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## MDD Guide for Notice 2 - Public

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### General Due Diligence Processes

1. In facilitating every transaction, an LOB shall obtain the purpose of the transaction from the clients in line with External Sector Statistics (ESS) reporting guideline. Verification on the purpose of transactions based on declaration from the clients shall be supported by internal checks on the status of the client (e.g. FE compliance track record) as guided by know your customer (KYC) principle and the LOB's own compliance framework.
2. An LOB is to set its own guidance on the requirement for documentary evidence, where such document(s) may be obtained either pre- or post-transaction and on transactional or selective basis, as guided by KYC principle and the LOB's own compliance framework.

### Specific Due Diligence Processes

#### Borrowing

##### LOB as a lender

##### *Lending in Ringgit to Non-Resident (NR)*

3. A LOB, in providing ringgit financing to a NR, shall ensure that the borrowing -
  - (a) complies with the permitted purposes:
    - (i) For borrowing to finance activities in real sector, the LOB shall obtain a declaration from the client on the purpose of utilisation if the LOB is unable to verify the activities or the loan disbursement is made directly to the client (e.g. personal loan); and
    - (ii) For borrowing in the form of repurchase agreement or sale buyback agreement (REPO), the LOB shall obtain a declaration from the client that its total borrowing from REPO is within the permissible limit.
  - (b) is not used for speculative activities. Upon conducting due diligence, if the LOB believes or suspects that the ringgit proceeds will be used for speculation, the LOB must insist on documentary proof on the utilisation of the ringgit proceeds prior to disbursement;
  - (c) extended to NR financial institutions (NRFI) is only for permitted purposes; and

- (d) in the form of ringgit overdraft facility to non-residents to avoid failure in settlement of shares or ringgit instrument traded on Bursa Malaysia or through RENTAS due to inadvertent delay of payment by the non-resident satisfies the following requirements:
- (i) The LOB shall obtain documentary proof of pre-advised funds from the non-resident before extending the overdrafts in the event of inadvertent delay; and
  - (ii) The LOB shall take steps to ascertain if requests for such overdrafts by the non-resident are unusually frequent. In such event, the LOB shall cease the offering of such facility to the non-resident if the LOB has reasons to believe that the facility is being abused.

*Lending in foreign currency to residents*

4. A LOB, in providing foreign currency financing to a resident individual, sole proprietor or general partnership, shall obtain a declaration from the client that its total outstanding borrowing from any LOB or a NR is within the permissible limit.
5. A LOB is required to check internally on existing foreign currency financing granted to the client to ensure that the additional foreign currency financing does not exceed the permissible limit.
6. An LOB, in providing foreign currency financing to a resident entity to finance investment in foreign currency assets, shall obtain a declaration from the client on purpose of the borrowing to determine the applicability of threshold of such activities.
  - (a) Foreign currency borrowing for direct investment abroad is freely permitted. However, in the event the LOB becomes aware of a client undertaking direct investment abroad with the ultimate purpose of reinvestment that does not fall under direct investment abroad, the LOB must obtain from the client approval from BNM for such investment as per Minimum Due Diligence Guide for Notice 3 (MDD3); and
  - (b) Foreign currency borrowing for other type of investment in foreign currency assets, the requirement under MDD3 shall be observed.

**LOB in facilitating lending**

*Lending in ringgit to a NR*

7. A LOB, in facilitating lending in ringgit to a non-bank NR, shall ensure that if the loan is extended by -
  - (a) a resident other than a LOB, is utilised for permitted purposes; or

- (b) immediate family member or employer in Malaysia is utilised for permitted purposes and in compliance with the requirement of external account.

The LOB shall also perform due diligence to determine the relationship between the NR and the resident lender to ensure such borrowing is permitted. The LOB shall obtain declaration from the client and be guided by KYC principle.

*Lending in foreign currency by a resident to a NR*

- 8. A LOB, in facilitating lending in foreign currency by a non-bank resident to a NR, shall ensure requirements under MDD3 and Minimum Due Diligence for Notice 4 (MDD 4) are observed.

**LOB in facilitating borrowing**

*Borrowing in ringgit by a resident from a NR*

- 9. A LOB, in facilitating borrowing in ringgit by a resident individual from a NR, shall obtain a declaration from the client to ensure that –

*Remitting bank*

- (a) the relationship between the client and NR immediate family member is established;
- (b) the relationship between the client and NR employer in Malaysia is established, the borrowing is in accordance with the terms and conditions of the client's service and the proceeds will be used in Malaysia; or
- (c) the lender is not an NRFI.

*Receiving bank*

- (a) the total outstanding borrowing of the client from NR does not exceed the permissible limit and the proceeds will be used for permitted purposes only via a declaration by the client; or
  - (a) The lender is not an NRFI.
- 10. A LOB, in facilitating borrowing in ringgit by a resident entity from a NR, shall obtain a declaration from the client, where relevant, to ensure that –
    - (a) The lender is not an NRFI, other than for ringgit borrowing via tradable ringgit bond or sukuk issued in line with the Securities Commission of Malaysia's guideline. The remitting LOB is responsible to ensure that any payment from an External Account of NRFI is in line with the permitted sources, and
    - (b) The borrowing will be utilised for permitted purposes only; and

- (c) The outstanding ringgit borrowing of the resident entity from a NR does not exceed the permissible limit.

*Borrowing in foreign currency by a resident from a NR*

- 11. A LOB, in facilitating borrowing in foreign currency by a non-bank resident from a NR, shall ensure that the permissible threshold is determined prior to facilitating such transaction by obtaining a declaration from the client on –
  - (a) the relationship between the client and the NR lender; and
  - (b) the outstanding borrowing in foreign currency of the client from any NR other than from its group of companies which is not an NRFI or a special purpose vehicle. The outstanding borrowing is computed based on group of entities with parent-subsidary relationship (including borrowing by the group's special purpose vehicle guaranteed or counter-guaranteed by the resident). Refer to the Appendix for illustrations on parent-subsidary relationship.

**Guarantees**

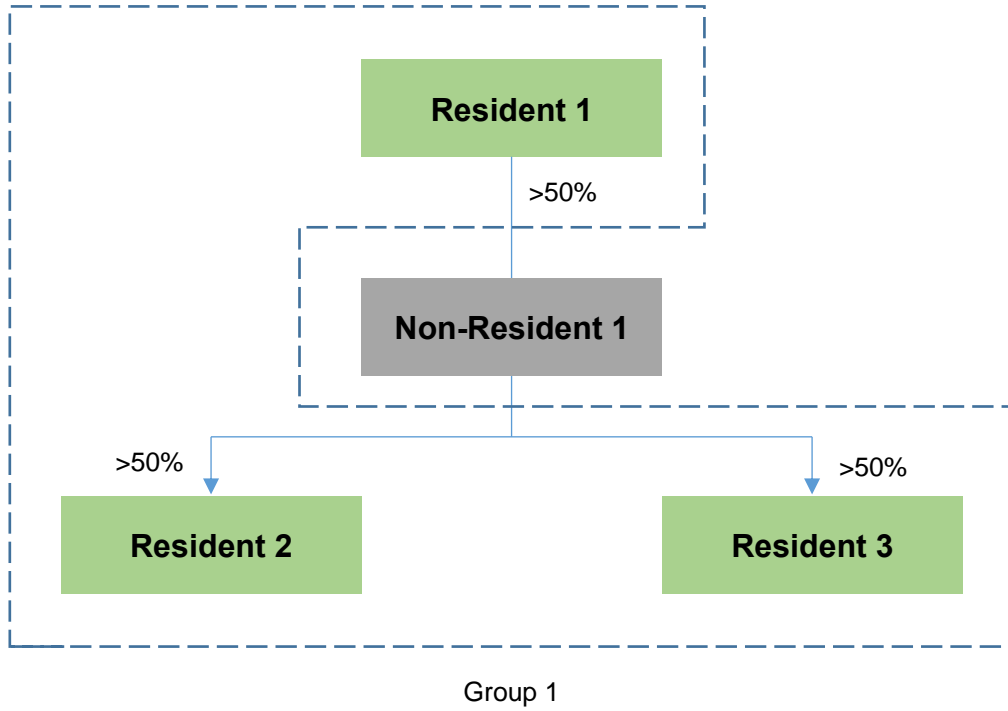
- 12. For the issuances of financial guarantees, a LOB is expected to advise the non-bank resident guarantors of the need to seek BNM's approval if –
  - (a) the non-resident borrower falls under the status of a 'special purpose vehicle' as per the FE Notices; or
  - (b) where implicit support arrangements (such as financial guarantee) are assessed as a repayment factor in the credit decision process, evidencing insufficient earning capacity on the part of the non-resident borrower to repay its own borrowings.
- 13. Any payment arising from financial guarantees shall be guided by MDD 4.

**Due Diligence Processes for Clients with Special Dispensations or Approvals**

- 14. A client with an approval/exemption from BNM has to satisfy the LOB's due diligence process in ensuring the transaction to be facilitated is in line with the approval/exemption.
- 15. A client with approval/exemption from BNM is expected to provide the approval letter to the facilitating LOB.

Illustration of Parent-Subsidiary Relationship

Scenario 1



Scenario 2

