

## PRINCIPAL TERMS AND CONDITIONS

### BACKGROUND INFORMATION

#### 1. Issuer

- (i) **Name** : Silver Sparrow Berhad (“**SPV**” or “**Issuer**”)
- (ii) **Address** : Level 18, Wisma Mont’ Kiara, No.1, Jalan Kiara, Mont’ Kiara, 50480 Kuala Lumpur
- (iii) **Business registration no.** : 943268-K
- (iv) **Date and place of incorporation** : 5 May 2011 / Malaysia
- (v) **Date of listing** : Not applicable
- (vi) **Status** : Non-resident-controlled company
- (vii) **Principal activities** : To participate in the transactions contemplated under the MTN Programme
- (viii) **Board of directors as at 31 August 2011** : Lai Voon Hon  
Lai Voon Huey  
\* Lai Man Moi appointed as director on 22 September 2011

- (ix) **Structure of shareholdings and names of shareholders or, in the case of a public company, names of all substantial shareholders as at 31 August 2011** :

Name of Shareholders	Total shareholding	% Equity held
ASPL M10 Limited	2 ordinary shares of RM1.00 each	100%

- (x) **Authorised and paid-up capital as at 31 August 2011** : RM100,000 divided into 100,000 ordinary shares of RM1.00 each / RM2.00 divided into 2 ordinary shares of RM1.00 each

#### 2. ICSD Ventures Sdn Bhd

- (i) **Name** : ICSD Ventures Sdn Bhd (“**ICSD**”)
- (ii) **Address** : Level 18, Wisma Mont’ Kiara, No.1, Jalan Kiara, Mont’ Kiara, 50480 Kuala Lumpur
- (iii) **Business registration no.** : 598900-P

- (iv) **Date and place of incorporation** : 15 November 2002 / Malaysia
- (v) **Date of listing** : Not applicable
- (vi) **Status** : Non-resident-controlled company
- (vii) **Principal activities** : Property Development
- (viii) **Board of directors as at 31 August 2011** : Lai Voon Hon  
Lai Voon Huey  
Lai Man Moi

- (ix) **Structure of shareholdings and names of shareholders or, in the case of a public company, names of all substantial shareholders as at 31 August 2011** :

Name of Shareholders	Total shareholding	% Equity held
ASPL M2 Limited	2 ordinary shares of RM1.00 each	100%

- (x) **Authorised and paid-up capital as at 31 August 2011** : RM 10,000,000 divided into 9,900,000 ordinary shares of RM1.00 each and 100,000 redeemable preference shares of RM1.00 each / RM8,750,000 divided into 8,750,000 ordinary shares of RM1.00 each

### 3. Iringan Flora Sdn Bhd

- (i) **Name** : Iringan Flora Sdn Bhd (“IFSB”)
- (ii) **Address** : Level 18, Wisma Mont’ Kiara, No.1, Jalan Kiara, Mont’ Kiara, 50480 Kuala Lumpur
- (iii) **Business registration no.** : 874127-W
- (iv) **Date and place of incorporation** : 6 October 2009 / Malaysia
- (v) **Date of listing** : Not applicable
- (vi) **Status** : Non-resident-controlled company
- (vii) **Principal activities** : Dormant
- (viii) **Board of directors as at 31 August 2011** : Lai Voon Hon  
Lai Voon Huey

\* Lai Man Moi appointed as director on 22 September 2011

(ix) **Structure of shareholdings and names of shareholders or, in the case of a public company, names of all substantial shareholders as at 31 August 2011** :

Name of Shareholders	Total shareholding	% Equity held
ASPL M3 B Limited	2 ordinary shares of RM1.00 each	100%

(x) **Authorised and paid-up capital as at 31 August 2011** : RM100,000 divided into 100,000 ordinary shares of RM1.00 each / RM2.00 divided into 2 ordinary shares of RM1.00 each

#### 4. Principal Terms and Conditions

##### (a) Names of parties involved in the proposed transaction (where applicable)

- (i) **Principal adviser** : Maybank Investment Bank Berhad (Company No. 15938-H) ("Maybank IB")
- (ii) **Lead arranger** : Maybank IB
- (iii) **Co-arranger** : Not applicable
- (iv) **Solicitor** : Zul Rafique & partners
- (v) **Financial adviser** : Not applicable
- (vi) **Technical adviser** : Not applicable
- (vii) **Trustee** : Mayban Trustees Berhad (Company No. 5004-P)
- (viii) **Guarantor** : Danajamin Nasional Berhad (Company No. 854686-K) ("**Danajamin**");  
Malayan Banking Berhad (Company No. 3813-K) ("**MBB**"); and  
OCBC Bank (Malaysia) Berhad (Company No. 295400-W) ("**OCBC**").

The Guarantee Facility of up to a maximum amount of RM525.0 million is to be made available to the Issuer by each of the Guarantors on a several basis proportionate to their guarantee commitments as follows subject to the Amortisation/Reduction Schedule (as defined herein):

Guarantors	Facility	Guarantee Commitment (RM million)
Danajamin	Financial Guarantee Insurance (" <b>FGI Policy</b> ")	300.0
MBB	Bank Guarantee (" <b>BG</b> ")	125.0
OCBC	BG	100.0
<b>Total</b>		<b>525.0</b>

Each issuance under a Series shall comprise of a tranche of MTNs which has the benefit of the BG (the “**BG Tranche**”) and a tranche of MTNs which has the benefit of the FGI Policy (the “**FGI Tranche**”).

- (ix) **Valuer** : Not applicable
- (x) **Facility agent** : Maybank IB
- (xi) **Primary subscriber (under a bought-deal arrangement) and amount subscribed (where applicable)** : OCBC, Maybank IB and/or such other party as may be determined by the Issuer. The amount to be subscribed is determined prior to the issuance in the event of a bought-deal basis.
- (xii) **Underwriter(s) and amount underwritten** : Not applicable
- (xiii) **Central depository** : Bank Negara Malaysia (“**BNM**”)
- (xiv) **Paying agent** : BNM
- (xv) **Reporting accountant** : Not applicable
- (xvi) **Calculation agent** : Not applicable
- (xvii) **Others (please specify)**
- Lead manager** : Maybank IB
- Rating agency** : RAM Rating Services Berhad (Company no. 763588-T) (“**RAM Rating**”).
- Co-Manager** : OCBC
- (b) **Facility description** : Guaranteed Medium Term Notes Programme (“**Programme**”) for the issuance of guaranteed Medium Term Notes (“**MTNs**”).
- (c) **Issue/programme size** : Up to RM515.0 million in nominal value comprising the following series and subject to the Amortisation/Reduction Schedule (as defined herein):-

Series	Nominal Value
1	up to RM120.0 million
2	up to RM125.0 million
3	up to RM270.0 million
Total	RM515.0 million

The outstanding nominal value of the MTN issued under the Programme at any point in time shall not exceed RM515.0 million and shall not exceed the amount of the BG/FGI Facility (“**BG/FGI Facility**”) outstanding.

Each Series under the Programme shall comprise of multiple issuances, namely in relation to an issuance under a Series, a tranche comprising of MTNs which has the benefit of the BG and a tranche comprising of the MTNs which has the benefit of the FGI Policy.

- (d) **Tenure of issue/debt programme (or facility)** : Tenure of the Programme  
 The tenure of the Programme is up to ten (10) years from the date of the first issuance under the Programme.  
Maturity of the MTN  
 More than one (1) year and up to eight (8) years as the Issuer may select, provided that all the MTN shall mature prior to the expiry of the Programme.
- (e) **Availability period of debt programme (or facility)** : The MTN is available for issuance throughout the tenure of the Programme, subject to the first issuance to be effected within two (2) years from the date of the Securities Commission's ("SC") approval.
- (f) **Interest/coupon rate** : To be determined prior to each issuance.
- (g) **Interest/coupon payment frequency** : Semi-annually or such other period to be agreed upon between the Issuer and the Facility Agent prior to each issuance of the MTN.
- (h) **Interest/coupon payment basis** : Actual number of days / 365 days.
- (i) **Security/collateral (if any)** : Clean. However the Issuer's obligation under each Series of the MTN under the Programme shall be severally guaranteed by the BG or FGI Policy (as defined hereafter) from the Guarantors on a pro-rata basis up to their respective guarantee commitments.
- (j) **Details on utilisation of proceeds** : The MTN proceeds will be utilised for the following purposes:

Series 1 – up to RM120.0 million in nominal value

1. Up to RM99.0 million shall be utilised to refinance ICSD's existing Term Loan 1 ("TL 1") Facility of RM99.0 million. In the event that the amount specified is not utilised in full for the purpose mentioned herein, the remaining amount may be utilised by the Issuer for onward lending to ICSD for the construction of the Sandakan Harbour Mall (as defined below);
2. The remaining RM21.0 million shall be utilised to finance/to reimburse ICSD and/or its shareholder for the variation order and fit out costs, professional fees, pre-opening expenditure and contingency costs in relation to the Sandakan Harbour Mall.

Series 2 – up to RM125.0 million in nominal value

1. Up to RM101.0 million shall be utilised to refinance ICSD's

existing Term Loan 2 (“**TL 2**”) Facility of RM101.0 million. In the event that the amount specified is not utilised in full for the purpose mentioned herein, the remaining amount may be utilised by the Issuer for onward lending to ICSD for the construction of the Four Points by Sheraton Sandakan Hotel (as defined below);

2. The remaining RM24.0 million to finance/to reimburse ICSD and/or its shareholder for the variation order and fit out costs, professional fees, pre opening expenditure and contingency costs in relation to the Four Points by Sheraton Sandakan Hotel.

The TL 1 and TL 2 form part of the facilities under a RM249.5 million syndicated credit facilities (“**Syndicated Facilities**”) obtained by ICSD to finance the construction of a retail mall cum car park complex and convention centre (“**Sandakan Harbour Mall**”) and a hotel (“**Four Points by Sheraton Sandakan Hotel**”) respectively, which forms part of an integrated urban development project undertaken by ICSD and known as Sandakan Harbour Square, located within the waterfront of Sandakan.

*The Sandakan Harbour Mall and Four Points by Sheraton Sandakan Hotel are collectively referred to as “Sandakan Properties”.*

Series 3 - up to RM270.0 million in nominal value

1. Up to RM208.0 million is to be utilised to part finance the acquisition cost of KL Sentral Hotel (as defined below) by IFSB.
2. The remaining balance shall be used to finance/to reimburse IFSB for the furniture, fixtures, fit out costs, professional fees, pre opening expenditure and contingency costs in relation to the KL Sentral Hotel (as defined below).

*KL Sentral Hotel refers to a 31-level hotel tower and adjoining 85 car park bays located on Parcel C&D of the land under Geran 46230, Lot 364, Seksyen 72, Bandar Kuala Lumpur, District of Wilayah Persekutuan.*

For the avoidance of doubt, all matured MTNs may be rolled over (i.e. maturing MTNs may be refinanced via proceeds from issuance of new MTNs).

- (k) **Sinking fund and designated accounts (if any)** : Not applicable
- (l) **Rating** : The Programme has been accorded an indicative rating of AAA(bg)/AAA(fg) by RAM Rating Services Berhad (Company No. 763588-T) (“**RAM Rating**”).

(m) **Mode of issue** : The MTN may be issued on a private placement and/or bought deal on a best effort basis without prospectus.

The MTN shall be issued in accordance with (1) the MyClear OPSS and (2) the "Participation and Operations Rules for Payment and Securities Services" issued by MyClear dated 6 May 2011 ("MyClear PORPSS"), as amended and substituted from time to time (collectively, the "MyClear Rules and Procedures").

(n) **Selling restriction, including tradability** : The MTN shall not be offered or sold, directly or indirectly in Malaysia other than to persons falling within any of the categories of persons or in the circumstances specified under.

(i) At point of issuance:

- a. Schedule 6 (or Section 229(1)(b)); or
- b. Schedule 7 (or Section 230(1)(b)); and
- c. Schedule 9 (or Section 257(3)),

of the Capital Markets and Services Act 2007 ("CMSA"), as amended from time to time.

(ii) After the issuance:

- a. Schedule 6 (or Section 229(1)(b)); and
- b. Schedule 9 (or Section 257(3)),

of the CMSA, as amended from time to time.

The MTN shall be traded in the secondary market on a willing-buyer willing-seller basis.

(o) **Listing status and types of listing** : The MTN will not be listed on any exchange.

(p) **Other regulatory approvals required in relation to the issue, offer or invitation and whether or not obtained (please specify)** : Not applicable

(q) **Conditions precedent** : **Conditions Precedent prior to first issuance**

Conditions precedent typical and customary for a facility of this nature including but not limited to and shall be in the form and substance acceptable to the LA:

Main Documentation

- (a) The Transaction Documents (as defined herein) and all other relevant documents in the form and substance satisfactory to the LA and the Legal Counsel have been executed and, where applicable, stamped (unless otherwise exempted) and presented for registration.

Issuer

- (a) Certified true copies of the Certificate of Incorporation, and the Memorandum and Articles of Association, of the Issuer;
- (b) Certified true copies of the latest Forms 24, 44 and 49 of the Issuer;
- (c) A certified true copy of board resolution of the Issuer authorising, among others, the issuance of the MTN and the execution of the relevant Transaction Documents under the Programme to which the Issuer is a party;
- (d) A list of the Issuer's authorised signatories and their respective specimen signatures;
- (e) A report of the relevant company search of the Issuer; and
- (f) A report of the relevant winding up search or the relevant statutory declaration of the Issuer confirming that the Issuer has not been wound up.

General

- (a) Evidence of the approval from the SC in respect of the MTN Programme have been obtained;
- (b) Written legal opinion from the Solicitors addressed to the LA, confirming among others:-
  - i. the legality, validity and enforceability of the Transaction Documents; and
  - ii. all conditions precedents have been fulfilled or waived (as the case may be);
- (c) Confirmation from the Rating Agency of the minimum rating of AAA(bg)/AAA(fg) (or its equivalent) for the Programme;
- (d) The consents from all existing financiers, chargees, bank guarantors or assignees (where applicable) have been obtained for the Issuer to undertake the MTN Programme and issue the MTNs;
- (e) All transaction fees, costs and expenses payable to the LA and Lead Manager have been paid in full or an arrangement (acceptable to the LA) for the payment of the relevant transaction fees, costs and expenses in relation to the Programme; and
- (f) Such other conditions precedent as may be advised by the Solicitors.

**Conditions Precedent for each issuance of MTN**

- (a) Issuer's confirmation that it is in compliance of all Representations and Warranties and no Event of Default or potential Event of Default has occurred; and
- (b) Such other conditions precedent as may be advised by the Solicitors.

- (r) **Representations and warranties** and : The representations and warranties typical and customary for a Programme issuance of this nature including but not limited to:-
- (a) The Issuer is duly established and validly existing under the laws of Malaysia and has the power and authority to enter into the business in which it is engaged;
  - (b) The Issuer has the power to enter into, exercise its rights under and perform its obligations under the respective Programme agreements;
  - (c) All necessary actions, authorisations and consents required under the respective Programme agreements by the Issuer to which it is a party has been taken, fulfilled and obtained and remain in full force and effect;
  - (d) The Issuer's entry into, exercise of its rights under and performance of its obligations under the respective Programme agreements to which it is a party does not and will not violate any existing law or any agreements to which it is a party or its memorandum and articles of association;
  - (e) The Issuer's latest audited accounts have been prepared in accordance with accounting principles and standards generally accepted in Malaysia and fairly represent the financial position of Issuer as at such date; and
  - (f) No event that would constitute a contravention of or default under the Transaction Documents (to which the Issuer is a party) has occurred and is continuing; and

Any other representations and warranties which may be advised by the Legal Counsel.

- (s) **Events of default** : The events of default typical and customary for a Programme of this nature including but not limited to:-

(i) **Non-Payments:**

- (1) the Issuer fails to pay any amount due from it under any Series of the MTN. For the purpose of this clause (i)(1):
  - A. non-payment of any amount due under a BG Tranche (as hereinafter defined in clause (v)(2)) shall not constitute an event of default in respect of the FGI Tranches (as hereinafter defined in clause (v)(2));
  - B. save where the Trustee has declared or required to declare an Event of Default in respect of all FGI Tranches, non-payment of any amount due under any FGI Tranche shall not constitute an event of default in respect of the BG Tranches;
  - C. non-payment of any amount due under an FGI Tranche shall not constitute an event of default in respect of other FGI Tranches;
- (2) the Issuer fails to pay any amount due from it under any of the Transaction Documents to which it is a party (other than under clause (i)(1)) on the due date or date of demand, if so payable;

(ii) **Other Breaches:**

the Issuer breaches any of its obligations or terms and conditions under any of the Transaction Documents to which it is a party (other than under clause (i)) which has a Material Adverse Effect and, if such breach in the reasonable opinion of the Trustee is capable of being remedied, the Issuer does not remedy the breach within a period of thirty (30) days after the Issuer became aware or having been notified by the Trustee of the breach, whichever is earlier;

(iii) **Misrepresentation:**

any representation, warranty or statement which is made by the Issuer in the Transaction Documents is or proves to be incorrect or misleading in any material respect, which will in the reasonable opinion of the Trustee have a Material Adverse Effect;

(iv) **Invalidity:**

any provision of the Transaction Documents is or becomes, for any reason, invalid, illegal, void or unenforceable which would prevent the Issuer from or entitle the Issuer to refrain from performing any of its obligations thereunder;

(v) **Cessation of business:**

the Issuer ceases to carry on all or a substantial part of its business operation as at the date of the Trust Deed, which will in the reasonable opinion of the Trustee have a Material Adverse Effect;

(vi) **Appointment of receiver, legal process:**

an encumbrancer takes possession of, or a trustee, liquidator, receiver or similar officer is appointed in respect of, all or a substantial part of the business, assets or undertaking of the Issuer and is not paid out, withdrawn or discharged within thirty (30) days of such appointment, and which will have a Material Adverse Effect;

(vii) **Insolvency:**

the Issuer is unable to pay its debts within Section 218(2) of the Companies Act, 1965 and the Issuer has not taken any action in good faith to set aside such claims within twenty one (21) days from the date of service of such claims for payment;

(viii) **Winding-up:**

a resolution being passed or an order of court is made that the Issuer be wound up or similar proceedings which are reasonably determined by the Trustee to be analogous in effect being instituted (other than for the purposes of an intra Group reorganisation on a solvent basis or an amalgamation, merger or reconstruction the terms whereof have previously been approved by the Trustee unless during or following such reconstruction the Issuer becomes or is declared to be insolvent); or a bona fide petition (which for the avoidance of doubt, excludes frivolous or vexatious petition) is presented for the winding-up or dissolution of the Issuer by an order of a court of competent jurisdiction unless such petition is stayed, withdrawn or dismissed within sixty (60) days (or such extended period as the Trustee may consent, such consent not to be unreasonably withheld) of its presentation; or the Issuer undergoes any scheme of reconstruction, arrangement or compromise pursuant to Section 176 of the Companies Act or the same has been instituted against it. For purposes of this clause, "Group" shall mean the Issuer and its subsidiaries, if any;

(ix) **Assets:**

all or a material part of the property or assets of the Issuer shall be condemned, seized or otherwise appropriated, nationalised or compulsorily acquired by any person acting under the authority of the governmental body, which will in the reasonable opinion of the Trustee have a Material Adverse Effect;

(x) **Composition:**

the Issuer makes a general assignment or enters into an arrangement or composition with or for the benefit of its creditors in respect of all or a material part of (or a particular type of) its indebtedness;

(xi) **Repudiation:**

the Issuer repudiates any of the Transaction Documents or the Issuer does or causes to be done any act or thing evidencing an intention to repudiate any of the Transaction Documents;

(xii) **Cross Default:**

save for such indebtedness which are being contested in good faith by the Issuer, any indebtedness of any member of the Group for monies borrowed becomes due or payable or capable of being declared due or payable prior to its stated maturity by reason of a default by any member of the Group in its obligations in respect of the same, or any member of the Group fails to make any payment in respect thereof on

the due date for such payment or if due on demand when demanded or the security for any such indebtedness becomes enforceable or any guarantee or similar obligations of any member of the Group for any such indebtedness is not discharged at maturity or when called provided that no Event of Default under this clause (xii) shall occur if the aggregate amount of indebtedness for monies borrowed is less than fifty per centum (50.0%) of the Group's total borrowed monies (including Islamic financing but excluding the MTN issued under the Programme) or Ringgit Malaysia One Hundred Million (RM100.0 Million), whichever is the higher.

For the purpose of this clause, "Group" shall mean the Issuer and its subsidiaries, if any;

(xiii) **Judgment passed:**

the Issuer fails to satisfy any judgment which has a Material Adverse Effect passed against it by any court of competent jurisdiction and no appeal against such judgment has been made to the appropriate appellate court within the time prescribed by law or such appeal has been dismissed.

**Specific Events of Default in respect of the BG Tranches**

- (i) MBB and/or OCBC have served a notice to require the Trustee to make a demand or claim on any BG pursuant to and in accordance with the terms of the BG Facility and the BG. For the purpose of this item, such notice by MBB and/or OCBC requiring the Trustee to demand or claim on a BG issued in relation to a BG Tranche shall constitute an Event of Default in respect of the other BG Tranches;
- (ii) The Trustee has declared or is required to declare an Event of Default in respect of all FGI Tranches;
- (iii) Occurrence of any of the following events:
  - (a) if the BG ceases to be, or claimed by MBB and/or OCBC not to be, in full force and effect;
  - (b) if it is or will become unlawful for MBB and/or OCBC to perform or comply with any one or more of its obligations under the BG;
  - (c) if a resolution being passed or an order of court is made that MBB and/or OCBC be wound up or similar proceedings which are reasonably determined by the Trustee to be analogous in effect being instituted or a bona fide petition (which for the avoidance of doubt, excludes frivolous or vexatious petition) is presented for the winding-up or dissolution of MBB and/or OCBC by an order of a court of competent jurisdiction unless an application to stay, withdraw or dismiss such petition has been filed by MBB and/or OCBC with the relevant authority within thirty (30) days of its presentation and such petition is stayed, withdrawn or dismissed within

seventy five (75) days of its presentation;

- (d) MBB and/or OCBC repudiates the BG or does or causes to be done any act or thing evidencing an intention to repudiate the BG;
- (e) MBB and/or OCBC is unable to pay its debts within Section 218(2) of the Companies Act, 1965 and MBB and/or OCBC has not taken any action in good faith to set aside such claims within twenty one (21) days from the date of service of such claims for payment.

**Specific Events of Default in respect of the FGI Tranches**

- (i) Danajamin has served a notice on the Trustee to require the Trustee to make a demand or claim on any FGI Policy pursuant to and in accordance with the terms of the FGI Facility and the FGI Policy. For the purpose of this item, such notice by Danajamin requiring the Trustee to demand or claim on an FGI policy issued in relation to a FGI Tranche shall not constitute an Event of Default in respect of the other FGI Tranches unless Danajamin has also served a notice on the Trustee to make a demand or claim on the FGI Policy issued in relation to such other FGI Tranches;
- (ii) Occurrence of any of the following events:
  - (a) the FGI Policy ceases to be, or is claimed by Danajamin not to be, in full force and effect;
  - (b) it is or will become unlawful for Danajamin to perform or comply with any one or more of its obligations under the FGI Policy;
  - (c) a resolution being passed or an order of court is made that Danajamin be wound up or similar proceedings which are reasonably determined by the Trustee to be analogous in effect being instituted or a bona fide petition (which for the avoidance of doubt, excludes frivolous or vexatious petition) is presented for the winding-up or dissolution of Danajamin by an order of a court of competent jurisdiction unless an application to stay, withdraw or dismiss such petition has been filed by Danajamin with the relevant authority within thirty (30) days of its presentation and such petition is stayed, withdrawn or dismissed within seventy five (75) days of its presentation;
  - (d) other than such failure by Danajamin as described in item (ii)(f) below, Danajamin stops or threatens to stop payment in respect of its obligations generally or any other debenture of or monies borrowed or any guarantee or indemnity given by Danajamin is not honoured when due and called upon or any indebtedness of the Danajamin for monies borrowed becomes due or payable or capable of being declared due or payable prior to its stated maturity by reason of a default by Danajamin in its obligations in respect of the same, or Danajamin fails to make any payment in

respect thereof on the due date for such payment or if due on demand when demanded or the security for any such indebtedness becomes enforceable or any guarantee or similar obligations of the Danajamin is not discharged at maturity or when called provided that the aggregate amount of the Danajamin's obligations in respect of which one or more of the events set out in herein has occurred equals or exceeds RM100 million;

- (e) Danajamin ceases to carry on its business operation;
- (f) Danajamin fails to pay any amount due from it under the FGI Policy issued by Danajamin in relation to the FGI Tranches when due and called upon;
- (g) Danajamin repudiates the FGI Policy or does or causes to be done any act or thing evidencing an intention to repudiate the FGI Policy;
- (h) Danajamin is unable to pay its debts within Section 218(2) of the Companies Act, 1965 and Danajamin has not taken any action in good faith to set aside such claims within twenty one (21) days from the date of service of such claims for payment.

#### **Consequence of Events of Default for the MTNs generally**

Upon the occurrence of any of the events above (other than the Event of Default referred to in clause (s)(i)(1), Specific Events of Default in respect of the BG Tranches and Specific Event of Default in respect of the FGI Tranches), the Trustee may, or shall if directed to do so by the MTN holders of all series pursuant to a special resolution, declare that an Event of Default (other than the Event of Default referred to in clause (s)(i)(1), Specific Events of Default in respect of the BG Tranches and Specific Event of Default in respect of the FGI Tranches) has occurred in respect of the MTN of all series, whereupon:

- (1) all outstanding MTN under the Programme shall become immediately due and payable;
- (2) upon the Issuer's failure to pay any amount due from it under any Series of the MTN, the Trustee shall submit a claim on all the BG and on all the FGI Policies.

#### **Declaration of Events of Default for MTN holders in respect of the BG Tranches and Consequence**

Upon the occurrence of any of the Event of Default referred to in the Specific Event of Default in respect of the BG Tranches (other than Specific Event of Default in respect of the BG Tranches, item (i)), the Trustee may, or shall if directed to do so by the holders of the BG Tranches pursuant to a special resolution, declare that an Event of Default has occurred in respect of all other BG Tranches, whereupon:

- (1) all outstanding sums in respect of the MTNs guaranteed under the BG Facility, shall become immediately due and payable; and
- (2) the Trustee shall submit a claim on the BG in respect of all the BG Tranches,

Upon the occurrence of the Event of Default referred to in clause (s)(i)(1) in relation to a BG Tranche, the Trustee shall without the need to seek further instructions or directions from the holders of all other BG Tranches, declare that such Event of Default has occurred in respect of the BG Tranches whereupon:

- (1) all outstanding sums in respect of the MTNs guaranteed under the BG Facility, shall become immediately due and payable; and
- (2) the Trustee shall submit a claim on the BGs in respect of all the BG Tranches.

Upon the occurrence of the Event of Default referred to in Specific Event of Default in respect of the BG Tranches, item (i) in relation to a BG Tranche ("**BG Invited Tranche**"), the Trustee shall without the need to seek further instructions or directions from the MTN holders of the BG Invited Tranche and all other BG Tranches, declare that such Event of Default has occurred in respect of the BG Tranches, whereupon:

- (1) all outstanding sums in respect of the BG Invited Tranche and all other BG Tranches, shall become immediately due and payable; and
- (2) the Trustee shall submit a claim on the BGs in respect of the all BG Tranches.

#### **Declaration of Events of Default for MTN holders in respect of the FGI Tranches and Consequence**

Upon the occurrence of any of the Event of Default referred to in the Specific Events of Default in respect of the FGI Tranches (other than the Specific Events of Default in respect of the FGI Tranches items (i) and (ii)(f)), the Trustee may, or shall if directed to do so by the holders of the FGI Tranches pursuant to a special resolution, declare that an Event of Default in respect of all other FGI Tranches, whereupon:

- (1) all outstanding sums in respect of all the MTNs guaranteed under the FGI Facility, shall become immediately due and payable; and
- (2) the Trustee shall submit a claim on all the FGI Policies in respect of the FGI Tranches.

Upon the occurrence of the Event of Default referred to in clause (s)(i)(1) in relation to a FGI Tranche ("**Affected Tranche**"), the

Trustee shall without the need to seek further instructions or directions from the MTN holders of the Affected Tranche, declare that such Event of Default has occurred in respect of the Affected Tranches, whereupon:

- (1) all outstanding sums in respect of the Affected Tranche, shall become immediately due and payable; and
- (2) the Trustee shall submit a claim on the FGI Policy in respect of the Affected Tranche.

For the avoidance of doubt, apart from the Affected Tranche, all other FGI Tranches will continue unaffected and will continue to be guaranteed under the respective FGI Policy.

Upon the occurrence of the Event of Default referred to in Specific Event of Default in respect of the FGI Tranches, item (i) in relation to a FGI Tranche ("**FGI Invited Tranche**"), the Trustee shall without the need to seek further instructions or directions from the MTN holders of the FGI Invited Tranche, declare that such Event of Default has occurred in respect of the FGI Invited Tranche, whereupon:

- (1) all outstanding sums in respect of the FGI Invited Tranche, shall become immediately due and payable; and
- (2) the Trustee shall submit a claim on the FGI Policy in respect of the FGI Invited Tranche.

For the avoidance of doubt, apart from the FGI Invited Tranche, all other FGI Tranches will continue unaffected and will continue to be guaranteed under the respective FGI Policy.

Upon the occurrence of the Event of Default referred to in Specific Events of Default in respect of the FGI Tranches item (ii)(f), the Trustee shall without the need to seek further instructions or directions from the holders of all the other tranches, being the tranches other than the Affected Tranches which Danajamin has failed to pay such amount that is due and called upon it, (such other tranches is hereinafter referred to as "**Unaffected Tranches**"), declare that such Event of Default has occurred in respect of all the Unaffected Tranches, whereupon:

- (1) all outstanding sums in respect of all the Unaffected Tranches, shall become immediately due and payable; and
- (2) the Trustee shall submit a claim on the FGI Policies in respect of all the Unaffected Tranches.

**(t) Covenants**

**(1) Information Covenants** : Information covenants typical and customary for an issue of this nature including but not limited to:-

- (a) The Issuer shall provide the Trustee at least on an annual basis within 120 days from the end of its financial year, a certificate confirming that it has complied with all its obligations under the Programme agreements and the terms and conditions of the MTN and there does not exist or had not

existed, from the date of the MTN were issued, any Event of Default, and if such is not the case, to specify the same;

- (b) The Issuer shall deliver to the Trustee the following:
- (i) Year-end audited financial statements within 120 days from its fiscal year end, and such other information (financial or otherwise) as the Trustee may reasonably require from time to time;
  - (ii) Half-yearly unaudited financial statements/management accounts within 60 days from the end of each half-year;
  - (iii) Promptly after receipt of such request by the Trustee, any other material information relating to its business, affairs and financial condition as may from time to time reasonably requested by the Trustee in order to discharge its duties and obligations as Trustee from time to time, to the extent permitted by law.
- (c) The Issuer must make available the following information and documents to the targeted investors of the MTN throughout the availability period of the Programme:
- (i) A pricing supplement which provides the indicative terms (which includes, but not limited to issue date, size, tenure, credit rating, coupon payment and utilisation of proceeds) of a specific issue or offer under the Programme prior to such issue or offer to its targeted investors, except if the MTN are tendered through the fully Automated System for Issuing and Tendering (“FAST”) or of the MTN are issued or offered on primary subscription basis; and
  - (ii) The latest annual audited financial statements.
- (d) The Issuer shall, through the Facility Agent, disseminate the latest annual audited financial statements, as stated in paragraph (c)(ii) above, in the following manner:
- (i) Announce through FAST that the said annual audited financial statements have been made available in a public domain and specify the website address of the public domain; or
  - (ii) Deliver a soft copy of the said annual audited financial statements to the SC through [DS@seccom.com.my](mailto:DS@seccom.com.my) not later than one hundred and eighty (180) days after the annual financial close.

**(2) Positive Covenants** : The Issuer shall provide covenants which are typical and customary for an issuance of this nature which shall include but not limited to the following:-

- (a) Perform all its obligations under and comply with all provisions of the Transaction Documents to which it is a party;
- (b) Obtain, preserve, keep in force and effect and promptly renew from time to time all licences, rights, authorisations, approvals, consents and exemptions, registrations, recordings, filings or notarisations which are required under the applicable law or regulation including those necessary for the Issuer to own its assets, the carrying out of the businesses of the Issuer or to ensure the validity, enforceability or priority of its liabilities and obligations or the rights of the Trustee, the MTN holders or any other party under the Transaction Documents and shall comply with the terms and conditions of the same;
- (c) Preserve and maintain good and valid title to its properties and assets;
- (d) Pay and discharge all taxes imposed upon it or its assets within the time period allowed without incurring penalties save to the extent that (a) payment is being consented in good faith, and for which adequate reserves are being maintained for those taxes, or (b) payment can be lawfully withheld;
- (e) To the extent required by law, punctually pay and discharge all indebtedness payable by it;
- (f) Utilise the issue proceeds for the purpose as represented herein;
- (g) Appoint from time to time such auditor or firm of auditors duly licensed by its respective governing bodies;
- (h) Ensure that the terms in any of the Transaction Documents do not contain any matter which is inconsistent with the provisions of the information memorandum issued in relation to the MTN Programme;
- (i) Acquire and maintain the necessary insurance policies;
- (j) Execute all such further documents and do all such further acts reasonably necessary at any time or times to give further effect to the terms and conditions of the Trust Deed;
- (k) Comply with all applicable and relevant laws and regulations with regards to the Programme;
- (l) The Issuer will exercise reasonable diligence in carrying out its business in a proper and efficient manner which should ensure, amongst others that all necessary approvals or relevant licenses are obtained;
- (m) The Issuer shall notify the Trustee immediately in the event that the Issuer becomes aware of the following:
  - (i) Any circumstances that has occurred that would materially prejudice the Issuer;
  - (ii) Any claims against it which could have Material Adverse Effect (as defined herein) under the Transaction Documents to which it is a party and any

- action that the Issuer is taking in relation to such claims;
- (iii) Any change in the withholding tax position or taxing jurisdiction of the Issuer insofar it affects the payment obligations of the Issuer under the Trust Deed;
  - (iv) Any take-overs, mergers, acquisitions and divestments undertaken by the Issuer which may affect its financial or liquidity position;
  - (v) Any Event of Default or that such other right or remedy under the terms, provisions and covenants of the Transaction Documents have become immediately enforceable;
  - (vi) Any substantial change in the nature of the business of the Issuer or the Guarantors;
  - (vii) Any change in the Guarantors;
  - (viii) Any cessation of liability of the Guarantors for the payment of the whole or part of the moneys for which it is liable under the BG/FGI Facility;
  - (ix) Any change in the utilisation of proceeds of the MTN with the Guarantors' prior written consent;
  - (x) Any right or remedy under the terms of the Trust Deed becomes immediately enforceable;
  - (xi) Any other matters that may materially prejudice the interest of the MTN holders.
- (n) Maintain and keep proper books and accounts at all times in compliance with applicable statutory requirements and in accordance with generally accepted accounting principles in Malaysia and provide the Trustee and any person appointed by it e.g. auditors access to such books and accounts to the extent permitted by law;
  - (o) Maintain a paying agent in Malaysia and procure that paying agent to notify the Trustee in the event the paying agent does not receive payment from the Issuer on the due dates as required under the Transaction Documents;
  - (p) Ensure that a credit rating is made available throughout the tenure of the Programme, unless the rating is suspended or withdrawn by the Rating Agency. In this regards, the Issuer must undertake to provide relevant information on continuous basis to the Rating Agency involved, in accordance with the format an frequency as agreed with the Rating Agency, so that timely dissemination of relevant information and rating analysis can be made available to the investors of the MTN; and
  - (q) Such other covenants as may be advised by the Legal Counsel.

**(3) Negative Covenants** : The Issuer without the prior written consent of the Trustee, shall not do any of the following, which shall include but not limited to:-

- (a) Constitutional Document: add to, delete, vary, amend or substitute its memorandum and articles of association to be inconsistent with the provisions under the Transaction Documents;
- (b) Dissolution: dissolve its affairs or consolidate with or merge with any other person or into another entity or otherwise, which would have a Material Adverse Effect;
- (c) Surrender Rights etc: cancel, surrender, transfer, assign, relinquish or otherwise dispose of any of its rights and interest under the Transaction Documents (except as permitted under the Transaction Documents), which would have a Material Adverse Effect;
- (d) Indebtedness: the Issuer shall not incur any further indebtedness for borrowed money whatsoever save and except for the MTN and the BG/FGI Facility;
- (e) Security interest: Create any security interest over all or any of its assets, business and/or undertakings save to facilitate the BG/FGI Facility;
- (f) Share capital: Reduce or in any way alter (except by way of an increase) its authorised and issued paid-up capital;
- (g) No Change in Business: change or cause or permit to change the nature or scope of its existing business or operations or suspend its existing business operations which would have a Material Adverse Effect;
- (h) Licences: cancel, surrender, abandon or otherwise amend or permit to be cancelled, surrendered, abandoned or otherwise amended, any licences, grant, consents, approvals or authorisations in any way which could have a Material Adverse Effect, unless imposed by any applicable law or authorities;
- (i) Related party transaction: Enter into a transaction whether directly or indirectly with interested persons unless such transaction shall be on terms that are no less favourable to the Issuer than those which could have been obtained in a comparable transaction from persons who are not interested persons;
- (j) Rating Requirement: Replace the Rating Agency during the tenure of the Programme unless the Issuer has obtained the approval of the MTN holders by way of a special resolution; and
- (k) Others: Such other negative covenants as may be advised by the Legal Counsel.

**(u) Provisions on buy-back and early redemption of bonds**

- (1) Redemption** : Unless previously redeemed, purchased and cancelled and subject to the Early Redemption Event clause herein, the MTN will be redeemed at par on the respective maturity date of the MTN.
- Any MTN redeemed cannot be re-issued.

**(2) Repurchase and Cancellation** : The Issuer may at any time purchase the MTN in the open market at the then market price or by private treaty. The MTN so purchased by the Issuer shall not be counted for the purposes of voting and shall be cancelled.

All MTN purchased and cancelled may not be reissued.

**(3) Early Redemption** : Notwithstanding the scheduled redemption of the MTNs, the Issuer may, at its option at any time two (2) years after the date of first issuance of the respective Series, redeem such Series at the Early Redemption Value plus any accrued but unpaid coupon from the immediate preceding Coupon Payment Date (from the Early Redemption date) to the Early Redemption date from the Bondholders subject to the Issuer having given a fourteen (14) days prior written notice of its intention to redeem the Series.

For avoidance of doubt, each Series shall be redeemed in whole and not in part

**(4) Early Redemption Value** : The amount payable on Early Redemption date of the respective Series of MTN shall be at an amount governed by the following formula:

$$\text{Amount payable} = \frac{(\text{PB} \times \text{ERP})}{100}$$

where:

PB = the nominal value of the MTN to be redeemed

ERP = early redemption price per RM100 of the nominal value of the MTN to be redeemed (rounded to the nearest 5 decimal places) subject to a minimum of RM100 calculated based on the formula set out below.

$$\text{ERP} = \left[ \frac{100}{\left[1 + (\text{YTM}/2)\right]^{(N-1)}} \right] + \left[ \sum_{k=1}^N \frac{\left(100 \times (\text{Coupon}/2)\right)}{\left[1 + (\text{YTM}/2)\right]^{(k-1)}} \right]$$

For the purposes of calculating the ERP, the following variables are used:-

- (i) Coupon = the original coupon rate of the MTN.
- (ii) YTM = the lower of (a) the coupon rate of the MTN or (b) the yield to maturity of Reference Malaysian Government Securities + a spread of 20 basis points ("Spread").

Reference Malaysian Government Securities shall be Malaysian Government Securities for tenures which is equal to the remaining tenure of the MTN being redeemed and shall be determined from:-

- (a) the latest Consolidated Government Securities Rates (Conventional) published by BNM, three (3) business days prior to the date of issue of the notice of redemption or, if that published rate is unavailable;
- (b) the arithmetic average of the mid-rates quoted by any five (5) principal dealers, three (3) business days prior to the date of issue of the notice of redemption.

In the case where the rate for a particular tenure is not available directly, then such a rate shall be extrapolated on a linear basis using the available arithmetic average mid-rates, provided that if the tenure of the MTN is not an integer, the Reference Malaysian Government Securities shall be the arithmetic mean of the rates of the two (2) nearest tenures derived from (a) or (b) above.

**(v) Other principal terms and conditions for the issue**

- (1) Amortisation/Reduction Schedule** : The limit of Programme shall be subject to the reduction schedule below:-

<b>Months from First Issue Date</b>	<b>Reduction Amount (RM'Million)</b>	<b>Reduced Programme Limit (RM'Million)</b>
60 <sup>th</sup>	30.0	485.0
72 <sup>nd</sup>	40.0	445.0
84 <sup>th</sup>	40.0	405.0
96 <sup>th</sup>	40.0	365.0
108 <sup>th</sup>	50.0	315.0
120 <sup>th</sup>	315.0	-

- (2) BG/FGI Policy** : MBB and OCBC shall issue bank guarantee(s) (“**BG**”) and Danajamin shall issue financial guarantee insurance policy(ies) (“**FGI Policy**”) respectively in favour of the Trustee, proportionate to their guarantee commitment under the BG/FGI Facility, to guarantee the principal and one (1) coupon payment obligations of the Issuer under each Series of MTN under the Programme on a several basis (other than interest on late payment charges and charges in respect of the MTN/Programme).

Each Series under the Programme shall comprise of multiple issuances, namely in relation to an issuance under a Series, a tranche comprising of MTNs which has the benefit of the BG and a tranche comprising of the MTNs which has the benefit of the FGI Policy.

Each BG/FGI Policy shall only allow for one (1) claim to be made against the Guarantors.

- (3) Issue Price** : The MTN shall be issued at par or at a discount to face value. The issue price shall be calculated in accordance with the Operational Procedures for Securities Services issued by Malaysian Electronic Clearing Corporation Sdn Bhd (“**MyClear**”) dated 6 May 2011, as

amended and substituted from time to time (“MyClear OPSS”).

- (4) **Yield to Maturity** : To be determined at the prior to each issuance.
- (5) **Issuance Conditions** : The MTN may be issued in multiples of RM1,000,000 but subject to the FAST Rules and other standard conditions including but not limited to the following:-
- (i) compliance to the Conditions Precedent clause;
  - (ii) receipt of the BG/FGI Policy is the agreed form; and
  - (iii) the issue notice shall be given to the Facility Agent at least seven (7) business days in relation to the first issuance and five (5) business days in relation to subsequent issuances prior to and excluding the date of the proposed issue.
- (6) **Status** : Obligations represented by the MTN under the Programme shall constitute direct, unsecured, unconditional and unsubordinated obligations of the Issuer under Malaysian laws and shall at all times rank pari passu with all other present and future unsecured unsubordinated indebtedness or other obligations of the Issuer, except for indebtedness preferred by mandatory provision of law.
- (7) **Form Denomination** and : Each issuance of the MTN shall be represented by global certificates to be deposited with the Central Depository, which are exchangeable for definitive bearer certificates only in certain limited circumstances.
- The denomination of the MTN shall be RM1,000,000 or in multiples of RM1,000,000 at the time of issuance or if required, such other denominations in accordance with FAST and/or any other procedures/guidelines issued by the relevant authorities.
- (8) **Minimum Level of Subscription** of : The minimum level of subscription for each issue that is not issued on a bought deal basis (which shall be fully subscribed) under the Programme shall be 100% of each issuance.
- In the event that the MTN are under-subscribed and cannot meet the minimum level of subscription, the said issue, offer or invitation shall be aborted and where applicable, any consideration received for the purpose of subscription shall be immediately returned to the respective subscribers.
- (9) **Claim Process /Claim Period** : A demand on any of the BG/FGI Policy must be made no later than thirty (30) days from the expiry of the respective BG/FGI Policy; failing which the Guarantors’ liability under such BG/FGI Policy shall be discharged.
- In the event a demand is to be made under any of the BG/FGI Policy, the Beneficiary shall be required to issue a claim on such BG/FGI Policy to the relevant Guarantors and upon any receipt of such claim, the Guaranteed Amount up to the date that such demand is being made will be due and payable by the relevant Guarantors within ten (10) business days from the date of receipt of such claim by the Facility Agent of the relevant BG/FGI Policy.

Only one (1) claim can be made on each BG/FGI Policy and the claim is capped to the amount as stated in the respective BG/FGI Policy (“Guaranteed Amount”) and such BG/FGI Policy shall cease to be valid upon payment of the Guaranteed Amount. Any demand on any of the BG/FGI Policy shall only take effect upon actual receipt of the demand in writing from the Beneficiary by the Guarantor of the relevant BG/FGI Policy.

**(10) Default Interest Rate** : In the event of any overdue payment of any sums due under the Programme, the Issuer shall pay default interest at the rate of 1% per annum above the applicable rate, which is the coupon rate(s) of such MTN, from the due date up to the date of actual receipt by the MTN holders.

**(11) Indemnity** : The Issuer shall unconditionally and irrevocably indemnify the Trustee and/or LA and/or Facility Agent and/or the Guarantors for any claim against the Trustee and/or LA and/or Facility Agent and/or the Guarantors under the Programme. Upon a demand in writing by the Trustee and/or LA and/or Facility Agent and/or the Guarantors, the Issuer shall within fourteen (14) days from the receipt of such written notice forthwith pay all sums outstanding or due payable under the Programme, together with all other costs and charges incurred as a result of such claims.

**(12) Material Adverse Effect** : Means in relation to any event or circumstances, the occurrence or effect of which, has resulted in, or will be likely to result in a material adverse effect on:

- (a) the financial conditions, business or operations of the Issuer or the Guarantors, as the case may be; or
- (b) the Issuer’s ability to perform its obligations under any provisions of the Transaction Documents or the Guarantors’ ability to perform their respective obligations under any provisions under the BG/FGI Facility, as the case may be; or
- (c) the rights and remedies available to the Trustee or the MTN holders under any provision of the Transaction Documents,

and references herein and in the Transaction Documents to any event or circumstances which “has” or which “would have” a Material Adverse Effect shall be construed accordingly.

**(13) Transaction Documents and Facility Documents** : The standard Transaction Documents for a programme of this nature, would include, inter alia:

- (i) Programme Agreement
- (ii) Trust Deed
- (iii) BG
- (iv) FGI Policy

(as amended from time to time) and any other agreements and documents as and when required and deemed necessary by the Legal Counsel and/or the Lead Arranger or Facility Agent which shall reflect and incorporate conditions stated herein and other

conditions, warranties, covenants, events of default and all relevant provisions under the Programme.

The standard Facility Documents relating to the BG/FGI Facility, would include, inter alia:

- (i) Syndicated Bank Guarantee Facility Agreement
- (ii) Financial Guarantee Insurance Facility Agreement
- (iii) Security Sharing Agreement
- (iv) Debenture
- (v) Assignment and Charge of Designated Accounts
- (vi) Assignment of Insurances
- (vii) Corporate Guarantee
- (viii) Land Charge
- (ix) Shares Charge
- (x) Deed of Undertaking
- (xi) Assignment of Put Option Rights and Proceeds
- (xii) Assignment of Sale and Purchase Agreement and Deed of Mutual Covenant
- (xiii) Put Option Agreements
- (xiv) Call Option Agreements

(as amended from time to time) and any other agreements and documents as and when required and deemed necessary by the Guarantors under the BG/FGI Facility.

- (14) Taxation** : All payment of principal, coupon and other amounts will be made without deduction or withholding for or on account of any taxes, duties, assessment or charges of whatsoever nature, present or future. If any taxes are imposed, the Issuer shall pay additional amounts so that the Facility Agent will receive the full amount, which would otherwise have been received.
- (15) Legal Fees and Other Expenses** : All costs, charges and expenses including the trustee fee, legal and other professional fees, rating fees, service tax, stamp duties (if any), penalties imposed by authorities (if any), SC and BNM fees, and other incidental costs, charges and expenses shall be borne by the Issuer, even if the Programme is subsequently aborted for any reason whatsoever.
- (16) Other Conditions** : The Programme shall be at all times governed by such rules and directives (whether or not having the force of law) required of or imposed on the participating financial institution(s) by the SC and/or any other appropriate authorities having jurisdiction over matters pertaining to the Programme.
- (17) Currency** : Ringgit Malaysia ("RM").

**(18) Governing Laws and Jurisdiction** : Laws of Malaysia and the non-exclusive jurisdiction of the Courts of Malaysia.