



Joint Information Note on the Issuance of Foreign Currency-Denominated Bonds and Sukuk in Malaysia

27 March 2007

1.0 Introduction

1.1 As part of the continuous efforts by Bank Negara Malaysia and the Securities Commission to promote the development of the domestic capital market, in particular the Islamic bond market under the initiative to develop Malaysia as an International Islamic Financial Centre (MIFC), a framework has been introduced to facilitate the issuance of foreign currency-denominated bonds and sukuk in Malaysia by:

(a) multilateral development banks (MDBs);

(b) multilateral financial institutions (MFIs);

(c) foreign governments;

(d) agencies or national corporation of the Malaysian Government or foreign governments;

(e) foreign multinational corporations (MNCs); and

(f) resident corporations.

(collectively known as Qualified Issuers).

1.2 The purpose of this Joint Information Note is to set out the facilitative requirements applicable to foreign currency-denominated bonds and sukuk issued by Qualified Issuers in a transparent manner and shall be read together with the Securities Commission's Practice Note 1A issued on 27 March 2007.

2.0 Submission of Application

2.1 An application by a Qualified Issuer should be submitted to the Ministry of Finance (for MDBs and MFIs only), Bank Negara Malaysia and the Securities Commission.

Submission to Bank Negara Malaysia

2.2 Any submission to Bank Negara Malaysia may be made through an adviser[1], or directly to Bank Negara Malaysia, providing the required information as in Appendix.

[1] Adviser means:
(a) Commercial banks licensed under Banking and Financial Institutions Act 1989;
(b) Islamic banks licensed under Islamic Banking Act 1983; and

Submission to Securities Commission

2.3 A submission to the Securities Commission shall be made through an adviser in accordance with the Practice Note 1A issued by the Securities Commission pursuant to the Guidelines on the Offering of Islamic Securities or the Guidelines on the Offering of Private Debt Securities, whichever is applicable.

2.4 A submission by a Qualified Issuer which is at least single 'A-' credit rating for the foreign currency-denominated bonds and sukuks shall be deemed approved upon a proper filing to the Securities Commission at least two working days prior to the issuance.

3.0 Issuance Specifications

3.1 Foreign currency-denominated bonds and sukuk shall be issued on scripless basis through the Fully Automated System for Issuing/Tendering (FAST) operated by Bank Negara Malaysia.

3.2 The size of the bond to be issued should be large enough to contribute to the development of the domestic bond market.

3.3 There is no minimum tenure requirement imposed for the issuance of foreign currency-denominated bonds and sukuk.

3.4 At least one credit rating is to be made available throughout the tenure of the bond issuance or programme. Foreign currency credit ratings assigned by international credit rating agencies are acceptable.

(c) Investment banks licensed both as a merchant bank pursuant to section 5 of the Banking and Financial Institutions Act 1989 and a Dealer pursuant to section 12 of the Securities Industry Act 1983 and, and duly established pursuant to the Guidelines on Investment Banks jointly issued by Bank Negara Malaysia and the Securities Commission.

4.0 Depository & Settlement

4.1 Foreign currency-denominated bonds and sukuk shall be deposited with the Real Time Electronic Transfer of Funds and Securities (RENTAS) System, with Bank Negara Malaysia as the Central Depository agent for the bonds, and Authorised Depository Institutions in Malaysia as the Sub-Depositories. An adviser or lead arranger which is a RENTAS member shall be appointed to facilitate the process of depositing the bonds in the RENTAS.

4.2 USD-denominated bonds and sukuk shall be settled on Delivery versus Payment (DvP) once enhancement to RENTAS is completed. Bonds and sukuk denominated in other foreign currencies shall be settled on a non-DvP basis.

5.0 Acceptance as collateral under RENTAS

5.1 Foreign currency-denominated bonds and sukuk issued in Malaysia are acceptable as collateral under RENTAS.

6.0 Shariah Adviser Requirement

6.1 In the case of a sukuk issuance, a domestic or foreign Shariah Adviser shall be appointed to advise on all aspects of a foreign currency-denominated *sukuk* issuance.

7.0 Utilisation of Proceeds

7.1 Foreign currency funds raised from the issuance of foreign currency-denominated bonds and sukuk may be used either for domestic purpose or overseas.

8.0 Maintenance of foreign currency funds

8.1 Issuers and investors are free to maintain foreign currency accounts with licensed onshore banks[2] in Malaysia for any purpose.

[2] Licensed onshore bank refers to:
(a) Commercial banks licensed under Banking and Financial Institutions Act 1989;
(b) Islamic banks licensed under Islamic Banking Act 1983; and

9.0 Hedging

9.1 Non-resident issuers and investors may hedge up to the full amount of foreign exchange and interest/profit rate exposure:

(a) vis-à-vis ringgit with licensed onshore banks in Malaysia; and

(b) in foreign currency with licensed onshore banks in Malaysia or other non-residents financial institutions.

9.2 Resident issuers and investors may hedge up to the full amount of foreign exchange and interest/profit rate exposure with licensed onshore banks in Malaysia.

10.0 Governing Law

10.1 The laws of Malaysia, England or the United States may be used in the relevant legal documentation. Notwithstanding the above, the relevant provisions of the Securities Commission Act 1993 and the Securities Industry Act 1983 in relation to the issuance, subscription and trading of bonds and sukuk in Malaysia shall apply, and are to be complied with at all times.

11.0 Trustee Requirement

11.1 The statutory requirement to appoint a trustee and enter into a trust deed is exempted if an issuance, offer or invitation of the foreign currency-denominated bonds and sukuk is:

(a) made by the Federal Government, any State Government, any statutory body of Malaysia or it is guaranteed by the Federal Government of Malaysia;

(b) made by a AAA-rated foreign government, MDB, MFI, or agency or national corporation of a foreign government[3]; and

(c) made by a Qualified Issuer exclusively to sophisticated institutional investors[4].

(c) Investment banks licensed both as a merchant bank pursuant to section 5 of the Banking and Financial Institutions Act 1989 and a Dealer pursuant to section 12 of the Securities Industry Act 1983, and duly established pursuant to the Guidelines on Investment Banks jointly issued by Bank Negara Malaysia and the Securities Commission.

[3] As stated under paragraph 12, Schedule 4 of the Securities Commission Act 1993

[4] As stated under paragraph 11, Schedule 4 of the Securities Commission Act 1993

12.0 Investment by residents in foreign currency-denominated bonds

12.1 Investment by residents in foreign currency-denominated bonds and sukuk issued in Malaysia will be in accordance to the prevailing foreign exchange administration policy on investment in foreign currency assets.

13.0 Income tax and withholding tax on investors of foreign currency-denominated sukuk

13.1 Resident investors are exempted from payment of income tax on the profits received from foreign currency-denominated sukuk issued in Malaysia.

13.2 Profits or income on non-residents' investments in foreign currency-denominated sukuks issued in Malaysia are fully exempted from withholding tax.

Appendix

Application for Issuance of Foreign Currency-denominated Bonds and Sukuk in Malaysia by Qualified Issuers

(a) Name of issuer and brief description of issuer's business

(b) Credit rating of issuer and name of credit rating agency

(c) Size of issuance

(d) Profit/Interest rate benchmark (e.g. Fixed, Floating [Benchmark])

(e) Profit/Interest payment frequency

(f) Tenor

(g) Type of bonds/sukuk

(h) Lead manager/Lead arranger/Adviser

(i) Other manager (if any)

(j) Underwriter (if any)

(k) Purpose of issuance
   - (i) For use in Malaysia
   - (ii) For use abroad

(l) Proposed hedging counter-party (if any)

(m) Method of issuance (e.g. open tender, book-building, private placement)

(n) Embedded option contracts (e.g. buy-back option)

(o) Details of contact person:
   - (i) Malaysia
   - (ii) Abroad

Information to be provided if proceeds of issuance are to be on-lent wholly or partly to a resident:

(p) Name of counterparty/borrower

(q) Relationship of issuer with counterparty/borrower (if any)

(r) Purpose of financing/loan utilisation

(s) Terms of financing/loan

(i) Amount

(ii) Profit/Interest rate

(iii) Tenor

(iv) Bearer of withholding tax (if applicable)

(v) Repayment period

(vi) Prepayment/callable option

Additional information to be provided by resident issuers:

(t) Existing credit facilities of the applicant

(i) Credit facilities obtained from:

- Non-resident in foreign currency
- Resident bank in foreign currency
- Resident non-bank in foreign currency

(ii) Total gross income for the latest financial year ended

(iii) Shareholders' funds of the applicant and group as at the latest financial year ended or latest net working funds if applicant is a Malaysian branch of an overseas company