

GUIDELINES ON CORPORATE GOVERNANCE FOR CAPITAL MARKET INTERMEDIARIES

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**GUIDELINES ON CORPORATE GOVERNANCE FOR
CAPITAL MARKET INTERMEDIARIES**

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¹ Save for requirements under paragraphs 5.04-5.08 of these Guidelines, which will take effect on 1 July 2022.

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Chapter 1

INTRODUCTION

- 1.01 The *Guidelines on Corporate Governance for Capital Market Intermediaries* (Guidelines) is issued by the Securities Commission Malaysia (SC) pursuant to section 377 of the *Capital Markets and Services Act 2007* (CMSA).
- 1.02 Corporate governance is defined as 'the process and structure that are used to direct and manage the business and affairs of the company towards promoting the business prosperity and corporate accountability with the ultimate objective of realising long-term shareholder value while taking into account the interest of other stakeholders'².
- 1.03 While focusing on achieving the company's goal, a CMSL Holder must ensure that robust corporate governance structure, as well as policies and practices are in place to safeguard against unethical conduct, mismanagement and fraudulent activities.
- 1.04 In addition to complying with these Guidelines, a CMSL Holder is strongly encouraged to adopt the recommended corporate governance best practices in the *Malaysian Code on Corporate Governance*.

² Corporate governance as defined in the High Level Finance Committee Report (1999) and adopted in the *Malaysian Code on Corporate Governance*.

Chapter 2

APPLICABILITY

- 2.01 These Guidelines apply to a CMSL Holder which is a company and does not apply to an individual.
- 2.02 The SC may, upon application, grant an exemption from or a variation to the requirements of these Guidelines if the SC is satisfied that–
- (a) such variation is not contrary to the intended purpose of the relevant provisions in these Guidelines; or
 - (b) there are mitigating factors which justify such exemption or variation.

Chapter 3

RELATED PROVISIONS

- 3.01 These Guidelines are in addition to and not in derogation of any other requirements provided for under securities laws or any other guidelines issued by the SC.
- 3.02 Where a CMSL Holder is subject to more than one governance-related requirements, the strictest requirement shall apply.
- 3.03 For avoidance of doubt, compliance with these Guidelines does not relieve the CMSL Holder from other obligations which may be imposed on the CMSL Holder under any other written law or by any other relevant regulator.

Chapter 4

DEFINITIONS

4.01 Unless otherwise defined below, all words used in these Guidelines shall have the same meaning as defined in the CMSA. In these Guidelines, unless the context otherwise requires–

active politician means a person who is a Member of Parliament, State Assemblyman or holds a position at the Supreme Council, or division level in a political party;

CMSL Holder means a company which holds a Capital Markets Services Licence granted by the SC pursuant to section 61 of CMSA;

director has the meaning assigned to it in the *Companies Act 2016*;

senior management means a person appointed by the CMSL Holder to manage or have authority and responsibility for the regulated activity, business decisions or key functions such as risk management, compliance, internal audit or other functions as may be specified by the SC, by whatever name called and includes the chief executive and chief financial officer.

Chapter 5

BOARD OF DIRECTORS

Board responsibilities

- 5.01 The board of a CMSL Holder must ensure that each of its directors fulfils the fit and proper requirements under the *Licensing Handbook*. The appointment of the director shall have due regard to any actual or potential conflicts of interest arising from the appointment and his standing with any relevant regulator.
- 5.02 The board of a CMSL Holder has the overall responsibility to oversee the business and affairs of the CMSL Holder and should ensure among others that it–
- (a) promotes a corporate culture which reinforces ethical, prudent and professional behaviour, honesty, fairness, trust and high performance;
 - (b) governs and sets clear strategic direction which includes approving and overseeing the CMSL Holder’s strategic objectives, governance framework, risk appetite, policies and procedures and business plan;
 - (c) ensures that the strategic plan of the CMSL Holder supports long-term value creation and considers material sustainability risks and opportunities;
 - (d) oversees, reviews, challenges and decides on management’s proposals and strategies, monitors the progress of implementation by management and evaluate management’s performance in undertaking its role;
 - (e) sets the risk appetite within which the board of a CMSL Holder expects management to operate and ensures that there is an appropriate risk management framework to identify, analyse, evaluate, manage and monitor significant financial and non-financial risks;
 - (f) ensures the necessary policies and practices in relation to disclosure are in place to promote self-discipline, accountability and transparency;
 - (g) where applicable, establishes and ensures effective functioning of board committees for example Compliance Committee, Audit Committee, Risk Management Committee, Nominating Committee and Remuneration Committee;
 - (h) establishes and periodically reviews the succession planning for the board of a CMSL Holder and senior management;

- (i) ensures the appointment of the board of a CMSL Holder and senior management are in the best interests of the CMSL Holder and the public; and
- (j) ensures senior management and other employees undergo appropriate training to enable them to undertake their roles and responsibilities effectively.

5.03 A director of a CMSL Holder is responsible to among others–

- (a) exercise vigilance and professional skepticism in understanding and shaping the strategic direction of the CMSL Holder;
- (b) exercise independent judgment in decision making and provide sound and objective advice;
- (c) devote sufficient time to prepare, attend board meetings, contribute constructively to board discussions and decision-making and conduct due inquiry before approving a matter;
- (d) maintain sound understanding of the business, the industry and undertake continuous professional development to support the effective discharge of the roles and responsibilities as a director of the CMSL Holder; and
- (e) ensure conflicts of interest are disclosed and necessary steps are taken to address such conflicts.

Board composition

- 5.04 The board of a CMSL Holder must comprise individuals with the appropriate mix of skills, knowledge, experience and independence that fit the objectives and strategic goals of the CMSL Holder.
- 5.05 The board of a CMSL Holder must identify the criteria that will guide the selection and appointment of its directors. The criteria must consider among others the mix of skills required on the board, board diversity and ability of a director to commit the time to undertake the roles and responsibilities as a director effectively. The board of a CMSL Holder must also review the criteria periodically to ensure alignment with the strategic direction of the CMSL Holder.
- 5.06 The board of a CMSL Holder must undertake the necessary measures to ensure the board comprises at least 30% women directors.
- 5.07 A director of a CMSL Holder must not be an active politician.
- 5.08 The board of a CMSL Holder must be of a size that promotes effective deliberation, encourages the active participation of all directors and allows the board to undertake its roles and responsibilities effectively.

Board meeting

- 5.09 The board of a CMSL Holder must meet regularly to among others, review the business operation and management of the CMSL Holder, monitor the financial and non-financial performance of the CMSL Holder and deliberate on strategic issues.
- 5.10 The board of a CMSL Holder must ensure that comprehensive and accurate minutes of board meetings are maintained to record the decisions of the board, including key deliberations, rationale for each decision made and any significant concerns or dissenting views. The minutes must indicate whether any director abstained from voting or excused himself from deliberating on a particular matter.

Information and support for the board

- 5.11 A CMSL Holder must ensure that its board receives all relevant information it requires to discharge its roles and responsibilities effectively, including meeting materials, which are complete, accurate and circulated to the board within a reasonable time prior to the meeting.
- 5.12 A CMSL Holder must ensure that each director has full and unrestricted access to information and resources including the company secretary, auditors and third party experts, whenever required to discharge his duties.

Remuneration

- 5.13 The board of a CMSL Holder must ensure that the remuneration of the board, senior management and other employees are determined after having considered among others–
- (a) scale, activity and performance of the business;
 - (b) roles and contribution of each individual;
 - (c) need to promote compliance culture, prudent risk taking behaviour and alignment with investors' best interest; and
 - (d) alignment with the corporate strategies, values and sustainability of the CMSL Holder.

Managing conflicts of interest

- 5.14 The board of a CMSL Holder must ensure that it has policies and processes to mitigate, manage and address actual and potential conflicts of interest situation that may arise including any transaction, procedure or course of conduct that raises questions of management integrity. The policies and procedures at minimum, must–
- (a) ascertain circumstances which amount to or may give rise to conflicts of interest;
 - (b) set out the policies and processes for directors to keep the board of a CMSL Holder informed of any material change to their circumstances that amount to or may give rise to a conflict of interest;
 - (c) set out the disclosures required in relation to the actual or potential conflicts of interest;
 - (d) identify the persons responsible for maintaining updated records on each director’s conflicts of interest; and
 - (e) identify and address any instances of non-compliance with the policy on conflicts of interest.

Chapter 6

SENIOR MANAGEMENT

- 6.01 The senior management of a CMSL Holder must–
- (a) understand the nature of the business of the CMSL Holder;
 - (b) establish a management structure that promotes accountability and transparency across the operations of the CMSL Holder and preserves the effectiveness and independence of control functions;
 - (c) promote, together with the board of a CMSL Holder, a corporate culture which reinforces among others, ethical, prudent and professional behaviour, honesty, fairness, trust and high performance;
 - (d) develop strategic and operational plans, written policies and processes to support operational efficiency as well as risk management for approval of the board of a CMSL Holder;
 - (e) implement and adhere to the business strategies, operational plans, risk management policies and other policies and processes as approved by the board of a CMSL Holder;
 - (f) supervise and monitor the business to ensure compliance with securities laws, regulations, guidelines and any other relevant laws;
 - (g) manage the risks associated with the business, including performing periodic evaluation of its risk management processes and internal controls framework;
 - (h) promote human resource development and address other issues relating to staff;
 - (i) address actual or potential breaches of regulatory requirements or internal policies in a timely and appropriate manner;
 - (j) regularly update the board of a CMSL Holder to facilitate the board in carrying out its oversight responsibilities, particularly on matters relating to–
 - i. the performance, financial condition and operating environment of the CMSL Holder;
 - ii. clients' complaints and measures taken to address these complaints;
 - iii. internal control failures, including breaches of risk limits; and

- iv. legal and regulatory obligations, including supervisory concerns and the remedial actions taken to address them; and
- (k) ensure records that are required to be maintained by the CMSL Holder are accurate, complete, properly secured and retained according to the relevant requirements.

Chapter 7

RISK MANAGEMENT, COMPLIANCE AND INTERNAL AUDIT

Risk management

- 7.01 The board of a CMSL Holder must determine its risk appetite and tolerance, including the nature and extent of the material risks, which the board of a CMSL Holder is willing to take in achieving its strategic objectives.
- 7.02 The board of a CMSL Holder must ensure that the CMSL Holder has systems in place to monitor and adequately manage the CMSL Holder's material risks and that there are adequate and effective operational procedures, internal controls for assessing, measuring, controlling, monitoring and reporting of risks taking into consideration the *Guiding Principles on Business Continuity* issued by the SC.
- 7.03 Where there is a regulatory requirement for a CMSL Holder to have a risk management function, the board of a CMSL Holder must ensure that the risk management function is sufficiently independent and adequately resourced with personnel who have the requisite experience and qualifications, including market and products knowledge and command of risk discipline. Other CMSL Holders are encouraged to establish an internal audit function to enhance its internal controls and governance process.
- 7.04 The board of a CMSL Holder must ensure that the CMSL Holder's risk governance framework, supported by appropriate policies, control procedures and processes commensurate with the CMSL Holder's size, complexity and risk profile.
- 7.05 The board of a CMSL Holder must promote a strong risk awareness culture through robust communication on risk and controls across the CMSL Holder and through reporting to the board of a CMSL Holder and senior management.

Compliance

- 7.06 The board of a CMSL Holder must ensure that its compliance approach and policies, including the remuneration and incentive structure promotes and cultivates a compliance culture.
- 7.07 Where there is a regulatory requirement for a CMSL Holder to have a compliance function, the board of a CMSL Holder must ensure that such function–
- (a) is undertaken by a Head of Compliance or designated Compliance Officer who has the necessary experience and competency, is independent and adequately resourced as well as given the necessary authority and direct access to the Board and/or Compliance Committee (where such committee has been established);

- (b) is responsible for promoting and monitoring the integrity of the CMSL Holder and ensuring that the CMSL Holder acts responsibly and observes all applicable regulatory obligations;
- (c) advises the board and senior management on compliance related laws, rules and standards and keep them informed of ongoing development; and
- (d) advocates a compliance culture including promoting awareness on applicable regulatory obligations and provides guidance to staff on compliance issues.

Internal audit

- 7.08 Where there is a regulatory requirement for a CMSL Holder to have an internal audit function, the board of a CMSL Holder must establish an internal audit function. Other CMSL Holders are encouraged to establish an internal audit function to enhance its internal controls and governance processes.
- 7.09 The board of a CMSL Holder must review and approve the internal audit charter that defines the remit for the internal audit function, including its purpose, authority and responsibility.
- 7.10 The CMSL Holder must ensure that the internal audit function is functionally independent from management and the functions it audits. The internal audit function must have a direct reporting line to the Audit Committee or the board of a CMSL Holder.
- 7.11 The board of a CMSL Holder must ensure that the internal audit function is sufficiently resourced and performs adequate and effective internal audit activities during the year and carries out appropriate risk-based assessment.

Outsourcing

- 7.12 Where any of the above function is outsourced, the board of a CMSL Holder remains accountable for all outsourced functions and must establish effective policies and procedures on the outsourcing arrangement.
- 7.13 Senior management must oversee the outsourcing arrangement and ensure compliance with requirements of Chapter 10 of the *Licensing Handbook*.