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Revised Guidelines for Private Debt Securities and Sukuk

The Securities Commission ("SC") has revised its guidelines for Sukuk and private debt securities ("PDS") that include some significant changes. The revised guidelines take effect this month.

Revised Sukuk guidelines

From 12 August 2011, the deemed approval process will be expanded to include highly rated ringgit-denominated Sukuk. To qualify for the deemed approval process, the ability of the Issuer to repay the principal and interest on a timely basis will play a key role, as the SC requires a local rating of AAA, an international rating of at least BBB or a regional rating of AAA.

The deemed approval process will include the Issuer seeking the approval of the Shariah Advisory Council on Shariah compliance, by the Issuer through its principal adviser submitting all relevant documents and information to the SC and in this process seek confirmation of qualification for deemed approval.

Under the revised Sukuk guidelines, other than revisions in relation to Shariah matters which still require the SC's prior approval, any other revisions to the principal terms and conditions of an offer or issue that has been approved by the SC and has already been issued or implemented will not require the prior approval of the SC. Notification to the SC would be sufficient provided that, inter alia, consent from the Sukuk holders, Shariah adviser, trustee, other regulatory authorities and/or other relevant parties have been obtained and the proposed revisions do not result in breach and/or non compliance with any regulatory requirements.

The size of the Sukuk cannot be revised.

The revised Sukuk guidelines do not make clear whether consent from all Sukuk holders is required or whether consent from a specific percentage of the Sukuk holders, as provided in the transaction documents would suffice.

Other changes to the guidelines as follows:

- the scope of application has now been clarified and expanded;
- the role of key transaction persons such as the Shariah adviser and Sukuk trustee is defined;
- Shariah rulings applicable to all and specific types of Sukuk are set out;
- disclosure of the issuer or board members on material information; and
- early redemption of the Sukuk shall be announced in the FAST system.

Revised PDS guidelines

This is also effective from 12 August 2011 and contains similar changes.

However, as Shariah compliance is not a requirement under the revised PDS guidelines, the Issuer through its principal adviser may need to submit all necessary information and documents to the SC to confirm qualification for deemed approval.

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