
MDD Guide for Notice 4

(updated on 5 January 2022)

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 the KYC principle and the LOB’s own compliance framework.
3. An LOB is also required to ascertain the residency status of clients during the on-boarding process¹. The residency status of client individuals shall be based on –
 - (a) nationality of the resident; and
 - (b) for individuals with Permanent Residency status, the determination shall be guided by existing tax ruling² in Malaysia.
4. For a resident client with foreign currency proceeds from export of goods or foreign currency receipt from a resident exporter and / or resident intermediary³ within the global supply chain⁴, LOB shall open a Trade FCA to credit such foreign currency proceeds. Guidance on the permitted sources and uses of funds for Trade FCA and Investment FCA are as stipulated in Appendix C.
5. Upon detection of any non-compliance of FE rules, the LOB shall –
 - (a) advise the client to seek approval from BNM;
 - (b) institute remedial or preventive action; and
 - (c) report to BNM based the Direction to Financial Institution.

¹ For exempted non-residents where the exemption status is time-bound (e.g. employment permit), LOBs are expected to keep track of such limitations and keep their records up-to-date.

² Kindly refer to Inland Revenue Board of Malaysia’s website at <http://www.hasil.gov.my> for latest updates.

³ Resident importers and resident vendors that have domestic transactions with the ultimate resident exporter within the global supply chain.

⁴ Global supply chain is defined as a business activity where resident importers purchase goods or services from overseas to support production and distribution of goods or services by a resident exporter for its export activities. This include domestic trade transactions between the resident importer and the resident exporter undertaken through resident intermediate entity.

Facilitating settlement of exports in Ringgit

6. Where the settlement for export is to be made by a NRFI on behalf of its non-resident clients in ringgit to a resident, any sale of foreign currency against ringgit shall be matched with a back-to-back arrangement with a LOB.

Payment under guarantee

7. Remitting LOB shall ensure that payment under financial guarantee is only made pursuant to event of default under the legal agreement or as required under the relevant laws..
8. Whilst the denomination of financial guarantees may be quoted to correspond to the underlying borrowing, payments or consequential debt repayments arising from financial guarantees to –
 - (a) a non-resident lender or guarantor shall only be made in foreign currency unless the underlying borrowing in ringgit is permitted;
 - (b) a non-bank resident guarantor from another resident shall only be made in ringgit except where the non-bank resident guarantor is an immediate family member or an entity within the borrower's group or the borrower's Direct Shareholder; and
 - (c) a lender or guarantor which is a LOB from another resident may be made in foreign currency or in ringgit.
9. Payments arising from non-financial guarantees involving non-residents shall only be made in foreign currency except for ringgit non-financial guarantees for use in Malaysia.

Facilitating foreign currency payments between Residents

10. In facilitating transactions involving payment in foreign currency between residents, the LOB shall –
 - (a) ensure that the payment falls within the permitted purposes under Notice 4;
 - (b) ensure payments are made from a resident exporter and/or resident intermediary to another resident within the global supply chain as declared by the resident exporter and/or resident intermediary to the Paying Bank.

11. For payment in foreign currency from resident exporter and/or resident intermediary to another resident within the global supply chain, the following have to be observed –

(a) Paying Bank

- (i) To obtain a declaration⁵ by the resident exporter and/or resident intermediary listing the residents within the global supply chain; and
- (ii) Payment shall be made only from the available foreign currency funds in the resident exporter's Trade FCA or approved foreign currency trade facility; no conversion of ringgit into foreign currency is allowed for this payment.

(b) Receiving Bank

The Receiving Bank reserves the right to reject payment if the Paying Bank fails to provide the due diligence confirmation required under the Minimum Due Diligence Guide that applies to the LOBs.

Facilitating payments in foreign currency involving derivatives

12. LOBs are to be guided by **Appendix B** when facilitating payments in foreign currency involving derivatives.

Due Diligence Processes for Clients

13. For clients with approvals / exemptions, LOBs are required to sight the approval letter from the applicable authorities.
14. LOBs may reject any transaction by a client if there is reasonable doubt of its compliance with FE Rules.

⁵ In lieu of a declaration, LOBs may substantiate the global supply chain relationship via other supporting documents as guided by KYC principle.

Appendix A

Types of documentary evidence required

The table below serves as a non-exhaustive guide on the type of documentary evidence that can be obtained. An LOB can determine the type of documentary evidence based on its internal KYC standards and risk appetite that is sufficient to ensure compliance with FEP rules.

No	Purpose	Examples of documents to support transaction (non-exhaustive)
1.	Between immediate family (parents, spouse, children and siblings only)	Marriage certificate, birth certificate, identity cards, passports
2.	Education overseas	<p>For sponsoring entity: Letter of award / scholarship / sponsorship, letter of offer by overseas school / college / university for sponsored student, invoice for tuition / accommodation / other fees</p> <p>For individuals: Letter of offer by overseas school / college / university for student, valid student card / pass / ID, invoice for tuition / accommodation / other fees, letter indicating estimated fees and / or living expenses for an academic year</p>
3.	Employment overseas	Letter of offer from employer, letter from employer confirming employee identity and status of employment, work permit, payslip
4.	Loan repayment	Letter of offer or loan agreement, loan repayment schedule, promissory note
5.	Goods and services	Invoice, bill of lading, purchase order, delivery order, supply contract, service / tenancy / rental agreement, payment advice

No	Purpose	Examples of documents to support transaction (non-exhaustive)
6.	Ringgit asset, including any income and profit due	Sale and purchase agreement, receipt for purchase or sale, tenancy / rental agreement, dividend payment notice
7.	Payment of any security or financial instrument (conventional and Islamic), payment of commodity murabahah transaction through resident commodity trading service provider, payment of derivative with a resident futures broker	Letter of account opening, contract notes with due dates, resident broker invoices to the buyer / customer

Appendix B

Payment in foreign currency for derivatives

No.	Type of derivatives payment (Scenario)	Payment parties	
		Between R and R	Between R and NR
Exchange Rate (FX) Derivative			
1.	Exchange Rate Derivative involving Ringgit <u>offered by Resident</u>	✗ (unless approved by BNM under Part B of Notice 5 or otherwise approved in writing by BNM)	✗ (unless approved by BNM under Part B of Notice 5 or otherwise approved in writing by BNM)
2.	Exchange Rate Derivative <u>offered by a Non Resident</u>	N/A	✗ (unless approved by BNM under Notice 1 or otherwise approved in writing by BNM)
Foreign Currency-denominated Derivative (Other than Exchange Rate Derivatives)			
1.	Foreign Currency-denominated derivative (excluding Exchange Rate Derivatives) transacted on a Specified Exchange under the CMSA	✓ between a Resident and a Resident futures broker	✓ between a Non-resident and a Resident futures broker
2.	Foreign Currency-denominated derivative (excluding Exchange Rate Derivatives) <u>offered by a Non Resident</u> and or transacted via Non Resident brokers (e.g. commodity derivatives)	N/A	✓
3.	Foreign Currency-denominated derivative (excluding Exchange Rate Derivatives) <u>offered by a Resident</u>	✗ (unless approved by BNM under Part B of Notice 5 or otherwise approved in writing by BNM)	✗ (unless approved by BNM under Part B of Notice 5 or otherwise approved in writing by BNM)

No.	Type of derivatives payment (Scenario)	Payment parties	
		Between R and R	Between R and NR
Others			
1.	Derivative which is referenced to Ringgit but payment is in Foreign Currency (e.g. synthetic products referenced to Ringgit such as Ringgit Non-Deliverable Forward)	N/A	X (unless approved by BNM under Part B of Notice 5 or otherwise approved in writing by BNM)

Appendix C

Guidance on sources and uses of funds of Trade FCA and Investment FCA for Residents

	Trade FCA	Investment FCA
Permissible Sources	<ol style="list-style-type: none"> 1. Proceeds of the export of goods. 2. Settlement of domestic trade from another Resident within the global supply chain as permitted under Notice 4. 3. Any amount for same-party transfers from Trade or Investment FCA. 4. Other Foreign Currency funds arising from transaction permitted under the FE Notices. 	<ol style="list-style-type: none"> 1. Any foreign currency funds other than – <ul style="list-style-type: none"> • Proceeds of the export of goods; and • Settlement of domestic trade from another Resident within the global supply chain as permitted under Notice 4. 2. Transfers from Trade FCA up to the approved aggregated investment limit in Notice 3. 3. Any amount for same-party transfers from Investment FCA.
Permissible Uses	<ol style="list-style-type: none"> 1. Settlement of domestic trade from another Resident within the global supply chain as permitted under Notice 4. 2. All permissible purposes in the Notice including investment in Foreign Currency Asset and transfers to Investment FCA up to the approved aggregated investment limit in Notice 3. 3. Any amount for same-party transfers into Trade FCA. 	<ol style="list-style-type: none"> 1. Any amount for same-party transfers into Trade or Investment FCA. 2. All permissible purposes.

Disclaimer –

The above guidance summary is non-exhaustive. Please be guided by the relevant notices.