



PRACTICE NOTE issued pursuant to the Guidelines on the Offering of Private Debt Securities, and the Guidelines on the Offering of Islamic Securities

**Issue Date: 12 October 2006**

**Registration by the Securities Commission for the Purpose of Acting as a Bond Trustee**

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## **1.0 INTRODUCTION**

- 1.1 A trustee for an issue of debentures or Islamic securities approved by the Securities Commission (SC) on or after 2 January 2007, must be registered by the SC under this Practice Note.
- 1.2 This Practice Note sets out the regulatory requirements and procedures for registration of a bond trustee by the SC.
- 1.3 Under this Practice Note, the following terms have the following meanings:
  - (a) "trustee" means a person who can be a trustee under section 69 of the Securities Commission Act 1993, and who is registered by the SC under this Practice Note; and
  - (b) "bonds" refer to debentures and Islamic securities approved by the SC.

## **2.0 REGISTRATION CRITERIA**

An applicant must meet all of the following minimum criteria in order to be registered with the SC:

## **2.1 Financial Resource Requirements**

- (a) Maintain a minimum shareholders funds of RM1 million (or such other amount as may be specified by the SC);
- (b) Obtain professional indemnity insurance coverage of at least RM5 million in the first year of its registration by the SC; and
- (c) Increase its professional indemnity insurance coverage to at least RM10 million in the second year of its registration by the SC, and maintain such coverage thereafter.

## **2.2 Expertise Resource Requirements**

- (a) Ensure that it has a sufficient number of qualified or experienced trustee officers to oversee the number of bonds for which it is acting as trustee;
- (b) Ensure that its trustee officers are competent, taking into account, among others, their level of education, years of experience, knowledge of or experience with bond issues, and other relevant specialty areas;
- (c) Ensure that it has qualified and competent staff to handle all legal matters pertaining to bond issues; and
- (d) Ensure that its trustee officers maintain a sufficient level of monitoring rigour, and in this regard, consider the number of bonds that can be effectively covered by a particular trustee officer, taking into account a broad spectrum of variables, including the complexity of the particular bond structure and the experience and expertise of the trustee officer.

## **2.3 No Conflict of Interest**

- (a) Ensure compliance with the provisions of section 69(2) of the Securities Commission Act 1993 (SCA); and
- (b) Ensure that there is no conflict of interest between the trustee (which includes any person or legal entity that may be connected to the trustee in any one or more ways including, but not limited to, connections through shareholding, agency, or any other point of commonality that would arouse doubt as to substantive independence and objectivity between the trustee and such person) and the transaction parties in relation to the bond issue.

## **2.4 No Adverse Record**

Has no material adverse record with the SC of negligent or reckless act or omission, nor any incidence of conflict of interest, in bond trusteeship.

## **2.5 Fit And Proper Persons**

Every person who is, or is to be, the trustee's director, chief executive or trustee officer for bond issues shall be fit and proper persons.

In determining whether a person is fit and proper to hold the above position in a trustee, regard shall be had as to his probity, diligence, competence and soundness of judgment in fulfilling the responsibilities of that position, whether the interest of bond investors may be in any way threatened by his holding that position as well as to his previous conduct and activities in business or financial matters.

## **2.6 Diligent Discharge of Duties**

For continued registration, the trustee must diligently discharge its duties and functions including, but not limited to, reporting material events and events of default to the SC in a timely manner.

## **2.7 Other Criteria**

Where the trustee is registered as a trust company under the Trust Companies Act 1949, the trustee is to have valid membership in the Association of Trust Companies Malaysia.

The SC may impose other criteria from time to time, whether on a particular trustee, on a particular group of trustees, or on all trustees, and which criteria may vary from the criteria listed in this Practice Note.

## **3.0 REGISTRATION PROCEDURE**

3.1 In applying for registration under the Practice Note, an applicant is required to submit the following information and documents to the SC:

- (a) Corporate information and information pertaining to the operations of the trustee (as set out in Appendix 1);
- (b) Declaration letter (as set out in Appendix 2); and
- (c) Any other information or documents as the SC may require from time to time.

3.2 All submissions and correspondences with the SC should be addressed to:

Chairman  
Securities Commission  
3 Persiaran Bukit Kiara  
Bukit Kiara  
50490 Kuala Lumpur

(Attention : Bond Market Department)

#### **4.0 INSPECTION AND INVESTIGATION**

- 4.1 The SC may review the trustee's registration, whether annually or from time to time, at its discretion.
- 4.2 The SC may inspect, or require the production of, the books of accounts, records and any relevant documents of the trustee:
  - (a) to ascertain whether a trustee is in compliance with the provisions of this Note and any terms and conditions of registration as may be specified by the SC;
  - (b) to inquire into complaints received from bond investors, other trustees or intermediaries, the ATCM, or any other person, provided that such inquiry shall be limited to the particulars in the complaint; or
  - (c) for any other matter related to the interests of bondholders.

#### **5.0 REVOCATION OF REGISTRATION**

- 5.1 The SC may suspend, or withdraw, or vary the terms of, the registration of a trustee if there are circumstances or events involving the trustee that may jeopardise the interests of the bondholders or the integrity of the bond market including, but not limited to, the following:

- (a) the trustee ceases to provide trustee services, whether general trustee services or trustee services specifically for bond issues; or
- (b) a winding-up petition is filed against the trustee and is not dismissed or withdrawn within ninety (90) days from the date of filing; or
- (c) the trustee commits an act, error or omission which is negligent, reckless or unethical, and is not remedied to the SC's satisfaction within thirty (30) days from the date that the trustee becomes aware of such act, error or omission;
- (d) the trustee commits a breach of, or does not comply with, any of the SC's requirements, whether in this Note or otherwise, and is not remedied to the SC's satisfaction within thirty (30) days from the date that the trustee becomes aware of such breach or non-compliance; or
- (e) the trustee does not comply with any other written notice, circular or direction of the SC, and is not remedied to the SC's satisfaction within fourteen (14) days from the date that the trustee becomes aware of such non-compliance.

5.2 A trustee shall be given the opportunity to show cause prior to the suspension or withdrawal of its registration by the SC.

**APPLICATION FOR REGISTRATION OF TRUSTEE**

**1. Corporate Information**

- (a) Name of company :
- (b) Date of incorporation :
- (c) Company number :
- (d) Paid-Up Capital :

**2. Address and Contact Details**

- (a) Registered Address :
- (b) Business Address (if different from above) :
- (c) Telephone Number :
- (d) Fax Number :
- (e) Website address :
- (f) Name and designation of contact person :

**3. Shareholders (as at submission date)**

Name of shareholder	Percentage of Shareholding
<b>Total</b>	

**4. Directors**

<b>Name of Director, and NRIC/Passport No.</b>	<b>Nature of Directorship</b> <i>(independent or non-independent, executive or non-executive, Chairman, etc.)</i>

**5. Key Officers<sup>1</sup>**

<b>Name of Officer, and NRIC/Passport No.</b>	<b>Designation</b>

**6. Trustee Officers**

<b>Name of Officer, NRIC/Passport No. and Designation</b>	<b>Qualification and Experience</b>	<b>Telephone number</b>

**7. Professional Indemnity Insurance**

- (a) Insurer :
- (b) Amount Insured :

**8. Any other relevant information to support the application**

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<sup>1</sup> Pls. state details of Chief Executive Officer (if any), Compliance Officer (if any), and such other key senior management team members.

## Appendix 2

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

The Chairman  
Securities Commission

Dear Sir,

### **DECLARATION LETTER PURSUANT TO THE APPLICATION FOR REGISTRATION AS A TRUSTEE**

We declare to the best of our knowledge that there is no false or misleading statement contained in, or material omission from, the application to the SC for registration.

We declare that we are satisfied after having made all reasonable enquiries that:

- (a) this application is in full compliance with the Practice Note on the Registration of Trustees (Practice Note); and
- (b) the company has not been convicted or charged with any offence under the securities laws, corporation laws or other laws involving fraud or dishonesty in a court of law, in the 10 years prior to this submission.

We undertake to ensure continuous compliance with the requirements stipulated in the Practice Note and to the terms and conditions as may be imposed by the SC in relation to the above application. We further undertake to provide to the SC all such information as the SC may require from time to time in relation to our registration with the SC under the Practice Note.

This Declaration is made pursuant to a resolution of the Board of Directors made on [date of resolution]/ a Power of Attorney granted to the Authorised Signatory below on [date of Power of Attorney]\*.

Yours faithfully,

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Name:  
Name of Applicant:

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\* Delete which ever not applicable.