

Malaysia

Bond Market Guide

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Acknowledgement

The Asian Development Bank (ADB) Team, comprising Satoru Yamadera (Economist, ADB Office of Regional Economic Integration, - September 2011), Seung Jae Lee (Principal Financial Sector Specialist), Shinji Kawai (Senior Financial Sector Specialist, Banking), Shigehito Inukai (ADB consultant), Taiji Inui (ADB consultant), and Matthias Schmidt (ADB consultant), would like to express their sincere gratitude to national members and expert institutions: Securities Commission Malaysia (SC), Bank Negara Malaysia, CIMB Investment Bank Berhad, and Bond Pricing Agency Malaysia (BPAM). They kindly provided answers to the questionnaires prepared by the ADB Team, thoroughly reviewed the draft of the Market Guide, and gave their valuable comments.

The ADB Team also would like to express special thanks to Citibank, Deutsche Bank AG, HongKong Shanghai Banking Corporation (HSBC), J.P. Morgan, and State Street for their contribution as international experts to provide information from their respective market guides, as well as their valuable expertise. Because of their cooperation and contribution the ADB Team started the research on solid ground.

Last but not least, the Team would like to thank all the interviewees who gave their comments and responses to questions during the market consultations.

It should be noted that any part of this report does not represent the official views and opinions of any institution which participated in this activity as the ABMF members and experts. The ADB Team bears responsibility for the contents of this report.

February 2012

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I. Structure, Type, and Characteristics of the Market

A. Overview of the Market

The Malaysian bond market is one of the most developed and dynamic bond markets in the region. It is the largest local currency bond market in the Association of Southeast Asian Nations (ASEAN). As of 31 December 2011, the market has reached the size of MYR848 billion (equivalent to \$282.3 billion).

This phenomenal development of the Malaysian bond market has largely been achieved through the exceptional growth of the corporate bonds and *Sukuk* markets. Malaysia's well-developed government bond market is complemented by a sizeable corporate bond market, which constituted 40% of the market size as of the end of the third quarter of 2011.¹ Malaysia's bond market is predominantly offered to and traded by sophisticated investors, which are generally associated to those listed in Schedule 6 and 7 under the *Capital Market and Services Act 2007* (CMSA) Appendix 1.1A.

The market also offers a wide range of instruments, considering the fact it has the largest *Sukuk* market in the world. *Sukuk*, or Islamic bonds which are issued on Islamic principles, play a major role in Malaysia's capital market development. With the *Sukuk* market providing the springboard, the past decade has also witnessed the rapid growth of Malaysia's Islamic capital market.

A testament to the significance of the Malaysian fixed-income market in the global bond markets is its inclusion in a number of global indices, such as the inclusion of Malaysian government bonds in the World Government Bond Index, which is one of the most referenced benchmark market indices by the international investing community, as well as in the Barclays Global Aggregate Index. Malaysian government *Sukuk* are also included in the Dow Jones Citigroup *Sukuk* Index, the world's first *Sukuk* index. Malaysia has allowed a diverse group of foreign entities to issue ringgit-denominated bonds in the country. By the end of September 2011, 34.5% of Malaysian government bonds outstanding were held by foreign investors, compared with 21.5% by the end of December 2010 and 18.1% by the end of June 2010.

¹ As of September 2011 based on data from AsianBondsOnline. http://asianbondsonline.adb.org/malaysia/data/bondmarket.php?code=LCY_in_USD_Local

Domestic and foreign investors can buy and sell conventional and Islamic debt instruments through over-the-counter (OTC) markets. Rules on hedging have been liberalized to allow residents and non-residents into hedging arrangements with licensed offshore banks.

In Malaysia, nearly all securities are scripless, with securities transferred electronically via Bank Negara Malaysia (BNM)'s Real-Time Electronic Transfer of Funds and Securities (RENTAS) system, which is operated by its wholly-owned subsidiary, Malaysian Electronic Clearing Corporation (MyClear). Transfer instructions are conducted on a trade-by-trade basis.

Securitization in Malaysia began in 2001, following the introduction of the Asset-Backed Securities Guidelines by Securities Commission Malaysia. The special purpose vehicle (SPV) set up by National Mortgage Corporation (Cagamas) is currently the largest issuer of securitized instruments in Malaysia through the securitization of housing loans of government staff. Cagamas is also an active issuer of bonds in Malaysia.

In 2004, the Securities Commission Malaysia (SC) on its website allowed public access to the Principal Terms and Conditions for all corporate bond and *Sukuk* issuances approved by the SC. Full access to all issuance documents, however, was made available to Schedule 6 CMSA investors upon subscription. This facility allows investors to utilize the information available and enables them to make their own evaluation on the merits and risks of the investment.

In 2006, BNM launched Bond Info Hub, a one-stop centre detailing all bond-related information in Malaysia. Bond Info Hub is a single source of information on the Malaysian bond market for the global investment community. In addition to being a key initiative to promote the domestic bond markets, Bond Info Hub acts as a conduit to correct misconceptions, especially among foreign investors, about the state of market development in Malaysia. Also in 2006, the Securities Commission issued Guidelines on the Registration of Bond Pricing Agencies to complement the government's objective of building more efficient and liquid bond and *Sukuk* markets.

B. Types of Bonds

Malaysia's local currency bond market is active for both conventional and Islamic bonds. A futures market is also available for Malaysian government securities. Investors may employ different investment and risk management techniques. Also, licensed and non-financial institutional investors may enter into repo and reverse-repo transactions.

1. By Issuer Category

a. Bonds Issued by Public Entities

i. Government Securities

The types of government debt securities and *Sukuk* include:

(1) Malaysian Government Securities

Malaysian Government Securities (MGS) are long-term bonds issued by the

government to raise funds from the local financial market. These coupon-bearing bonds are the most actively traded bonds in the Malaysian bond market. Aside from MGS, callable MGS have also been issued in 2006 to provide the government an alternative to “redeem the bond ahead of its maturity date”²

(2) Malaysian Treasury Bills (MTB)

Malaysian Treasury bills (MTBs) are “short-term securities issued by BNM on behalf of the government. Treasury bills are used for working capital.”³

(3) Malaysian Islamic Treasury Bills (MITB)

Malaysian Islamic Treasury bills (MITBs) are short-term securities issued by the Government of Malaysia based on Islamic principles. MITBs are usually issued on a weekly basis, with original maturity of 1 year.

(4) Government Investment Issues

“Government investment issues (GIIs) are non-interest-bearing government securities based on Islamic principles issued by the government and placed on a competitive tender with maturities of 3 to 10 years. Funds are used for development expenditures.”⁴

(5) Sukuk Simpanan Rakyat

Sukuk Simpanan Rakyat, issued on a scripless basis by BNM on behalf of the government, is an investment instrument for Malaysian citizens who are 21 years old and above.

(6) Merdeka Savings Bonds

These are scripless bonds structured on Shariah principles. These bonds represent an additional savings instrument for Malaysian citizens who are 56 years old and above.

Merdeka savings bonds are “targeted at retirees by offering a slightly higher return than the market rate, and a tax exemption. A unique feature of [the] *Merdeka* savings bonds is that they are all based on the Islamic banking concept of *bai’ al-inah* (sell-and-buy-back arrangement).”⁵

ii. Bank Negara Monetary Notes (BNMN)

(1) Bank Negara Monetary Notes

Bank Negara Monetary Notes (BNMNs) are discounted or coupon-bearing government securities with maturities of 91, 182, 364 days, and 1 to 3 years. BNMNs are issued for the purpose of managing liquidity in both conventional and Islamic financial markets, and can be discount-based or coupon-based. “BNMNs are offered through competitive auction through principal dealers.”⁶ The maximum maturity of BNMN is 3 years. BNMNs replaced the Bank Negara Bills and Bank Negara Negotiable Notes.

(2) Floating Rate Bank Negara Monetary Notes

Floating Rate Bank Negara Monetary Notes (BNMNF) are instruments used for

² AsianBondsOnline. http://asianbondsonline.adb.org/malaysia/structure/instruments/bond_types.php

³ Footnote 2.

⁴ Footnote 2.

⁵ Footnote 2.

⁶ Footnote 2.

implementing monetary policy and in managing liquidity in the financial market. Floating rate BNMN issuance is conducted through competitive Dutch auction (uniform price) via the Principal Dealer network where market participants bid the tender based on spread.

iii. *Sukuk* Bank Negara Malaysia Issues

Sukuk Bank Negara Malaysia Ijarah (SBNMI) are zero-coupon bonds with maturities of 1 to 2 years. SBNMI are based on the concept of sale and lease back (*al-Ijarah*).⁷ A special-purpose vehicle (SPV) has been established to issue the *Sukuk* Ijarah.

b. Bonds and Notes Issued by Private Entities

Financial institutions are the main issuers of corporate bonds and notes.

i. Financial Institutions

ii. Local and Foreign Corporates

The types of corporate bonds issued on the Malaysian capital market are classified as straight, convertible, bonds with warrants, floating rate, zero coupon, mortgage bonds, Islamic bonds, secured and unsecured bonds, and guaranteed bonds.

(1) Medium-Term Notes

As the name implies, medium-term notes (MTNs) are debt papers issued on a medium-term basis, with tenures of more than 1 year and redeemable at par on maturity. They may carry fixed- or floating-rate coupons, and may be issued both on conventional and Islamic principles and by direct placement or tender. Based on the Private Debt Securities Guidelines of the SC of Malaysia, which was revised in August 2011, if a debt program involves an issuance of commercial papers (CPs) or a combination of MTNs and CPs, the tenure for such programs must not exceed 7 years. For a stand-alone MTN program, the 7-year tenure restriction does not apply.

Islamic MTNs provide semi-annual dividends depending on the structure used. This type of instrument was introduced to bridge the gap between short-term CPs and long-term corporate bonds. They differ from corporate bonds in that they are sold in relatively small amounts either on a continuous or on an intermittent basis. This type of debt program is used by a company to obtain a constant stream of cash flow from its debt issuance. It allows a company to tailor its debt issuance to meet its financing needs, only tapping the market for funds as and when required.

MTNs allow a company to register with the SC only once, instead of registering for every issue with differing maturities.

(2) Floating-Rate Notes

Floating-rate notes (FRNs) are debt securities with variable (floating) interest rates that are linked to those in the money markets. Their tenures range from 3 to 7 years. FRNs are usually pegged at a fixed spread to interbank rates corresponding to the maturity periods of the notes. In contrast to a coupon rate that is fixed for the entire life of the bonds, the coupon rate for FRNs is pegged to an agreed benchmark. It is

⁷ Footnote 2.

periodically reset at a stated margin over a reference rate, usually the Kuala Lumpur Interbank Offered Rates (KLIBOR), e.g., the 6-month KLIBOR for semi-annual coupons, or 12-month KLIBOR for coupons payable annually.

FRN investors are usually financial institutions with floating rate liabilities. Other investors use FRNs as substitutes for money market instruments and as hedges against rising interest rates.

(3) Commercial Paper

A CP is a short-term revolving promissory note, with maturities from 1 month to 1 year. In practice, a CP is often rolled over upon maturity until the expiry of the issue program. Most investors hold CPs until maturity as these are short term in nature.

(4) Notes Issuance Facility

Under this facility, a borrower can issue short-term notes of less than 1 year maturity, with common tenures being 1, 3 and 6 months. The tenure of the facility typically ranges from 3 to 5 years. The notes are issued in specific denominations and sold at a discount to their face value. The total amount of outstanding notes is capped by the approved facility amount.

The notes are subscribed by participating investors, normally financial institutions. Upon maturity, the notes are either redeemed at par or the principal is rolled over with the issuance of new notes. In the latter scenario, the discounted interest is paid to note holders at the time of the rollover.

The notes issuance facility (NIF) is a low-cost substitute for syndicated bank loans since its rates are pegged to the KLIBOR and not to the base lending rate (BLR), as in the case of bank loans.

(5) Revolving Underwritten Facility and Revolving Underwritten Notes Issuance Facility (RUNIF):

When the NIF includes underwriting services, the arrangement takes the form of a revolving underwritten facility (RUF) or revolving underwritten notes issuance facility (RUNIF). In the event that the notes are undersubscribed, the underwriters are committed to take up the unsold portion at a pre-determined rate.

(6) Multilateral Development Banks

The World Bank defined Multilateral Development Banks (MDBs) as institutions that provide financial support and professional advice for economic and social development activities in developing countries. The term Multilateral Development Banks typically refers to the World Bank Group and four Regional Development Banks:

- (i) World Bank
- (ii) African Development Bank
- (iii) Asian Development Bank
- (iv) European Bank for Reconstruction and Development
- (v) Inter-American Development Bank Group⁸

⁸ WorldBank. <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20040614-menuPK:41699-pagePK:43912-piPK:44037-theSitePK:29708,00.html>

(7) Other Types of Government-Related Bonds

(a) **Khazanah Bonds**

Khazanah bonds are issued by Khazanah National, the investment holding arm of the Government of Malaysia. These unsecured zero-coupon bonds are based on the Islamic principles of *murabahah*,⁹ with maturities of 3, 5, 7 or 10 years.

(b) **Cagamas Bonds**

Securities issued by Cagamas are called Cagamas bonds (CAGB) in the domestic market.

Cagamas papers are unsecured bearer bonds issued by Cagamas, the national mortgage corporation established in 1986 to promote the secondary mortgage market in Malaysia. Cagamas issues debt securities and *Sukuk* to finance the purchase of housing loans and other consumer receivables from financial institutions, selected corporations, and the government. It is the second largest issuer of securities after the Government of Malaysia, and the major issuer of asset-backed securities in Malaysia. Various types of Cagamas papers are available in the market:

- (i) **Cagamas fixed-rate bonds.** These have tenures of 1.5 to 10 years with fixed coupon rates determined through tenders submitted by principal dealers. Interest is paid semi-annually.
- (ii) **Cagamas floating-rate bonds.** These have tenures of up to 10 years and an adjustable interest rate pegged to the 3- or 6-month KLIBOR. The interest rate is reset every 3 or 6 months, with interest paid at those intervals.
- (iii) **Cagamas notes (CAGN).** CAGNs are short-term instruments with maturities of 1 to 12 months, and issued at a discount from face value to reflect the implied interest rate.
- (iv) **Sanadat Mudharabah Cagamas (SMC).** SMCs are Islamic bonds issued under the Islamic principle of *mudharabah* (profit sharing) to finance the purchase of Islamic home-financing debts, granted on the basis of *bai' bithaman ajil*¹⁰ and the purchase of Islamic hire-purchase debts, which are allowed under the principle of *ijarah thumma al-bai*.¹¹ They are redeemable at par at maturity unless there is principal diminution. Tenures extend up to 10 years.
- (v) **Cagamas Bithaman Ajil Islamic Securities (CAGABAIS).** Formerly known as *Sanadat ABBA* Cagamas (SAC), CAGABAIS are Islamic bonds issued under the Islamic principle of *bai bithaman ajil* to finance the purchase of Islamic home-financing debts and Islamic hire-purchase debts. The bonds

⁹ According to Financial Islam.com, *murabaha* is a form of sale where the cost of the goods to be sold as well as the profit on the sale is known to both parties. The purchase and selling price and the profit margin must be clearly stated at the time of the sale agreement. Payment of the *Murabaha* price may be in spot, in instalments or in lump sum after a certain period of time.

¹⁰ *Bai' bithaman ajil* means deferred payment scale.

¹¹ *ijarah thumma al-bai* means hire purchase.

are redeemable at par together with the dividend due on maturity date. They also have tenures of up to 10 years.

2. By Type of Bonds

a. Straight Bonds (Government Bonds and/or Corporate Bonds)

These are bonds with a fixed coupon rate, maturing on a date fixed at the time of issue. They are called “plain vanillas” in some debt markets, as these bonds do not have any enhancement like warrants attached to them, or additional features such as put or call options. They also tend to carry relatively higher coupon rates. Coupon or interest payments are made either semi-annually or annually. Upon maturity, the principal or par value is paid to the bond holder.

b. Floating-Rate Notes

Please refer to page 8 for details.

c. Zero-Coupon Bonds

Zero-coupon bonds are fixed-income securities sold at a discount. They pay no periodic interest or coupon, and have a final redemption value equal to par. The difference between the purchase price and the redemption value equals the return on the investment.

Funds are not blocked off until maturity, as investors are free to trade the bonds and, if necessary, liquidate the bonds for cash.

d. Islamic Bonds

Islamic bonds, also called *Sukuk*, are structured to comply with Shariah principles, which prohibit the charging of interest.

Malaysian authorities have taken the lead in developing and innovating new Islamic securities structures and in pioneering the Islamic capital market.

e. Medium-Term Notes

Please see discussion on MTNs on page 8.

f. Convertible Bonds

Convertible bonds are fixed-rate securities that grant the bondholders the right to convert the bonds into a specific number of the issuer’s common shares at a predetermined conversion rate and price. This feature makes convertible bonds more desirable to prospective purchasers seeking a combination of equity and fixed-income features. Convertible bonds appeal to investors who seek both cash flow and safety of a bond while still enjoying the prospects of capital appreciation should the company’s ordinary shares perform well.

g. Bonds with Warrants

Fixed-rate bonds are commonly issued with detachable warrants (or transferable subscription rights). A warrant is a type of deferred-rights issue that gives the holder the option to purchase a specified number of the issuer’s shares at a set price (exercise price) within a certain time period (exercise period). The exercise price of a warrant is predetermined and is the price that would have to be paid by a warrant holder to

convert his warrants into ordinary shares. The warrants are usually detached from the bonds and sold to a different group of investors. Both instruments are then traded separately. Investors find it an attractive option to buy shares at a predetermined price, although at the outset the cost of the warrant is effectively subsidizing the issuer's borrowing cost.

Bonds with warrants allow listed companies to raise capital, initially in the form of debt and subsequently in the form of equity, at a premium to its current share price and at a lower interest cost than would be achievable through a straight-bond issue. When the warrants are exercised, new money is used to subscribe for the shares, increasing the borrower's capitalization. This is in contrast to a convertible bond where an exchange of shares for bonds takes place.

As a warrant entitles the bondholder to an option to purchase a specified amount of the company's shares, bonds issued with warrants have low coupon rates to compensate the issuers.

In addition, there are also stapled securities issued in the market. These are debt securities issued with preference shares, which enable the issuer to pass on its tax credit to the holders of the papers.

h. Asset-Backed Securities

Asset-backed securities (ABS) are securities backed by assets. Among others, these assets could be mortgages, loans or receivables. ABS are also issued based on Islamic principles in Malaysia. Apart from mortgage-backed securities (MBS), other examples of ABS are collateralized loan obligations and securitization of receivables.

Cagamas is the pioneer in local residential MBS.

3. Money Markets Instruments

a. Commercial Paper

Commercial papers refer to either conventional or Islamic short-term papers issued with original tenor of 1 year or less.

b. Repo

A repo is a contract to sell and, subsequently, repurchase securities at a specified date and price. It is also known as buyback arrangement.

4. By Listing Status

a. Debt Securities and *Sukuk* Listed and Traded on Bursa Malaysia

Debt securities listed on the exchange, called loan stocks, have three types:

(a) Redeemable Convertible Loan Stocks

These are debt securities that give the holders the right to convert the loan stocks into new ordinary shares during a specified period at a predetermined conversion rate and price. The issuer has the obligation to redeem the loan stocks at par upon maturity, together with interest, if the loan stocks have not been converted into shares.

(b) Irredeemable Convertible Loan Stocks

These are debt securities that confer the holders the right to convert the stocks into new ordinary shares. Nonetheless, the issuer will not redeem the stocks and such stocks will automatically be converted into ordinary shares on maturity.

(c) Redeemable Non-convertible Loan Stocks

These are debt securities that cannot be converted into ordinary shares. The company is obligated to redeem the loan stocks upon maturity.

b. Debt Securities and *Sukuk* Traded Over the Counter

Debt securities and *Sukuk* that are traded over the counter are those issued, offered, or subscribed in accordance with Sec. 229(1) and Sec. 230(1) of CMSA. These bonds can be listed under Bursa Malaysia's Exempt Regime, but not traded on Bursa Malaysia.

C. Methods of Issuing Bonds**1. Auction**

Auction is undertaken by BNM for government bonds and Principal Dealers for BNM notes.

a. Auction by BNM

BNM, via competitive auction, issues government bonds on behalf of the government. Successful bidders are determined according to the lowest yields offered, and the coupon rate is fixed at the weighted average yield of successful bids.

b. Auction by Principal Dealers

Principal Dealers offer BNM notes through competitive auction.

2. Direct Placement or Tender

Bonds issued by other statutory bodies and government-owned corporations, as well as corporate bonds, are issued via direct placement or tender.

D. Bonds and *Sukuk* Listed under the Exempt Regime on Bursa Malaysia**1. Listing of Bonds and *Sukuk* in Bursa Malaysia**

The term "sophisticated investor" is not explicitly defined in the CMSA. However, Schedules 6 (Sec. 229) and 7 (Sec. 230) (see Appendix) of the CMSA exempt these type of issues and offers to sophisticated or professional investors and their transactions from prospectus requirements.

To promote the Malaysian debt securities and *Sukuk* market while enhancing the breadth and depth of investment options on the Malaysian capital market, debt securities and *Sukuk* can now be listed on Bursa Malaysia under a new exempt regime by both listed and non-listed issuers. Under an exempt regime, debt securities or *Sukuk* which are listed on the Exchange will not be quoted nor traded on the Exchange. Debt securities or *Sukuk* listed on the Exchange may be denominated in foreign currencies but must have original maturity of more than 1 year.

For the features under an exempt regime, refer to Bursa Malaysia's Chapter 4B on listing under an exempt regime.¹²

2. Size of the Market

Listing under the Bursa Malaysia exempt regime currently comprises of 17 *Sukuk* issuers and five conventional bonds issuers. The total listed foreign currency *Sukuk* and bonds amounted to USD6.65 billion, SGD1.5 billion and CNY500 million, respectively. Total listed Malaysian ringgit-denominated *Sukuk* and bonds amounted to MYR16.7 billion with Cagamas MBS topping the list with MYR4.12 billion conventional bonds and MYR3.37 billion *Sukuk*, respectively. More details may be found in the Bursa Malaysia website on listed bonds under an exempt regime.¹³

E. Offers of Bonds to Professionals

According to Schedules 6 and 7 of the CMSA, professional investors are referred to as 'sophisticated investors':

- (i) A holder of a Capital Markets and Services Licence who carries on the business of dealing in securities.
- (ii) A holder of a Capital Markets and Services Licence who carries on the business of fund management.
- (iii) A licensed offshore bank under the *Offshore Banking Act 1990*.
- (iv) A licensed offshore insurer under the *Offshore Insurance Act 1990*.
- (v) A licensed institution under the *Banking and Financial Institution Act 1989* or an Islamic Bank under the *Islamic Banking Act 1983*.
- (vi) An insurance company registered under the *Insurance Act 1996*.

As stated above, under the exempt regime, prospectus exemption is adapted to the offers of bonds to sophisticated investors.

F. Definition of "Sophisticated Investors" in Malaysia

In Malaysia, a definition for sophisticated investors exists under items 9, 10, and 11 of Schedules 6 and 7 of the Capital Markets and Services Act. The background on the review of the categories of investors who are referred to as 'sophisticated investors' and the current framework of 'So-called Sophisticated Investors' are explained as follows:

¹² Bursa Malaysia. http://www.bursamalaysia.com/website/bm/regulation/rules/listing_requirements/

¹³ Footnote 8. http://www.bursamalaysia.com/website/bm/market_information/listed_bonds/exempt_regime.htm

Box 1.1 Framework for Sophisticated Investors

2.1 Current framework

2.1.1 The determination as to whether an investor is a “sophisticated investor” or a “retail investor” is important for several reasons.

First, only sophisticated investors should have access to complex and risky capital market investment products such as structured products and units in wholesale funds.^a

This approach is consistent with the SC’s regulatory policy of not encouraging retail investors to have exposure to complex investment products, as retail investors may not have the necessary knowledge and risk tolerance to invest in such products.^b

Second, the disclosures that are to be made to retail investors are more extensive and prescriptive as opposed to the disclosures that are made to sophisticated investors. For example, when an offering of securities is made to retail investors, the offering must be accompanied with a registered prospectus.

2.1.2 The term “sophisticated investor” is not explicitly defined in the Capital Markets and Services Act 2007 (CMSA). However, **Schedules 6 and 7** of the CMSA **exempt the following investors and transactions from prospectus requirements:**

- (a) A unit trust scheme or prescribed investment scheme;
- (b) A holder of a Capital Markets and Services Licence who carries on the business of dealing in securities;
- (c) A holder of a Capital Markets and Services Licence who carries on the business of fund management;
- (d) The aggregate consideration for the acquisition is not less than MYR250,000 or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise;
- (e) An individual whose total net personal assets exceed MYR3 million or its equivalent in foreign currencies;
- (f) A corporation with total net assets exceeding MYR10 million or its equivalent in foreign currencies based on the last audited accounts;
- (g) A licensed offshore bank under the Offshore Banking Act 1990;
- (h) A licensed offshore insurer under the Offshore Insurance Act 1990;
- (i) A licensed institution under the Banking and Financial Institution Act 1989 or an Islamic Bank under the Islamic Banking Act 1983;
- (j) An insurance company registered under the Insurance Act 1996;
- (k) A statutory body established by an Act of Parliament or an enactment of any State; and
- (l) A pension fund approved by the Director General of Inland Revenue.

1.1.3 The above classification was adopted in year 2000 by the Securities Commission (“SC”) when the prospectus requirements for the offer and invitation of securities were moved from the Companies Act 1965 to the Securities Commission Act 1993 via the Securities Commission (Amendment) Act 2000.

1.1.4 In drafting the excluded offers above, the SC has adopted and expanded the exempted offers list which existed under section 47B of the Companies Act 1965 and the Companies (Exempt Purchasers) Order 1997. Since year 2000, no review has been undertaken on the classification of “sophisticated investors”.

1.1.5 Although the original intention behind Schedules 6 and 7 of the CMSA (Schedules 6 and 7 of CMSA were in fact Schedules 2 and 3 of the Securities Commission Act 1993.) was to clarify situations when an offer of securities would not need to be accompanied with a registered prospectus, over time, the use of the Schedules have expanded and are now used as a means to determine who are sophisticated investors for the purposes of offering complex investment products.

3.1 Qualifying criteria and classification of “sophisticated investors”

3.1.1 Our research indicates that the qualifying criteria to determine whether a person is a “sophisticated investor” can be either one or more of the following:

- (a) the financial means test where consideration would be given to the net assets, portfolio of investments held by the investor or the income earned by the investor.

In some jurisdictions, this test may take into account assets, portfolio of investments or income that is held or received jointly by the investor and his immediate family members.

Where these criteria are imposed on an individual and that individual satisfies the criteria, that individual is usually referred to as a high net worth individual. Where an entity satisfies this criteria, that entity is then referred to as a high net worth entity; and

Box 1.1 continuation

- (b) the requisite knowledge test where consideration is given to the knowledge that is presumed to be held or exhibited to be held by the investor.

Some jurisdictions impose the knowledge test as an additional criterion that must be satisfied by an individual who has met the financial means test.

The reason for imposing this additional knowledge requirement is that once it is satisfied, certain processes in respect of sales practices need not be observed when dealing with such investors.

In some cases, the investor concerned is deemed to have such knowledge where it involves entities which have been licensed or whose ordinary course of business includes making investments.

These include licensed banks, corporations, unit trust funds, collective investment schemes[,] and those who hold a licence to carry out a regulated activity.

This category of sophisticated investors is commonly referred to as **professional investors**.

3.6 Professional investors

3.6.1 Professional investors, by virtue of their experience and knowledge [,] would be in a better position to make informed decisions and protect their own interests.

3.6.2 Within Schedules 6 and 7 of the CMSA, professional investors would include—

- a. A holder of a Capital Markets and Services Licence who carries on the business of dealing in securities;
- b. A holder of a Capital Markets and Services Licence who carries on the business of fund management;
- c. A licensed offshore bank under the Offshore Banking Act 1990;
- d. A licensed offshore insurer under the Offshore Insurance Act 1990;
- e. A licensed institution under the Banking and Financial Institution Act 1989 or
- f. an Islamic Bank under the Islamic Banking Act 1983; and
- g. An insurance company registered under the Insurance Act 1996.

^a For example, the Guidelines on the Offering of Structured Products provides that an issue, offer or invitation of unlisted structured products can only be made to investors listed in Schedules 2 and 3 of the SCA (now Schedules 6 and 7 of the Capital Markets and Services Act). The Guidelines on Wholesale Funds states that units in a wholesale fund can only be offered to qualified investors. A qualified investor is an individual whose total net personal assets exceed MYR3 million or its equivalent in foreign currencies, or a corporation with total net assets exceeding MYR10 million or its equivalent in foreign currencies based on the last audited accounts.

^b Moving forward the SC may consider whether retail investors should have exposure to some of these products, particularly structured products and unlisted debt securities. Exposing retail investors to such products, however, will be complemented with an enhanced sales practices regime. Proposals to enhance the existing sales practices regime are further discussed in Part 2 of this paper.

Note: Emphases added by the authors.

Source: Public Consultation Paper No. 1/2010. Review of Sophisticated Investors and Sales Practices for Capital Market Products, Securities Commission.

Sec. 229 of the CMSA defines excluded offers or excluded invitations, and Sec. 230 defines excluded issues.

Both Schedule 6 and Schedule 7 specify certain provisions in Division 3 that a prospectus shall not apply to “excluded offers” or “excluded invitations” and “excluded issues”.

An information memorandum issued by a person or his agent purporting to describe the business and affairs of the person in respect of any excluded offer or excluded invitation shall, however, be deemed to be a prospectus as it relates to the liability of the person or his agent for any statement or information that is false or misleading, or from which there is a material omission.

G. Quick Reference on Sophisticated Investors

Table 1.1 Quick Reference on Sophisticated Investors

	Sophisticated Investor		
	Sophisticated Investor	Professional Investor	Qualified Investor
a. A unit trust scheme or prescribed investment scheme;	✓		
b. A holder of a Capital Markets and Services Licence who carries on the business of dealing in securities;	✓	✓	
c. A holder of a Capital Markets and Services Licence who carries on the business of fund management;	✓	✓	
d. The aggregate consideration for the acquisition is not less than MYR250,000 or its equivalent in foreign currencies for each transaction whether such amount is paid in cash or otherwise;	✓		
e. An individual whose total net personal assets exceed MYR3 million or its equivalent in foreign currencies;	✓		✓
f. A corporation with total net assets exceeding MYR10 million or its equivalent in foreign currencies based on the last audited accounts;	✓		✓
g. A licensed offshore bank under the Offshore Banking Act 1990;	✓	✓	
h. A licensed offshore insurer under the Offshore Insurance Act 1990;	✓	✓	
i. A licensed institution under the Banking and Financial Institution Act 1989 or an Islamic Bank under the Islamic Banking Act 1983;	✓	✓	
j. An insurance company registered under the Insurance Act 1996;	✓	✓	
k. A statutory body established by an Act of Parliament or an enactment of any State;	✓		
l. A pension fund approved by the Director General of Inland Revenue;	✓		

Source: Schedules 6 and 7 of the *Capital Markets and Services Act, 2007*, as amended.

H. Credit-Rating Agencies and Credit Rating of Bonds

There are two credit-rating agencies (CRAs) in Malaysia that provide independent opinions on the credit risks and potential default risks of specific issuers. The first rating agency, Rating Agency Malaysia (now known as RAM Ratings Services, RAM), was established in November 1990; and the second, Malaysian Rating Corporation (MARC), was incorporated in October 1995.

Malaysia is one of the first countries in the world to require the recognition of CRAs for rating a bond or *Sukuk* issue. This is in recognition of their vital role in evaluating the probability of default of debt securities or a *Sukuk* issue, and the importance investors place on ratings for their investment decisions, despite the fact that all rating reports carry a disclaimer expressly stating that “a rating is not a recommendation to purchase, sell or hold a security’s market price or its suitability for a particular investment, nor does it involve any audit by the rating agency.”

CRAs are required to be registered by the SC for rating debt or *Sukuk* issues in Malaysia, pursuant to the “Guidelines on Registration of Credit Rating Agencies,” which was revised in March 2011. A CRA is also required to adopt the International Organization of Securities Commissions (IOSCO) CRA Code in its own code of conduct, and to disclose this on its website. Where the CRA’s code of conduct differs in substance from the provisions of the IOSCO CRA Code, the rating agency must explain where and why these differences exist, and fully disclose such explanation on its website.

In Malaysia, generally all debt securities and *Sukuk* issues are required to be accompanied by a credit rating at all times. A credit rating is a mechanism through which an independent third party, i.e. the CRA, makes an assessment on the likelihood of a corporate issuer's default on its debt repayments. A credit rating focuses on a specific debt instrument and not the overall creditworthiness or financial standing of the corporate issuer. A rating will take into consideration various enhancement tools like guarantees, sinking funds, letters of credit, or any other mechanism devised to reduce the default risk of specific issues.

Hence, the work of a CRA provides the benefits detailed in the next few paragraphs:

1. Information Disclosure

As the debt securities and *Sukuk* market develops and the nature and variety of debt instruments and *Sukuk* increase, even experienced investors may find it difficult to make informed choices because of lack of accessibility or the complexity of information about the corporate issuer. The nature and specialization of a CRA place it in a position where it has access to public as well as private information pertinent to the assessment of credit risk. Such information is not usually accessible to the individual investor. A competent CRA, therefore, bridges this information gap between the issuers of debt or *Sukuk* and investors. Conversely, markets that are inefficient will lead to incorrectly-priced securities, which do not reflect the fundamental values of the assets and, thus, lack information necessary to investors. In providing information on default risk, investors have access to information that enables them to establish benchmarks for comparing the risks and returns on their investments.

2. Investor Protection

The independent, objective analysis of the credit quality of debt and *Sukuk* issues aids the investor in making informed choices to determine the level of risk and associated returns they are willing to undertake for their investment.

Besides the predictive value of ratings, the continuous surveillance of a rated instrument acts as an early-warning system for investors on any changes in the quality of the rated debt or *Sukuk*, so that investors may reassess their positions and realign their portfolios accordingly.

3. Lower Cost of Borrowing

A high rating assigned to a corporate borrower translates into lower cost of borrowing for the issuer as the risk premium demanded by investors is lower. Corporate borrowers are thus motivated to improve their financial structures and operating risks to obtain high ratings for their private debt securities (PDS) or *Sukuk* issues. This, in turn, enables companies to raise more funds to finance their expansion and the management of their activities, resulting in higher allocative efficiency.

4. Aids Pricing Decisions

The interest payable on corporate debts and profit payments for *Sukuk* are linked to their assigned ratings. Therefore, credible and objective ratings are invaluable aids to investment bankers, underwriters and brokers when determining the pricing of debt instruments. To promote transparency in the debt securities and *Sukuk* market, information on ratings is widely disseminated to all existing and potential PDS and *Sukuk* investors in a timely manner.

Obligation to be Rated by a Recognised Rating Agency

Currently, all Malaysian ringgit corporate bonds are required to be rated by a rating agency registered by the SC. However, the SC exempts certain corporate bonds from being rated, such as those listed below:

- (i) Irredeemable convertible loan stocks.
- (ii) Foreign currency-denominated private debt securities.
- (iii) Convertible bonds or loan stocks and exchangeable bonds which fulfill the following requirements:
 - (a) Investors of bonds or loan stocks are given the right to convert or exchange the instruments into the underlying share at any time or within a reasonable period or periods during the tenure of the bond issue; and
 - (b) The underlying shares are listed on the stock exchange.
- (iv) Private debt securities:
 - (a) which are non-transferable and non-tradable;
 - (b) whose investors do not require a rating; and
 - (c) the principal adviser to ensure that both criteria above are met prior to the applicable issue, offer or invitation.

Please refer to Chapter 7.09 of the Private Debt Securities Guidelines for full details.

I. Financial Guarantee Institution

Financial guarantee institutions (FGIs) help raise the credit rating of bond issues, which otherwise would normally be below investment grade, to a level deemed as investment grade by investors by lending their own sterling ratings to these bond issues. Issuers will need to pay a premium, commensurate with the perceived risk of the issuer, to these FGIs who will undertake to pay the interest and capital repayment in the event that the issuer fails to do so.

Danajamin Nasional (Danajamin), Malaysia's first financial guarantee insurer, was established in May 2009 to provide financial guarantee insurance for bonds and *Sukuk* issuances, which enabled access to the PDS market to viable Malaysian companies. Jointly owned by the Minister of Finance Incorporated (50%) and the Credit Guarantee Corporation Malaysia (50%), Danajamin is rated AAA by both RAM and MARC. Danajamin have an issued and paid-up capital of MYR1 billion and another MYR1 billion callable capital. Its underwriting capacity is up to MYR15 billion.

This important initiative is also expected to help stimulate the local economy by guaranteeing bonds issued by companies in key sectors like infrastructure and services to finance viable projects.

J. Governing Laws on Bond Issuance

Under the governing law on bond issuances in Malaysia, all issuances of primary securities are governed under Sec. 212 (Part VI: Issues of Securities and Take-Overs and Mergers, Division 1, Proposals in Relation to Securities Proposals to be

submitted to Commission) of the CMSA with the exception of government bonds. Any person or entity dealing in government or corporate bonds is required to be licensed under CMSA.

Specific laws governing different types of bonds are summarized as follows:

1. Government Bonds

Government securities dealers are typically banking institutions licensed and regulated by BNM. Besides commercial banks and Islamic banks, investment banks are also participants in the inter-bank market for government securities.

The “Malaysian Code of Conduct for Principals and Brokers in the Wholesale Money and Foreign Exchange Markets,” issued by BNM, sets out best market practices, principles and standards to be observed in the Malaysian market. The objective is to uphold market integrity and promote the highest level of professionalism.

In addition, BNM also issues rules and guidelines governing the issuance, allotment, interest payment, redemption, and settlement of scripless securities under the Fully Automated System for Issuing/Tendering (FAST) and RENTAS. The aim of these guidelines is to provide a uniform set of rules to promote operational efficiency, market integrity and market transparency.

Detailed information on the rules and guidelines issued by BNM can be obtained from the FAST website.¹⁴

2. Corporate Bonds and *Sukuk*

The CMSA, which is administered by the SC, governs a substantial part of the activities in the domestic corporate debt securities and corporate *Sukuk* markets. On 1 July 2000, the SC became the single regulator for the Malaysian corporate debt securities and corporate *Sukuk* markets, and moved towards a full disclosure-based regulatory regime with the issuance of the Guidelines on the Offering of Private Debt Securities. This was followed by the issuance of the Guidelines on the Offering of Islamic Securities.

The SC issues guidelines on the issuance of corporate bonds and *Sukuk*, supervises trading activities in the secondary market, and conducts joint examinations and inspections of investment banks together with BNM. The SC’s guidelines and regulations relating to corporate bonds and *Sukuk* issuances represent part of the government’s initiatives to develop the debt securities and *Sukuk* market in Malaysia, by putting in place an efficient and facilitative issuance process. Towards this end, the regulatory framework for the issuance of corporate bonds and *Sukuk* has been developed with the following objectives:

- (i) To rationalize a fragmented regulatory structure;
- (ii) To expedite and create a facilitative and transparent approval scheme for corporate debt securities and corporate *Sukuk*;
- (iii) To impose greater disclosure requirements for better protection of corporate

¹⁴ Fully Automated System for Issuing/Tendering (FAST). <https://fast.bnm.gov.my/fastweb/public/MainPage.do>

- debt securities and corporate *Sukuk* investors, and to enhance legal protection afforded to these investors; and
- (iv) To enhance secondary market liquidity for corporate debt securities and corporate *Sukuk*.

Over the years, the SC has issued a comprehensive set of guidelines, regulations and practice notes to guide and clarify the requirements for all aspects of corporate debt securities and corporate *Sukuk* issues. A complete set of these guidelines, regulations and practice notes is available on the SC's website.¹⁵

K. Transfers of Interests in Bonds

Malaysian Government debt securities are scripless, thus securities transfer is electronic. In the RENTAS system operated by MyClear (a wholly-owned subsidiary of BNM), transfer instructions are done on a trade-by-trade basis, with the transfer of securities running simultaneous with the transfer of funds for payment.¹⁶

L. Definition of Securities

1. Securities

Securities are defined as:

- (i) **debentures**, stocks or bonds issued or proposed to be issued by any government;
- (ii) shares in, or debentures of, a body corporate or an unincorporated body; or
- (iii) unit trusts or prescribed investments, and includes any right, option or interest in respect thereof, but does not include futures contracts.¹⁷

2. Debentures

Debenture includes debenture stock, bonds, notes and any other evidence of indebtedness of a corporation for borrowed monies, whether or not constituting a charge on the assets of the corporation, but shall not be construed as applying to any of the following:

- (i) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray the consideration payable under, a contract for sale or supply of goods, property or services, or any contract of hire in the ordinary course of business;
- (ii) a check, banker's draft or any other bill of exchange or a letter of credit;
- (iii) a banknote, guarantee or an insurance policy;
- (iv) a statement, passbook or other documents showing any balance in a current, deposit or savings account;

¹⁵ The complete guidelines regulations and practice notes are also available in the Securities Commission of Malaysia (SC) website. <http://www.sc.com.my>

¹⁶ More information is available on the Bank Negara Malaysia website. http://bondinfo.bnm.gov.my/portal/server.pt?open=514&objID=27257&parentname=CommunityPage&parentid=3&mode=2&in_hi_userid=22874&cached=true; http://bondinfo.bnm.gov.my/portal/server.pt?open=514&objID=27271&parentname=CommunityPage&parentid=4&mode=2&in_hi_userid=22874&cached=true

¹⁷ Government of Malaysia. *Capital Markets and Services Act 2007* (CMSA), sec. 2(1).

- (v) any agreement for a loan where the lender and borrower are signatories to the agreement and where the lending of money is in the ordinary course of business of the lender, and any promissory note issued under the terms of such an agreement; or
- (vi) any instrument, product, or class of instruments or products as the Minister of Finance may, on the recommendation of the SC, prescribe by order, published in the Gazette.

M. *Sukuk*

1. *Sukuk*

Malaysia has emerged as the largest Islamic securities, or *Sukuk*, market in the world, with MYR334 billion or 61% of all outstanding *Sukuk* worldwide originating from Malaysia as of September 2011. In its simplest form, *Sukuk* are certificates of equal value that represent an undivided interest (proportional to the investor's interest) in the ownership of an underlying asset (both tangible and intangible), usufruct, services, or investments in particular projects or special investment activities. Unlike conventional debt securities that mirror debts or loans on which interest is paid, *Sukuk* can be structured based on innovative applications of Islamic principles and concepts. Nonetheless, *Sukuk* share some similarities with conventional debt securities in that they are similarly structured based on the ability of the issuer to pay the periodic distribution and principal repayment.

2. The Legality of *Sukuk*

Sukuk represent ownership claims on a pool of assets, or rights to receivables or participation. The various transaction contracts that form the genesis for a *Sukuk* issue have different legal implications for investors. *Sukuk* investors should, therefore, be fully apprised and knowledgeable on their rights and obligations under the various Islamic concepts and principles.

c. Rights to Underlying Asset and Its Cashflow

For *Sukuk* that represent ownership of assets, their usufruct or services (the underlying asset), the claim embodied in the *Sukuk* is not just a claim on the underlying asset used in the *Sukuk* transaction, but also the right to the cash flow and proceeds from the sale of the asset. For example, in *Sukuk* Ijarah, the *Sukuk* are akin to trust certificates establishing undivided ownership of the leased asset and the right to the cashflow arising from it.

d. Rights to Cashflow from the Contract of Exchange but not the Asset

For *Sukuk* issued as evidence of indebtedness arising from the sale of asset based on contracts of exchange other than Ijarah, such as those originating from *bai' bithaman ajil*, *murabahah* and *istisna'*, the claim is on the obligations stemming from the applied contract of exchange, and not ownership of the physical asset, as ownership has been transferred to the obligor.

e. Rights to Undivided Interest in Specific Investments

For special investment activities funded through *musyarakah* (loss-sharing scheme) or *mudharabah*, the *Sukuk* represent the holders' undivided interests in the specific

investments. *Sukuk musyarakah* is used to raise funds for projects on the basis of partnership contracts. *Sukuk musyarakah* holders or investors then become the owners of the project, in proportion to their respective shares. Profits are distributed according to a pre-agreed proportion while losses are pro-rated according to their equity share.

Each *Sukuk mudharabah* holder or investor, on the other hand, holds equal value in the *mudharabah* equity. Profits will be shared on a pre-agreed ratio between the *mudharabah* investors and the *Sukuk* shared equally among the *mudharabah* investors.

N. Self-Governing Rules behind the Market

The following organizations support the market:

1. Bursa Malaysia

Bursa Malaysia is an exchange holding company approved under Sec. 15 of the CMSA. It operates a fully-integrated exchange, offering a complete range of exchange-related services including trading, clearing, settlement and depository services. Bursa Malaysia today is one of the largest bourses in Asia with just under 1,000 listed companies offering a wide range of investment choices to the world. Companies are either listed on Bursa Malaysia Securities Main Market or the ACE Market¹⁸.

Bursa Malaysia is guided by the following regulatory principles aimed at achieving regulatory goals and ensuring a consistent and cohesive approach to its actions and decisions. These principles are also embedded in the rules and regulatory framework of Bursa Malaysia. The regulatory principles will ensure greater parity of regulatory actions across the different segments of parties regulated and overall greater effectiveness in regulation. The regulatory principles are as follows:

- (a) Clear and easily accessible rules and requirements
- (b) No more regulation than necessary
 - (i) Balance competing needs of regulation and business efficacy; and
 - (ii) Ensure costs and burden of regulatory compliance are proportionate to the benefits.
- (c) Principle-based approach where appropriate

Bursa Malaysia works towards a principle-based approach to regulation where appropriate, but issue guidance where necessary.

- (d) Outcome focused
 - (i) Target outcomes through its regulatory actions or decisions rather than mere compliance with rules.
 - (ii) Use discretion to modify or waive the rules, where the spirit of the rules

¹⁸ Main market is the merging of main board and second board while the ACE market is a revamp of the MESDAQ Market. More details can be found in the Bursa Malaysia website: http://www.bursamalaysia.com/website/bm/listed_companies/main_ace_market.html.

- can still be achieved, business can be facilitated without harming other stakeholders, or where the burden of complying far outweighs the benefits.
- (iii) Always be guided by its regulatory objectives and the current regulatory concern.
- (iv) Consider the impact of its regulatory actions or decisions before and after taking each action or decision.

(e) Innovative and competitive

Facilitate innovation, for example, by avoiding unreasonable restrictions on regulatees

(f) Risk-based approach

- (i) Emphasize risk-based supervision rather than “one-size-fits-all” regulation
- (ii) Facilitate early detection of problems, issues and trends, enabling prompt pre-emptive actions

(g) Values-based approach

- (i) Enforce the rules without fear or favor
- (ii) Act professionally with integrity and fairness
- (iii) Exercise its powers and discretion consistently while also considering the particular facts of each case and different points of view
- (iv) Act swiftly in a proactive manner

(h) Transparency

- (i) Make regulatory approaches and processes more transparent
- (ii) Communicate clearly and effectively about what it does

(i) Benchmarked and globally collaborative

- (i) Observe and benchmark international standards and best practices
- (ii) Create and maintain close coordination among domestic and foreign regulators

(j) Consultative approach

- (i) Adopt a consultative approach and actively seek feedback from industry participants, other stakeholders, and the public
- (ii) Interact and leverage on relationships with stakeholders

Bursa Malaysia adopts a thematic approach to achieve its goals and objectives of ensuring effective market regulation. Under this approach, Bursa Malaysia will focus on certain key themes in discharging its regulatory role. These themes are regularly reviewed to ensure relevance in a progressive environment. The six themes are as follows:

- (i) Enhancing standards of corporate governance among listed issuers;
- (ii) Improving standards of disclosure;
- (iii) Promoting high standards of business conduct and self-regulation among brokers;
- (iv) Enhancing the effectiveness of enforcement;
- (v) Elevating the level of education and awareness in the industry; and
- (vi) Managing crisis in light of the global financial turmoil.

2. Financial Market Association of Malaysia

The Financial Markets Association of Malaysia (ACI Malaysia) was established in 1974 with the objective of providing an association for those who are actively engaged in the wholesale financial markets in Malaysia. Besides offering a platform for social and friendly contact among its members, ACI Malaysia is also actively involved in education to develop and enhance the knowledge and skills of its members. ACI Malaysia, whose membership comprises staff from treasury operations of Malaysia's financial institutions (including insurance companies), has adopted a code of conduct for the industry. It has five categories of membership: Provisional, Ordinary, International and Associate, and may invite any person to become an Honorary Member. In its effort to upgrade members' knowledge and skills, ACI Malaysia has, since December 1995, imposed qualifying examinations for its new members. Members must now pass the four modules of the ACI Certificate Examinations before they are licensed to participate in the financial markets. ACI Malaysia also organizes talks, seminars, conferences, meetings, and related gatherings for its members and the general public to improve and update their knowledge.

ACI Malaysia's key objectives are:¹⁹

- (i) Promote and develop any scheme which may elevate the status and/or advance the interests of the Association.
- (ii) Afford opportunities for social and friendly contact among members.
- (iii) Establish liaison with associations or bodies overseas having similar objectives, and to seek their assistance to participate in any seminar, forum, conference, meeting, or gathering organized by the association overseas.
- (iv) Organize talks, seminars, conferences, meetings and similar gatherings for members and for the public to improve and update their knowledge on the financial markets.
- (v) Educate, train and assess by examination or otherwise the members of the Association skilled financial markets, to award any certificate to those who successfully complete the examinations, and to award prizes to outstanding candidates in examinations.
- (vi) Establish and maintain libraries and collection of publications, research papers, papers delivered at seminars and conferences, and other documents and effects whether the same are in written form or otherwise.

The other main objective of ACI Malaysia is to constantly review the techniques and practices in the financial markets to develop, improve and maintain high standards comparable to international practices and techniques.

O. Investor Protection

1. Bondholders Rights

Bondholder rights are protected under the *Companies Act 1965* and *Capital Markets and Services Act 2007*, and in their various amendments. Under the Companies Act, creditors, including bondholders, can file a winding-up petition for a company when debtors are unable to pay their debts. When a winding-up order is made, the court appoints a liquidator who oversees the liquidation process.

¹⁹ Persatuan Pasaran Kewangan Malaysia. http://www.ppkm.net/v2/articles.php?article_id=2

Foreign creditors have the same rights as local creditors under Malaysian laws. Under the *Capital Markets and Services Act*, all bond issuers are required to enter into a trust deed with an appointed trustee. The trust deed contains bond provisions, covenants, and other requirements set by the SC. The trustee's role is to safeguard the interests of the bondholders as set out in the trust deed and in the *Capital Markets and Services Act*. Bond documents (e.g., prospectus, term sheets) also contain covenants and relevant default clauses specific to the bond issue that provide additional protection to bondholders. The SC's website provides copies of term sheets and/or principal terms and conditions of bond issuances.

2. Prevention of Fraud

The SC imposes laws on securities trading offenses such as false trading, manipulation and fraud which are liable to result in fines and imprisonment under Part V of the CMSA.

P. Trustees

Trustees for a bond or *Sukuk* issue have the responsibility of safeguarding the interests of bondholders. The trustee will, among others, vet through the transactions documents of a bond or *Sukuk* issue to ensure, to the best of its ability, the following:

That there are no inconsistencies or conflicts of interest between the provisions of the trust deed and the conditions stated in the SC's letter of approval, and in the term sheet approved by the SC;

That there are no provisions in any of the transaction documents that are inconsistent or in conflict with, or may lead to inconsistency or conflict with, the trustee's duties; and

That the SC's Guidelines on Trust Deeds (effective 12 August 2011) have been complied with.

In view of the important role of trustees in a debt securities or *Sukuk* issue, the SC has introduced a set of registration guidelines to ensure that only fit and proper trustee companies can act as bond or *Sukuk* trustees, and that they discharge their fiduciary duties in a proper manner. For this purpose, a bond or *Sukuk* trustee for an issue of debentures or Islamic securities approved by the SC on or after 2 January 2007 must be registered with the SC pursuant to the Registration by the Securities Commission for the Purpose of Acting as a Bond Trustee. The issuance of the registration criteria for trust companies to act as bond or *Sukuk* trustees dovetails with the requirement for a corporate bond or *Sukuk* issuer to appoint a trustee and enter into a trust deed under the CMSA.

The higher standards of professionalism among trustees will translate to greater protection for investors. Among others, the SC will evaluate the financial resources of the trustee company, its expertise, its independence and avoidance of conflict of interests, as well as track record to ensure that only fit and proper trustee companies

are registered. A list of companies registered with the SC to act as bond or *Sukuk* trustees are provided in the Appendix.²⁰

Generally all bonds and *Sukuk* are required to have a Trust Deed unless exempted under Schedule 8 of the CMSA.

Box 1.2 Exemptions from Need for Trust Deed (1)

SCHEDULE 8 (*1)

[Section 257(1)]

Debentures issues

Issues of, offers for subscription or purchase of, or invitations to subscribe for or purchase, debentures to which Subdivision 1 of Division 4 of Part VI and section 283 of Subdivision 2 of Division 4 of Part VI shall not apply.

1. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by the Federal Government or any State Government or any statutory body.
2. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures guaranteed by the Federal Government or Bank Negara.
3. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures which by their terms may only be held by members of the issuer.
4. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures which by their terms may only be held by a single holder of those debentures.
5. All trades in debentures effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2).
6. All trades in debentures effected in the money market.
7. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made pursuant to a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998.
8. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by or to Danamodal Nasional Bhd.
9. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made exclusively to persons outside Malaysia.
10. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures to existing members of a company within the meaning of section 270 of the Companies Act 1965.
11. An issue, offer or invitation made in relation to a foreign currency denominated debenture to—
 - (a) an underwriter under an underwriting or initial purchase agreement;
 - (b) a unit trust scheme or prescribed investment scheme;
 - (c) a holder of a Capital Markets Services Licence who carries on the business of dealing in securities;
 - (d) a closed end fund approved by the Commission;
 - (e) a holder of a Capital Markets Services Licence who carries on the business of fund management;
 - (f) a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts;
 - (g) a licensed offshore bank as defined under the Offshore Banking Act 1990; or
 - (h) an offshore insurer as defined under the Offshore Insurance Act 1990.
12. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures or Islamic securities made by a multilateral development bank, a multilateral financial institution, a foreign sovereign or a corporation guaranteed or controlled by a foreign sovereign, with a credit rating of AAA or its equivalent, assigned by a credit rating agency.

Note: Emphasis added by the author.

Source: *Capital Markets and Services Act, 2007*, as amended.

²⁰ Please refer to the SC website for the complete list of registered Trustees. <http://www.sc.com.my/eng/html/resources/stats/RegisteredTrustees.pdf>

Box 1.3 Exemptions from Need for Trust Deed (2)**SCHEDULE 9 (*2)**

[Section 257(2)]

Debentures issues

Issues of, offers for subscription or purchase of, or invitations to subscribe for or purchase, debentures to which Subdivision 1 of Division 4 of Part VI and section 283 of Subdivision 2 of Division 4 of Part VI shall not apply.

1. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by the Federal Government or any State Government or any statutory body.
2. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures guaranteed by the Federal Government or Bank Negara.
3. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures which by their terms may only be held by members of the issuer.
4. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures which by their terms may only be held by a single holder of those debentures.
5. All trades in debentures effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2).
6. All trades in debentures effected in the money market.
7. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made pursuant to a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998.
8. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made by or to Danamodal Nasional Bhd.
9. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures made exclusively to persons outside Malaysia.
10. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures to existing members of a company within the meaning of section 270 of the Companies Act 1965.
11. An issue, offer or invitation made in relation to a foreign currency denominated debenture to—
 - (a) an underwriter under an underwriting or initial purchase agreement;
 - (b) a unit trust scheme or prescribed investment scheme;
 - (c) a holder of a Capital Markets Services Licence who carries on the business of dealing in securities;
 - (d) a closed end fund approved by the Commission;
 - (e) a holder of a Capital Markets Services Licence who carries on the business of fund management;
 - (f) a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts;
 - (g) a licensed offshore bank as defined under the Offshore Banking Act 1990; or
 - (h) an offshore insurer as defined under the Offshore Insurance Act 1990.
12. An issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures or Islamic securities made by a multilateral development bank, a multilateral financial institution, a foreign sovereign or a corporation guaranteed or controlled by a foreign sovereign, with a credit rating of AAA or its equivalent, assigned by a credit rating agency.

Note: Emphasis added by the author.

Source: Capital Markets and Services Act, 2007, as amended.

Q. Meetings of Bondholders

The trustee is responsible for a resolution of a meeting of bondholders, where applicable. Meetings may be convened at the request of the issuer, trustee or an agreed percentage of debenture holders. Meetings of the bondholders are provided under clause 22 of the Guidelines on Trust Deeds (effective 12 August 2011), issued by the SC.

R. Bankruptcy Procedures

Malaysia's laws on bankruptcy have been established under the *Companies Act 1965*, *Bankruptcy Act 1967*, and in their respective rules and in various amendments.

The *Companies Act 1965* contains provisions for insolvency, rehabilitation, appointment of receivers, and winding-up procedures for companies. Specific laws governing industries may also have provisions governing insolvency of a company (e.g., the *Banking and Financial Institutions Act 1989* for banks). The *Bankruptcy Act 1967* covers bankruptcy laws for individuals.

The "Asia-Pacific Restructuring and Insolvency Guide 2006" provides an explanation on the restructuring and insolvency frameworks of Asia-Pacific countries, including the report on Malaysia.²¹

S. Event of Default

Events of default are usually negotiated terms but the Trust Deed Guidelines issued by the SC provides for the minimum contents requirements for such trust deed. The trust deed and the terms and conditions of debentures must provide for, but should not be limited to, the following:²²

- 1) A list of all events, the occurrence of any of which would entitle or oblige the trustee to declare the debentures immediately due and repayable (to the extent appropriate and subject to any materiality thresholds and provision for remedy or period of grace which may be negotiated) including the following:
 - (a) where there is any default in payment of any principal, premium or interest, or profit under the debentures or *Sukuk*;
 - (b) where a winding up order has been made against the issuer;
 - (c) where a resolution to wind up the issuer has been passed;
 - (d) where a scheme of arrangement under Sec. 176 of the *Companies Act 1965* has been instituted against the issuer;
 - (e) where a receiver has been appointed over the whole or a substantial part of the assets of the issuer;
 - (f) where there is a breach by the issuer of any term or condition in the debentures or *Sukuk*, or provision of the trust deed or of any other document relating to the issue, offer or invitation in respect of the debentures or *Sukuk*;

²¹ Asian Development Bank. 2006. *The Asia-Pacific Restructuring and Insolvency Guide 2006*. Malaysia: Shearn Delamore & Co. and PricewaterhouseCoopers. <http://www.adb.org/Documents/Guidelines/restructuring-insolvency/chap4-9.pdf>

²² Securities Commission of Malaysia. *Guidelines on the Minimum Contents Requirements for Trust Deeds*. Please refer to the latest trust deed guidelines issued in 2011, which was revised on 12 July 2011 and took effect on 12 August 2011. http://www.sc.com.my/eng/html/resources/guidelines/bondmkt/trustDeed_110812.pdf

- (g) where any other indebtedness of the issuer becomes due and payable prior to its stated maturity, or where the security created for any other indebtedness becomes enforceable; and
 - (h) where there is a revocation, withholding, invalidation or modification of a license, authorization or approval that impairs or prejudices the issuer's ability to comply with the terms and conditions of the debentures or *Sukuk*, or the provisions of the trust deed or any other document relating to the issue, offer or invitation in respect of the debentures or *Sukuk*.
- 2) The powers of the trustee in any of the events described in paragraph (1) include:
- (a) the powers of the trustee to declare the debentures or *Sukuk* immediately due and payable at its discretion;
 - (b) the powers of the trustee to declare the debentures or *Sukuk* immediately due and payable as directed by a special resolution;
 - (c) the powers of the trustee to enforce the provisions of the trust deed;
 - (d) the circumstances under which the trustee shall be bound to enforce the provisions of the trust deed; and
 - (e) the circumstances under which the holders of the debentures or *Sukuk* are entitled to pursue their rights and remedies.

Clause 12 of the Trust Deed Guidelines issued by the SC on August 2011 provides for events constituting default and the remedy of such default.

T. Currency of the Bonds

The most common currencies in which bonds are denominated are Malaysian ringgit and U.S. dollar. Foreign currency-denominated debt securities and *Sukuk* deposited in RENTAS may be settled in RENTAS on a delivery-versus-payment (DVP) basis.

U. Parties Involved in Bond Issue and Their Respective Roles

1. Lead Arranger or Principal Adviser

The role of the lead arranger or principal adviser is to structure the debt securities or *Sukuk* proposal, together with any other arrangers, and submit the application to the SC for approval.

According to the SC's Principal Adviser Guidelines issued on 8 May 2009, a principal adviser is the corporate finance adviser responsible for making submissions to the SC for corporate proposals. The categories of principal advisers and the types of corporate proposals they are permitted to submit to the SC are as follows:

Table 1.2 Categories of Principal Advisers and Permitted Types of Corporate Proposals

Items	Categories of Principal Advisers	Types of Corporate Proposals
a.	Investment banks/ licensed merchant banks/ universal brokers	All types of corporate proposals.
b.	1+1 brokers	All types of corporate proposals, except those involving private debt securities, Islamic securities and structured products.
c.	Special scheme brokers	<u>Issue of Structured Warrants</u> Proposals for the issue of structured warrants. <u>Offering of Foreign Securities</u> Proposals for the offering of equity securities, private debt securities, or Islamic securities of listed or unlisted foreign issuers to investors identified under Schedules 6 and 7 of the Capital Market and Services Act 2007.
d.	Islamic banks	All types of corporate proposals in respect of Islamic products.
e.	Licensed banks	<u>Offering of Private Debt Securities</u> All proposals for the offering of private debt securities, except for any of the following: - Private debt securities of Malaysian incorporated public companies or foreign corporations that are capable of being converted into equity; and - Private debt securities of Malaysian incorporated public companies or foreign corporations that are issued together with warrants. <u>Offering of Islamic Securities</u> All proposals for the offering of Islamic debt securities, except for any of the following: - Islamic securities of Malaysian incorporated public companies or foreign corporations that are capable of being converted into equity; and - Islamic securities of Malaysian incorporated public companies or foreign corporations that are issued together with warrants. <u>Offering of Structured Products</u> Proposals for the offering of structured products.
f.	Bank Pembangunan Malaysia	Proposals on infrastructure project companies for the purposes of listing such companies or otherwise.

Source: Securities Commission Malaysia. http://www.sc.com.my/eng/html/resources/guidelines/pa/gj_pa_090508.pdf

The guidelines on Principal Adviser can be found in Securities Commission website.

2. Adviser

Based on the Principal Adviser Guidelines issued by SC on 3 August 2009, a corporate finance adviser is defined as a person who is permitted to carry on the regulated activity of advising on corporate finance under the CMSA. The CMSA provides that any person carrying on the regulated activity of advising on corporate finance must either be a holder of a Capital Markets Services Licence (CMSL) or a registered person. In addition, the SC adopts a policy of permitting only certain categories of corporate finance advisers to submit applications to the SC in the capacity of principal advisers for certain types of corporate proposals under Part VI of the CMSA.

3. Underwriter

Investment banks and commercial banks are the main underwriters of debt securities and *Sukuk*. Underwriters assume the risk of undersubscribed debt issues and assure the issuer of liquidity.

The arranger of the issue, besides inviting licensed financial institutions to underwrite the issue, can also be an underwriter, depending on its limits and its appetite for the paper. If an issue is undersubscribed, the arranger will notify the underwriters. For issues of notes, underwriters bid at a discount, while for bond issues, bids are based on yield, depending on the coupon.

4. Facility Agent

The facility agent is responsible for all administrative matters pertaining to the issue, such as facilitating the creation of the issue and the stock code in FAST. The lead arranger, in many cases, also acts as the facility agent.

5. Paying Agent

The paying agent is responsible for the cash flow involved in the transaction, specifically in receiving the proceeds from the issuance on behalf of the issuer and remitting the proceeds to the issuer, as well as the payment of interest to investors. The lead arranger is often also the paying agent.

6. Legal Counsel

Before the finalization of a debt securities or *Sukuk* issue, a legal due diligence exercise is always conducted on the issuer, related projects and project information pertaining to the securities issue or *Sukuk*. This is done by a team of lawyers appointed by the issuer.

A limited financial due diligence exercise is also undertaken to ascertain the credibility of the financial projections and financial data of the issue. The primary purpose of these due diligence exercises is to ensure that no misleading and/or inaccurate information is furnished to the regulatory authorities and investors in general.

A set of guidelines on the standards expected from a due diligence exercise has been issued by the SC, i.e. the Guidelines on Due Diligence Conduct for Corporate Proposals, which came into effect on 1 February 2008.

7. Shariah Adviser

A Shariah adviser must be appointed for a *Sukuk* issue to advise the issuer on the appropriate and acceptable concept(s) and principle(s) to be used in the issuance. Shariah concepts and principles to be used must be approved by the Shariah Advisory Council.

The roles and responsibilities of Shariah advisers with regard to *Sukuk* issuance are set out in the Islamic Securities guidelines (*Sukuk* Guidelines).²³ In addition, the Registration of Shariah Advisers Guidelines (issued and effective on 10 August 2009) set out the general role and responsibilities, fit and properness, academic qualification, experience, and requirements for continuous professional development.²⁴ Refer to these two guidelines for details.

Section 316 of the CMSA contains specific provisions relating to the National Shariah Advisory Council. The Shariah Advisory Council (SAC) was established in 1996 primarily:

- a. To advise the SC on Shariah-related matters; and
- b. To provide Shariah guidance on Islamic Capital Market (ICM) transactions and activities, aimed at standardizing and harmonizing applications.

²³ Footnote 18. http://www.sc.com.my/eng/html/resources/guidelines/bondmkt/SukukGuidelines_110812.pdf

²⁴ Footnote 18. <http://www.sc.com.my/main.asp?pageid=970&menuid=&newsid=&linkid=&type=>

The main thrust of ICM products is compliance to Islamic principles.

8. Trustee

Trustees for a bond or *Sukuk* issue have the responsibility of safeguarding the interests of bondholders. The trustee will vet through the transactions documents of a bond or *Sukuk* issue to ensure the following:

- (i) That there are no inconsistencies or conflicts of interest between the provisions of the trust deed and the conditions stated in the SC's letter of approval, and in the term sheet approved by SC;
- (ii) That there are no provisions in any of the transaction documents that are inconsistent or in conflict with, or may lead to inconsistency or conflict with, the trustee's duties; and
- (iii) That the SC's Trust Deed Guidelines have been complied with.

Please refer to Chapter I. P. for more details.

9. Credit-Rating Agency

There are two credit-rating agencies (CRAs) in Malaysia that provide independent opinions on the credit risks and potential default risks of specific issuers. The first rating agency, Rating Agency Malaysia (now known as RAM Rating Services), was established in November 1990; the second, Malaysian Rating Corporation (MARC), was incorporated in October 1995.

The CRA performs the following functions:

- (i) Investor protection
- (ii) Enlarged investor pool
- (iii) Information disclosure
- (iv) Lower cost of borrowing
- (v) Aids pricing decisions

Please refer to Chapter I. H. for more details.

10. Financial Guarantee Institution

Financial guarantee institutions (FGIs) help raise the credit rating of bond issues, which otherwise would normally be below investment grade, to a level that investors deem as investment grade by lending their own sterling ratings to these bond issues.

Please refer to Chapter I. I for more details.

11. Bond Pricing Agency

Investors and issuers in the Malaysian debt securities and *Sukuk* market may obtain information on the prices of all ringgit-denominated bonds and *Sukuk* from a bond pricing agency. This is a private sector-led initiative, developed with the support of key bond market participants, to complement the government's objective of building more efficient, sophisticated and liquid bond and *Sukuk* markets. A bond pricing

agency must provide daily independent and objective fair values for all ringgit-denominated bonds and *Sukuk* (excluding irredeemable convertible unsecured loan stocks), which will also help facilitate daily mark-to-market valuation of bond and *Sukuk* portfolios. Any entity that wishes to carry out the business of providing bond and *Sukuk* prices must be registered with the SC pursuant to the Guidelines on the Registration of Bond Pricing Agencies, issued by the SC on 25 January 2006.

Bond Pricing Agency Malaysia (BPAM, formerly known as Bondweb Malaysia) is the country's first bond pricing agency to deliver pricing and information services exclusively on the ringgit bond and *Sukuk* markets. It currently provides daily evaluated prices for nearly 2,000 bonds and *Sukuk* in the domestic market, which is used by issuers, traders and investors alike.

BPAM has constructed a series of bond indices comprising Malaysian ringgit denominated, long-term, investment-grade conventional and Islamic securities. The TR-BPAM Bond Index Series (BPAM co-branded the index with Thomson Reuters in October 2011) will allow its users to pick and choose any index based on its principle, index type and tenure. As of 30 December 2011, the main index, TRBPAM All Bond Index, consisted of 793 bonds with a total market capitalization of MYR600 billion. The Index constituents undergo calculation, review and rebalancing on a daily basis. All return calculations are based on BPAM's mark-to-market prices.²⁵

V. Issuer

The central government of Malaysia issues bills and bonds that are facilitated by Bank Negara Malaysia (BNM). Central government bonds are issued to raise funds from the domestic capital market and for development expenditure. BNM also issues its own treasury bills and bonds for liquidity purposes.

Khazanah and Cagamas are the major issuers of quasi-government bonds. Financial institutions, non-financial institutions, and corporations issue private debt and asset-backed securities (ABS), commercial papers (CPs), and medium-term notes (MTNs) under conventional and Islamic principles.

1. Government

The federal government and BNM are the main issuers of public debt. Bonds are issued under conventional or Islamic principles.

2. Corporate

Financial institutions, non-financial institutions, corporations, and quasi-government institutions such as Khazanah and Cagamas issue private debt and ABS, CPs, and MTNs under conventional and Islamic principles. CPs and MTNs are short- and medium-term promissory notes used to finance short-term capital needs.

Corporate bond structures also vary in terms of coupons such as fixed- or floating-rate, step-up, zero coupons, and with warrants attached. CPs, MTNs and ABS are also issued by Malaysian corporations.

²⁵ Bond Pricing Agency Malaysia. <http://www.bpam.com.my>

3. Multilateral Development Banks

Multilateral development banks (MDBs) issue debt to finance long-term loans and very-long term development projects in their area of coverage.

W. Investor

Malaysian government securities (MGS) constitute the largest percentage of the bond market (about 33% of total outstanding bonds, as of the end of July 2011) and are primarily issued to the Employee Provident Fund (EPF) to meet its investment needs and to finance government expenditures. As of the end of March 2011, 58% of MGS holders comprise the EPF, insurance companies, and commercial banks while another 29% of MGS were held by foreign investors.

Government investment issues are bought mostly by banks dedicated to Islamic funds. The key investors for Malaysian Treasury bills are banks, finance companies, and insurance institutions. BNM is the largest shareholder of Cagamas bonds, which are also held by commercial banks, finance companies, and merchant banks.

1. Pension Fund

The Malaysian pension system comprises a series of provident funds. The EPF is the largest provident fund and accounts for over 85% of the total assets of the Malaysian provident fund system. It is a significant investor in the bond market and is required to invest 30% of its assets in MGS.²⁶

The Social Security Organization (SOCSO), which provides benefits to workers through the Employment Injury Insurance Scheme and the Invalidity Pension Scheme, invests at least 40% of its funds in government bonds or in bonds issued by government-linked organizations. The Pension Trust Fund, which was transformed into the Retirement Fund under the *Retirement Fund Act of 2007*, also invests considerable amounts in Malaysian government bonds and other types of fixed-income securities.

2. Insurance Companies

Private insurance companies dominate Malaysia's non-bank financial sector. Since the 1997–1998 Asian financial crisis, a merger program had reduced the number of insurers to 39 by the end of 2010.

The *takaful* sector is also experiencing rapid growth. *Takaful*, or mutual support, is the basis of the concept of insurance (solidarity) among Muslims where participants mutually agree to guarantee each other against defined loss or damage that may occur on any of them by donation from *takaful* funds. The number of *takaful* operators increased to nine by the end of 2010 from only three in 2003. The total *takaful* fund assets reached MYR14.7 billion by the end of 2010 from MYR4.4 billion in 2003.

3. Asset Management Institutions

SC began liberalizing Malaysia's unit trust industry in 1997. Since then, the investment management industry has expanded. SC reported that as of 31 December 2010, total funds managed by licensed fund management companies in Malaysia rose by 19.8% to MYR377.5 billion compared to MYR315 billion in 2009.

²⁶ For further information, please refer to the website of the Employees Provident Fund. <http://www.kwsp.gov.my/index.php?ch=p2about>

X. Authorized Depository Institution

To subscribe to or trade in debt securities and *Sukuk*, an investor must open an account with an authorized depository institution (ADI). ADIs are licensed financial institutions that are members of RENTAS and are allowed by Bank Negara Malaysia to hold Scripless Securities Depository System (SSDS) (previously known as Scripless Securities Trading System, or SSTS) securities on behalf of customers that are not members of SSDS. For members of the SSTS, BNM is the authorized depository, crediting bondholders with scripless bonds for trading and transfer according to the Code of Conduct and Market Practices for Scripless Trading, and recording the holdings and transactions of each SSTS member institution.

ADIs offer protection to investors with regard to payment of interest and redemption proceeds. They ensure secrecy of accounts, issue statutory acknowledgement receipts and monthly statements detailing account holdings and transfers, and carry out the various responsibilities of depository institutions for their customers.

Dealers that act as ADIs maintain two accounts with the SSTS: one for their own holdings, and another for all the securities they hold in custody, through which non-SSTS members' transactions are cleared and settled. ADIs are required to maintain a separate account for each customer.

Y. Quick Reference for Information on Cross-Border Issuance and Investment

Table 1.3 Quick Reference on Cross-Border Issuance and Investment in Malaysia

Description	Information
I. Issuance of Local Currency Bonds by Non-Resident	
• Local rating	Local currency bonds issued by Multilateral Development Banks, Multilateral Financial Institutions, Foreign Governments, and Agencies of Foreign Governments are given the option of obtaining local or foreign ratings.
• Local listing	Local currency bonds issued by a non-resident are not required to be listed.
• Governing law	Malaysian law
• Documentation language	English
• Time required to obtain approval	Securities Commission: Issue, offer or invitation of local currency bonds by Multilateral Development Banks and Multilateral Financial Institutions shall be deemed approved by the Securities Commission on the date of receipt of a complete submission. Other issuers, within 14 working days Bank Negara Malaysia: Within 7 working days upon receipt of full information
• Typical duration of issuance process	The duration of the issuance process can vary from issuer to issuer as the structure of the issue, economic conditions, etc. need to be taken into account
• Settlement organization for Government Bonds	Bank Negara Malaysia
• Settlement Organization for Unlisted Corporation	Bank Negara Malaysia
II. Investment in Local Currency Bonds	
By resident	
• Purchase	No restriction: <ul style="list-style-type: none"> • Payment to non-resident seller may be made in ringgit or foreign currency. • Payment to resident seller, however, must be in ringgit.

continued on next page

Table 1.3 continuation

Description	Information
• Sale	No restriction: <ul style="list-style-type: none"> • Receipt from non-resident buyer may be in ringgit or foreign currency. • Receipt from resident buyer must be in ringgit.
By non-resident	
• Purchase	No restriction: Payment to non-resident or resident issuer/seller may be made in ringgit or foreign currency.
• Sale	No restriction: Receipt from non-resident or resident buyer may be made in ringgit or foreign currency.
• Hedging onshore	Allowed with licensed onshore banks
• Hedging offshore	Allowed with the appointed overseas branches of the licensed onshore banks
III. Investment in Foreign Currency Bonds	
By resident	
• Purchase	<ul style="list-style-type: none"> • Resident corporates or individuals without domestic ringgit credit facilities: <ul style="list-style-type: none"> ✓ No restriction ✓ May finance through the conversion of ringgit or from foreign currency funds retained onshore or offshore • Resident corporates or individuals with domestic ringgit credit facilities: <ul style="list-style-type: none"> ✓ No restriction if financed with existing foreign currency funds ✓ Up to the following limits if financed with conversion of ringgit into foreign currency: <ul style="list-style-type: none"> ■ MYR50 million equivalent per calendar year by resident corporates on group basis ■ MYR1 million equivalent per calendar year by resident individuals • Resident unit trust management companies <ul style="list-style-type: none"> ✓ No limit on investment of Islamic funds ✓ 100% of net asset value (NAV) of foreign currency-denominated funds ✓ 100% of NAV of ringgit-denominated funds attributed to non-residents and residents without domestic ringgit borrowing; and ✓ 50% of NAV of ringgit-denominated funds attributed to residents with domestic ringgit borrowing • Resident fund or asset managers: <ul style="list-style-type: none"> ✓ No limit on funds mandated to be invested in Shariah-compliant assets ✓ No limit on foreign currency funds mandated to be invested in non-Shariah compliant assets ✓ No limit on ringgit funds of non-resident or resident without domestic borrowing mandated to be invested in non-Shariah compliant assets ✓ 50% of total ringgit funds managed for resident with domestic borrowing • Resident insurance companies and <i>takaful</i> operators: <ul style="list-style-type: none"> ✓ 100% of NAV of foreign currency-denominated investment-linked funds marketed to residents and non-residents ✓ 100% of NAV of ringgit-denominated investment-linked funds marketed to residents and non-residents without domestic borrowing ✓ 50% of NAV of ringgit-denominated investment-linked funds marketed to residents with domestic ringgit borrowing ✓ Up to 10% of total assets for insurers ✓ Up to 5% of total assets of the <i>takaful</i> operators
• Sale	No restriction: <ul style="list-style-type: none"> • Receipt from non-resident must in foreign currency • Receipt from resident may be in ringgit or foreign currency
• Hedging onshore	Allowed with licensed onshore banks
• Hedging offshore	Not allowed
By non-resident	
• Purchase	No restriction
• Sale	No restriction
• Hedging onshore	Allowed with licensed onshore banks
• Hedging offshore	No restriction

continued on next page

Table 1.3 continuation

Description	Information
IV. Financing to Non-Resident	
<ul style="list-style-type: none"> Local currency 	Freely allowed for the following: <ul style="list-style-type: none"> ✓ Non-resident (other than stock broking companies and banks) from licensed onshore banks, resident non-bank companies, and individuals to finance activities in the real sector in Malaysia ✓ Non-resident stock broking companies and banks from licensed onshore banks for settlement of ringgit instruments traded on Bursa Malaysia Berhad or through the Real-Time Electronic Transfer of Funds and Securities System (RENTAS) to avoid settlement failure due to inadvertent delays on the receipt of funds
<ul style="list-style-type: none"> Foreign currency 	<ul style="list-style-type: none"> No restriction from licensed onshore banks
V. Taxes	
<ul style="list-style-type: none"> Withholding 	No withholding tax on interest derived from the following: <ul style="list-style-type: none"> interest accruing to any resident or non-resident individual, unit trust and listed closed-end fund from: <ol style="list-style-type: none"> bonds or securities issued or guaranteed by the Government of Malaysia; debentures, other than convertible loan stock, approved by the Securities Commission; and Bon Simpanan Malaysia issued by Bank Negara Malaysia. Coupon/interest income derived by non-resident companies from: <ol style="list-style-type: none"> ringgit-denominated Islamic securities and debentures, other than convertible loan stocks, approved by the Securities Commission; and securities issued by the Government of Malaysia or Bank Negara Malaysia.
<ul style="list-style-type: none"> Capital gain 	No tax imposed
<ul style="list-style-type: none"> Other 	-
Other limitations on non-residents	Nil
VI. Settlement and Custodial Information for Local Currency Bonds	
<ul style="list-style-type: none"> Scripless trading 	Yes
<ul style="list-style-type: none"> Settlement cycles 	The standard settlement cycle is on T+2. However, the buyer and seller can specify a specific settlement date up to one (1) year forward.
<ul style="list-style-type: none"> International linkages 	Currently not available.
<ul style="list-style-type: none"> Custodian system 	<ul style="list-style-type: none"> The securities are issued in the form of Global Certificates (GC). The issuer lodges the GC with Bank Negara Malaysia as the Central Depository for safe custody. Bank Negara Malaysia will hold the GC on behalf of all securities holders and their scripless securities account for the purpose of trading and transfer. Investors maintain account with designated Authorized Depository Institutions (ADIs).
<ul style="list-style-type: none"> Real Time Gross Settlement System 	Yes, since July 1999. The system caters to the settlement for inter-bank funds transfer, as well as securities trades.
<ul style="list-style-type: none"> Delivery Versus Payment method 	Yes, settlement for unlisted securities trades is conducted based on a Delivery versus Payment (DVP) Model 1, i.e., where the settlement of securities and funds is conducted simultaneously on gross basis.
<ul style="list-style-type: none"> Others 	Nil
<p>^a Onshore licensed banks comprise all commercial banks and Islamic banks in Malaysia licensed under the Banking and Financial Institutions Act 1989 and the Islamic Banking Act 1983</p> <p>Source: AsianBondsOnline. Footnote 2. http://asianbondsonline.adb.org/malaysia/documents/quick_reference_my_march2006.pdf</p>	

II. Market Regulations in Malaysia

The Malaysian debt securities and *Sukuk* market is supervised by the Securities Commission (SC) and Bank Negara Malaysia (BNM). Both regulators play a dual role of supervising market intermediaries and the activities in the market, as well as actively supporting and developing the market infrastructure and fostering a conducive and facilitative environment. As a result of the coordinated and committed efforts of the SC and BNM, the Malaysian debt securities and *Sukuk* market has been charting stellar growth over the years.

A. Market Entry Requirements for Non-Residents

1. Foreign Issuers

Foreign issuers may issue bonds or *Sukuk* denominated in ringgit or foreign currency in Malaysia, subject to the approval of relevant authorities. The ringgit and foreign currency funds raised from such issuance may be used either in Malaysia or overseas. Nonetheless, the remittance of such funds overseas must be made in foreign currency other than the currency of Israel. There is no restriction for foreign issuers to open and maintain ringgit or foreign currency accounts with licensed onshore banks in Malaysia.

Foreign issuers may also manage their foreign exchange and interest or profit rate exposures arising from the bond or *Sukuk* issuance with licensed onshore banks or non-resident financial institutions. Nevertheless, all ringgit exposures shall be managed only with licensed onshore banks or appointed overseas branches of the banking group of the licensed onshore banks.

2. Foreign Investors

Foreign investors are free to invest in Malaysia in any form including the purchase of bonds or *Sukuk* denominated in ringgit or foreign currency by foreign issuers. There is no restriction for foreign investors to repatriate funds from divestment of ringgit assets or profits and dividends arising from the investments. However, repatriation must be made in foreign currency other than the currency of Israel.

Investment of ringgit assets by foreign investors may be funded from

- (i) foreign investors' own ringgit accounts (external accounts);
- (ii) sale of foreign currency with licensed onshore banks or appointed overseas branches of the banking group of the licensed onshore banks; or
- (iii) any amount of foreign-currency borrowing from licensed onshore banks and licensed international Islamic banks.

Details on foreign exchange administration rules can found in the BNM website.²⁷

B. Market Regulators

1. Bank Negara Malaysia

BNM (or the Bank) is the central bank of Malaysia. It was established on 26 January 1959 under the *Central Bank of Malaysia Act 1958* (CBA 1958), with its objectives extended under the new CBA 2009:

- (a) The principal objective of the Bank shall be to promote monetary stability and financial stability conducive to the sustainable growth of the Malaysian economy.
- (b) The primary functions of the Bank are as follows:
 - (i) to formulate and implement monetary policy in Malaysia;
 - (ii) to issue currency in Malaysia;
 - (iii) to regulate and supervise financial institutions which are subject to the laws enforced by the Bank;
 - (iv) to provide oversight over money and foreign exchange markets;
 - (v) to exercise oversight over payment systems;
 - (vi) to promote a sound, progressive and inclusive financial system;
 - (vii) to hold and manage the foreign reserves of Malaysia;
 - (viii) to promote an exchange rate regime consistent with the fundamentals of the economy; and
 - (ix) to act as financial adviser, banker, and financial agent of the government.
- (c) The Bank shall have all the powers necessary, incidental or ancillary to give effect to its objects and carry out its functions.
- (d) The Bank, in giving effect to its objects and carrying out its functions under this Act, shall have regard to the national interest.

Today, BNM focuses on the three pillars of central banking: monetary stability, financial stability, and the payment system. In addition, emphasis is given to the developmental role of BNM with respect to economic management, institution building, and the development of the financial system.

To enable BNM to meet its objectives, it has been vested with comprehensive legal powers under various acts to regulate and supervise the financial system. These acts include the *Central Bank of Malaysia Act 2009* (CBA 2009); the *Islamic Banking Act 1983*; the *Banking and Financial Institutions Act 1989* (or BAFIA); the *Takaful Act 1984*; the *Insurance Act 1996*; the *Development Financial Institutions Act 2002*; and the *Payment Systems Act 2003*. Collectively, these lay the legal foundation of and empower

²⁷ Bank Negara Malaysia (BNM). <http://www.bnm.gov.my/fxadmin>

the central bank to license and regulate institutions comprising banks, investment banks, money brokers, insurance companies, takaful operators, and development financial institutions, which constitute majority of the participants in the domestic debt securities and *Sukuk* market.

BNM is a statutory body wholly-owned by the Government of Malaysia with a paid-up capital currently at MYR100 million. The Bank reports to the Minister of Finance, Malaysia and keeps the Minister informed on matters pertaining to monetary and financial sector policies.

As the banker of and advisor to the government, BNM's role includes managing the liabilities of the government, both in Malaysia and abroad. It advises the government on its loan programs, including planning the auction calendar for government securities, taking into consideration the terms and timing of the loans and the types of securities. BNM participates actively in the monthly Cash Flow Committee meeting, chaired by the Treasury, to discuss the final details of government securities issuances. In addition, BNM is responsible for the issuance process, registration, settlement and redemption of government securities through the in-house automated trading and settlement system.

BNM is also empowered by several different laws to issue Malaysian government securities on behalf of the Government of Malaysia. Conventional debt instruments such as Malaysian government securities (MGS) and Malaysian Treasury bills (MTB) are issued under the *Loan (Local) Act 1959 (Revised-2004)* and the *Treasury Bills (Local) Act 1946 (Revised-1977)*, respectively. On the other hand, Islamic securities such as Government investment issues (GIIs) and Malaysian Islamic Treasury bills (MITBs) are issued under the *Government Funding Act 1983* (previously known as the *Government Investment Act 1983*). Each act sets a different issuance limit for conventional and Islamic instruments from time to time, by order of the Yang di-Pertuan Agong—the constitutional monarch of Malaysia—as published in the Gazette.

The *Treasury Bills (Local) Act 1946* empowers the Minister of Finance to borrow money through the issuance of treasury bills, while the *Loan (Local) Act 1959* authorizes BNM to raise funds within Malaysia, on behalf of the Minister, for the development fund. The *Government Funding Act 1983* provides for raising funds by the Government of Malaysia using instruments that adhere to Shariah principles, as approved by the National Shariah Advisory Council. This Act grants the Minister the authority to receive investments by creating and issuing instruments evidencing such investment, on behalf of the Government of Malaysia.

It is stipulated in the CBA 2009 that BNM can provide temporary advances, known as “ways and means” advances, to the government to cover any deficit in the budget revenue. However, there are legal limitations to the amount and the duration on loans that BNM can make available to the government.

Since 2005, BNM is allowed to purchase MGS from the primary and secondary markets based on market prices, and to use the purchased securities for its open market operations.

To ensure that these purchases do not unduly influence or distort market prices, BNM's participation in the primary auction is based on the weighted average price of the auction and is limited to a maximum of 10% of the issue size. Similarly, the amount purchased in the secondary market is limited to 10% of the outstanding issued amount. As of the end of September 2011, BNM holds 0.2% of the total MGS outstanding amount.

BNM had also been the regulator of the domestic corporate debt securities and corporate *Sukuk* market before it came under the purview of the SC in 2000. Today, the Bank continues to play a pivotal role in supporting the local debt securities and *Sukuk* market through its involvement in infrastructure development and the promotion of a facilitative foreign-exchange administration framework for foreign issuers and investors in the Malaysian market.

BNM is also the issuer of BNM monetary notes, which are issued to manage liquidity in both the conventional and Islamic financial markets. The Bank also conducts repurchase auctions as part of its open market operations. Among the major roles of the Bank is the prudent conduct of monetary policy, which has seen generally low and stable inflation for decades and thereby, preserving the purchasing power of the ringgit. The Bank is also responsible for bringing about stability in the financial system and fostering a sound and progressive financial sector. A well-diversified, comprehensive and resilient financial sector that is able to meet the increasingly sophisticated needs of consumers and businesses is now in place, which has become a growth driver in the economy.

The Bank also plays a significant developmental role, including the evolution of the financial system infrastructure with major emphasis placed on building the nation's efficient and secured payment systems, as well as the necessary institutions including the SC, Bursa Malaysia (formerly the Kuala Lumpur Stock Exchange, KLSE), and the Credit Guarantee Corporation, which are important towards building a comprehensive, robust and resilient financial system.

The Bank actively promotes financial inclusion, which has led to improved access to financial services for all economic sectors and segments of society, thereby supporting balanced economic growth.

2. Securities Commission Malaysia

The SC was established on 1 March 1993 under the *Securities Commission Act 1993* to promote and maintain fair, efficient, secure and transparent securities and futures markets, and to facilitate the orderly development of an innovative and competitive capital market. It is a self-funding statutory body with investigative and enforcement powers. It reports to the Minister of Finance and its accounts are tabled in Parliament annually. The SC's many regulatory functions include:

- (i) Supervising exchanges, clearing houses and central depositories;
- (ii) Registering authority for prospectuses of corporation other than unlisted recreational clubs;
- (iii) Approving authority for corporate bond issues;
- (iv) Regulating all matters relating to securities and futures contracts;
- (v) Regulating the takeover and mergers of companies;

- (vi) Regulating all matters relating to unit trust schemes;
- (vii) Licensing and supervising all licensed persons;
- (viii) Encouraging self-regulation; and
- (ix) Ensuring proper conduct of market institutions and licensed persons.

The SC administers the *Securities Industry Act 1983*, which governs a substantial part of activities in the domestic bond market. It also has the ultimate responsibility of investor protection. Apart from discharging its regulatory functions, the SC is also obliged by statute to encourage and promote the development of the securities and futures markets in Malaysia.

Prior to 1993, there was no single authority entrusted with the responsibility of regulating and systematically developing the Malaysian capital market. Supervisory powers were shared between industry organizations such as the stock exchange and government institutions. To streamline the regulatory structure of the capital markets, the SC was established as a self-funding statutory body with investigative and enforcement powers.

The SC's commitment to strengthening and broadening the domestic capital market is manifested in the Capital Market Masterplan (CMP). Launched in 2001, the CMP seeks to chart the future direction of the Malaysian capital market over the next 10 years. Twenty-two of the 152 recommendations in the CMP relate to developmental initiatives for the debt securities and *Sukuk* market.

3. Bursa Malaysia

Bursa Malaysia (formerly the KLSE) is now a holding company following demutualization in 2004. It is a self-regulatory organization that governs its members' conduct and member companies in securities dealings. It is also responsible for marketplace surveillance. Bursa Malaysia, on behalf of SC, supervises and enforces disclosure standards for listed companies.

4. Shariah Advisory Council

To ensure that all Islamic capital market products are in compliance with Shariah principles, the Shariah Advisory Council (SAC) was established in 1996 by the SC for the onshore market. The SAC comprises prominent Shariah scholars, jurists and market practitioners to advise the SC on matters relating to the Islamic capital market and provide Shariah guidance on Islamic capital market transactions and activities.²⁸

There are two SAC's in Malaysia: BNM's SAC and SC's SAC. The SAC is the highest and final authority on all Shariah matters concerning Islamic capital market products in Malaysia. The SAC of the SC has the mandate to make final decisions on Shariah matters concerning Islamic capital market products while the SAC of BNM has the mandate to make final decisions on Islamic banking products.

C. Related Regulations and Rules on Issuing Debt Instruments

1. Issuance by Government

BNM manages the liabilities of the government, both in Malaysia and abroad. It

²⁸ Please also refer to <http://www.sc.com.my/main.asp?pageid=251&menuid=277&newsid=&linkid=&type=>

advises the government on its loan programs, including planning the government securities auction calendar, taking into consideration the terms and timing of loans and issue of new types of securities. It participates in the monthly Cash Flow Committee meeting chaired by the Treasury to discuss the final details of government securities issuances.

BNM is responsible for trading, registering, settlement, and redemption of government securities through the in-house automated trading and settlement system. BNM and MyClear published the rules on RENTAS and FAST in PDF accessible in the public domain.²⁹

2. Issuance by Non-Residents

For foreign issuers, the Quick Reference for Information on Cross-Border Bond Issuance and Investment contains information on bond issuance by non-residents in Malaysia.³⁰

D. Rules and Regulations on Investment in Debt Securities

Currently, there are no specific regulations allowing non-high net-worth individuals (retail investors) to participate in the corporate bond market. Generally, dealers or other intermediaries require a minimum investment amount.

1. To increase trading efficiency, the SC liberalized the Central Depository System (CDS) account requirements in October 2005, widening the group of those allowed to hold securities on behalf of others. These exempt-authorized nominees are now allowed to hold securities in omnibus CDS accounts.
2. The SC has a special website for retail investors—the Malaysian Investor.³¹ The site provides helpful information on different securities, including bonds.

E. Taxation Framework and Tax Requirements

1. Interest Income Tax

Resident individuals, unit trust companies and listed closed-end fund companies are exempted from paying income tax for interest income earned from ringgit-denominated sovereign bonds, as well as private debt securities and *Sukuk* approved by the SC. Non-resident investors are also exempted from paying withholding tax on interest income and profit earned from ringgit-denominated debt securities issued by the Malaysian Government, as well as private debt securities or *Sukuk* approved by the SC. Meanwhile, resident investors are exempted from payment of income tax on the profits received from the foreign currency-denominated *Sukuk* issued in Malaysia. Profits or income from non-residents' investments in foreign currency-denominated *Sukuk* issued in Malaysia are fully exempted from withholding tax.

²⁹ Footnote 10. https://fast.bnm.gov.my/fastweb/public/files/RENTAS_Rules_May2006.pdf; https://fast.bnm.gov.my/fastweb/public/files/FAST_Rules_July2005_Update_15May2006.pdf; <http://www.myclear.org.my/index.php?id=53&mnu=53>

³⁰ Footnote 2. http://asianbondsonline.adb.org/malaysia/documents/quick_reference_my_march2006.pdf

³¹ The Malaysian Investor. <http://www.min.com.my/>

2. Stamp Duty

There is no stamp duty relating to the issuance and transfer of Malaysian Government securities (MGS), private debt securities or *Sukuk* approved by the SC.

3. Capital Gains Tax

There is no capital gains tax in Malaysia.

F. Tax Incentives

1. Tax Treatment for Issuers

- (a) Issuance for private debt securities (PDS) are exempted from stamp duty.
All instruments relating to the issuance and transfer of PDS approved by the SC are exempted from stamp duty effective 1 July 2000.
- (b) Tax deductions on expenses incurred in the issuance of *Sukuk*
Expenses incurred in the issuance of *Sukuk* will be tax-deductible until Year of Assessment 2010.
- (c) Exemption from stamp duty
All instruments for the purpose of securitization approved by the SC are exempted from stamp duty effective 1 January 2001. All instruments for the purpose of a *Sukuk* issuance approved by the SC are exempted from stamp duty.
- (d) Securitization exempted from real property gains tax
Real property gains tax in respect of chargeable gains accrued on the disposal of any chargeable assets to or in favor of a special purpose vehicle (SPV), or in connection with the repurchase of chargeable assets to or in favor of the person from whom the assets had been acquired, is exempted for the purpose of a securitization transaction.
- (e) Tax-neutral for the originator and SPV in a securitization
Tax-neutral framework in computing income-tax treatment for the originator and SPV involved in a securitization transaction is approved by the SC.
- (f) Extension of tax incentives for *Sukuk*
Extension of deduction on expenses for *Sukuk* issued under *musyarakah*, *mudharabah*, *Ijarah*, and *Istisna'* was allowed for another 3 years until the Year of Assessment 2010.
- (g) Tax deductions for SPV in a *Sukuk* transaction
Income-tax exemption is granted to an SPV established solely for issuance of *Sukuk*. A company establishing an SPV is given tax deduction on the SPV's cost of issuing Islamic securities effective 2007. SPVs set up for Islamic financing purposes are not required to comply with the administrative requirements under the *Income Tax Act 1967*.

- (h) Tax exemption from the Year of Assessment 2009 until the Year of Assessment 2011

Tax exemption from the Year of Assessment 2009 until 2011 is granted to a person licensed or registered under the CMSA in respect of income derived from dealing in *Sukuk* and advising on corporate finance relating to the arranging, underwriting, and distributing of *Sukuk* originating from Malaysia, and issued or guaranteed by the Government of Malaysia or approved by the SC.

2. Tax Treatment for Investors

- (a) Exemption on interest income from ringgit-denominated debt securities and *Sukuk*

Resident individuals, unit-trust companies, and listed closed-end fund companies are exempted from income tax on interest income and profits earned from ringgit-denominated sovereign bonds, as well as PDS and *Sukuk* approved by the SC. Non-resident investors are also exempted from paying withholding tax on interest income and profit earned from ringgit-denominated debt securities issued by the Malaysian Government, as well as PDS or *Sukuk* approved by the SC.

- (b) Exemption on interest income from foreign currency-denominated *Sukuk*
Resident investors are exempted from payment of income tax on the profits received from foreign currency-denominated *Sukuk* issued in Malaysia. Profits or income from non-residents' investments in foreign currency-denominated *Sukuk* issued in Malaysia are fully exempted from withholding tax.

- (c) No stamp duty on transfers of MGS, PDS and *Sukuk*
There is no stamp duty on the transfer of MGS, PDS or *Sukuk* approved by the SC.

- (d) Capital gains tax
There is no capital gains tax in Malaysia.

III. Trading of Bonds and Trading Market Infrastructure

The Malaysian bond market consists of listed and unlisted bonds. Unlisted bonds are largely traded over the counter (OTC) while listed bonds are traded through Bursa Malaysia.

A. Over-the-Counter Market Trading

In Malaysia's OTC market, the primary market segment is facilitated by Bank Negara Malaysia (BNM) through the Fully Automated System for Issuing/Tendering (FAST). It provides information on issue terms, real-time prices, completed trade details, and other relevant news about debt securities. FAST was first launched by BNM in September 1996 to automate the tendering procedure of government securities or Bank Negara Papers, which are issued through the principal dealer (PD) network. In July 1997, FAST was further enhanced to include commercial papers and medium-term notes, which are issued via tender or private placement.

In addition, Bursa Malaysia operates the Electronic Trading Platform (ETP), which facilitates the trading and reporting of secondary market activities. ETP acts as the centralized price and trade repository, and interfaces with FAST and information vendors. More information can be obtained through the Bursa Malaysia website.³²

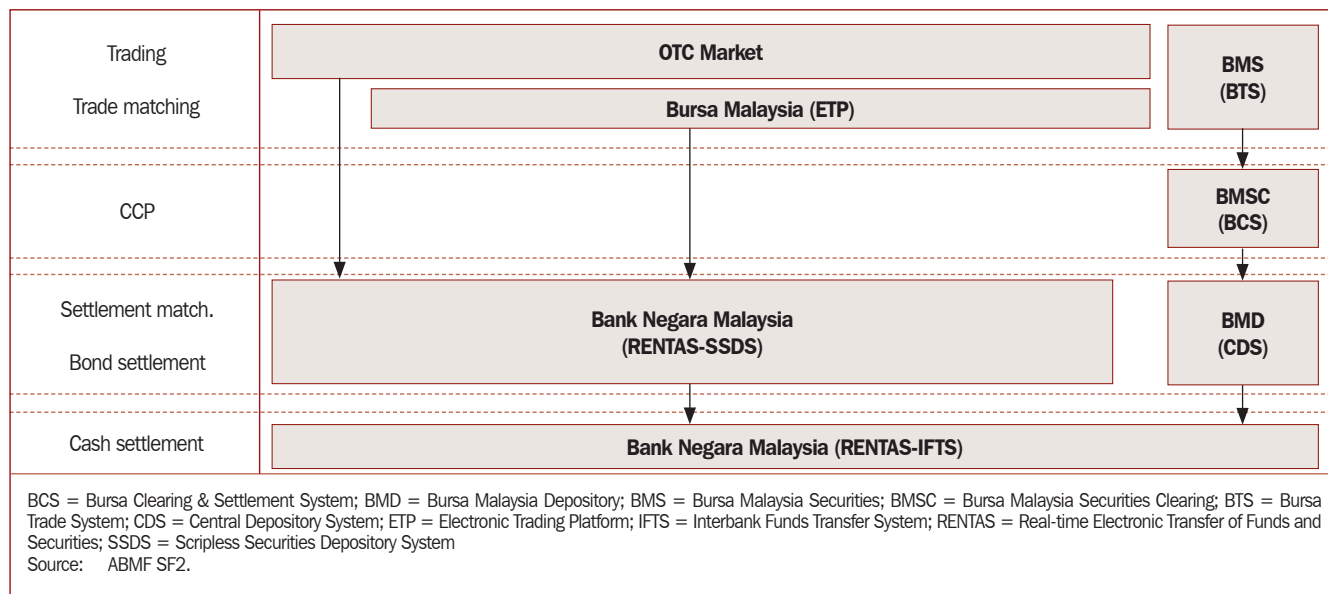
B. Exchange trading

Bursa Malaysia is an exchange holding company approved under Sec. 15 of the Capital Markets and Services Act 2007 (CMSA). It operates a fully-integrated exchange, offering a complete range of exchange-related services including trading, clearing, settlement, and depository services. The wholly-owned subsidiaries of Bursa Malaysia own and operate these various businesses.

³² Footnote 8. <http://www.bursamalaysia.com/website/bm/trading/bonds/>

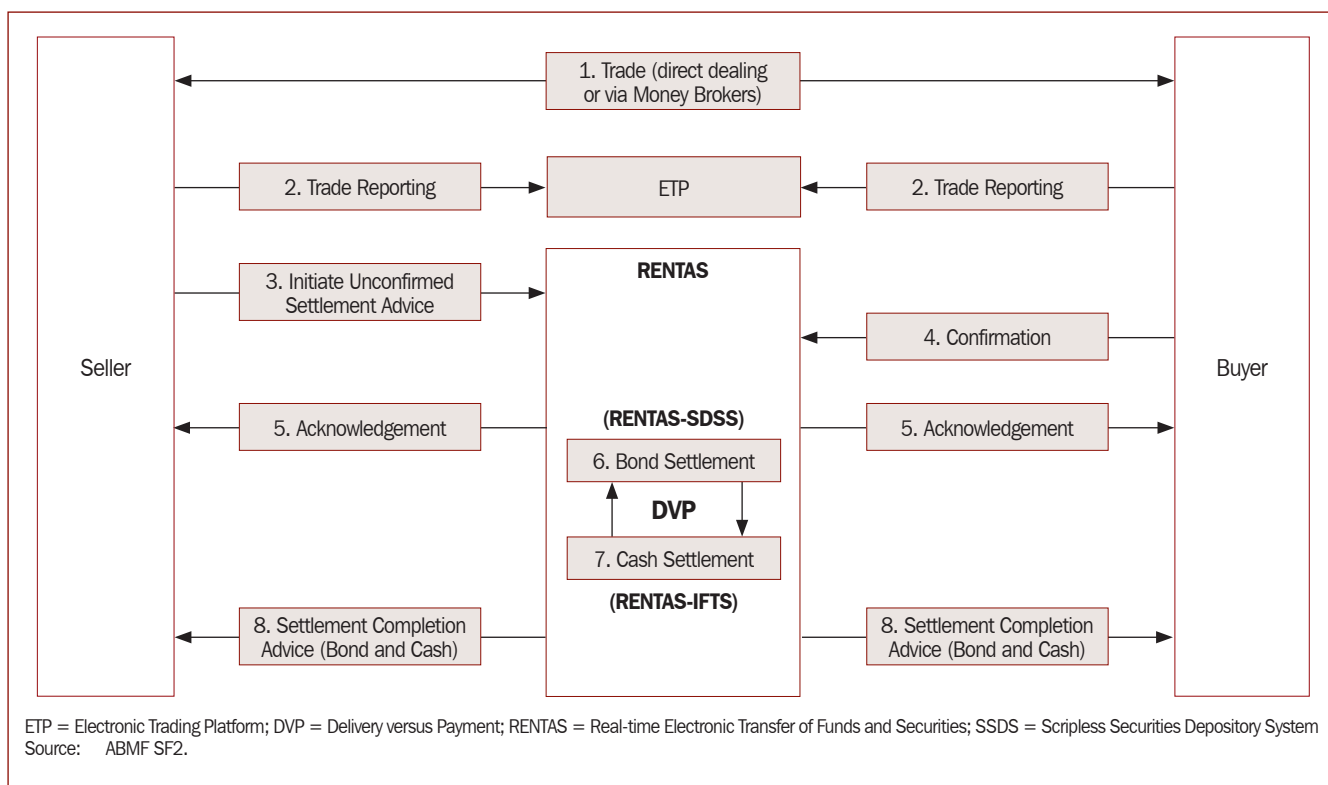
C. Bond Market Infrastructure Diagram

Figure 3.1 Bond Market Infrastructure Diagram (MY: T+2)



D. Business Process Flowchart: Bond Market (Over-the-Counter Market)/Delivery versus Payment

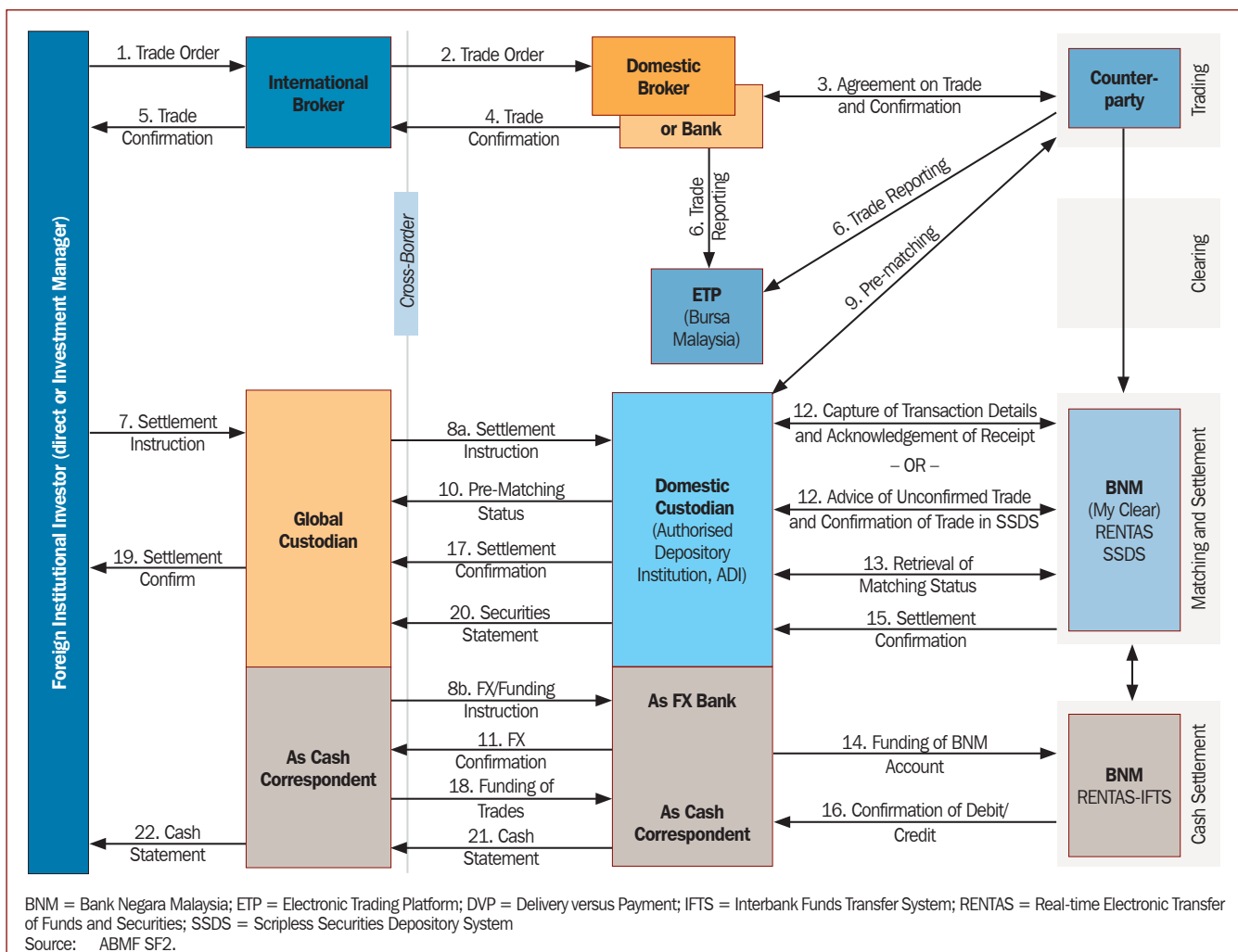
Figure 3.2 Business Process Flowchart: Over-the-Counter Market/Delivery versus Payment



1. The seller and buyer trade over the counter by telephone (direct dealing or through money broker). Ninety-five percent of bond trades are dealt in the OTC market. Commercial banks and Islamic banks can trade the bonds.
2. All trades are recorded in the ETP.
3. The seller (or buyer) inputs trade data into Real-time Electronic Transfer of Funds and Securities (RENTAS) to initiate unconfirmed settlement advice.
4. The buyer (or seller) confirms an unconfirmed settlement advice using by the Confirmation menu of RENTAS.
5. The seller and buyer access the Report menu of RENTAS and confirm that confirmation of local matching is performed.
6. 7. On settlement date, bond and cash are settled on DVP basis.
8. The seller and buyer access Report menu of RENTAS and confirm report of Bond settlement and cash settlement.

E. Over-the-Counter Bond Transaction Flow for Foreign Investors

Figure 3.3 Over-the-Counter Bond Transaction Flow for Foreign Investors



Trade Date

1. Foreign Institutional Investor places order with International Broker
2. International Broker or Domestic Investor places order with Domestic Broker/Bank
3. Domestic Broker or Bank and Counterparty agree on OTC trade (via e.g., phone or Bloomberg)
4. Domestic Broker or Bank sends trade confirmation to International Broker
5. Foreign Institutional Investor receives trade confirmation
6. Domestic Broker or Bank and Counterparty capture trade in ETP by end of trading day

T+1

7. Foreign Institutional Investor instructs Global Custodian, on securities settlement and cash and/or funding details
8. Global Custodian instructs Domestic Custodian/Authorized Depository Institution (ADI) on (a) securities settlement details, (b) foreign exchange (FX) request or funding details (since Third Party FX possible)
9. Domestic Custodian/ADI and Counterparty pre-match settlement details, via phone
10. Domestic Custodian/ADI sends pre-matching result information (e.g., missing instructions) to Global Custodian
11. Domestic Custodian/ADI provides confirmation of FX booked (in case of earlier FX request)

Settlement Date

12. Domestic Custodian/ADI captures settlement details into SSDS and receives SSDS acknowledgment of receipt of data (selling side), OR receives alleged trade notice (advice of unconfirmed trade) from Scripless Securities Depository System (SSDS) and confirms settlement details in SSDS (buying side)
13. Domestic Custodian/ADI retrieves settlement matching status
14. Domestic Custodian/ADI effects funding of its account at BNM via RENTAS (Interbank Funds Transfer System, IFTS)
15. Upon settling securities, SSDS sends settlement confirmation for securities to Domestic Custodian/ADI
16. Upon settling cash, RENTAS sends debit/credit confirmation to Domestic Custodian/ADI
17. Domestic Custodian/ADI sends settlement confirmation to Global Custodian
18. Global Custodian funds account with Domestic Custodian/ADI (before end of day)
19. Global Custodian sends settlement confirmation to Foreign Institutional Investor
20. Domestic Custodian/ADI sends statement of securities to Global Custodian (at end of day)
21. Domestic Custodian/Sub-registry sends debit/credit information in cash statement (at end of day)
22. Global Custodian sends debit/credit information in cash statement to FII (at end of day)

IV. Possible Items of Future Improvement

For possible items for future improvements of the Malaysian bond market, please refer to the comprehensive review of the Malaysia Capital Market Masterplan II in Chapter IX. Next Steps, which begins on page 71.

V. Description of the Securities Settlement System

A. Securities Settlement Infrastructure

Sovereign and unlisted corporate bonds are registered and settled through BNM's real-time gross-settlement, delivery-versus-payment system, RENTAS. RENTAS membership is restricted to financial institutions licensed under the Banking and Financial Institutions Act 1989 and includes Islamic banks, selected DFIs, non-banks such as EPF & KWA, International Central Securities Depositories and foreign central banks. All unlisted corporate bonds are held by BNM as a custodian agent and are settled by fund transfer.

All listed corporate bonds under the Bursa Malaysia are held in book-entry form and cleared and settled through the Bursa Malaysia Securities Clearing (formerly Securities Clearing Automated Network Services, SCANS). Bursa Malaysia also offers settlement services to institutional investors through the Institutional Settlement Service of Bursa Malaysia Securities Clearing.

The Bursa Malaysia Depository (formerly the Malaysian Central Depository) operates a system for the central handling of securities that facilitates securities transactions without the physical delivery of scrip. The Bursa Malaysia Derivatives Clearing (formerly the Malaysia Derivatives Clearing House) provides clearing and settlement services for the futures market operated by the Bursa Malaysia Derivatives (formerly the Malaysia Derivatives Exchange). The clearing and settlement of contracts executed under Bursa Malaysia's two exchanges (securities and derivatives exchanges) are based on the Fixed Delivery and Settlement System (FDSS). Settlement is on a T+3 basis. The financial settlement of securities is done on a net—rather than gross—basis.

F. Definition of Clearing and Settlement

1. Clearing

- (i) “Clearing” means the process of exchanging and reconciling payment items that result in the establishment of final positions for settlement.³³
- (ii) “Clearing facilities” refer to a facility for the clearing or settlement of transactions in securities traded on a stock exchange or futures contracts traded on a futures market; a facility for the guarantee of settlement of transactions; or such other clearing or settlement facility, or class of clearing or settlement facilities, as the Securities Commission (SC) with the approval of the Minister may allow.
- (iii) “Clearing house” means a person whose activities or objects include the provision of clearing facilities.
- (iv) The clearing house is the Bursa Malaysia Securities.

Rules of Bursa Malaysia Securities Clearing can be found in the Bursa Malaysia website.³⁴

2. Settlement

Settlement, in relation to a market contract, means the discharge of the rights and liabilities of the parties to the market contract whether by performance, compromise or otherwise; and includes partial settlement effected in accordance with the rules of an approved clearing house. All securities trades are generally settled on a delivery-versus-payment (DVP) basis. For all government and corporate debt securities deposited in RENTAS, ownership and transfers are reflected as book entries in the custody accounts with BNM in the RENTAS system. The settlement of primary and secondary market transactions in government securities and unlisted corporate debt securities takes place through the Scripless Securities Depository System (SSDS), which is part of the RENTAS system. US dollars-denominated debt securities and *Sukuks* may be settled in RENTAS on DvP basis while those denominated in other foreign currencies may be settled on a non-DvP basis.³⁵

³³ Bank Negara Malaysia, MyClear. 2011. *Participation and Operation Rules for Payments and Securities Services*. Kuala Lumpur.

³⁴ Footnote 8. http://www.bursamalaysia.com/website/bm/regulation/rules/bursa_rules/downloads/SCANSRules.pdf

³⁵ For a detailed description of the bond settlement process in the Malaysian market and the detailed transaction flow for transactions involving foreign institutional investors, kindly refer to Chapter III.D, page 46 in this document. More details can be found in the Bond Information Hub. <http://bondinfo.bnm.gov.my>

V. Costs and Charging Methods

The following market charges exist in the Malaysian market.

Table 5.1 Market Charges

Market Charge	Details
Brokerage Fees	Fully negotiable
Clearing Fees	To be determined by the Clearing House from time to time
System Maintenance Fees	To be determined by the Exchange from time to time
Source: Bursa Malaysia.	

Details on the market charges for listed bonds can be found on the Bursa Malaysia website.³⁶ For unlisted bonds, please refer to the Bond Information Hub website, which is maintained by BNM.³⁷

³⁶ Footnote 8. http://www.bursamalaysia.com/website/bm/regulation/rules/bursa_rules/downloads/bm_brchapter10.pdf.

³⁷ Bond Information Hub. <http://bondinfo.bnm.gov.my>

VI. Presence of *Sukuk* Market

A. *Sukuk* Market

The Malaysian *Sukuk* market has shown remarkable progress since its introduction in 1990. Malaysia has successfully created a niche market in this area. Based on the Islamic Finance Information Service, it is estimated that from January to September 2011, 70% of the total global Islamic bonds that have been issued were issued in Malaysia, making Malaysia one of the world's largest *Sukuk* market. In 2010, *Sukuk* issuance amounted to MR30 billion, accounting for 56% of total *Sukuk* issuance. In 2009 and 2010, *Sukuk* were extremely popular among issuers and investors alike, eclipsing conventional bonds and accounting in both years for more than 50% of issuance. Demand for Islamic paper by Islamic and conventional investors was strong, and major issuers, particularly toll road concessionaires and power supply companies, took advantage of lower issuance costs as the demand led to more competitive bidding.

B. Structure of *Sukuk*

A prerequisite for *Sukuk* is compliance with the Shariah (Islamic laws), which prohibits the charging of interest (*riba*). A *Sukuk* instrument is structured so that it involves an exchange of Shariah-compliant assets for financial consideration that allows investors to earn profits and rentals from transactions in the future.

There are various types of Islamic-based structures used for the creation of Islamic bonds. The more prominent ones are the sale and purchase of an asset based on deferred payment (*bai' bithaman ajil*), leasing of specific assets (*ijarah*), and a profit-and loss-sharing scheme (*musyarakah*). There are also a number of innovative instruments recently pioneered by market players involving the gamut of Islamic financial principles, including *istisna* (project finance), *murabahah* (cost-plus sale), *mudharabah* (profit-sharing), and *qard* (interest-free loan). In Malaysia, majority of *Sukuk* are debt-based instruments, i.e., *murabahah* and *bai' bithaman ajil*. As of end of October 2011, the proportion of corporate *Sukuk* approved based on various Shariah principles is as follows:

- (i) *Musharakah* 59%
- (ii) *Ijarah* 13%
- (iii) *Murabahah* 10%
- (iv) *Mudharabah* 9%
- (v) *Wakalah* 9%

Issuers are no longer constrained by the legal concept of debentures (debt-based), as required for conventional products, following the implementation of the latest *Sukuk* Guidelines made effective by the Securities Commission (SC) in August 2011.³⁸

C. Growth and Acceptance of *Sukuk*

The increasing popularity of Islamic bonds is attributable to several factors. First, *Sukuk* provide an avenue for Islamic-based investors who need to invest in Shariah-compliant instruments. Second, *Sukuk* have also appealed to conventional investors who are constantly looking for liquid, attractively priced instruments to obtain capital gains and income. The strong demand by investors also provides the opportunity to issuers to finance borrowing at a lower cost. Third, the Malaysian government has been actively involved in creating an efficient price-discovery process for Islamic securities through its issuance of Malaysian Islamic Treasury bills (MITBs) and government investment issues (GIIs), which has led to the establishment of an Islamic benchmark yield curve.

Over the years, Islamic capital market products have garnered universal acceptance as viable alternatives to conventional products. There has been clear evidence of the acceptability of the products to non-Muslim issuers and investors alike. As an indication of the success of Malaysia's Islamic capital market, 50% of funds raised in the private debt securities (PDS) market in 2010 were through Islamic products. The success of "mainstreaming" Islamic bonds could be replicated internationally, considering the estimated size of the global Islamic financial system and the latent demand for Shariah-compliant financial instruments.

D. Malaysia as an Islamic Capital Market Center

The Capital Market Masterplan (CMP) also provides a detailed long-term strategy to promote the Islamic capital market in line with Malaysia's core areas of competitive advantage. Recent measures by the authorities have facilitated cross-border issuance and investment of Islamic bonds, including:

- (i) allowing supranational and multinational corporations to issue Malaysian ringgit bonds;
- (ii) allowing investors to invest in foreign securities on exchanges recognized by Bursa Malaysia;

³⁸ Footnote 18. http://www.sc.com.my/eng/html/resources/guidelines/bondmkt/SukukGuidelines_110812.pdf

- (iii) allowing sophisticated investors to execute secondary trades in non-Malaysian ringgit bonds without SC approval; and
- (iv) liberalizing the framework for issuance of foreign currency-denominated bonds.

E. Regulatory Framework for Islamic Finance

Malaysia is at the forefront of Islamic finance. It is the largest issuer of Islamic financial products in the world. The SC supervises the Islamic capital market (ICM), which operates parallel to conventional capital markets. The ICM plays a complementary role to the Islamic banking system by broadening and deepening instruments and access to Islamic financial markets. Malaysia is also host to the Islamic Financial Services Board (IFSB).

F. Types of Instruments Available, Segments, and Tenure

Conventional government bonds have counterpart Islamic bonds (*Sukuk*). These are:

- (i) Bank Negara Monetary Notes-i (BNMNs-i) are Islamic securities issued by BNM to manage liquidity in the Islamic financial market, which replaced the Bank Negara Negotiable Notes.
- (ii) MITBs are short-term securities based on Islamic principles issued by BNM on behalf of the government. The structure of MITB is based on the *bai'al-inah* (sell-and-buy-back agreement) principle and are actively traded based on the *bai' ad-dayn* (debt trading) principle in the secondary market.
- (iii) GIIs are non-interest-bearing government securities based on Islamic principles issued by the government and placed on a competitive tender with 3- to 10-year maturities. Like Malaysian government securities (MGSs), GIIs are issued by BNM on behalf of the government, and the funds are used for development expenditures.
- (iv) *Sukuk* Bank Negara Malaysia issues (SBNMIs) are zero-coupon bonds with maturities of 1 to 2 years. SBNMIs are based on *al-ijarah* (sale and lease back) principle.
- (v) Merdeka savings bond is a bond structure based on Shariah principles with the purpose of assisting retirees who depend primarily on interest income from deposits placed with banking institutions.
- (vi) *Sukuk* 1Malaysia 2010, which is based on Shariah principles, is an additional investment instrument for Malaysian citizens who are 21 years and above. *Sukuk* 1Malaysia 2010 has a re-saleable feature that provides flexibility for investors to sell and purchase the *Sukuk* before maturity date.

Corporates also issue *Sukuk*. In fact, the corporate *Sukuk* market has grown exponentially in recent years, with an annual average growth of 21% between 2001 and 2008. Corporate *Sukuk* currently accounts for 55.9% of the outstanding corporate debt securities and *Sukuk* issued in Malaysia.

G. Basic Market Infrastructure Required to Facilitate Islamic Finance

The market infrastructure is the same for both conventional and Islamic securities.

H. Tax-Related Issues

Profits and dividends received by non-resident investors from holding of ringgit and non-ringgit Islamic instruments issued in Malaysia are exempted from withholding tax. Special purpose vehicles (SPVs) for Islamic financing purposes via the Islamic capital market are not subject to administrative procedures under the *Income Tax Act 1967*. In addition, companies that establish these SPVs are given tax deduction on the issuance cost of Islamic securities incurred by the SPV. The issuance costs for all Islamic securities approved by the SC are also eligible for tax deduction. Finally, there is a stamp duty exemption on instruments relating to Islamic securities under the Malaysia International Financial Centre (MIFC) until 2015.

VII. History of Debt Market Development

A. Market Development History

Table 7.1 Strategic Development Initiatives for the Malaysian Bond Market

Strategy	Initiatives
Introducing an efficient and facilitative issuance process	<ul style="list-style-type: none"> - Release of Guidelines on the Offering of PDSs - 2000 - Introduction of a shelf-registration scheme - 2000 - Release of Guidelines on the Offering of Asset-backed Securities (ABSs) - 2001 - Release of Asset Securitisation Report - 2002 - Introduction of Guidelines on the Offering of Islamic Securities - 2004
Establishing a reliable and efficient benchmark yield	<ul style="list-style-type: none"> - Introduction of an auction calendar for Malaysian Government Securities (MGS) - 2000 - Review of the principal dealers system
Widening the issuer and investor base	<ul style="list-style-type: none"> - Broadening of the investor base under the Securities Commission Act for the OTC market - Universal Brokers are allowed to trade in the OTC market - 2002 - ABSs are introduced together with tax-neutral framework and tax deductions on issuance expenses - 2003 - Islamic PDSs are accorded various tax incentives (eg., stamp duty waiver, tax deductions on issuance expenses) and a tax-neutral framework - 2003, 2005 - Multilateral development banks, multilateral financial institutions and multinational corporations are allowed to raise ringgit-denominated bonds - 2004 - Removal of withholding taxes on interest income earned on investments by nonresident companies in ringgit-denominated Islamic securities and securities issued by the Malaysian Government - 2004
Improving liquidity in the secondary market	<ul style="list-style-type: none"> - Non-financial institutions are allowed to enter into repurchase transactions - 2000 - The Securities Borrowing and Lending Programme is introduced via the RENTAS system - 2001 - Institutional Securities Custodian Programme (ISCAP) is put in place to encourage institutional investors to lend securities to BNM - 2004
Facilitating the introduction of risk management instruments	<ul style="list-style-type: none"> - Introduction of 3-, 5-, and 10-year MGS futures - 2002, 2003 - Introduction of Guidelines on Regulated Short-selling of Securities - 2005

Sources: Bank Negara Malaysia; Securities Commission.

During the 1970s and 1980s, the government issued Malaysian government securities (MGSs) to finance the public sector's development. Later, MGSs were issued to fund the fiscal deficit and refinance a portion of the government's external debt. Even in periods when fiscal surpluses were posted, the government continued to issue MGSs

to meet market demand. On the other hand, Shariah-based government investment issues (GIIs) and Malaysian Islamic Treasury bills (MITBs) were issued to provide liquid instruments that satisfy Islamic banks' statutory liquidity requirements.

Securitization in Malaysia began in 1986 when the government established the National Mortgage Corporation (Cagamas), the largest issuer of securitized instruments in Malaysia. Khazanah and Cagamas soon became major issuers of quasi-government bonds. Khazanah bonds were originally issued not to raise funds for capital or to finance projects, but for the specific purpose of serving as a benchmark for Islamic corporate bonds. Issuance of this original type of Khazanah bonds, however, has not occurred since 2006, and the outstanding amount of these bonds has fallen precipitously. More recently, Khazanah and Cagamas have been issuing corporate bonds and medium-term notes, both of which are classified as corporate instead of quasi-government bonds.

The growth of the debt securities and *Sukuk* market is also spurred further through the large issuance and growing interest in *Sukuk* which now forms an integral part of the Malaysian financial market. As a pioneer in the global *Sukuk* market, Malaysia has remained the largest issuer of *Sukuk*, with 62% of the world's outstanding *Sukuk* originating from Malaysia. Malaysia's lead is also reflected in the innovative and competitive structures that have been pioneered such as the exchangeable *Sukuk musharakah* and *Sukuk* based on *istisna'* and *ijarah*. The recent *Emas Sukuk* issuance by Petronas further reinforces Malaysia's position as the centre for *Sukuk* origination.

To ensure that access to financing through the financial market remains unhindered during the recent global financial turmoil, Bank Negara Malaysia (BNM) recently established Danajamin Nasional, a national financial guarantee insurer to provide credit enhancement for viable corporations to raise financing from the debt securities and *Sukuk* market. In addition, collaboration and coordination between the regulatory agencies are aimed at ensuring that the market remains resilient and robust against any shocks, and that stability is preserved.

Malaysia's bond market grew annually by 10.8% with outstanding debt securities tripling from MYR273.1 billion in 2000 to MYR758.6 billion in 2010. During this period, Malaysia emerged as a leading regional bond market with an average issue size of MYR670 million and an average weighted tenure of 16 years during 2000-2010. The development of a vibrant bond market was supported by a facilitative regulatory framework that streamlined the issuance process with the introduction of disclosure-based guidelines for private debt securities (PDS), asset-backed securities, structured products, and Islamic securities. Enhancements to the rating process, improved price transparency and a tax environment that attracted a wide range of issuers, including multilateral development banks, foreign multinational corporations, and foreign governments and agencies.

N. Regulatory Framework and Market Infrastructure Building

During the early years, BNM, the government agency responsible for corporate bond issuance, took several initiatives to strengthen the legal and regulatory framework

and market infrastructure of the underdeveloped primary and secondary markets. In March 1993, the Securities Commission (SC) was established to act as the single regulatory body to promote the development of the capital market, particularly to rationalize securities market regulations.

Prior to the establishment of the SC, a set of guidelines for PDS issuance was introduced in 1988. In addition, the Rating Agency Malaysia (RAM) and Malaysian Rating Corporation (MARC) were established in 1990 and 1995, respectively, to provide independent opinions on the potential default risk of debt issuers and disseminate all appropriate information to existing and potential investors in a timely fashion. The Bond Dealers Association was established in June 1996 to represent the industry's views and work with regulatory authorities to promote the bond market. The Financial Markets Association of Malaysia (ACI Malaysia) was established in 1974 to monitor, develop and improve industry standards, and to bring them in line with international best practice. ACI Malaysia, whose membership comprised staff from treasury operations of Malaysia's financial institutions, including insurance companies, had adopted a Code of Conduct for the industry. To qualify as a member of ACI Malaysia, a rigorous qualifying examination must be passed.

On the operational front, various processes were computerised and put online by BNM to enhance cost-effectiveness and efficiency. These included the introduction of the Fully Automated System for Tendering (FAST) in September 1996 to speed up securities tendering, and the Real-Time Gross Settlement System, Real-time Electronic Transfer of Funds and Securities (RENTAS), in July 1999 to reduce settlement risk. RENTAS was developed as a computerized scripless trading system to facilitate faster and more efficient trading, registration and settlement of securities.

The Bond Information and Dissemination System was introduced in October 1997 to facilitate efficient trading and promote transparency of information related to domestic debt securities. To further improve liquidity in the market, the Securities Borrowing and Lending Programme was introduced in December 2001 via the RENTAS system, and the Institutional Securities Custodian Programme was implemented in October 2004 to promote lending of securities to the central bank. For the Islamic bond market, an Internet-based platform system—the Islamic Interbank Money Market—was launched in September 2004 to provide transparency of information on Islamic financial products.

An important milestone in the broader bond market development agenda was the creation of the National Bond Market Committee (NBMC) in 1999. Its members comprised senior representatives from the Ministry of Finance, the Economic Planning Unit, BNM, SC, Bursa Malaysia, and the Registrar of Companies. Its purpose is to oversee the policy direction for the development of the bond market, and to identify and recommend appropriate implementation strategies. As a first step, the NBMC has authorized the SC to be the single regulatory body to regulate and promote the development of the corporate bond market.

To chart future growth, the Capital Market Masterplan (CMP1) was unveiled in 2001. A Capital Market Strategic Committee, consisting of high-level representatives from the SC and the private sector, was established in September 1999 to facilitate the

development of the capital market masterplan. CMP1 was the strategic blueprint for the Malaysian capital market over the next decade starting 2001, within which six broad objectives were spelled out:

- (i) to be the preferred fund-raising center for Malaysian companies;
- (ii) to promote an effective investment management industry and a more conducive environment for investors;
- (iii) to enhance the competitive position and efficiency of market institutions;
- (iv) to develop a strong and competitive environment for intermediation services;
- (v) to ensure a stronger and more facilitative regulatory regime; and
- (vi) to establish Malaysia as an international Islamic capital market center.

The CMP1 had been divided into three stages, spanning a period of 10 years and involving 152 detailed recommendations that seek to fulfil the realization of a robust and dynamic Malaysian capital market.

Table 7.2 Implementation Plan for the Capital Market Masterplan

Phase 1 (2001–2003)	Phase 2 (2004–2005)	Phase 3 (2006–2010)
Strengthen domestic capacity, and develop strategic and nascent sectors	Further strengthen key sectors and gradually liberalise market access	Further expansion and strengthening of market processes and infrastructure towards becoming a fully developed capital market, and enhancing international positioning in areas of comparative and competitive advantage
Source: The Securities Commission.		

Out of the 152 recommendations in the CMP1, by the end of June 2005, 96 recommendations (63%) had been put in place; 17 recommendations were made to enhance the Malaysian domestic bond market, particularly to establish a deeper, broader and more efficient corporate bond market. CMP1 initiatives were directed at key specific areas, and have included the enhancement of the fundraising process, ensuring the robustness and efficiency of the bond market microstructure and expanding both the issuer and investor base. With the essential building blocks in place, the development of the bond market proceeded at a steady pace towards the accomplishment of key goals, such as the establishment of a benchmark yield curve, improvement in secondary market liquidity, and the introduction of new asset classes to the market. Launched 10 years ago, CMP1 guided the development of the Malaysian capital market for the period of 2001 to 2010. It aimed to build a capital market that would be competitive in meeting the country's capital and investment needs and support long-term nation-building efforts.

Since 2000, the growth of the Malaysian capital market had outpaced the economy, with the size of the capital market expanding from MYR718 billion to MYR2 trillion, or at an annual compounded growth rate of 11%. This strong growth was achieved through rapid industry expansion and strong regulatory oversight that underpinned investor confidence in the capital market.

O. Regional Cooperation

The Malaysian domestic bond market has also benefited from regional cooperation in East Asia. Local and cross-border impediments have been addressed through the sharing of experiences and technical expertise, as each country has strived to add depth and breadth to its own domestic market. Three regional forums have been at the forefront of financial development in the region, namely the Asia-Pacific Economic Cooperation, the Association of Southeast Asian Nations Plus 3 (ASEAN+3) and the Executives' Meeting of East Asia and Pacific (EMEAP) Central Banks. These three forums focus on different aspects of local bond market development.

EMEAP's successful launch of the Asian Bond Fund I (ABF1), which pooled USD1 billion in reserves from 11 central banks and invested in US dollar-denominated bonds of sovereigns and quasi-sovereigns, led to the recent launch of the second fund, the Asian Bond Fund II (ABF2). The second fund involves the creation of local-currency bond funds in each EMEAP market, and consists of the Pan-Asian Bond Index Fund and eight single market funds. Launching these funds forced participating central banks to face market impediments head on, and address them as a group.

The listing of Malaysia's first exchange-traded fund (ETF), the ABF Malaysian Bond Index Fund, in July 2005 marked another important milestone in bond market development. The ETF was the second country sub-fund to be launched, following the successful listing of the ABF Hong Kong Bond Index Fund in June 2005. The fund consists of investments in government and quasi-government securities and tracks an index, which by design is replicable and transparent, paving the way for the introduction of other innovative products by the corporate sector in the future.

The listing of the ETF on Bursa Malaysia (the Malaysian Stock Exchange) should also generate interest on the part of domestic and international investors in the local bond market. Detailed information on the bond market development in Malaysia can be found at BNM's Bond Information Hub for Malaysian government securities and Securities Commission for corporate bonds.³⁹

³⁹ Footnote 33. <http://www.bondinfo.bnm.gov.my/portal/server.pt>; Footnote 18. <http://www.sc.com.my/main.asp?pageid=261&menuid=350&newsid=&linkid=&type=>

VIII. Market Size and Statistics

A. Market Size

Total outstanding local currency (LCY) bonds in Malaysia increased 16.5% year-on-year to MYR840 billion as of end of September 2011. Outstanding LCY government bonds jumped 19.8% year-on-year to MYR505 billion, mainly due to the increase in outstanding central bank bills. Excluding central bank bills, outstanding government LCY bonds rose by 10.9% year-on-year. LCY corporate bonds outstanding, on the other hand, posted 11.8% year-on-year growth to MYR335 billion. More information can be found at the AsianBondsOnline website.⁴⁰

B. Sukuk Market

Reflecting the government's effort to boost Malaysia's Islamic capital market, Islamic-based LCY government and corporate bonds outstanding have been steadily increasing for the past decade, amounting to MYR113.5 billion and MYR180.6 billion, respectively, at the end of 2010. Moreover, Islamic medium-term notes rose by 14.8% to reach MYR101.5 billion while the stock of more traditional Islamic bonds issued by corporations (IBONDS) declined to MYR68.8 billion. Islamic commercial paper rose to MYR5.3 billion in 2010 while Islamic asset-backed securities dropped to MYR5.1 billion. More information can be found at the AsianBondsOnline website.⁴¹

C. Equity Market

Market capitalization advanced strongly, crossing the MYR1-trillion threshold on the first trading day of 2010, and rounded off the year by growing by some 28% over the year. Initial public offering (IPO) activity contributed to a strong year-end boost in overall market values.

⁴⁰ Footnote 2.

⁴¹ Footnote 2.

D. Size of Local Currency Bond Market

Table 8.1 Size of Local Currency Bond Market in USD (Local Sources) (% GDP)

Date	Govt (in % GDP)	Corp (in % GDP)	Total (in % GDP)	Govt (\$ billions)	Corp (\$ billions)	Total (\$ billions)
Dec-00	38.0	35.2	73.3	35.68	33.02	68.71
Dec-01	43.1	41.1	84.2	39.94	38.16	78.10
Dec-02	44.0	34.2	78.2	44.36	34.47	78.82
Dec-03	48.4	36.6	85.0	53.33	40.38	93.71
Mar-04	46.1	33.8	79.9	52.19	38.18	90.37
Jun-04	45.0	32.1	77.1	52.66	37.47	90.13
Sep-04	46.1	31.5	77.6	55.89	38.11	94.01
Dec-04	46.1	31.5	77.6	57.51	39.27	96.78
Mar-05	46.2	30.8	77.0	58.99	39.39	98.38
Jun-05	45.8	31.4	77.2	59.74	40.95	100.69
Sep-05	45.2	31.7	76.9	61.11	42.81	103.92
Dec-05	44.4	33.0	77.4	61.34	45.63	106.96
Mar-06	44.1	32.9	77.0	64.24	48.01	112.25
Jun-06	44.5	32.8	77.3	66.76	49.21	115.97
Sep-06	44.1	32.5	76.6	67.55	49.70	117.24
Dec-06	43.6	33.0	76.6	71.02	53.67	124.68
Mar-07	47.1	32.7	79.8	79.47	55.09	134.55
Jun-07	50.9	34.6	85.5	87.91	59.67	147.58
Sep-07	52.6	34.3	86.9	94.62	61.66	156.28
Dec-07	48.9	35.9	84.8	94.90	69.61	164.51
Mar-08	51.0	35.0	86.0	107.50	73.80	181.30
Jun-08	50.0	35.9	85.9	108.41	77.79	186.20
Sep-08	44.9	35.2	80.2	96.89	75.92	172.82
Dec-08	42.1	35.5	77.6	90.19	75.92	166.11
Mar-09	44.5	36.3	80.7	88.12	71.87	160.00
Jun-09	48.7	39.0	87.7	96.36	77.08	173.44
Sep-09	51.9	41.4	93.2	100.72	80.32	181.03
Dec-09	51.0	42.4	93.4	101.23	84.17	185.40
Mar-10	51.3	40.5	91.8	110.99	87.54	198.53
Jun-10	55.0	40.4	95.3	123.97	91.04	215.00
Sep-10	56.3	40.0	96.4	136.55	97.08	233.63
Dec-10	58.2	40.4	98.6	145.44	101.11	246.55
Mar-11	60.0	39.7	99.6	155.81	103.14	258.95
Jun-11				160.58	108.38	268.96
Sep-11				158.35	105.04	263.39

Source: AsianBondsOnline. Footnote 2. http://asianbondsonline.adb.org/malaysia/data/bondmarket.php?code=LCY_in_GDP_Local

E. Size of Foreign Currency Bond Market in Percentage of Gross Domestic Product (Bank for International Settlement)

Table 8.2 Foreign Currency Bonds to Gross Domestic Product Ratio

Date	as % of GDP	FCY Denominated Bonds (\$ billions)	GDP (\$ billions)
Dec-95	7.8	6.8	87.6
Dec-96	9.3	9.4	100.5
Dec-97	16.4	11.9	72.7
Dec-98	15.4	11.5	74.5
Dec-99	17.2	13.6	79.2
Dec-00	15.9	14.9	93.8
Dec-01	17.3	16.1	92.8
Dec-02	21.7	21.9	100.9
Dec-03	19.1	21	110.2
Mar-04	18.6	21	113.1
Jun-04	17.9	20.9	116.9
Sep-04	18.5	22.4	121.1
Dec-04	18.5	23.1	124.7
Mar-05	18.1	23.2	127.7
Jun-05	18.3	23.8	130.4
Sep-05	18	24.3	135.1
Dec-05	17.1	23.6	138.2
Mar-06	17	24.8	145.7
Jun-06	16.4	24.6	150.1
Sep-06	16.6	25.4	153
Dec-06	15.7	25.6	162.9
Mar-07	15.1	25.5	168.7
Jun-07	14.1	24.4	172.7
Sep-07	13.5	24.4	179.8
Dec-07	12.7	24.6	193.9
Mar-08	12.2	25.7	210.9
Jun-08	11.9	25.7	216.8
Sep-08	11.9	25.6	215.6
Dec-08	11.6	24.9	214.1
Mar-09	12.2	24.3	198.2
Jun-09	10.9	21.5	197.8
Sep-09	13	25.3	194.2
Dec-09	12.3	24.5	198.4
Mar-10	11.5	24.9	216.3
Jun-10	11.7	26.3	225.5
Sep-10	11.4	27.7	242.5
Dec-10	11	27.5	250
Mar-11	10.7	27.7	259.9
Jun-11	10.4	27.9	268.1

Source: AsianBondsOnline. Footnote 2. http://asianbondsonline.adb.org/malaysia/data/bondmarket.php?code=FCY_in_GDP

F. Size of Foreign Currency Bond Market in US Dollars (Local Sources)

Table 8.3 Foreign Currency Bonds Outstanding (Local Sources)

Date	Government (\$ billions)	Banks and Financial Institutions (\$ billions)	Other Corporates (\$ billions)	Total FCY (\$ billions)
Mar-01	4.11	2.32	9.95	16.38
Jun-01	5.86	2.27	10.91	19.04
Sep-01	5.87	2.29	10.27	18.43
Dec-01	5.87	2.25	10.27	18.39
Mar-02	5.86	1.99	10.26	18.11
Jun-02	6.48	1.63	13.39	21.50
Sep-02	6.48	1.51	14.49	22.49
Dec-02	6.49	1.51	14.58	22.58
Mar-03	6.49	1.78	14.52	22.79
Jun-03	6.50	1.72	14.05	22.27
Sep-03	6.50	2.02	14.16	22.68
Dec-03	6.52	2.02	14.12	22.66
Mar-04	6.48	2.15	13.91	22.53
Jun-04	6.52	2.81	14.23	23.56
Sep-04	6.52	2.84	14.25	23.61
Dec-04	6.95	3.19	14.29	24.44
Mar-05	6.95	3.42	14.37	24.74
Jun-05	6.93	3.82	14.98	25.74
Sep-05	6.19	4.77	14.39	25.35
Dec-05	6.19	4.77	14.24	25.20
Mar-06	6.19	4.86	15.26	26.31
Jun-06	6.21	4.76	15.21	26.18
Sep-06	6.21	5.71	14.60	26.53
Dec-06	6.22	6.06	14.33	26.61
Mar-07	6.22	6.06	14.43	26.72
Jun-07	5.63	6.72	13.67	26.02
Sep-07	5.64	6.34	13.68	25.66
Dec-07	5.63	6.34	13.73	25.70
Mar-08	5.63	6.74	14.33	26.70
Jun-08	5.63	6.74	14.32	26.68
Sep-08	5.60	6.83	14.16	26.58
Dec-08	5.55	6.85	13.91	26.30
Mar-09	5.54	6.48	13.56	25.58
Jun-09	3.83	6.20	12.20	22.23
Sep-09	3.83	5.78	16.43	26.04
Dec-09	3.41	5.43	16.12	24.97
Mar-10	3.41	5.49	16.20	25.10
Jun-10	3.41	5.49	16.17	25.07
Sep-10	3.41	6.33	16.17	25.91
Dec-10	3.00	6.35	15.87	25.21
Mar-11	3.00	6.00	16.12	25.12

Source: AsianBondsOnline. Footnote 2. http://asianbondsonline.adb.org/malaysia/data/bondmarket.php?code=FCY_Bonds_Outstanding

G. Foreign Holdings in Local Currency Government Bonds

Table 8.4 Foreign Holdings in Local Currency Government Bonds (MYR billions)

Date	Foreign Holdings (MYR billions)	Total (MYR billions)	% of Total
Mar-96	2.11	69.27	3.05
Jun-96	2.11	70.45	3.00
Sep-96	2.11	70.96	2.97
Dec-96	1.71	71.06	2.41
Mar-97	1.71	69.06	2.47
Jun-97	1.74	67.34	2.59
Sep-97	1.80	67.34	2.67
Dec-97	1.74	69.01	2.52
Mar-98	1.67	68.56	2.44
Jun-98	1.67	69.16	2.41
Sep-98	0.62	69.01	0.89
Dec-98	0.60	77.01	0.77
Mar-99	0.67	76.86	0.87
Jun-99	0.70	78.86	0.88
Sep-99	0.39	78.34	0.49
Dec-99	0.39	80.34	0.48
Mar-00	0.20	83.24	0.24
Jun-00	0.22	89.24	0.24
Sep-00	0.23	91.29	0.25
Dec-00	0.23	93.05	0.25
Mar-01	0.23	96.75	0.24
Jun-01	0.15	96.45	0.16
Sep-01	0.18	101.45	0.18
Dec-01	0.23	107.45	0.21
Mar-02	0.22	105.05	0.21
Jun-02	0.13	107.55	0.12
Sep-02	0.15	109.55	0.13
Dec-02	0.19	114.55	0.16
Mar-03	0.11	123.35	0.09
Jun-03	0.15	129.85	0.12
Sep-03	0.12	135.30	0.09
Dec-03	0.12	137.80	0.09
Mar-04	1.22	143.30	0.85
Jun-04	1.14	147.20	0.78
Sep-04	1.51	155.95	0.97
Dec-04	7.58	163.45	4.63
Mar-05	10.31	169.45	6.08
Jun-05	13.04	169.95	7.67
Sep-05	10.49	175.50	5.98
Dec-05	7.95	176.15	4.51
Mar-06	9.09	180.75	5.03
Jun-06	11.34	188.95	6.00
Sep-06	14.34	192.75	7.44
Dec-06	14.63	193.90	7.54
Mar-07	17.56	202.60	8.67
Jun-07	22.96	213.00	10.78

continued on next page

Table 8.4 continuation

Date	Foreign Holdings (MYR billions)	Total (MYR billions)	% of Total
Sep-07	24.47	225.30	10.86
Dec-07	29.09	219.70	13.24
Mar-08	42.49	230.05	18.47
Jun-08	44.00	240.55	18.29
Sep-08	38.32	242.4	15.81
Dec-08	28.95	256.30	11.30
Mar-09	26.72	264.14	10.12
Jun-09	28.29	283.64	9.98
Sep-09	35.24	302.64	11.64
Dec-09	40.99	308.27	13.30
Mar-10	55.42	323.77	17.12
Jun-10	59.04	326.88	18.06
Sep-10	67.98	335.49	20.26
Dec-10	73.76	342.49	21.54
Mar-11	80.84	366.99	22.03
Jun-11	91.61	371.73	24.64

Source: AsianBondsOnline. Footnote 2. http://asianbondsonline.adb.org/malaysia/data/bondmarket.php?code=Foreign_Holdings

H. Domestic Financing Profile

Table 8.5 Domestic Financing Profile

Date	Domestic Credit (% of Total)	Bonds (% of Total)	Equity (% of Total)	Domestic Credit (\$ billions)	Bonds (\$ billions)	Equity (\$ billions)	Total (\$ billions)
Dec-00	0	37.78	62.22	0	68.70	113.16	181.86
Dec-01	40.82	23.45	35.73	135.94	78.10	118.98	333.02
Dec-02	41.80	22.74	35.46	144.87	78.83	122.89	346.60
Dec-03	37.70	22.92	39.38	154.12	93.71	160.97	408.80
Dec-04	36.36	22.12	41.52	159.04	96.78	181.62	437.44
Dec-05	37.05	23.42	39.53	169.22	106.97	180.52	456.70
Dec-06	34.99	22.50	42.51	193.87	124.69	235.58	554.14
Mar-07	32.72	21.94	45.34	200.70	134.56	278.04	613.31
Jun-07	30.48	22.57	46.95	199.24	147.58	306.96	653.78
Sep-07	32.11	23.55	44.34	213.03	156.28	294.21	663.52
Dec-07	30.98	23.18	45.84	219.86	164.51	325.29	709.66
Mar-08	33.31	25.66	41.02	235.33	181.30	289.81	706.44
Jun-08	33.96	26.97	39.06	234.47	186.20	269.67	690.34
Sep-08	37.91	27.52	34.57	238.05	172.81	217.04	627.90
Dec-08	40.92	27.62	31.46	246.14	166.11	189.24	601.49
Mar-09	41.01	27.67	31.31	237.11	159.99	181.03	578.13
Jun-09	38.2	26.52	35.28	249.78	173.44	230.71	653.93
Sep-09	37.07	25.80	37.14	260.16	181.03	260.62	701.80
Dec-09	36.49	24.81	38.70	272.65	185.40	289.22	747.27
Mar-10	35.88	24.44	39.68	291.38	198.53	322.27	812.18
Jun-10	35.74	25.84	38.42	297.33	215.00	319.68	832.01

continued on next page

Table 8.5 continuation

Date	Domestic Credit (% of Total)	Bonds (% of Total)	Equity (% of Total)	Domestic Credit (\$ billions)	Bonds (\$ billions)	Equity (\$ billions)	Total (\$ billions)
Sep-10	34.80	25.32	39.89	321.06	233.63	368.02	922.71
Dec-10	33.53	25.01	41.46	330.59	246.55	408.69	985.83
Mar-11	33.35	25.19	41.46	342.75	258.95	426.17	1,027.87
Jun-11	33.44	25.34	41.23	354.90	268.96	437.61	1,061.47

Source: AsianBondsOnline. Footnote 2. http://asianbondsonline.adb.org/malaysia/data/bondmarket.php?code=Domestic_Financing_profile

I. Trading Volume

Table 8.6 Trading Volume (\$ billions)

Year	Govt Bonds (\$ billions)	Corp Bonds (\$ billions)	Total (\$ billions)
Mar-04	12.51	15.04	27.55
Jun-04	13.58	14.93	28.51
Sep-04	23.09	13.18	36.27
Dec-04	18.67	11.39	30.06
Mar-05	21.66	9.57	31.23
Jun-05	24.12	8.26	32.38
Sep-05	26.18	6.59	32.77
Dec-05	19.51	7.42	26.93
Mar-06	22.71	6.51	29.22
Jun-06	25.51	5.11	30.62
Sep-06	34.63	7.72	42.35
Dec-06	33.68	10.76	44.44
Mar-07	47.34	8.99	56.33
Jun-07	52.81	9.70	62.51
Sep-07	50.80	6.33	57.13
Dec-07	43.90	7.75	51.65
Mar-08	66.43	6.95	73.38
Jun-08	73.91	7.23	81.14
Sep-08	69.45	3.54	72.99
Dec-08	51.99	3.87	55.86
Mar-09	50.45	3.26	53.71
Jun-09	55.25	4.56	59.81
Sep-09	59.21	5.40	64.61
Dec-09	56.55	4.74	61.29
Mar-10	66.11	5.88	71.99
Jun-10	79.22	8.75	87.97
Sep-10	86.10	6.97	93.07
Dec-10	85.87	6.89	92.76
Mar-11	113.55	6.80	120.35
Jun-11	137.77	8.63	146.40
Sep-11	167.48	9.07	176.55

Source: AsianBondsOnline. Footnote 2. http://asianbondsonline.adb.org/malaysia/data/bondmarket.php?code=Trading_Volume

IX. Next Step ⇒ Future Direction: Extract from the Capital Market Masterplan II⁴²

A. Growth Prospects to 2020

The Malaysian capital market has significant growth prospects. The Securities Commission (SC) estimates the size of Malaysia's capital market (comprising stock-market capitalization and debt securities) to more than double from MYR2.0 trillion in 2010 to MYR4.5 trillion by 2020.

The baseline forecast is predicated on annual real gross domestic product (GDP) growth of 6.5% and historical market benchmarks, and is subject to prevailing economic and market conditions. Overall, the long-range forecasts provide a reasonable reflection of baseline growth prospects based on extrapolation of historical trends. Further analysis indicates there are strong upside prospects for the Malaysian capital market. The structural reforms and high impact investment projects under the new economic model and economic transformation program (ETP) can accelerate economic growth momentum with a significant impact on the upside for the long-term growth of the capital market. Based on benchmarks for regional financial centers, it is estimated that internationalization of the stock market can increase the potential size of the Malaysian capital market by another 30% to MYR5.8 trillion in 2020. Higher levels of internationalization will also have positive growth effects on the bond market and the Islamic capital market (ICM). In addition, several segments are expected to achieve critical mass, such as ICM, which is projected to increase from MYR1.1 trillion in 2010 to MYR2.9 trillion in 2020, and the investment management industry where asset under management is projected to rise from MYR377.4 billion in 2010 to MYR1.6 trillion in 2020. The most important effect of achieving critical mass is the facilitation of volume strategies and higher efficiency from increased economies of scale.

Based on historical trends, the growth of the investment management industry is likely to outpace the growth of equity assets over this decade. This is a feature typical of an economy in transition from middle income to developed status. Projections indicate that the penetration rate for unit trusts is likely to almost double from 18% in 2010 to 34% in 2020, which is closer to levels usually seen in developed markets. The annual notional value of derivatives trading of MYR512.1 billion in 2010 is

⁴² Securities Commission. 2011. Capital Market Masterplan 2. <http://www.sc.com.my/main.asp?pageid=1044&menuid=10038&newsid=&linkid=&type=S>

currently largely based on crude palm oil futures contracts. There is substantial upside from further expansion of derivative products and this will deepen liquidity across market segments through positive spill-over effects from higher levels of inter-market trading, hedging and arbitrage.

With the core intermediation industries reasonably developed, the developmental focus will shift towards nurturing future growth segments, particularly in ancillary layers supporting intermediation activities. The development of more competitive niches will foster higher productivity and value-added activities with the supporting clusters providing positive growth feedback effects. Overall, the Capital Market Masterplan II (CMP2) offers a broad set of strategies that are aimed at addressing key structural challenges and critical linkages to create an environment conducive to private sector intermediation and expanding the growth boundaries of the capital market. These will be complemented with strategies to ensure effective governance arrangements to sustain confidence in the integrity of Malaysia's capital market and to maintain strong regulatory oversight to safeguard the interests of investors.

B. Widen Access to the Bond Market

The development of a significant bond market provided critical long-term financing to many large-sized and catalytic economic projects. This resulted in Malaysia having one of the best infrastructures in the region, ranging from international airports and highways to power plants and telecommunications. The bond market has also been a source of financing support for banks and corporations, and provided liquidity to balance sheets through the securitization of mortgages and other receivables.

In tandem with the economic transformation plans, there is a need to broaden the capability and capacity of the bond market to supply financing to a wider base of industries and projects, particularly in supporting the structural shift towards the services and knowledge-based industries. The ability to widen access to bond financing for more sophisticated ventures is critically dependent on broadening the investor base and appetite for a wider array of debt products and credit risks. Widening the credit spectrum therefore requires strengthening investor confidence, increasing the participation of the public and private investment management industry, expanding product range, and enhancing market infrastructure. Towards this end, market standards and practices will be enhanced through improving documentation and disclosure standards, as well as clarifying post-issuance disclosure obligations and requirements.

The credit rating agency (CRA) framework will be further enhanced to converge with new international standards and best practices covering key areas such as the transparency of rating criteria and policies, rating reviews and the governance structure of CRAs. The default process for bonds will also be reviewed to provide greater clarity and certainty to investors. In tandem with this, efforts will be made to promote a more active market for the pricing of distressed issues.

The participation of the public and private sector investment management industry in fixed-income investments needs to be further strengthened. This will require building their fixed-income investment capabilities to enable their participation

in a broader spectrum of structures and credits. There is also a need to increase transparency and liquidity in the secondary market to match the growth in primary issuance. This will be achieved through strengthening the environment for electronic trading and infrastructure in the areas of bond lending, market-making, trading, clearing, settlement and custodian services. Efforts will also be made to promote greater retail participation in the bond market through developing a framework to facilitate the offering of corporate bonds to retail investors that covers the eligible issuer base, mode of offering, format of offering documents, price transparency, investor protection and education activities. In addition, distribution channels will also be widened to enable greater retail investment.

The availability of a broad range of interest rate-sensitive products is required for the application of sophisticated fixed-income investment strategies and to promote active trading and arbitrage in the bond market. In conjunction with increasing institutional investment in fixed income, the product range will be broadened to include fixed-income indices and inflation-linked products.

Further additional mechanisms will be considered to widen participation and deepen liquidity in the bond market. The establishment of Danajamin Nasional provides a means for less-established companies to gain access to the bond market and to establish their track record for credit-worthiness while a review will be undertaken to assess the viability of establishing facilities to mitigate illiquidity risks of bond funds.

C. Growth Prospects for Bond Market to 2020

Malaysia's bond market is relatively well-developed with outstanding bond issuances approximating 97% of GDP. It is ranked the third largest bond market in Asia by GDP. Market depth is reflected by an average weighted bond tenure of 16 years and an average issuance size of MYR670 million, while market width is reflected by the diversified range of conventional and Islamic instruments.

The bond market is expected to sustain reasonable growth over this decade. The ETP has already identified several major infrastructure projects which will underpin strong domestic issuance. Demand growth will be driven by the increasing participation of the investment management industry in fixed-income investments and through growing international participation in Malaysia's bond and *Sukuk* market. Further improvements in the legal, regulatory and institutional framework will support the continued deepening and broadening of the bond market. The growing pool of fixed-income professionals will provide the necessary expertise to originate debt and *Sukuk* structures to match the financing requirements for infrastructure projects and the investment needs of both the private and public sectors.

D. Expand International Intermediation Capabilities

Malaysia has also strengthened the positioning of its bond market with the removal of withholding tax coupled with a facilitative approval framework. These developments have resulted in Malaysia being recognized as an important hub for cross-border investments and issuances in the region. Since 2004, foreign issuers have issued

MYR18.6 billion worth of bonds and *Sukuk*. Foreign investments in local currency bonds amounted to MYR121 billion in 2010. Overall, further improvements will be made to enhance the connectivity of the clearing and settlement infrastructure while friction costs will be reduced to attract more active international investor trading in the secondary equity, bond, and derivative markets.

The changing pattern of global savings intermediation augurs strong growth prospects for domestic intermediaries based in Asia. Asian intermediaries benefit from home ground advantage in recycling substantial domestic savings surpluses and from their proximity to new growth opportunities. In recognition of the benefits of higher intra-regional participation, the ASEAN Finance Ministers endorsed an Implementation Plan from securities regulators to promote the development of an integrated capital market in ASEAN by 2015. The Implementation Plan offers a comprehensive set of strategic initiatives and specific actions to pursue regional integration. This includes mutual recognition frameworks for cross-border offerings, listings, and professionals, the formation of exchange alliances, and the development of a regulatory framework and infrastructure conducive to facilitating cross-border transactions among capital markets in the region.

Domestic intermediaries have already been preparing to operate in a more open and competitive environment. They have strengthened their presence in the regional market and advised on international transactions. They have also embarked on distribution of international products to domestic clients (Box 9.1).

Box 9.1 Securities Commission Survey on International Expansion Plans of Intermediaries

In 2009, the SC conducted a survey of 89 capital market intermediaries on their international expansion plans over the next 10 years. The survey results are highlighted below:

- Ninety-four percent (94%) of domestic intermediaries anticipate expanding business abroad through establishing strategic alliances, subsidiaries, and through acquisition of foreign entities;
- The share of profits from international operations is expected to grow from less than 10% of total profits to between 30% and 50% over 10 years; and
- Domestic intermediaries expect their sales of foreign products to rise from 10% currently to about 30% of revenues.

Source: Securities Commission Malaysia, Capital Market Masterplan 2, p. 46 (<http://www.sc.com.my/eng/html/cmp2/separated/contents.pdf>)

The SC will continue to pursue cross-border regulatory arrangements to facilitate the expansion of domestic intermediaries and distribution of products in other markets. In addition, intermediary standards and capabilities will be strengthened across a broad range of industry segments to facilitate their participation in international transactions and markets.

Apart from its core industry segments, Malaysia has natural strengths in many parts of the value chain for capital market transactions. Internationalization will be an important catalyst to unlock hub opportunities in a broad range of middle- and back-office functions covering advisory services, research, risk management, compliance,

settlement, custodian, trustee and other services. In this regard, Malaysia is well-positioned to attract international participants as it offers an attractive choice of locations in Kuala Lumpur, Labuan and Iskandar, each with its own advantages. This needs to be complemented with strategies to attract talent with knowledge of international practices related to the capital market, law, accounting, tax and Shariah to build an ecosystem that provides cost-effective support for the structuring and processing of international capital market transactions.

E. Group of 30 Compliance

The so-called Group of 30 (G-30) Recommendations were originally conceived as the G-30's Standards on Securities Settlement Systems in 1989, detailing in a first of its kind report nine recommendations for efficient and effective securities markets covering legal, structural and settlement process areas. The recommendations were subsequently reviewed and updated in 2001, under the leadership of the Bank for International Settlements, and through the efforts of a Joint Task Force of the Committee on Payment and Settlement Systems and the Technical Committee of the International Organisation of Securities Commissions. Compliance with the G-30 Recommendations in individual markets is often an integral part in securities industry participants' and intermediaries' due diligence process.

Table 9.1 Group of Thirty Compliance

Recommendation		Implemented
1	Eliminate paper and automate communication, data capture, and enrichment.	Yes All unlisted debt securities are dematerialized, except for some CP/MTN programs issued before April 2006.
2	Harmonize messaging standards and communication protocols.	No CSD and most local market participants do not use SWIFT message formats.
3	Develop and implement reference data standards.	Yes ISIN codes are available for all local bond issues, and are available at the time of issue.
4	Synchronize timing between different clearing and settlement systems and associated payment and foreign exchange systems.	Yes
5	Automate and standardize institutional trade matching.	Yes
6	Expand the use of central counterparties.	No
7	Permit securities lending and borrowing to expedite settlement.	–
8	Automate and standardize asset servicing processes, including corporate actions, tax relief arrangements, and restrictions on foreign ownership.	–
9	Ensure the financial integrity of providers of clearing and settlement services.	Yes
10	Reinforce the risk management practices of users of clearing and settlement service providers.	Yes
11	Ensure final, simultaneous transfer and availability of assets.	Yes
12	Ensure effective business continuity and disaster recovery planning.	Yes

continued on next page

Table 9.1 continuation

Recommendation		Implemented
13	Address the possibility of failure of a systematically important institution.	Yes
14	Strengthen assessment of the enforceability of contracts.	Yes
15	Advance legal certainty over rights to securities, cash, or collateral.	Yes
16	Recognize and support improved valuation methodologies and closeout netting arrangements.	Yes
17	Ensure appointment of appropriately experienced and senior board members (of the boards of securities clearing and settlement infrastructure providers).	Yes
18	Promote fair access to securities clearing and settlement networks.	Yes
19	Ensure equitable and effective attention to stakeholder interests.	Yes
20	Encourage consistent regulation and oversight of securities clearing and settlement service providers.	Yes

CP = commercial paper; CSD = Central Securities Depository; ISIN = International Securities Identification Number; MTN = medium-term note; SWIFT = Society for Worldwide Interbank Financial Telecommunication
Source: Group of 30 (G30). 2003. *Global Clearing and Settlement – A Plan of Action*. <http://www.partad.ru/wrd/word/g30app1.pdf>

F. Group of Experts Barrier Report Market Assessment – Malaysia (April/2010)

The Group of Experts (GoE) Report refers to the published results in 2010 of the GoE formed under Task Force 4 of the Asian Bond Market Initiative (ABMI). In the report, published under the leadership of the Asian Development Bank (ADB), a group of securities market experts from the private and public sectors in ASEAN+3, as well as International Experts, assessed the ASEAN+3 securities markets on potential market barriers, the costs for cross-border bond transactions, and the feasibility of the establishment of a Regional Settlement Intermediary (RSI). The findings in the GoE Report led to the creation of the ASEAN+3 Bond Market Forum (ABMF).

Table 9.2 Barrier Report Market Assessment for Malaysia

Potential Barrier Area	Current situation	Market Assessment Questionnaire Scores	Overall Barrier Assessment
Quotas	There are no quotas on foreign involvement in the local market.	OK	OK
Investor registration	There is no requirement for foreign investor registration. There were comments from some investors regarding account-opening, identification of beneficial owner and other issues. It is believed these reflect restrictions introduced 10 years ago and which have now largely been repealed. The general feedback was that Malaysia was now an investor-friendly market with few difficulties.	OK	OK
FX controls - conversion	There are no restrictions on the purchase of MYR by non resident investors, provided the FX is executed with a licensed onshore bank. In this case, MYR may be freely bought and sold (or held) without evidence of underlying securities trades. Third-party FX is possible, but not common. Perception gap - there appears to be a perception among many investors that FX controls are more onerous.	LOW	OK
FX controls - repatriation of funds	There are no restrictions on repatriation of capital, profits and income. Foreign investors can freely remit funds from their local cash accounts. MYR can be freely sold for FCY.	OK	OK

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Table 9.2 continuation

Potential Barrier Area	Current situation	Market Assessment Questionnaire Scores	Overall Barrier Assessment
Cash controls - credit balances	Clean cash payments between different beneficial owners are not prohibited. However, they are subject to “Permitted Reasons for Transfers” as prescribed under ECM4, Exchange Control Notices of Malaysia	LOW	OK
Cash controls - overdrafts	Overdrafts for non-resident accounts are limited. Overdraft facilities are only permitted for financing funding gaps due to unforeseen or inadvertent technical or administration errors, and funds must be repaid within 2 business days. Licensed onshore banks may extend any amount of ringgit overdraft facilities to non-resident stock-broking companies and custodian banks for settlement of ringgit securities on Bursa Malaysia and RENTAS due to inadvertent delays on receipt of funds from non-resident investors. This area was the one most often singled out by investors as a problem.	LOW	LOW
Taxes	There is no withholding tax for non-resident investors on interest on government bonds and on approved corporate bonds. However, there is a 15% tax on convertible loan stock interest. There is no capital gains tax in Malaysia.	OK	OK
Omnibus accounts	There are no restrictions on the use of omnibus accounts for non-resident investors.	OK	OK
Settlement cycle	The settlement cycle for listed bonds is T+3 and for unlisted bonds is negotiable (market practice is T+2).	OK	OK
Message formats	The CSD, and most local market participants, do not use SWIFT message formats.	LOW	LOW
Securities numbering	ISIN codes are available for all local bond issues, and are available at the time of issue. Most local market participants use ISIN codes in securities messages, but the CSD does not.	LOW	OK
Matching	There is an electronic platform for trade matching. Settlement pre-matching for bonds is carried out by telephone.	OK	OK
Dematerialisation	All unlisted debt securities are dematerialised, except for some CP / MTN programmes issued before April 2006.	OK	OK
Regulatory framework	Investor comments on the regulatory regime were generally favourable. There are, however, still memories of the controls introduced 10 years ago.	–	OK

CP = commercial paper; CSD = Central Securities Depository; FCY = foreign currency; FX = foreign currency; ISIN = International Securities Identification Number; MTN = medium-term note; MYR = Malaysian ringgit; RENTAS = Real-time Electronic Transfer of Funds and Securities; SWIFT = Society for Worldwide Interbank Financial Telecommunication
Source: ABMI Group of Experts (GoE) Report for Task Force 4, April 2010, Asian Development Bank. [https://wpqr1.adb.org/LotusQuickr/asean3goe/Main.nsf/h_58E34A1388F9070B48257729000C0A4E/90F408746827C16248257729000C1334/\\$file/Part3.pdf](https://wpqr1.adb.org/LotusQuickr/asean3goe/Main.nsf/h_58E34A1388F9070B48257729000C0A4E/90F408746827C16248257729000C1334/$file/Part3.pdf)

Appendixes

Appendix 1.1 Extracts from the Capital Markets and Services Act 2007 (CMSA)⁴³

A. PART VI: ISSUES OF SECURITIES AND TAKE-OVERS AND MERGERS

Box A1.1 DIVISION 1: Proposals in Relation to Securities Proposals to be submitted to Commission Section 212

212. (1) In this Division and Schedule 5, unless the context otherwise requires—

“an applicant” means any person referred to in subsection (2);

“expert” includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him;

“officer”, in relation to a corporation, includes—

- (a) a director, a secretary, an executive officer or an employee of the corporation;
- (b) a receiver and manager, appointed under a power contained in any instrument, of any part of the undertaking or property of the corporation; and
- (c) a liquidator of the corporation appointed in a voluntary winding up of the corporation, but does not include a receiver who is not also a manager, a receiver and manager appointed by a court and a liquidator appointed by a court;

“private company” and “public company” have the meanings assigned to them in subsection 4(1) of the Companies Act 1965;

“proposal” means a proposal referred to in subsection (2).

(2) This section applies to a person who proposes to do any of the following:

- (a) make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase securities in Malaysia;
- (b) make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, outside Malaysia, securities of a public company, or to list such securities on a securities exchange outside Malaysia;
- (c) by way of issue of securities, effect—
 - (i) a compromise or arrangement whether or not for the purposes of or in connection with a scheme, compromise or arrangement for the amalgamation of any two or more corporations or for reconstruction of any corporation; or
 - (ii) an acquisition of securities or assets;
- (d) apply for the listing of a corporation, or for the quotation of securities, on a stock market of a stock exchange;
- (e) distribute the assets of a public company or a listed corporation to its members other than distribution in cash or distribution of assets to members of the public company or listed corporation on its winding up; or
- (f) acquire or dispose assets (whether or not by way of issue of securities) which results in a significant change in the business direction or policy of a listed corporation.

continued on next page

⁴³ Footnote 13. A. Part VI: Issues of Securities and Take-Overs and Mergers. <http://www.sc.com.my/eng/html/cmsa/cmsa2007/cmsa2007.pdf>

Box A1.1 continuation

- (3) An applicant shall submit to the Commission such documents and such other information in relation to the proposal in such form and manner and at such times as the Commission may require.
- (4) Subject to section 213, no person referred to in subsection (2) shall implement or carry out a proposal unless the Commission has approved the proposal under this section.
- (5) The Commission may—
- (a) approve a proposal subject to such terms and conditions as it thinks fit;
 - (b) approve a proposal with such revisions and subject to such terms and conditions as it thinks fit; or
 - (c) reject a proposal.
- (6) A person who contravenes any term or condition in relation to an approval given under paragraph (5)(a) or (b) commits an offence.
- (7) Where the Commission is satisfied that—
- (a) there is a contravention of subsection 214(1);
 - (b) there is a breach of any term or condition imposed under paragraph (5)(a) or (b); or
 - (c) there is any change or development in the circumstances relating to a proposal occurring subsequent to the Commission giving its approval under subsection (5), and if such change or development, if known to the Commission prior to the approval, would have affected its decision as regards the proposal, the Commission may—
- (A) revoke an approval given under subsection (5);
 - (B) revise an approval; or
 - (C) impose such further terms or conditions in relation to a proposal approved by it under subsection (5):
Provided that the Commission may only revoke or revise such approval or impose such further terms and conditions where such revocation, revision or imposition shall not affect the rights of third parties that may have been created by or arising from the carrying out or implementation of a proposal in accordance with an approval given under subsection (5).
- (8) The Commission shall give a written notice to an applicant of its intention to take action under subsection (7) and shall give the applicant an opportunity to be heard prior to it taking any action under subsection (7).
- (9) Where the Commission has granted its approval to a proposal under subsection (5)—
- (a) if registration of a prospectus is required under this Act in connection with the proposal, the prospectus shall include a statement that the Commission has approved the proposal pursuant to this section and that the Commission's approval of the proposal shall not be taken to indicate that the Commission recommends the proposal; or
 - (b) if registration of a prospectus is not required under this Act in connection with the proposal, the applicant shall include in any document issued with respect to the proposal, in such form as the Commission may require, a statement that the Commission has approved the proposal pursuant to this section and that the Commission's approval of the proposal shall not be taken to indicate that the Commission recommends the proposal.
- (10) Where—
- (a) a person enters into an agreement in respect of a proposal; and
 - (b) the terms of the agreement are not binding until the fulfilment of any condition as may be set out in the agreement, including that of the approval to be given under subsection (5), the person shall not be taken, for the purposes of subsection (4), to have taken any step to implement or carry out the proposal.
- (11) In respect of any proposal referred to in subsection (2)—
- (a) the Commission may direct an applicant to make an announcement of a proposal in accordance with the rules of the stock exchange, if applicable; and
 - (b) any person may make an announcement of a proposal before submitting such proposal to the Commission for its approval under this section.
- (12) For the purpose of subsection (11), an "announcement" includes any publication by press notice or in any other form of a firm intention to make an offer for any securities.
- (13) A person who contravenes subsection (3), (4), (9) or (11) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

Box A1.2 Division 3: Prospectus

CAPITAL MARKETS AND SERVICES ACT 2007
(Act 671)
As at 28 September 2007

PART VI

ISSUES OF SECURITIES AND TAKE-OVERS AND MERGERS**DIVISION 3 Prospectus**

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Interpretation

226. In this Division, Divisions 4 and 5, unless the context otherwise requires—

“**approved company auditor**” means a person approved by the Minister under subsection 8(2) of the Companies Act 1965 as a company auditor and whose approval has not been revoked;

“**excluded invitation**” or “**excluded offer**” means an invitation or offer which is specified in **Schedule 6** or which is prescribed by the Minister to be an **excluded invitation or excluded offer under paragraph 229(1)(b)**;

“**excluded issue**” means an issue which is specified in **Schedule 7** or which is prescribed by the Minister to be an **excluded issue under paragraph 230(1)(b)**;

“**preliminary prospectus**” means any document which is designed to assist an issuer in setting a price in respect of a proposed issue of, an offer for subscription or purchase of, or an invitation to subscribe for or purchase, securities or to determine the final contents of a prospectus;

“**promoter**” means—

- (a) in relation to a prospectus issued by or in connection with a corporation, a promoter of the corporation;
- (b) in relation to a prospectus in respect of a unit trust scheme or prescribed investment scheme, a promoter of the scheme; or
- (c) in relation to a prospectus in any other case, a person, who is a party to the preparation of the prospectus or any relevant portion thereof, but does not include any person by reason only of his acting in a professional capacity;

“**prospectus**” means a notice, circular, advertisement or document inviting applications or offers to subscribe for or purchase securities, or offering any securities for subscription or purchase and, unless expressly specified, includes a supplementary prospectus, replacement prospectus, shelf prospectus, short form prospectus, profile statement, supplementary shelf prospectus and abridged prospectus;

“**shelf prospectus**” means a prospectus issued under a shelf registration scheme;

“**shelf registration scheme**” means a scheme applicable for the purpose of any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities by an issuer based on a shelf prospectus and a supplementary shelf prospectus;

“**supplementary shelf prospectus**” means a document which provides material information necessary to update the information in a shelf prospectus subsequent to the registration of such shelf prospectus.

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Invitation

227. In this Part, a reference to an invitation includes a reference to an invitation to make an offer or application.

Offer for subscription or purchase

228. For the purposes of this Division and Division 5, the expression “offer for subscription or purchase” or “making an invitation to subscribe for or purchase”, in relation to units of a unit trust scheme or prescribed investment scheme, as the case may be, shall include the making available of such units.

Excluded offers and invitations

- 229. (1) An offer for subscription or purchase of, or an invitation to subscribe for or purchase, securities is an excluded offer or an excluded invitation if—**
- (a) **the offer or invitation is specified in Schedule 6(*: See below); or**
 - (b) **the offer or invitation is made to a person or a class of persons, or made in respect of securities or a class of securities, as the Minister may, on the recommendation of the Commission, prescribe by order published in the Gazette, to be an excluded offer or an excluded invitation.**
- (2) **Schedule 6** or a prescription made under paragraph (1)(b) may specify the provisions of this Act that shall not apply to an excluded offer or an excluded invitation.
- (3) An information memorandum issued by a person or his agent purporting to describe the business and affairs of the person in respect of—
- (a) any excluded offer or excluded invitation specified in Schedule 6; or
 - (b) any offer or invitation made to a person or a class of persons or any offer or invitation in relation to securities or a class of securities prescribed under paragraph (1)(b),

shall be deemed to be a prospectus insofar as it relates to the liability of the person or his agent for any statement or information that is false or misleading or from which there is a material omission.

- (4) A person issuing the information memorandum referred to in subsection (3) shall deposit a copy of the information memorandum with the Commission within seven days after it is first issued.
- (5) Paragraph 17 of Schedule 6 shall not apply to any securities or class of securities of any private company or class of private companies as the Minister may, on the recommendation of the Commission, prescribe by order published in the Gazette.

(*SCHEDULE 6

[Section 229]

Excluded offers or excluded invitations

A. Excluded offers or excluded invitations

1. An offer or invitation to enter into an underwriting or subunderwriting agreement or an offer or invitation made to an underwriter under such an agreement.
2. With respect to the securities of a corporation which are not listed, an offer or invitation made to existing members or debenture holders of such corporation by means of a rights issue and is not an offer to which section 237 applies.
3. An offer or invitation made to a company that is registered as a trust company under the Trust Companies Act 1949 or a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the Commission to be a trustee for the purposes of this Act.
4. An offer or invitation made to a unit trust scheme or prescribed investment scheme.
5. An offer or invitation made to a holder of a Capital Markets Services Licence who carries on the business of dealing in securities.
6. An offer or invitation made exclusively to persons outside Malaysia.
7. An offer or invitation made to a closed end fund approved by the Commission.
8. An offer or invitation made to a holder of a Capital Markets Services Licence who carries on the business of fund management.
9. An offer or invitation made to a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise.
10. An offer or invitation made to an individual whose total net personal assets exceed three million ringgit or its equivalent in foreign currencies.
11. An offer or invitation made to a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts.
12. An offer or invitation made to a licensed offshore bank as defined under the Offshore Banking Act 1990.
13. An offer or invitation made to an offshore insurer as defined under the Offshore Insurance Act 1990 [Act 444].

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Box A1.2 continuation

14. An offer or invitation made with respect to any sale of a unit in a unit trust scheme or a prescribed investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realisation of assets.
15. All trades in securities effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2) or such other exchange outside Malaysia which is recognised under the rules of the stock exchange.
16. An offer or invitation of securities made or guaranteed by the Federal Government or any State Government or Bank Negara.
17. An offer or invitation in respect of securities of a private company.
18. An offer or invitation pursuant to a take-over offer which complies with the relevant law applicable to such offers.
19. All trades in securities effected in the money market.
20. An offer or invitation made to employees or directors of a corporation or its related corporation pursuant to an employee share or employee share option scheme.
21. An offer or invitation made to any creditor or holder of securities of a company undergoing a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998 which may not be renounced to any person other than a creditor or holder of securities of the company.
22. An offer or invitation made to a licensed institution as defined in the Banking and Financial Institutions Act 1989 or an Islamic bank as defined in the Islamic Banking Act 1983.
23. An offer or invitation made to an insurance company registered under the Insurance Act 1996.
24. An offer or invitation made to a statutory body established by an Act of Parliament or an enactment of any State.
25. An offer or invitation made to a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967 [Act 53].
26. An offer or invitation made by or to Danamodal Nasional Bhd.
27. An offer or invitation in respect of securities of a corporation made to existing members of a company within the meaning of section 270 of the Companies Act 1965.
28. An offer or invitation in respect of securities of a foreign corporation whose securities or any class of securities having gained admission on such other exchange outside Malaysia which is recognised under the rules of a stock exchange, made to existing members or debenture holders of such foreign corporation by means of a rights issue provided that such offer of invitation has been accompanied by a prospectus or disclosure document approved by the foreign supervisory authority of such foreign corporation.

B. Non-application

Excluded offers or excluded invitations to which sections 232, 233, 234, 235, 236, 237, 238, 239, 240, 241 and 244 of Division 3 of Part VI shall not apply.

Excluded issues**230. (1) An issue of securities is an excluded issue if—**

- (a) **the issue is so specified in Schedule 7(*: See below) ; or**
- (b) **the issue is made to a person or a class of persons, or made in respect of securities or a class of securities, as the Minister may, on the recommendation of the Commission, prescribe by order published in the Gazette.**

(2) Schedule 7 or a prescription made under paragraph (1)(b) may specify the provisions of this Act that shall not apply to an excluded issue.

(3) An information memorandum issued by a person or his agent purporting to describe the business and affairs of the person in respect of—

- (a) any excluded issue specified in Schedule 7; or
- (b) any issue of securities made to a person or a class of persons or in relation to securities or a class of securities prescribed under paragraph (1)(b),

shall be deemed to be a prospectus insofar as it relates to the liability of the person or his agent for any statement or information that is false or misleading or from which there is a material omission.

(4) A person issuing the information memorandum referred to in subsection (3) shall deposit a copy of the information memorandum with the Commission within seven days after it is first issued.

(5) Paragraph 17 of Schedule 7 shall not apply to any securities or class of securities of any private company or class of private companies as the Minister may, on the recommendation of the Commission, prescribe by order published in the Gazette.

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Box A1.2 continuation

(*)Schedule 7

[Section 230]

Excluded issues

A. Excluded issues

1. An issue made to an underwriter under an underwriting or subunderwriting agreement.
2. An issue in respect of securities of a corporation which are not listed made to existing members or debenture holders of such corporation by means of a rights issue and is not an issue or allotment to which section 237 applies.
3. An issue made to a company that is registered as a trust company under the Trust Companies Act 1949 or a corporation that is a public company under the Companies Act 1965 or under the laws of any other country which has been allowed by the Commission to be a trustee for the purposes of this Act.
4. An issue made to a unit trust scheme or prescribed investment scheme.
5. An issue made to a holder of a Capital Markets Services Licence who carries on the business of dealing in securities.
6. An issue made exclusively to persons outside Malaysia.
7. An issue made to a closed end fund approved by the Commission.
8. An issue made to a holder of a Capital Markets Services Licence who carries on the business of fund management.
9. An issue made to a person who acquires securities pursuant to an offer, as principal, if the aggregate consideration for the acquisition is not less than two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction, whether such amount is paid for in cash or otherwise.
10. An issue made to an individual whose total net personal assets exceed three million ringgit or its equivalent in foreign currencies.
11. An issue made to a corporation with total net assets exceeding ten million ringgit or its equivalent in foreign currencies based on the last audited accounts.
12. An issue made to a licensed offshore bank as defined under the Offshore Banking Act 1990.
13. An issue made to an offshore insurer as defined under the Offshore Insurance Act 1990.
14. An issue made with respect to any sale of a unit in a unit trust scheme or a prescribed investment scheme by a personal representative, liquidator, receiver or trustee in bankruptcy or liquidation, as the case may be, in the normal course of realisation of assets.
15. All trades in securities effected on a stock market of a stock exchange which is approved by the Minister pursuant to subsection 8(2) or such other exchange outside Malaysia which is recognised under the rules of the stock exchange.
16. An issue of securities made or guaranteed by the Federal Government or any State Government or Bank Negara.
17. An issue in respect of securities of a private company.
18. An issue in respect of securities which are acquired pursuant to a take-over offer which complies with the relevant law applicable to such offers.
19. All trades in securities effected in the money market.
20. An issue in respect of securities which are acquired by employees or directors of a corporation or its related corporation pursuant to an employee share or employee share option scheme.
21. An issue made to any creditor or holder of securities of a company undergoing a scheme of arrangement or compromise under section 176 of the Companies Act 1965 or a restructuring scheme under the Pengurusan Danaharta Nasional Berhad Act 1998 which may not be renounced to any person other than a creditor or holder of securities of the company.
22. An issue made to a licensed institution as defined in the Banking and Financial Institutions Act 1989 or an Islamic bank as defined in the Islamic Banking Act 1983.
23. An issue made to an insurance company registered under the Insurance Act 1996.
24. An issue made to a statutory body established by an Act of Parliament or an enactment of any State.
25. An issue made to a pension fund approved by the Director General of Inland Revenue under section 150 of the Income Tax Act 1967.
26. An issue made by or to Danamodal Nasional Bhd.
27. An issue of securities by a corporation pursuant to the exercise of an option, a warrant or a transferable subscription right, in respect of which a prospectus has been registered under this Act or in respect of which the securities to which the option, warrant or transferable subscription right converts into are listed securities.
28. An issue of shares by a corporation pursuant to a provision contained in a convertible note, whether the note was issued by that corporation or by another corporation, in respect of which a prospectus has been registered under this Act or in respect of which the securities to which the option, warrant or transferable subscription right converts into are listed securities.
29. An issue in respect of shares or units in a unit trust scheme or prescribed investment scheme which are issued in satisfaction of dividends payable by the issuer to the holders of existing shares or units that were issued pursuant to a prospectus.
30. An issue of securities of a corporation made to existing members of a company within the meaning of section 270 of the Companies Act 1965.

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Box A1.2 continuation

31. A bonus issue of securities made by a corporation.
32. An issue in respect of securities of a foreign corporation whose securities or any class of securities having gained admission on such other exchange outside Malaysia which is recognised under the rules of a stock exchange, made to existing members or debenture holders of such foreign corporation by means of a rights issue.
33. An issue of securities of a foreign corporation whose securities or any class of securities having gained admission on such other exchange outside Malaysia which is recognised under the rules of a stock exchange, made to existing members or debenture holders of such foreign corporation by means of a rights issue provided that such issue has been accompanied by a prospectus or disclosure document approved by the foreign supervisory authority of such foreign corporation.

B. Non-application

Excluded issues to which sections 232, 233, 234, 235, 236, 237, 238, 239, 240, 241 and 244 of Division 3 of Part VI shall not apply.

Exceptions

- 231.** (1) The provisions of this Division as specified in Schedule 6 or 7 or as may be prescribed by the Minister pursuant to paragraph 229(1)(b) or 230(1)(b) shall not apply to—
- (a) an excluded offer;
 - (b) an excluded invitation; or
 - (c) an excluded issue.
- (2) The provisions of this Part shall not apply to the making available of, the offer for subscription or purchase of, or an invitation to subscribe for or purchase, shares or debentures of any unlisted recreational club.

Requirement to register prospectus in relation to securities

- 232.** (1) A person shall not issue, offer for subscription or purchase, make an invitation to subscribe for or purchase or in the case of an initial listing of securities, make an application for the quotation of the securities on a stock market of a stock exchange unless—
- (a) a prospectus in relation to the securities has been registered by the Commission under section 233; and
 - (b) the prospectus complies with the requirements or provisions of this Act.
- (2) Unless authorised in writing by the Commission, a person shall not issue, circulate or distribute any form of application for securities unless the form is accompanied by a copy of a prospectus which has been registered by the Commission under section 233.
- (3) A person shall not issue, circulate or distribute any form of application for securities of a corporation that has not been formed or of a unit trust scheme or prescribed investment scheme that has not been formed.
- (4) The Commission may for public information publish the registrable prospectus submitted to the Commission before the registration of the prospectus under section 233.
- (5) The publication under subsection (4) shall not indicate that the Commission recommends the securities or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the registrable prospectus.
- (6) For the purposes of this section, a “registrable prospectus” refers to a prospectus that has been submitted under section 233 and which has yet to be registered by the Commission.
- (7) A person who contravenes subsection (1), (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

Registration of prospectus

- 233.** (1) The Commission shall refuse to register a prospectus if—
- (a) the Commission is of the opinion that the prospectus does not comply with any provision of this Act;
 - (b) the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the prospectus relates does not comply with any other requirement or provision of this Act;
 - (c) the Commission is of the opinion that the prospectus contains any statement or information that is false or misleading or that the prospectus contains any statement or information from which there is a material omission;
 - (d) the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities to which the prospectus relates—
 - (i) requires the approval of the Commission under section 212 and such approval has not been given; or
 - (ii) does not comply with any term or condition imposed under subsection 212(5);
 - (e) in relation to a unit trust scheme or prescribed investment scheme, there has been a failure to comply with any term or condition in relation to an approval of a management company or trustee; or
 - (f) the Commission is of the opinion that the issuer has contravened any provision of the securities laws or the Companies Act 1965 and that such contravention would cast a doubt as to whether the issuer is a fit and proper person to make an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, any securities.

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Box A1.2 continuation

- (2) No prospectus shall be registered unless it is submitted to the Commission together with—
- a written application for its registration;
 - copies of all consents required under subsection 244(1) from any person named in the prospectus as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based;
 - copies of all material contracts referred to in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, verified in accordance with any requirements specified by the Commission; and
 - all such information or documents as may be required by the Commission.
- (3) An issuer shall cause a copy of—
- any consent required under subsection 244(1) in relation to the issue of the prospectus; and (b) every material contract or document referred to in the prospectus, to be deposited—
- (A) at the registered office of the issuer in Malaysia, and if it has no registered office in Malaysia, at the address specified in the prospectus for that purpose; and
- (B) in the case of a unit trust scheme or prescribed investment scheme, at the registered office of the issuer and the trustee in Malaysia, at the address specified in the prospectus for that purpose, within three days after the registration of the prospectus and shall keep each such copy, for such period as may be specified by the Commission, for inspection by any person without charge.

Requirement to lodge prospectus with Registrar

- 234.** An issuer shall cause a copy of the prospectus registered by the Commission under this Act and a copy of the form of application accompanying such prospectus—
- in relation to securities other than a unit trust scheme or prescribed investment scheme, to be lodged with the Registrar;
 - in relation to a unit trust scheme or prescribed investment scheme, to be lodged with the Commission, before the date of issue of the prospectus.

Contents of prospectus

- 235.** (1) Without prejudice to section 236, a prospectus—
- shall be dated and that date shall, unless the contrary is proved, be taken as the date of issue of the prospectus;
 - shall state that—
 - the prospectus has been registered by the Commission;
 - in respect of securities other than a unit trust scheme or prescribed investment scheme, a copy of the prospectus is lodged with the Registrar and in respect of a unit trust scheme or prescribed investment scheme, a copy of the prospectus is lodged with the Commission; and
 - the registration of the prospectus shall not be taken to indicate that the Commission recommends the securities or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the prospectus;
 - shall contain a statement that no securities will be allotted or issued on the basis of the prospectus later than such period as the Commission may specify from the date of issue of the prospectus;
 - shall, if it contains any statement made by an expert or contains what purports to be a copy of or an extract from a report, memorandum or valuation of an expert, state the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the prospectus;
 - shall not contain the name of any person named in the prospectus as having made a statement—
 - that is included in the prospectus; or
 - on which a statement made in the prospectus is based, unless the requirements of subsection 244(1) are satisfied; and
 - shall set out such information, matters or reports as may be specified by the Commission.
- (2) A condition requiring or binding an applicant for securities to waive compliance with any requirement of this section or section 236, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.
- (3) Notwithstanding the provisions of this Division, the Commission may, either on the written application of any person referred to in section 232 or of its own accord, make an order relieving such person from or approving any variation of the requirements of this Act relating to the form and content of a prospectus.
- (4) In making an order under subsection (3), the Commission may impose such terms and conditions as it thinks fit.
- (5) The Commission shall not make an order under subsection (3) unless it is satisfied that—
- compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; or
 - compliance with the requirements of this Act would impose an unreasonable burden on the issuer.
- (6) A prospectus shall be deemed to have complied with all the requirements of this Act relating to the form and content of a prospectus if it is issued in compliance with an order made under subsection (3).
- (7) Where a prospectus relating to any securities is issued and the prospectus does not comply with the requirements of this section, the issuer and each director of the issuer at the time of the issue of the prospectus commits an offence and shall, on conviction, be liable to a fine not exceeding

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Box A1.2 continuation

three million ringgit or to imprisonment for a term not exceeding ten years or to both.

(8) A person who contravenes any term or condition as may be imposed by the Commission under subsection (4) commits an offence.

General duty of disclosure in prospectus

- 236.** (1) For the purpose of determining whether a prospectus contains any statement or information which is false or misleading or from which there is a material omission under subsection 246(1) or 248(1), regard shall be had to whether the prospectus contains all such information that investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed assessment of—
- (a) the assets and liabilities, financial position, profits and losses and prospects of the issuer and, in the case of a unit trust scheme or prescribed investment scheme, of the scheme;
 - (b) the rights attaching to the securities; and
 - (c) the merits of investing in the securities and the extent of the risk involved in doing so.
- (2) The information that investors and their professional advisers would reasonably require and reasonably expect to find in the prospectus under subsection (1) is information—
- (a) which is known to all or any of the following persons:
 - (i) a person who was a director of the issuer at the time of issue of the prospectus;
 - (ii) a person who has consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;
 - (iii) a promoter;
 - (iv) the principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
 - (v) a person named in the prospectus, with his consent, as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based;
 - (vi) a person named in the prospectus, with his consent, as a stockbroker, sharebroker or underwriter, as the case may be, in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
 - (vii) a person named in the prospectus, with his consent, as an auditor, banker or advocate in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
 - (viii) a person named in the prospectus, with his consent, as having performed or performing any function in a professional, advisory or other capacity not mentioned in paragraph (iv), (v), (vi) or (vii) in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities; or
 - (b) which any of the persons referred to in paragraph (2)(a) would have been able to obtain by making such enquiries as were reasonable in the circumstances.
- (3) Without prejudice to the generality of subsection (1) or (2), in determining the information that is required to be included in a prospectus under this section, regard shall be had to—
- (a) the nature of—
 - (i) the securities;
 - (ii) the business of the issuer of the securities; and
 - (iii) the unit trust scheme or prescribed investment scheme;
 - (b) the persons likely to consider acquiring such securities;
 - (c) the fact that certain matters may reasonably be expected to be known to any professional adviser whom investors referred to in subsection 236(1) may reasonably be expected to consult; and
 - (d) whether the persons to whom an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is to be made are the holders of securities in the corporation, or unit holders in the unit trust scheme or prescribed investment scheme, and if they are, to what extent (if any) relevant information has previously been given to them by the issuer under any law or any requirement of the rules of a stock exchange, if applicable, or otherwise.

Abridged prospectus for renounceable rights issues

- 237.** (1) A corporation shall not issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities by means of a rights issue which is renounceable in favour of persons other than existing members or debenture holders of that corporation and in respect of which an application has been or will be made for permission to deal with or quote such securities on a stock market of a stock exchange unless an abridged prospectus is registered by the Commission.
- (2) Any abridged prospectus registered pursuant to subsection (1) shall contain such particulars or information as may be specified by the Commission.
- (3) Nothing in this section shall be construed as preventing a full prospectus from being registered containing the particulars specified by the Commission in respect of full prospectuses in respect of an issue, offer or invitation referred to in subsection (1).

Supplementary or replacement prospectus

- 238.** (1) This section applies—
- (a) in the case of a unit trust scheme or prescribed investment scheme, where a prospectus has been registered; or
 - (b) in any other case, where a prospectus has been registered but before the issue of securities, and where the issuer becomes aware that—

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Box A1.2 continuation

- (A) a matter has arisen and information in respect of that matter would have been required by—
- (i) section 235 or 236;
 - (ii) any requirement under this Act;
 - (iii) any guidelines issued by the Commission; or
 - (iv) any listing requirement of a stock exchange, to be disclosed in the prospectus if the matter had arisen at the time the prospectus was prepared;
- (B) there has been a significant change affecting a matter disclosed in the prospectus;
- (C) the prospectus contains a material statement or information that is false or misleading; or
- (D) the prospectus contains a statement or information from which there is a material omission.
- (2) As soon as practicable after becoming aware of a matter referred to in subsection (1), the issuer shall submit a supplementary or replacement prospectus, as the case may be, to the Commission for registration.
- (3) The issuer shall lodge the supplementary or replacement prospectus, as the case may be—
- (a) in relation to securities other than a unit trust scheme or prescribed investment scheme, with the Registrar immediately upon registration by the Commission; and
 - (b) in relation to a unit trust scheme or prescribed investment scheme, with the Commission immediately upon registration by the Commission.
- (4) Subsection (1) shall apply with respect to matters contained in a supplementary or replacement prospectus, as the case may be, previously registered under this section in respect of the securities in question.
- (5) On each page of a supplementary prospectus, there shall be a clear statement in bold type that states that the document is a supplementary prospectus that is to be read in conjunction with the original prospectus and if other supplementary prospectuses have been issued in relation to the original prospectus, both the original prospectus and the supplementary prospectuses.
- (6) At the beginning of the replacement prospectus, there shall be a clear statement in bold type that states the document is a replacement prospectus, and identifies the prospectus which it replaces.
- (7) A supplementary prospectus shall be regarded as being part of the prospectus to which it relates and the provisions of this Act and any other law relating to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply to such supplementary prospectus and shall have effect accordingly.
- (8) A replacement prospectus shall be regarded as replacing the prospectus previously registered under section 233.
- (9) Where a supplementary prospectus has been registered by the Commission, every copy of the original prospectus issued after registration of the supplementary prospectus must be accompanied by a copy of the supplementary prospectus.
- (10) Notwithstanding the provisions of this section, the Commission may, on the written application of any issuer or of its own accord, make an order relieving such person from, or approving any variation of, the requirements of this section.
- (11) In making an order under this section, the Commission may impose such terms and conditions as it thinks fit.
- (12) The Commission shall not make an order under subsection (10) unless it is satisfied that—
- (a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; or
 - (b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.
- (13) A person who contravenes subsection (2), (3), (5), (6) or (9) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.
- (14) A person who contravenes any term or condition as may be imposed by the Commission under subsection (11) commits an offence.

Consequences of registering a supplementary or replacement prospectus

- 239.** (1) This section applies—
- (a) where a person (“the applicant”) applies for the issue of, subscription or purchase of, any securities pursuant to a prospectus and—
 - (i) in the case of a unit trust scheme or prescribed investment scheme, before the issue of units or transfer of units from the management company or the trustee to the applicant; or
 - (ii) in any other case, before the issue of securities; and
 - (b) the issuer delivers to the Commission for registration a supplementary or replacement prospectus, as the case may be, that relates to the prospectus.
- (2) As soon as practicable after the registration of the supplementary or replacement prospectus, as the case may be, by the Commission, the issuer shall—

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Box A1.2 continuation

- (a) give to the applicant a written notice or such other notice as may be specified by the Commission—
 - (i) advising the applicant that a supplementary or replacement prospectus, as the case may be, has been registered by the Commission;
 - (ii) giving the applicant not less than fourteen days from the date of receipt of the notice an opportunity to withdraw his application; and
 - (b) ensure that the written notice referred to in paragraph (2)(a) is accompanied by a copy of a supplementary or replacement prospectus, as the case may be.
- (3) If the applicant withdraws his application pursuant to subparagraph (2)(a)(ii), the issuer shall immediately pay to the applicant any monies that the applicant has paid to the issuer on account of the application.
- (4) Notwithstanding the provisions of this section, the Commission may, on the written application of any issuer or of its own accord, make an order relieving such person from, or approving any variation of, the requirements of this section.
- (5) In making an order under this section, the Commission may impose such terms and conditions as it thinks fit.
- (6) The Commission shall not make an order under subsection (4) unless it is satisfied that—
- (a) compliance with the requirements of this Act is unnecessary for the protection of persons who may normally be expected to deal in those securities, being persons who would reasonably be expected to understand the risks involved; or
 - (b) compliance with the requirements of this Act would impose an unreasonable burden on the issuer.
- (7) A person who contravenes subsection (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.
- (8) A person who contravenes any term or condition as may be imposed by the Commission under subsection (5) commits an offence.

Regulations for shelf prospectuses, supplementary shelf prospectuses, short form prospectuses, profile statements, etc.

- 240.** (1) Notwithstanding the provisions of sections 235 and 236, a person may issue, offer or subscription or purchase, or make an invitation to subscribe for or purchase, securities where at the time of the issue, offer or invitation there is in force—
- (a) a shelf prospectus as updated by a supplementary shelf prospectus;
 - (b) a short form prospectus; or
 - (c) a profile statement, relating to all matters which the Commission, with the approval of the Minister, may provide by way of regulations made under this Act with respect to a shelf prospectus, supplementary shelf prospectus, short form prospectus or profile statement, as the case may be.
- (2) The regulations referred to under subsection (1) may provide for, but shall not be limited to, the following matters:
- (a) a shelf prospectus, including a supplementary shelf prospectus;
 - (b) a short form prospectus;
 - (c) a profile statement;
 - (d) the period during which a person may be permitted to issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, securities on the basis of a shelf prospectus, as updated by a supplementary shelf prospectus, short form prospectus or profile statement, as the case may be;
 - (e) the form and content of a prospectus referred to in paragraph (a), (b) or (c);
 - (f) the persons or classes of persons to which any prospectus referred to in paragraph (a), (b) or (c) may apply; or
 - (g) the securities or classes of securities to which any prospectus referred to in paragraph (a), (b) or (c) may apply.
- (3) Where the Commission makes regulations under subsection (1) with respect to a shelf prospectus, supplementary shelf prospectus, short form prospectus or profile statement, the provisions of this Act and any other law relating to liability in respect of statements in or omissions from prospectuses or otherwise relating to prospectuses shall apply to the shelf prospectus, supplementary shelf prospectus, short form prospectus or profile statement, as the case may be, and shall have effect accordingly.

Box A1.3 DIVISION 4: Debentures**CAPITAL MARKETS AND SERVICES ACT 2007 (Act 671)**

As at 28 September 2007

DIVISION 4 Debentures**Subdivision 1 – Trust deeds, duties of trustees, borrowers, etc.**

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Application of this Division

- 257.** (1) The provisions of this Subdivision and section 283 shall not apply to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures specified in Schedule 8.
- (2) The provisions of this Division as specified in Schedule 9 shall not apply to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures specified in Schedule 9.
- (3) The provisions of this Division shall not apply to an issue, offer or invitation that is made to a person or a class of persons, or made in respect of a debenture or a class of debentures, as the Minister may, on the recommendation of the Commission, prescribe by order published in the Gazette.
- (4) A prescription made under subsection (3) may specify the provisions of this Division to which an issue, offer or invitation shall not apply.

Requirement for trust deed and trustee

- 258.** (1) Every person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall—
- enter into a trust deed that meets the requirements of section 259;
 - appoint a trustee who is a person eligible to be appointed or to act as trustee in accordance with section 260; and
 - comply with the requirements and provisions of this Division.
- (2) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall not allot such debenture unless the person has entered into a trust deed that meets with the requirements of section 259 and has appointed a trustee who is a person eligible to be appointed or to act as trustee under section 260.
- (3) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall not revoke the trust deed unless the person has repaid all amounts payable under the debenture in accordance with the terms, provisions and covenants of the debenture and the trust deed.
- (4) A person who contravenes subsection (1), (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

Form and contents of trust deeds

- 259.** (1) A trust deed shall contain such provisions, covenants, requirements, information and particulars as may be specified by the Commission.
- (2) A person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, any debenture shall deliver a copy of the trust deed to the Commission together with such other particulars, information or documents as the Commission may specify.

Persons who can be trustees

- 260.** (1) A trustee shall be—
- a company registered as a trust company under the Trust Companies Act 1949 [Act 100]; or
 - a corporation that is a public company under the Companies Act 1965 or under the laws of any other country, which has been approved by the Commission to act as trustee for the purposes of this Act.
- (2) A person shall not be eligible to be appointed or to act as trustee for debenture holders without the approval of the Commission if the person—
- is a shareholder who beneficially holds shares in the borrower;
 - is beneficially entitled to monies owed by the borrower to it;
 - has entered into a guarantee in respect of the amount secured or payable under the debenture; or
 - is a related corporation of—
 - the persons referred to in paragraphs (a) to (c); or
 - the borrower.
- (3) An application for approval made under subsection (1) or (2) shall be made to the Commission in accordance with such procedure or other requirement as may be specified by the Commission.

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Box A1.3 continuation

- (4) Notwithstanding the provisions of subsection (2), a person is not prevented from being appointed or from acting as trustee by reason only that—
- (a) the borrower owes to the trustee or any related corporation of the trustee any monies, so long as such monies are—
 - (i) monies that do not, at the time of the appointment or at any time within a period of three months after the debentures are first offered for subscription or purchase or in respect of which an invitation to subscribe for or purchase is made, exceed one-tenth of the amount of the debentures proposed to be issued within that period and do not, at any time after the expiration of that period, exceed one tenth of the amount the borrower owes to the holders of the debentures; or
 - (ii) monies to which the trustee or any related corporation of the trustee is entitled to as trustee for holders of any debenture of the borrower, in accordance with the terms, provisions or covenants of the debenture or the trust deed; or
 - (b) the trustee or a related corporation of the trustee, despite being beneficial owners in the shares of the borrower, do not have the right to exercise more than one-twentieth of the voting power at any general meeting of the borrower.
- (5) Where an application has been made to the Commission under subsection (3), the Commission may approve such application subject to such terms and conditions as it thinks fit.
- (6) In exercising its discretion under subsection (5), the Commission shall have regard to—
- (a) the interests of holders of any debenture; and
 - (b) the ability of the trustee to safeguard the interests of such debenture holders as required by the provisions and covenants of the trust deed and the provisions of this Act.
- (7) The Commission may revoke its approval under subsection (5) where the trustee has failed to comply with any term or condition imposed under subsection (5) or has contravened any provision of this Act.
- (8) A trustee who—
- (a) contravenes subsection (1) or (2); or
 - (b) contravenes a term or condition imposed by the Commission under subsection (5), commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Existing trustee to continue to act until new trustee takes office

261. Notwithstanding the provisions of section 43 of the Trustee Act 1949 [Act 208] or any term, provision or covenant in the debenture or trust deed, an existing trustee shall continue to act as trustee until a new trustee is appointed and has taken office as trustee.

Replacement of trustee

262. (1) Where no provision has been made in the debenture or trust deed for the appointment of a successor to a retiring trustee, the borrower shall, within one month after becoming aware of the intention of the trustee to retire, appoint as successor to the retiring trustee a trustee who is a person eligible to be appointed or to act as trustee under section 260.

- (2) A court may, on the application of the borrower, a debenture holder or the Commission—
- (a) appoint, as trustee, a person who is eligible to be appointed or to act as trustee under section 260 if—
 - (i) the trustee has not been validly appointed; or
 - (ii) the trustee has ceased to exist; or
 - (b) terminate the appointment of an existing trustee and appoint in his place, as trustee, a person who is eligible to be appointed or to act as trustee under section 260 if—
 - (i) the existing trustee is not eligible to be appointed or to act as trustee under section 260;
 - (ii) the existing trustee fails or refuses to act in accordance with the provisions or covenants of the trust deed or the provisions of this Act;
 - (iii) a receiver is appointed over the whole or a substantial part of the assets or undertaking of the existing trustee and has not ceased to act under that appointment, or a petition is presented for the winding up of the existing trustee (other than for the purpose of and followed by a reconstruction, unless during or following such reconstruction the existing trustee becomes or is declared to be insolvent); or
 - (iv) the trustee is under investigation for conduct that contravenes the Trust Companies Act 1949, the Trustee Act 1949, the Companies Act 1965 or the securities law.

- (3) A borrower who contravenes subsection (1) commits an offence.

Duties of trustees

- 273.** (1) The trustee of a trust deed that is entered into under section 258—
- (a) shall satisfy itself that the provisions of a prospectus or an information memorandum relating to the debenture do not contain any matter which is inconsistent with the terms, provisions and covenants of the debenture and the trust deed;
 - (b) shall ensure that the borrower and each guarantor complies with Division 7 of Part IV of the Companies Act 1965, to the extent that it applies to the debenture;

continued on next page

Box A1.3 continuation

- (c) shall take reasonable steps to ensure that the borrower or guarantor remedies any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act;
 - (d) shall notify the Commission as soon as practicable if the borrower or guarantor fails to remedy any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act;
 - (e) shall, where the borrower or the guarantor fails to remedy any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act, call for a meeting of debenture holders and place before the meeting proposals for the protection of the interest of the debenture holders as the trustee considers necessary or appropriate and obtain their directions; and
 - (f) shall notify the Commission as soon as practicable where the trustee discovers that it is not eligible to be appointed or to act as trustee under section 260.
- (2) Where a proposal relating to a debenture is approved by the Commission under section 212, the trustee shall—
- (a) exercise reasonable diligence to ascertain whether the assets of the borrower and of each guarantor which are or may be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates when it becomes due;
 - (b) notify the Commission as soon as practicable if—
 - (i) the borrower has contravened section 265 or 266; or
 - (ii) a guarantor has contravened paragraph 271(1)(d);
 - (c) where the borrower or the guarantor fails to remedy any breach of the terms, provisions or covenants of the debenture or the trust deed or any contravention of the provisions of this Act call for a meeting of debenture holders and place before the meeting proposals for the protection of the interest of the debenture holders as the trustee considers necessary or appropriate and obtain their directions;
 - (d) comply with any directions given to it at a debenture holders' meeting referred to in sections 277, 278 and 279 unless—
 - (i) the trustee is of the opinion that the direction is inconsistent with the terms, provision or covenant of the debenture or the trust deed or the provisions of this Act or is otherwise objectionable; and
 - (ii) the trustee has either obtained, or is in the process of obtaining, an order from the court under section 282 to set aside or vary that direction;
 - (e) give the debenture holders a statement explaining the effect of any proposal that the borrower submits to the debenture holders before any meeting that—
 - (i) the court calls in relation to a scheme of arrangement or compromise under subsection 176(1) of the Companies Act 1965; or
 - (ii) the trustee calls under subsection 278(1);
 - (f) apply to the Commission for a direction under subsection 280(1) where the trustee upon due inquiry is of the opinion that the assets of the borrower and the guarantor which are or should be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates as and when it becomes due;
 - (g) apply to court for an order under section 282 where—
 - (i) the trustee upon due inquiry is of the opinion that the assets of the borrower and the guarantor which are or should be available, whether by way of security or otherwise, are insufficient or are likely to become insufficient to repay the amount secured or payable under the debenture to which the trust deed relates as and when it becomes due; or
 - (ii) the borrower has failed to comply with a direction made by the Commission under subsection 280(1); and
 - (h) where the prospectus relating to the debenture contains a statement as to the particular purpose or project for which such amount are to be applied and—
 - (i) it appears to the trustee that the purpose or project has not been achieved within the time stated in the prospectus or where no time is stated, within a reasonable time; or
 - (ii) it is the trustee's opinion that notice is necessary for the protection of the interests of debenture holders, give a notice in writing to the borrower requiring it to repay the amounts secured or payable under the debenture to which the trust deed relates within one month after the notice is given and deliver a copy of that notice to the Commission, unless the trustee is satisfied of any or all of the following:
 - (A) that the purpose or project has been substantially achieved or completed; or
 - (B) that the interests of debenture holders have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time.
- (3) For the purposes of paragraphs (2)(f) and (g), a trustee in making any application to the Commission or to the court—
- (a) shall have regard to the nature and kind of security given when the debentures were first issued or, if no security was given, shall have regard to the position of debenture holders as unsecured creditors of the borrower; and
 - (b) may rely on any certificate or report given or statement made by any advocate, auditor or officer of the borrower or the guarantor if it has reasonable grounds for believing that the advocate, auditor or officer was competent to give or make the certificate, report or statement.
- (4) A trustee who contravenes subsection (1) shall not be guilty of an offence.

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Box A1.3 continuation

Exemptions and indemnification of trustee from liability

- 274.** (1) Subject to this section, a term, provision or covenant of a debenture or a trust deed or a term of a contract with holders of debentures secured by a trust deed shall be void insofar as the term, provision or covenant, as the case may be, would have the effect of—
- (a) exempting a trustee from liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of it as trustee; or
 - (b) indemnifying a trustee against liability for contravention of any provision of this Act or for breach of trust or for failure to show the degree of care and diligence required of it as trustee, unless the term, provision or covenant—
- (A) releases the trustee from liability for anything done or omitted to be done before the release is given; or
 - (B) enables a meeting of debenture holders to approve the release of a trustee from liability for anything done or omitted to be done before the release is given.
- (2) For the purpose of paragraph (1)(B)—
- (a) a release is approved if the debenture holders who vote for the resolution hold seventy-five percent of the nominal value of the debentures held by all the debenture holders who attend the meeting and vote on the resolution; and
 - (b) a debenture holder attends the meeting and votes on the resolution if—
 - (i) such debenture holder attends the meeting in person and votes on the resolution; or
 - (ii) if proxies are permitted, the debenture holder is represented at the meeting by a proxy and the proxy votes on the resolution.

Indemnity of trustee

- 275.** (1) A trustee is not liable for anything done or omitted to be done in accordance with a direction given to the trustee by the debenture holders at any meeting called under section 277, 278 or 279.
- (2) A trustee may, in addition to any other rights under the trust deed, seek reimbursement by deducting out of any monies coming into the trustee's hands from the borrower all reasonable costs incurred in explaining the effect of any proposal that the borrower submits to the debenture holders in the circumstances set out in paragraph 273(2)(e).

Duty of auditor to trustee for debenture holders

- 276.** (1) An auditor of a borrower shall, within seven days after furnishing the borrower with any balance sheet, profit and loss account or any report, certificate or other document which he is required by the Companies Act 1965 or by the debenture or trust deed to give to the borrower, send a copy of such balance sheet, profit and loss account, report, certificate or other document by post to every trustee for the holders of debentures of the borrower.
- (2) Where, in the performance of his duties as auditor of a borrower, the auditor becomes aware of any matter which, in his professional opinion, is relevant to the exercise and performance of the powers and duties imposed on the trustee—
- (a) by this Act; or
 - (b) under the trust deed, the auditor shall, as soon as practicable after becoming aware of the matter, report the matter to the borrower and the trustee.
- (3) Where, in the performance of his duties as auditor for the borrower, the auditor becomes aware—
- (a) of any matter which, in his professional opinion, may constitute a contravention of any provision of this Act; or
 - (b) of any irregularities that may have a material effect on the ability of the borrower to repay any amount under the debenture, the auditor shall immediately report the matter to the Commission.
- (4) The auditor shall not, in the absence of proof of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement made in the circumstances referred to in subsection (1), (2) or (3).
- (5) An auditor who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.
- (6) An auditor who contravenes subsection (3) commits an offence.

Subdivision 2 – General

Register of debenture holders

- 283.** (1) Subject to subsection (2), every borrower which issues debentures, not being debentures transferable by delivery, shall keep a register of debenture holders at its registered office or at some other place in Malaysia.
- (2) Where the borrower is a company, the borrower shall comply with the provisions of section 70 of the Companies Act 1965 that relate to the obligation to keep a register of debenture holders and a branch register of debenture holders.

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Box A1.3 continuation

- (3) The register shall contain particulars of—
- (a) the names and addresses of debenture holders; and
 - (b) the amount of debentures held by them.
- (4) The register shall be open for inspection by registered debenture holders or shareholders of the borrower except when duly closed under subsection (5).
- (5) A register is deemed to be duly closed—
- (a) if it is closed in accordance with the provisions contained in—
 - (i) the constituent documents of the borrower;
 - (ii) the debentures or debenture stock certificates;
 - (iii) the trust deed; or
 - (iv) any other document relating to or securing the debenture; and
 - (b) where it is closed for such periods as is specified in any of the documents mentioned in subparagraphs (5)(a)(i), (ii), (iii) and (iv), provided that such period does not exceed, in the aggregate, thirty days in any calendar year.
- (6) A borrower shall, upon request, supply every registered debenture holder or shareholder of the borrower with a copy of the register of debenture holders, or such part thereof, on the payment of a reasonable sum as may be specified by the borrower.
- (7) The copy of the register of debenture holders referred to in subsection (6) need not include the particulars of any debenture holder other than the name and address of the registered debenture holder and the debentures held by him.
- (8) If inspection is refused, or a copy is refused or not forwarded within a reasonable time after a request has been made pursuant to this section, the borrower and every officer of the borrower who is in default commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.
- (9) A borrower issuing debentures may keep at any place outside Malaysia a branch register of debenture holders which shall be deemed to be a part of the borrower's register of debenture holders, and the provisions of Division 4 of Part V of the Companies Act 1965 shall, with such adaptations as are necessary, apply to and in relation to the keeping of a branch register of debenture holders.
- (10) Notwithstanding the provisions of subsections (1) to (9), the Commission may, either on the written application of any borrower referred to in subsection (1) or of its own accord, make an order relieving such borrower from, or approving any variation from, the requirements of this section relating to the maintenance of a register of debenture holders, subject to such terms and conditions as it thinks fit.
- (11) A borrower and every officer of the borrower who is in contravention of subsection (1), (3) or (9) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

Note: Emphases added by the authors.

Box A1.4 B. Part VIII: Self-Regulatory Organisations⁴⁴

CAPITAL MARKETS AND SERVICES ACT 2007 (Act 671)

As at 28 September 2007

PART VIII

SELF-REGULATORY ORGANISATIONS

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⁴⁴ Footnote 48.

Box A1.4 continuation

Interpretation

322. For the purposes of this Part, “chief executive”, “director” and “officer” includes any person occupying the position or performing the functions of chief executive, director and officer by whatever name called and “chief executive”, “director” and “officer” shall have the same meaning as in subsection 2(1).

Recognition of a self-regulatory organisation

- 323.** (1) The Commission may, with the concurrence of the Minister, where it thinks appropriate in the public interest or for the protection of investors by notice published in the Gazette, declare a person to be a recognised self-regulatory organisation, subject to such terms and conditions as the Commission thinks fit, if it is satisfied that—
- (a) the person in discharging its obligation under section 324 will not act contrary to the public interest and in particular the interest of investors;
 - (b) the person shall be able to take appropriate action against its members and any person to whom the rules apply to;
 - (c) the person has sufficient financial, human and other resources to carry out its functions;
 - (d) the person is fit and proper and satisfies the criteria or standards referred to in section 64, or any rules of the stock exchange or futures exchange, as the case may be;
 - (e) the person is managed by officers who are fit and proper and who satisfy the criteria or standards referred to in section 65, or any rules of the stock exchange or futures exchange or any applicable guidelines, as the case may be;
 - (f) the person has competent personnel for the carrying out of its functions; and
 - (g) the rules of the person make satisfactory provision—
 - (i) to promote investor protection;
 - (ii) to promote fair treatment of its members and any person who applies for membership;
 - (iii) to exclude a person who is not fit and proper from being its member or being appointed as its chief executive, director or officer;
 - (iv) to promote proper regulation and supervision of its members;
 - (v) to promote appropriate standards of conduct of its members;
 - (vi) to manage any conflict of interest that may arise between its interest and the interest referred to in subsection 324(1);
 - (vii) to ensure that there is a fair representation of members in its governing body;
 - (viii) to ensure that its members and officers duly comply with the securities laws, regulations and guidelines issued by the Commission and where relevant, the rules of the stock exchange, futures exchange, approved clearing house or central depository;
 - (ix) to prevent the usage of any information by its members or officers that may result in such member or officer making an unfair gain;
 - (x) for the expulsion, suspension, disciplining or sanctioning of a member in the event a member contravenes the securities laws, regulations and guidelines issued by the Commission and where relevant, the rules of the stock exchange, futures exchange, approved clearing house or central depository; and
 - (xi) to allow an aggrieved member to appeal against any decision of the recognised self-regulatory organisation.
- (2) The Commission may, in declaring a person to be a recognised self-regulatory organisation, require such person to provide any information to the Commission as the Commission considers necessary.
- (3) A person who—
- (a) with intent to deceive, makes or furnishes; or
 - (b) knowingly authorises or permits the making or furnishing of, any false or misleading statement or report with respect to the information submitted to the Commission referred to in subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.

Duties of a recognised self-regulatory organisation

- 324.** (1) A recognised self-regulatory organisation shall ensure that in exercising any of its powers or in carrying out any of its functions, such power or function shall be exercised or carried out in the public interest having particular regard to the need for the protection of investors.
- (2) A recognised self-regulatory organisation shall immediately notify the Commission if it becomes aware of—
- (a) any matter which adversely affects or is likely to adversely affect the interests of investors; and
 - (b) any contravention by its members of any securities laws.
- (3) Without prejudice to subsection (2), when a recognised self-regulatory organisation expels, or suspends any member, or otherwise disciplines any of its members, it shall, within seven days, give to the Commission in writing the following particulars:
- (a) the name of the member;
 - (b) the reason for and the nature of the action taken;
 - (c) the amount of the fine;
 - (d) the period of suspension, if any; and
 - (e) any other disciplinary action taken.

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Box A1.4 continuation

- (4) A recognised self-regulatory organisation shall not make a decision under its rules that adversely affects the rights of a person unless the recognised self-regulatory organisation has given the affected person an opportunity to make representations to the recognised self-regulatory organisation about the matter.
- (5) Notwithstanding the provisions of subsection (4), where the recognised self-regulatory organisation considers that any delay in making the decision is likely to prejudice public interest or necessary for the protection of investors, the recognised self-regulatory organisation may make a decision without giving an opportunity to be heard.

Rules of a recognised self-regulatory organisation

- 325.** (1) No amendments to the rules of a recognised self-regulatory organisation shall have effect unless it has been approved by the Commission under subsection (4).
- (2) Where a recognised self-regulatory organisation proposes to make any amendment to its rules, the recognised self-regulatory organisation shall submit to the Commission—
- (a) the text of the proposed amendment; and
 - (b) an explanation of the purpose of the proposed amendment.
- (3) The Commission shall, within six weeks after the receipt of any proposed amendment under subsection (2), give notice in writing to the recognised self-regulatory organisation that it approves or disapproves of the proposed amendment or any part of the proposed amendment, as the case may be.
- (4) The Commission may, by notice in writing, declare any class of rules of a recognised self-regulatory organisation to be a class of rules whose amendments do not require the approval of the Commission under subsection (3), and accordingly, any amendment to the rules of the recognised self-regulatory organisation that belongs to that class shall, subject to subsections (5) and (6), have effect notwithstanding that they have not been so approved under subsection (3).
- (5) Where the Commission is of the opinion that any amendment to the rules of a recognised self-regulatory organisation made under subsection (4) does not fall within the class of rules declared by the Commission under that subsection as not requiring its approval, the Commission may, after consultation with the recognised self-regulatory organisation, require the recognised self-regulatory organisation to submit such amendment for its approval under subsection (3).
- (6) Notwithstanding the provisions of this section, the Commission may, from time to time, after consultation with the recognised self-regulatory organisation, by written notice require the recognised self-regulatory organisation to amend or supplement any of its rules in such manner and within such period as may be specified in the notice.
- (7) A recognised self-regulatory organisation which contravenes subsection (2) or which contravenes a requirement made under subsection (5) or a written notice made under subsection (6) commits an offence.

Appointment of directors of a recognised self-regulatory organisation

- 326.** (1) No appointment, election or nomination of a director or chief executive of a recognised self-regulatory organisation can be made without the prior approval of the Commission.
- (2) The recognised self-regulatory organisation shall ensure that at least one-third of the number of directors on its board shall be public interest directors in accordance with such criteria as may be specified by the Commission.

Powers to issue directions to a recognised self-regulatory organisation

- 327.** (1) Where the Commission is satisfied that—
- (a) a conflict exists or may come into existence between the interest of a recognised self-regulatory organisation or its members and the interest of the proper performance of the functions or duties conferred by this Act, its rules or any guidelines issued by the Commission pursuant to section 377;
 - (b) such a conflict of interest has occurred or has existed in circumstances that make it likely that the conflict of interest will continue or be repeated; or
 - (c) the recognised self-regulatory organisation has failed to carry out its functions or discharge its duties under subsection 324(1) or its rules or any guidelines issued by the Commission pursuant to section 377, the Commission may serve a written notice on the recognised self-regulatory organisation stating the reasons in support of the ground for the notice and direct the recognised self-regulatory organisation to forthwith take such step as are specified in the notice, including steps in relation to any of its affairs, business or property for the purposes of managing the conflict of interest or the matters occasioning the conflict of interest and the satisfactory carrying out of its functions and satisfactory discharge of its duties.

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Box A1.4 continuation

- (2) A notice served under subsection (1) shall take effect immediately.
- (3) A recognised self-regulatory organisation that has been served with a notice under subsection (1) shall not without reasonable excuse; fail to comply with the notice.
- (4) A recognised self-regulatory organisation that has been served with a notice under subsection (1) may appeal against the notice to the Commission not later than fourteen days after the date of service of the notice or such longer period if any, as the Commission may specify in the notice, but the notice shall take effect immediately notwithstanding that the appeal has been or may be made under this subsection.
- (5) Without limiting the generality of subsection (1), the Commission may issue any other direction to a recognised self-regulatory organisation where the Commission thinks necessary in the public interest or for the protection of investors.

Withdrawal of recognition

328. (1) The Commission may, with the concurrence of the Minister, withdraw a recognition given under subsection 323(1) where—
- (a) the recognised self-regulatory organisation has failed to commence operations within six months from the date published in the Gazette under subsection 323(1);
 - (b) the Commission is not satisfied that the recognised self-regulatory organisation is properly performing or is able to perform the functions or duties under its rules or any guidelines issued by the Commission pursuant to section 377;
 - (c) the recognised self-regulatory organisation has breached any term and condition imposed under subsection 323(1);
 - (d) the recognised self-regulatory organisation is in breach of any provisions of the securities laws or any guidelines issued pursuant to section 377 or has failed to comply with any direction by the Commission and where relevant, the rules of the stock exchange, futures exchange, approved clearing house or central depository;
 - (e) the recognised self-regulatory organisation is being wound up or otherwise dissolved;
 - (f) a judgement debt against the recognised self-regulatory organisation has not been satisfied in whole or in part;
 - (g) a receiver, a receiver and manager, or equivalent person has been appointed, in relation to or any property of the recognised self-regulatory organisation;
 - (h) the recognised self-regulatory organisation—
 - (i) on its own accord has applied to the Commission to cease operating as a recognised self-regulatory organisation; or
 - (ii) has been determined by the Commission to have ceased operating as a recognised self-regulatory organisation;
 - (iii) any information provided for the purposes of section 323 was false or misleading in a material particular; or
 - (iv) the recognised self-regulatory organisation has contravened any direction of the Commission issued under section 327.
- (2) A recognition given under subsection 323(1) shall not be withdrawn unless the Commission has notified the recognised self-regulatory organisation of its intention and the reasons for the Commission's action, and give the recognised self-regulatory organisation an opportunity to make representations to the Commission.

Protection for a recognised self-regulatory organisation

329. A recognised self-regulatory organisation, an officer or employee of a recognised self-regulatory organisation or a member of a committee of a recognised self-regulatory organisation shall not be liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by them in the performance in good faith of their powers, functions and duties in connection with the regulatory or supervisory functions of the recognised self-regulatory organisation.

Accounts and reports in respect of a recognised self-regulatory organisation

330. (1) The provisions of Subdivision 6 of Division 4 of Part III shall apply to the appointment, removal and resignation of an auditor and the audit of a recognised self-regulatory organisation's accounts.
- (2) Within three months after the end of each financial year, a recognised self-regulatory organisation shall submit to the Commission a report on the extent to which it has complied with the terms and conditions imposed under subsection 323(1), the requirements imposed on it under this Part and its rules or any guidelines issued by the Commission pursuant to section 377.
 - (3) The Commission shall forthwith send a copy of the report referred to under subsection (2) to the Minister.
 - (4) Upon receipt of the report under subsection (2), the Commission may at any time if it deems it necessary to do so—
 - (a) conduct an audit on the recognised self-regulatory organisation;
 - (b) appoint any independent person to assist the Commission in an audit; and
 - (c) charge the costs of carrying out such audit to the recognised self-regulatory organisation.

continued on next page

Box A1.4 continuation

- (5) The Commission shall as soon as practicable submit to the Minister a copy of the report of the audit conducted by the Commission under subsection (4).

Provision of assistance to Commission

- 331.** (1) A recognised self-regulatory organisation shall provide such assistance to the Commission, or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires, including the furnishing of such returns, and the provision of such information relating to the operations of the recognised self-regulatory organisation or any other information as the Commission or such person may require for the proper administration of the securities laws.
- (2) A person who refuses or fails, without lawful excuse, to assist the Commission or a person acting on behalf of, or authorised by, the Commission, in accordance with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Guidelines and practice notes of Commission

- 377.** (1) The Commission may, generally in respect of this Act or in respect of any particular provision of this Act, issue such guidelines and practice notes as the Commission considers desirable.
- (2) The Commission may revoke, vary, revise or amend the whole or any part of any guidelines and practice notes issued under this section.
- (3) Subject to this Act or unless the contrary intention is expressly stated, a person to whom the guideline or practice note referred to in subsection (1) apply, shall give effect to such guideline or practice note within such period as may be specified by the Commission.
- (4) Where a person referred to in subsection (3) contravenes or fails to give effect to any guideline or practice note issued by the Commission, the Commission may take any one or more of the actions set out in section 354, 355 or 356 as it thinks fit.

Appendix 1.2 List of Registered Credit Rating Agencies

Table A1. List of Registered Credit Rating Agencies

No.	Name	Contact Details
1.	RAM Rating Services Berhad ^{a, b} (763588-T)	<p>Registered address: Suite 20.01, Level 20 The Gardens South Tower Mid Valley City Lingkarang Syed Putra 59200 Kuala Lumpur</p> <p>Business address: Suite 20.01, Level 20 The Gardens South Tower Mid Valley City Lingkarang Syed Putra 59200 Kuala Lumpur Tel : 603 7628 1000 Fax: 603 7628 1700 Website: www.ram.com.my</p>
2.	Malaysian Rating Corporation ^c Berhad (364803 V)	<p>Registered address: 5th Floor, Bangunan Malaysian Re No. 17, Lorong Dungun Damansara Heights 50490 Kuala Lumpur</p> <p>Business address: 5th Floor, Bangunan Malaysian Re No. 17, Lorong Dungun Damansara Heights 50490 Kuala Lumpur Tel : 603 2092 5398 Fax: 603 2094 9397 (Ratings) 603 2093 9308 (General) Website: www.marc.com.my</p>

^a Rating Agency Malaysia Website. www.ram.com.my
^b Credit rating services were transferred from RAM Holdings Berhad (formerly known as Rating Agency Malaysia Berhad) to RAM Rating Services Berhad on 1 July 2007.
^c Malaysian Rating Corporation Website. www.marc.com.my

Appendix 1.3 List of Registered Bond Pricing Agency

Bond Pricing Agency Malaysia Sdn Bhd (667403-U)
 Business Address : No.17-8 & 19-8, The Boulevard, Mid Valley City, Lingkarang Syed Putra, 59200 Kuala Lumpur Malaysia
 Tel : 603- 2772 0888 Fax : 603 - 2772 0808
 Website: www.bpam.com.my

Appendix 1.4 List of Guidelines

A. List of Guidelines on the Debt Securities and *Sukuk* Market issued by the Securities Commission Malaysia

1. Guidelines on the Offering of Structured Products - Revised April 2007
2. Practice Note on Registration by the Securities Commission for the Purpose of Acting as a Bond **Trustee**^a - October 2006
3. Guidelines on Registration of Bond Pricing Agencies - January 2006
4. Guidelines on Registration of Credit Rating Agencies - 30 March 2011
5. Guidelines on Registration of an Electronic Broking System - January 2006
6. Guidance Note on the Secondary Trading of Foreign Currency Denominated Debentures and Foreign Currency Denominated Islamic Securities - September 2005
7. Guidelines on Private Debt Securities - August 2011
8. Guidelines on the Offering of Asset-Backed Securities - July 2004
9. Guidelines on Islamic Securities (*Sukuk* Guidelines) - 12 August 2011
10. Guidelines on Dealing in Unlisted Debt Securities by a Universal Broker - October 2002
11. Guidelines on Trust Deeds - 12 August 2011

^a Also applicable to the offering of Islamic Securities.

Note: The list of Guidelines mentioned above is current as at the date of this publication. However, the SC continuously reviews and introduces new guidelines to facilitate the growth of the debt securities and *Sukuk* market. For the latest list, please refer to the SC's website.

B. List of Guidelines Issued by Bank Negara Malaysia and MyClear Relating to the Debt Securities and *Sukuk* market

1. Central Securities Depository and Paying Agency Rules (CSDPAR) - May 2011
2. Operational Framework For MGS Switch Auction - January 2007
3. Guidance Notes on Repurchase Agreement Transactions - July 2006
4. Participation and Operation Rules for Payment and Securities Services - May 2011
5. Operational Procedures for Securities Services - May 2011
6. Operational Procedures for RENTAS - May 2011
7. Guidelines on Regulated Short-Selling of Securities in the Wholesale Money Market - October 2005
8. Guidelines on Standing Facilities - April 2004
9. Guidance Notes on Sell and Buy-back Agreement Transactions - August 2002
10. Guidelines on Securities Borrowing and Lending (SBL) Programme under RENTAS - December 2001

Note: The list of Guidelines mentioned above is current as at the date of this publication. However, Bank Negara Malaysia continuously reviews and introduces new guidelines to facilitate the growth of the debt securities and *Sukuk* market. For the latest list, please refer to Bank Negara Malaysia's and MyClear's website <https://fast.bnm.gov.my/fastweb/public/MainPage.do>

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http://www.sc.com.my/eng/html/bondmkt/MalaysianDebtSecuritiesSukuk_2009.pdf
- Bond Info Hub (Bank Negara Malaysia)
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