all reasonable enquiries that the Proposal is/will be<sup>^</sup> in full compliance with the relevant requirements of the following, where applicable:

- (a) *Guidelines on Issuance of Private Debt Securities and Sukuk to Retail Investors;*
- (b) *Trust Deeds Guidelines<sup>^</sup>;*
- (c) *Equity Guidelines\*<sup>^</sup>;*

- (d) The requirements of the Controller of Foreign Exchange with respect to the Proposal<sup>^</sup>; and
  - (e) Other requirements under the *Capital Markets and Services Act 2007*.
4. Save as otherwise disclosed in the attachment accompanying this declaration<sup>^</sup>, we have 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)<sup>^</sup>; and
  - (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 submission<sup>#</sup>.
5. We declare the following in accordance with the Equity Guidelines<sup>#</sup>:
- (a) The Proposal results/does not result<sup>^</sup> in a significant change in the business direction or policy of the public listed company<sup>#</sup>; and
  - (b) The Proposal is/is not<sup>^</sup> a related-party transaction<sup>#</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 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 and documents 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 -

**POST-ISSUANCE NOTICE FOR PDS OR SUKUK**

*Notes:*

*\* Applicable only for sukuk*

1.01 The principal adviser(s) must submit the following information and documents to the SC via DS@seccom.com.my prior to the issue date of PDS or sukuk or each 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 or Islamic MTN base prospectus, 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 adviser(s) must also submit a hard copy of the following information and documents to the SC prior to the issue date (or each issue date under a programme):

- (a) Issue date;
- (b) Maturity date;
- (c) Issue amount (nominal value);
- (d) Issue price (cash raised);

- (e) Interest/coupon/profit/rental rate;
- (f) Yield-to-maturity;
- (g) Mode of issue;
- (h) List of subscribers/successful tender panel members and amounts subscribed;
- (i) Utilisation of proceeds raised from the issue:
  - (i) Purpose;
  - (ii) Amount utilised;
  - (iii) Details of condition imposed on the utilisation, including conditions imposed by the Shariah Advisory Council, if any; and
  - (iv) Confirmation from the Shariah adviser that the conditions imposed on the utilisation are/ will be met\*;
- (j) Clearing and settlement platform;
- (k) A copy of the rating report;
- (l) A certified true copy of the executed trust deed, where applicable; and
- (m) Names of all parties involved in the lifecycle of the PDS or sukuk and their roles and responsibilities.

1.03 Confirmation from the principal adviser(s) that–

- (a) designated accounts, if any, have been opened, the authorised signatories are signatories of the respective accounts and the accounts are administered according to the terms;
- (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) the principal adviser(s) have notified the SC of any variation to or substitution/replacement of the underlying assets and confirmed to the SC that the Shariah adviser has given its approval for the variation or the substitution/replacement\*;

- (d) the principal adviser(s) have undertaken the necessary internal measures that prior to each issuance/drawdown under the proposed sukuk programme, the issuance/drawdown is in full compliance with Shariah principles\*; and
- (e) all other conditions of approval that has been/may be imposed by the SC has been/will be complied with.

1.04 Confirmation from the Shariah adviser dated not later than three business days from the issue date of the sukuk that\*-

- (a) all documentation for the sukuk issuance have been vetted;
- (b) all documentation for the sukuk issuance have been executed in proper sequence; and
- (c) all documentation comply with Shariah requirements.



**INFORMATION AND DOCUMENTS TO BE SUBMITTED TO THE SC FOR POST-ISSUANCE REVISION**

*Notes:*

*\* Applicable only for sukuk*

- 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 13 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 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, if applicable.
- 1.04 The following documents, where applicable:
- (a) Supplementary prospectus;
  - (b) Supplementary base prospectus;
  - (c) Supplementary information memorandum;
  - (d) Supplementary offering circular;
  - (e) Executed supplementary trust deed;
  - (f) Copy of letter issued by SC in relation to the endorsement by the Shariah Advisory Council\*;
  - (g) Shariah pronouncement\*; and
  - (h) Other disclosure 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 prospectus, supplementary base prospectus, supplementary information memorandum, supplementary offering circular, executed supplementary trust deed, copy of letter issued by SC in relation to the endorsement by the Shariah Advisory Council, Shariah pronouncement and other disclosure documents.

**DOCUMENTS AND INFORMATION TO BE SUBMITTED TO THE SC FOR APPROVAL TO UPSIZE A PDS OR SUKUK PROGRAMME**

*Notes:*

*\* Applicable only for sukuk*

1.01 The principal adviser must submit two (2) hard copies and one (1) soft copy (in accordance with Appendix 5) of the following information and documents:

- (a) An application letter which includes the following:
  - (i) Background information on the issuer;
  - (ii) Current amount of PDS or sukuk outstanding under the 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; and
  - (ix) Name, telephone 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) Confirmation from the Shariah adviser that the proposed upside has no Shariah implication\*;
- (d) Declaration by issuer (as per Part 3 of Appendix 1); and
- (e) Latest audited financial statements of the issuer.

**ELECTRONIC SUBMISSION**

1.01 All correspondences to be submitted to the SC (except e-mails) must be accompanied by electronic copy in text-searchable 'PDF' format 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](mailto:bondsubmission@seccom.com.my). Please indicate in the cover letter 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 registrable prospectus and supporting documents, must be submitted in text-searchable 'PDF' format. Please ensure that the PDF-text files must be in a readable and proper condition.

**INFORMATION AND DOCUMENTS TO BE SUBMITTED TO THE SC FOR REVISION TO TERMS AND CONDITIONS OF 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](mailto:ICMsubmission@seccom.com.my).

## APPROVED SHARIAH PRINCIPLES AND CONCEPTS FOR SUKUK

The following are approved Shariah principles and concepts for sukuk:

### 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.
- *Wadiyah 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.
- *Wadiyah 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*.