

# **GUIDELINES ON RECOGNIZED MARKETS**

**SC-GL/6-2015(R8-2022)**

1 <sup>st</sup> Issued :	11 December 2015
Revised :	15 November 2022

## GUIDELINES ON RECOGNIZED MARKETS

### List of Revisions

<b>Revision Series</b>	<b>Revision Date</b>	<b>Effective Date of Revision</b>	<b>Series Number</b>
<b>1<sup>st</sup> Revision</b>	<b>13.04.2016</b>	<b>02.05.2016</b>	<b>SC-GL/6-2015 (R1-2016)</b>
<b>2<sup>nd</sup> Revision</b>	<b>25.01.2019</b>	<b>31.01.2019</b>	<b>SC-GL/6-2015 (R2-2019)</b>
<b>3<sup>rd</sup> Revision</b>	<b>17.05.2019</b>	<b>17.05.2019</b>	<b>SC-GC/6-2015 (R3-2019)</b>
<b>4<sup>th</sup> Revision</b>	<b>16.04.2020</b>	<b>16.04.2020</b>	<b>SC-GC/6-2015 (R4-2020)</b>
<b>5<sup>th</sup> Revision</b>	<b>05.05.2020</b>	<b>05.05.2020<sup>1</sup></b>	<b>SC-GC/6-2015 (R5-2020)</b>
<b>6<sup>th</sup> Revision</b>	<b>06.01.2021</b>	<b>06.01.2021</b>	<b>SC-GC/6-2015 (R6-2021)</b>
<b>7<sup>th</sup> Revision</b>	<b>22.11.2021</b>	<b>22.11.2021</b>	<b>SC-GC/6-2015(R7-2021)</b>
<b>8<sup>th</sup> Revision</b>	<b>15.11.2022</b>	<b>15.11.2022</b>	<b>SC-GC/6-2015(R8-2022)</b>

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<sup>1</sup> Save for the requirement to have policies and procedures on anti-corruption and whistleblowing under subparagraph 6.02(d)(ii) of these Guidelines, which will take effect on 1 June 2020.

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# **PART A: GENERAL**

## **CHAPTER 1**

### **Introduction**

- 1.01 The *Guidelines on Recognized Markets* (Guidelines) are issued by the Securities Commission Malaysia (SC) pursuant to section 377 of the *Capital Markets and Services Act 2007* (CMSA) read together with subdivision 4, division 2 of Part II CMSA.
- 1.02 These Guidelines set out the requirements for—
- (a) the registration of a person as a recognized market operator (RMO); and
  - (b) ongoing requirements applicable to a RMO.
- 1.03 A RMO must be structured as a body corporate unless specified otherwise by the SC.
- 1.04 These Guidelines seek to replace the *Guidelines on Regulation of Markets* issued on 11 December 2015, under section 34 of CMSA, and shall be read together with other relevant SC guidelines.
- 1.05 These Guidelines do not apply to—
- (a) a technology service provider who merely provides the infrastructure, software or the system to a RMO;
  - (b) an operator of a communication infrastructure that merely enables orders to be routed to an approved stock market or derivatives market;
  - (c) an operator of a financial portal that aggregates content and provides links to financial sites of service and information provider; or
  - (d) an operator of a facility that provides information concerning prices of securities or derivatives, and a person is not reasonably expected to sell, purchase or exchange securities or derivatives based solely on the information.
- 1.06 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 requirements in these Guidelines; or
  - (b) there are mitigating factors which justify the said exemption or variation.

## **SC's Approach to Regulation of Markets**

- 1.07 The securities and derivatives market operated, provided or maintained by an operator can be classified into three types of markets that are subject to different levels of regulation i.e. approved market, exempt market and recognized market. The level of regulation imposed will depend on the proposed market characteristics, including the structure of the market; sophistication of market users and rights of access; types of products traded; and risks posed by such markets.
- 1.08 An approved market refers to a stock market of a stock exchange or derivatives market of a derivatives exchange, which are approved pursuant to section 8 of the CMSA<sup>2</sup>. The level of regulation on an approved market requires direct regulation subject to stringent requirements to ensure integrity of its market is maintained through fair, orderly, transparent and efficient market operations.
- 1.09 An exempt market is a stock market or derivatives market which has been declared as an exempt stock or derivatives market pursuant to section 7 of the CMSA. Such market may be exempted when it has already been subjected to other forms of regulation.
- 1.10 A recognized market essentially covers an alternative trading venue, market place or facility that brings together purchasers and sellers of capital market products. The level of regulation in comparison to approved markets is not as stringent. Terms and conditions may be imposed on the RMO to commensurate with the risk profile, nature and scope of the proposed recognized market operations.

## **Circumstances where a person may be considered to be operating, providing or maintaining a market in Malaysia**

- 1.11 A person may be considered to be operating, providing or maintaining a stock market or a derivatives market in Malaysia if—
- (a) the stock market or derivatives market is operated, provided or maintained in Malaysia; or
  - (b) the stock market or derivatives market is located outside Malaysia and actively targets Malaysian investors.
- 1.12 A stock market or derivatives market will be considered to be operated, provided or maintained in Malaysia where the component parts of the stock market or derivatives market when taken together are physically located in Malaysia even if any of its component parts, in isolation, is located outside Malaysia.
- 1.13 A stock market or derivatives market that is located outside Malaysia will be considered

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<sup>2</sup> An example of an approved market is the stock market operated by Bursa Malaysia Securities Bhd.

as actively targeting Malaysian investors if the operator or the operator's representative, promotes directly or indirectly that market in Malaysia.

1.14 In deciding whether there is direct or indirect promotion of the stock market or derivatives market, the following may be taken into consideration by the SC:

- (a) Advertising the stock market or derivatives market, products or in the case of equity crowdfunding, an issuer hosted on the platform, in any publication in Malaysia; or
- (b) Sending direct mail or e-mail to Malaysian addresses marketing or promoting the stock market or derivatives market.

1.15 Notwithstanding the above factors, in determining whether a stock market or a derivatives market is targeted at Malaysian investors, the SC will assess all relevant facts and circumstances taking into account the protection of Malaysian investors and the integrity of Malaysian capital markets.

1.16 These Guidelines comprise of the following parts:

- (a) Requirements for the registration of the RMO as set out in Part B of these Guidelines;
- (b) Terms and conditions and ongoing obligations of a RMO as set out in Part C of these Guidelines;
- (c) Provisions on cessation of business, withdrawal of registration and review of status of a RMO as set out in Part D of these Guidelines;
- (d) Requirements relating to offering of Islamic capital market products on a recognized market as set out in Part E of these Guidelines;
- (e) Additional requirements applicable to a recognized market that is a crowdfunding platform as set out in Part F of these Guidelines;
- (f) Additional requirements applicable to a recognized market that is a digital asset exchange as set out in Part G of these Guidelines;
- (g) Additional requirements applicable to a recognized market that is a property crowdfunding platform as set out in Part H of these Guidelines;
- (h) Additional requirements applicable to a recognized market that is an e-services platform as set out in Part I of these Guidelines; and

- (i) Application process for the registration of a RMO as set out in Part J of these Guidelines.

## Definitions

1.17 Unless otherwise defined, all words used in these Guidelines shall have the same meaning as defined in the CMSA:

approved clearing house	means a clearing house approved under section 38 of the CMSA;
approved exchange	means a stock exchange or a derivative exchange approved under section 8 of the CMSA;
approved market	means a stock market or a derivative market of an approved exchange;
central depository	has the same meaning as provided in section 2 of SICDA;
controller	has the same meaning as provided in subsection 60(7) of the CMSA;
foreign operator	means a body corporate or a limited liability partnership incorporated outside Malaysia who establishes, operates or maintains a stock market or derivatives market;
independent director	means a director who—  (a) is not an executive director of the RMO and its related corporation;  (b) is not a substantial shareholder of the RMO or any of its related corporation;  (c) is not a family member of any officer or substantial shareholder of the RMO or any of its related corporation;  (d) is not acting as a nominee or representative of any executive director or substantial shareholder of the RMO or any of its related corporation;



- (e) in the last two years, has not been engaged for the provision of services by, or in any business transaction with, the RMO or any of its related corporation under such circumstances as may be specified by SC; or
- (f) is not presently a partner, director (except as an independent director) or substantial shareholder, as the case may be, of a firm or corporation that has engaged in any transaction with the RMO or any of its related corporation under such circumstances as may be specified by SC;

investment note

means any contract, agreement, note or any other document evidencing a monetary loan, executed or offered, on or through an electronic platform, where an investor expects a financial return, but does not include—

- (a) any right, option or interest in respect thereof;
- (b) a cheque, banker's draft or any other bill of exchange or a letter of credit;
- (c) a banknote, guarantee or an insurance policy; or
- (d) a statement, passbook or other document showing any balance in a current, deposit or savings account;

Islamic investment note

means any contract, agreement, note or any other document evidencing undivided ownership or investment in any assets in compliance with Shariah principles and concepts endorsed by the Shariah Advisory Council, and is executed or offered, on or through an electronic platform where an investor expects a financial return, but does not include—

- (a) any right, option or interest in respect thereof;

	(b) a cheque, banker's draft or any other bill of exchange or a letter of credit;
	(c) a banknote, guarantee or a takaful policy; or
	(d) a statement, passbook or other document showing any balance in a current, deposit or savings account;
licensed institution	means–
	(a) a licensed bank as defined under <i>Financial Services Act 2013</i> ;
	(b) a licensed Islamic bank as defined under <i>Islamic Financial Services Act 2013</i> ; or
	(c) a licensed investment bank as defined under <i>Financial Services Act 2013</i> ;
Malaysian	means a person who resides or has a registered address in Malaysia;
person in breach	means a person who breaches the rules of a recognized market;
recognized market	means a stock market or a derivatives market operated by a RMO;
recognized market operator (RMO)	means an operator who is registered pursuant to section 34 of the CMSA;
recognized self-regulatory organisation	means a person declared to be a recognized self-regulatory organisation under section 323 of the CMSA;
sophisticated investors	means any person who–
	(a) falls within any of the categories of investors set out in Part 1, Schedule 6 and 7 of the CMSA; or
	(b) acquires any of the capital market product or Islamic capital market product offered or traded on a recognized market where the consideration is not less than

two hundred and fifty thousand ringgit or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise;

subsidiary

has the same meaning as provided in section 4 of the *Companies Act 2016*.

## **PART B: REQUIREMENTS FOR REGISTRATION**

### **Chapter 2**

#### **Registration and application for registration**

##### **Registration**

- 2.01 The SC may register a person as a RMO, subject to the person satisfying the criteria set out in these Guidelines.
- 2.02 For the purposes of these Guidelines, an application for the registration as a RMO must be made by the operator of the stock market or derivative market.
- 2.03 Upon receiving an application for registration as a RMO under these Guidelines, the SC may exercise its power under subsection 35(3) of the CMSA to treat the said application as an application to be an approved exchange. Before exercising its power, the SC may consider the factors as provided in paragraph 11.03.

##### **Application for Registration**

- 2.04 An applicant is required to submit to the SC the relevant forms and documents as specified in Appendix 1 of these Guidelines and any other information as may be required by the SC.
- 2.05 In the case where an applicant is regulated by another sectorial regulator, the applicant must also submit to the SC a no objection or approval letter from the relevant sectorial regulator when making the application to the SC.

## CHAPTER 3

### Criteria for registration

3.01 The SC may register an applicant as a RMO, if the applicant satisfies the SC that—

- (a) the applicant will be able to operate an orderly, fair and transparent market in relation to the securities or derivatives that are offered or traded, on or through its platform;
- (b) the applicant will be able to carry out its obligations as set out under these Guidelines;
- (c) the information or document that is furnished by the applicant to the SC is not false or misleading nor does it contain any material omission;
- (d) the applicant is not in the course of being wound up or otherwise dissolved;
- (e) no receiver, receiver and manager or an equivalent person has been appointed within or outside Malaysia, or in respect of any property of the applicant;
- (f) the applicant has not, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
- (g) the applicant, applicant's directors, chief executive, controller, and any person who is primarily responsible for its operations or financial management are fit and proper, taking into account the following:
  - (i) That they are suitably qualified to assume the position including having the relevant experience and track record in managing a market;
  - (ii) That they have not—
    - (A) been charged; or
    - (B) had any civil action initiated against them in any court of law;
  - (iii) Been convicted, whether within or outside Malaysia, of an offence involving fraud or other dishonesty, or violence or the conviction of which involved a finding that he acted fraudulently or dishonestly;
  - (iv) Been convicted of an offence under the securities laws or any law within or outside Malaysia relating to capital market;

- (v) Been subjected to any action taken by the SC under section 354, 355 or 356 of the CMSA;
  - (vi) Contravened any rules of an approved exchange, approved clearing house, central depository or a recognized self-regulatory organisation;
  - (vii) Contravened any provision made by or under any written law whether within or outside Malaysia appearing to the SC to be enacted for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
  - (viii) Engaged in any business practices appearing to the SC to be deceitful, oppressive or otherwise improper, whether unlawful or not, or which otherwise reflect discredit on his method of conducting business;
  - (ix) Engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement; or
  - (x) Engaged in or has been associated with any conduct that cast doubt on his ability to act in the best interest of investors, having regard to his reputation, character, financial integrity and reliability;
- (h) there are no other circumstances which are likely to—
- (i) lead to the improper conduct of operations by the applicant or by any of its directors, chief executive, controller or any person who is primarily responsible for the operations or financial management of the applicant; or
  - (ii) reflect discredit in the manner it operates its market;
- (i) the applicant's business model has a clear or unique value proposition or will contribute to the overall development of the capital market;
- (j) the applicant will appoint at least one responsible person as required under Chapter 4 of these Guidelines;
- (k) the rules of the market it seeks to operate make satisfactory provisions—
- (i) for the protection of investors and public interest;

- (ii) to ensure proper functioning of the market;
  - (iii) to promote fairness and transparency;
  - (iv) to manage any conflict of interest that may arise;
  - (v) to promote fair treatment of its users or any person who subscribe for its services;
  - (vi) to promote fair treatment of any person who is hosted, or applies to be hosted, on its platform;
  - (vii) to ensure proper regulation and supervision of its users, or any person utilising or accessing its platform, including suspension and expulsion of such users or persons; and
  - (viii) to provide an avenue of appeal against the decision of the RMO;
- (l) the applicant will be able to take appropriate action against a person in breach including directing the person in breach to take any necessary remedial measure;
  - (m) the applicant will be able to manage risks associated with its business and operation including demonstrating the processes and contingency arrangement in the event the applicant is unable to carry out its operations;
  - (n) the applicant has sufficient financial, human and other resources for the operation of the recognized market, at all times; and
  - (o) the applicant has appropriate security arrangements which include maintaining a secured environment pursuant to the *Guidelines on Management of Cyber Risk* and other relevant guidelines.

3.02 In the case of a foreign operator, in addition to the requirements under paragraph 3.01, the SC may register the foreign operator as a RMO, if the applicant satisfies the SC that—

- (a) the operator is authorised to operate a stock market or derivatives market, or carry out activity of a similar nature in a foreign jurisdiction;
- (b) the operator is from a comparable jurisdiction with whom the SC has regulatory arrangements on enforcement and supervision; and
- (c) it is in the best interest of Malaysia to register the foreign operator as a RMO.

3.03 In determining the best interest of Malaysia, the SC will give regard to any one or more of the following:

- (a) The area of specialisation and level of expertise that can be offered to the capital market including the effect on productivity, transference of skills and efficiency and quality of capital market services;
- (b) The risk posed on the systemic stability of the capital market including activities and conduct that will likely impact the orderly functioning of the capital market;
- (c) The contribution towards attracting investments, enhancing market linkages and promoting vibrancy in the capital market;
- (d) The ability in developing strategic or nascent sectors in the capital market; or
- (e) The degree and significance of participation of Malaysians in the capital market.

3.04 Before the RMO is allowed to fully operationalise the recognized market, the SC may require among others—

- (a) the RMO to provide an IT assurance regarding the system readiness; and
- (b) a written declaration by the RMO's internal auditor or responsible person confirming that the RMO has, in relation to the recognized market,—
  - (i) sufficient human, financial and other resources to carry out operations;
  - (ii) adequate securities measures, systems capacity, business continuity plan and procedures, risk management, data integrity and confidentiality, record keeping and audit trail, for daily operations and to meet emergencies; and
  - (iii) sufficient IT and technical support arrangements.



## **CHAPTER 4**

### **Directors and Responsible Person**

#### **Directors**

- 4.01 A RMO must ensure that members of its board are fit and proper and are suitably qualified.
- 4.02 A RMO must notify the SC in writing of any appointment or reappointment of a director, within such time as specified by the SC or prior to any public announcement on the appointment or reappointment of a director, whichever is earlier.
- 4.03 Where a member of the board becomes subject to any disqualification or becomes otherwise unfit to hold office, the RMO must ensure that such person vacates the position immediately.
- 4.04 The RMO must immediately notify the SC of a director's disqualification and when the position is vacated.

#### **Appointment of responsible person**

- 4.05 A RMO must have at least one responsible person.
- 4.06 A person appointed as a responsible person must be a chief executive of the RMO or any person who is primarily responsible for its operations and financial management.
- 4.07 At all times, the responsible person must undertake the role of the main contact person for the purpose of liaising with the SC and perform any duty as may be directed by the SC.
- 4.08 Any vacancy in relation to the position of a responsible person shall be filled within three months from the date of such vacation.

## **PART C: TERMS AND CONDITIONS, DIRECTIONS AND ONGOING OBLIGATIONS**

### **CHAPTER 5**

#### **Terms and conditions and directions**

- 5.01 The SC may, in registering a RMO, impose any term or condition, and at any time vary, add or remove any term or condition.
- 5.02 The SC may issue a direction to the RMO, the board, chief executive, controller or any other person regarding—
- (a) compliance with the requirements of the securities laws and these Guidelines;
  - (b) the conduct of business or operations of the recognized market;
  - (c) the appointment or removal of the responsible person;
  - (d) fees payable;
  - (e) restrictions on the types of investors or participants who may have access to a recognized market;
  - (f) the capital market products or Islamic capital market products that may be traded on or through a recognized market;
  - (g) the services that may be offered;
  - (h) the requirement to notify the SC of any changes to the RMO's business;
  - (i) the requirement to submit periodic reports to the SC;
  - (j) the requirement to maintain relevant records; and
  - (k) any other matter as the SC considers necessary for the protection of investor or the proper functioning of a recognized market.
- 5.03 The SC may direct the RMO to remove the director or chief executive within such period as may be specified in such direction, if—
- (a) any grounds in subparagraph 3.01(g) is applicable; or
  - (b) it would be contrary to public interest for the person to continue to hold the

office of a director or chief executive or partner of the RMO.

- 5.04 The SC may conduct periodic assessment of a RMO's compliance with any or all of its regulatory obligations and request documents or other assistance as required.
- 5.05 The SC may impose a fee or levy on all transactions conducted on a RMO's platform.

## CHAPTER 6

### Obligations

#### RMO's obligations

6.01 A RMO must—

- (a) monitor and ensure compliance of its rules;
- (b) ensure fair treatment of its users;
- (c) ensure that all disclosures are fair, accurate, clear and not misleading;
- (d) obtain and retain self-declared risk acknowledgement forms from its users prior to them investing in a recognized market;
- (e) provide prior disclosure to investors that any loss resulting from the investors' trading or investment through the recognized market is not covered by the Capital Market Compensation Fund;
- (f) ensure that all fees and charges payable are fair, reasonable and transparent;
- (g) ensure that it does not engage in any business practices appearing to SC to be deceitful, oppressive or improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business;
- (h) carry out continuous awareness and education programmes;
- (i) have in place processes to monitor anti-money laundering, counter terrorism financing and counter proliferation financing requirements,<sup>3</sup> including having adequate investor on-boarding arrangements and processes;
- (j) disclose and display prominently on its platform, any relevant information relating to the recognized market including—
  - (i) all necessary risk warning statements, including all risk factors that users may require in making a decision to participate on the platform;
  - (ii) information on rights of investors relating to investing or trading in a recognized market;

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<sup>3</sup> These requirements are set out in the *Guidelines on Prevention of Money Laundering and Terrorism Financing for Reporting Institutions in the Capital Market* and *Guidelines on Implementation of Targeted Financial Sanctions Relating to Proliferation Financing for Capital Market Intermediaries*.

- (iii) criteria for access to the recognized market;
  - (iv) education materials, including comparative information where necessary;
  - (v) fees, charges and other expenses that it may charge, impose on its users;
  - (vi) information about complaints handling or dispute resolution and its procedures;
  - (vii) information on processes and contingency arrangement in the event the RMO is unable to carry out its operations or cessation of business; and
  - (viii) any other information as may be specified by the SC;
- (k) provide to the SC access to any register required to be maintained under these guidelines and disclose any other information as the SC may require;
  - (l) must notify the SC of the occurrence of any event which would trigger the activation or execution of the business continuity plan, in such form and manner as may be specified by the SC; and
  - (m) in the event of any systems error, failure or malfunction—
    - (i) take all necessary and immediate appropriate actions to mitigate any potential losses; and
    - (ii) immediately notify the SC of the systems error, failure or malfunction.

**Prior approval or notification for the change in controller, shareholders, directors or responsible person**

Controller

6.02 A RMO must obtain the SC's prior approval in circumstances where any proposed change in the direct or indirect shareholding of the RMO will result in the change in its controller.

6.03 "Controller" has the same meaning assigned to it under subsection 60(7) of the CMSA, which means—

"a person who—

- (a) is entitled to exercise, or control the exercise of, not less than 15% of the

votes attached to the voting shares in the RMO; or

- (b) has the power to appoint or cause to be appointed a majority of the directors of the RMO; or
- (c) has the power to make or cause to be made, decisions in respect of the business or administration of such RMO, and to give effect to such decisions or cause them to be given effect to.”

Shareholders, directors and responsible person

6.04 A RMO must notify the SC at least fourteen days before effecting any changes in shareholders, directors and responsible person.

**Prior notification of new business, shares or interests in or outside Malaysia**

6.05 A RMO must notify the SC prior to—

- (a) establishing or acquiring any new business;
- (b) ceasing or disposing any business; or
- (c) acquiring or disposing any interests or shares held by the RMO,  
in or outside Malaysia.

**Board's obligations**

6.06 The RMO's board must—

- (a) ensure the RMO complies with all the requirements under these Guidelines including any direction issued or any term or condition imposed by the SC;
- (b) ensure the responsible person carries out his responsibilities and duties;
- (c) identify and manage risks associated with its business and operations, including having in place an effective business continuity plan;
- (d) establish and maintain policies and procedures to—
  - (i) effectively and efficiently manage actual and potential conflicts of interest;
  - (ii) implement anti-corruption and whistleblowing measures that are

- appropriate to the nature, scale and complexity of its business<sup>4</sup>;
- (iii) monitor trading and other market activity to detect non-compliance with the securities laws or its rules;
  - (iv) deal with complaints relating to the operations of its market or the conduct of its participants; and
  - (v) ensure compliance with all relevant laws, regulations and guidelines including *Personal Data Protection Act 2010*;
- (e) immediately notify the SC—
- (i) of any irregularity or breach of any provision of the securities laws, these Guidelines or its rules, including any alleged or suspected violations of any law or guidelines in relation to money laundering, terrorism financing and proliferation financing by its participants;
  - (ii) of any material change in the information submitted to the SC; or
  - (iii) if it becomes aware of any matter which adversely affects or is likely to adversely affect its ability to meet its obligations or to carry out its functions under these Guidelines.

### **Outsourcing obligations**

- 6.07 The RMO's board remains accountable for all outsourced functions.
- 6.08 The RMO's board must establish effective policies and procedures for its outsourcing arrangement including a monitoring framework to monitor the service delivery and performance reliability of the service provider.
- 6.09 A RMO must ensure that the service provider has adequate policies and procedures to monitor the conduct of any appointed sub-contractor.
- 6.10 A RMO must perform an assessment on a service provider on a periodic basis, as part of its monitoring mechanism under paragraph 6.09 and submit a report of the assessment to its board of directors and senior management.
- 6.11 A letter of undertaking is also required from the service provider or sub-contractor stating that the SC will have access to all information, records and documents relating to the material outsourced arrangements.

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<sup>4</sup> The policies and procedures on anti-corruption shall be guided by the *Guidelines on Adequate Procedures* issued pursuant to section 17A (5) of the *Malaysian Anti-Corruption Commission Act 2009*.

6.12 A RMO must notify the SC of any adverse development arising in the outsourcing arrangement of any outsourced function that could significantly affect the RMO, within two weeks from the occurrence of the event.



## **CHAPTER 7**

### **Submission of rules**

- 7.01 A RMO must submit to the SC for its review, any proposed rules or any proposed amendments to existing rules. The submission shall include—
- (a) the text of the proposed rules or amendments; and
  - (b) an explanation of the purpose of the proposed rules or amendments.
- 7.02 The SC may at any time, direct a RMO to vary or amend any rule submitted as it deems necessary.

## **CHAPTER 8**

### **Reporting requirements**

8.01 A RMO must submit to the SC the following:

- (a) An annual compliance report to demonstrate the RMO's compliance with any conditions imposed by the SC pursuant to the registration of the RMO as well as the CMSA;
- (b) Its latest audited financial statements, within three months after the close of each financial year or such period that the SC may allow; and
- (c) Any information required by the SC for the purpose of administering securities laws in the form and manner as may be specified by the SC.

## **PART D: CESSATION, WITHDRAWAL AND REVIEW OF STATUS**

### **CHAPTER 9**

#### **Cessation of business or operations**

- 9.01 The RMO shall not cease the business or operations of a recognized market without prior engagement with the SC.
  
- 9.02 Without prejudice to Chapter 5 of these Guidelines, the SC may issue a direction or impose any term or condition for the purposes of ensuring the orderly cessation of the business or operations of the recognized market.

## **CHAPTER 10**

### **Withdrawal of Registration**

10.01 The SC may withdraw the registration of a RMO if—

- (a) the RMO fails to meet the requirements under paragraphs 3.01 or 3.02 of these Guidelines;
- (b) the RMO fails or ceases to carry on the business or activities for which it was registered for a consecutive period of six months;
- (c) the RMO contravenes any obligation, condition or restriction imposed under these Guidelines; or
- (d) fails to pay any fee or levy prescribed by the SC.

10.02 The RMO may, by notice in writing, apply to the SC to withdraw its registration and provide reasons for its withdrawal.

10.03 The withdrawal of an RMO's registration under paragraph 10.01 shall not—

- (a) take effect until the SC is satisfied that adequate arrangements have been made to meet all the liabilities and obligations of the RMO that are outstanding at the time the notice of the withdrawal is given; and
- (b) operate so as to—
  - (i) avoid or affect any agreement, transaction or arrangement entered into on the recognized market operated by the RMO, whether the agreement, transaction or arrangement was entered into before or after the withdrawal of the registration; or
  - (ii) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

## CHAPTER 11

### Review of Status

11.01 As provided under section 36B CMSA, the SC may, on application by a RMO or on SC's own initiative, review the status of a RMO.

11.02 Following the review, the SC may require a RMO to make an application for the recognized market to be an approved market under section 8 CMSA if the SC is of the opinion that the recognized market would be more appropriately regulated as an approved market.

11.03 In conducting review of the status of a RMO, the SC may consider the following factors:

(a) **The size and structure, or proposed size and structure, of the recognized market**

Consideration will be given to the size and structure of the market, including the volume and value of transactions conducted on the market, the number of investors trading on the market and the number of participants;

(b) **The nature of the services provided, or to be provided, by the recognized market**

This relates to the range of services provided by the market, such as whether the market offers the full range of services which includes the provision of quotes, matching of orders, clearing and settlement and provision of data services;

(c) **The type of the capital market products traded, or to be traded, on the recognized market**

This relates to the different type of capital market products traded on the market. A market that offers a variety of products or products that are highly complex or risky may pose a greater risk to the capital market and thus should be regulated as an approved market; and

(d) **The nature of the investors or participants, or proposed investors or participants, who may use or have an interest in the recognized market**

Consideration will be given to the level of sophistication of the investors or participants, the systemic importance of the participants and the impact of any failure of the market on the investors or participants and the broader financial sector.

## **PART E: OFFERING OF ISLAMIC CAPITAL MARKET PRODUCTS**

### **CHAPTER 12**

#### **Shariah Adviser**

##### **Appointment of Shariah Adviser**

12.01 Where an Islamic capital market product is offered, on or through the recognized market, the RMO must appoint a Shariah Adviser.

12.02 The Shariah Adviser must either be—

- (a) a person or a corporation, registered with the SC;
- (b) a licensed Islamic bank; or
- (c) a licensed bank or licensed investment bank approved to carry on Islamic banking business.

##### **Role of Shariah Adviser**

12.03 The role and responsibility of the Shariah Adviser shall include the following:

- (a) Advising on compliance with Shariah principles relating to the offering of Islamic capital market product;
- (b) Providing Shariah expertise and guidance on all matters, particularly in documentation, structuring and investment instruments, and ensure compliance with relevant securities laws and guidelines issued by the SC;
- (c) Ensuring that the applicable Shariah rulings, principles and concepts endorsed by the Shariah Advisory Council are complied with;
- (d) Applying *ijtihad* (intellectual reasoning) to ensure that all aspects relating to the offering of Islamic capital market product are in compliance with Shariah, in the absence of any rulings, principles and concepts endorsed by the Shariah Advisory Council; and
- (e) Where applicable, issue a Shariah pronouncement, which must include—
  - (i) the basis and rationale for the pronouncement;
  - (ii) the structure and mechanism of the Islamic capital market product; and

- (iii) the applicable Shariah rulings, principles and concepts used in the Islamic capital market product.

## **Disclosure**

12.04 Where an Islamic capital market product is offered, on or through the recognized market, the RMO must disclose the following:

- (a) The name of the Shariah adviser appointed to advise on the offering of Islamic capital market product; and
- (b) The information relating to the structure of the Islamic capital market product.

# **PART F: ADDITIONAL REQUIREMENTS RELATING TO A RECOGNIZED MARKET THAT IS A CROWDFUNDING PLATFORM**

## **CHAPTER 13**

### **Equity crowdfunding platform**

#### **Definitions**

13.01 For the purposes of this chapter, unless context otherwise requires—

angel investor	refers to an individual—  (a) who is a tax resident in Malaysia; and  (b) whose total net personal assets exceed RM3 million or its equivalent in foreign currencies; or  (c) whose gross total annual income is not less than RM180,000 or its equivalent in foreign currencies in the preceding twelve months; or  (d) who, jointly with his or her spouse, has a gross total annual income exceeding RM250,000 or its equivalent in foreign currencies in the preceding 12 months;
ECF operator	means a RMO who operates an equity crowdfunding (ECF) platform;
ECF platform	means an equity crowdfunding platform registered by the SC;
issuer	means a person who is hosted on an ECF platform to offer its shares on the ECF platform;
latest practicable date	means a date whereby the information disclosed should remain relevant and current as at the date of issue of the prospectus;
microfund	means an entity that meets the conditions set out in paragraph 13.18;
officer	means any director and employee of the ECF operator.



## **ECF operator**

13.02 All other requirements stated in these Guidelines are applicable to an ECF operator, unless otherwise stated.

13.03 All ECF operators must be locally incorporated.

## **Obligations of ECF operator**

13.04 In addition to the obligations specified in chapter 6, an ECF operator must—

- (a) carry out a due diligence exercise on prospective issuers planning to use its platform;
- (b) ensure the issuer's disclosure document lodged with the ECF operator is verified for accuracy and made accessible to investors through the ECF platform;
- (c) where an issuer is a public company, assess and subject to compliance with the requirements under this Part, register the issuer's prospectus, including any supplementary prospectus, furnished to the ECF operator. In assessing the issuer's prospectus and supplementary prospectus (if any), the ECF operator must ensure that the prospectus and supplementary prospectus (if any) includes the information required under this Part and that its contents are not false or misleading or containing any material omission;
- (d) inform investors of any material adverse change to the issuer's proposal as set out under paragraph 13.09;
- (e) ensure that the fundraising limits imposed on the issuer are not breached; and
- (f) ensure that the investment limits imposed on investors are not breached.

13.05 The scope of the due diligence exercise by an ECF operator shall include taking reasonable steps to—

- (a) conduct background checks on the issuer to ensure fit and properness of the issuer, its directors, senior management and controller; and
- (b) verify the business proposition of the issuer.

## **Operation of trust account**

13.06 An ECF operator must establish systems and controls for maintaining accurate and up-to-date records of investors' monies held.

13.07 The ECF operator must ensure that investors' monies are properly safeguarded from conversion or inappropriate use by its officers.

13.08 The ECF operator shall—

- (a) establish and maintain in a licensed institution one or more trust accounts designated for the funds raised by an issuer hosted on its platform;
- (b) ensure that the trust accounts under paragraph 13.08(a) are administered by an independent registered trustee; and
- (c) only release the funds to the issuer after the following conditions are met:
  - (i) The targeted amount sought to be raised has been met;
  - (ii) The shares have been issued to the investors;
  - (iii) There is no material adverse change relating to the offer before the issue of shares; and
  - (iv) The cooling-off period of at least six business days have expired.

13.09 For the purpose of subparagraph 13.08(c), a material adverse change concerning the issuer, may include any of the following matters:

- (a) The discovery of a false or misleading statement in any disclosures in relation to the offer;
- (b) The discovery of a material omission of information required to be disclosed in relation to the offer; or
- (c) There is a material change or development in the circumstances relating to the offering or the issuer.

13.10 Notwithstanding paragraph 13.08(c), the ECF operator may impose any other additional conditions precedent before releasing the fund, provided that they serve the investors' interest.

### **Managing conflict of interest**

13.11 The ECF operator, including its individual directors and shareholders, must disclose to the public on its platform if—

- (a) it holds any shares in any of the issuers hosted on its platform; or

- (b) it pays any referrer or introducer, or receives payment in whatever form, including payment in the form of shares, in connection with an issuer hosted on its platform.

13.12 Notwithstanding paragraph 13.11, an ECF operator's shareholding in any of the issuers hosted on its platform shall not exceed 30 per cent.

13.13 The ECF operator is prohibited from providing direct or indirect financial assistance to investors, to invest in shares of an issuer hosted on its platform.

### **Permitted and non-permitted issuers**

13.14 Only locally incorporated companies and limited liability partnerships will be allowed to be hosted on the ECF platform.

13.15 The following entities are prohibited from raising funds through an ECF platform:

- (a) Exempt private company;
- (b) Commercially or financially complex structures (i.e. investment fund companies or financial institutions);
- (c) Public-listed companies and their subsidiaries;
- (d) Companies with no specific business plan or its business plan is to merge or acquire an unidentified entity (i.e. blind pool);
- (e) Companies other than a microfund that propose to use the funds raised to provide loans or make investment in other entities; and
- (f) Any other type of entity that is specified by the SC.

13.16 An issuer shall not be allowed to be hosted concurrently on multiple ECF platforms or on any stock market of Bursa Malaysia Securities Berhad.

13.17 An issuer may be permitted to be hosted on an ECF platform and peer-to-peer financing (P2P) platform, at the same time, subject to disclosure requirements as may be specified by the platform operators.

13.18 An ECF operator may allow for the hosting of a microfund on its platform provided the microfund—

- (a) is registered with the SC as a venture capital company;
- (b) has a specified investment objective; and

- (c) only raises funds from sophisticated investors and angel investors.

### **Limits to funds raised from ECF platform**

13.19 An issuer may only raise, collectively, a maximum amount of RM20 million through ECF platforms in its lifetime, excluding the issuer's own capital contribution or any funding obtained through a private placement exercise.

13.20 Paragraph 13.19 shall not apply to a microfund hosted on an ECF platform.

### **Disclosure requirements**

13.21 An issuer proposing to be hosted on an ECF platform must disclose the information set out in paragraph 13.24 to enable an investor to make an informed assessment on the fundraising exercise.

13.22 Where an issuer is a public company, the issuer shall submit to the ECF operator a prospectus which—

- (a) complies with subsection 235(1) of the CMSA save that the issuer shall be relieved from compliance with paragraph (b) of subsection 235(1); and
- (b) contains the information set out in paragraph 13.24.

13.23 Paragraph 13.22 will not apply where a public company is making an offer of its shares solely to sophisticated investors, provided the public company discloses the statements as set out in paragraph 13.24(h) to the investors.

13.24 An issuer proposing to be hosted on an ECF platform shall submit the relevant information to the ECF operator, including the following:

- (a) Information that explains key characteristics of the company;
- (b) Information relating to the rights attached to the shares being offered;
- (c) Information that explains the purpose of the fundraising and the targeted offering amount;

#### **Guidance for paragraph 13.24(c)**

The information should also include information relating to the number and price of shares being offered, subsequent use and application of the proceeds after the success of the fundraising exercise including the proposed timeframe for such utilisation.

- (d) Information relating to the business plan of the company;
- (e) Financial information relating to the company—
  - (i) where the issuer is a public company, audited financial statements of the company;
  - (ii) for other types of issuers—
    - (A) for offerings below RM500,000:
      - i. Audited financial statements of the company, where applicable (e.g. where the issuer has been established for at least 12 months); and
      - ii. Where audited financial statements are unavailable (e.g. the issuer is newly established), certified financial statements or information by the issuer's management; or
    - (B) for offerings above RM500,000, audited financial statements of the company;
- (f) Information relating to key management, directors and promoters of the issuer;

**Guidance for paragraph 13.24(f)**

The information should include, among others, the individual's name, nationality, age, profession, qualification, past experiences and any interests held in any other company which may result in a conflict of interest.

- (g) Where an issuer is a public company, information relating to—
  - (i) the risk factors and prospects of its business;
  - (ii) any situations of actual or potential conflict of interest involving the direct and indirect interest of a director, substantial shareholder or chief executive; and

**Guidance for paragraph 13.24(g)(ii)**

Situations that are likely to give rise to conflict of interest include circumstances where a director, substantial shareholder or chief executive—

- (a) has an interest in a competing business with that of the issuer's or its subsidiary companies;
- (b) conducts or has interest in business transactions involving goods or services, either directly or indirectly, with the issuer or its subsidiary companies;
- (c) provides or receives financial assistance which includes advances, loans and personal or corporate guarantees from the issuer or its subsidiary companies; or
- (d) leases property to or from the issuer or its subsidiary companies.

(iii) any transaction or arrangement entered into by the issuer or any of its subsidiaries with any of—

- (A) the issuer's director, substantial shareholder or a person connected with a director or substantial shareholder of the issuer; or
- (B) its subsidiary's director, substantial shareholder or a person connected with a director or substantial shareholder of the subsidiary,

which is not undertaken at arm's length basis or at terms not in the ordinary course of business for the period covered in the issuer's audited financial statements and up to the latest practicable date prior to the issue of the prospectus; and

(iv) any policies and procedures to manage issues of conflict of interest including potential conflicts of interest and any related party transactions.

(h) The following statements must be highlighted in bold and a prominent colour:

- (i) **"No shares will be allotted or issued based on this document after six months from the closing of the offer period."**
- (ii) **"This issue, offer or invitation for the offering is a proposal not requiring authorisation of the Securities Commission Malaysia under section 212(8) of the CMSA 2007."**

- (iii) **“This document has not been reviewed by the Securities Commission Malaysia. The Securities Commission Malaysia does not recommend nor assume responsibility for any information including any statement, opinion or report disclosed in relation to this fundraising exercise and makes no representation as to its accuracy or completeness. The Securities Commission Malaysia expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the information disclosed.”**

13.25 For the purposes of paragraph 13.24(g)(iii)—

- (a) “person connected with a director” has the same meaning assigned to a “person connected with a director” under section 197 of Companies Act 2016; and
- (b) “person connected with a substantial shareholder” has the same meaning assigned to a “person connected with a director” under section 197 of Companies Act 2016 save that all references therein to a director shall be read as a reference to a substantial shareholder.

13.26 An issuer proposing to be hosted on an ECF platform shall ensure that all information submitted or disclosed to an ECF operator is true and accurate and shall not contain any information or statement which is false or misleading or from which there is a material omission.

13.27 In addition to the obligations set out in chapter 6, an ECF operator must disclose and display prominently on its platform—

- (a) Information relating to the issuer as specified under paragraph 13.24; and
- (b) details on how the platform facilitates the investor’s investment including providing communication channels to permit discussions about issuers hosted on its platform.

13.28 An issuer that has successfully completed its fundraising exercise on an ECF platform must ensure that there is effective, transparent and regular communication with its shareholders including providing regular updates on the progress of the business of the issuer and the issuer’s financial position.

## **Prospectus**

13.29 Where an issuer is a public company—

- (a) a prospectus registered with an ECF operator shall be deemed to have been

registered with the SC for purposes of section 232 of the CMSA;

- (b) the issuer must furnish a copy of the prospectus that has been registered with the ECF operator to the SC in the manner and form as may be specified by the SC;
- (c) where a prospectus has been registered with the ECF operator under paragraph 13.29(a), and before the issue of shares, the issuer becomes aware that—
  - (i) a matter has arisen and information in respect of that matter would have been required by these Guidelines to be disclosed in the prospectus if the matter has arisen at the time the prospectus was prepared;
  - (ii) there has been a material change affecting a matter disclosed in the prospectus; or
  - (iii) the prospectus contains a statement or information that is false or misleading, or from which there is a material omission,

the issuer must notify the ECF operator and, as soon as practicable, submit a supplementary prospectus to the ECF operator for registration. The issuer must furnish a copy of the supplementary prospectus that has been registered with the ECF operator to the SC.

13.30 For the purposes of paragraph 13.29(c),—

- (a) where a supplementary prospectus has been registered with the ECF operator, and before the issuance of shares, the ECF operator must notify the investor that—
  - (i) a supplementary prospectus is available on the platform; and
  - (ii) the investor may withdraw his application for the subscription of shares within six (6) business days from the date of receipt of the notice;
- (b) if the investor withdraws his application pursuant to paragraph 13.30(a) above, the ECF operator must within six (6) business days, refund to the investor any amount that the investor has paid for the purposes of the share offering.

### **Investment limit**

13.31 A person may invest in any issuer hosted on the ECF platform, subject to the following limits:

- (a) **Sophisticated investors:** No restrictions on investment amount;



- (b) **Angel investors:** A maximum of RM500,000 within a 12-month period; and
- (c) **Retail investors:** A maximum of RM5,000 per issuer with a total amount of not more than RM50,000 within a 12-month period.

13.32 The investment limits specified in paragraph 13.31 are applicable to local and foreign investors.

### **Secondary market**

13.33 An ECF operator who wishes to operate a secondary market for the trading of an issuer's shares must seek prior approval of the SC.

13.34 An ECF operator must ensure that—

- (a) only shares of an issuer that have been hosted and successfully funded through the ECF platform will be permitted to be traded on the ECF operator's platform; and
- (b) the issuer's shares may only be traded after six (6) months from the date of the completion of the issuer's fundraising campaign. For avoidance of doubt, the issuer's fundraising campaign is completed after the issuer's shares have been allotted and issued to the investors.

13.35 Notwithstanding paragraph 13.34(b), in the case of shares of the issuer held by the promoter, the promoter can only sell, transfer or assign his shares after six (6) months from the date the shares are traded on the secondary market.

### **Obligations of an ECF operator operating a secondary market**

13.36 Where an ECF operator operates a secondary market, the ECF operator must, among others—

- (a) have arrangements on how the secondary market will operate, and ensure that the secondary market trading activities on its platform is conducted in a fair, orderly and transparent manner;
- (b) ensure that access to its secondary market is fair, transparent and objective, including treating all its users fairly by, among others, providing equal access to information;
- (c) disclose information about its market structure, order types, and the interactions of the order types;

- (d) have in place policies and procedures for the trading, clearing and settlement of securities on the ECF platform;
- (e) have additional resources, including financial, technological and human resources that is sufficient to operate its secondary market;
- (f) have adequate arrangements for—
  - (i) notifying disclosures made to it and for continuing to make those disclosures available;
  - (ii) handling all conflicts of interest and all risks that may arise from the conduct of its secondary market activities; and
  - (iii) monitoring and ensuring compliance of its rules, including conducting ongoing market surveillance.
- (g) have in place mechanisms to help ensure the resiliency, reliability and integrity of the system, including the security of critical systems.

13.37 Any proposed rules of an ECF operator or any proposed amendments to its existing rules relating to secondary market shall comply with paragraph 7.01.

### **Market integrity provisions**

#### *Trading operations*

13.38 An ECF operator must—

- (a) disclose the order execution rules and any cancellation procedures and ensure they are applied fairly to all its users;
- (b) establish a robust operational framework with appropriate systems, policies, procedures and controls to manage and monitor trading activities on the ECF platform;
- (c) have in place adequate arrangements and processes to manage error trades;
- (d) have in place adequate arrangements and processes to manage systems error, failure or malfunction;
- (e) have in place adequate arrangements and processes to manage excessive volatility of its market which may include circuit breakers, price limits and trading halts;

- (f) have in place adequate arrangements and processes for trading halts in relevant securities, which should include the length of the trading halt and how it will resume trading on its market after the trading halt;
- (g) have in place adequate arrangements and processes to manage investors' assets in the event of any suspension or outages of the platform, including transfer or withdrawal procedures;
- (h) have in place adequate arrangements and processes to deter manipulative activities on the platform and ensure proper execution of trades; and
- (i) have clearly defined operational reliability objectives and have in place policies that are designed to achieve those objectives.

### Market transparency

13.39 An ECF operator must—

- (a) ensure trading information, both pre-trade and post-trade, is made publicly available on a timely or real-time basis, as the case may be;
- (b) make available in a comprehensive manner and on a timely basis, material information or changes to the tradable securities;
- (c) ensure all information relating to the trading arrangements and circumstances arising thereof where relevant, are made publicly available; and
- (d) ensure timely and accurate disclosure of all material information necessary for informed investing and take reasonable steps to ensure that all investors enjoy equal access to such information.

### **Clearing and settlement**

13.40 An ECF operator must ensure there are orderly, clear and efficient clearing and settlement arrangements.

13.41 An ECF operator must provide clear and certain final settlement, at a minimum by the end of the value date, intra-day or real time.

### **Risk management**

13.42 An ECF operator that is operating a secondary market should identify possible sources of operational risk in secondary market trading activities, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures and controls. Systems should be designed to ensure a high degree of security and

operational reliability including having adequate capacity.

13.43 In relation to paragraph 13.42, an ECF operator must—

- (a) establish an operational risk-management framework with appropriate systems, policies, procedures and controls to identify, monitor, mitigate and manage operational risks;
- (b) have in place clearly defined roles and responsibilities for addressing operational risks; and
- (c) have a comprehensive physical and information security policy that addresses all potential vulnerabilities and threats in secondary market trading activities.

## CHAPTER 14

### Peer-to-peer financing platform

#### Definitions

14.01 For the purposes of this chapter, unless context otherwise requires—

angel investor	refers to an individual—  (a) who is a tax resident in Malaysia; and  (b) whose total net personal assets exceed RM3 million or its equivalent in foreign currencies; or  (c) whose gross total annual income is not less than RM180,000 or its equivalent in foreign currencies in the preceding 12 months; or  (d) who, jointly with his or her spouse, has a gross total annual income exceeding RM250,000 or its equivalent in foreign currencies in the preceding 12 months;
invoice financing	means a fundraising activity via the sale of trade receivables or invoices which is evidenced by an investment note or an Islamic investment note;
issuer	means a person that is seeking funding on or through a P2P platform and shall include seeking funding via invoice financing;
officer	means any director and employee of the P2P operator;
P2P operator	means a RMO who operates a P2P platform;
P2P platform	means an electronic platform that facilitates directly or indirectly the issuance, execution or offering of an investment note or an Islamic investment note.

#### P2P operator

14.02 All other requirements stated in these Guidelines are applicable to a P2P operator, unless otherwise stated.

14.03 Any person who seeks to operate an invoice financing platform must apply to be registered as a P2P operator under these Guidelines.

14.04 All P2P operators must be locally incorporated and have a minimum paid-up capital of RM5 million.

### **Obligations of P2P operator**

14.05 A P2P operator must, in addition to the obligations specified in Chapter 6—

- (a) ensure there is an efficient and transparent risk scoring system in place relating to the investment note or Islamic investment note;
- (b) carry out a risk assessment on prospective issuers intending to use its platform;
- (c) ensure the issuer's disclosure document lodged with the P2P operator is verified for accuracy and made accessible to investors through the P2P platform;
- (d) inform investors of any material adverse change to the issuer's proposal as set out under paragraph 14.12;
- (e) have in place processes or policies to manage any default by issuers including using its best endeavours to recover amounts outstanding to investors; and
- (f) in addition to the provision as set out in subparagraph 3.01(j), ensure that its rules set out a rate of financing that is not more than eighteen (18) per cent per annum. A P2P operator must consult the SC if it wishes to impose a rate of financing that is more than 18 per cent per annum.

14.06 The scope of the risk assessment by a P2P operator shall include taking reasonable steps to—

- (a) conduct background checks on the issuer to ensure fit and properness of the issuer, its board of directors, senior management and controller;
- (b) verify the business proposition of the issuer; and
- (c) carry out assessment on the issuer's creditworthiness.

### **Operation of trust account**

#### **General**

14.07 A P2P operator must establish systems and controls for maintaining accurate and up-to-date records of investors' monies held.

14.08 The P2P operator must ensure that investors' monies are properly safeguarded from conversion or inappropriate use by its officers.

### **Trust account relating to monies received for issuers**

14.09 The P2P operator shall—

- (a) establish and maintain in a licensed institution, one or more trust accounts designated for the funds raised in relation to a hosting on its platform; and
- (b) ensure that the trust accounts are administered by an independent registered trustee.

14.10 The P2P operator may only release the funds to the issuer provided that there is no material adverse change relating to the investment notes or Islamic investment notes during the offer period.

14.11 Where an Islamic investment note is executed or offered, on or through a P2P platform, the P2P operator must establish and maintain a Shariah-compliant trust account with a licensed Islamic bank, licensed bank or licensed investment bank approved to carry on Islamic banking business, for purpose of the funds raised.

14.12 For the purpose of paragraph 14.10, a material adverse change may include any of the following matters:

- (a) The discovery of a false or misleading statement in any disclosures relating to the investment notes or Islamic investment notes;
- (b) The discovery of a material omission of information required to be disclosed in relation to the investment notes or Islamic investment notes; or
- (c) There is a material change or development in the circumstances relating to the investment notes, Islamic investment notes or the issuer.

14.13 Notwithstanding paragraph 14.10, the P2P operator may impose any other additional conditions precedent before releasing the fund, provided that they serve the investors' interest.

### **Trust account relating to monies received for investors**

14.14 A P2P operator shall—

- (a) establish and maintain in a licensed institution, one or more trust accounts designated for the monies received as repayments to investors; and
- (b) ensure that the trust accounts are administered by an independent registered trustee.

14.15 A P2P operator shall not withdraw from or deal with investors' monies in a trust account except for the purpose of making a payment—

- (a) to the person entitled thereto (issuer, investor or P2P operator); or
- (b) that is as otherwise directed by the SC or by any other enforcement agencies as provided under written law.

### **Managing conflict of interest**

14.16 The P2P operator and its officers are prohibited from providing direct or indirect financial assistance to investors, to invest in investment note or Islamic investment note executed or offered, on or through its platform.

14.17 The P2P operator is prohibited from providing any funding to issuers or investing in any of the investment notes or Islamic investment notes executed or offered, on or through its platform.

14.18 Notwithstanding paragraph 14.17, officers of the P2P operator are permitted to invest subject to the P2P operator having in place appropriate process and procedure to manage conflict of interest.

### **Permitted and non-permitted issuers**

14.19 Only the following type of issuer will be allowed to be hosted on a P2P platform:

- (a) Locally incorporated or registered, as the case may be,—
  - (i) sole proprietorship;
  - (ii) partnership;
  - (iii) limited liability partnership;
  - (iv) private company;
  - (v) unlisted public company;
  - (vi) public-listed company;
  - (vii) subsidiaries of a public-listed company; and
- (b) Any other type of entity or person as may be permitted by the SC.



14.20 The following entities are prohibited from raising funds through a P2P platform:

- (a) Commercially or financially complex structures (i.e. investment fund companies or financial institutions);
- (b) Companies with no specific business plan or its business plan is to merge or acquire an unidentified entity (i.e. blind pool);
- (c) Companies that propose to use the funds raised to provide loans or make investment in other entities; and
- (d) Any other type of entity that is specified by the SC.

14.21 An issuer shall not be allowed to be hosted concurrently for the same purpose on multiple P2P platforms.

14.22 An issuer may be permitted to be hosted on a P2P platform and ECF platform at the same time, subject to the issuer complying with the disclosure requirements as may be specified by the platform operators.

14.23 In the case of invoice financing, the P2P operator shall take reasonable steps to ensure that the receivable or invoice—

- (a) is payable to and is owned by the issuer;
- (b) represents a bona fide payment obligation from a client of the issuer to the issuer;
- (c) has not been offered for financing or otherwise disposed in any way to any person before being hosted on its P2P platform; and
- (d) is not subject to any encumbrances which may adversely affect an investor's rights, title, interests and benefits.

### **Risk scoring**

14.24 All issuances, offers or invitations to subscribe or purchase investment note or Islamic investment note must be rated by the P2P operator.

14.25 The P2P operator is accountable for the risk scoring mechanism and methodology employed.

14.26 The final risk scoring for the purchase of the investment note or Islamic investment note must be made available to investors at the time of offer.

## **Funds raised on a P2P platform**

- 14.27 An issuer is permitted to keep any amount which was raised through a hosting on a P2P platform provided that the issuer must have at least raised 80 per cent of the target amount.
- 14.28 Notwithstanding paragraph 14.27, the issuer is not allowed to keep any amount which exceeds the initial target amount.

## **Disclosure requirements**

- 14.29 An issuer proposing to be hosted on a P2P platform shall submit the relevant information to the P2P operator including the following:
- (a) Information that explains key characteristics of the business;
  - (b) Information that explains the purpose of the investment note or Islamic investment note and the targeted offering amount;
  - (c) Information relating to the business plan;
  - (d) Information relating to his intention to seek funding from any other P2P platforms concurrently; and
  - (e) Financial information relating to the business—
    - (i) for offerings below RM500,000:
      - (A) audited financial statements where applicable (e.g. where the issuer has been established for at least 12 months); and
      - (B) where audited financial statements are unavailable (e.g. the issuer is newly established), certified financial statements or information by the issuer's management; or
    - (ii) for offerings above RM500,000, audited financial statements of the company.
- 14.30 An issuer proposing to be hosted on a P2P platform shall ensure that all information submitted or disclosed to a P2P operator is true and accurate and shall not contain any information or statement which is false or misleading or from which there is a material omission.
- 14.31 In addition to the obligations set out in Chapter 6, a P2P operator must disclose and display prominently on its P2P platform, any relevant information relating to

the P2P including—

- (a) information relating to an issuer as specified under paragraph 14.29, at point of offering and throughout the tenor of the investment note or Islamic investment note;
- (b) information on how the P2P platform facilitates an investor's investment including providing communication channels to permit discussions about offerings hosted on its P2P platform;
- (c) explanatory notes on risk scoring mechanism, methodology and parameters;
- (d) information on the criteria by which an investment note or Islamic investment note is regarded as in default;
- (e) information about processes and policies put in place by the P2P operator to manage default of issuers; and
- (f) information including statistics on late payment and default rate of issuers hosted on the P2P platform.

### **Investment limit**

14.32 A sophisticated investor or angel investor may invest in any issuer hosted on the P2P platform and shall not be subjected to any restriction in respect of his investment amount.

14.33 To manage the risk exposure of retail investors, P2P operators must encourage retail investors to limit their investments on any P2P platform to a maximum of RM50,000 at any period of time.

### **Secondary market**

14.34 A P2P operator who wishes to operate a secondary market for the trading of investment notes or Islamic investment notes must seek prior approval of the SC.

14.35 Only an investment note or Islamic investment note that fulfils the following criteria may be permitted to be traded on the secondary market:

- (a) At the point of admission for secondary market trading, the investment note or Islamic investment note has a remaining repayment period of at least 3 months;
- (b) The investment note or Islamic investment note is executed or offered through the P2P platform; and

- (c) The investment note or Islamic investment note has been issued to investors.

### **Obligations of a P2P operator operating a secondary market**

14.36 Where a P2P operator operates a secondary market, the P2P operator must, among others—

- (a) have arrangements on how the secondary market will operate, and ensure that the secondary market trading activities on its platform is conducted in a fair, orderly and transparent manner;
- (b) ensure that access to its secondary market is fair, transparent and objective, including treating all its users fairly by, among others, providing equal access to information;
- (c) disclose information about its market structure, order types, and the interactions of the order types;
- (d) have in place policies and procedures for the fair and transparent referencing and pricing of investment notes or Islamic investment notes to be traded on the secondary market;
- (e) have in place policies and procedures for the trading, clearing and settlement of investment notes or Islamic investment notes on the P2P Platform;
- (f) have additional resources, including financial, technological and human resources that is sufficient to operate its secondary market;
- (g) have adequate arrangements for—
  - (i) notifying disclosures made to it and for continuing to make those disclosures available;
  - (ii) handling all conflicts of interest and all risks that may arise from the conduct of its secondary market activities;
  - (iii) monitoring and ensuring compliance of its rules, including conducting on-going market surveillance; and
- (h) have in place mechanisms to help ensure the resiliency, reliability and integrity of the system, including the security of critical systems.

14.37 Any proposed trading rules of a P2P operator or any proposed amendments to its existing trading rules relating to secondary market shall comply with paragraph 7.01.

## **Market integrity provisions**

### Trading operations

14.38 A P2P operator must—

- (a) disclose the order execution rules and any cancellation procedures and ensure they are applied fairly to all its users;
- (b) establish a robust operational framework with appropriate systems, policies, procedures and controls to manage and monitor trading activities on the platform;
- (c) have in place adequate arrangements and processes to manage error trades;
- (d) have in place adequate arrangements and processes to manage systems error, failure or malfunction;
- (e) have in place adequate arrangements and processes to manage excessive volatility of its market which may include circuit breakers, price limits and trading halts;
- (f) have in place adequate arrangements and processes for trading halts in relevant securities, which should include the length of the trading halt and how it will resume trading on its market after the trading halt;
- (g) have in place adequate arrangements and processes to manage investors' assets in the event of any suspension or outages of the platform, including transfer or withdrawal procedures;
- (h) have in place adequate arrangements and processes to deter manipulative activities on the platform and ensure proper execution of trades; and
- (i) have clearly defined operational reliability objectives and have policies in place that is designed to achieve those objectives.

### Market transparency

14.39 A P2P operator must—

- (a) ensure trading information, both pre-trade and post-trade, is made publicly available on a timely or real-time basis, as the case may be;
- (b) make available in a comprehensive manner and on a timely basis, material information or changes to the tradable securities;

- (c) ensure all information relating to the trading arrangements and circumstances arising thereof where relevant, are made publicly available; and
- (d) ensure timely and accurate disclosure of all material information necessary for informed investing and take reasonable steps to ensure that all investors enjoy equal access to such information.

### **Clearing and settlement**

14.40 A P2P operator must ensure there are orderly, clear and efficient clearing and settlement arrangements.

14.41 A P2P operator must provide clear and certain final settlement, at a minimum, by end of the value date, intra-day or real time.

### **Risk management**

14.42 A P2P operator that is operating a secondary market should identify possible sources of operational risk in secondary market trading activities, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures and controls. Systems should be designed to ensure a high degree of security and operational reliability including having adequate capacity.

14.43 In relation to paragraph 14.42, a P2P operator must—

- (a) establish an operational risk-management framework with appropriate systems, policies, procedures and controls to identify, monitor, mitigate and manage operational risks;
- (b) have in place clearly defined roles and responsibilities for addressing operational risks; and
- (c) have a comprehensive physical and information security policy that addresses all potential vulnerabilities and threats in secondary market trading activities.

## **PART G: ADDITIONAL REQUIREMENTS RELATING TO A DIGITAL ASSET EXCHANGE**

### **CHAPTER 15**

#### **Digital Asset Exchange (DAX)**

##### **Definitions**

15.01 For the purposes of this chapter, unless context otherwise requires—

DAX	means an electronic platform which facilitates the trading of a Digital Asset;
DAX operator	means a RMO who operates a DAX;
Digital Asset	refers to a Digital Currency or Digital Token, as the case may be;
Digital Broker model	refers to where a DAX Operator acts as the counterparty to an investor for every buy or sell order on or through the platform;
Digital Currency	has the same meaning assigned to it in the <i>Capital Markets and Services (Prescription of Securities)(Digital currency and digital token) Order 2019</i> ;
Digital Token	has the same meaning assigned to it in the <i>Capital Markets and Services (Prescription of Securities)(Digital currency and digital token) Order 2019</i> ;
Virtual Asset Service Provider (VASP)	has the same meaning assigned to it in the <i>Financial Action Task Force (FATF) Recommendations 2012</i> <sup>5</sup> .

##### **DAX operator**

15.02 All other requirements stated in these Guidelines are applicable to a DAX operator, unless otherwise stated.

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<sup>5</sup> FATF Recommendations 2012, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, [www.fatf-gafi.org/recommendations.html](http://www.fatf-gafi.org/recommendations.html)

## **Eligibility and financial requirements**

15.03 All DAX operators must—

- (a) be locally incorporated; and
- (b) have a minimum—
  - (i) paid-up capital of RM5 million; and
  - (ii) in the case of a DAX operator operating a Digital Broker model, an additional RM 5 million in shareholders' funds maintained at all times.

15.04 Notwithstanding paragraph 15.03, the SC may at any time impose additional financial requirements or other terms and conditions on the DAX operator that commensurate with the nature, operation and risks posed by the DAX operator.

## **Independent director**

15.05 Where a DAX operator is a public company, at least one member of the board must be an independent director.

## **Managing conflict of interest**

15.06 A DAX operator must use its best endeavours to identify and avoid any actual or potential conflict of interest.

15.07 Where a conflict of interest cannot be avoided, a DAX operator must have a framework in place to effectively manage or mitigate the conflict of interest.

15.08 The DAX operator's conflict of interest framework must include policies and procedures relating to the offering of Digital Assets, among others—

- (a) proprietary trading by the DAX operator on its platform;
- (b) timely and accurate disclosure of any conflict of interest to a potential or existing investor or any material interest, including any fees, commission or benefit received by the DAX operator, which may affect the fair treatment of such investor;
- (c) trading in any Digital Asset by its officers and employees on its own or other platforms; and
- (d) the management of non-public material information.



## **Prohibition on financial assistance**

15.09 A DAX operator is prohibited from providing direct or indirect financial assistance to investors, including its officers and employees, to invest or trade in any Digital Asset on its platform.

## **Risk management**

15.10 A DAX operator should identify possible sources of operational risk, both internal and external, and mitigate the impact of such risks through appropriate systems, policies, procedures and controls. Systems should be designed to ensure a high degree of security and operational reliability including having adequate capacity.

15.11 In relation to paragraph 15.10, a DAX operator must, among others—

- (a) establish a robust operational risk-management framework with appropriate systems, policies, procedures and controls to identify, monitor, mitigate and manage operational risks;
- (b) have in place clearly defined roles and responsibilities for addressing operational risks;
- (c) have in place clearly defined operational reliability objectives and policies that are designed to achieve those objectives;
- (d) ensure that it has adequate capacity proportionate to stress volumes to achieve its service-level objectives; and
- (e) have a comprehensive physical and information security policy that addresses all potential vulnerabilities and threats.

15.12 A DAX operator must have a business continuity plan that addresses events posing a significant risk of disrupting operations including events that could cause a wide-scale or major disruption.

15.13 The business continuity plan should incorporate the use of a secondary site and should be designed to ensure that critical information technology systems can resume operations within reasonable recovery time objectives (RTO) following disruptive events.

15.14 A DAX operator must carry out periodic reviews, audits and testing on systems, operational policies, procedures and controls relating to risk management and its business continuity plan.

## **Internal Audit**

15.15 A DAX operator must establish an internal audit function to develop, implement and maintain an appropriate internal audit framework which commensurate with its business and operations.

## **Trading of Digital Assets**

15.16 A DAX operator must establish and implement policies and procedures to assess any Digital Asset prior to offering the Digital Asset to be traded on its platform.

15.17 Notwithstanding paragraph 15.16, a DAX operator must obtain the SC's concurrence prior to offering the Digital Asset to be traded on its platform.

### **Guidance to paragraph 15.17**

The SC's concurrence is only required for the offering of any Digital Asset that is not already offered on any other DAX Operator.

15.18 Where the SC has provided its concurrence for the offering of a new Digital Asset by a DAX operator, any other DAX operator who wishes to offer the same Digital Asset on its platform must demonstrate its operational capabilities to the SC prior to offering the Digital Asset.

### **Guidance to paragraph 15.18**

The DAX operator must submit its amended rulebook pursuant to paragraph 15.25 to demonstrate its operational capabilities.

15.19 In relation to paragraph 15.17, a DAX operator must submit to the SC—

- (a) information relating to the Digital Asset including the nature of the Digital Asset and the profile of its founders and management team; and
- (b) an assessment report as to whether the Digital Asset has met the following minimum criteria to be offered on its platform:
  - (i) The Digital Asset represents certain rights, benefits or utility;

- (ii) The Digital Asset has sufficient liquidity, taking into account, among others—
  - (A) the amount of the Digital Asset in circulation;
  - (B) past trading volumes; and
  - (C) the demand for the Digital Asset in Malaysia;
- (iii) The Digital Asset is well distributed and not over-concentrated, supported with, among others, the following indicators:
  - (A) The number of addresses created and active;
  - (B) Concentration of the Digital Asset in specific addresses; and
  - (C) Patterns and concentration of transactions;
- (iv) Information relating to the Digital Asset is widely available and readily accessible including—
  - (A) the issuance of a whitepaper or any other disclosure document accompanying the Digital Asset; and
  - (B) information relating to the progress of the project including both business and technical aspects;
- (v) Security feature of the underlying distributed ledger is sound, taking into account—
  - (A) the number of nodes;
  - (B) any history of hacks and other form of attacks; and
  - (C) any known security vulnerabilities;
- (vi) The economics of the Digital Asset is viable and sustainable, including but not limited to—
  - (A) participants and their interactions within the Digital Asset's ecosystem; and
  - (B) mechanism to regulate demand and supply (if any); and
- (vii) The Digital Asset is in compliance with all other legal and regulatory

frameworks in Malaysia and other jurisdictions which the project operates in.

15.20 The SC may refuse to provide concurrence under paragraph 15.17 where the SC considers necessary including for the protection of investors, public interest or the proper functioning of a recognized market.

### **Delisting of Digital Assets**

15.21 A DAX operator must establish and implement policies and procedures to manage the delisting of any Digital Asset offered on its platform.

15.22 A DAX operator must notify the SC prior to delisting any Digital Asset from its platform.

15.23 For the purposes of paragraph 15.22, the DAX operator must submit to the SC the following information:

- (a) Detailed reasons for the delisting;
- (b) Impact analysis and detailed roll-out plans including notification to affected investors;
- (c) The DAX operator's board resolution for the delisting; and
- (d) Any other information or explanation as may be specified by the SC.

### **Obligations of the DAX operator**

15.24 In addition to the obligations specified in Chapter 6, a DAX operator must—

- (a) ensure that its platform is operating in an orderly, fair and transparent manner;
- (b) have in place policies and procedures for the trading, clearing and settlement of Digital Assets on the platform; and
- (c) conduct real-time market surveillance.

15.25 Notwithstanding paragraph 7.01, any proposed rules of a DAX operator or any proposed amendments to its existing rules shall not have effect unless it has been approved by the SC.

15.26 Where a DAX operator operates a Digital Broker model, the DAX operator must—

- (a) ensure that the Digital Asset is sourced from a VASP that is—

- (i) registered, authorised, licensed or regulated by a regulatory authority having similar regulatory authority or function as the SC; or
  - (ii) in compliance with the *FATF Recommendations 2012* relating to the supervision or monitoring of a VASP;
- (b) ensure that for any purchase of a Digital Asset by an investor, the Digital Asset must be transferred from the DAX operator's wallet into the investor's wallet; and
  - (c) carry out the necessary AML/TF screening on the Digital Asset that has been sourced prior to transferring the Digital Asset to an investor.

15.27 A DAX operator must seek the SC's prior approval if it seeks to provide or carry out any other model other than the one it has been registered for to facilitate the trading of Digital Assets on its platform.

### **Client's asset protection**

15.28 A DAX operator must—

- (a) establish systems and controls for maintaining accurate and up to date records of investors and any monies or Digital Assets held in relation thereto;
- (b) establish and maintain a sufficiently and verifiably secured storage medium designated to store Digital Assets on behalf of its investors;
- (c) ensure investors' monies and Digital Assets are properly safeguarded from conversion or inappropriate use by any person, with the necessary governance and approval processes in place to avoid;
- (d) ensure effective controls and risk management for Digital Assets held on behalf of investors in the event of liquidation of the DAX operator;
- (e) segregate investors' Digital Assets from its own inventory;
- (f) establish and maintain in a licensed Malaysian financial institution one or more trust accounts, designated for the monies received from investors;
- (g) ensure that the trust accounts under paragraph 15.28(f) are administered by an independent registered trustee; and
- (h) in relation to investors' Digital Assets, have arrangements and processes in place to protect against the risk of loss, theft or hacking.

## **Settlement and custody**

15.29 A DAX operator must ensure—

- (a) there are orderly, clear and efficient clearing and settlement arrangements; and
- (b) in the case of a DAX operator operating a Digital Broker model, that it has sufficient liquidity risk management arrangement in place to ensure settlement can be done with its investors for purposes of every transaction.

15.30 These arrangements must include prior or upfront deposit of monies and Digital Assets with the DAX operator before entering into a transaction on the DAX.

15.31 A DAX operator should provide clear and certain final settlement in real time.

## **Market integrity provisions**

### *General*

15.32 A DAX Operator must comply with the relevant requirements set out under paragraphs 15.33 to 15.46 insofar as it is applicable to the type of DAX model it operates.

### *Price Methodology*

15.33 A DAX operator must ensure that the pricing for trading in the Digital Assets on its platform is fair and transparent.

15.34 In the case of a DAX operator that operates a Digital Broker model, the DAX operator must disclose and display prominently on its platform, explanatory notes on the methodology of how the price is derived for the Digital Assets being offered on its platform.

### *Trading Operations*

15.35 A DAX operator must disclose information about its market structure, order types and the interactions of the order types, if any, on the platform.

15.36 A DAX operator must have adequate arrangements and processes to deter manipulative activities on the platform and ensure proper execution of trades.

15.37 A DAX operator must have adequate arrangements and processes to manage excessive volatility of its market which may include circuit breakers, price limits and trading halts.

15.38 A DAX operator must have adequate arrangements and processes to manage error trades.

15.39 A DAX operator must have adequate arrangements and processes to manage systems error, failure or malfunction.

15.40 A DAX operator must have adequate arrangements and processes to manage investors' assets in the event of any suspension or outages of the platform, including transfer or withdrawal procedures.

#### Market Transparency

15.41 A DAX operator must ensure trading information, both pre-trade and post-trade, is made publicly available on a real-time basis.

15.42 A DAX operator must make available in a comprehensible manner and on a timely basis, material information or changes to the tradable Digital Assets.

15.43 A DAX operator must ensure all information relating to the trading arrangements pursuant to paragraphs 15.35 to 15.40, including the circumstances arising thereof and where relevant, are made publicly available.

#### Market making

15.44 A DAX operator may provide or carry out market making activities to provide liquidity to its market, subject to SC's approval.

15.45 A DAX operator must ensure sufficient disclosure of all market making arrangements to its investors.

15.46 Where a DAX operator appoints a third-party market maker, the DAX operator must comply with the requirements relating to outsourcing as set out under paragraphs 6.07 to 6.12.

## **PART H: ADDITIONAL REQUIREMENTS RELATING TO A PROPERTY CROWDFUNDING PLATFORM**

### **CHAPTER 16**

#### **Property Crowdfunding Platform**

##### **Definitions**

16.01 For the purposes of this chapter, unless context otherwise requires—

PCF operator	means a RMO who operates a property crowdfunding (PCF) platform;
registered valuer	means a person registered with the Board of Valuers, Appraisers, Estate Agents and Property Managers Malaysia under the <i>Valuers, Appraisers, Estate Agents and Property Managers Act 1981</i> ;
PCF platform	means an electronic platform that facilitates—  (a) crowdfunding for residential property; and  (b) secondary trading of the investment note or Islamic investment note;
residential property	means a house, a condominium unit, an apartment or a flat, purchased or obtained solely to be used as a dwelling house, and includes a service apartment;
officer	means any director or employee of the PCF operator.

##### **PCF operator**

16.02 All other requirements stated in these Guidelines are applicable to a PCF operator, unless otherwise stated.

##### **Eligibility criteria of a PCF operator**

16.03 All PCF operators must be locally incorporated and have a minimum shareholders' funds of RM10 million, of which RM5 million must be set aside and maintained in a segregated bank account at all times throughout the operation of the PCF platform.

16.04 For the purpose of paragraph 16.03, the RM5 million set aside shall only be utilised for the purposes of ensuring and facilitating the exit certainty of the investment notes or Islamic investment notes hosted on its PCF platform.



16.05 The SC may at any time impose additional financial requirements or other terms and condition on the PCF operator that commensurate with the nature, operations and risks posed by the PCF platform.

### **Independent director**

16.06 In the case where a PCF operator is a public company, at least one member of the board must be an independent director.

### **Managing conflict of interest**

16.07 The PCF operator's framework relating to conflict of interest, must include policies and procedures relating to, among others—

- (a) the PCF operator or its officers seeking to participate on any PCF platform as a user;
- (b) any transaction entered into by the PCF operator which a director, substantial shareholder or person connected with such director or substantial shareholder of the PCF operator may have interest in, whether direct or indirect;
- (c) prevention of abuse of non-public material information by the PCF operator or its officers; and
- (d) any fees or remuneration received for the hosting of a residential property or any investment note or Islamic investment note on its PCF platform.

### **Prohibition on financial assistance**

16.08 The PCF operator is prohibited from—

- (a) providing direct or indirect financial assistance—
  - (i) to investors to invest or trade in any investment note or Islamic investment note hosted on its platform; and
  - (ii) to homebuyers seeking residential property financing, investing or trading in any investment note or Islamic investment note hosted on its platform.

### **Risk Management**

16.09 A PCF operator must, among others—

- (a) establish a robust operational risk-management framework with appropriate systems, policies, procedures, and controls to identify, monitor, mitigate and

- manage operational risks;
- (b) have in place clearly defined roles and responsibilities for addressing operational risk; and
- (c) have a comprehensive physical and information security policy that addresses all potential vulnerabilities and threats.

### **Internal Audit**

16.10 A PCF operator must establish an internal audit function to develop, implement and maintain an appropriate internal audit framework that commensurate with its business and operations.

### **Obligations of the PCF operator**

16.11 In addition to the obligations specified in chapter 6, a PCF operator must—

- (a) ensure that its platform is operating in an orderly, fair and transparent manner;
- (b) have in place rules and procedures for the hosting of a residential property and the issuance, trading, clearing and settlement of investment note or Islamic investment note on its platform;
- (c) obtain and retain a self-declared acknowledgement form from each homebuyer confirming that he has satisfied the eligibility criteria and will comply with his obligations under the property crowdfunding scheme;
- (d) inform an investor of any material adverse change in relation to the homebuyer or the investment note or Islamic investment note;
- (e) ensure that all fees and charges including any stamp duties, legal fees and other costs payable in relation to the sale and purchase of the residential property, trading fees and management fees imposed are fair and transparent, as the case may be;
- (f) appoint an independent registered valuer to carry out the valuation of the residential property to ascertain its market value, upon hosting and before the expiry of the tenor of the investment note or Islamic investment note;
- (g) maintain a register of homebuyers and investors for each residential property; and
- (h) have in place policies and processes relating to the obligation of each party at the end of tenor of the investment note or Islamic investment note including using its best endeavours to recover any amount due to an investor.

## **Exit certainty**

16.12 A PCF operator must have in place policies and processes to ensure exit certainty for homebuyers and investors at the end of the tenor of the investment note or Islamic investment note.

16.13 A PCF operator must ensure that the exit terms are disclosed, including how returns, if any, will be distributed to the investors and homebuyers.

## **Eligibility and obligations of homebuyers**

16.14 A PCF operator must ensure that a homebuyer must be—

- (a) an individual Malaysian citizen;
- (b) at least 21 years of age; and
- (c) a first time homebuyer.

16.15 A homebuyer must—

- (a) ensure he occupies the residential property;
- (b) not sell or transfer the residential property; and
- (c) use his best endeavours to maintain the property in good condition, during the tenor of the investment note or Islamic investment note.

16.16 A homebuyer shall ensure that all information submitted or disclosed to a PCF operator is true and accurate and shall not contain any information or statement which is false or misleading or from which there is a material omission.

## **Eligible properties**

16.17 Only a property which satisfies the following criteria, is eligible to be hosted on a PCF platform:

- (a) It is a completed residential property located in Malaysia;
- (b) It has a valid and effective legal title with no encumbrances attached;
- (c) It has been issued a certificate of completion and compliance by the relevant authority; and
- (d) It is valued at RM500,000 or below.

16.18 The PCF operator must ensure delivery of vacant possession of the residential property to the homebuyer.

### **Funds raised on a PCF platform**

16.19 A homebuyer is permitted to seek residential property financing of up to a maximum of 90 per cent of the value of the residential property.

16.20 Notwithstanding paragraph 16.19, the homebuyer is not allowed to retain any amount raised during the tenor of the property crowdfunding scheme which exceeds the target financing amount.

### **Disclosure requirements**

16.21 A PCF operator must disclose and display prominently relevant information on its PCF platform, including—

- (a) information relating to the residential property, upon hosting of and throughout the tenor of the investment note or Islamic investment note;
- (b) information relating to the homebuyer, upon hosting of and throughout the tenor of the investment note or Islamic investment note;
- (c) information relating to the developer or in the case of a sub-sale, the existing owner of the residential property, upon hosting of the residential property on its platform;
- (d) information relating to the independent registered valuer appointed to prepare the valuation reports on the residential property;
- (e) provide communication channels to permit discussion among its users;
- (f) information relating to all applicable fees and charges that are to be borne by a homebuyer and investors under the property crowdfunding scheme including stamp duties, legal fees, insurance costs, quit rent and assessment.

### **Client's asset protection**

16.22 A PCF operator must—

- (a) establish and maintain in a licensed Malaysian financial institution one or more trust accounts, designated for the monies received from users;
- (b) ensure that the trust accounts under paragraph 16.22(a) are administered by an independent registered trustee;

- (c) establish systems and controls for maintaining accurate and up to date records of users' monies held; and
- (d) ensure users' monies are properly segregated and safeguarded from conversion or inappropriate use by any person.

16.23 A PCF operator can only release the monies to the person entitled to it, provided that the following conditions are met:

- (a) The targeted amount sought to be raised has been met and there is no material adverse change during that period; or
- (b) Upon the sale price of the residential property having been fully paid at the end of tenor of the investment note or Islamic investment note and there is no material adverse change during that period.

16.24 For the purpose of paragraph 16.23, a material adverse change may include any of the following matters:

- (a) The discovery of a false or misleading statement in any disclosures relating to the investment notes or Islamic investment note;
- (b) The discovery of a material omission of information required to be disclosed in relation to the investment note or Islamic investment note; or
- (c) There is a material change or development in the circumstances relating to the investment note or Islamic investment note, the homebuyer, the residential property, the developer or the existing residential property owner, as the case may be.

16.25 Notwithstanding paragraph 16.23, the PCF operator may impose any other additional conditions precedent before releasing the fund, provided that they serve the investors' interest.

### **Secondary market**

16.26 Only investment note or Islamic investment note that have been hosted and successfully funded through the PCF platform will be permitted to be traded on its platform.

16.27 A PCF operator must disclose information about its market structure, order types, and the interactions of the order types.

16.28 A PCF operator must have adequate arrangements to deter market manipulation and abuse and ensure proper execution of trades.

- 16.29 A PCF operator must have adequate arrangements and processes to manage error trades.
- 16.30 A PCF operator must have adequate arrangements and processes to manage systems error, failure or malfunction.
- 16.31 A PCF operator must make available pre-trade and post-trade information on a non-discriminatory basis to all users on a timely basis.
- 16.32 A PCF operator must make available in a comprehensive manner and on a timely basis, material information or changes relating to the investment note or Islamic investment note.
- 16.33 A PCF operator must determine and disclose the anomalous order threshold for the investment note or Islamic investment note that is offered on its secondary market, taking into account, at a minimum, the price at which a single order deviates substantially from prevailing market conditions and historical trading patterns.
- 16.34 The SC may notify the PCF operator where its anomalous order threshold is not appropriate to promote market integrity or a fair, orderly and transparent market.
- 16.35 A PCF must have policies and procedures for trading pause/halt in a relevant investment note, which include the length of the trading pause/halt and how it will resume trading on its market after the trading pause/halt.
- 16.36 A PCF operator must have policies and procedures to monitor, manage and mitigate risks of any system failure or malfunction by the PCF operator, including suspension of trading or take any action the PCF operator deems fit.

### **Settlement and clearing**

- 16.37 A PCF operator must ensure there are orderly, clear and efficient settlement and clearing arrangements.

# **PART I: ADDITIONAL REQUIREMENTS RELATING TO AN E-SERVICES PLATFORM**

## **CHAPTER 17**

### **E-Services Platform**

#### **Definitions**

17.01 For the purposes of this chapter, unless context otherwise requires—

- |                              |  |
|------------------------------|--|
| CMSL holder                  | means a holder of a Capital Markets Services Licence;  |
| e-services platform          | means an electronic platform which arranges or facilitates the sale, purchase or subscription of a capital market product offered by a CMSL holder or another RMO, to investors; |
| e-services platform operator | means a RMO who operates an e-services platform.   |

#### **Related requirements**

17.02 All other requirements stated in these Guidelines are applicable to an e-services platform operator, unless otherwise stated.

17.03 These Guidelines shall not apply to—

- (a) CMSL holder licensed for dealing in securities where the holder operates an e-services platform for buying and selling of securities;
- (b) CMSL holder licensed for dealing in derivatives where the holder operates an e-services platform for buying and selling of derivatives;
- (c) registered person registered for dealing in securities where the person operates an e-services platform for buying and selling of unit trust scheme;
- (d) private retirement scheme administrator approved under the CMSA where it operates an e-services platform pursuant to its function;
- (e) Pos Malaysia Bhd; and
- (f) Employees Provident Fund (EPF).

17.04 The Guidelines *on Online Transactions and Activities in relation to Unit Trust* shall not apply to an e-services platform operator who offers unit trust products on

its e-services platform.

### **Eligibility criteria of an e-services platform operator**

- 17.05 An e-services platform operator must be locally incorporated and have a minimum paid up capital of RM500,000.
- 17.06 An e-services platform operator must obtain the approval of the relevant sectorial regulator when making the application to the SC as provided for under paragraph 2.05.
- 17.07 The SC may at any time impose additional financial requirements or other terms and conditions on the e-services platform operator that commensurate with the nature, operations and risks posed by the e-services platform.

### **Managing conflict of interest**

- 17.08 The e-services platform operator's framework relating to conflict of interest must include policies and procedures relating to, among others—
- (a) buying and selling of a capital market product for its own account; and
  - (b) buying and selling of a capital market product by its officers and employees on its e-services platform.

### **Prohibition on financial assistance**

- 17.09 An e-services platform operator is prohibited from providing direct or indirect financial assistance to investors, including to its officers and employees, for purposes of investing in a capital market product offered on its e-services platform<sup>6</sup>.

### **Risk Management**

- 17.10 An e-services platform operator should identify possible sources of operational risk, both internal and external, and mitigate their impact through appropriate systems, policies, procedures, and controls. Systems should be designed to ensure a high degree of security and operational reliability including having adequate capacity.
- 17.11 An e-services platform operator must, among others—
- (a) establish a robust operational risk-management framework with appropriate systems, policies, procedures, and controls to identify, monitor, mitigate and manage operational risk;

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<sup>6</sup> Financial assistance does not include any gifts or rebates that are offered to the investors.



- (b) have in place clearly defined roles and responsibilities for addressing operational risk; and
- (c) have a comprehensive physical and information security policy that addresses all potential vulnerabilities and threats.

### **Adding-on additional products**

- 17.12 An e-services platform operator must not add-on a different type of capital market product from the initial capital market products offered on its e-services platform without the SC's prior approval<sup>7</sup>.
- 17.13 Where an e-services platform operator intends to offer any other product which is not a capital market product or any other services which is not a capital market service or a regulated activity, the e-services platform operator must obtain the necessary authorisation from the relevant sectorial regulator, as the case may be.
- 17.14 The e-services platform operator must submit the authorisation from the relevant sectorial regulator to the SC prior to making available such product or service on its platform.

### **Obligations of the e-services platform operator**

- 17.15 In addition to the obligations specified in chapter 6, an e-services platform operator must—
- (a) ensure that its e-services platform is operating in an orderly, fair and transparent manner;
  - (b) where applicable, have in place rules and procedures governing the provision of services in relation to the capital market products offered on the platform;
  - (c) carry out continuous awareness and education programmes;
  - (d) disclose any information or provide any information to the SC as it may require; and
  - (e) ensure the responsible person carries out his responsibilities and duties.
- 17.16 Paragraph 6.01(i) shall not apply to an e-services platform operator provided that the CMSL holder or another RMO carries out the obligation to monitor anti-money

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<sup>7</sup> Example: If an e-services platform operator has been approved to facilitate the buying and selling of units in a unit trust scheme and now wishes to add-on debenture, the e-services platform operator must obtain the SC's prior approval before adding-on debentures on its e-services platform.

laundering, counter terrorism financing and counter proliferation financing requirements.

17.17 In the event incentives such as gifts or rebates are offered to investors, an e- services platform operator must ensure that such gifts or rebates do not detract investors from making an informed investment decision.

### **Client's asset protection**

17.18 An e-services platform operator must—

- (a) establish systems and controls for maintaining accurate and up to date records of investors, the investors' transactions and any monies or capital market products held in relation thereto; and
- (b) ensure investors' monies and assets belonging to the investors are properly segregated and safeguarded from conversion or inappropriate use by any person.

### **Settlement and payment**

17.19 An e-services platform operator must ensure there is in place an orderly, clear and efficient clearing and settlement arrangement.

17.20 An e-services platform must ensure that any monies received from the CMSL holder or another RMO that is due to an investor must be credited into the investor's account as soon as practicable.

## **PART J: SUBMISSION OF APPLICATION**

### **CHAPTER 18**

#### **Submission**

18.01 All registration forms, periodic reports and other additional documents as required in these Guidelines shall be submitted to the SC at the following address:

Chairman  
Securities Commission Malaysia 3 Persiaran Bukit Kiara  
Bukit Kiara  
50490 Kuala Lumpur  
Tel: (603) 6204 8000  
Fax: (603) 6201 5282  
(Attention: Market and Corporate Supervision)  
E-mail: [RMO.Registrations@seccom.com.my](mailto:RMO.Registrations@seccom.com.my)