

TECHNICAL NOTE NO. 1/2020

APPROVAL REQUIREMENT UNDER SUBSECTION 212(4) AND SCHEDULES 6 AND 7 OF THE CAPITAL MARKETS AND SERVICES ACT 2007

(Issued: 28 April 2020)

This Technical Note supersedes paragraph 1.04 of Technical Note No.1/2014. This Technical Note should be read together with the relevant Schedules in the *Capital Markets and Services Act 2007* (CMSA) and guidelines issued by the SC.

Part 1 - Clarification to subsection 212(4) of the CMSA on the offering of shares, debentures or sukuk

1. Approval under subsection 212(4) shall be required where a public company or listed corporation proposes to offer its shares, debenture or sukuk outside Malaysia, save where an exemption is provided for under Schedule 5 of the CMSA.
2. However, the SC does not intend for subsection 212(4) of the CMSA to be applicable to-
 - a) in the case of a listed corporation, any secondary transactions of its shares subsequent to the IPO of the shares (e.g. proposal by a shareholder of the corporation to distribute his or its shares in the corporation to parties outside Malaysia); and
 - b) in the case of a public company-
 - i. the issuance of its shares not pursuant to an IPO including the subsequent offering of such shares; or
 - ii. the issuance of structured products exclusively to persons outside Malaysia.
3. The SC would also like to clarify that for the purpose of subsection 212(4) of the CMSA, the exemption under Schedule 5 for secondary transactions of debentures and sukuk equally applies to secondary transactions occurring outside Malaysia.
4. Reference to the term "structured products" in paragraph 2(b)(ii) above includes conventional structured products and Islamic structured products.

Part 2 - Clarification to Schedules 6 and 7 of the CMSA on offers, invitations or issues of securities made to registered persons

5. Sub-paragraph 3(a), Part 1 of Schedule 6 and paragraph 2, Part 1 of Schedule 7 of the CMSA exempt the prospectus requirement for any offer, invitation or issue of securities that is made to a holder of a Capital Markets and Services License.
6. Having regard to SC's licensing and registration framework, the application of the excluded offer or excluded invitation in paragraph 5 above is hereby extended to a corporation that is registered under section 76 of the CMSA.