

# Guidelines on Registration of Venture Capital and Private Equity Corporations and Management Corporations (Guidelines)

## Frequently-Asked-Questions

### GENERAL

#### 1. What is the objective of these Guidelines?

These Guidelines outline the requirements for the registration and on-going obligations for corporations undertaking a venture capital (VC) or private equity (PE) activity including Islamic VC and PE activities.

#### 2. What is the underlying philosophy behind the revised Guidelines?

The philosophy behind the revised Guidelines is to support the evolving VC and PE industries, with a focus on facilitating an orderly development of the PE and VC industries as a whole.

#### 3. What is the scope of these Guidelines?

These Guidelines comprise the following sections–

- (a) requirements for the registration of corporations undertaking a VC or PE activity, which would also include Islamic VC or PE activity;
- (b) application process for the registration of these corporations; and
- (c) type of activities and ongoing obligations of the registered corporations.

#### 4. When will these Guidelines take effect?

These Guidelines come into effect on 9 March 2015 and 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 in May 2008.

#### 5. Who should the application for registration be addressed to?

All registration forms, periodic reports and other additional documents shall be submitted to the SC at the following address:

The Authorisation and Licensing Department  
Securities Commission Malaysia  
No. 3 Persiaran Bukit Kiara  
Bukit Kiara  
50490 Kuala Lumpur

#### 6. Whom are these Guidelines applicable to?

These Guidelines are applicable only to corporations who are acting or offering to act as investment managers or co-investment managers of a VC or PE fund. Corporations wishing to carry on a VC or PE activity in Malaysia including Islamic VC or PE activity are required to be

registered with the SC under these Guidelines. In addition, corporations already registered under the “*Guidelines on the Registration of Venture Capital Corporations and Venture Capital Management Corporations*” are also required to comply with these Guidelines.

**7. Are foreign corporations undertaking VC or PE activity required to be registered under these Guidelines?**

The foreign corporations are not required to be registered if:

- the activity is performed outside Malaysia and the foreign firm has no physical presence in Malaysia, and
- the foreign firm undertakes a VC or PE activity as a result of a local company seeking the services of a firm operating outside Malaysia i.e. as in the case of 'reverse inquiries'.

Foreign firms may still elect to be registered with the SC subject to meeting the requirements stipulated in these Guidelines by submitting the required forms and documentation.

**8. Would there be exceptions where the SC would not approve a registration application?**

An application would be approved if the applicant meets all the requirements outlined in these Guidelines. However the SC would exercise discretion if it is evident that the applicant is not able to satisfy the “Best Interest of Malaysia” criteria as reflected in the Licensing Handbook. The “Best Interest of Malaysia” criteria are applicable to all persons wishing to undertake capital market activities in Malaysia.

In determining the *Best Interest of Malaysia*, the SC will give regard to–

- a) the area of specialization and level of expertise that can be offered to the capital market including 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) contribution towards attracting investments, enhancing market linkages and promoting vibrancy in the capital market;
- d) 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.

**9. How are PE activities distinguished from VC activities?**

Essentially, PE and VC investments can be segregated according to the different business stages of investments. However, PE and VC activities are similar as both involve the provision of capital and the application of expertise in providing strategic direction and vision to the venture corporations.

The general categories of PE investments include venture capital, buyouts and restructuring. Leveraged buyouts and restructuring deals are usually targeted towards more mature firms. In contrast, VC investments typically involve the provision of equity funding to younger, small and

relatively high-risk companies with strong potential, which generally include venture corporations from seed to pre-IPO stages.

**10. What are the pertinent features of these Guidelines that an applicant should be aware of?**

<b>Features</b>	<b>Descriptions</b>	<b>Applicability</b>
Investment restrictions	A registered VC corporation and its management corporation are allowed to undertake investments in listed securities of not more than 20% of its fund size. The 20% threshold must be maintained at all times.	VC Only
Reporting requirement	Existing annual periodic report will be further enhanced as additional information is required to be submitted. Further, there is a new requirement to submit a mid-year filing.  Timeline for submission for annual periodic report is 30 days from each year end. For the mid-year filing, the timeline is 14 days from 30 <sup>th</sup> June of each year.	VC & PE
Custodian arrangement	A registered corporation will have to comply with this requirement once its investments include listed securities.  Where a registered corporation only invests in unlisted securities- <ul style="list-style-type: none"> <li>▪ a written acknowledgement and consent must be obtained from investors stating awareness that the custody arrangement is not in place, and</li> <li>▪ an independent auditor must be appointed to audit the fund's assets annually.</li> </ul>	VC & PE
Valuation	Registered PE and VC corporations are encouraged to adopt a valuation methodology which is in line with international best practices for the purpose of evaluating investments in venture corporations.	VC & PE

**TRANSITION**

**11. How do these Guidelines affect the VCCs and VCMCs already registered with the SC?**

Existing VCCs and VCMCs which are registered with the SC under the previous *Guidelines for the Registration of Venture Capital Corporations and Venture Capital Management Corporations* shall be deemed to have been registered under these Guidelines.

**12. What is the rationale of imposing a one-year grace period to the existing registered corporations?**

The grace period is to allow existing registered corporations to have sufficient time to comply with the newly imposed requirements of these Guidelines. The registered corporations are required to notify the SC if they are unable to comply with the newly imposed requirements within the stipulated grace period. It is to be noted that the grace period is not applicable to new applicants who intend to be registered under these Guidelines as they are required to comply with the requirements immediately.

**13. Are the current registered VCCs and VCMCs allowed to undertake PE activities?**

Existing registered VCCs or VCMCs which intend to undertake PE activities must comply with the relevant PE requirements under these Guidelines and are required to notify the SC prior to undertaking such PE activities.

**14. What are the requisite application procedures for an existing VCC or VCMC to change its status to a PEC or PEMC?**

Existing VCCs or VCMCs should notify the SC of the request for change in status. Resubmission of Form 1 from the registration kit and other relevant forms must be made if there are material changes or variations from the most recent submission to the SC.

## **REQUIREMENTS FOR REGISTRATION**

**15. Are these registration requirements applicable to the funds or the management corporations?**

As mentioned earlier, only corporations who are acting or offering to act as investment managers or co-investment managers of a VC or PE fund must be registered with the SC. As such, the following entities are required to be registered:

- A standalone VC or PE fund with an in-house management team;
- A VCMC or PEMC appointed by a VC or PE fund to manage investments on its behalf.

A fund set up without an in-house management team is not required to be registered with the SC as it is not performing any management activity. However, details of current funds under management and planned future funds are required to be disclosed by the relevant VCC, PEC, VCMC or PEMC as part of the registration requirements.

**16. Why are the capital requirements for a PE corporation higher than a VC corporation?**

In comparison to a VC corporation, a PE corporation is allowed to undertake a wider range of activities which would include investing in listed securities (unrestricted) and possible application of leverage in its investments. Taking into account the PE's exposure to the market and the credit risks involved in its activities, a higher capital requirement is imposed on a PE corporation.

**17. What is the purpose of appointing Responsible Persons?**

The appointment of Responsible Persons is to ensure that the VC or PE corporation is managed by and equipped with persons of sufficient industry experience and technical expertise to facilitate the fiduciary and decision-making capacity. Whilst these Guidelines prescribe the minimum number of responsible persons to be appointed, nevertheless, the corporation must make a reasonable assessment of the appropriate number of Responsible Persons required, to commensurate the size of the fund under management and the risk profile involved.

**18. What relevant industry experience should a Responsible Person have?**

Responsible Persons must demonstrate that they have sufficient competency and experience that is expected of their role. Relevant industry experience in this regard would not necessarily be confined to just the VC or PE field but would also include (but not limited to) experiences in relevant industries such as investment banking, corporate finance, fund management, business strategy, management consulting and corporate law.

A Responsible Person must also demonstrate managerial experience or experience in supervisory capacity as expected of his/her position. The SC would assess and approve each application on a case by case basis.

## ISLAMIC FUNDS

**19. Are there specific methodologies for the Shariah adviser to adopt in determining the Shariah-compliant status of a venture corporation?**

The Shariah adviser may adopt the Shariah screening methodology as prescribed by the Shariah Advisory Council of the SC, or other methodologies as deemed appropriate.

## APPLICATION PROCESS

**20. What are the documents required to be submitted for registration?**

Please refer to Part C of these Guidelines for all details and documentation required in relation to the registration process.

**21. How long is the application process for registration?**

An application would normally take six weeks upon complete submission.

## INVESTMENT LIMITS

**22. Who qualifies as a “Sophisticated Investor”?**

*Sophisticated investor* refers to high-net worth individuals, high-net worth entity and/or accredited investors as prescribed in Schedules 6 and 7 of the Capital Markets and Services Act

2007. For purposes of these Guidelines, members of the management team of a VC/PE corporation who co-invest in the fund will also be deemed as “sophisticated investors”.

**23. What is the rationale of imposing the requirement for sophisticated investors?**

Given the complexity and risks involved in VC and PE investments, the SC is of the view that the investors of such funds should be limited to only sophisticated investors as they have the ability, as well as the resources to conduct the necessary due diligence prior to investing and negotiate appropriate arrangements with the VC/PE manager to safeguard their own interests.

**24. Are investments in listed corporations restricted to corporations trading on Bursa Malaysia?**

Investments in listed corporations include corporations listed on Bursa Malaysia as well as corporations listed on any foreign exchange.

**25. Are investments restricted to locally incorporated companies?**

No. A registered corporation may invest in a “corporation” as defined in the CMSA which includes body corporate formed or incorporated or existing both within and outside Malaysia.

## CONTINUOUS OBLIGATIONS

**26. What constitutes a material change of information that requires immediate notification to be made to the SC?**

Any variation from the information lodged at the point of registration outlined in Appendix 1 requires SC to be notified. This would include but not limited to the following:

- Changes in the constituent documents of the corporation
- Changes in key personnel
- Establishment of new and change of details of existing funds under management

## CUSTODIAN

**27. Who is eligible to be appointed as custodian?**

Custodian in these Guidelines refers to persons defined under section 121 of the CMSA, which includes:

- a licensed banking institution in Malaysia or its wholly owned subsidiary that provides nominee services;
- a trust company registered under the *Trust Companies Act 1949*;
- Amanah Raya Bhd;
- a participating organisation as defined in the CMSA; or
- any institution licensed or authorised to provide custodian services outside Malaysia.

## **28. Why is it important for a custodian to be appointed?**

The appointment of a custodian is to ensure the safekeeping of investors' asset against theft or misappropriations as well as encouraging good business conduct.

## **VALUATION**

### **29. What is meant by a valuation methodology?**

A valuation methodology outlines measures used to evaluate fair value of venture corporations for investment and portfolio reconciliation purposes. This may include national and international financial reporting standards that outline measurements in fair value of VC or PE investments, as well as recognised standards in relation to investor disclosure of VC or PE valuation.

### **30. Does SC prescribe specific standards of valuation to be adopted?**

While registered corporations are encouraged to adopt international best practices for purposes of evaluating investments in venture corporations, the SC will not prescribe specific standards on valuation or disclosures to investors as these matters should be dictated by legal arrangement between all parties of the fund.

### **31. Why is it important for registered corporations to disclose their valuation methodology?**

Disclosure is important so that investors understand how a particular portfolio is evaluated and priced. While the SC does not prescribe any specific valuation methods, it is recommended for registered corporations to be consistent and transparent in their valuation methodology to ensure that the information presented to investors are fair, timely, sufficient and comparable.

## **OTHERS**

### **32. What are the winding up or liquidation procedures for registered corporations?**

The SC must be notified upon appropriate resolutions for winding up or liquidation of registered corporations. The corporation will be deregistered once a liquidator has been appointed.