

Guidelines on the Registration of Venture Capital and Private Equity Corporations and Management Corporations

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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 and ongoing requirements for corporations undertaking a venture capital or private equity activity.
- 1.03 These Guidelines comprise the following parts–
- (a) requirements for the registration of corporations undertaking venture capital or private equity including Islamic venture capital or private equity activities as set out in Part B of these Guidelines;
 - (b) application process for the registration of these corporations as set out in Part C of these Guidelines; and
 - (c) type of activities and ongoing obligations of Registered Corporations as set out in Part D of these Guidelines.
- 1.04 These Guidelines shall come into force on 9 March 2015 and 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 in May 2008.
- 1.05 Subject to paragraph 1.06, Venture Capital Corporations and Venture Capital Management Corporations which have been registered under the *Guidelines for the Registration of Venture Capital Corporations and Venture Capital Management Corporations* shall be deemed to have been registered under these Guidelines and shall continue to comply with the corresponding provisions in these Guidelines.
- 1.06 The registered Venture Capital Corporations and Venture Capital Management Corporations under paragraph 1.05 are given a grace period of one year from the effective date of these Guidelines to comply with all the requirements of these Guidelines.

- 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 provision 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.

Chapter 2

DEFINITIONS

2.01 In these Guidelines, the following words and expressions have the following meanings, 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;
custodian	has the meaning assigned to it under section 121 of the CMSA;
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;
financial year	has the same meaning assigned to it in the <i>Companies Act 1965</i> ;
limited liability partnership	has the same meaning assigned to it in the <i>Limited Liability Partnerships Act 2012</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;

	and includes a corporation undertaking Islamic private equity activity;
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 undertaking venture capital or private equity activity 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;
Shariah adviser	means: <ul style="list-style-type: none"> (a) a registered Shariah adviser who meets the criteria as stipulated under the <i>Registration of Shariah Advisers Guidelines</i>; or (b) an Islamic bank or a financial institution approved by Bank Negara Malaysia to carry on Islamic banking business;
sophisticated investor	means a person specified under Part I of Schedule 6 and 7 of CMSA;
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; and includes a corporation undertaking Islamic venture capital activity;
venture corporation	means the investee corporation of a Registered Corporation;
year-end	means 31 December of each year.

PART B: REQUIREMENTS FOR REGISTRATION

Chapter 3

GENERAL AND MINIMUM FINANCIAL REQUIREMENTS

- 3.01 All VCCs, PECs, VCMCs and PEMCs are required to be registered with the SC.
- 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 An applicant who wishes to be registered as a VCC or VCMC must have a minimum shareholders' funds or capital contribution of RM100,000, as the case may be.
- 3.04 An applicant who wishes to be registered as a PEC or PEMC must have a minimum shareholders' funds or capital contribution of RM500,000, as the case may be.

Chapter 4

APPOINTMENT OF RESPONSIBLE PERSON(S)

- 4.01 An applicant who wishes to be registered as a VCC or VCMC must have at least one (1) responsible person.
- 4.02 An applicant who wishes to be registered as a PEC or PEMC must have at least two (2) responsible persons.
- 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 paragraphs 4.01 or 4.02 must–
- (a) be a director as defined under the *Companies Act 1965* or in the case of a limited liability partnership, a partner as defined under the *Limited Liability Partnerships Act 2012*; and/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) notify the SC of any material change in the information submitted to the SC within 14 calendar days from the date of such change; 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 three months from the date of the departure of the former responsible person(s) in compliance with this chapter.

Chapter 5

APPOINTMENT OF SHARIAH ADVISER

- 5.01 An applicant who wishes to undertake Islamic VC or PE activities must appoint a Shariah adviser to provide Shariah expertise and guidance on all matters pertaining to the Islamic VC or PE activities and ensure that all aspects of the activities are in accordance with Shariah requirements, including resolutions issued by the Shariah Advisory Council (SAC) of the SC.

PART C: APPLICATION PROCESS FOR REGISTRATION

Chapter 6

FORMS

- 6.01 An applicant is required to submit to the SC the relevant forms and documents as specified in Appendix 1 of these Guidelines.

Chapter 7

REGISTRATION

- 7.01 The SC may register a VCC, VCMC, PEC or PEMC subject to such conditions or restrictions as it thinks fit or necessary.
- 7.02 A person who is not a Registered Corporation shall not take or use or have attached to or exhibited at any place, any name, title, or describe that such person is a Registered Corporation.
- 7.03 A person who is registered only as a VCC or VCMC shall not take or use or have attached to or exhibited at any place, any name, title, or describe that such person is a registered PEC or PEMC and vice versa.

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 make available, offer for subscription or purchase, or issue an invitation to subscribe or purchase securities of a VC or PE fund to sophisticated investors.
- 8.02 At any point in time, the number of sophisticated investors for each VC or PE fund must not exceed 50.
- 8.03 Members of the management team who co-invest in the VC or PE fund shall be deemed as sophisticated investors for the purpose of these Guidelines.

B. Investment activities

- 8.04 Table 1 below sets out the type of permitted investment activities for a Registered Corporation–

Entity	Type of permitted investment activities
Part I:	
VCC & VCMC	(a) The acquisition or disposal of or subscription for, securities of any venture corporation that are not listed on a stock market of a stock exchange; (b) The acquisition or disposal of or subscription for, any listed securities of any venture corporation, provided that at all times, the listed securities shall not amount to more than 20% of the fund's size.
Part II:	
PEC & PEMC	(a) The acquisition or disposal of or subscription for, securities of any venture corporation that are not listed on a stock market of a stock exchange; (b) The acquisition or disposal of or subscription for, any listed securities of any venture corporation.

- 8.05 In the case of investment in securities of any venture corporation by Registered Corporations undertaking Islamic VC or PE activities, the activities of the venture corporations must be Shariah compliant. In determining the Shariah compliant status of the venture corporations, the Shariah adviser may employ the Shariah screening methodology of the SAC or any other methodology as may be appropriate.
- 8.06 Where the Registered Corporations undertaking Islamic VC or PE activities invest in listed securities on Bursa Malaysia Securities Bhd, the Registered Corporations must only invest in the securities classified as Shariah compliant based on the List of Shariah-Compliant Securities by the SAC.
- 8.07 Any investment decision, either local or abroad, must be endorsed by the Shariah adviser to ensure that the investment complies with the general Shariah principles, standards or resolutions issued by the SAC or an established or recognised Shariah authority or body.

Chapter 9

CONTINUOUS COMPLIANCE

- 9.01 A Registered Corporation must–
- (a) ensure that the minimum capital requirements as set out under paragraphs 3.03 and 3.04, as the case may be, 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, which commensurate with the size of the fund under management and its risk profile; and
 - (e) comply with the requirements of these Guidelines at all times.
- 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 periodic report in accordance with Form 3 entitled "**Annual Activity Report for Registered Corporations**", within 30 calendar days from each calendar year-end;
- (b) a copy of a report by the Shariah adviser certifying that its business and operations are managed in accordance with Shariah principles, if relevant;
- (c) a mid-year filing in accordance with Form 3A entitled "**Mid-year Filing for Registered Corporations**", within 14 calendar days from 30 June of each year; and
- (d) its latest audited financial statements, 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 section 122 of the CMSA 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.

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.

Chapter 13

GENERAL

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

**The Authorisation and Licensing Department
Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur**

Tel: (603) 6204 8000

Fax: (603) 6201 5282

APPENDIX 1

For -	Form and Documents to be submitted to SC
VCC, VCMC, PEC or PEMC	<p>(a) Form 1: Application for the Registration of Venture Capital/Private Equity Corporations and/or Management Corporations;</p> <p>(b) Form 8 or 9 (whichever is applicable), 24 and 49 of the <i>Companies Act 1965</i>;</p> <p>(c) Form 13 and/or 32A of the <i>Companies Act 1965</i> if there is any change of name or transfer of securities of the applicant, where applicable;</p> <p>(d) A copy of the applicant's Memorandum of Association and Articles of Association or Limited Liability Partnership Agreement or other constituent document;</p> <p>(e) A copy of the applicant's profile and organisational structure depicting related, subsidiary, associate and holding companies with percentage of shareholding in each category; and</p> <p>(f) Relevant information of the corporation, including the following–</p> <ul style="list-style-type: none"> (i) list and contact details of Board of Directors, Investment Committee, Shariah adviser and members of the management team including curriculum vitae comprising details on the qualification and experience, where relevant; (ii) details of business plan including key features of the fund; and (iii) estimated returns for the next five years or for the life of the fund. <p>In the case of foreign incorporated companies operating in Malaysia, they are required to submit constitutive documents which are equivalent to paragraph (b) and (c) above.</p>

Responsible Person	<p>(a) Form 2: Application for the Registration of Responsible Person(s) of Venture Capital/Private Equity Corporations and Management Corporations;</p> <p>(b) A curriculum vitae comprising details on the qualification and experience of the proposed responsible person(s) to be appointed;</p> <p>(c) A certified copy of relevant documents and certificates supporting the information in the curriculum vitae;</p> <p>(d) A certified copy of the identity card (for Malaysian citizen) or passport (for non-Malaysian citizen) of the proposed responsible person(s) named;</p> <p>(e) A recent passport-sized coloured photograph of the proposed responsible person(s); and</p> <p>(f) Details of employment history of staff at the managerial level and above.</p> <p>Items (c) and (d) above must be certified by a Commissioner for Oaths.</p>
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