



GUIDELINES ON SUKUK

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PART A: GENERAL

Chapter 1

INTRODUCTION

- 1.01 These *Guidelines on Sukuk* are issued by the SC under section 377 of the *Capital Markets and Services Act 2007* (CMSA).
- 1.02 These Guidelines comprise the following parts –
- (a) requirements for an issuance, offering or invitation to subscribe or purchase sukuk as set out in Part B of these Guidelines;
 - (b) approval for an issuance, offering or invitation to subscribe or purchase sukuk as set out in Part C of these Guidelines;
 - (c) requirements for an issuance, offering or invitation to subscribe or purchase retail sukuk as set out in Part D of these Guidelines; and
 - (d) the relevant Shariah rulings, principles and concepts that have been endorsed by the SAC, to be complied with for issuances of ringgit-denominated sukuk.
- 1.03 These Guidelines shall come into force on 28 December 2012 and shall replace the *Islamic Securities Guidelines* (Sukuk Guidelines) issued on 12 July 2011.
- 1.04 Any issue, offer or invitation to subscribe or purchase sukuk under the Sukuk Guidelines issued on 12 July 2011 shall continue to comply with the corresponding provisions in these Guidelines.
- 1.05 These Guidelines shall be read together with other relevant SC guidelines. The table below sets out the application of the relevant guidelines on the respective capital market products:

Product	Guidelines on Sukuk	Guidelines on the Offering of Asset-Backed Securities	Guidelines on Private Debt Securities
Sukuk	√	-	-
Asset-backed securities	√	√	-

Combination of sukuk and private debt securities	√	-	√
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1.06 Any issue, offer or invitation to subscribe or purchase 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 Islamic loan stock¹, convertible sukuk and 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 These are loan stocks structured in a Shariah-compliant manner based on any permissible Shariah principles and have been named appropriately.

DEFINITIONS

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

approval	means an approval, authorisation or recognition under Part VI of the CMSA as the case may be.
Bursa Securities	means Bursa Malaysia Securities Bhd.
business day	means a day (other than Saturday or Sunday) on which commercial banks settle payments in Kuala Lumpur.
commercial paper (CP)	has the meaning assigned to it under the Participation and Operation Rules for Payments and Securities Services issued by Malaysian Electronic Clearing Corporation Sdn Bhd (MyClea), on behalf of Bank Negara Malaysia.
corporation	has the meaning assigned to it under sub-section 2(1) of the CMSA.
foreign currency-denominated sukuk through a roadshow	refers to foreign currency-denominated sukuk that are – (a) issued by a foreign issuer; (b) not originated in Malaysia; and (c) issued or offered to investors in Malaysia and at least one other country; or (d) an invitation to subscribe or purchase made to investors in Malaysia and at least one other country.
interested person	has the meaning assigned to it under the <i>Trust Deeds Guidelines</i> .
international credit rating agency	refers to a credit rating agency that operates in more than one international financial centre, is either licensed or registered by a relevant authority, and is capable of assigning international ratings that are widely accepted by international investors.

investment bank	has the meaning assigned to it under the <i>Principal Adviser Guidelines</i> .
Islamic bank	means a bank licensed under the <i>Islamic Banking Act 1983</i> .
licensed bank	means a bank licensed under the <i>Banking and Financial Institutions Act 1989</i> .
licensed institution	has the meaning assigned to it under sub-section 2(1) of the <i>Banking and Financial Institutions Act 1989</i> .
medium-term note (MTN"	has the meaning assigned to it under the Participation and Operation Rules for Payments and Securities Services issued by MyClear, on behalf of Bank Negara Malaysia.
obligor	has the meaning as assigned to it under the <i>Trust Deeds Guidelines</i> .
originator	has the meaning assigned to it under the <i>Guidelines on the Offering of Asset-Backed Securities</i> .
principal adviser	has the meaning assigned to it under the <i>Principal Adviser Guidelines</i> .
retail investors	has the meaning assigned to it under the <i>Guidelines on Sales Practices of Unlisted Capital Market Products</i> .
retail sukuk	means sukuk that are proposed to be issued or offered to retail investors and include an invitation to subscribe or purchase sukuk that are made to retail investors.
Shariah Advisory Council (SAC)	has the meaning assigned to it under sub-section 2(1) of the CMSA.
special scheme brokers	has the meaning assigned to it under the Principal Adviser Guidelines.
stock exchange	has the meaning assigned to it under sub-section 2(1) of the CMSA.

sukuk	refers to certificates of equal value which evidence undivided ownership or investment in the assets using Shariah principles and concepts endorsed by the SAC, but shall not include any agreement for a financing/investment where the financier/investor and customer/investee are signatories to the agreement and where the financing/investment of money is in the ordinary course of business of the financier/investor, and any promissory note issued under the terms of such an agreement.
sukuk <i>bai` bithaman ajil</i>	are 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>	are certificates of equal value evidencing the certificate holder's undivided ownership of the leased asset and/or usufruct and/or services and rights to the rental receivables from the said leased asset and/or usufruct and/or services.
sukuk <i>istisna`</i>	are 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>	are certificates of equal value evidencing the certificate holder's undivided ownership in the <i>mudharabah</i> venture.
sukuk <i>murabahah</i>	are 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>	are 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, Islamic CPs or a combination of Islamic CPs and Islamic MTNs, within a validity period which is specified to the SC and in the offer document.

sukuk wakalah bi al-istithmar

are certificates of equal value which evidence undivided ownership of the certificate holders in the investment assets pursuant to their investment through the investment agent.

universal brokers

has the meaning assigned to it under the *Principal Adviser Guidelines*.

PART B: REQUIREMENTS FOR AN ISSUANCE, OFFERING OR INVITATION TO SUBSCRIBE OR PURCHASE SUKUK

Chapter 3

ISSUER AND PRINCIPAL ADVISER

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

NAMING OF RINGGIT-DENOMINATED SUKUK

4.01 The name of ringgit-denominated sukuk must not be misleading and must be based on the following principles:

- (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*; or
- (b) where the sukuk are structured using multiple Shariah principles, the sukuk may be named according to –
 - (i) the name of the issuer or obligor (where applicable);
 - (ii) sukuk *istithmar* (investment); or
 - (iii) any other names based on principles endorsed by the SAC from time to time.

The application of the multiple Shariah principles must be disclosed in the principal terms and conditions of the sukuk.

APPOINTMENT OF SHARIAH ADVISER

- 5.01 The issuer must, with the concurrence of the principal adviser, appoint a Shariah adviser to carry out responsibilities that include:
- (a) advising on all aspects of the sukuk including documentation and structuring;
 - (b) issuing a Shariah pronouncement that outlines the following:
 - (i) basis and rationale of the pronouncement, structure and mechanism of the sukuk issue;
 - (ii) the applicable Shariah rulings, principles and concepts used in the sukuk issue; and
 - (iii) the relevant Shariah matters relating to the documentation of the sukuk issue;
 - (c) ensuring that the applicable Shariah rulings, principles and concepts endorsed by the SAC are complied with; and
 - (d) applying *ijtihad* (intellectual reasoning) to ensure all aspects relating to sukuk issuance are in compliance with Shariah, in the absence of any rulings, principles and concepts endorsed by the SAC.
- 5.02 The Shariah adviser must be either –
- (a) a registered Shariah adviser who meets the criteria as stipulated under the Registration of Shariah Advisers Guidelines; or
 - (b) an Islamic bank or a financial institution approved by Bank Negara Malaysia to carry out Islamic Banking Scheme or Skim Perbankan Islam.
- 5.03 For foreign currency-denominated sukuk, any foreign Shariah adviser can be appointed subject to compliance with the relevant requirements stated in the Registration of Shariah Advisers Guidelines.

Non-application of requirements

- 5.04 The requirements under sub-paragraph 5.01 (b), (c) and (d) do not apply to an issue, offer or invitation to subscribe or purchase foreign currency-denominated sukuk.

COMPLIANCE WITH SHARIAH RULINGS, PRINCIPLES AND CONCEPTS

- 6.01 The structure of ringgit-denominated sukuk must be in compliance with the Shariah rulings, principles and concepts that are provided for under chapters 7, 8 and Appendix 1 of these Guidelines as well as any other Shariah rulings, principles and concepts endorsed by the SAC from time to time.
- 6.02 Where the structure of ringgit-denominated sukuk departs from or does not comply with –
- (a) the Shariah rulings, principles and concepts that are provided for under chapters 7, 8 and Appendix 1 of these Guidelines;
 - (b) any other Shariah rulings, principles and concepts endorsed by the SAC from time to time,

the rulings of the SAC must be obtained prior to any submission of documents and information under these Guidelines.

SHARIAH RULINGS APPLICABLE TO ALL TYPES OF RINGGIT-DENOMINATED SUKUK

Requirement of underlying asset

7.01 Under sukuk *bai` bithaman ajil*, sukuk *murabahah*, sukuk *istisna`* and sukuk *ijarah*, an asset, whether tangible and/or intangible, must be made available for sukuk to be issued subject to the following:

- (a) the underlying asset and its use must comply with Shariah requirements;
- (b) any encumbered asset or an asset that is jointly-owned with another party, can only be used as underlying asset provided the issuer has obtained consent from the chargee or joint-owner; and
- (c) where receivables are used as the underlying asset, they must be *mustaqir* (established and certain) and transacted on cash basis (on spot).

Asset pricing

7.02 Sukuk *bai` bithaman ajil*, sukuk *murabahah*, sukuk *istisna`* and sukuk *ijarah* involves the sale and purchase of underlying assets. When the investors purchase the underlying assets, the purchase price 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.

Ibra' (Rebate)

7.03 Provision for *ibra`* may be stipulated in the primary legal document provided that such provision shall not be part of the pricing section.

7.04 Through the application of *ibra`*, variable rate mechanism may be applied to sukuk *bai` bithaman ajil*, sukuk *murabahah* and sukuk *istisna`* which may be benchmarked to the prevailing market rates.

Ta`widh (Compensation)

- 7.05 *Ta`widh* is permissible under sukuk *bai` bithaman ajil*, sukuk *murabahah*, sukuk *istisna'* and sukuk *ijarah* only in the event of delay in payment of any financial obligation.
- 7.06 *Ta`widh* under sukuk *musharakah* and sukuk *mudharabah* is only limited to the failure of the issuer/obligor to distribute the realised profit to the investors on the agreed date. *Ta`widh* does not apply to the failure to pay expected profit.
- 7.07 *Ta`widh* under sukuk *wakalah bi al-istithmar* may be imposed on the issuer/*wakeel* (agent) for the breach of its fiduciary duty as an investment manager as well as for his failure to distribute the realised profit to the investors on the agreed date.
- 7.08 The rate of *ta`widh* is determined by the SAC from time to time and is available on the Islamic Capital Market section of the SC website.

SHARIAH RULINGS APPLICABLE TO SPECIFIC TYPES OF RINGGIT-DENOMINATED SUKUK

8.01 The following Shariah rulings are applicable to the issuance of sukuk *ijarah*:

- (a) Rate of lease rental and lease period

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

- (b) Usage of leased asset

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

- (c) Sub-lease of leased asset to third party by lessee

The lessee may sub-lease the leased asset to a third party provided that the sub-lease period must not be longer than the initial lease.

- (d) Lease of a leased asset to third party by owner of asset

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.

- (e) Maintenance of leased asset

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.

- (f) *Ijarah mawsufah fi zimmah* (Forward lease)

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

(ii) An *ijarah mawsufah fi zimmah* is a lease contract where the asset will be delivered in the future. The contract must state the following:

- (aa) the rate of lease rental;
 - (bb) the nature of the leased asset;
 - (cc) the lease period; and
 - (dd) the method of lease payment.
- (iii) However, if upon delivery, the lessor fails to deliver the asset based on the agreed specification, the lessee is entitled to reject the asset and either –
 - (aa) demand a replacement of the asset with another asset that conforms to agreed specifications; or
 - (bb) terminate the *ijarah* contract, and if the lessee has paid the advance rental, the lessor must refund the amount paid.

(g) Variable rate mechanism

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*.

(h) Transfer of ownership of leased asset

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:

- (i) by way of selling the leased asset at an agreed price; or
- (ii) by way of *hibah* (gift) of the leased asset.

8.02 The following Shariah rulings are applicable to the issuance of sukuk *musharakah*:

(a) *Musharakah* capital

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

(b) *Kafalah* (guarantee) on *musharakah* capital

Kafalah on *musharakah* capital may be provided by a third party, with or

without imposition of fee. If *kafalah* cannot be procured from Islamic banks/*kafalah* provider, conventional guarantee is allowed to be procured.

(c) *Musharakah* partners

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.

(d) Profit and loss

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.

(e) *Tanazul* (Waiver of Right)

A partner may waive his right on the profit payment from the *musharakah* venture, if he so desires.

(f) Management of the *musharakah* venture

One of the partners or issuer or a third party may be appointed as the manager to manage the *musharakah* venture.

8.03 The following Shariah rulings are applicable to the issuance of sukuk *mudharabah*:

(a) *Mudharabah* capital

Capital contributed by a *rabb al-mal* (capital provider) must be in the form of cash, in kind or a combination of both.

(b) *Kafalah* (guarantee) on *mudharabah* capital

Kafalah on *mudharabah* capital may be provided by a third party, with or without imposition of fee. If *kafalah* cannot be procured from Islamic banks/*kafalah* provider, conventional guarantee is allowed to be procured.

(c) *Rahn* (Collateral)

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*.

(d) Profit and loss

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.

(e) *Tanazul* (Waiver of Right)

A partner may waive his right on the profit payment from the *mudharabah* venture, if he so desires.

(f) Management of the *mudharabah* venture

The management of the *mudharabah* venture may be carried out by the *mudharib* or a third party appointed by the *mudharib*.

8.04 The following Shariah rulings are applicable to the issuance of sukuk *wakalah bi al-istithmar*.

(a) *Wakalah* (agency) appointment

There must be a *wakalah* agreement between the investors and the issuer, appointing the issuer as *wakeel* for the purpose of investment, with or without imposition of fee. In the absence of a *wakalah* agreement, a clause for the appointment of the *wakeel* must be provided in the trust deed.

(b) Underlying investment

The capital must be invested in a Shariah compliant investment.

(c) *Kafalah* (Guarantee)

(i) *Kafalah* may be provided under sukuk *wakalah bi al-istithmar* by–

(aa) a third party;

(bb) *wakeel*/sub-*wakeel* appointed by the issuer; or

(cc) related party or associated company of the issuer.

(ii) The *kafalah* provided by parties listed under sub-paragraph (i)(bb) and (cc) above are subjected to the following conditions:

- (aa) *kafalah* is a separate arrangement from the *wakalah*, where any termination of the *wakalah* would not affect the *kafalah* arrangement and vice-versa; and
 - (bb) the amount to be guaranteed is only limited to the obligation arising from contracts under the Shariah principles of *bai` bithaman ajil*, *murabahah*, *istisna`* and *ijarah*.
- (iii) Amount to be guaranteed

The following are the amount that may be guaranteed under sukuk *wakalah bi al-istithmar* structure:

- (aa) nominal amount of the sukuk and/or profit/rental arising from contracts under the Shariah principles of *bai` bithaman ajil*, *murabahah*, *istisna`* and *ijarah*; or
 - (bb) principal amount arising from contracts under the Shariah principles of *musharakah*, *mudharabah* and *wakalah*.
- (iv) If *kafalah* cannot be procured from Islamic banks/*kafalah* provider, conventional guarantee is allowed to be procured.

CHAPTER 9

RATING REQUIREMENTS

Credit rating

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

Appointment of credit rating agency

- 9.05 Sukuk rated on a local rating scale must be rated by a credit rating agency registered with the SC.
- 9.06 Sukuk rated on an international or regional rating scale must be rated by an international credit rating agency.
- 9.07 An issuer incorporated in Malaysia may appoint an international credit rating agency to assign a rating for its ringgit-denominated sukuk, provided that –
- (a) the issuer had previously issued a foreign currency-denominated sukuk for which an international or regional rating has been assigned;

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

Issuer's obligations

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

Non-application of requirements

- 9.11 This chapter does not apply to an issue, offer or invitation to subscribe or purchase the following types of sukuk:
 - (a) irredeemable convertible Islamic loan stocks;
 - (b) foreign currency-denominated sukuk;
 - (c) convertible sukuk or Islamic loan stocks and exchangeable sukuk which fulfil the following requirements:
 - (i) investors of the sukuk or Islamic loan stocks are given the right to convert or exchange the instruments into the underlying shares at any time or within a reasonable period or periods during the tenure of the sukuk issue; and
 - (ii) the underlying shares are listed on a stock exchange;
 - (d) Sukuk –
 - (i) which are non-transferable and non-tradable; and
 - (ii) whose investors do not require a rating.

- 9.12 In relation to sub-paragraph 9.11(d), the principal adviser must ensure that both criteria are met prior to the issue, offer or invitation to subscribe or purchase the sukuk and confirm this in writing to the SC.

SUKUK TRUSTEE AND TRUST DEED REQUIREMENTS

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

Obligations of the issuer where a trust deed is not required

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

OTHER REGULATORY APPROVALS AND COMPLIANCE WITH RELEVANT LAWS AND GUIDELINES

11.01 Where applicable, an issuer must ensure that –

- (a) it has complied with all relevant regulatory requirements from other regulatory authorities, including the Controller of Foreign Exchange, prior to its submission for approval to the SC to issue, offer or make an invitation to subscribe or purchase sukuk; and
- (b) it continues to comply with any conditions imposed by such regulatory bodies throughout the tenure of the sukuk.

11.02 For the purpose of sub-paragraph 11.01(a) where an approval from the Controller of Foreign Exchange is required, such approval must be obtained within two years before the time of the issuer's submission to the SC.

11.03 An issuer and its principal adviser must ensure that the issue, offer or invitation to subscribe or purchase sukuk has complied with all the relevant laws which govern the proposal, including:

- (a) the CMSA;
- (b) the *Companies Act 1965*; and
- (c) all other relevant SC guidelines.

TENURE FOR SUKUK PROGRAMME INVOLVING ISLAMIC COMMERCIAL PAPERS

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

12.02 The requirement in paragraph 12.01 does not apply to –

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

IMPLEMENTATION TIME FRAME

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

MODE OF ISSUE

Ringgit-denominated sukuk

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

Foreign currency-denominated sukuk

- 14.03 Foreign currency-denominated sukuk must be announced or reported on FAST.
- 14.04 Foreign currency-denominated sukuk may be issued on scripless basis, deposited and settled in the RENTAS system with MyClear as the central securities depository and Authorised Depository Institutions in Malaysia as the sub-depositories.

UTILISATION OF PROCEEDS

- 15.01 An issuer must ensure that proceeds from the approved sukuk are utilised for Shariah-compliant purposes only and in accordance with the purposes disclosed to the SC.
- 15.02 Where the proceeds are utilised for a project which will generate cash flow for payments to investors, the issuer must ensure that the transaction documents relating to the sukuk include the relevant parameters, conditions, supporting documents and certificates to enable the sukuk trustee or facility agent, where applicable, to manage the release of the proceeds to the issuer.

DISCLOSURE OF MATERIAL INFORMATION

Sukuk programme

16.01 For any sukuk programme approved by the SC, the issuer must –

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

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

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

- (a) date, size and tenure of issue;
- (b) credit rating;
- (c) coupon/profit rate of the issue; and
- (d) utilisation of proceeds raised from the issue.

16.04 Paragraphs 16.02 and 16.03 do not apply if an issue under the Islamic MTN programme is tendered through FAST or if it is issued or offered on a primary subscription basis (under a bought-deal or private placement arrangement).

Early redemption and call option

16.05 An immediate announcement must be made where an issuer decides to:

- (a) make an early redemption of the sukuk; or
- (b) exercise a call option to redeem its outstanding sukuk prior to the maturity date.

16.06 The immediate announcement must be made on:

- (a) FAST by the facility agent, for sukuk that are traded over-the-counter; or

- (b) the stock exchange by the issuer, for sukuk that are listed and traded on the stock exchange.

16.07 In addition to the announcement requirement, the issuer, facility agent or sukuk trustee may use any other means to inform the investors of such redemption, as may be provided in the trust deed and other transaction documents.

16.08 In the case of an early redemption of the sukuk:

- (a) investors must be informed of the relevant details of such redemption, including broad details of the proposed investors' resolution where appropriate, as soon as possible through an announcement; and
- (b) where prior consent from investors is required for the early redemption, another announcement shall be made soonest practicable after the consent from investors has been obtained.

Non-application of requirements

16.09 The requirements under paragraphs 16.05, 16.06, 16.07 and 16.08 do not apply to an issue, offer or invitation to subscribe or purchase foreign currency-denominated sukuk.

REVISION TO PRINCIPAL TERMS AND CONDITIONS

General requirements

- 17.01 Any revision to the principal terms and conditions of a sukuk issue must not result in non-compliance with any requirements provided in these Guidelines.
- 17.02 Any revision to the principal terms and conditions to increase the size of sukuk is not allowed.

Revision to profit rate

- 17.03 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;
 - (b) a revision to increase the profit rate 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 initial contract.
- 17.04 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.

Revision to maturity date

- 17.05 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.
- 17.06 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.

- 17.07 Supplemental contract executed under paragraphs 17.04, 17.05 and 17.06 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 maybe).

Approval required

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

Notification required

- 17.09 Subject to paragraph 17.10, SC's prior approval is not required for any revision to principal terms and conditions of sukuk in the following circumstances:
- (a) sukuk which has been approved or deemed approved by the SC and has already been issued; or
 - (b) sukuk which has been deemed approved by the SC but not yet issued.
- 17.10 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.
- 17.11 If the revision to principal terms and conditions relates to Shariah matters, the issuer, through the principal adviser, must first refer such matters to the SAC prior to notification to the SC.
- 17.12 For the purpose of a referral to the SAC under paragraph 17.11, the principal adviser must submit the relevant documents as specified in Appendix 2 of these Guidelines to the SC.
- 17.13 Notification to the SC is made by submitting to the SC the relevant documents and information as set out in Appendix 3 of these Guidelines.
- 17.14 Prior to submitting the documents and information as required under paragraph 17.13, 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.

17.15 Where consent from investors is required for any proposed revision to the principal terms and conditions, the principal adviser must ensure that –

- (a) due process has been observed in obtaining investors' approval. This includes the requirement that the issuer or any interested persons of the issuer abstain from voting in the meeting convened to obtain investors' approval;
- (b) all material information pertinent to the revision, including the impact on credit rating, has been disclosed to investors;
- (c) two separate announcements, where applicable, have been made on FAST – one on the proposed revision which must be announced prior to obtaining investors' approval and another on the outcome of the investors' decision which must be made immediately after the investors' decision. For a sukuk that is listed and traded on the stock exchange, these announcements must be made on the stock exchange; and
- (d) the announcements made on FAST or on the stock exchange are copied to the SC within two business days from the date of the announcements.

Non-application of requirements

17.16 The requirements in this chapter, except for paragraph 17.01, do not apply to revisions made to foreign currency-denominated sukuk which is:

- (a) issued or offered by Malaysian issuer exclusively to investors outside Malaysia; or
- (b) an issue, offer or invitation to subscribe or purchase foreign currency-denominated sukuk in Malaysia through a roadshow. The responsibility to notify investors in Malaysia shall reside with the principal adviser involved.

PART C: APPROVAL FOR AN ISSUANCE, OFFERING OR INVITATION TO SUBSCRIBE OR PURCHASE SUKUK

Chapter 18

APPROVAL

SC approval

General

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

Foreign currency-denominated sukuk through a roadshow

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

Deemed approved

Ringgit-denominated and foreign currency-denominated sukuk

18.04 A proposed issue, offer or invitation to subscribe or purchase sukuk by a Multilateral Development Bank (MDB) or Multilateral Financial Institution (MFI) will be deemed approved by the SC.

18.05 In the case of any other proposed issue, offer or invitation to subscribe or purchase sukuk, it will be deemed approved by the SC upon fulfilling the following conditions:

- (a) in the case of a ringgit-denominated sukuk –
 - (i) the issuer, through the principal adviser, has sought the endorsement of the SAC as to whether the sukuk are Shariah compliant; and
 - (ii) the sukuk have been assigned –
 - (aa) a local rating of AAA by a domestic credit rating agency registered with the SC; or
 - (bb) an international rating of at least BBB- (or its equivalent) or a regional rating of AAA by an international credit rating agency. The use of an international rating or regional rating is subject to the requirements set out under paragraph 9.07;
- (b) in the case of a foreign currency-denominated sukuk which is originated in Malaysia, it has been assigned an international rating of at least BBB- (or its equivalent) on the date of application; or
- (c) in the case of a multi-currency sukuk which includes both ringgit-denominated and foreign currency-denominated sukuk, the requirements under sub-paragraph 18.05(a) and 18.05(b) have been and continue to be complied with.

18.06 For the purpose of sub-paragraph 18.05(a)(i), the principal adviser must submit the relevant documents as specified in Appendix 4 of these Guidelines to the SC.

18.07 For the purpose of sub-paragraph 18.05(b), a proposed issue, offer or invitation to subscribe or purchase foreign currency-denominated sukuk is considered to be originated in Malaysia if the following conditions are fulfilled:

- (a) a licensed bank, investment bank, universal broker or special scheme broker in Malaysia is appointed as a main adviser or co-adviser and this must be clearly stated in an information memorandum or offer document for the proposed issue, offer or invitation to subscribe or purchase the foreign currency-denominated sukuk; and
- (b) the marketing and placement of the sukuk is performed by the Malaysian adviser.

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

- (a) asset-backed securities (ABS); and
- (b) sukuk where the issuer is a special purpose vehicle with all of the following characteristics:
 - (i) it does not employ any officer or manager for its business operations;
 - (ii) it does not actively carry out any business activity; and
 - (iii) investors of the sukuk do not have any full financial recourse to any entity² that is assigned a local rating of AAA by a domestic credit rating agency or an international rating of at least BBB- (or its equivalent) by an international credit rating agency.

For the purpose of sub-paragraph 18.08(b)(iii), the term “full financial recourse” means irrevocable and unconditional guarantee from a corporation, licensed institutions or other financial institutions on the full amount of a sukuk programme or any issue, offer or invitation to subscribe or purchase sukuk.

Islamic negotiable instruments of deposit programme by licensed institutions or Islamic banks

18.09 A proposed issue, offer or invitation to subscribe or purchase Islamic negotiable instruments of deposit (INID) with a tenure of more than five years³ by a licensed institution or an Islamic bank will be deemed approved by the SC.

18.10 For a fixed-rate INID with a tenure of more than five years issued or offered by a licensed institution or an Islamic bank, the licensed institution or the Islamic

² Inclusive of an entity with senior unsecured obligation which is rated either local rating of AAA or international rating of at least BBB- (or its equivalent), where applicable.

³ To be read together with *Securities Commission (Non-Application of the Definition of Debenture) Order 2001*.

bank must continuously comply with the following requirements for the approval to be considered valid throughout the tenure of the programme:

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

18.11 Other than the requirements stated in paragraphs 18.10, 19.03, 19.04 and 19.05, the other requirements in these Guidelines are not applicable to fixed-rate INIDs with a tenure of more than five years issued by a licensed institution or an Islamic bank.

18.12 Floating-rate INIDs with a tenure of more than five years and fall within the definition of structured products are subject to the *Guidelines on the Offering of Structured Products* (SP Guidelines) and not these Guidelines.

SUBMISSION OF APPLICATION FOR APPROVAL

- 19.01 An issuer of sukuk must submit its application for approval to the SC through a principal adviser.
- 19.02 An MDB or MFI may however submit its application for approval directly to the SC or through a principal adviser.
- 19.03 All documents to be submitted to the SC must be in two hard copies and one electronic copy.
- 19.04 Any submission in electronic copy must be prepared in the manner specified in Appendix 5 of these Guidelines.
- 19.05 The documents and information to be submitted to the SC for the purpose of approval are set out in the following appendices:
- (a) Appendix 6 – SC approval and deemed approval
 - (b) Appendix 7 – SC approval for foreign currency-denominated sukuk through a roadshow
 - (c) Appendix 8 – Deemed approval for INIDs programme
- 19.06 An issuer and its principal adviser must furnish any other documents or information as requested by the SC.

SUBMISSION OF INFORMATION TO THE SC POST APPROVAL

20.01 Upon obtaining an approval from the SC, the documents and information specified in Appendix 9 of these Guidelines must be submitted to the SC by –

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

PART D: REQUIREMENTS FOR AN ISSUANCE, OFFERING OR INVITATION TO SUBSCRIBE OR PURCHASE RETAIL SUKUK

Chapter 21

RETAIL SUKUK

21.01 This chapter sets out the additional requirements for retail sukuk.

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

Retail sukuk issuers

21.03 Notwithstanding the eligible issuers specified in paragraph 3.01, a retail sukuk can only be issued by:

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

Eligible sukuk

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

- (a) fixed term with principal and any profit payable at expiry;

- (b) fixed or variable profit rate;
- (c) except for sukuk without periodic distribution, profits are to be paid periodically on certain specified intervals from the issue date;
- (d) rank at least equally with amounts owing to unsecured and unsubordinated creditors; and
- (e) does not embed any swaps, options⁴ or other derivatives, except in the case of convertible or exchangeable sukuk where the option is to convert or exchange the sukuk into shares:
 - (i) the option is at the discretion of the investor; and
 - (ii) the underlying shares are listed on Bursa Securities.

21.05 Notwithstanding paragraph 21.04, retail sukuk must not include:

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

Approval for retail sukuk

21.06 Chapter 18 of these Guidelines is not applicable to retail sukuk.

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

21.08 For the purpose of paragraph 21.07, a complete set of documents must include:

- (a) the documents and information set out in Appendix 6 of these Guidelines; and
- (b) a registrable prospectus/disclosure document.

⁴ An option does not include any purchase and sale undertakings under a sukuk structure

- 21.09 The registrable prospectus/disclosure document submitted to the SC must be complete and complies in full with the requirements of Division 2 of the SC's *Prospectus Guidelines/Guidelines on Disclosure Documents and Offering Documents*.
- 21.10 An issuer of a retail sukuk must disclose in its submission to the SC the –
- (a) indicative size of the retail portion; and
 - (b) method of distribution.
- 21.11 Notwithstanding paragraph 21.08, the SC may approve a retail sukuk under an existing approved sukuk programme provided that the issuer submits to the SC –
- (a) a marked-up copy of the revised principal terms and conditions; and
 - (b) a registrable prospectus/disclosure document; or
 - (c) a base prospectus/disclosure document together with the pricing supplement, in relation to the retail sukuk.

Summary advertisement of prospectus/disclosure document

- 21.12 The issuer is required to publish a summary advertisement of its prospectus/disclosure document in at least one national newspaper which is widely circulated.
- 21.13 The summary advertisement must include the following statement and information:
- (a) a statement advising investors to read and understand the contents of the prospectus/disclosure document before investing and to make their own risk assessment and seek professional advice, where necessary;
 - (b) brief description of the retail sukuk;
 - (c) the risks specific to the retail sukuk referred to in the advertisement;
 - (d) the date of the prospectus/disclosure document;
 - (e) the opening and closing dates of the application for subscription of the retail sukuk; and
 - (f) where a copy of the prospectus/disclosure document can be obtained.

Continuous disclosure obligations

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

21.15 Where the retail sukuk are to be offered to retail investors over-the-counter (OTC), the issuer must disclose on a platform as may be specified by the SC, any information which may have a material effect on:

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

21.16 In addition to paragraph 21.15, the issuer must immediately announce the following on the platform specified by the SC:

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

shall be regarded as a sukuk holder, hence entitled to attend, speak and vote at the meeting of the investors.

- 21.17 The issuer must announce the maturity date of each issuance of the retail sukuk at least one month before the maturity date.

Non-application of requirements

- 21.18 The requirements under paragraphs 21.07, 21.09, 21.12 and 21.13 shall not apply to a retail sukuk that is traded on the secondary market if a prospectus/base prospectus/disclosure document has already been registered with the SC in relation to the issue of retail sukuk in the primary market.

APPROVED SHARIAH RULINGS, CONCEPTS AND PRINCIPLES FOR RINGGIT-DENOMINATED SUKUK

The following are acceptable Shariah rulings, concepts and principles for ringgit-denominated 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.
- 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 fulfill 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 concepts and principles

- Bai` dayn (Debt trading)
A transaction that involves the sale and purchase of securities or debt certificates that conforms with Shariah. Securities or debt certificates will be issued by a debtor to a creditor as an evidence of indebtedness.
- 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 fulfill 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' (Rebate)
An act by a person to withdraw his rights to collect payment from a person who has the obligation to repay the amount borrowed from him.
- Ittifaq dhimni (Pre-agreed contract)
A sale and re-purchase of the underlying asset of which the prices are agreed by the parties prior to the completion of the contract. This is an external agreement which must be reached before the contract can be concluded to allow for *bai` al-muzayadah* to take place.

- 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.
- Ujrah (Fee)
A financial charge for the utilisation of services or manfaat (benefit). In the context of today's economy, it can be in the form of salary, allowance, commission and any other permissible form of assets.

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

- 1.01 A cover letter to the SC (addressed to the Executive Director of Islamic Capital Market) disclosing the detailed description of the revised transaction and structure diagram (where applicable) of the sukuk.
- 1.02 Shariah Pronouncement including detailed reasoning/justification⁵.
- 1.03 Revised principal terms and conditions of the sukuk.
- 1.04 Any other supporting documents or information as may be required by the SC.

⁵ Detailed Shariah reasoning/justification is required if the revision involves changes to the structure earlier approved by the SC. For a revision which does not affect the structure of the sukuk, letter of consent from the Shariah adviser is required to be submitted.

APPENDIX 3

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

- 1.01 A notification letter to the SC on the revision which includes the following:
- (a) rationale for each revision;
 - (b) confirmation that the relevant requirements (as set out in Chapter 17 of these Guidelines) have been duly complied with by the issuer; and
 - (c) details of the contact person of the principal adviser including name, telephone number, facsimile number and e-mail address.
- 1.02 A marked-up version copy of the revised principal terms and conditions.
- 1.03 A copy of the written consent from the relevant parties in relation to the revision.
- 1.04 The following documents, where applicable:
- (a) supplementary information memorandum;
 - (b) supplemental offering circular;
 - (c) executed supplemental trust deed; and
 - (d) other offer documents.
- 1.05 Any other material information in relation to the revision.
- 1.06 A soft copy (clean version in PDF format) of the following documents to be e-mailed to DS@seccom.com.my –
- (a) revised principal terms and conditions in the following format –
 - Font- Arial
 - Font size- 11
 - Margins (Top, Down, Right, Left) - 1.25"
 - Spacing- single
 - (b) where applicable, the supplementary information memorandum, supplementary offering circular, executed supplementary trust deed and other offer documents.

APPENDIX 4

DOCUMENTS AND INFORMATION ON SHARIAH COMPLIANCE TO BE SUBMITTED TO THE SC FOR DEEMED APPROVAL

- 1.01 A cover letter to the SC (addressed to the Executive Director of Islamic Capital Market) disclosing the following:
 - (a) background information on the issuer and/or obligor; and
 - (b) a description of the transaction and structure diagram of the sukuk.
- 1.02 Shariah Pronouncement including detailed reasoning/justification.
- 1.03 Indicative principal terms and conditions of the sukuk (as per Part 2 of Appendix 6).
- 1.04 Any other supporting documents or information as may be required by the SC.

ELECTRONIC SUBMISSIONS

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

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

PART 1: APPLICATION

1.01 An application letter which includes the following:

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

- (m) name, telephone number, facsimile number and e-mail address of the officer-in-charge for the issue/sukuk programme.
- 1.02 Principal terms and conditions of the proposal (as per Part 2 of Appendix 6).
- 1.03 Copies of approval letters from all other relevant regulatory authorities.
- 1.04 Compliance checklist on these Guidelines.

Additional documents to be submitted for SC Approval

- 1.05 The following additional documents are to be submitted:
 - (a) issuer's declaration (as per Part 3 of Appendix 6); and
 - (b) latest audited financial statements of the issuer.

PART 2: PRINCIPAL TERMS AND CONDITIONS OF THE PROPOSAL

2.01 Background information

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

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

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

2.02 Principal terms and conditions

- (a) Names of parties involved in the proposal, where applicable:
 - (i) Principal adviser;
 - (ii) Lead arranger;
 - (iii) Co-arranger;
 - (iv) Solicitor;
 - (v) Financial adviser;
 - (vi) Technical adviser;
 - (vii) Sukuk 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) Islamic principles used;
- (c) Facility description;
- (d) Identified assets;
- (e) Purchase and selling price/rental (where applicable);
- (f) Issue/sukuk programme size;
- (g) Tenure of issue/sukuk programme;
- (h) Availability period of sukuk programme;
- (i) Profit/coupon/rental rate;
- (j) Profit/coupon/rental payment frequency;
- (k) Profit/coupon/rental payment basis;
- (l) Security/collateral, where applicable;
- (m) Details on utilisation of proceeds by issuer/obligor and originator (in the case of ABS). If proceeds are to be utilised for project or capital

expenditure, description of the project or capital expenditure, where applicable;

- (n) Sinking fund and designated accounts, where applicable;
- (o) Rating:
 - Credit ratings assigned and whether the rating is final or indicative. In the case of a sukuk programme where the credit rating is not assigned for the full amount, disclosures set out in paragraph 9.04 of these Guidelines must be made; and
 - Name of credit rating agencies;
- (p) Mode of issue;
- (q) Selling restriction, including tradability, i.e. whether tradable or non-tradable;
- (r) Listing status and types of listing, where applicable;
- (s) Other regulatory approvals required in relation to the issue, offer or invitation to subscribe or purchase sukuk, and whether or not obtained;
- (t) Conditions precedent;
- (u) Representations and warranties;
- (v) Events of default, dissolution event and enforcement event, where applicable;
- (w) Covenants;
- (x) Provisions on buy-back and early redemption of sukuk; and
- (y) Other principal terms and conditions for the proposal.

PART 3: DECLARATION BY THE ISSUER

Date

The Chairman
Securities Commission Malaysia

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

- the Guidelines on Sukuk; and
- the Equity Guidelines *¹

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

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

(hereinafter referred to as "the Proposal").

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

corporations laws or other laws involving fraud or dishonesty in a court of law, for the past ten years prior to the submission/since incorporation (if less than ten years)*;

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

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

- (a) the Proposal results/does not result in a significant change in the business direction or policy of the listed company³; and
- (b) the Proposal is/is not a related-party transaction⁴.

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

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

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

Yours faithfully,

.....

Signature

Name -

Name of Issuer –

Date -

Notes

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

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

* To delete if not applicable

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

- 1.01 An application letter which includes the following:
- (a) background information on the issuer;
 - (b) profile of directors of issuer, including:
 - (i) National Registration Identity Card numbers for Malaysian directors; and
 - (ii) passport numbers for non-Malaysian directors;
 - (c) a description of the transaction and structure of the issue or sukuk programme. In addition, specify whether it is a one-time issue or a sukuk programme;
 - (d) details of the utilisation of proceeds, including its schedule where applicable;
 - (e) name, telephone number, facsimile number and e-mail address of the officer-in-charge for the issue/programme; and
 - (f) any other material information in relation to the issue/programme.
- 1.02 Term sheet or offer documents such as offering circular.
- 1.03 Declaration from the Malaysian principal adviser that the requirements under subparagraph 18.03 have been complied with.
- 1.04 An undertaking by the issuer that the rating report (if applicable) and amount issued to investors in Malaysia will be submitted to the SC within seven business days after the issue.

APPENDIX 8

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

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

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

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

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

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

- (a) date of issue;
- (b) size of issue;
- (c) tenure of issue;
- (d) mode of issue;
- (e) coupon/profit rate of the issue;

- (f) names of the primary subscribers/placees/investors and the respective amounts subscribed, primary subscription rates/yield-to-maturity;
- (g) list of tender panel members, if any;
- (h) utilisation of proceeds raised from the issue;
- (i) a certified true copy of the executed trust deed, where applicable; and
- (j) a copy of the rating report. If the issue is unrated, confirmation from the principal advisers that the sukuk are non-transferable and non-tradable, and the investors do not require a rating.

1.03 Confirmation from the principal advisers that –

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

investing in the sukuk, and if any, the profit and loss sharing entitlement ratio between the investors, the advance payment and purchase undertaking mechanism and the recourse available to the investors; and

- (g) all other conditions of approval that has been/may be imposed by the SC has been/will be complied with.

1.04 The principal advisers must submit to the SC confirmation from the Shariah adviser dated prior to, or on, the issue date of sukuk or the first issue under a sukuk programme, confirming 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.