

FREQUENTLY ASKED QUESTIONS
GUIDELINES ON THE REGISTRATION AND CONDUCT OF CAPITAL MARKET
SERVICES PROVIDERS
(Date Issued: 19 October 2018)
(Date Revised: 17 April 2020)

1.0 APPLICATION OF THE GUIDELINES

1.1 When do the *Guidelines on the Registration and Conduct of Capital Market Services Providers* ("CMSP Guidelines") take effect?

The CMSP Guidelines came into effect from 2 January 2019 (Effective Date).

1.2 In light of the issuance of the CMSP Guidelines, are the existing requirements for registered trustees still applicable?

From the Effective Date, the requirements of the CMSP Guidelines in relation to the trustees shall supersede the relevant requirements in the following guidelines:

- (a) *Guidelines on Unit Trust Funds;*
- (b) *Guidelines on Private Retirement Schemes (PRS Guidelines);*
- (c) *Guidelines on Real Estate Investment Trusts;*
- (d) *Guidelines on Listed Real Estate Investment Trusts;*
- (e) *Guidelines on Issuance of Corporate Bonds and Sukuk to Retail Investors;*
- (f) *Practice Note issued pursuant to the Guidelines on the Offering of Private Debt Securities and the Guidelines on the Offering of Islamic Securities;*
- (g) *Guidelines on Allowing a Person to be Appointed or to Act as a Trustee Under Subsection 69(2) of the Securities Commission Act 1993; and*
- (h) *Guidelines for the Appointment of a Related-Party Trustee.*

For avoidance of doubt, the requirements affecting trustees under the respective product guidelines shall continue in effect. For example, the requirements imposed upon the PRS trustees under the PRS Guidelines, which are not mentioned in the CMSP Guidelines, shall remain in force.

1.3 Under the new regulatory regime for Capital Market Services Providers (“CMSP”), where should the applications for registration as a CMSP be submitted to?

Applications shall be addressed to:

Chairman
Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur

(Attention: Authorisation and Licensing Department)

1.4 What are the fees applicable under the CMSP Guidelines?

Under the CMSP Guidelines, all registered entities will be required to pay fees specified by the SC.

1.5 Is the new regulatory regime applicable to private trust companies offering private trust services?

No, the new regulatory regime is not applicable to private trust companies that do not offer capital market services.

1.6 Are exchange-traded fund (ETF) and peer-to-peer (P2P) lending (which are also within the SC’s purview) considered as “other products”?

ETF is a type of unit trust scheme (UTS), which falls within the types of products set out in paragraph 1.04(a) of the CMSP Guidelines. The CMSP Guidelines do not apply to equity crowd funding and P2P financing operators.

1.7 Are registered entities required to notify the SC of material outsourcing arrangements?

Yes, notification to the SC is only required for outsourced functions that are deemed material. Non-material outsourced functions will not require a notification to the SC. Registered entities should refer to the requirements set out in Chapter 10 of the CMSP Guidelines in determining whether an outsourced function should be classified as material or non-material. The materiality assessment for outsourcing arrangements should be documented.

1.8 Are registered entities required to notify the SC of its delegation arrangements?

Yes, registered entities are required to notify the SC of their delegation arrangements. In addition, they are expected to monitor the delegation arrangements continuously to prevent business disruption and negative consequences to investors. Registered entities should refer to the delegation requirements set out in Chapter 10 of the CMSP Guidelines.

1.9 Are the registered entities required to change the existing outsourcing agreement and/or delegation agreement to reflect requirements as stated in paragraph 10.13 of the CMSP Guidelines?

No. This requirement does not have a retrospective effect as long as the existing outsourcing agreement and/or delegation agreement does not have any provision that is contrary to the requirements of the CMSP guidelines. However, if there are changes made to the current agreement(s) after the issuance of the CMSP Guidelines, then the agreement(s) must comply with the Guidelines.

1.10 Where should the notification of the outsourcing and/or delegation arrangements be directed to?

Applications shall be addressed to:

Intermediary and Fund Supervision
Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur

The notification template is available at the SC website.

1.11 What must registered entities do if they are unable to fulfil the requirements under the CMSP Guidelines?

Registered entities must apprise the SC of the following:

- (i) areas of non-compliance;
- (ii) reasons for non-compliance; and
- (iii) time frame required for compliance.

2.0 TRANSITIONAL ARRANGEMENT

2.1 What is the transitional arrangement for existing trustees upon the Effective Date?

Existing trustees are deemed registered under the new regime without having to submit a new application. However, the SC may request for additional information.

2.2 What is the registration treatment for applications of renewal of registration for existing trustees prior to the Effective Date?

Applications submitted to the SC prior to the Effective Date will be assessed in accordance with the former registration regime i.e. the guidelines, as specified in item 1.2 of this document. From the Effective Date onwards, all applications must be made in accordance with the CMSP Guidelines.

2.3 When do the existing trustees need to comply with the CMSP Guidelines?

Current registered trustees must comply with the existing requirements contained within the CMSP Guidelines, as specified in item 1.2 of this document. For the additional requirements, the existing trustee must comply within one year from the Effective Date. A summary of amendments is available on the SC website.

2.4 Upon the Effective Date, are the existing issuing houses required to make a formal application for registration as a CMSP under the new regulatory regime?

Existing issuing houses are deemed registered under the CMSP Guidelines as at the Effective Date. Although they do not need to submit a new application for registration, they are required to submit updated information, as may be specified by the SC.

2.5 What is the status of the licence held by the current issuing houses under the new regulatory regime for CMSPs?

Their licence was ceased upon the Effective Date of the CMSP Guidelines as the current issuing houses are deemed registered.

2.6 What is the SC's rationale for moving the current issuing houses from a licensing regime to a registration regime under section 76A of the Capital Markets and Services Act 2007 (CMSA)?

The core functions carried out by an issuing house do not constitute a regulated activity under the CMSA. Instead, they are considered ancillary and enabling services that complement a regulated activity or complete a capital market transaction.

2.7 When is the registered entity required to submit their first audited financial statements?

The registered entity shall lodge with the SC their first audited financial statements that are due for submission in January 2020 or beyond. For instance, if a registered entity's fiscal year ended is on 31 October 2019, it will be required to lodge its audited financial statements by 31 January 2020.

3.0 AREAS SPECIFIC TO A REGISTERED TRUSTEE

3.1 Deemed Registration

- (i) While existing trustees are deemed registered without having to submit a new application, does this mean that trustees providing services for unit trust and/or private retirement schemes are required to renew their registration?**

No. Under the new regulatory regime, registration as a CMSP is a one-off exercise.

- (ii) Will the existing trustees be issued a one-time registration certificate as proof of registration?**

No. The list of registered trustees is published on the SC website.

3.2 Staff competence

Paragraph 4.05(c) of the CMSP Guidelines provides that trustees must ensure that their personnel have the necessary qualification, expertise and skills to carry on business as a trustee. What are the expected staff competencies?

Registered trustees must ensure that they deploy sufficient qualified, competent and experienced personnel to enable them to satisfy all the requirements in the CMSP Guidelines and discharge their monitoring roles.

3.3 Products and services

- (i) Are trustees for fund administration, fund accounting and transfer agency services subject to the CMSP Guidelines?**

No. Such back-office service is not specified to be a capital market service for the purpose of section 76A of the CMSA, as set out in paragraph 1.04 of the CMSP Guidelines.

- (ii) Are registered trustees who act as a trustee for multiple products such as ETFs, non-exchange traded funds and real estate investments (REITs) required to be registered separately?**

No. Such investment products are considered a collective investment scheme (CIS), as such, trustees for CIS products are only required to register once, as a trustee for UTS.

3.4 Event of default (EOD)

Are trustees required to notify the SC of an EOD before the bondholders' meeting or declaration of an EOD?

A trustee is to notify the SC within 10 business days upon declaration of an EOD by the bondholders, as stated in paragraph 7.09(b) of the CMSP Guidelines.

3.5 Retirement of trustees

In the event that the unitholders' registrar is maintained by the management company ("MC") or the MC's transfer agent services provider, how is a retiring trustee expected to notify the unitholders immediately?

A retiring trustee shall collaborate with the MC to ensure proper arrangements are in place for the safekeeping of investors' assets and notify the relevant stakeholders, including the unitholders, immediately.

The same applies to bond trustees should the pertinent information be held by the authorised depository institutions (ADIs).

3.6 Related party trustees (RPTs)

(i) A trustee fee is typically proposed by the promoter on behalf of the fund. Therefore, are RPTs required to demonstrate that they are financially independent of the management company or the borrower?

Yes, RPTs must demonstrate their financial independence to determine the extent of their ability to act independently.

(ii) How would the trustee ensure that an independent assessment is conducted by an external auditor for RPTs?

The RPT is required to submit an independent assessment to the SC once in two years, i.e. one month prior to the anniversary date of the RPT. The RPT is responsible to ensure there is sufficient time to complete the independent assessment before the anniversary date, including obtaining the SC's approval for the scope of the assessment.

Note: The financial auditor of the RPT may be appointed as the external auditor to conduct the assessment.

- (iii) Is the application to be an RPT a one-off application? Is the RPT required to re-apply if it is appointed as a trustee for different UT funds under the same MC?**

It is a one-off application. An RPT may continue to act as a trustee for multiple UT funds under the same MC.

3.7 Annual data reporting

When is the submission deadline for the annual data reporting?

The registered entity is required to submit an annual data reporting in the form or format prescribed by the SC, within 14 business days from 31 December of every year.

3.8 Foreign Funds

Are trustees for permitted foreign funds under the *Guidelines for the Offering, Marketing and Distribution of Foreign Funds* (“OMD Guidelines”) required to comply with the CMSP Guidelines?

Unless otherwise stated in the OMD Guidelines, a trustee or fund supervisor or custodian, as the case may be, of a permitted foreign fund is not subject to the requirements in the CMSP Guidelines.

3.9 Foreign trustees

- (i) Is Chapter 5 of the CMSP Guidelines applicable to all foreign trustees, including those from jurisdictions where trustees are not regulated?**

Only foreign trustees for corporate bond and sukuk are subject to the new regulatory regime.

Trustees from jurisdictions without a regulatory regime for trustees will be required to apply for registration as a trustee in accordance with the requirements set out in Chapter 4 of the CMSP Guidelines.

- (ii) Is a registered foreign trustee required to comply with all the requirements specified in the CMSP Guidelines?**

Foreign trustees registered with the SC must ensure compliance with all relevant requirements under the CMSP Guidelines except for the requirements in Chapter 4 (Requirements for Registration of Trustees) and Chapter 9 (Issuing House).

3.10 Conflicting requirements

In the event of conflicting requirements between the CMSP Guidelines and the requirements of other regulators, which requirement should the CMSP comply with?

A registered trustee must ensure compliance with all applicable laws, rules, guidelines and requirements, including those imposed by other regulators. The requirement with the higher threshold or stricter standard shall prevail in case of any discrepancy or inconsistency.