

GUIDELINES ON THE REGISTRATION OF VENTURE CAPITAL AND PRIVATE EQUITY CORPORATIONS AND MANAGEMENT CORPORATIONS

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¹ Save for the requirement to have policies and procedures on anti-corruption and whistleblowing under subparagraph 9.01(d) of these Guidelines, which took effect on 1 June 2020.

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PART A: GENERAL

Chapter 1

INTRODUCTION

- 1.01 These *Guidelines on the Registration of Venture Capital and Private Equity Corporations and Management Corporations* (Guidelines) are issued by the Securities Commission Malaysia (SC) under section 377 of the *Capital Markets and Services Act 2007* (CMSA) read together with section 76 of the CMSA.
- 1.02 These Guidelines set out the requirements for the registration of and ongoing requirements for corporations undertaking fund management activity in relation to venture capital or private equity funds.
- 1.03 These Guidelines comprise the following parts—
- (a) requirements for the registration of corporations undertaking fund management activity in relation to venture capital or private equity funds as set out in Part B of these Guidelines;
 - (b) type of activities and ongoing obligations of registered corporations as set out in Part D of these Guidelines; and
 - (c) submission procedures as set out in Part E of these Guidelines.
- 1.03A In addition to complying with these Guidelines, a registered corporation must, in relation to managing an Islamic venture capital or private equity fund also comply with the *Guidelines on Islamic Capital Market Products and Services*.
- 1.04 These Guidelines shall replace the *Guidelines for the Registration of Venture Capital Corporations and Venture Capital Management Corporations* issued on 1 August 2002 and *Guidelines and Best Practices on Islamic Venture Capital* issued on May 2008.
- 1.05 [deleted]
- 1.06 [deleted]
- 1.07 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.

1.08 These Guidelines shall be read together with other relevant SC guidelines.

1.09 Guidance on the application of the relevant requirements of these Guidelines has been inserted, where appropriate. Any departure from the Guidance will be taken into account in the SC's assessment on whether a breach of these Guidelines had occurred.

Chapter 2

DEFINITIONS

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

corporation	has the same meaning assigned to it in the CMSA and includes any— (a) entity established under the laws of Labuan; and (b) limited liability partnership;
ComRep	means the SC's Common Reporting platform;
custodian	has the meaning assigned to it under section 121 of the CMSA. For purposes of these Guidelines, reference to "a holder of a Capital Markets Services Licence" under section 121 of the CMSA should apply to a registered corporation under these Guidelines;
early-stage financing	means financing or funding provided to a venture corporation as— (a) capital expenditure or working capital to initiate commercialisation of technology, product and/or services; (b) additional capital expenditure or working capital to increase production capacity, marketing or product development. Also known as the expansion or growth stage; or (c) interim funding for a venture corporation expecting to be listed on the official list of a stock exchange. Also known as the bridge or mezzanine or pre-IPO stage;
EASy	means Electronic Application System;
financial year	has the same meaning assigned to it in the <i>Companies Act 2016</i> ;
limited liability partnership	has the same meaning assigned to it in the <i>Limited Liability Partnerships Act 2012</i> ;

private debt notes and Islamic private debt notes	means an instrument as described in Section B, Part 5 of the <i>Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework</i> ;
private equity corporation (PEC) or private equity management corporation (PEMC)	means a private equity fund or corporation that manages the investment in securities of venture corporations for the purpose of— (a) providing medium to long-term capital investment in the venture corporation; or (b) financing to fund growth, development, business improvement or buy-outs of the venture corporation;
private equity (PE) or venture capital (VC) fund	means a corporation set up for the purpose of investing in venture corporations;
registered corporation	means a corporation which is registered under these Guidelines;
seed-capital financing	means financing or funding provided to a venture corporation for the purpose of research, assessment and development of an initial concept or prototype;
senior management	means a person, other than a director, having authority and responsibility for planning, directing or controlling the activities of a registered corporation, including the chief executive, chief operating officer, chief financial officer, members of decision making committees and other key persons performing functions such as risk management, compliance, internal audit or other functions as may be specified by the SC;
Shariah adviser	has the same meaning assigned to it in the <i>Guidelines on Islamic Capital Market Products and Services</i> ,
sophisticated investor	means any person who— (a) is determined to be a sophisticated investor under the <i>Guidelines on Categories of Sophisticated Investors</i> ; or (b) acquires securities 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;

start-up financing	means financing or funding provided to a venture corporation for product development and initial marketing;
venture capital corporation (VCC) or venture capital management corporation (VCMC)	means a VC fund or corporation that manages the investment in securities of venture corporations for the purposes of seed capital financing, start-up financing or early-stage financing;
venture corporation	means the investee corporation of a VC or PE fund; and
year-end	means 31 December of each year.

PART B: REQUIREMENTS FOR REGISTRATION

Chapter 3

GENERAL AND MINIMUM FINANCIAL REQUIREMENTS

- 3.01 Any VCC, PEC, VCMC or PEMC is required to be registered with the SC if it is acting or offering to act as an investment manager or co-investment manager of a venture capital or private equity fund.

Guidance to paragraph 3.01

A registered corporation may carry out the following activities incidental to its fund management activity:

- (a) Dealing in securities in relation to arrangements of and investments of funds managed by the registered corporation; and
- (b) The provision of investment advice on venture capital and private equity to its clients or related entities.

- 3.02 The SC may register a VCC, PEC, VCMC or PEMC subject to the applicant satisfying the criteria set out in these Guidelines.
- 3.03 A registered corporation must maintain at all times a minimum net assets of RM100,000.
- 3.04 [Deleted]

Chapter 4

APPOINTMENT OF RESPONSIBLE PERSON

- 4.01 A registered corporation must have at least one responsible person.
- 4.02 [Deleted]
- 4.03 A person shall not be appointed as a responsible person without the prior approval of the SC.
- 4.04 A person to be appointed under paragraph 4.01 must–
- (a) be a director as defined under the *Companies Act 2016* or in the case of a limited liability partnership, a partner as defined under the *Limited Liability Partnerships Act 2012*; or
 - (b) an officer who is responsible for investment strategies and decisions.
- 4.05 The responsible person must have a minimum of five years of relevant industry experience at least at a managerial level and must be a fit and proper person.
- 4.06 In determining whether a person is fit and proper to be designated as a responsible person in accordance with paragraph 4.05, regard shall be had to his probity, to his competence and soundness of judgement of fulfilling the responsibilities of a responsible person, to the diligence with which he is fulfilling or likely to fulfill those responsibilities, and to whether the interests of customers, if any, are or are likely to be, in any way threatened by his holding of that position.
- 4.07 Without prejudice to the generality of paragraph 4.06, regard may be had to the previous conduct and activities in the business or financial matters of the person in question and in particular, to any evidence that he–
- (a) has 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;
 - (b) has been convicted of an offence under the securities laws or any law within or outside Malaysia relating to capital market;
 - (c) has 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

- (d) has 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 the conduct of undischarged bankrupts.

4.08 At all times, the responsible persons must–

- (a) ensure continuous compliance of all requirements under these Guidelines;
- (b) [Deleted]; and
- (c) undertake the role of the main contact person(s) for the purpose of liaising with the SC.

4.09 Any vacancy in relation to the position of a responsible person shall be filled within six months from the date of the departure of the former responsible person in compliance with this chapter.

4.10 In the interim, the registered corporation must identify a person and require that person to take on and be responsible for the functions of the vacated position.

Chapter 5

[DELETED]

PART C: [DELETED]

Chapter 6

[DELETED]

Chapter 7

[DELETED]

PART D: TYPE OF ACTIVITIES AND ONGOING OBLIGATIONS OF REGISTERED CORPORATIONS

Chapter 8

INVESTMENT LIMITS/PARAMETERS

A. Category and number of investors

8.01 A registered corporation may only offer fund management services in relation to a VC or PE fund to sophisticated investors.

8.02 [Deleted]

8.03 Members of the management team who co-invest in a VC or PE fund managed by the registered corporation shall be deemed as sophisticated investors for the purposes of these Guidelines.

B. Investment activities

8.04 A registered corporation may only invest up to 20% of the VC or PE fund's committed capital in listed securities.

8.04A Notwithstanding paragraph 8.04, a registered corporation may invest in more than 20% of the VC or PE fund's committed capital in listed securities provided:

- (a) the investment was made prior to the listing of the venture corporation;
- (b) holding of listed securities was the result of corporate action involving a venture corporation;
- (c) the investment was for the purpose of taking the venture corporation private;
or
- (d) the investment is a private investment in public equity;

provided the investment is not for the purposes of trading and is in line with the investment strategy of the VC or PE fund.

8.05 [Deleted]

8.06 [Deleted]

8.07 [Deleted]

Chapter 9

CONTINUOUS COMPLIANCE

9.01 A registered corporation must–

- (a) ensure that the minimum capital requirements as set out under paragraph 3.03 are met at all times;
- (b) notify the SC immediately of any failure to comply with any requirement of these Guidelines;
- (c) notify the SC of any material change in the information submitted to the SC within 14 calendar days from the date of such change;
- (d) have in place appropriate systems, procedures and controls, including policies and procedures on anti-corruption and whistleblowing, which commensurate with the size of the fund under management and its risk profile; and

Guidance to subparagraph 9.01(d)

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

- (e) comply with the requirements of these Guidelines at all times.

9.01A Where a registered corporation invests a VC or PE fund’s committed capital in private debt notes or Islamic private debt notes, the registered corporation must have in place risk management policies and procedures set out in a standalone document.

Guidance to paragraph 9.01A

A registered corporation’s risk management policies and procedures should effectively monitor, measure and manage risks of the investment positions of the VC or PE fund and their contributions to the risk profile of the VC or PE fund including all relevant risks associated with investments in private debt notes or Islamic private debt notes.

In preparing the risk management policies and procedures, the registered corporation may be guided with the areas provided below which is non-exhaustive and the SC may request additional information where deemed necessary:

- (a) Overview of deal sourcing and investment structuring practices and risk mitigation techniques, such as:

- (i) Use of financial covenants, asset backing, or guarantees; and
- (ii) Loan term structuring and exit planning to ensure alignment with liquidity profile;
- (b) Credit evaluation process, including:
 - (i) How borrower assessments are conducted, including business fundamentals, industry outlook, financial health, and transaction structure;
 - (ii) Risk indicator reviews (e.g. red flag assessments), security enforceability, equity participation, and sponsor support; and
 - (iii) Description of credit scoring framework and evaluation of borrower's credit worthiness based on said framework;
- (c) Description of the approval process in assessing borrower's credit worthiness including personnel and committees involved in credit assessment, and investment decision;
- (d) Description of the valuation and pricing methodology used to assess private credit instruments;
- (e) Approach to assessing impairment risk including data, early warning indicators and events that are considered;
- (f) Intervention process to preserve investor capital or trigger equity conversion;
- (g) Ongoing covenant monitoring, repayment tracking, and stress detection as well as processes for enhanced monitoring, restructuring discussions, or recovery action;
- (h) Proof of the issuer's lodgement with the SC under Section B, Part 5, of the *Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework* in respect of the private debt notes or Islamic private debt notes and compliance with applicable terms; and
- (i) Maintenance of records of assessment of key personnel and committees responsible for credit evaluation, approval, and oversight including possessing the required qualifications, expertise, and experience in managing private debt notes or Islamic private debt notes. The assessment should also cover their roles in the investment process, as well as the governance safeguards in place to ensure independence and objectivity.

- 9.01B Prior to investing the VC or PE fund's committed capital in private debt notes and Islamic private debt notes, a registered corporation must first inform the SC of its intention to do so before proceeding to invest the VC or PE fund's committed capital in private debt notes and Islamic private debt notes.
- 9.02 A registered corporation must maintain a register of investors and enter into the register—
- (a) in the case of an investor who is an individual, the name, address and the number of the identity card (for Malaysians) or passport number (for foreigners);
 - (b) in the case of an investor who is a corporation, the name, registered address and registration number of the corporation, including details of its directors and shareholders; and
 - (c) any other relevant information or particulars of the investor.
- 9.03 A registered corporation must keep and document all relevant agreements, including the Management Agreement, the Subscription Agreement and the Shareholders' Agreement.

Chapter 10

REPORTING AND DISCLOSURE REQUIREMENT

10.01 A registered corporation must submit to the SC the following:

- (a) an annual report in accordance with Form 3 entitled "**Annual Activity Report for registered corporations**" via ComRep within 30 days from each year-end;
- (b) in the case of an Islamic VC or PE fund, a copy of the annual report by the Shariah adviser;

Guidance to paragraph 10.01 (b)

The Shariah adviser's report must comply with the requirements as set out in the *Guidelines on Islamic Capital Market Products and Services*.

- (c) a mid-year filing in accordance with Form 3A entitled "**Mid-year Filing for registered corporations**" via ComRep within 14 days from 30 June of each year; and
- (d) its latest audited financial statements via ComRep within three months after the close of each financial year or such further period that the SC may allow.

Chapter 11

CUSTODIAN REQUIREMENT

11.01 A registered corporation with investments in listed securities must appoint a custodian and comply with the requirements under section 122 of the CMSA² to safeguard investors' assets and monies.

11.02 The registered corporation must ensure that the custodian, at all times, takes measures that include but are not limited to the following:

- (a) holding assets on behalf of the fund under safekeeping conditions no less favourably than those that apply to other clients of the custodian;
- (b) maintaining records to enable identification of the assets of the clients of the custodian, and keeping its own assets segregated from its clients' assets;
- (c) conducting reconciliation of the fund's account on a daily basis; and
- (d) having in place proper processes to ensure verification of all investments and payment instructions received from the registered corporation in relation to the fund.

11.03 Paragraph 11.01 shall not apply where a registered corporation invests only in unlisted securities subject to the following:

- (a) the registered corporation has obtained a written acknowledgement and consent from its investors; and
- (b) the registered corporation must appoint an independent auditor to audit the fund's assets on an annual basis and report to investors.

² For purposes of these Guidelines, reference to "a holder of a Capital Markets Services Licence" under section 122 of the CMSA should apply to a registered corporation under these Guidelines.

Chapter 12

VALUATION

- 12.01 A registered corporation must have a valuation framework in place to assess the value of investments in venture corporations.
- 12.02 A registered corporation is encouraged to adopt a valuation methodology which is in line with international best practices for the purpose of evaluating investments in venture corporations.
- 12.03 Sufficient disclosure must be made to allow investors to have a clear understanding of how the portfolio is valued and priced.
- 12.04 A registered corporation must ensure that the valuation policy for illiquid assets or holdings, such as unlisted securities, provides for the consistent and transparent valuation of such assets. The valuation methodology must be clearly documented.

PART E: SUBMISSION PROCEDURE

Chapter 13

SUBMISSION PROCEDURE

General

- 13.01 Unless specified otherwise, all submissions under these Guidelines must be made to the SC via EASy, in accordance with the forms and accompanied by the supporting documentation as specified on the SC website. Further information on EASy can also be found on the SC website.
- 13.02 A submitting party must ensure that the relevant persons as indicated in the forms have authorised the submission of information and particulars stated in the forms, and the supporting documentation.
- 13.03 Any person who furnishes to the SC, directly or indirectly, any statement, information or document (collectively referred to as “representation”), by whatever means or in any form, must ensure that the representation is not false or misleading, and does not contain any material omission. Breach of this requirement can result in enforcement action under the securities laws. For the avoidance of doubt, this requirement includes any clarification or additional representation submitted to the SC.
- 13.04 The SC must be immediately informed of any change or development in circumstances and information—
- (a) that may impact the application subsequent to the submission of the application; and
 - (b) relating to an application occurring subsequent to the SC giving its approval.

Submission for registration

- 13.05 Upon satisfying relevant criteria as set out in these Guidelines, an applicant is required to submit the relevant forms and supporting documentation as specified on the SC website.
- 13.06 Where necessary, the SC may request for other relevant or additional information and documentation to be submitted.
- 13.07 In the case where the registered corporation is appointing its partner, director, senior management and responsible person, the registered corporation is responsible for verifying the good character, reputation and competency of the respective individual.

13.08 Application results may be released through the system or via any other method deemed appropriate by the SC.

Withdrawal of application

13.09 A submission made to the SC may be withdrawn prior to communication of decision by the SC. Any withdrawal must be accompanied by an explanation.

Changes that require prior approval

13.10 The SC's prior approval is required for the appointment of a responsible person.

Changes that require notification

13.11 The registered corporation must notify the SC via EASy on any of the following material change within 14 days of the occurrence of the event:

- (a) Change in shareholders or shareholding details;
- (b) Appointment of partner, director, senior management or responsible person, and change of designation for director;
- (c) Change of registered corporation's particulars such as name, and registered, business or correspondence address, including its corporate shareholder's particulars;
- (d) Cessation of business or deregistration;
- (e) Change of individual particulars for individual shareholder, partner, director, senior management and responsible person;
- (f) Cessation of partner, director, senior management or responsible person; and
- (g) Any other material change.

13.12 Notwithstanding paragraph 13.11, for any resignation or cessation of partner, director, senior management or responsible person, the registered corporation must inform the SC immediately via email to the Head of Authorisation and Licensing Department, followed by submission of the relevant forms.

Application for extension of time

- 13.13 A registered corporation seeking an extension of time to comply with any registration requirements and conditions must submit an application with accompanying justifications and relevant supporting materials to the Head of Authorisation and Licensing Department at least 14 days prior to the expiry of the stipulated time frame for the SC's consideration.