

CONSULTATIVE DOCUMENT ON GUIDELINES FOR INTEREST SCHEMES



CONSULTATIVE DOCUMENT ON GUIDELINES FOR INTEREST SCHEMES

The Companies Commission of Malaysia (SSM) invites comments on the provisions of the proposed Guidelines for Interest Schemes as set out in this consultative document by **23 February 2017**. Please provide your name and the organisation you represent (where applicable) and to provide reference on the Clause/s you are commenting.

Comments must be forwarded by email to: lrpia@ssm.com.my

Confidentiality: Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been requested.

TABLE OF CONTENTS

CHAPTER 1: PRELIMINARY	7
Introduction	7
Interpretation	8
CHAPTER 2: REGISTRATION REQUIREMENT (QUANTITATIVE)	10
TYPE OF SCHEMES THAT MAY BE REGISTERED	10
THE MANAGEMENT COMPANY	10
Criteria/Main Requirements	10
Capital Requirements	10
Profit Test	11
Operating History & Management Capability	13
Schemes Infrastructure	13
Joint Venture Company	17
Necessary Approvals and Disclosure of Fund Source	17
Compliance of Governance Structure	17
Maintenance of Records	17
THE CHIEF EXECUTIVE OFFICER (CEO)	18
The Management Company must appoint CEO	18
Requirements	18
Retirement and Resignation	18
THE INDEPENDENT CONSULTANT	19
Appointment of Independent Consultant	19
Criteria/Main Requirements	19
Report	20
FOREIGN SCHEMES – ADDITIONAL REQUIREMENTS	20
Criteria/Main Requirements	20
Due Diligence by an Independent Consultant	21
Certain activities are not foreign scheme	21
PROMOTION & MARKETING BY THE MANAGEMENT COMPANY	22
Marketing and Promotion by Management Company	22
Criteria/Main Requirements for Marketing Agent	23
THE TRUSTEE	24

Criteria/Main Requirements	24
Roles and Responsibilities	24
CHAPTER 3: REGISTRATION REQUIREMENT (QUALITATIVE) Business & Industry Dynamics	26
Report by Independent Consultant	26
CHAPTER 4: ADDITIONAL REGISTRATION REQUIREMENT OTHER REQUIREMENTS	28
Threshold on Fund to be Raised and Restriction to Consolidate	28
Pricing, Fund Size and Fund Raising Objectives	29
Public Offer Ratio	30
Duration of the Scheme	31
FUND MANAGEMENT	31
Trust Account	31
Sinking Fund/Reserve Fund	32
Retention Fund	32
RISK ASSESSMENTS	32
ADDITIONAL SAFEGUARDS FOR INVESTOR	33
Buy Back Policy and Buy Back Method of Calculation	33
Insurance	33
Cooling-off Period	33
PROPERTY OF THE SCHEME	34
Underlying Valuable Asset	34
Approval from Relevant Authorities	34
Lease	34
Charge	35
ACCOUNTS	35
Separation of Account for Scheme	35
AGREEMENT	35
License or Subscription Agreement	35
ADVERTISEMENT	36

SALE OF INTEREST BY MANAGEMENT COMPANY	36
DISCLOSURE OF PRICES	37
Price of Interest Unit	37
Monthly or Yearly Expenses	37
CALCULATION OF RETURNS	37
ADDITIONAL SUBMISSION REQUIREMENT	38
MEDIATION AND ARBITRATION	38
CHAPTER 5: DETERMINATION AND TERMINATION	39
MATURITY DATE	39
CHAPTER 6: STATUTORY DOCUMENTS TO BE LODGED WITH THE REGISTRAR	39
TRUST DEED AND CONTRACTUAL AGREEMENT	39
Covenants of the Management Company	40
Covenants of the Trustee	41
Amendment of the Trust Deed	42
Material Change in Circumstances	42
PROSPECTUS OR PRODUCT DISCLOSURE STATEMENT	43
Profile of Suitable Investor	43
Anti-Money Laundering Policy	44
Renewal of Prospectus or Product Disclosure Statement	44
Statement of Disclaimer	44
CHAPTER 7: DECISION BY REGISTRAR	46
CHAPTER 8: POWER TO TAKE ACTION FOR BREACH OF THIS GUIDELINES	46
APPENDIX 1	47
APPENDIX 2	54
APPENDIX 3	55
APPENDIX 4	56

PREAMBLE

In view of the broad application of the Interest Schemes Act 2016 (“the Act”), SSM recognizes the need to provide a more effective and comprehensive guidelines to regulate wide-ranging activities including subscription and purchase of interest other than shares and debentures that offers the right to participate in monetary benefits, income or profits and/or asset or realization of any financial, business undertaking or schemes.

This Guidelines set out the policy regulating interest schemes under the Act on the registration, management, processes and termination to be observed by Management Company and approved Trustees. This Guidelines stipulates the parameters of compliance for the application to register interest schemes in relation to the offer and sale of interests pursuant to the provisions of the Act and where appropriate also serves to regulate the conduct of registered schemes pursuant to the provisions of the Act.

This Guidelines serve as the main reference point over any subsidiary guidelines to cater for any category of interest schemes. The Policy Guidelines and Requirements for Sale of Club Membership 1992 (updated 2002), the Policy Guidelines and Requirements for Timesharing Arrangements 2000 (updated 2002), the Policy Guidelines and Requirements on the Issuance of Advertisement in Relation to Registered Interest Schemes dated 13 July 2010 and the Policy Guidelines and Requirements for Sale of Share-Farming Grower’s Plot dated 13 July 2010 (hereafter each and/or collectively referred to as “the Subsidiary Guidelines”) shall remain in force but, in the event of any inconsistency with this Guidelines, the Subsidiary Guidelines shall be superseded only to the extent of such inconsistencies.

The Registrar may, from time to time review this Guidelines or issue practice notes or Frequently Asked Questions (FAQs) to provide further clarity and guidance on any of the matters set out in this Guidelines.

CHAPTER 1: PRELIMINARY

INTRODUCTION

1. The Act regulates a company's issuance and offer to the public for subscription or purchase of interest other than shares and debentures.
2. Interest is defined under section 2(1) of the Act as any interest or right to participate, whether enforceable or not, whether actual, prospective or contingent whether in Malaysia or elsewhere and whether or not the interest or right is evidenced by a formal document or relates to a physical asset in any investment, time-sharing or recreational membership scheme.
3. The definition under section 2(1) of the Act excludes the following: -
 - (i) any shares in or debenture of a corporation;
 - (ii) any capital market product as defined in section 2 of the Capital Markets and Services Act 2007;
 - (iii) any interest in a partnership agreement unless the agreement relates to a contract, arrangement, undertaking or enterprise; or
 - (iv) any participatory interest in any product offered by the licensees regulated under the Financial Services Act 2013 and the Islamic Financial Services Act 2013, approved issuers of a designated payment instruments regulated under the Financial Services Act 2013 and the Islamic Financial Services Act 2013 and the development financial institutions prescribed under the Development Financial Institutions Act 2002.
4. Any party who wishes to offer for sale of interest to the public shall comply with the provisions under the Act and the requirements in this Guidelines. A management company may apply to the Registrar in the manner as determined by the Registrar for the registration of one or more schemes referred to in the Act. An application to register a scheme shall be made to the Registrar by providing the information specified by the Act and any regulations made thereunder.

INTERPRETATION

5. In this Guidelines, the following terms shall have the meaning set forth as follows:

<i>'Act'</i>	Means the Interest Schemes Act 2016
<i>'Chief Executive Officer'</i>	Any officer acting in a similar capacity or occupying the position of a Chief Executive Officer by whatever name called
<i>'Fee' or 'Membership Fee'</i>	Payment payable or contributed by the interest holder to the Management Company under the Trust Deed or Contractual Agreement and under the Prospectus or Product Disclosure Statement for subscribing an interest and includes membership fee, license fee or interest unit price
<i>'Interest'</i>	Shall have the same meaning as assigned under section 2(1) of the Act
<i>'Interest holder'</i>	Subscriber of any interest issued or proposed to be issued in respect of a scheme
<i>'Management Company'</i>	Any company incorporated under the Companies Act 2016 which issued or proposes to be issued any interests or any deed as assigned under section 2(1) of the Act
<i>'Maturity date'</i>	Prescribed date on which the scheme ends
<i>'Membership/license scheme'</i>	Scheme which offers membership or license by Management Company to the public for a duration of not less than 12 months. The Management Company operates the scheme and the member/license holder will be entitled to the right to use the facilities or assets offered
<i>'Minister'</i>	Minister charged with the responsibility for companies
<i>'Premium Scheme'</i>	Scheme offered by a Management Company which is a public company limited by shares incorporated under the Companies Act 2016
<i>'Registrar'</i>	Registrar as designated under Section 20A of the Companies Commission of Malaysia Act 2001

<i>'Scheme or Schemes'</i>	Includes Time-Sharing Scheme, Membership/License Scheme, Marina Scheme, Share Farming Scheme, Memorial Park Scheme, Property Scheme, Equipment Sharing Scheme either individually or collectively
<i>'Small scheme'</i>	Scheme offered by a Management Company which is a company limited by shares incorporated under the Companies Act 2016
<i>'Trust Deed/Contractual Agreement'</i>	Document prepared pursuant to sections 19-21 of the Act, First Schedule of the Act and the Guidelines duly approved by the Registrar
<i>'Unit of interest'</i>	Individual unit in the scheme that entitles the holder to the interest

6. The Schemes set out in this part are by no means exhaustive and may include such further categories of schemes as shall be determined by the Registrar from time to time.
7. Any reference to a primary document shall also include reference to any supplemental, replacement or renewal document.

CHAPTER 2: REGISTRATION REQUIREMENT (QUANTITATIVE)

TYPE OF SCHEMES THAT MAY BE REGISTERED

A scheme may be registered as a small scheme, a premium scheme or a foreign scheme as provided under sections 5, 6, 7 and 8 of the Act.

THE MANAGEMENT COMPANY

The Management Company must comply with all the requirements set out under this Guidelines.

Criteria/Main Requirements

8. For the purposes of application to register a scheme, the Management Company must comply with the following:
 - (a) the Management Company must be a company limited by shares;
 - (b) for the purposes of registering a scheme, the Management Company must fulfill the criteria as set out below; and

Types of Scheme	Types of Company
Small Scheme	Private or public company limited by shares incorporated under the Companies Act 2016 and must meet the criteria in the definition of SME set by SME Corporation Malaysia (as revised from time to time) and Appendix 4 of this Guidelines
Premium Scheme	Public company limited by shares incorporated under the Companies Act 2016
Foreign Scheme	Public company limited by shares locally incorporated under the Companies Act 2016

- (c) the Management Company must be majority owned (more than 50%) by shareholders who are Malaysian citizens or permanent residents.

Capital Requirements

9. The capital requirement shall be a minimum amount set out in the table below (fully paid up in the form of cash) taking into account the type of scheme and the amount of fund to be raised.

TYPE OF SCHEMES	MINIMUM PAID UP CAPITAL (RM)	FUND SIZE (RM)
Small Scheme	500,000	<ul style="list-style-type: none"> ■ Minimum: 1 million ■ Maximum: 10 million
Premium Scheme	1 Million	<ul style="list-style-type: none"> ■ Above 10 Million to 50 million
	2 Million	<ul style="list-style-type: none"> ■ Above 50 Million to 100 million
	5 Million	<ul style="list-style-type: none"> ■ Above 100 Million
Foreign Scheme	5 Million	<ul style="list-style-type: none"> ■ Any amount

10. At least 20% of the paid up capital or a minimum amount of RM100, 000 (whichever is higher) must remain in the form of liquidities during the duration of the scheme.
11. The Management Company may apply to the Registrar for the release of the requirement under Clause 10 above if the Management Company is able to satisfy the solvency test under the provision of the Companies Act 2016 upon annual review by the Registrar.

Profit Test

12. The Management Company must show uninterrupted profit after tax (PAT) track record for a minimum of 4 years preceding the date of application for registration of the scheme. The track record must be based on audited financial statements lodged with the Registrar.
13. The profit must be derived from related activities only.
14. The PAT may be flexible but must show reasonable profit figures.
15. In considering whether a proposed scheme is viable, a profit forecast for a minimum period of 4 years must be provided. Projections must use previous profit track record as the basis.

16. If the Management Company is unable to fulfill the profit requirements, approval may be considered if the following conditions are fulfilled:

- (a) The holding company:
 - (i) is able to fulfil the profit requirements over the profit track record period as per Clause 12 above; and
 - (ii) has common controlling shareholders.

OR

- (b) At least one corporation within the Group (excluding the holding company):
 - (i) is able to fulfil the profit requirements over the profit track record period as per Clause 12 above;
 - (ii) are involved in the same core business; and
 - (iii) has common controlling shareholders.

OR

- (c) If neither the Management Company nor any of the companies within the Group is able to fulfill the profit requirements, approval may be considered if the Management Company:
 - (i) is a company that falls within the category or operates a scheme of the nature set out under Appendix 2 of this Guidelines;
 - (ii) has provided a detailed turnaround plan to bring the Management Company back to profitability level together with detailed profit forecast for a minimum period of four (4) years after returning to profitability level to the satisfaction of the Registrar;
 - (iii) has provided sufficient proof from the audited financial statements and supporting documents that the Management Company has healthy cash flow position and financial liquidity and appears able to repay all its debts as they become due in the ordinary course of business to the satisfaction of the Registrar; and
 - (iv) is able to provide any other additional information or document required by the Registrar.

PROVIDED THAT the Registrar may impose one or more suitable investor protection mechanisms including but not limited to varying the tenure of the scheme, the fund size, the creation and threshold

of the retention fund and any other measures as the Registrar deems fit.

Operating History and Management Capability

17. The Management Company must have a minimum of five (5) years of good track record in the same nature of business as the proposed scheme.
18. Related companies' experience and track record will also be considered if the following conditions are fulfilled:
 - (a) either the holding company or a related company has a minimum of five (5) years of solid track record in the same nature of business; and
 - (b) have common controlling shareholders.
19. If neither the Management Company nor any of the companies within the Group is able to fulfill the management track record requirement, approval may be considered if at least one (1) of the member/s of the management team, which term refers to a group of two (2) or more persons directly responsible to oversee the management of the scheme, consists of individual(s) having a minimum of five (5) years experiences and demonstrate expertise in managing companies and in-depth knowledge of the related business.
20. The Registrar reserves the right to require the management team including the CEO of the scheme to undergo an appropriate level of security vetting and he or she must be a fit and proper person and shall not be a person who could face disqualification to act as a director on the grounds set out under sections 198 and 199 of the Companies Act 2016.
21. If the scheme consists of additional or different entity(ies) other than the Management Company, to act as an operator or manager or a developer of the scheme, the requirements that apply to Management Company under this provision shall apply to such additional entity(ies).

Scheme Infrastructure

22. The Management Company must comply with the following infrastructure requirements:

CATEGORY	INFRASTRUCTURE REQUIREMENT
Investment Scheme that has the effect of providing monetary return with the stated fund raising objective that has the effect of growing existing business	<ul style="list-style-type: none"> ▪ An appropriate or suitable scheme infrastructure for the nature and size of business undertaken or to be undertaken must already be in place to reflect the capability of the Management Company. ▪ In addition, an Independent Consultant must also express his views on the scheme infrastructure as part of his report to be made pursuant to Clause 40 of this Guidelines.
Scheme that has the effect of providing monetary return with the stated fund raising objective that has the effect of funding an entirely new project	<ul style="list-style-type: none"> ▪ There must be sufficient resource to operate and manage the scheme. ▪ An independent consultant must also express his views on the scheme infrastructure as part of his report made pursuant to Clause 40 of this Guidelines. ▪ SUBJECT TO the Registrar imposing any one or more suitable investor protection mechanisms including but not limited to varying the tenure of the scheme, the fund size, the creation and threshold of the retention fund and any other measures as the Registrar deems fit.
Membership/license scheme and Time-sharing scheme	<ul style="list-style-type: none"> ▪ Where in the application or in the Trust Deed or Contractual Agreement or in the Prospectus or Product Disclosure Statement, certain facilities are offered for use and/ or enjoyment in return for subscription

	<p>of a unit of interest, the facilities must be fully completed and ready for use.</p> <ul style="list-style-type: none"> ▪ In addition, the infrastructure that relates to or supports the provision or use of such facilities must also be fully completed and certified as fit for occupation by the relevant authority responsible for such matter under the law.
<p>Memorial Park Scheme</p>	<ul style="list-style-type: none"> ▪ Where in the application or in the Trust Deed or Contractual Agreement or in the Prospectus or Product Disclosure Statement, the plot attributable in respect of a unit of interest subscribed, the relevant development or planning approval must be obtained from the relevant authorities, the plot must be properly zoned, identified, constructed and completed. ▪ Where in the application or in the Trust Deed or Contractual Agreement or in the Prospectus or Product Disclosure Statement, there are facilities attributable in respect of a unit of interest subscribed, the plot and the corresponding facilities must be fully completed and ready for use. ▪ In addition, the infrastructure that relates to or supports the provision or usage of such plot and facilities must also be fully completed and (where applicable) certified as habitable or fit for occupation by the relevant authority responsible for such matter under the law.

23. The Registrar may consider and give approval for a scheme which contains incomplete infrastructure or infrastructure under construction or development **SUBJECT TO** the following conditions:
- (i) The scheme viability as a whole will not be undermined by the fraction of the incomplete infrastructure or infrastructure under development. In coming to this finding the Registrar may rely on the report of the independent consultant made pursuant to Clause 40 of this Guidelines which may include factors such as the significant percentage (%) of completion, the completion of progressive works according to schedule and whether separately certified to be habitable or fit for occupation;
 - (ii) There are clear identification and separation of interest units between units of interest that are related to or supported by the completed infrastructure and those which are related to or to be supported by the incomplete infrastructure;
 - (iii) The units of interest which are related to or to be supported by the incomplete infrastructure shall not be offered for sale. As and when the infrastructures are completed and certified accordingly and the corresponding units of interest become available for sale, the necessary modification must be made to the Trust Deed or Contractual Agreement and in the Prospectus or Product Disclosure Statement subject to approval by the trustee and the Registrar;
 - (iv) If the party undertaking the development of the incomplete infrastructure is different from the Management Company, such party must be made a party to the Trust Deed or Contractual Agreement.

PROVIDED THAT the Registrar may impose one or more suitable investor protection mechanisms including but not limited to the creation and threshold of the retention fund and any other measures as the Registrar deems fit.

Joint Venture Company

24. Where a joint venture is entered into between two (2) or more companies, the following conditions are to be complied with:-
- a) A special purpose vehicle (SPV) company must be set up to carry out the function of the Management Company; and
 - b) Internal control mechanism must be implemented to ensure:-
 - (i) The asset and the scheme are protected from any illegal transactions; and
 - (ii) The transactions are recorded in line with approved accounting standards.

Necessary approvals and disclosure of fund source

25. **Approval from other authority**
The Management Company must obtain all necessary approvals from the relevant authorities relating to the scheme activities.
26. **Disclosure of the source of fund**
The Management Company must disclose to the Registrar the source of fund for the indicated return prior to producing yield.

Compliance of governance structure

27. The Management Company must establish its own compliance of the governance structure to ensure that the interest of the interest holder is protected. It is the Management Company responsibility to devise a program suitable to its business model that allows self-monitoring of its conduct of the scheme. In particular, the compliance of governance structure should provide a basis for the monitoring system of internal control, record keeping, and systematic process for recurring obligations such as the renewal of the Prospectus or Product Disclosure Statement.

Maintenance of Records

28. A register of interest holders must be kept and maintained at the registered office or business address of the Management Company at all times.

29. The register of interest holders must be available for inspection by the Trustee and interest holders at all times during office hours.

THE CHIEF EXECUTIVE OFFICER (“CEO”)

The Management Company must appoint a CEO

30. The Management Company must appoint a Chief Executive Officer (“CEO”) who is responsible for the management of the scheme and for all matters and complaints relating to the scheme.

Requirements

31. The Registrar has the discretion to direct the CEO to attend an interview session and undergo an appropriate level of security vetting prior to his appointment as the CEO of the scheme.
32. The CEO must be a person who sits on the Board of Directors of the Management Company or a person who reports directly to the Board of Directors of the Management Company.
33. The CEO must be familiar with the operation and responsibility of the scheme.
34. The CEO must have the necessary knowledge and experience to manage the scheme.

Retirement and Resignation

35. The CEO shall hold office until his retirement or resignation subject to a minimum period of thirty (30) days’ notice in writing to the Management Company of his intention to retire or resign.
36. The Management Company shall notify the Trustee and the Registrar within seven (7) days of any appointment, resignation, removal or retirement of the CEO.
37. The Management Company must ensure that there is continuity in the holding of the CEO’s position. A new CEO shall be appointed by the Management Company within thirty (30) days upon the vacancy of the post by the outgoing CEO. In the event that appointment of the succeeding CEO would be delayed on reasonable grounds, the Management Company may appoint an interim or caretaker CEO subject to notification to the Trustee

and the Registrar and subject to the period of such appointment not exceeding sixty (60) days from the date of vacancy of the CEO's position.

THE INDEPENDENT CONSULTANT

Appointment of Independent Consultant

38. The appointment to act as an independent consultant for the scheme must be approved by the Registrar. The Management Company may appoint different independent consultants over the scheme duration.

Criteria/Main Requirements

39. The independent consultant must comply with three (3) or more of the following criteria upon application:-

- (i) Has extensive and practical experience in the management and operation of the scheme;
- (ii) Certified by relevant authorities (possessed valid certificate);
- (iii) A member of trade associations of the relevant industry;
- (iv) Has acted as independent consultant for a number of projects in related areas (to provide past client list);
- (v) Has undertaken a number of related research projects funded by recognized local/international universities at doctorate level;
- (vi) Has won international acclaim for work in related areas;
- (vii) Has served as an employee at management/technical operation level at governmental agencies primarily responsible for the related areas/industries; or
- (viii) Has been commissioned by any governmental institutions to carry out a number of related research projects.

Report

40. The Management Company at its own cost and expense must appoint an independent consultant to provide the relevant reports under the following situation :

Category of Scheme	Situation	Upon Application for registration	Throughout the duration of the Scheme
Investment Schemes that have the effect of providing monetary return	In all cases	Independent consultant to provide the initial report upon application for the scheme registration	Independent consultant to provide two (2) interim reports per year on the progress and quality of work carried out on the scheme at interval not exceeding six (6) months from the previous report.
Memorial Park Schemes	In cases where the Scheme infrastructure is incomplete or under construction		
Timeshare Schemes			
Golf & Recreational Club Schemes			

41. The scope of the initial report to be included in the submission documents for application of the scheme registration are as specified under Clauses 81 and 82 of this Guidelines.
42. The scope of the two written interim reports per annum on the development of the scheme are as specified under Clauses 85 and 86 of this Guidelines.

FOREIGN SCHEME – ADDITIONAL REQUIREMENTS

Criteria/Main Requirements

43. The Management Company must be a company incorporated under the Companies Act 2016 subject to the shareholding structure as set out under Clause 8(c) of this Guidelines.
44. The Management Company must specify in its Constitution that the managing of interest scheme is one of its main objects.
45. The foreign scheme has obtained approval in the country of origin or in any foreign jurisdiction that has a regulatory framework that is comparable to Malaysia.

46. In addition, the Management Company must provide and produce the following:
- (i) The names and addresses of the foreign company that operates the foreign scheme together with the relevant group shareholding chart involving the Management Company;
 - (ii) A copy of the certificate of incorporation of the foreign company at its country of origin;
 - (iii) Evidence that the foreign scheme is lawfully approved or registered or is exempted by the relevant regulators in the foreign jurisdiction;
 - (iv) A copy of a Prospectus or Product Disclosure Statement and an approved Trust Deed or Contractual Agreement, or such other similar document in the foreign jurisdiction; and
 - (v) Any other document that the Registrar may require.

Due diligence by an Independent Consultant

47. Due diligence at the cost and expenses of the Management Company is to be carried out by an independent local consultant [e.g. local solicitors or audit firms] with foreign affiliates in the country of origin of the foreign scheme and exclude the person currently advising the Management Company in respect of the application for registration of the scheme. The scope of the due diligence shall include:
- (i) Credit rating report from the foreign credit rating agency (Foreign CRA) that has information from the country of origin of the foreign schemes. The local consultant must ensure that the Foreign CRA is credible;
 - (ii) Information about the regulatory framework of the scheme carried out in the country of origin including the details of investor protection accorded under that framework;
 - (iii) Core corporate and financial information including shareholding structure, board of directors, solvency status including receivership, winding up or similar status, profit and loss and years in operation in respect of the Management Company or its holding or related company undertaking the scheme in the foreign country subject to the same period of review to fulfill the profit and operating history requirements under Clauses 12-21 of this Guidelines; and
 - (iv) Legal verification regarding the scheme including land status, land restriction or conditions and business activities carried out.

Certain activities are not foreign scheme

48. If a business activity for which the scheme is set up is located at a foreign country but the company managing the scheme is controlled wholly or

substantially by a local ultimate holding company, such scheme shall not be considered a foreign scheme.

49. The Registrar reserves the right to require partial compliance of the relevant provisions under this Clause according to the circumstances of each application. Examples of such activities are overseas livestock business or land banks or plantations acquired and managed by a company controlled wholly or substantially by a local ultimate holding company.

PROMOTION AND MARKETING BY THE MANAGEMENT COMPANY

Marketing and Promotion by Management Company

50. The Management company must ensure that all marketing and promotional material, content, publication, displays, advertisement and all related marketing and promotional products and activities comply with the relevant provisions of the Act, Guidelines, Practice Notes and any of the same that are issued from time to time.
51. The Management Company must ensure that all representation made to the public is in accordance with the Trust Deed or Contractual Agreement and current Prospectus or Product Disclosure Statement.
52. The Management Company must ensure that it does not indulge in 'hard-sell' techniques which put the public under undue pressure and leading to the signing of the application form for the scheme under duress or undue influence.
53. The Management Company must on its best effort basis conduct the marketing and promotion on its own and should not engage a marketing agent.
54. However, if it is proven to the satisfaction of the Registrar that sales performance has deteriorated significantly or significantly fall short by more than 50% of the sales target for a period of not less than one (1) year from the date of the first Prospectus or Product Disclosure Statement for the scheme, the Management Company may apply to the Registrar for the approval to appoint a Marketing Agent.
55. The appointment of the Marketing Agent must be approved by the Registrar. The application must be accompanied by:
 - (i) Sufficient proof about the sale shortfall referred to under Clause 54 above; and
 - (ii) The Management Company shall lodge with the Registrar a proposed modification to the Trust Deed or Contractual Agreement to

incorporate a provision that allows for the appointment of a Marketing Agent.

Criteria/Main Requirements for Marketing Agent

56. The marketing agent must be a company which is approved by Registrar.
57. The Management Company is responsible for the performance and conduct of the marketing agent and any employee of the marketing agent who promotes and sells the interest on behalf of the Management Company. The marketing agent shall be treated as an agent of the Management Company.
58. The Management Company must ensure that the marketing agent does not publish any advertisement, circular or any other documents that contain any statement with respect to the scheme.
59. The Management Company must ensure that the marketing agent comply with the relevant provisions of the Act, Guidelines and Requirements, Practice Notes that are issued from time to time.
60. The Management Company must ensure that all representation made by its marketing agent to the public is in accordance with the Trust Deed or Contractual Agreement and current Prospectus or Product Disclosure Statement.
61. The Management Company must notify the Registrar and Trustee in writing within seven (7) days of any resignation and removal of the marketing agent.
62. The Management Company must ensure that its marketing agent will not be involved in any way in relation to the secondary market.
63. The marketing agent must not delegate its authority to another party to sell the interest on behalf of the Management Company.
64. The Management Company must ensure that the appointed marketing agent does not indulge in 'hard-sell' techniques which put the public under undue pressure and leading to the signing of the application form for the scheme under duress.

THE TRUSTEE

Criteria/Main Requirements

65. The Trustee must be a public company limited by shares that is registered as a trust company under the Trust Companies Act 1949 or any other person approved by the Minister.
66. The Trustee must have sufficient man power and expertise to carry out its duties and responsibilities under the Trust Deed or Contractual Agreement.
67. The Trustee must be independent and not related in any way, whether directly or indirectly, to the Management Company.

Roles and Responsibilities

68. **Any monies to be remitted**
The Trustee must take all reasonable actions to ensure that the Management Company pays any monies payable to the Trustee under the Trust Deed or Contractual Agreement within thirty (30) days upon receipt.
69. **Interest holder protection**
The Trustee must ensure that the interest of interest holders are preserved and protected at all times.
70. **Trust Account**
The Trustee must hold the monies standing in the trust accounts as prescribed in the Trust Deed or Contractual Agreement and invest them in suitable liquid and secured investment in accordance with the terms of the Trust Deed or Contractual Agreement.
71. **Insurance Coverage**
The Trustee must take all reasonable actions to ensure that adequate insurance coverage is obtained by the Management Company on the

scheme and that the scheme is adequately covered by insurance for the entire period of the scheme.

72. **Inspection**

The Trustee must conduct periodical site visits for inspection purposes (as stated in the Trustee Compliance Monitoring Plan) and seek remedial action if the condition is unsatisfactory.

73. **Complaint**

The Trustee must investigate and take appropriate steps to ensure any complaints made by interest holders are resolved.

74. **Corporate Governance**

(i) The Trustee must report to the Registrar immediately on any known non-compliance or breach of Trust Deed or Contractual Agreement by the Management Company or its agents and the roles as stipulated in the Act and the Trust Deed or Contractual Agreement.

(ii) The Trustee must ensure that the covenants in the Trust Deed or Contractual Agreement Deed and contents in the Prospectus or Product Disclosure Statement are complied with.

75. **Engagement With Liaison Committee**

If in respect of a scheme, a liaison committee is established or required to be established pursuant to the provision of the Subsidiary Guidelines, the Trustee must conduct regular engagement with members of the liaison committee to obtain feedback on the scheme and the Trustee may determine the appropriate manner of carrying out the engagement including conducting meetings, tele-conferencing or exchanges of written communication.

76. **Review Independent Consultant Report**

(i) The Trustee must review the interim reports by the independent consultant and in appropriate situations, obtain necessary feedback on the operation of the scheme.

(ii) The Trustee must take all reasonable actions to ensure that the bi-annual interim reports by the independent consultant are sent to the Registrar within fourteen (14) days upon receipt of such reports.

77. **Land**

(i) The Trustee must retain current information relating to the legal status of the land and inform the Registrar and interest holders of the possibility of the land being disposed or foreclosed upon receiving

such knowledge e.g. information that the Management Company defaulted on the loan.

- (ii) In such situation, the Trustee must take all necessary actions to ensure that the rights and interest of the interest holders are protected.
- (iii) If the land is leased to the Management Company, the Trustee must take all reasonable efforts to ensure that the lease is registered in the name of the Management Company within a reasonable time.
- (iv) The Trustee must update the Registrar on the status of the registration of the land in timely manner.

78. Compliance Monitoring Plan

The Trustee must produce a Compliance Monitoring Plan to ensure that the interest of the holder is protected prior to appointment with the Registrar.

79. Scope of Compliance Monitoring Plan

The scope of the Compliance Monitoring Plan includes the following:-

- (i) Schedule based inspection at reasonable interval corresponding to the risk profile of the scheme.
- (ii) Timeline and procedures for event based inspection, e.g. complaints, special items withdrawal from the trust account or when Interest Holder's Fees are being raised requiring the consent of the Trustee.
- (iii) Such other proactive measures to properly monitor the operation of the scheme in accordance with the Trust Deed or Contractual Agreement or to avoid money laundering.

80. Maintenance of Records

The Trustee must ensure that the register of interest holders is properly kept and maintained.

CHAPTER 3: REGISTRATION REQUIREMENT (QUALITATIVE)

BUSINESS & INDUSTRY DYNAMICS

Report by the independent consultant

- 81. The Management Company must be able to demonstrate the viability and sustainability of the proposed scheme. In complying with the requirement, an initial report will need to be submitted by an independent consultant.
- 82. The scope of the report must include, in the case of initial report upon scheme application, an overview of the industry, analysis on the scheme viability and sustainability, scheme infrastructure, risk factors and disclosures and such other material and relevant information which would

assist the Registrar in considering the application for registration of the scheme.

83. The Report must form part of the application together with the Prospectus or Product Disclosure Statement and if the Report is found to be false, misleading or intentionally omits material facts, the Management Company or the independent consultant can be held liable under the Act.
84. Notwithstanding paragraph 84 above, the Registrar may if he is not satisfied with the quality of the independent consultant's report or if the report contains false, misleading or intentionally omits material facts, either:-
 - (i) Request for a fresh/different consultant's report at the cost of the Management Company;
 - (ii) Reject the application; and/or
 - (iii) Direct the Management Company to appoint a new independent consultant.
85. In the case of interim reports, two (2) interim reports must be submitted per year providing the progress and quality of work carried out on the scheme. The independent consultant must examine and provide report on key business performances during the period under review such as sales, income, market pricing and other relevant information to determine whether the business of the scheme is on course to meet the objective of the scheme. The independent consultant must highlight any progress shortcoming or deficiencies which may materially affect the timely and orderly development or management of the scheme or which may greatly affect the ability of the Management Company to meet the scheme objective.
86. For the avoidance of doubt, the requirement under this Clause that applies to the initial report shall also apply to the interim reports or such other reports prepared by the independent consultant pursuant to any requirement under this Guidelines.

CHAPTER 4: ADDITIONAL REGISTRATION REQUIREMENT

OTHER REQUIREMENTS

Threshold on Fund to be Raised and Restriction to Consolidate

87. The following threshold of fund size in respect of type and category of schemes shall be used as guidance.

CATEGORY OF SCHEME	TYPES OF SCHEME	FUND THRESHOLD (RM)
Investment Scheme that has the effect of providing monetary return	Small Scheme	Minimum: 1 million Maximum: 10 million
	Premium Scheme and Foreign Scheme	Minimum: 10 million Maximum: 50 million
Golf & Recreational Club Schemes	Small Scheme	Minimum: 1 million Maximum: 10 million
	Premium Scheme and Foreign Scheme	Minimum: 10 million No maximum monetary limit on individual scheme subject to cap on consolidated scheme below.
Time-Sharing Schemes	Small Scheme	Minimum: 1 million Maximum: 10 million
	Premium Scheme and Foreign Scheme	Minimum: 10 million No maximum monetary limit on individual scheme subject to cap on consolidated scheme below.
Memorial Park Scheme	Small Scheme	Minimum: 1 million Maximum: 10 million
	Premium Scheme and Foreign Scheme	Minimum: 10 million No maximum monetary limit on individual scheme subject to cap on consolidated scheme below

88. For purpose of consolidation, scheme(s) operating at different locations may be consolidated provided the scheme(s) are similar in nature, tenure and all rights attaching with the scheme currently applied for registration.

CATEGORY	RESTRICTION TO CONSOLIDATE
-----------------	-----------------------------------

Investment Scheme that has the effect of providing monetary return	<ul style="list-style-type: none"> ■ Restriction on consolidating under one scheme numerous schemes operating in various locations except the collective fund size is below RM75 million.
Golf & Recreational Club Schemes	<ul style="list-style-type: none"> ■ For a golf club – every 9 holes – 2,000 members. ■ For non-golf club the maximum number of license must correspond to the number or size of facilities provided. ■ Restriction on consolidating under one scheme numerous schemes operating in various locations save where the collective fund size is below RM150 million.
Time-Sharing Scheme	<ul style="list-style-type: none"> ■ The maximum number of timeshare units must correspond to the number of units in the scheme to avoid overselling. ■ Restriction on consolidating under one scheme numerous schemes operating in various locations save where the collective fund size is below RM150 million.
Memorial Park Scheme	<ul style="list-style-type: none"> ■ The maximum number of units must correspond to the number of units in the scheme to avoid overselling. ■ Restriction on consolidating under one scheme numerous schemes operating in various locations save where the collective fund size is below RM150 million.

Pricing, Fund Size and Fund Raising Objectives

89. The Management Company must disclose to the Registrar the details of its fund raising objectives including its basis or calculation to determine the intended fund size. The Management Company must also provide detailed explanation on how it plans to utilize the fund. The Registrar reserves the right to reject or review the fund size accordingly.
90. The Management Company must ensure that the intended fund size correspond to its fund raising objective. Any application to vary, modify or increase the fund size of the scheme during the scheme tenure shall not be allowed except when any fund size increase resulting from upward or

downward adjustment of the price of each unit of interest calculated according to the basis disclosed earlier during the application for registration of the scheme. For the avoidance of doubt, any fund size increase arising from the following circumstances shall not be allowed:

- (i) adding additional units of interest by breaking up the existing number of available units of interest and creating additional number of units therefrom; and
- (ii) adding additional land, property, rights in respect of the scheme to create additional units of interest therefrom,

PROVIDED ALWAYS and subject to the threshold of collective fund size under Clause 87 and on condition that the nature of the scheme, tenure and all rights attaching to the unit of interest are similar to the existing scheme, the Management Company may apply to consolidate additional schemes operating in different locations subject to payment of the relevant fees to the Registrar in respect of the approval for the difference in the amount between the existing fund size and the increased fund size.

- 91. Depending on the risk profile of a scheme, the Registrar reserves the right to request from the Management Company, confirmation on the minimum threshold of fund that must be achieved within a reasonable period in order for the scheme to be viable or able to meet its objective and such confirmation must be to the satisfaction of the Registrar. Further, the Registrar may impose conditions relating to the keeping of the fund in the interim in appropriate trust account upon such terms as determined by the Registrar pending the threshold being reached.
- 92. The Management Company that have previously registered their scheme and would like to open a subsequent scheme may only re-apply after showing good financial performance for five (5) consecutive years from the date of commencement of the previous scheme. Notwithstanding that, the Management Company of the following schemes may re-apply before expiration of the five (5) year period for consideration by the Registrar:
 - (i) schemes other than a scheme that has the effect of providing monetary return; and
 - (ii) schemes that has the effect of providing monetary return where the return are clearly paid from the operating profits of the Management Company for two (2) consecutive years and not from any reserve fund created out of any license fee collected from the interest holder.

Public Offer Ratio

- 93. In respect of a scheme that has the effect of providing monetary return, the Management Company must hold 30% of the total interest issued over

the course of the scheme duration, unless otherwise allowed by the Registrar and must be taken up upon approval of the Trust Deed or Contractual Agreement and Prospectus or Product Disclosure Statement.

94. To reflect the take up of the 30% of the interests issued, a sum proportionate to the amount to be retained in the Trust Account must be deposited in the Trust Account within 30 days from the take up date.
95. In certain cases, the Registrar may consider an appropriate progressive take up mechanism.

Duration of the Scheme

96. The duration of the scheme must correspond to the period of realization of the objective of the scheme.

Explanation:

- **Minimum Duration :**
Based on capital return period.
- **Maximum Duration :**
Based on operational reasonable feasibility.

97. The Registrar reserves the right to review the proposed duration, upon assessing the information disclosed to it.

FUND MANAGEMENT

Trust Account

98. The Management Company must establish a trust account in the name of the appointed Trustee with a licensed bank for the purpose of depositing and holding on trust monies received as required by the Trust Deed or Contractual Agreement.
99. The Management Company must remit to the Trustee any monies received from interest holders that are payable to the Trustee under the Trust Deed or Contractual Agreement within thirty (30) days after receiving such money, for the monies to be deposited into the trust account.
100. Any monies collected during the cooling-off period must be deposited into the trust accounts immediately from the date of the collection.

101. The trust accounts shall be audited by an approved company auditor at the end of each financial year.
102. Monies in the trust account may be invested by the Trustee in suitably secured investment as specified in the Trust Deed or Contractual Agreement. Any interest or income arising out of the investment shall accrue to the fund.

Sinking Fund

103. The Management Company must establish a Sinking Fund under a separate trust account in the name of the appointed Trustee with a licensed bank.
104. The purpose of the fund is to cover the costs of reasonable claims in respect of any repairs and replacements of the property of the scheme. The Sinking Fund shall not be used for normal maintenance or minor repairs and replacements.
105. The Management Company shall deposit a sum of not less than 10% of interest holders fee received into the fund within thirty (30) days after receiving such fee.
106. All claims for withdrawal of monies from the Sinking Fund must be supported with documents and approved by the Trustee.

Retention Fund

107. If the Registrar considers it fit with the aim of protecting the interest of interest holder, a retention fund comprising a proportion to be determined by the Registrar from the fees collected must be held in a trust account and may only be withdrawn for purposes and upon such times as specified by the Registrar. The Management Company must establish a Retention Fund Account in the form of another trust account in the name of the appointed Trustee with a licensed bank.

RISK ASSESSMENTS

108. The Management Company must state in the Prospectus or Product Disclosure Statement the risk assessments carried out and the practical and effective measures that would address or mitigate any risk assessed.

ADDITIONAL SAFEGUARDS FOR INVESTOR

Buy Back Policy and Buy Back Method of Calculation

109. The Management Company must state in the Trust Deed or Contractual Agreement and Prospectus or Product Disclosure Statement, the full details of the buyback calculation proposed to be carried out.

Insurance

110. The Management Company must ensure that the scheme's assets is covered by the relevant insurance coverage.

Cooling-off period

111. The Management Company must attach a copy of the Prospectus or Product Disclosure Statement to the application form for interest holder to be supplied to the potential licensee/interest holder.
112. The Management Company must provide a cooling-off period of at least ten (10) days after receiving the application form from the interest holder.
113. Any money collected by the Management Company or its agent from the interest holder during the cooling-off period must be deposited with the Trustee immediately.
114. During the cooling-off period, the interest holder is entitled to the cooling-off period to allow the interest holder to consider whether to maintain the purchase of the License or otherwise. In the event that the interest holder decides to withdraw his Purchase Order during the cooling-off period by submitting the Withdrawal Notice to the Management Company the Trustee and/or the Management Company (as the case shall be) shall return the Deposit in full, free of interest, without any deduction or charges to the Applicant within fourteen (14) days from the date of receipt of Withdrawal Notice provided always such Withdrawal Notice is acknowledged receipt in writing by the Management Company during the cooling-off period shall have the right to withdraw the application made or rescind the contract without any deduction or penalty.
115. Trustee shall only release any money collected during cooling-off period to the Management Company after the cooling-off period has lapsed and provided no claim for refund has been made by an applicant who has served notice to the Management Company to withdraw the purchase prior to the expiry of the cooling-off period.

PROPERTY OF THE SCHEME

Underlying Valuable Asset

116. The Registrar reserves the right to require that safeguard mechanism in the form of underlying valuable asset be put in place which asset is to belong to the scheme and managed by the Trustee.

Approval from relevant Authorities

117. The Management Company must obtain approvals from all relevant authorities for the scheme property to be used for the purpose of the scheme.

Lease

118. Leased properties/land will only be allowed if they are leased from a related company that has common controlling shareholders with the Management Company such as:

- (i) the holding company of the management company that has common controlling shareholders with the Management Company;
- (ii) a company that is wholly owned by the Management Company; or
- (iii) a subsidiary of (i) above that has common controlling shareholders with the Management Company.

119. The Management Company must obtain written consent from the Lessor for the leased land to be used for the purpose of the scheme.

120. The Lessor must be a party to the Trust Deed or Contractual Agreement and be subjected to relevant covenants of the Trust Deed or Contractual Agreement including that it shall not encumber the land during the lease period.

121. The Management Company must ensure that the use of the leased land in the proposed scheme does not breach of any terms and conditions of the lease agreement.

122. The lease period must be at least two (2) years longer than the duration/tenure of the scheme.

Charge

123. In the event that the land is charged or encumbered, the Management Company must obtain a written consent from the chargee allowing the said land to be used for the proposed scheme.
124. After the launch of the scheme, the land can only be charged for the purpose of the scheme, with written consent from the Trustee.
125. The Management Company must disclose to the Trustee of any possibility that the chargee or the creditor may enforce the charge or seek recourse for debts owing.
126. The Management Company must furnish the Trustee the report on the status of the registration of the land and encumbrances relating to the said land in timely manner.

ACCOUNTS

Separation of Account for Scheme

127. The Management Company and every director and manager of the Management Company must cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of every scheme separately and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared from time to time, and must cause those records to be kept in such manner as to enable them to be conveniently and properly audited.

AGREEMENT

License or Subscription Agreement

128. A license or subscription agreement can only be executed between a licensee/interest holder and the Management Company after the lapse of the cooling-off period.

129. The terms of the license or subscription agreement must not prejudice the interests of the licensee/interest holder. A sample of the license or subscription agreement must be attached to the executed Trust Deed or Contractual Agreement. In the event of any inconsistency between the Trust Deed or Contractual Agreement and the license or subscription agreement (including such other agreement), the provision of the Trust Deed or Contractual Agreement to the extent of such inconsistency thereto shall prevail over the provision of the license or subscription agreement (including such other agreement).
130. The Management Company must maintain a register of interest holders at its registered office or business address at all times. The register of interest holders must be available for inspection by Trustee and interest holders at all times during office hours.

ADVERTISEMENT

131. Any advertisement by the Management Company in relation to the scheme is subject to section 35 of the Act and the relevant guidelines and requirements, practice notes and any of the same that are issued from time to time.
132. The use of the SSM's logo is strictly prohibited.
133. The Management Company must ensure that the advertisement does not contain misleading information and Company shall fulfill obligations/promises in advertisement.
134. The validity period of the Prospectus or Product Disclosure Statement must be included in the advertisement. Advertisement artworks must be checked by the Trustee to ensure compliance with the Act and relevant guidelines before publication.

SALE OF INTEREST BY MANAGEMENT COMPANY

135. Subject to the terms of the Trust Deed or Contractual Agreement, the Management Company may offer its interest for sale to the public provided that the offer is accompanied by a current copy of the Prospectus or Product Disclosure Statement.
136. The Management Company must ensure that the licensee/interest holders are supplied with the valid copy of the Prospectus or Product Disclosure Statement within fourteen (14) days from the date of request and upon payment of a fee not more than RM20.00.

DISCLOSURE OF PRICES

Price of Interest Unit

137. The price offered to interest holders must reasonably correspond to the expected financial returns or fair value of the interest offered.
138. The computation method of the price of an interest unit must be stated in the Trust Deed or Contractual Agreement and Prospectus or Product Disclosure Statement. While the price of an interest unit during subsequent sales after launch can be fixed by the operator subject to market forces, the method of calculation must be provided in the Trust Deed or Contractual Agreement and Prospectus or Product Disclosure Statement.

Monthly or Yearly Expenses

139. The monthly or yearly expenses payable by interest holders must be disclosed in the Trust Deed or Contractual Agreement and Prospectus or Product Disclosure Statement.
140. Any increase in the aggregate for each calendar year by more than 5% at any one time in respect of the monthly or yearly expenses must be approved by the Trustee and the interest holders must be notified of any increase. Approval from the Trustee is not required for any increase in the aggregate by 5% or less for each calendar year but interest holders must be informed. The Registrar reserves the right to request further clarification or document or conduct inspection to determine if any increase in the monthly or yearly expenses is warranted.

CALCULATION OF RETURNS

141. The computation of any financial benefit to be received by each interest holder must be approved by Registrar.
142. The Registrar makes no endorsement of return guarantee by the Management Company or any other party. The Registrar reserves the right to take all actions to the full extent permitted by law against any party making representation in any document or advertisement or through any other conducts that has the effect of expressing or implying such endorsement.

ADDITIONAL SUBMISSION REQUIREMENT

143. The directors of the Management Company are directly responsible to oversee the management of the scheme and must do the followings:
- (i) Confirm in writing on compliance with the relevant laws governing the scheme applicant and the conduct of business carried out. For purpose of guidance, compliance with such relevant laws include but not limited to approval or permission from the Land Office, Municipal Council, Fisheries Department, Maritime Department, Ministry Of Agriculture.
 - (ii) Submit a signed declaration that he or she is a fit and proper person and not a person or persons who could face disqualification to act as a director on the grounds set out under section 125 and section 130 of the Act.
 - (iii) Highlight to the Registrar in writing information on all material terms and conditions imposed by the relevant authorities. For purpose of guidance, such information includes but not limited to conditions and tenure of license, certificate of fitness and land restrictions.
 - (iv) Confirm in writing that the Management Company is not in breach of provisions of the Act.
 - (v) Provide certified copies of approval, license, permit, title deed, certificate, plans, drawings in respect of any matter relating to the scheme application or submission of any statutory documents under Chapter 6 from relevant authorities. In a situation where the law does not prescribe that any of the foregoing documents must be created or issued by any relevant authority, then the maker of such document shall be a person who is competent in the ordinary course of business to create or issue the document.

MEDIATION AND ARBITRATION

144. Any dispute between any parties to this Trust Deed or Contractual Agreement arising out of or in connection with the Trust Deed or Contractual Agreement (except for such matter(s) expressed in the Deed or Agreement to be determined first by another person) must, at first instance, be referred to a mediator for resolution. Should the mediation fail, in whole or in part, any party may, upon giving written notice, and within twenty eight days thereof, apply for the appointment of a single arbitrator for final resolution.
145. The rules relating to mediation and/or arbitration including the appointment of mediator and/or arbitrator shall be governed by both the Arbitration Act 1952 and the Rules of the Kuala Lumpur Regional Centre for Arbitration (KLRCA Arbitration Rules) or in the case involving parties of foreign

domicile, the KLRCA UNCITRAL Rules and the seat of arbitration shall be Malaysia.

CHAPTER 5: DETERMINATION AND TERMINATION

MATURITY DATE

146. The scheme expires on the maturity date as stated in the Trust Deed or Contractual Agreement.

CHAPTER 6: STATUTORY DOCUMENTS TO BE LODGED WITH THE REGISTRAR

TRUST DEED AND CONTRACTUAL AGREEMENT

147. Under section 19 of the Act, a Management Company and Trustee shall ensure that the Trust Deed or Contractual Agreement contain covenants stipulated in this section and First Schedule of the Act.

148. The requirements stipulated in this chapter 6 are in addition to requirements imposed on the Management Company and the Trustee under the Act and other related law. The contents of this Chapter are in addition to and not in derogation of any other duty imposed by any other law.

149. A Management Company, or its adviser, must submit an application to register and lodge the Trust Deed or Contractual Agreement in accordance with the requirements under section 20(3) of the Act.

Covenants of the Management Company

150. A Trust Deed or Contractual Agreement must contain the duties of the Management Company which are prescribed under the Act, First Schedule of the Act and this Guidelines. The Trust Deed or Contractual Agreement must include and disclose, but not limited to, the following covenants –
- (i) A provision to the effect that if a third party property management company or a professional manager has been engaged by the Management Company to act as an operator or manager to manage the scheme on its behalf, the full particulars of the material terms of that engagement must also be disclosed to the Registrar. There must also be a provision to the effect that subject to the Registrar's approval, such entity must be included as a party to the Trust Deed or Contractual Agreement and be bound by the covenants of the Management Company but notwithstanding the engagement, the Management Company shall still be liable and shall not be absolved from the full liabilities caused by the failure or non-performance of duties and covenants of the third party property management company or manager.
 - (ii) Tenure of the scheme.
 - (iii) The number of interest offered, number of interest reserved and maximum interest available for sale.
 - (iv) Formula for computation of financial returns.
 - (v) Role of the Trustee.
 - (vi) Obligations of the Management Company pursuant to the Act and this Guidelines.
 - (vii) Any exemption provided by the Minister to the Management Company from complying with any of the provisions in the Act.
 - (viii) A provision to allow any interest holder on payment of a fee of not exceeding RM10.00 to request from the Management Company to furnish him within fourteen (14) days a certificate certifying:
 - (a) Whether monthly/annual fees payable by interest holders are in good standing;
 - (b) Whether there are any legal proceedings in existence or contemplated in respect of the scheme or Management Company; or

- (c) Whether the development or project is sufficiently covered by insurance.
- (ix) The license/subscription agreement and any other agreement in relation to the scheme must be attached to the Trust Deed or Contractual Agreement as part of its contents. The Trust Deed or Contractual Agreement must contain a provision to the effect that in any event of inconsistency between the Trust Deed or Contractual Agreement and the Membership Agreement (including such other agreement), the provision of the Trust Deed or Contractual Agreement to the extent of such inconsistency thereto shall prevail over the provision of the Membership Agreement (including such other agreement).
- (x) With reference to Item 1(h)(iv) of First Schedule of the Act, the Trust Deed or Contractual Agreement must contain a method of calculating the purchase price of the interest.
- (xi) The Trust Deed or Contractual Agreement must adhere to the following:
 - (a) Any advertisement by the Management Company in relation to the scheme is subject to section 35 of the Act and the relevant guidelines and requirements, practice notes and any of the same that are issued from time to time; and
 - (b) Any use of SSM's logo is strictly prohibited.

Covenants of the Trustee

151. A Trust Deed or Contractual Agreement must contain duties of a Trustee which are prescribed under the Act, First Schedule and this Guidelines, also include and disclose, but not limited to, the following covenants –
- (i) Fulfill their role and duties as stipulated in the Act and this Guidelines and the relevant Trust Deed or Contractual Agreement and ensure the interest of the interest holders are preserved.
 - (ii) Ensure that development and facilities as promised in the Trust Deed or Contractual Agreement are delivered and properly maintained.
 - (iii) Make regular visits to inspect the condition of the Scheme and its facilities and seek remedial actions in the event of any matter not to his satisfaction.

- (iv) Ensure that interest of the interest holders are preserved and protected.
- (v) Hold meetings with members of the Liaison Committee to get feedback on the management of the scheme and its facilities.
- (vi) Investigate into complaints by interest holder.
- (vii) Report to the Registrar any non-compliance with the covenants of the Trust Deed or Contractual Agreement by the developer and/or the operator.

Amendment to the Trust Deed or Contractual Agreement

152. Any amendment made to the Trust Deed or Contractual Agreement, including alteration, deletion or addition of any of the covenants, can only be made via a supplementary Trust Deed or supplemental Contractual Agreement with the approval of the Trustee and subject to determination by the Trustee of materiality under Clause 154, to notify the Registrar.
153. The Registrar upon being notified pursuant to Clause 154, has the discretion to impose additional covenants to be included in the supplemental Trust Deed or supplemental Contractual Agreement and the Trustee must ensure that such covenants be included.

Material Change in Circumstances

154. A Trust Deed or Contractual Agreement must incorporate a provision to the effect that when there is instance of material changes, the Trustee will make determination on materiality and as soon as possible take such necessary action in the best interest of interest holder:-
- (i) To inform or announce to interest holder;
 - (ii) To call for a meeting of interest holders to obtain an appropriate mandate;
 - (iii) To notify the Registrar; and
 - (iv) To cause the changes as mandated to be included by way of supplemental Trust Deed or supplemental Contractual Agreement.
155. Any material change would include but not restricted to the following:
- (i) Relocation of client's office/business address to a country outside jurisdiction or legal enforceability;
 - (ii) Material restructuring, merger and acquisitions;

- (iii) Substitution of functions to parties not subject to jurisdiction or legal enforceability unless provided for in the Trust Deed or Contractual Agreement; and
- (iv) Substitution of the CEO and/or the main management team directly responsible to oversee the management of the scheme which is likely to disrupt continuity.

PROSPECTUS OR PRODUCT DISCLOSURE STATEMENT

156. In addition to the requirements specified under Second Schedule of the Act and this Guidelines, the Prospectus or Product Disclosure Statement must also disclose the following information:-
- a. The maximum number of interest offered with details on number reserved and available for sale and if applicable, the number offered for promotional purposes;
 - b. Any exemption provided by the Minister to the Management Company from complying any of the provisions of the Act;
 - c. Management Company obligation to furnish subsequent purchaser of interest with a copy of the latest Prospectus or Product Disclosure Statement and the consequences of failure to do so;
 - d. Details on how interest holder can obtain a copy of the latest Prospectus or Product Disclosure Statement;
 - e. The obligation on the part of the Management Company;
 - f. Details of the appointment of the Marketing Agent and its corporate profile;
 - g. If the property is charged, risk to the interest holders in the event that the property is foreclosed; and
 - h. Method of calculation of pricing.

Profile of Suitable Investor

157. Management Company on best effort basis to develop the mechanism that a potential investor self-certifies not to overinvest. The threshold of over-investment can be determined by the Management Company but must be reasonable.
158. As a guide, potential investors are required to certify that they will not invest more than a specific percentage of their net investible portfolio in unlisted shares or unlisted debt securities (i.e. excluding their primary residence, pensions and life cover) before subscribing for the interest.
159. If a scheme is to be offered exclusively to high net worth investors more particularly described in Appendix 2 of these Guidelines, the Management

Company may apply for exemption from complying with any of the provisions of the Act.

Anti-Money Laundering Policy

160. The Management Company must provide and disclose the policies and procedures to avoid money laundering activities (e.g. procedures on identifying and verifying investors and beneficial owners, and actions to be taken by the Management Company when money laundering activity is detected).

Renewal of Prospectus or Product Disclosure Statement

161. Application for renewal of Prospectus or Product Disclosure Statement should be submitted to the Registrar at least two (2) weeks prior to the expiry date.
162. The application letter should state the changes made vis-a-vis the existing Prospectus or Product Disclosure Statement and give an undertaking that the new Prospectus or Product Disclosure Statement is the same as the existing Prospectus or Product Disclosure Statement except for the changes highlighted.

Statement of Disclaimer

163. A Prospectus or Product Disclosure Statement must contain the following statement of disclaimer:-

"A copy of this Prospectus or Product Disclosure Statement has been lodged with and is registered by the Registrar of Companies, Malaysia who takes no responsibility for its contents. Registration of the Prospectus or Product Disclosure Statement by Registrar of Companies

does not imply that the Interest Schemes Act 2016 or any other legal or regulatory requirements have been complied with”.

FORMS

164. The Management Company must keep, update and lodge with the Registrar the following forms:-

- (i) Notice of place where the register of interest holders is kept or any change of address in relation thereto.
- (ii) Annual Return of the scheme by the Management Company containing prescribed information.

CHAPTER 7: DECISION BY REGISTRAR

165. The Registrar has the power to approve, reject or refuse registration of a new scheme application, or approve the application subject to appropriate conditions. Such power also extends to the exercise of any of the powers for the administration of the relevant provisions under the Act and this Guidelines including but not limited to approval of documents, deed and appointment of persons or agents.
166. The Registrar has the power to impose any necessary terms or conditions as he thinks fit.
167. The final decision by the Registrar supersedes all earlier representations, warranties, indications.
168. Where certain powers under the Act are exercisable by the Minister, the Registrar shall make the appropriate recommendations to the Minister having regard to the provisions of this Chapter.
169. Any provisions in this Chapter regarding the extent of the Registrar's powers shall also apply if such decision is made by the Minister. Notwithstanding that, if there are provisions in this Chapter limiting the powers of the Registrar, unless expressly limited by the Act or any relevant law, such limitation shall not apply on any decision made by the Minister.

CHAPTER 8: POWER TO TAKE ACTION FOR BREACH OF THIS GUIDELINES

170. This Guidelines is issued pursuant to section 20C of the Companies Commission of Malaysia (Amendment) Act 2015 and the Registrar may take any one or more of the actions prescribed for any breach if a person fails to comply with or give effect to this Guidelines.

APPENDIX 1 - CHECKLIST

Note:	
*	All categories
**	Investment schemes that provide monetary returns
***	Golf, Recreational, Marina, Timeshare & Memorial Park
****	All categories except not suitable given the business nature
*****	Investment schemes that provide monetary returns and other categories where the scheme infrastructure is incomplete

(Please ensure that checklist has been marked and submitted together with the documents before submission to the COMPANIES COMMISSION OF MALAYSIA)

A	COVERING DOCUMENTS	APPLY TO	CHECKLIST	APPENDIX
1.	Cover Letter	*		
2.	Fee Calculation Checklist	*		
3.	Conceptual Paper/Write up to explain about the business model, nature of business and mode of operations of the scheme	*		
B	CORPORATE PROFILE OF THE COMPANY	APPLY TO	CHECKLIST	APPENDIX
a)	Main Requirements			
1.	Name of Company and Date of Incorporation	*		
2.	Registered office address	*		
3.	Principal Business / Office Address	*		
4.	The date for change of status to a public company	*		
5.	Shareholders – Names and percentage of their shareholdings <i>(The majority shareholding must be held by Malaysian citizens)</i>	*		
b)	Capital Requirements			
6.	Authorized share capital (RM)	*		
7.	Paid-up capital (RM) <i>(Minimum of RM500,000, refer to Clause 9 of this Guidelines)</i> Document required (i) Return of Allotment (ROA) (ii) Bank Statement	*		
c)	Profit Test			
8.	Audited financial statement for the last 4 years for the management company.	*		

9.	<p>If management company cannot fulfill the profit test requirement, Audited financial statement for the last 4 years of the holding company if the holding company :</p> <p>(i) is able to fulfill the profit requirements over the profit track record period; and</p> <p>(ii) have common controlling shareholders; OR</p>	*		
10.	<p>If neither the management company nor the holding company is able to fulfill the profit test requirement, Audited financial statement for the last 4 years of a related company if the related company:</p> <p>(i) is able to fulfill the profit requirements over the profit track record period; (ii) have common controlling shareholders ; and (iii) have the same core business</p>	*		
11.	<p>If neither the management company nor any of the companies within the group is able to fulfill the profit test requirement, the management company must provide the following documents :</p> <p>(i) Proof that the management company falls within Appendix 1 of this Guidelines; (ii) Detailed turnaround plan to return to profitability level; (iii) Detailed profit forecast; and (iv) Proof of healthy cash flow position.</p>	*		
d)	Operating History and Management Capability and Continuity			
12.	Directors and Company Secretary - (Names and Residential address)	*		
13.	A write up detailing the track record of the company and the management which is consistent with the Annual Return and Financial Statement of the company for the past 5 years	*		

14.	A write up detailing the track record of the Holding company or related company and the management of such companies which are consistent with the Annual Return and Financial Statement of such company for the past 5 years	*		
15.	A write up detailing the track record or expertise of any individual(s) engaged by the company to manage or directly supervise the operation of the scheme	*		
e)	Information on the Scheme			
16.	Name of the Scheme	*		
17.	CEO of the scheme (i) Profile and experiences (CV) (ii) Be a Member of the Board/Report directly to the Board	*		
18.	Address of the Scheme Location	*		
19.	Type / Nature / Category of Scheme	*		
20.	Duration of the scheme and date/year of expiry (For lease land, the scheme must be less than 2 years from the lease expiry date)	*		
21.	Duration of each interest unit	*		
22.	License Category / Unit Category	*		
23.	Fund Size / (Sales) Value of the scheme (RM)	*		
24.	Fund Raising Objective	*		
25.	Detailed explanation on Fund Utilization	*		
26.	Pricing : (i) License Fee/Unit Price according to category/package; (ii) Method of calculation of the Unit Price (iii) For schemes that provide monetary return, the price offered to interest holders must reasonably correspond to the expected financial returns	*		
27.	Maximum number of interest units offered (depending on the size of the business / operations / facilities)	*		

28.	Public offer ratio – To state based on type of scheme: (i) In RM value; or (ii) In number of units; or both if applicable	**		
29.	Return /profits / interim return to the interest holders : (i) Source of fund for the indicated return prior to producing yield; (ii) Method of computation of the return (Please provide supporting documents e.g. prevailing market price, sales record and etc); (iii) Manner of distribution of such payment (submit monthly/yearly schedule of estimated profits/returns for the period of the scheme)	**		
30.	Monthly / yearly subscription fees /One-Off Continuity Fee	***		
f)	Scheme Infrastructure			
31.	Land/property information: (i) Status/category of land use (Ensure that the land is suitable and permissible to be used for the proposed scheme by the Land Office) (ii) The total land area for the scheme (iii) Size per unit (iv) Land tenure (v) Land restrictions (vi) Owner of the land (vii) The said land must be free from encumbrances/consent from the chargee to be obtained (viii) If the property is leased/purchased – A copy of Lease Agreement or the Sale & Purchase Agreement (ix) Clearance letter/correspondence from the District & Land Office on the status of the Land (x) Clearance letter from land owner (if the land is owned by the State Government) (xi) Relevant development plan, building plan approval in respect of the scheme infrastructure	****		

	(xii) The progress of the project and written confirmation from architect/surveyor/engineer with photos attached			
32.	Facilities and Amenities: (i) Type and unit of facilities and amenities offered; (ii) Stage of completion/ready for usage (Provide proof-e.g. CF, etc.); and (iii) Stage of completion/ready for usage of supporting infrastructure (Provide proof-e.g. parking, access road, etc.)	****		
33.	Business and operation infrastructure: (i) Supporting document to prove that company has suitable or appropriate infrastructure for the nature and size of business; and (ii) Supporting document to prove that company has sufficient resource to operate and manage the scheme.	**		
C	INFORMATION ON THE APPOINTMENT OF INDEPENDENT CONSULTANT	APPLY TO	CHECKLIST	APPENDIX
1.	Name	*****		
2.	Corporate/personal profile	*****		
3.	Qualification attained (specialization)-Please state three (3) or more of the criteria set out in this Guidelines (to provide supporting documents)	*****		
4.	List of clients	*****		
5.	Report on the proposed scheme to contain: (i) Overview of the industry; (ii) Analysis on the scheme viability and sustainability; (iii) Views on the scheme infrastructure; (iv) Risk factors; and (v) Other material and relevant information	*****		
D	FOREIGN SCHEME – ADDITIONAL INDEPENDENT CONSULTANT	APPLY TO	CHECKLIST	APPENDIX
1.	Independent local consultant which is an established institution such as registered audit firm or legal firm with an international affiliate practicing at the country of origin of the foreign	*		

	<p>scheme. The consultant to provide the following due diligence confirmation:</p> <ul style="list-style-type: none"> (i) Credit rating report; (ii) Information about the regulatory framework; (iii) Core corporate and financial information; and (iv) Legal verification 			
E	RELEVANT APPROVALS, PERMITS, LICENSE	APPLY TO	CHECKLIST	APPENDIX
1.	A certified copy of Certificate of Completion and Compliance (CCC)	****		
2.	A certified copy of approval letter/permits/license from the relevant authorities governing the industry/business/operations which is the subject matter of the scheme	*		
3.	A copy of letter or Environmental Impact Assessment Report in connection with the proposed scheme	****		
F	INFORMATION FROM TRUST COMPANY	APPLY TO	CHECKLIST	APPENDIX
1.	A copy of Appointment Letter	*		
2.	Corporate profile with latest financial statement	*		
3.	List of club/scheme under the administration	*		
4.	Other Duties undertaken by the Trustee	*		
5.	Compliance monitoring plan by the Trustee	*		
6.	Trustee confirmation on the location where the records are kept	*		
G	TRUST ACCOUNT	APPLY TO	CHECKLIST	APPENDIX
1.	Number and type of trust account.	*		
2.	Purpose of the account (Including the percentage to be kept in the account).	*		
H	TRUST DEED OR CONTRACTUAL AGREEMENT	APPLY TO	CHECKLIST	APPENDIX
1.	A copy of the Trust Deed or Contractual Agreement for the scheme containing the covenants and particulars prescribed under the Interest Schemes Act 2016, Second Schedule of the Act and this Guidelines	*		
I	PROSPECTUS OR PRODUCT DISCLOSURE STATEMENT	APPLY TO	CHECKLIST	APPENDIX
1.	A copy of Prospectus or Product Disclosure Statement for the scheme containing the particulars prescribed under the Companies Act 2016, the Second Schedule of the Act and this Guidelines	*		

J	INFORMATION ON MEMBERSHIP/SUBSCRIPTION AGREEMENT AND RULES	APPLY TO	CHECKLIST	APPENDIX
1.	Membership/subscription Agreement	*		
2.	Rules & Regulations	*		
K	INFORMATION ON INSURANCE COVERAGE	APPLY TO	CHECKLIST	APPENDIX
1.	Name of Insurance Company	****		
2.	Type of Coverage	****		
3.	Policy Holder	****		
L	APPROVAL BY REGISTRAR FOR APPOINTMENT OF TRUSTEE	APPLY TO	CHECKLIST	APPENDIX
1.	Appointment of trustee under section 22 of the Act	*		
2.	Exemptions from other provisions, if any (state the justification/reason for the exception applied)	*		
M	ADDITIONAL SUBMISSION REQUIREMENT	APPLY TO	CHECKLIST	APPENDIX
1.	The director of the management company responsible for the scheme to submit the following: <ul style="list-style-type: none"> i) Written confirmation on company's compliance with relevant laws; ii) Director's declaration that he/she is fit and proper person; iii) Written confirmation on company's and director's compliance with the Companies Act 2016 - to provide the Certificate of Attestation of Company Good Standing (ACGS); iv) Certified copies of approval, license, permit, title deed, certificate, plans, drawings from the relevant authorities 	*		

APPENDIX 2 [CHAPTER 2 – CLAUSE 17(c)(i)]

VOL.	DESCRIPTION OF COMPANY / NATURE OF SCHEME
1	Serves to promote or is aligned with the national economic agenda to drive domestic economy in economic growth areas identified by the Government under the Economic Transformation Plan (ETP) in particular the EPP partners or participating companies.
2.	Has achieved certification from related agencies in areas like innovation, halal development, ICT, green technology, renewable and clean energy and sustainable development. Examples are Bio Nexus status, 1-innoCERT, MSC status companies.
3.	Serves to promote or is aligned with initiatives to promote linkage between university and industry to increase market driven collaborations in R&D, product commercialization, consultancy, industrial trainings and job placements.
4.	Serves to promote or is aligned with Government led policies to increase Bumiputera equity participation, or support the Bumiputera agendas like entrepreneur development, mentorship programme, industrial training and Bumiputra recruitment policy.

APPENDIX 3 [CHAPTER 6 - CLAUSES 158-160]

RATIONALE FOR EXEMPTION	THE HIGH NET WORTH INVESTOR
<p>Protection of the investing public – the aim of the law is to protect the great majority of the investing public who generally do not have access to private financial advice in order to independently make appropriate investment decision, therefore requiring strict compliance with the Guidelines. The Registrar may consider exercising power to exempt, vary or give relief if the entire interest scheme on the other hand will involve a special class of investors who are likely and can afford to have full access to independent financial advice.</p>	<p>For purpose of this Guidelines, this class of investors (also called “sophisticated investors”) are:</p> <ul style="list-style-type: none">• investors having a personal net worth of more than RM3 Million ; and / or• buying interest unit of which each has a value of not less than RM3 Million.

APPENDIX 4 [CHAPTER 2 – CLAUSE 8]

Definition of SME set by SME Corporation Malaysia.

A business can qualify as an SME if it meets either one of the two specified criteria, namely sales turnover or full-time employees, whichever is lower

- (i) Manufacturing Sector: Sales turnover not exceeding RM50 million OR full-time employees not exceeding 200.
- (ii) Services and other sectors: Sales turnover not exceeding RM 20 million OR full time employees not exceeding 75

Detailed definition by category and size of operation namely Micro, Small and Medium is as follows:

Size	Micro		Small		Medium	
	Sales Turnover (RM)	Employees	Sales Turnover (RM)	Employees	Sales Turnover (RM)	Employees
Manufacturing	<300,000	< 5 employees	300,000 to < 15 Million	5 to < 75 employees	15Million to < 50 Million	75 to < 200 employees
Services & Others			300,000 to < 3 Million	5 to < 30 employees	3 Million to < 20 Million	30 to < 75 employees

Note < is less than / is not exceeding

All the SMEs must be entities registered with SSM or other equivalent bodies. However it excludes the following:

- (i) Entities that are public-listed on the main board; and
- (ii) Subsidiaries of:
 - ❖ Publicly-listed companies on the main board;
 - ❖ Multinational corporations (MNCs);
 - ❖ Government-linked companies (GLCs);
 - ❖ Syarikat Menteri Kewangan Diperbadankan (MKDs); and
 - ❖ State-owned enterprises.