

**BANK NEGARA MALAYSIA
CORPORATE DEBT RESTRUCTURING COMMITTEE
PARTICIPANTS' CODE OF CONDUCT**

Issued on **29 JULY 2009**

(Updated on **27 JUNE 2018**)

Introduction

- 1.1 The Corporate Debt Restructuring Committee (“**CDRC**”) was formed by Bank Negara Malaysia (“**BNM**”) to provide a platform for both debtors and Creditors to work out feasible debt restructuring schemes without having to resort to legal proceedings.
- 1.2 The Code of Conduct (“**Code**”) specifies CDRC’s expectations of the conduct of both debtors and FI creditors that have applied and admitted to CDRC for a debt restructuring workout (the “**Participants**”).
- 1.3 This Code is not intended to be legally binding on the Participants. Nonetheless, any breach or non-compliance of the Code by any Participant shall be regarded with serious concern by CDRC.

Scope and Commencement

- 2.1 The Code shall be observed by the Participants.
- 2.2 The Code is issued and effective on 29 July 2009 and revised on 27 June 2018, it shall be applicable until CDRC is dissolved.

Definitions and Interpretation

- 3.1 In this Code, except where the context otherwise requires, the following words shall have the following meanings-

“**Act**” means the Companies Act 2016 (Act 777) and includes any modification or re- enactment thereof in force;

“**eligible debtor**” means any person who satisfies the eligibility criteria in section 5 of this Code;

“**facility**” means, in respect of an eligible debtor, each loan, credit or financing facility, whether Islamic or conventional granted by a participating institution to an eligible debtor, or any issuances of securities by an eligible debtor and includes all rights to receive repayment of monies lent or made available thereunder;

“**participating institutions**” or “**creditors**” means any –

- a) licensed banks as defined in the Financial Services Act 2013;
- b) licensed Islamic banks as defined in the Islamic Financial Services Act 2013;
- c) development financial institutions prescribed under the Development Financial Institutions Act 2002;
- d) any other institutions which come within the purview of regulation of BNM; and

- e) any other body corporate, co-operative societies, fund managers, unit trusts or other entity legally empowered under any written law and/or its valid and binding constitutive agreement to provide loans, financing or any other credit facilities save and except for any trade creditors of an eligible debtor, who are the creditors of an eligible debtor or holders of debt securities (both conventional and Islamic) issued by an eligible debtor and have agreed to participate in the debt restructuring framework of the CDRC; and

“**workout exercise**” refers to the individual workout exercise under this Code undertaken by the eligible debtor and the participating institutions in formulating the proposed debt restructuring scheme.

General Principles

- 4.1 CDRC is intended to be a forum for the mediation of debt restructuring arrangements between Participants.
- 4.2 All FI creditors are encouraged to co-operate and work together towards achieving a common objective of a successful debt restructuring that restores the operations and business of an eligible debtor to commercial viability while respecting the priority of rights of such creditors and other capital or liquidity providers.
- 4.3 CDRC aims to facilitate effective communication between eligible debtors and their FI creditors and to mediate conflicting interests with the aim of a successful debt restructuring workout. In this regard, the CDRC shall provide guidance to the eligible debtor and participating institutions during the workout exercise to ensure equitable treatment to all stakeholders.
- 4.4 In determining the consensus of the participating institutions in respect of any matters under the Code, CDRC shall regard a majority of seventy-five percent (75%) from each class of creditor as having achieved a consensus.

Eligibility Criteria

- 5.1 Companies eligible to be admitted to CDRC shall meet the following criteria:
 - a) have an aggregate indebtedness arising under or in connection with any financing/loan agreements or arrangements or issuance of securities of at least Ringgit Malaysia Ten Million (RM10,000,000-00), and involving at least two (2) participating institutions; and
 - b) at the time of consideration by the CDRC, the applicant is not dissolved, in liquidation or in receivership and no such actions or conditions exists at that time which may result in a dissolution, liquidation or receivership of the applicant. In the event that any such actions or conditions exist at the time of consideration, necessary steps shall be taken to keep such actions in abeyance. Nevertheless, an exception is given to those companies where Receivers have been appointed only over certain specified assets and that the Directors remain in control of the companies’ overall operations; and

- c) the eligible debtor,
 - i) has projected or demonstrated that it will imminently be in financial difficulty or is already experiencing difficulties in servicing their debt obligations but may not have already defaulted on its obligations; or
 - ii) is a company listed on the Main Market or ACE Market of Bursa Malaysia that has been classified as a PN17 or GN3 company respectively.

5.2 Notwithstanding the eligibility criteria in paragraph 5.1, CDRC in its absolute discretion may accept or reject applications as it deems fit.

5.3 CDRC in its absolute discretion may review and/or amend the eligibility criteria stipulated herein as it deems necessary for the purposes of preserving its over-reaching objectives of employment preservation and sustaining economic growth.

Key Restructuring Principles

- 6.1 **First Loss Principle**: the losses incurred by an eligible debtor shall always be borne firstly by its ordinary shareholders, and followed by any preference shareholders and providers of subordinated loans or advances;
- 6.2 **Post-Restructuring Level of Borrowing**: the post-restructuring level of debt shall be set at a level that is commensurate with the debt servicing capability of the eligible debtor, taking into account, amongst others, its expected future cashflows and the value of its assets;
- 6.3 **Shortfall to Creditors**: any shortfall borne by participating institutions of an eligible debtor shall be sufficiently compensated by way of issuance of equity, equity hybrids or any other type of deferred instruments;
- 6.4 **Ranking**: the debt restructuring scheme shall recognize and acknowledge the existing priority and status of claims of the creditors of an eligible debtor at the time of application of eligible debtor to the CDRC and there shall be no changes in respect of the prevailing ranking and status of creditors;
- 6.5 **New Monies**: any claims by creditors of an eligible debtor in respect of new monies provided by its creditors, if any, to sustain the viability of the business shall be accorded a senior ranking status to the existing debts of the eligible debtor; and
- 6.6 **Operating Accounts**: where appropriate, there should be consolidation of the operating accounts of the eligible debtor, with the aim of providing transparency to its FI creditors of its actual cashflows.

Organisational Structure

7.1 **Organs of the framework:** The following committees shall be formed under the framework, which shall jointly undertake the workout exercise:

- a) the Committee;
- b) the Operations Team; and
- c) the FI Creditors Committee.

7.2 The Committee

- a) The Committee shall comprise at least seven (7) members having the requisite experience and from legal, accounting or regulatory backgrounds including but not limited to the following person(s):
 - (i) the chairman of the CDRC (“Chairman”);
 - (ii) representatives of BNM;
 - (iii) representatives of the Securities Commission Malaysia;
 - (iv) representatives from the Ministry of Finance; and
 - (v) independent representatives appointed by BNM.
- b) The Committee shall meet at least once a month. At any meeting of the Committee, at least five (5) members of the Committee shall form the quorum for the convening of a Committee meeting.
- c) In the absence of the Chairman, the quorum present may nominate any member of the Committee present at the meeting to chair the Committee meeting.
- d) The Committee may, in the execution and exercise of all or any of its functions, duties or powers, delegate such functions, duties or powers to the Operations Team.
- e) The functions and duties of the Committee include the following:
 - (i) to consider applications made or referred cases to CDRC and review whether such applicant meets the eligibility criteria;
 - (ii) to provide broad guidelines on the steps to be taken in the workout exercise to enable orderly and expeditious progress, whilst allowing the parties flexibility in exercising their commercial decisions in arriving at equitable and fair treatment of all classes of creditors; and

- (iii) to mediate in disputes, if any, amongst participating institutions, or between participating institutions and eligible debtors.

7.3 **The Operations Team**: The Operations Team shall consist of the persons appointed by CDRC and shall carry out the following functions and duties in addition to any functions and duties as may be delegated or specified to it by the Committee (the “Operations Team”):

- a) to keep a register of all applications made to the Committee by eligible debtors and submit the same to the Committee;
- b) to handle all inquiries in respect of the Committee;
- c) to review all applications submitted, including to conduct any initial screening procedures as it deems necessary;
- d) to make recommendations to the Committee in respect of accepting or rejecting applications in accordance with sub-section (c) hereof and to respond promptly to the applicants;
- e) to keep track of the progress and status of all applications;
- f) to facilitate the convening of meetings of the Creditors Committee with the participating institutions and/or the eligible debtor, as the case may be;
- g) to convene the Creditors Committee meetings;
- h) to invite the eligible debtor to attend a Creditors Committee meeting, and to convene and chair such Creditors Committee meetings;
- i) to monitor and ensure that the deadlines set are adhered to;
- j) to provide administrative support to the Committee in all administrative and technical matters as may be required; and
- k) to provide reporting to the Committee.

The Operations Team is not a decision-making body, and merely has administrative and secretarial powers in respect of the functions and duties as prescribed in section 7.3 hereof.

7.4 **FI Creditors Committee**

- a) A Creditors Committee consisting of participating institutions of an eligible debtor shall be formed in respect of each successful application.
- b) The members of the Creditors Committee shall comprise representatives from all or substantially all classes of creditors, including but not limited to secured creditors, unsecured creditors and bondholders. The respective representatives shall be senior officers of the participating institutions or creditors with decision making authority in respect of the workout exercise.

- c) All Creditors Committee meetings will be chaired by a representative of CDRC.
- d) The Creditors Committee will be responsible for the following matters:
 - (i) to be actively involved in the evaluation, negotiation and finalization of the Proposed Restructuring Scheme (“**PRS**”) in accordance with CDRC’s guiding principles on restructuring;
 - (ii) to sufficiently raise salient issues or points for discussion during the CDRC mediated meetings for the benefit of all stakeholders during the workout exercise; and
 - (iii) to finalise and recommend for approval the proposed restructuring scheme where appropriate;
 - (iv) any other functions as may be deemed necessary for the workout exercise and are in accordance with the spirit of the Code.
- e) The eligible debtor shall prepare the minutes of the CDRC meeting which shall constitute as the official record of all proceedings.

Procedures and Methodology of the Workout Exercise

- 8.1 **Application:** An application may be made to CDRC by an eligible debtor for a workout exercise under the framework of CDRC. Such application shall be in the form and substance as prescribed by CDRC.
- 8.2 **Viability Assessment:** CDRC shall, upon receipt of an application by an eligible debtor, conduct a preliminary viability assessment on the eligible debtor’ application based on historical and currently available information to determine if there is a basis for a viable restructuring of the eligible debtor’s debt.
- 8.3 **Notification:** CDRC shall, within one (1) month from the date of application in paragraph 8.1 hereof notify the eligible debtor and its FI creditors of its decision to accept or reject the application of the eligible debtor to the CDRC for a workout exercise under the framework of CDRC.
- 8.4 **Standstill:** All participating institutions shall observe a standstill period in accordance with paragraph 9 of this Code.-
- 8.5 **Notwithstanding the standstill and unless already obtained,** the eligible debtor may require additional protection under provisions set out within Division 7 (Subdivisions 2 and 3) or Division 8 (Subdivisions 1 and 2) of the Companies Act 2016. In such circumstances, the eligible debtor shall make a written request to the CDRC.

- 8.6 Creditors Committee: Upon notification of the acceptance of the eligible debtor's application into CDRC as per paragraph 8.3 of the Code, a Creditors Committee shall be formed in accordance with the Code.
- 8.7 Proposed Workout: The eligible debtor, in consultation with the FI Creditors Committee shall proceed to prepare and submit a proposed debt restructuring scheme to CDRC within sixty (60) days from the date of the notification of acceptance of its application in line with paragraph 8.3. The eligible debtor should undertake to be open minded and flexible to act as quickly as circumstances permit. It must show genuine commitment to the workout exercise to justify the continued support of the CDRC and the participating institutions.
- 8.8 The proposed debt restructuring scheme shall-
- a) be accompanied by a "responsibility statement" which is to be printed on the eligible debtor's official letterhead and duly executed by a director of the eligible debtor (the standard format "responsibility statement" as provided by CDRC);
 - b) contain complete and comprehensive terms and conditions of the proposed debt restructuring scheme sufficient to be incorporated into a final restructuring agreement;
 - c) conform to the Key Restructuring Principles as set out in paragraph 6 of the Code; and
 - d) be accompanied with the complete legal documentation as may be required for the execution of the final restructuring agreement.
- 8.9 Formal Notification: Upon finalisation of the proposed debt restructuring scheme the participating Institutions shall provide their formal decisions on the same within a period specified by CDRC.
- 8.10 Final Agreement: Upon the CDRC's receipt of written confirmation from at least seventy five percent (75%) of each class of creditors, CDRC will notify the eligible debtor and its participating institutions that the proposed debt restructuring scheme is henceforth binding on all parties and they may proceed to prepare and execute the final restructuring agreement within a period specified by the CDRC.

Standstill

- 9.1 Each participating institution shall observe a standstill commencing from the date of CDRC's notification of the acceptance of an eligible debtor's application and until such time that may be advised by the CDRC.
- 9.2 Where participating institutions are holders of securities issued by the eligible debtor, such participating institutions shall instruct and authorise any trustee or other person appointed to represent the interests of the holders of such securities to adhere to the terms stipulated in the Code for and on behalf of the holders of the said securities.
- 9.3 During the Standstill Period, participating institutions shall observe the following:

- a) continue to make available and maintain the outstanding balance on all Facilities granted to the eligible debtor as at the commencement of the informal standstill;
- b) not take or commence or continue any recovery action or legal proceedings against the Eligible Debtor or any of its assets, whether held as security or not in respect of any of the Facilities or any other liability of the Eligible Debtor or permit any recovery action or proceedings to be taken on its behalf;
- c) not accelerate or require payment of any liability of the eligible debtor in respect of any of the Facilities;
- d) not take any action to enforce or make any demand under any security or guarantee or similar support given in connection with the Facilities by the eligible debtor;
- e) not exercise any right of set-off or consolidation of accounts in respect of amounts outstanding under any Facilities;
- f) not attempt to secure or obtain any guarantee, indemnity, charge, pledge, lien or any other security from the eligible debtor save and except with the prior written consent from the other Participating Institutions in respect of that eligible debtor;
- g) not impose any penalty charges or late payment charges on any amounts due and payable under the Facilities as at the commencement of the Standstill Period;
- h) unless it is permitted under the transaction documents pertaining to the Facilities, not sell, assign or transfer its Facilities to any person or entity who is not a participating institution under the Code; and
- i) consent to the repayment to the secured participating institutions in respect of the eligible debtor whereby the monies for such repayment is derived from any redemption sums and cash flows generated from projects undertaken by the eligible debtor, if any, to continue.

Notwithstanding, participating institutions may appeal to CDRC to permit action which is deemed necessary to safeguard their position.

9.4 During the -Standstill Period, the eligible debtor shall observe the following:

- a) to manage and conduct its core business in the ordinary and usual course and not to carry on any other business without the approval of the participating institutions;
- b) to diligently pursue claims against third parties (with de minimis exception); and
- c) to ensure that any loan stock or advances from its directors or related companies be fully subordinated and remain fully subordinated to all rights, claims and actions which each participating institution may now or hereafter have against the eligible debtor in connection with the Facilities.

d) the eligible debtor shall not, without the prior approval of all the participating institutions-

- (i) create, incur, assume or suffer or permit to exist any security interest upon any of its property, assets or revenues, or rights to receive income, whether now owned or hereafter acquired except for any security interest existing upon notification of acceptance into the CDRC;
- (ii) incur further borrowings or indebtedness;
- (iii) declare any dividends whatsoever;
- (iv) repay or redeem any loan stock or any advances from its directors or related companies;
- (v) acquire, dispose or transfer any material assets otherwise than in the ordinary course of business and on an arms' length basis;
- (vi) make any loan or advances to any related company or any other person or make any investment;
- (vii) permit any significant change in its shareholding structure and/or management;
- (viii) make any payments in respect of interest on any loans or advances from its directors or related parties;
- (ix) incur any expenses other than in the ordinary course of business;
- (x) enter into any transactions with related parties other than in the ordinary course of business and on an arms' length basis; or
- (xi) create any preferences to any of its creditors.

Meetings of Creditors Committee

10.1 Attendance of all members of the Creditors Committee is mandatory for each meeting. Where a representative of a participating institution is unable to attend any Creditors Committee meetings, an alternate representative of similar seniority shall attend on behalf of that participating institution. Failure to attend any Creditors Committee's meeting twice will result in the removal of the said creditor from the Creditors Committee and any decisions thereon made by the remaining participating institutions/creditors shall be /applicable to all participating institutions/creditors notwithstanding removal.

10.2 The eligible debtor shall furnish the CDRC and participating institutions with timely, complete and accurate information..

Observance of Milestones and Extension of Time

- 11.1 Delays in the workout exercise or the implementation of the debt restructuring scheme may have the effect of diminishing the possibility of the effective restructuring of the eligible debtor. To minimise the risk of this materialising, the Operations Team shall establish a tentative timeline which is expected to be met by all Participants and any other parties involved in the workout exercise. Failure to adhere to these timelines shall be deemed a breach of the Code as set out in paragraph 12 of the Code.
- 11.2 Notwithstanding paragraph 11.1, an eligible debtor may make a formal request to CDRC for an extension of time to complete the workout exercise. CDRC in its absolute discretion may approve or decline the request.

Non-Compliance of the Code

- 12.1 The failure of the participating institutions or the eligible debtor to observe or perform its obligations under the Code or under any arrangement or undertaking entered into in connection therewith shall be deemed conclusively by CDRC as a non-compliance of the Code by such participating institutions or eligible debtor (“Non-Compliance”) save and except otherwise communicated in writing by CDRC to such participating institution or eligible debtor.
- 12.2 If any participating institution or eligible debtor commits a Non-Compliance, any other participating institution or the eligible debtor, as the case may be, may report such Non-Compliance to CDRC, and such report shall include all relevant details and evidence pertaining to the Non-Compliance.
- 12.3 Upon the receipt of such report or information on the Non-Compliance , CDRC shall consider the matter and issue a letter notifying the participating institution or eligible debtor, as the case may be, of such Non-Compliance and providing a timeline for the remedy of such Non-Compliance to be complied with by the said participating institutions or eligible debtor.
- 12.4 At any time during the Standstill Period, CDRC shall have the absolute discretion to discharge the eligible debtor from under its purview if the eligible debtor committed any Non-Compliance or if the Proposed Debt Restructuring Scheme (“PDRS”) is deemed not feasible by participating institutions.
- 12.5 The eligible debtor shall not for its benefit, use CDRC’s name to influence any third party in whatever form or manner while under the purview of CDRC. Doing so shall be regarded as a Non-Compliance.

Fees and Expenses

- 13.1 An administrative fee of 0.05% calculated on the total debt mediated is payable upon the successful implementation of the debt restructuring scheme.
- 13.2 The costs associated with negotiating and finalising the workout exercise will normally be borne by the debtor. Lenders should help to minimise expenses and where feasible, the

sharing of resources and appointment of advisors with appropriate expertise and at a reasonable cost should be encouraged.

Confidentiality and Secrecy

- 14.1 Each party under the Code, including but not limited to any consultants or experts appointed, their related employees and officers shall not use or exploit for any purpose whatsoever divulge or communicate to any person any information relating to the affairs of the eligible debtor and or any participating institution, or any confidential knowledge or information or any legal, financial, trading or other information relating to the eligible debtor or the participating institution which it may receive or obtain through the workout exercise save and except as may be required by law.
- 14.2 If required by CDRC, the eligible debtor and/or the participating institutions , as the case may be, shall procure their respective advisers and consultants and their representatives (other than officers and employees), if any to give a similar confidentiality undertaking acceptable to CDRC.

Release and Indemnity

- 15.1 Any party who subscribes to the Code shall indemnify and hold harmless CDRC and the officers, members, servants, agents and advisers of CDRC against any legal proceedings, suit, action, arbitration or any other form of dispute resolution for any loss or damage caused or likely to be caused by anything which is done, omitted or intended to be done in good faith in furtherance of the workout exercise in accordance with the Code.

Miscellaneous

- 16.1 The Code may be amended at any time and from time to time in the absolute discretion of CDRC.
- 16.2 The decisions of CDRC and/or the Committee, as the case may be, in respect of any matters to be decided by them in accordance with the Code, shall be final and conclusive.