



**SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA**

POLICY GUIDELINES AND REQUIREMENTS FOR SALE OF SHARE-FARMING GROWER'S PLOT

INTRODUCTION

1. The objective of Division 5 Part IV of the Companies Act 1965 ("the Act") is to offer inventors protections in a wide range of investments that are beyond shares or debentures of a company by regulating public offering of interests, other than shares and debentures.
2. Upon the Companies Commission of Malaysia's ("SSM") assessment of the business module, it is of the view that the sale of a Grower's Plots constitutes a sale of interest within the meaning of section 84 of the Act.
3. Any party who wishes to offer for sale such interest to the public shall comply with the provisions under Division 5 Part IV of the Act and the requirements in this Policy Guidelines and Requirements for the Sale of Share Farming Grower's Plot ("Policy Guidelines").
4. This Policy Guidelines and requirements is issued pursuant to the provisions of sections 86 and 87 of the Act to facilitate the application for the registration of interest schemes in relation to the sale of share farming growers plots. Registrar retains the discretion

to exempt and/or vary any of the requirements in this Policy Guidelines as he thinks fit.

INTERPRETATION

'Management Company' refers to any person who issues or offer to the public for subscription or purchase, or invite the public to subscribe for or purchase any interest prescribed under section 84(1) of the Act.

'Minister' refers to the Minister charged with the responsibility for companies.

'Grower' refers to the subscriber of the scheme.

'Chief Executive Officer' includes any officer acting in a similar capacity or occupying the position of a Chief Executive Officer by whatever name called.

'Grower's Fee' refers to any payment payable by the grower to the Management Company under the trust deed.

'Grower's Plot' refers to the prescribed parcel of land of which the profit e *pandre* of that parcel of land had been allocated to the Grower by the Management Company in exchange of a fee.

'plantation land' refers to the land and the crops grown on the land that are used for the purpose of the scheme.

'maturity date' refers to the prescribed date of which the scheme ends.

'Registrar' means the Registrar of Companies.

'trust deed' means the document crafted pursuant to sections 85, 86 and 88 of the Act, Regulation 9 of the Companies Regulation 1966 and duly approved by the Registrar.

ELIGIBILITY

5. The Management Company must:
 - (a) be a public company limited by shares;
 - (b) comply with the minimum paid-up capital requirement specified in **APPENDIX 1** of this Policy Guidelines and Requirements, depending on the business module and the type of share farming activity;
 - (c) be majority owned by shareholders who are Malaysian citizens or permanent residents; and

- (d) consists of individuals who have experience and expertise in managing public companies and in-depth knowledge of the related business.
- (e) have obtained all necessary approvals from the relevant authorities for the plantation activities;

APPOINTMENTS

Appointment of a Trustee

6. The management company must appoint either a trustee for the scheme.
7. Only a trust company that fulfills the following requirements can be appointed as a trustee of the scheme:
 - (a) be registered under the Trust Companies Act 1949;
 - (b) have sufficient number of manpower and expertise to carry out its duties and responsibilities
 - (c) be approved by the Minister to act as trustee for the scheme; and
 - (d) be independent and not related in any way, whether directly or indirectly, to the Management Company.
8. In addition to the duties and responsibilities stipulated in the Act, the deed and the regulations made hereunder, trustee must also observe the following duties and responsibilities:

- (a) Take all reasonable actions to ensure that the Management Company pays any monies payable by the Management Company to the trustee under the trust deed within 30 days after receipt of the monies by the Management Company.
- (b) Hold the monies standing in the trust accounts as prescribed in the trust deed and invest them in suitable liquid and secured investment in accordance with the terms of the trust deed.
- (c) Ensure that the register of Growers is properly maintained.
- (d) Take all reasonable actions to ensure that adequate insurance coverage is obtained by the Management Company on the plantation land and that the plantation land is adequately covered by insurance during the entire period of the scheme.
- (e) Make regular site-visits for inspection purposes and seek remedial action if the condition is unsatisfactory.
- (f) Ensure that the interest of the Growers are preserved and protected at all times.
- (g) Attend any complaints made by any Grower.

- (h) Report to SSM immediately on any known non-compliance or breach of trust deed by the Management Company or its agents.
- (i) Hold at least 2 meetings per annum, subject to an interval period of not less than 4 months after the last meeting held, with an independent consultant (as further explained in paragraph 15 below) to obtain necessary feedback on the operation of the plantations. The feedback shall then be reduced in writing and submitted to SSM.
- (j) Take all reasonable actions to ensure that the bi-annual reports by the independent consultant appointed are sent to SSM within 14 days upon receipt of such reports.
- (k) Retain current information relating to legal status if the plantation land and inform the Growers of the possibility of the plantation land being disposed or foreclosed upon receiving such knowledge e.g. information that the Management Company defaulted the loan. In such situation, trustee shall take all necessary actions to ensure that the rights and interest of the Growers are protected.
- (l) If the plantation land is leased to the Management Company, trustee shall take all reasonable efforts to ensure that the lease be registered in the name of the Management Company within a reasonable time.

- (m) Update SSM on the status of the registration of the plantation land every quarter.

Appointment of Chief Executive Officer

- 9. The Management Company must appoint a Chief Executive Officer ("CEO") who is responsible for the operation of the scheme and to all matters and complaints relating to the scheme.

- 10. The CEO must be:
 - (a) a person who sits on the board of director of the Management Company or a person who reports directly to the board of the director of the Management Company;
 - (b) familiar with the operation and responsibility of the scheme; and
 - (c) approved by SSM.

Subject to its discretion, SSM may direct for the CEO to attend an interview session prior to his appointment as the CEO of the scheme.

- 11. The CEO shall hold office until his retirement or resignation subject to minimum of 30 days notice in writing to the Management Company of his intention to retire or resign.

12. The management company shall notify the trustee and SSM within 2 days of any appointment, resignation, removal or retirement of the CEO.

13. The Management Company must ensure that there is continuity in the holding of the CEO's position. A new CEO shall be caused to be appointed by the Management Company within 30 days upon the vacancy of the post by the outgoing CEO.

Appointment of Independent Consultant

14. The Management Company shall appoint an independent consultant to review the quality of work carried out on the plantation.

15. The independent consultant must be a professional advisor who has extensive and practical experience in the management and operation of the plantation.

16. The independent consultant must provide at least 2 written reports per annum on the development of the plantation. The Management Company shall submit the report to the trustee at least twice a year subject to an interval period of 4 months since the submission of the last report.

Appointment of Marketing Agent

17. The Management Company may appoint a marketing agent if there is a proviso in the trust deed that allows for the appointment of a marketing agent.

18. In absence of such proviso in the trust deed, the Management Company shall include the proviso by way of supplemental trust deed, prior to the appointment of a marketing agent.

19. The marketing agent must be a company which is approved by SSM.

20. The Management Company is responsible for the performance and conducts of the marketing agent and any employee of the marketing agent who promotes and sells the grower's plot on behalf of the management company. The marketing agent shall be treated as an agent of the Management Company.

21. The Management Company shall ensure that the marketing agent does not publish any advertisement, circular or any other documents that contain any statement with respect to the scheme.

22. The Management Company shall ensure that the marketing agent shall comply with the relevant provisions of the Act, policy guidelines and requirements, practice notes and any of the same that are issued from time to time.

23. The Management Company shall ensure that all representation made by its marketing agent to the public is in accordance with the trust deed and current prospectus.

24. The Management Company shall notify SSM and trustee within 2 days of any resignation and removal of the marketing agent.

25. The Management Company shall ensure that its marketing agent will not be involved in anyway in relation to the secondary market.

26. The marketing agent shall not delegate its authority to another party to sell the Grower's Plot on behalf of the Management Company.

27. The Management Company shall ensure that its marketing agent does not indulge in 'hard-sell' techniques which put the public under undue pressure and led the signing of the scheme under duress.

PLANTATION LAND

28. Management Company must obtain approvals from all relevant authorities for the plantation land to be used for the purpose of such proposed plantation.

Lease

29. Leased land will only be allowed as plantation land if the land is leased from:

(a) a company that wholly owns the Management Company,
or

(b) a company that is wholly owned by the Management Company,

unless otherwise approved by Registrar.

30. The Management Company must obtain written consent from the *lessor* for the leased land to be used as plantation land for the purpose of the scheme.

31. The *lessor* shall be a party to the trust deed and be subjected to relevant covenants of the deed including that it shall not encumber the plantation land during the lease period.

32. The Management Company must ensure that the use of the leased land as plantation land does not breach of any terms and conditions of the lease agreement.

33. The lease period must be at least 5 years longer than the duration/tenure of the scheme.

Charge

34. In the event that the plantation land is charged or encumbered, the Management Company must obtain a written consent from the *chargee* allowing the plantation land to be used for the scheme.

35. After the launching of the scheme, the plantation land can only be charged for the purpose of the scheme, with written consent from the trustee.

36. 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.

37. The Management Company shall furnish the trustee a quarterly report on the status of the registration of the land and encumbrances relating to the said land.

MEMBERSHIP

Cooling-off period

38. Management Company shall attach a copy of the prospectus of the interest to the application form for Grower's Plot to be supplied to the potential Grower.

39. Management Company shall provide a cooling-off period of at least 10 days after receiving the application form from Grower.

40. Any money collected by the Management Company or its agent from potential Grower during the cooling-off period must be deposited with the trustee immediately.

41. During the cooling-off period, potential Grower shall have the right to withdraw the application made or rescind the contract without any deduction or penalty.

42. Upon withdrawal of the application, any money collected from the potential Grower during the cooling-off period must be returned to the potential Grower within 14 days of the application of withdrawal.

43. Trustee shall only release any money collected during cooling-off period to the Management Company after the cooling-off period has lapsed.

Agreement between Grower and Management Company

44. A membership agreement can only be executed between Grower and the Management Company after the cooling-off period lapsed.

45. The terms of the membership agreement must not prejudice the interests of the growers and shall have consent from SSM. A sample of the membership agreement must be attached to the executed trust deed.

46. The Management Company must maintain a register of growers at its registered office or business address at all times. The register of Growers must be available for inspection by trustee and Growers at all times during office hours.

Fees

47. The Grower's Fee must reasonably correspond to the expected financial returns.

48. Any increase of more than 5% of any recurring fee required to be paid by the Growers under the trust deed must be with the approval of the trustee and be informed to the Growers.

Maximum Number Of Grower's Plot

49. Maximum number of Grower's Plot must be stipulated and correspond with the size of the plantation land.

50. Management Company must hold 30% of the total Grower's Plot as reserved Growers' Plots. The reserved Grower's Plot can only be sold upon approval of the Registrar.

51. Notwithstanding the above, Management Company must permanently hold 5% of the total Grower's Plot for the duration of the scheme.

RETURNS

52. The computation of any financial benefit to be received by each Grower must be approved by SSM.

ACCOUNTS

Trust Account

53. The Management Company must establish a trust account in the name of the appointed trustee with a bank for the purpose of depositing and holding on trust monies received as required by the trust deed.

54. Unless provided for, the Management Company must remit to the trustee any monies received from growers that are payable to the trustee under the trust deed within 30 days after receiving such money, for the monies to be deposited into the trust account.

55. Any monies collected during the cooling-off period must be deposited into the trust accounts immediately from the date of the collection.

56. The trust accounts shall be audited by an approved company auditor at the end of each financial year.

57. Any dividend/interest made by the trust account shall be payable to the Management Company for the purpose of holding meetings with the Growers.

Reserve Fund

58. The Management Company must establish a Reserve Fund in the form of another trust account in the name of the appointed trustee with a bank.

59. The purpose of the reserve fund is to cover the costs of reasonable claims in respect of any improvements and enhancements of the yield, harvesting and/or major maintenance of the trees and infrastructure of the plantation land. Reserve fund shall not be used for normal maintenance and minor repairs or replacements.

60. The Management Company shall deposit a sum not less than 10% of grower's fee received into the reserve fund within 30 days after receiving such fee.

61. A sum not less than 5% of total Growers' Fee collected by the Management Company shall be maintained at all times for the duration of the scheme, subject to the terms of trust deed and approval by trustee.

62. All claims for withdrawal of monies from Reserve Fund must be supported with documents and approved by the trustee.

63. The reserve fund shall be audited by an approved company auditor at the end of each financial year.

INSURANCE

64. The Management Company shall ensure that the trees and infrastructure on the plantation land are covered by the necessary insurance against events such as peat fire, damage and other contingencies.

ADVERTISEMENT

65. Any advertisement by the Management Company in relation to scheme is subject to section 40 of the Companies Act 1965, section 363(10) of the Companies Act 1965 and the relevant policy guidelines and requirements, practice notes and any of the same that are issued from time to time.

SALE OF GROWER'S PLOT BY GROWER

66. Subject to the terms of the trust deed, Grower may offer its plot for sale to the public provided that the offer is accompanied by a current copy of the prospectus.

67. The Management Company shall ensure that Grower is supplied with the valid copy of the prospectus within 14 days from the date of request and upon payment of a fee not more than RM20.00 by the Grower.

EXPIRATION OF SCHEME

Maturity Date

68. The scheme shall expire on the maturity date as stated in the trust deed.

Deed of Termination

69. The scheme may be terminated by way of deed of termination, with the consent of trustee and approval of Registrar.

70. Subject to the trust deed, the scheme can be terminated if:

- (a) the scheme has yet to make any sales, or
- (b) all Growers agrees to the termination of the scheme.

Winding-up

71. The scheme may be wound-up in accordance with section 95 of the Companies Act 1965.

TRUST DEED

Contents of trust deed

72. In addition to the covenants and matters stipulated by the Act and regulation 9 of Companies Regulation 1966, the deed shall include the following covenant and disclose the following information:

- (a) The identity of any 3rd party who is appointed by the Management Company to manage the scheme, if any;

- (b) The identity of any 3rd party who is appointed by the Management Company to manage the plantation land, if any;
- (c) The material terms of the contract between the Management Company and the 3rd party, if any;
- (d) Tenure of the scheme;
- (e) The membership agreements and any other agreements which in relation to the scheme must be attached to the trust deed as part of its contents;
- (f) Total number of Grower's Plots with details on number of reserved plots and for Grower's Plots available for sale;
- (g) Formula for computation of annual nett yield or financial returns;
- (h) Role of trustee;
- (i) Obligations of the management company pursuant to the Act and this policy guideline.
- (j) Any exemption provided by the Minister to the Management Company from complying any of the provision in Division 5, Part VI of the Companies Act 1965;
- (k) The Management Company shall furnish the grower within 14 days of the request by the grower and payment of not more than RM5 a certificate certifying:
 - Whether monthly/annual fees payable by growers are in good standing

- Whether there are any legal proceedings in existence or contemplated in respect of the scheme or management company
- Whether the development or project is sufficiently covered by insurance.

73. Registrar has the discretion to impose additional covenants to be included in the deed.

Changes to the Trust Deed

74. Any changes made to the trust deed, including alteration, deletion or addition of any of the covenants, can only be made via a supplementary trust deed, with the consent of the trustee and approval of the Registrar.

75. Any changes of the trust deed that would affect the Growers' rights and interest shall obtain prior approval of the Growers.

PROSPECTUS

Disclosure requirements

76. In addition to the requirements specified in 7th schedule of the Companies Act 1965, the prospectus shall also disclose the following information:

- (a) The maximum number of Grower's Plot with details on number of reserved plots and Grower's Plots available for

sale and if applicable, the number of Grower's Plot to be released for promotional purposes;

- (b) Any exemption provided by the Minister to the management company from complying any of the provision in Division 5, Part VI of the Companies Act 1965;
- (c) Grower's obligation to furnish subsequent purchaser with a copy of the latest prospectus and the consequences of failure to do so;
- (d) Details on how Growers can obtain a copy of the latest prospectus;
- (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 land is charged, risk to the Growers in the event that the plantation land is foreclosed by the charge;
- (h) Details of any encumbrances including mortgages on the plantation land;
- (i) Tenure of the scheme;
- (j) Sale price of the Grower's Plot offered at the initial launch of the scheme;
- (k) Current sale price of the grower's plot;
- (l) Estimate monthly or yearly expenses payable by the grower;
- (m) Formula for computation of annual nett yield or financial returns;
- (n) All risk to the Grower;

- (o) Insurance detail;
- (p) Details of appointed independent consultant;
- (q) Latest report by independent consultant on the operation and status of the plantation;
- (r) Furnishing the Grower within 14 days of the request by the grower and payment of not more than RM5 a certificate certifying:
 - Whether monthly/annual fees payable by growers are in good standing
 - Whether there are any legal proceedings in existence or contemplated in respect of the scheme or management company
 - Whether the development or project is sufficiently covered by insurance.
- (s) Details of cooling-off period
- (t) Addresses of the places where Grower can inspect the register of Grower and copies of the plans and specifications relating to the scheme.
- (u) The directors of the Management Company have made all reasonable enquiries and are satisfied that they are not aware of any information or circumstances the omission of which would result in the prospectus being false or misleading in a material particular.

77. Registrar has the discretion to impose additional information to be included in the prospectus.

Renewal of Prospectus

78. The Management Company shall register with Registrar a new prospectus at least 5 days prior to the expiry date of the preceding prospectus.

Extending the validity period of a Prospectus

79. Registrar may consider an application for extension of the validity period of a prospectus if:

- (a) There are no material changes in the 2 preceding prospectus period;
- (b) The Management Company is prepared to provide an undertaking to the Registrar that there would be no material changes in the information disclosed in the prospectus during the extended period;
- (c) The financial year of the latest summarized audited income statement and balance sheet must not be more than 6 months from the date of prospectus;
- (d) The application form and the draft prospectus states that no membership will be sold on the basis of prospectus after 12 months from the date of the prospectus;
- (e) The Management Company is prepared to supply the growers with the latest audited accounts on request of the growers, free of charge. This must be disclosed in the prospectus;
- (f) The trust deed provides for the extension of the validity of prospectus;

(g) Management Company agrees to provide a letter of undertaking providing that:

- the directors are satisfied that all conditions for extension has been complied with,
- the directors have made all reasonable enquiries and are satisfied that they are not aware of any information or circumstances the omission of which would result in the prospectus being false or misleading in a material particular.

This letter of undertaking must be provided to the Registrar upon lodgement of each prospectus for registration and signed by a director of the Management Company.

**REGISTRAR OF COMPANIES
COMPANIES COMMISSION OF MALAYSIA**

DATED : 13 JULY 2010

APPENDIX 1

NO.	TYPE OF PLANTATION	MINIMUM PAID-UP
1.	Oil-Palm Plantation	RM 5,000,000.00