



Suruhanjaya Sekuriti
Securities Commission
Malaysia

GUIDELINES ON DIGITAL ASSETS

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GUIDELINES ON DIGITAL ASSETS

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PART A: GENERAL

Chapter 1

INTRODUCTION

- 1.01 The *Guidelines on Digital Assets* (Guidelines) are issued by the Securities Commission Malaysia (SC) pursuant to section 377 of the *Capital Markets and Services Act 2007* (CMSA).
- 1.02 The *Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019* came into force on 15 January 2019 ("Order"). Pursuant to the Order, all digital currencies and digital tokens that satisfy the requirements in the Order are prescribed as securities for purposes of securities laws.
- 1.03 In line with digital currencies and digital tokens being prescribed as securities, these Guidelines set out the requirements relating to fundraising activity through digital token offering, operationalisation of initial exchange offering (IEO) platform and provision of digital asset custody.
- 1.04 Notwithstanding anything in these Guidelines, digital currencies and digital tokens are not recognised as a legal tender nor as a form of payment instrument that is regulated by Bank Negara Malaysia (BNM).

Chapter 2

APPLICABILITY

- 2.01 These Guidelines apply to–
- (a) all issuers seeking to raise funds through digital token offering;
 - (b) all persons intending to operate an IEO platform; and
 - (c) all persons intending to provide the services of safekeeping, storing, holding or maintaining custody of digital assets for the account of another person.
- 3.01 To assist with the interpretation of the requirements under these Guidelines and their application, guidance has been provided, where appropriate. Any departure from the guidance will be taken into consideration in the SC's assessment on whether a breach of these Guidelines had occurred.
- 2.02 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.

Chapter 3

RELATED PROVISIONS

- 3.02 These Guidelines must be read together with other relevant laws and guidelines including payment services and foreign exchange administration laws administered by BNM.
- 3.03 These Guidelines are in addition to and not in derogation of any requirements provided for under securities laws or any other guidelines issued by the SC.

Guidance to paragraph 3.02:

For example, where an issuer issues a digital token which has the features of an existing type of securities such as unit trust funds, bonds, warrants or options, the issuer must also comply with the existing requirements for such issuance as set out in the relevant SC's guidelines in addition to meeting the requirements under these guidelines.

Chapter 4

DEFINITIONS

4.01 Unless otherwise defined, all words used in these Guidelines shall have the meaning assigned to them in the CMSA. In these Guidelines, unless the 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;
Board	means the board of directors;
controller	has the same meaning as provided in subsection 60(7) CMSA;
digital assets	means a digital currency or digital token, as the case may be;
digital currency	means a digital currency that is prescribed as securities under the <i>Capital Markets and Services (Prescription of Securities)(Digital Currency and Digital Token) Order 2019</i> ;
digital token	means a digital token that is prescribed as securities under the <i>Capital Markets and Services (Prescription of Securities)(Digital Currency and Digital Token) Order 2019</i> ;
director	has the same meaning assigned to it in the CMSA and– (a) for the purposes of Part B and C, excludes the chief executive; and (b) for the purposes of Part D, includes the chief executive;

financial statements	has the same meaning assigned to it the approved accounting standards issued or approved by the Malaysian Accounting Standards Board pursuant to the <i>Financial Reporting Act 1997</i> ;
fit and proper	refers to the criteria as set out in Appendix 1 of these Guidelines;
initial exchange offering (IEO)	means offering of digital tokens by an issuer through an IEO platform;
IEO platform	means an electronic platform operated by an IEO operator which hosts IEO;
IEO operator	means an electronic platform operator registered under these guidelines to operate an IEO platform;
IEO project	means the underlying business or project referred to in the white paper for which the issuer seeks to raise fund through an IEO;
issuer	means a body corporate that seeks to raise fund through a digital token offering;
independent director	means a director who— <ul style="list-style-type: none"> (a) is not an executive director of the IEO operator and its related corporation; (b) is not a major shareholder¹ of the IEO operator or any of its related corporation; (c) is not a family member of any officer or major shareholder of the IEO operator or any of its related corporation; (d) is not acting as a nominee or representative of any executive director or major shareholder of the IEO operator or any of its related corporation; (e) in the last two (2) years, has not been engaged for the provision of services by, or in any business transaction with, the IEO operator 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 major shareholder, as the

¹ Major shareholder means a person who has interest in one or more voting shares in a company and the number or aggregate number of those shares is 10% or more of the total number of voting shares in the company, or 5% or more of the total number of voting shares in the company where such person is the largest shareholder of the company.

case may be, of a firm or corporation that has engaged in any transaction with the IEO operator or any of its related corporation under such circumstances as may be specified by SC;

limited liability partnership (LLP)	means a limited liability partnership registered under section 11 of the <i>Limited Liability Partnership Act 2012</i> ;
payment instrument	has the same meaning assigned to it in the <i>Financial Services Act 2013</i> ;
SC	means the Securities Commission Malaysia established under the <i>Securities Commission Malaysia Act 1993</i> ;
senior management	means – (a) a person, by whatever name called, having the authority and responsibility for the planning, directing or controlling the activities of the entity, including the chief executive, chief financial officer and chief technology officer; and (b) any other person performing any function as may be specified by the SC;
white paper	means the document issued by the issuer accompanying an IEO describing, among others, the detailed information of the issuer, the IEO and the IEO project, and includes a supplementary white paper.

PART B: REQUIREMENTS FOR DIGITAL TOKEN OFFERING

Chapter 5

GENERAL

5.01 For the purposes of this Part B, -

- (a) any reference to Board in a company also refers to the partners collectively in an LLP, and any reference to a director in a company also refers to a partner in an LLP; and
- (b) any reference to shares in a company also refers to interest in an LLP.

Chapter 6

ISSUER

General Requirements

- 6.01 An issuer must comply with the requirements under this Part B;
- 6.02 An issuer must–
- (a) be a Malaysian-incorporated company (excluding an exempt private company and public-listed company) or LLP;
 - (b) have its main business operations carried out in Malaysia; and
 - (c) only raise fund through IEO and not through any other means.

Guidance to paragraph 6.02(a):

An unlisted subsidiary or a special purpose vehicle (SPV) of a public-listed company may, however, qualify as an issuer.

Minimum financial requirements

- 6.03 An issuer (other than an LLP) must have a minimum–
- (a) paid-up capital of RM500,000; and
 - (b) shareholders' funds of RM500,000 maintained at all times.

Where an issuer is an LLP, the issuer must have a minimum capital of RM500,000 maintained at all times.

- 6.04 Notwithstanding paragraph 6.03, the SC may at any time impose additional financial requirements on an issuer that commensurate with the nature, operations and risks posed by the issuer.

Issuer's Board and senior management

- 6.05 The issuer's Board must, at all times, have at least two (2) directors whose principal or only place of residence is in Malaysia.
- 6.06 An issuer must ensure that its directors and senior management are fit and proper at all times.

Moratorium on equity interest

- 6.07 The issuer's directors and senior management must, in aggregate, own at least 50% equity holding in the issuer on the date of the issuance of the digital tokens.
- 6.08 Post issuance of the digital tokens, the issuer's directors and senior management may only sell, transfer or assign not more than 50% of their respective equity holding until completion of IEO project. For avoidance of doubt, directors and senior management include those who are subsequently appointed as a director or senior management pursuant to their purchase of any equity in the issuer post issuance of the digital tokens.

Guidance to paragraphs 6.07 and 6.08:

On 1 January 2019 (date of issuance of the digital tokens), Melanie who is an initial director of Company A holds 100,000 units of equity in Company A. On 1 February 2019, Melanie received an offer from Seri to purchase her equity. As the IEO project has not been completed, Melanie may only sell up to 50,000 units of her equity to Seri.

Seri, who is now a new shareholder and a newly-appointed director, may only sell up to 25,000 units of her equity until the completion of the IEO project.

Chapter 7

APPLICATION TO RAISE FUND THROUGH IEO

Approval requirement

- 7.01 An issuer must submit its application to raise fund through an IEO to an IEO operator for an approval, in the form and manner as may be specified by the IEO operator (application).
- 7.02 An issuer must ensure that the application includes–
- (a) a fit and proper declaration of all the issuer’s directors and senior management; and
 - (b) the white paper which must contain information as specified in paragraphs 8.03 and 8.04 of these Guidelines.

Offering of digital tokens

- 7.03 An issuer must not offer any digital token to any person before the IEO operator’s approval for the application has been obtained.

Innovative solution or meaningful digital value proposition

- 7.04 In its application, the issuer must also demonstrate to the IEO operator that the IEO project provides an innovative solution or a meaningful digital value proposition for Malaysia.

Guidance to paragraph 7.04:

A IEO project provides an innovative solution or digital value proposition if, among others, the IEO project–

- (a) provides a solution or addresses an existing market need or problem; or
- (b) improves the efficiency of an existing process or service undertaken by the issuer or the industry.

Closed loop

- 7.05 In the case of a digital token that serves as a payment instrument, the digital token may only be used in exchange for the issuer’s goods and services as disclosed in the Whitepaper approved by the IEO operator.

Chapter 8

WHITE PAPER

Submission of white paper

- 8.01 An issuer must not offer a digital token to any person unless the offer is also accompanied by a white paper that has been approved by the IEO operator.
- 8.02 An issuer must furnish a copy of the white paper, that has been furnished to the IEO operator, to the SC in the manner and form as may be specified by the SC.

Content Requirements

- 8.03 An issuer must ensure that the white paper contains such information that would enable an investor to make an informed assessment of the digital token before subscribing to the digital token, including the following:
- (a) Brief description of the issuer's directors, senior management, key personnel and advisers including name, designation, nationality, address, professional qualifications and related experience;
 - (b) The objective or purpose of the IEO, including detailed information on the IEO project to be managed and operated by the issuer;
 - (c) The key characteristics of the digital token;
 - (d) Detailed description of the sustainability and scalability of the IEO project;
 - (e) The business plan of the issuer;
 - (f) The targeted amount to be raised through the IEO, and subsequent use and application of the proceeds thereafter illustrated in a scheduled timeline for drawdown and utilisation of proceeds (schedule of proceeds);
 - (g) Any rights, conditions or functions attached to digital tokens including any specific rights attributed to a token holder;
 - (h) Discussion on the determination of the accounting and the valuation treatments for the digital token including all valuation methodology and reasonable presumptions adopted in such calculation;
 - (i) Associated challenges and risks as well as mitigating measures thereof;

- (j) Information in relation to the distribution of the digital tokens and where applicable, the distribution policy of the issuer;
- (k) A technical description of the protocol, platform or application of the digital token, as the case may be, and the associated benefits of the technology;
- (l) Audited financial statements of the issuer; and
- (m) A statement of disclaimer as follows:

“The furnishing on this white paper to the Securities Commission Malaysia should not be taken to indicate that the Securities Commission Malaysia assumes responsibility for the correctness of any statement made in this white paper.”

8.04 In addition to paragraph 8.03 above, a white paper must also contain the following statement:

“Investors are reminded that Bank Negara Malaysia (the Bank) does not recognise digital tokens as a legal tender nor as a form of payment instrument that is regulated by the Bank and that the Bank will not provide any avenues of redress for aggrieved token holders”.

Supplementary white paper

8.05 Where a white paper has been furnished to the IEO operator and the SC, but before the closing of the offer period, the issuer becomes aware that–

- (a) a matter has arisen and information in respect of that matter would have been required by these Guidelines to be disclosed in the white paper if the matter has arisen at the time the White paper was prepared;
- (b) there has been a material change affecting a matter disclosed in the white paper; or
- (c) the White paper contains a statement or information that is false or misleading, or from which there is a material omission,

the issuer must notify the IEO operator and, as soon as practicable, furnish a supplementary white paper to the IEO operator and the SC.

Chapter 9

ISSUER'S OBLIGATIONS

General

- 9.01 An issuer must–
- (i) comply with the requirements of these Guidelines at all times;
 - (ii) ensure that it does not submit or provide any document or information that is false or misleading, or from which there is material omission;
 - (iii) in relation to the requirement under paragraph 6.06 of the Guidelines, submit to the IEO operator a fit and proper declaration of its directors and senior management within three (3) business days from the appointment or reappointment of the director or senior management; and
 - (iv) immediately notify the IEO operator and the SC of any failure to comply with any requirement of these Guidelines.
- 9.02 An issuer must retain all relevant documents and agreements related to the IEO for a period of seven (7) years from the date the documents or agreements are submitted to the IEO operator.
- 9.03 An issuer must provide to the SC any information or assistance relating to the digital tokens as the SC deems necessary.

Utilisation of proceeds

- 9.04 An issuer must provide a confirmation to the SC that the drawdowns have been utilised for the purposes stated in the white paper in such form and manner as the SC may specify.
- 9.05 An issuer must not make any changes to the utilisation of proceeds post the issuance of the digital tokens or any changes that affect the token holder's rights, unless prior approval of the token holders representing 75% of the total amount of tokens held by all token holders present and voting has been obtained.

Managing conflict of interest

- 9.06 An issuer must establish a framework which sets out the policies and procedures to effectively and efficiently manage issues of conflict of interest including potential conflicts of interest and any related party transactions which may arise in the course of the IEO project.

Material changes

- 9.07 Where a material change occurs affecting the IEO, the IEO project or the issuer, the issuer must, immediately upon knowing or becomes aware of the event, inform the IEO operator of such change for purposes of announcement on the IEO platform.
- 9.08 In addition to the requirement in paragraph 9.07, post issuance of the digital tokens, the IEO operator must also immediately notify the IEO operator of any sale, transfer or assignment involving five (5) per centum or more shareholding in the issuer.

Chapter 10

REPORTING AND AUDIT

Reporting requirements

- 10.01 An issuer must prepare and cause to be published, on the IEO platform, an annual report and semi-annual report which contain necessary information to enable token holders to evaluate the performance of the issuer.
- 10.02 The issuer's reports must contain information on the performance of the underlying business or project, including–
- (a) the total amount of digital tokens issued and in circulation;
 - (b) the status of the utilisation of the digital token's proceeds by the issuer;
 - (c) the status of the IEO project; and
 - (d) audited financial statements for the latest financial year.

Chapter 11

MARKETING AND PROMOTION

- 11.01 An issuer must ensure that all information disseminated for marketing or promotion is consistent with the contents of its white paper and are appropriately displayed in all marketing and promotional materials including on its website.
- 11.02 An issuer must not engage any third party individual(s) or entity, other than an IEO operator, to endorse or represent the issuer with the intended purpose of marketing, promoting, gaining publicity or soliciting funds for its IEO.

Chapter 12

POWER OF THE SC IN RELATION TO AN ISSUER

Power of the SC to Impose Additional Requirements

12.01 In addition to paragraph 6.04, the SC may at any time vary, add or remove any requirements or terms and conditions on an issuer that commensurate with the nature, operations and risks posed by the issuer.

Power of the SC to issue directions

12.02 The SC may, at any time, issue a direction to the issuer, the issuer's Board, any of the issuer's directors, any of the issuer's senior management or any other person, if the SC—

- (a) is satisfied that it is necessary or expedient for the—
 - (i) purposes of ensuring fair and orderly markets; or
 - (ii) protection of the token holders, or in the public interest; or
- (b) is of the opinion that the IEO project is no longer viable or sustainable.

12.03 A direction issued under paragraph 12.02 may include a direction—

- (a) not to deal or transfer monies or properties to any other person;
- (b) not to solicit business from any person;
- (c) to cease or refrain from committing an act or pursuing a course of conduct or activity;
- (d) to do any act, in relation to its business, affairs, property or digital token as the SC deems necessary;
- (e) to give effect to any requirement of the securities laws and these Guidelines;
- (f) to remove any director from the issuer's Board or any senior management member, where—
 - (i) such person is not fit and proper; or

(ii) it would be contrary to public interest for such person to continue to hold the office of a director or be a member of the senior management; and

(g) on any other matter as the SC considers necessary.

12.04 A direction issued under this Part B must be complied with and nothing in this Part B shall preclude the SC from exercising its powers under securities laws.

PART C: REQUIREMENTS FOR IEO OPERATOR

Chapter 13

REQUIREMENTS FOR REGISTRATION AND APPLICATION

- 13.01 A person who seeks to operate an IEO platform must be registered under these Guidelines.
- 13.02 Where the person referred to in paragraph 13.01 also seeks to facilitate the trading of digital assets on its platform, the person must also be registered as a DAX operator under the *Guidelines on Recognized Market*.

Registration

- 13.03 The SC may register a person as an IEO operator, subject to the person satisfying the requirements set out in this Part C.
- 13.04 An IEO operator must be a Malaysian-incorporated company unless specified otherwise by the SC.
- 13.05 An application for the registration as an IEO operator must be made by the operator of the IEO platform.
- 13.06 An IEO operator registered under these Guidelines shall be deemed to be registered as a recognised market operator for the purposes of section 34 of the CMSA.

Application

- 13.07 An applicant is required to submit to the SC the relevant forms and documents as specified in Appendix 2 these Guidelines and any other information as may be required by the SC.
- 13.08 An applicant must ensure that the application submitted pursuant to paragraph 13.07 is accompanied with the prescribed fees.

Chapter 14

FINANCIAL REQUIREMENTS

- 14.01 An IEO operator must have a minimum paid-up capital of RM5,000,000.
- 14.02 Notwithstanding paragraph 14.01, the SC may at any time impose additional financial requirements on an IEO operator that commensurate with the nature, operations and risks posed by the IEO operator.
- 14.03 An IEO operator must immediately notify the SC in writing of a potential or an actual breach of the minimum financial requirement and the corrective measures intended to be taken to address the potential or actual breach.

Chapter 15

CRITERIA FOR REGISTRATION

- 15.01 The SC may register an applicant as an IEO operator if the SC is satisfied that all the following requirements are fulfilled–
- (a) the applicant, its directors, controller and senior management are fit and proper;
 - (b) the applicant will be able to carry out its obligations as set out under these Guidelines;
 - (c) the applicant will appoint at least one (1) responsible person as required under chapter 16 of these Guidelines;
 - (d) 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;
 - (e) the applicant has sufficient financial, human and other resources for its operation at all times; and
 - (f) the applicant has appropriate security arrangements, taking into account the scale of its business operations and risks, which include maintaining a secured environment pursuant to the guidelines issued by the SC for the management of cyber risk and other relevant guidelines.

Chapter 16

DIRECTORS AND RESPONSIBLE PERSON

Independent director

16.01 In the case where an IEO Operator is a public company, at least one of its directors must be an independent director.

Directors and senior management

16.02 An IEO operator must ensure that its directors, controller and senior management are fit and proper and are suitably qualified.

16.03 An IEO operator 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.

16.04 Where a director or senior management is no longer fit and proper to hold office, the IEO operator must ensure that such director or senior management vacates his office immediately.

16.05 The IEO operator must immediately notify the SC of a director or senior management's disqualification and when the position is vacated.

Responsible person

16.06 An IEO operator must have at least one (1) responsible person at all times.

16.07 The responsible person must be appointed from the IEO operator's senior management.

16.08 At all times, the responsible person must undertake the role of the main contact person to liaise with the SC and perform any duty as may be directed by the SC.

16.09 The responsible person must have a minimum five (5) years' experience in carrying out due diligence, assessment on business proposals and fundraising or any other relevant experience, and must be a fit and proper person.

16.10 Any vacancy in relation to the position of a responsible person must be filled within one (1) month from the date of such vacation.

Chapter 17

OBLIGATIONS

Senior management's obligations

17.01 The senior management must, among others –

- (a) implement and adhere to the policies, practices and standards approved by the Board;
- (b) manage risks associated with the business of an IEO operator including performing periodic evaluation of its risk management process;
- (c) frequently and adequately apprise the Board on the operations of the IEO operator; and
- (d) ensure–
 - (i) all records of transactions relating to investors; and
 - (ii) all records that sufficiently explain the financial position and the business of the IEO operator,are accurate, properly secured and retained for a minimum period of seven (7) years.

Board's obligations

17.02 The Board must, among others –

- (a) ensure the IEO operator complies with the requirements of securities laws and 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 business²;
 - (iii) monitor the offering 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) define and oversee the business plan and strategy of the IEO operator that is appropriate to its objective, size, structure and risk profile;
 - (f) ensure that the IEO operator has the relevant capabilities including technology capabilities and support, secured infrastructure, and sufficient resources to undertake its business;
 - (g) approve and oversee all key policies including those relating to risk management, internal controls and compliance with the requirements as provided under securities laws, relevant laws and guidelines or industry best practices;
 - (h) ensure all policies, processes and procedures are continuously reviewed so that that they remain relevant and effective, taking into consideration developments in its business and operations; and
 - (i) 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.

² 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*.

IEO operator's obligations

17.03 An IEO operator, in determining whether to approve an IEO, must–

- (a) carry out due diligence and critical assessment on an issuer including–
 - (i) understanding and verifying the business of the issuer to ensure that the issuer does not engage in any business practices appearing to be deceitful, oppressive or improper, whether unlawful or not;
 - (ii) assess the fit and properness of the issuer's directors and senior management; and
 - (iii) understand the features of the digital token to be issued by the issuer and the rights attached to it;
- (b) exercise its own judgment and carry out critical assessment on the issuer's compliance with the requirements in these Guidelines including as to whether the issuer will be able to satisfy the requirement to provide an innovative solution or a meaningful digital value proposition for Malaysia; and
- (c) assess the issuer's White paper furnished to the IEO operator. In approving the issuer's white paper, the IEO operator must ensure that the contents of the white paper include the information required under these Guidelines and that its contents are not false or misleading, or containing any material omission.

17.04 In addition to the obligations set out in paragraph 17.03, an IEO operator must–

- (a) ensure that the white paper is accessible to investors through its IEO platform;
- (b) ensure that all relevant information relating to an issuer, including any material changes that are affecting the IEO project or the issuer and the issuer's annual and semi-annual report, are available through its IEO platform;
- (c) take reasonable steps in monitoring the drawdowns by issuer and that it has been utilised for the purposes stated in the white paper;
- (d) ensure that its IEO platform is operating in an orderly, fair and transparent manner;
- (e) have in place rules and procedures for IEO on its IEO platform;

- (f) ensure that all fees and charges payable are fair, reasonable and transparent;
- (g) carry out continuous awareness and education programmes;
- (h) take all reasonable measures to avoid situations that are likely to involve a conflict of interest with the issuer;
- (i) disclose any information or provide any document to the SC as the SC may require;
- (j) ensure that all disclosures are not false or misleading, or containing any material omission;
- (k) obtain and retain self-declared risk acknowledgement forms from its users prior to them investing in the initial exchange offering;
- (l) provide prior disclosure to investors that any loss resulting from the investors investing in an initial exchange offering is not covered by the Capital Market Compensation Fund;
- (m) disclose and display prominently on its IEO platform, any relevant information relating to the recognised market including–
 - (i) all necessary risk warning statements, including all risk factors that users may require in making a decision to participate on the IEO platform;
 - (ii) information on rights of investors to investing in a recognised market;
 - (iii) criteria for access to the recognised 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 it is unable to carry out its operations or cessation of business; and
 - (viii) any other information as may be specified by the SC;

- (n) establish and maintain policies and procedures to–
 - (i) provide clear line of reporting, authorisation and proper segregation of function;
 - (ii) implement anti-corruption and whistleblowing measures that are appropriate to the nature, scale and complexity of its business³;
 - (iii) identify, monitor, manage and mitigate cyber risks in its operating environment;
 - (iv) effectively and efficiently identify, monitor, mitigate and manage situations and potential situations which may give rise to conflicts of interest; and
 - (v) ensure compliance with all relevant laws, regulations and guidelines including the *Anti-Money Laundering and Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001* and *Personal Data Protection Act 2010*;
- (o) ensure that its processes and practices are continuously aligned to industry practices in relation to digital assets;
- (p) take all reasonable steps to ensure fair treatment of clients;
- (q) identify and manage potential vulnerabilities and cyber threats in its operating environment;
- (r) in the event of any systems error, failure or malfunction, take all necessary and immediate appropriate actions to mitigate any potential losses;
- (s) carry out any other duties or responsibilities as may be specified by the SC; and
- (t) immediately notify the SC–
 - (i) of any breach of the terms and conditions imposed by the SC, any provisions of the securities laws, guidelines or its rules, including any alleged or suspected violations of any relevant laws or guidelines referred to in paragraph 17.04(n)(v);

³ 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*.

- (ii) when 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;
- (iii) of any material change to the IEO, the IEO project or the issuer including any of the following matters:
 - A. The discovery of a false or misleading statement in any disclosures in relation to the IEO, the IEO project or the issuer;
 - B. The discovery of any material omission of information that may affect token holders;
 - C. Any material development in the circumstances relating to the IEO, IEO project or the issuer; and
- (iv) 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;
- (u) retain for a minimum period of seven (7) years–
 - (i) all records of transactions relating to investors; and
 - (ii) all records that sufficiently explain the financial position and the business of the IEO operator; and
- (v) 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.

17.05 Notwithstanding subparagraph 17.04(e), any proposed rules of an IEO operator or any proposed amendments to its existing rules shall not have effect unless it has been approved by the SC.

Risk management

17.06 An IEO Operator must identify and manage any risks associated with its business and operations, including any possible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls.

17.07 An IEO operator must, among others–

- (a) ensure that its systems are designed to assure a high degree of security and operational reliability, including having adequate capacity;

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

17.08 An IEO 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.

17.09 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.

17.10 An IEO 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

17.11 An IEO operator must establish an internal audit function to develop, implement and maintain an appropriate internal audit framework which commensurate with its business and operations.

Conflict of interest management

17.12 An IEO operator, including all its directors and shareholders, must disclose to the public on its platform if–

- (a) it holds any shares in any of the issuers or digital tokens issued by any 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 electronic platform.

17.13 Notwithstanding paragraph 17.12, an IEO operator's shareholding in any of the issuers hosted on its platform shall not exceed thirty (30) per cent.

17.14 An IEO operator is prohibited from providing direct or indirect financial assistance to investors to invest in the digital tokens of an issuer hosted on its platform.

Operation of trust account

17.15 An IEO operator must–

- (a) establish systems and controls for maintaining an accurate and up to date records of investors and any monies or digital tokens held in relation to the investor;
- (b) ensure investors' monies and digital tokens are properly safeguarded from conversion or inappropriate use by any person, including but not limited to implementing multi-signature arrangements;
- (c) establish and maintain with a licensed Malaysian financial institution one or more trust accounts, designated for the monies received from investors;
- (d) ensure that the trust accounts under paragraph 17.15(c) are administered by an independent trustee registered with the SC under *Guidelines on Registration and Conduct of Capital Market Services Providers*;
- (e) only release the funds to the issuer after the following conditions are fulfilled:
 - (i) The targeted amount sought to be raised has been met; and
 - (ii) There is no material change relating to the IEO or the issuer during the offer period; and
- (f) in relation to investors' digital token–
 - (i) ensure that the token holders' digital tokens are properly segregated and safeguarded from conversion or inappropriate use by any person;
 - (ii) establish and maintain a sufficiently and verifiably secured storage medium designated to store digital assets from investors; and

- (iii) establish system and controls for maintaining accurate and up-to-date records of client's digital assets held.

Guidance to paragraph 17.15(f):

An IEO operator may appoint a digital asset custodian registered with the SC to provide custody of the token holders' digital tokens.

Where an IEO operator chooses to provide its own custody services to the token holders, the IEO operator must ensure that it complies with the requirements set out under Part D of these Guidelines with regard to a digital asset custodian.

- 17.16 For the purpose of subparagraph 17.15(e)(ii), a material change may include any of the following matters:
- (a) The discovery of a false or misleading statement in any disclosures in relation to the IEO, the IEO project or the issuer;
 - (b) The discovery of any material omission of information that may affect investors; or
 - (c) Any material development in the circumstances relating to the IEO, IEO project or the issuer.
- 17.17 Notwithstanding paragraph 17.15(e), an IEO operator may impose any other additional condition precedent before releasing the fund, provided that they serve the token holders' interest.

Supplementary white paper

- 17.18 Where a supplementary white paper has been furnished to the IEO operator and the SC, and before the issue of digital tokens, the IEO operator must notify the IEO applicant that–
- (a) a supplementary white paper is available on the platform; and
 - (b) the applicant may withdraw his application for the subscription of the digital token within six (6) business days from the date of receipt of the notice.
- 17.19 If the applicant withdraws his application pursuant to paragraph 17.18(b) above, the IEO operator must, within six (6) business days, refund to the applicant any amount that the applicant has paid for the purposes of the IEO.

Register of initial token holders

- 17.20 An IEO operator must maintain a register of initial token holders who subscribed for the digital tokens during the offer period and enter into the register–
- (a) in the case of a token holder who is a Malaysian, the name, address and identity card number of the token holder. In the case of a non-Malaysian token holder, the name, address and passport details of the token holder;
 - (b) in the case of a token holder who is a corporation, the name, registered address and registration number of the corporation, including details of its directors and shareholders;
 - (c) total amount of digital tokens subscribed by each token holder; and
 - (d) any other relevant information or particulars of the token holder as may be required by the SC.

Outsourcing

- 17.21 An IEO operator must select an appropriate and efficient service provider for its outsourcing arrangement, and monitor the outsourcing arrangement on a continuous basis to ensure that it does not lead to any business disruption and negative consequences to token holders.
- 17.22 Except for the functions set out under paragraph 17.23, all other functions of the IEO operator, i.e. back office processes, services or activities can be outsourced subject to the requirements in these Guidelines.
- 17.23 The IEO operator is not allowed to outsource any function that involves–
- (a) the decision making functions of the IEO operator; or
 - (b) any interaction or direct contact with the IEO issuer or token holders.
- 17.24 The service provider must avoid any conflicts of interest. Where a conflict cannot be avoided, appropriate safeguards must be put in place to protect the interests of the token holders.
- 17.25 The outsourcing of the following functions by the IEO operator is considered as material outsourcing arrangement and can only be outsourced to the following service provider–
- (a) internal audit function to the IEO operator’s group auditor or an external auditor, where applicable;

- (b) compliance function to the IEO operator group of companies; or
 - (c) risk management function to the IEO operator group of companies or an external service provider in the area of risk management.
- 17.26 Other than the material functions set out in the paragraph 17.25, other outsourcing arrangements will also be considered as material outsourcing arrangement where–
- (a) there may be a financial, reputational or operational impact on the IEO operator in the event of a default or failure of the service provider;
 - (b) the IEO operator’s services or support rendered to the IEO issuers may be potentially impacted by the outsourcing arrangement;
 - (c) the IEO operator’s ability and capacity to comply with regulatory requirements may be impacted by the outsourcing arrangement; and
 - (d) if the appointed service provider may not be able to perform the outsourced function, there is a degree of difficulty and time required for the IEO operator to select an alternative service provider, or to bring the outsourced function in-house.
- 17.27 Where applicable, the internal audit and risk management functions which have been outsourced cannot be further sub-contracted.
- 17.28 Where a service provider or a sub-contractor is located outside Malaysia, the IEO operator must–
- (a) analyse the economic, legal and political conditions of the country that the service provider and the sub-contractor are operating from, which may impact the undertaking of any outsourced functions;
 - (b) refrain from outsourcing to jurisdictions where the SC is hindered from having prompt access to information;
 - (c) commit to retrieve information readily available from the service provider and the sub-contractor should the SC request for such information; and
 - (d) inform the SC if any foreign authority were to seek access to its clients’ information.
- 17.29 The IEO operator’s Board remains accountable for all outsourced functions.

- 17.30 The IEO operator's Board shall be responsible to establish effective policies and procedures for its outsourcing arrangement including a monitoring framework to monitor the service delivery, performance reliability and processing capacity of the service provider which should, among others, include periodic review and update the service level agreement and hold regular meetings to discuss performance of the service provider, sub-contractor and regulatory matters.
- 17.31 An IEO operator must ensure that the service provider has adequate policies and procedures to monitor the conduct of the appointed sub-contractor.

Outsourcing information

- 17.32 An IEO operator must provide the SC, within two (2) weeks prior to entering into any outsourcing arrangement in respect of any material outsourced function, with the following:
- (a) A brief decision of the material outsourced functions, and, if applicable, a brief explanation on the rationale to outsource to service provider or sub-contractor outside Malaysia and the reasons the particular function could not be undertaken domestically; and
 - (b) A letter of undertaking 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 arrangement;
- 17.33 An IEO operator must also notify the SC, within two (2) weeks from the occurrence of the following event:
- (a) Any variation or termination of the service level agreement and sub-contracting agreement in relation to any material outsourcing arrangement signed by the service provider; and
 - (b) Any adverse development arising in such material outsourcing arrangement that could significantly affect the IEO operator.

Chapter 18

HOSTING ON OTHER PLATFORMS

- 18.01 An issuer must not be hosted concurrently on multiple IEO platforms or on an equity crowdfunding or P2P platform.

Chapter 19

LIMIT OF FUND RAISED BY THE ISSUER

19.01 An IEO operator must ensure that an issuer may only raise fund subject to the following limit:

Issuer's shareholders' funds or in the case of an LLP, issuer's capital * Multiple (20) = Maximum quantum of fund permitted to be raised within any continuous 12-month period, subject to a ceiling of RM100 million.

19.02 The issuer must demonstrate to the IEO operator that the gross proceeds to be raised from the IEO would be sufficient to undertake the IEO project as proposed in the white paper.

19.03 The digital tokens issued by an issuer must be fully subscribed, and an issuer is not allowed to keep any amount exceeding the target amount raised.

19.04 In the event an issuer is unable to comply with the requirement in paragraph 19.03, the IEO operator must refund all monies collected from the token holders within six (6) business days from the date of the closing of the offer period.

Investment limits

19.05 A person may invest in an IEO subject to the following limits:

- (a) For sophisticated investors⁴: no restriction on investment amount;
- (b) For angel investors: a maximum of RM500,000 within a 12-month period; and
- (c) For retail investors: a maximum of RM2,000 per issuer with a total investment limit not exceeding RM20,000 within a 12-month period.

Cooling off right

19.06 A cooling-off right must be given to an applicant who is applying to subscribe a digital token in an IEO, except for where such applicant is a staff of the issuer.

19.07 The cooling-off period must be no fewer than six (6) business days commencing from the closing date of the offer period.

⁴ Sophisticated investors refer to investors specified under Part I of Schedules 6 and 7 of the CMSA.

19.08 An applicant exercising their cooling-off right pursuant to paragraph 19.07 shall be entitled to a refund amounting to the sum equivalent of–

(a) the purchase price paid for the digital token; and

(b) any other charges imposed on the day the digital token was purchased.

19.09 When an investor notifies the IEO operator of his intention to exercise his cooling-off right, the IEO operator must refund to the investor the quantum in paragraph 19.08 above within six (6) business days of receiving such notification.

Chapter 20

CESSATION OF BUSINESS OR OPERATIONS

- 20.01 An IEO operator shall not cease its business or operations without prior engagement with the SC.
- 20.02 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 IEO operator.
- 20.03 The cessation of business or operations of the IEO operator will not take effect until the SC is satisfied that all the requirements stated in the securities laws, these Guidelines, relevant guidelines issued by the SC and any other relevant laws or requirements, have been fulfilled.

Chapter 21

WITHDRAWAL OF REGISTRATION

- 21.01 The SC may withdraw the registration of an IEO operator if–
- (a) the SC finds that, at any time, the IEO operator has submitted to the SC any false or misleading information or there is material omission of information;
 - (b) the IEO operator fails to meet the requirements as provided in securities laws, these Guidelines, any other relevant laws or guidelines or any direction issued by the SC on the IEO operator;
 - (c) the IEO operator fails or ceases to carry on the business or activities for which it was registered for a consecutive period of six (6) months;
 - (d) the IEO operator contravenes any obligation, condition or restriction imposed under these Guidelines; or
 - (e) fails to pay any fee prescribed by the SC.
- 21.02 An IEO operator may, by notice in writing, apply to the SC to withdraw its registration and provide reasons for its withdrawal.
- 21.03 The withdrawal of the IEO operator’s registration 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 IEO operator that are outstanding at the time when the notice of the withdrawal is given; and
 - (b) operate so as to–
 - (i) avoid or affect any agreement, transaction or arrangement entered into by the IEO operator, 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 22

POWER OF THE SC IN RELATION TO IEO OPERATOR

Power of the SC to Impose Additional Requirements

22.01 In addition to paragraph 14.02, the SC may at any time vary, add or remove any requirements or terms and conditions on an IEO operator that commensurate with the nature, operations and risks posed by the IEO operator.

Power of the SC to issue directions

22.02 The SC may issue a direction to the IEO operator, the IEO operator's Board, any of the IEO operator's directors, any of the IEO operator's senior management or any other person if the SC—

- (a) is satisfied that it is necessary or expedient for the;
 - (i) purposes of ensuring fair and orderly markets; or
 - (ii) protection of the token holders, or in the public interest; or
- (b) is of the opinion that the IEO project is no longer viable or sustainable.

22.03 A direction under paragraph 22.02 may include a direction—

- (a) not to deal or transfer monies or properties of the token holders to any other person;
- (b) not to solicit business from any person;
- (c) to cease or refrain from committing an act or pursuing a course of conduct or activity;
- (d) to do any act, in relation to its business, affairs, property or digital token as the SC deems necessary;
- (e) to give effect to any requirement of the securities laws and these Guidelines;
- (f) to remove any director from the IEO operator's Board or any senior management member, where—
 - (i) such person is not fit and proper; or

- (ii) it would be contrary to public interest for such person to continue to hold the office of a director or be a member of the senior management; or
 - (g) on any other matter as the SC considers necessary.
- 22.04 The SC may conduct periodic assessment of an IEO operator's compliance with any or all of its regulatory obligations, and request documents or other assistance as required.
- 22.05 Notwithstanding the approval granted by an IEO operator to the issuer, the SC may, at any time before the fund raised is released to the issuer, do any or all of the following:
- (a) Revoke an approval granted by an IEO operator for any IEO;
 - (b) Issue a direction to suspend the IEO; or
 - (c) Issue a direction to defer the implementation of the IEO.
- 22.06 The SC may exercise its powers under paragraph 22.05 if the SC becomes aware of any of the following:
- (a) The issuer has breached any requirement under securities laws, these Guidelines or any other guidelines issued by the SC;
 - (b) The issuer has failed to comply with any terms or conditions imposed by the IEO operator on the issuer;
 - (c) The application, including the white paper, contains any statement or information that is false or misleading or from which there is a material omission;
 - (d) There is a concern with the issuer's corporate governance record or with the integrity of any of the issuer's directors and senior management; or
 - (e) The SC has reason to believe that the approval of the application would be contrary to public interest.
- 22.07 The SC shall not revoke an approval granted by an IEO operator to an issuer unless the SC has given a reasonable opportunity to be heard to any affected person as to whether such an order should be made.
- 22.08 A direction issued under this Chapter must be complied with and nothing in this Chapter shall preclude the SC from exercising its powers under securities laws.

PART D: REQUIREMENTS FOR DIGITAL ASSET CUSTODIAN

Chapter 23

INTRODUCTION

- 23.01 The services of providing safekeeping, storing, holding or maintaining custody of digital assets for the account of another person is specified to be a capital market services for the purposes of section 76A of the CMSA.
- 23.02 For the purposes of this Part D, a digital asset custodian means a person who provides any of the services as described under paragraph 23.01.
- 23.03 In the case of a registered recognized market operator or registered trustee who seeks to provide any of the services specified in paragraph 23.01, such registered recognized market operator or registered trustee must notify the SC of its intention prior to it providing the specified services.

The SC may carry out an assessment on the registered recognized market operator or registered trustee. The registered recognized market operator or trustee shall be deemed to be registered as a digital asset custodian under these Guidelines provided that the SC is satisfied that the registered recognised market operator or trustee is able to comply with the requirements under this Part D.

Guidance to paragraphs 23.01 and 23.02:

A person who merely offers a system by whatever means, which enable the asset owner to hold digital assets and the asset owner has full control of his digital assets, is not deemed to be a digital asset custodian for the purposes of paragraph 23.02.

An asset owner is considered as having full control of his digital assets when he holds the private key(s) to the wallet and the digital asset custodian does not have the ability to effect a unilateral transfer of the asset owner's digital assets.

Registration

- 23.04 The SC may register a person as a digital asset custodian, subject to the person satisfying the requirements set out in this Part D.
- 23.05 In the case of a foreign digital asset custodian, in addition to satisfying the requirements set out in this Part D, the SC may register the foreign digital asset custodian, provided that the SC is satisfied that—
- (a) the applicant is authorised to operate or carry out an activity of a similar nature in the foreign jurisdiction;

- (b) the applicant is from a comparable jurisdiction with whom the SC has regulatory arrangements on enforcement, supervision and sharing of information; and
- (c) it is in the best interest of Malaysia to register the foreign digital asset custodian.

23.06 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.

Application

23.07 An applicant is required to submit to the SC the relevant forms and documents as specified in Appendix 3 of these Guidelines and any other information as may be required by the SC.

23.08 An applicant must ensure that the application submitted pursuant to paragraph 23.07 is accompanied with the prescribed fees.

Chapter 24

FINANCIAL REQUIREMENTS

- 24.01 A digital asset custodian must have a minimum–
- (a) paid-up capital of RM500,000; and
 - (b) shareholders' funds of RM500,000 maintained at all times.
- 24.02 Notwithstanding paragraph 24.01, the SC may at any time impose additional financial requirements on a digital asset custodian that commensurate with the nature, operations and risks posed by the digital asset custodian.
- 24.03 A digital asset custodian must immediately notify the SC in writing of a potential or an actual breach of the minimum financial requirements and the corrective measures intended to be taken to address the potential or actual breach.

Chapter 25

CRITERIA FOR REGISTRATION

- 25.01 The SC may register an applicant as a digital asset custodian, if the SC is satisfied that all the following requirements are fulfilled–
- (a) the applicant, its directors, controller and senior management are fit and proper;
 - (b) the applicant will be able to carry out its obligations as set out under these Guidelines;
 - (c) the applicant will appoint at least one (1) responsible person as required under chapter 26 of these Guidelines;
 - (d) 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;
 - (e) the applicant has sufficient financial, human and other resources for its operation at all times; and
 - (f) the applicant has appropriate security arrangements, taking into account the scale of its business operations and risks, which include maintaining a secured environment pursuant to the guidelines issued by the SC for the management of cyber risk and other relevant guidelines.

Chapter 26

DIRECTORS AND RESPONSIBLE PERSON

Directors and Senior Management

- 26.01 A digital asset custodian must ensure that its directors, controller and senior management are fit and proper and are suitably qualified.
- 26.02 Where a director or senior management is no longer fit and proper to hold office, the digital asset custodian must ensure that such director or senior management vacates his office immediately.
- 26.03 The digital asset custodian must immediately notify the SC of a director or senior management's vacation from office.

Responsible person

- 26.04 A digital asset custodian must have at least one (1) responsible person at all times.
- 26.05 The responsible person must be appointed from the digital asset custodian's senior management.
- 26.06 At all times, the responsible person must undertake the role of the main contact person to liaise with the SC and perform any duty as may be directed by the SC.
- 26.07 The responsible person must have a minimum of five (5) years of relevant industry experience or expertise and must be a fit and proper person.
- 26.08 Any vacancy in relation to the position of a responsible person must be filled within one (1) month from the date of such vacation.

Chapter 27

OBLIGATIONS

Senior management's obligations

27.01 The senior management must, among others, –

- (a) implement and adhere to the policies, practices and standards approved by the Board;
- (b) manage risks associated with the business of a digital asset custodian including performing periodic evaluation of its risk management process;
- (c) frequently and adequately apprise the Board on the operations of the digital asset custodian; and
- (d) ensure–
 - (i) all records of transactions relating to clients; and
 - (ii) all records that sufficiently explain the financial position and the business of the digital asset custodian,are accurate, properly secured and retained for a minimum period of seven (7) years.

Board and chief executive's obligations

27.02 The Board and chief executive must, among others, –

- (a) ensure the digital asset custodian complies with the requirements of securities laws and 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 business⁵;
 - (iii) monitor the transfer of digital assets to detect non-compliance with the securities laws or its rules;
 - (iv) deal with complaints relating to the services provided by the digital asset custodian; and
 - (v) ensure compliance with all relevant laws, regulations and guidelines including *Personal Data Protection Act 2010*;
- (e) define and oversee the business plan and strategy of the digital asset custodian that is appropriate to its objective, size, structure and risk profile;
 - (f) ensure that the digital asset custodian has the relevant capabilities including technology capabilities and support, secured infrastructure, and sufficient resources to undertake its business;
 - (g) approve and oversee all key policies including those relating to risk management, internal controls and compliance with the requirements as provided under securities laws, relevant laws and guidelines or industry best practices;
 - (h) ensure all policies, processes and procedures are continuously reviewed so that that they remain relevant and effective, taking into consideration developments in its business and operations;
 - (i) ensure that clients' digital assets are safeguarded; and
 - (j) 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.

⁵ 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*.

Digital Asset Custodian's obligations

27.03 A digital asset custodian must–

- (a) act in the best interest of the clients and take all reasonable measures to avoid situations that are likely to involve conflict of interest with the clients;
- (b) safeguard the rights and interests of its clients including ensuring that its clients have access to their digital assets at all times, and preventing unauthorised access to clients' digital assets;
- (c) ensure that all fees and charges payable are fair, reasonable and transparent;
- (d) disclose any information or provide any document to the SC as the SC may require;
- (e) comply with all the reporting requirements and submit accurate information that is required by the SC in a timely manner;
- (f) identify and manage risks associated with its business and operations, including having in place an effective business continuity plan;
- (g) establish and maintain written policies and procedures to–
 - (i) provide clear line of reporting, authorisation and proper segregation of function;
 - (ii) prevent unauthorised access or fraudulent transaction;
 - (iii) implement anti-corruption and whistleblowing measures that are appropriate to the nature, scale and complexity of its business⁶;
 - (iv) enable full disclosure of all client's transactions and assets to the client;
 - (v) ensure compliance with all relevant laws, regulations and guidelines including the *Anti-Money Laundering and Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001* and *Personal Data Protection Act 2010*;
 - (vi) manage clients' data that covers collection, storage, use, disclosure and disposal of client information, including the following:

⁶ 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*.

- (A) proper handling and safeguarding of client data;
 - (B) protection of confidentiality and security of client data; and
 - (C) managing third party service provider who has access to client data;
- (h) ensure that its processes and practices are continuously aligned to industry practices in relation to custody of digital assets;
- (i) take all reasonable steps to ensure fair treatment of clients;
- (j) identify and manage potential vulnerabilities, cyber threats in its operating environment;
- (k) in the event of any systems error, failure or malfunction, take all necessary and immediate appropriate actions to mitigate any potential losses;
- (l) carry out any other duties or responsibilities as may be specified by the SC;
- (m) immediately notify the SC–
 - (i) of any breach of the terms and conditions imposed by the SC, any provisions of the securities laws, guidelines or its rules, including any alleged or suspected violations of any relevant laws or guidelines referred to in paragraph 27.03(g)(v);
 - (ii) when 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; and
 - (iii) 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;
- (n) retain for a minimum period of seven (7) years–
 - (i) all records of transactions relating to clients; and
 - (ii) all records that sufficiently explain the financial position and the business of the digital asset custodian; and
- (o) 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.

Risk management

- 27.04 The digital asset custodian must establish a risk management framework to identify, assess, monitor, control and report all material risks to which the digital asset custodian could be exposed to.
- 27.05 The risk management framework must include–
- (a) strategies developed to identify, assess, monitor and mitigate all material risks;
 - (b) policies and protocols relating to management and controls of all material risks;
 - (c) methodology to assess all material risks; and
 - (d) reporting system for all material risks to senior management and Board.
- 27.06 A digital asset custodian must carry out periodic reviews, audits and testing on systems, operational policies, procedures, and controls relating to risk management and its business continuity plan.

Conflict of interest management

- 27.07 A digital asset custodian must give priority to the clients' interest if there is a conflict between the clients' interests and its own interests;
- 27.08 A digital asset custodian must establish and maintain written policies and processes and procedures that–
- (a) identifies, monitors, mitigates and manages situations and potential situations which may give rise to conflicts of interest; and
 - (b) requires disclosure of any conflict or potential conflict of interest.

Internal audit

- 27.09 A digital asset custodian must perform internal audit checks on its operations regularly. For this purpose, the digital asset custodian may establish an internal audit function or outsource the said function.
- 27.10 The person responsible for the internal audit function must report directly to the Board on the adequacy, effectiveness and efficiency of the management, operations, risk management and internal controls.

27.11 Notwithstanding that the internal audit function may be outsourced, the Board must ensure that the internal audit framework includes–

- (a) clearly defined terms of the internal audit framework which sets out the scope, objectives, approach and reporting requirements;
- (b) adequate planning, controlling and recording all audit work performed, and record the findings, conclusions and if any, recommendations made;
- (c) issuance of an internal audit report at the conclusion of each internal audit performed; and
- (d) ensuring matters are highlighted in the internal audit report are satisfactorily resolved in a timely manner and does not jeopardise or prejudice the clients' interest.

27.12 The internal audit framework must be approved by the Board.

Chapter 28

CONDUCT REQUIREMENTS FOR DIGITAL ASSET CUSTODIAN

Key generation and management

- 28.01 A digital asset custodian must establish and maintain a sufficiently and verifiably secured storage medium designated to store its clients' digital assets.
- 28.02 A digital asset custodian must have in place effective policies and procedures to safeguards key generation and management including–
- (a) adopting industry standards and practices in terms of key generation and management;
 - (b) ensuring that the employees that are involved in the key generation process are identified and prevented from having unauthorised access to clients' digital assets; and
 - (c) having in place procedures to enable the clients to access their digital assets in the event the client loses his access credentials or where the keys have been compromised.
- 28.03 A digital asset custodian must have in place effective security mechanisms for the digital assets including adopting measures such as having multi-factor authentication requirements before effecting any transaction on behalf of the clients.

Segregation of client assets

- 28.04 A digital asset custodian must–
- (a) ensure that all clients' digital assets are properly segregated from its own assets and safeguarded from conversion or inappropriate use by any person; and
 - (b) establish system and controls for maintaining accurate and up-to-date records of clients' digital assets held.

Transaction handling

- 28.05 A digital asset custodian must ensure that, at all times, it has up-to-date transactional records relating to the clients' digital assets including–
- (a) transaction timestamp;

- (b) details of any transaction including the purpose of a transfer, amount and details of the counterparty;
- (c) relevant signatories and transaction approval/rejection evidence;
- (d) account balances;
- (e) transaction value; and
- (f) any other information as may be specified by the SC.

28.06 The digital asset custodian must provide the information under paragraph 28.05 to the SC as and when requested by the SC and in such form and manner as the SC may specify.

28.07 The digital asset custodian must retain all the transactional records including those stated in paragraph 28.05 for a minimum period of seven (7) years.

Outsourcing

28.08 A digital asset custodian must select an appropriate and efficient service provider for its outsourcing arrangement, and monitor the outsourcing arrangement on a continuous basis to ensure that it does not lead to business disruption and negative consequences to the clients.

28.09 Except for the functions set out under paragraph 28.10, all other functions of the digital asset custodian, i.e. back office processes, services or activities can be outsourced subject to the requirements of these Guidelines.

28.10 The digital asset custodian is not allowed to outsource any function that involves–

- (a) the decision making functions of the digital asset custodian; or
- (b) any interaction or direct contact with the clients.

28.11 The service provider must avoid any conflicts of interest. Where a conflict cannot be avoided, appropriate safeguards must be put in place to protect the interests of the clients.

28.12 The outsourcing of the following functions by the digital asset custodian is considered as material outsourcing arrangement and can only be outsourced to the following service provider–

- (a) internal audit function to the digital asset custodian’s group auditor or an external auditor, where applicable;

- (b) compliance function to the digital asset custodian group of companies; or
 - (c) risk management function to the digital asset custodian group of companies or an external service provider in the area of risk management.
- 28.13 Other than the material functions set out in the paragraph 28.12, other outsourcing arrangements will also be considered as material outsourcing arrangement where:
- (a) there may be a financial, reputational or operational impact on the digital asset custodian in the event of a default or failure of the service provider;
 - (b) the digital asset custodian's services or support rendered to the clients may be potentially impacted by the outsourcing arrangement;
 - (c) the digital asset custodian's ability and capacity to comply with regulatory requirements may be impacted by the outsourcing arrangement; and
 - (d) if the appointed service provider may not be able to perform the outsourced function, there is a degree of difficulty and time required for the digital asset custodian to select an alternative service provider, or to bring the outsourced function in-house.
- 28.14 Where applicable, the internal audit and risk management functions which have been outsourced cannot be further sub-contracted.
- 28.15 Where a service provider or a sub-contractor is located outside Malaysia, the digital asset custodian must–
- (a) analyse the economic, legal and political conditions of the country that the service provider and the sub-contractor are operating from, which may impact the undertaking of any outsourced functions;
 - (b) refrain from outsourcing to jurisdictions where the SC is hindered from having prompt access to information;
 - (c) commit to retrieve information readily available from the service provider and the sub-contractor should the SC request for such information; and
 - (d) inform the SC if any foreign authority were to seek access to the clients' information.
- 28.16 The digital asset custodian's Board remains accountable for all outsourced functions.

- 28.17 The digital asset custodian's Board shall be responsible to establish effective policies and procedures for its outsourcing arrangement including a monitoring framework to monitor the service delivery, performance reliability and processing capacity of the service provider which should, among others, include periodic review and update the service level agreement and hold regular meetings to discuss performance of the service provider, sub-contractor and regulatory matters.
- 28.18 A digital asset custodian must ensure that the service provider has adequate policies and procedures to monitor the conduct of the appointed sub-contractor.

Outsourcing information

- 28.19 A digital asset custodian must provide the SC, within two (2) weeks prior to entering into any outsourcing arrangement in respect of any material outsourced function, the following:
- (a) A brief decision of the material outsourced functions, and, if applicable, a brief explanation on the rationale to outsource to service provider or sub-contractor outside Malaysia and the reasons the particular function could not be undertaken domestically; and
 - (b) A letter of undertaking 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 arrangement;
- 28.20 A digital asset custodian must also notify the SC, within two (2) weeks from the occurrence of the following event:
- (a) Any variation or termination of the service level agreement and sub-contracting agreement in relation to any material outsourcing arrangement signed by the service provider; and
 - (b) Any adverse development arising in such material outsourcing arrangement that could significantly affect the digital asset custodian.

Chapter 29

CHANGES REQUIRING THE SC'S PRIOR APPROVAL

- 29.01 A digital asset custodian must obtain the SC's prior approval in circumstances where any proposed change to the shareholding will result in a direct or indirect change in the digital asset custodian's controller.

- 29.01 A digital asset custodian must notify the SC if it intends to provide custodial services for additional classes of digital assets.

Chapter 30

CESSATION OF BUSINESS OR OPERATIONS

- 30.01 A digital asset custodian must not cease its business or operations without prior engagement with the SC.
- 30.02 The SC may issue a direction or impose any term or condition for the purposes of ensuring the orderly cessation of the business or operation of the digital asset custodian.
- 30.03 A digital asset custodian must ensure the clients continue to have uninterrupted access to their respective digital assets under its custody in the event that the digital asset custodian ceases to operate or cannot fulfil its obligation under the custodial agreement.
- 30.04 The cessation of business or operations of the digital asset custodian will not take effect until the SC is satisfied that all the requirements stated in the securities laws, these Guidelines, relevant guidelines issued by the SC and any other relevant laws or requirements have been fulfilled.

Chapter 31

WITHDRAWAL OF REGISTRATION

- 31.01 The SC may withdraw the registration of a digital asset custodian if–
- (a) the SC finds that, at any time, the digital asset custodian has submitted to the SC any false or misleading information or there is material omission of information;
 - (b) the digital asset custodian fails to meet the requirements as provided in securities laws, these Guidelines, any other relevant laws or guidelines or any direction issued by the SC on the digital asset custodian;
 - (c) the digital asset custodian fails or ceases to carry on the business or activities for which it was registered for a consecutive period of six (6) months;
 - (d) the digital asset custodian contravenes any obligation, condition or restriction imposed under these Guidelines; or
 - (e) the digital asset custodian fails to pay any fee prescribed by the SC.
- 31.02 The digital asset custodian may, by notice in writing, apply to the SC to withdraw its registration and provide reasons for its withdrawal.
- 31.03 The withdrawal of its registration of the digital asset custodian 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 digital asset custodian that are outstanding at the time when the notice of the withdrawal is given; and
 - (b) operate so as to–
 - (i) avoid or affect any agreement, transaction or arrangement entered into by the digital asset custodian, 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 32

POWER OF THE SC IN RELATION TO A DIGITAL ASSET CUSTODIAN

Power of the SC to Impose Additional Requirements

32.01 In addition to paragraph 24.02, the SC may at any time vary, add or remove any requirements or terms and conditions on a digital asset custodian that commensurate with the nature, operations and risks posed by the digital asset custodian.

Power of the SC to issue directions

32.02 The SC may issue a direction to the digital asset custodian, the digital asset custodian's Board, any of the digital asset custodian's directors, any of the digital asset custodian's senior management or any other person if the SC is satisfied that it is necessary or expedient for the protection of the clients, or in the public interest.

32.03 A direction under paragraph 32.02 may include a direction—

- (a) not to deal or transfer monies or properties of the digital asset custodian to any other person;
- (b) not to solicit business from any person;
- (c) to cease or refrain from committing an act or pursuing a course of conduct or activity;
- (d) to do any act, in relation to its business, affairs, property or digital assets as the SC deems necessary;
- (e) to give effect to any requirement of the securities laws and these Guidelines;
- (f) to remove any director from the digital asset custodian's Board or any senior management member, where—
 - (iii) such person is not fit and proper; or
 - (iv) it would be contrary to public interest for such person to continue to hold the office of a director or be a member of the senior management; or
- (g) on any other matter as the SC considers necessary.

- 32.04 The SC may conduct periodic assessment of a digital asset custodian's compliance with any or all of its regulatory obligations, and request documents or other assistance as required.
- 32.05 A direction issued under this Chapter must be complied with and nothing in this Chapter shall preclude the SC from exercising its powers under securities laws.

PART E: SUBMISSION OF APPLICATION

Chapter 33

SUBMISSION OF APPLICATION

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

For application to be registered as an IEO Operator:

Chairman
Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur
(Attention: Institution Supervision Department)

Tel: (603) 6204 8000
Fax: (603) 6201 5282
Email: rmo@seccom.com.my

For application to be registered as a digital asset custodian, including notification by registered recognised market operators and registered trustees pursuant to paragraph 23.03:

Chairman
Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur
(Attention: Authorisation and Licensing Department)

Tel: (603) 6204 8000
Fax: (603) 6201 5282
Email: aldmail@seccom.com.my

FIT AND PROPER CRITERIA

A person is considered to be fit and proper if–

- (1) the person–
 - (a) has not been convicted, whether within or outside Malaysia, of an offence involving fraud or dishonesty or violence or the conviction of which involved a finding that he acted fraudulently or dishonestly;
 - (b) has not been convicted, whether within or outside Malaysia, of an offence under securities laws or any laws relating to capital market;
 - (c) has not been issued, whether within or outside Malaysia, with any compounds or subject to any administrative action taken by a regulator or law enforcement agency for any offence involving bribery, fraud, dishonesty, mismanagement of a company or violence;
 - (d) has no pending investigations or criminal charge against him in any court of law, whether within or outside Malaysia, for an offence involving bribery, fraud, dishonesty, mismanagement of a company or violence;
 - (e) has not had any civil enforcement action filed against them in any court of law by any regulator or law enforcement agency, whether within or outside Malaysia;
 - (f) is not an undischarged bankrupt or is in the course of being wound up or otherwise dissolved, as the case may be, whether within or outside Malaysia;
 - (g) has no execution against him in respect of a judgment debt, whether within or outside Malaysia;
 - (h) 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;
 - (i) is not disqualified to be a director, whether within or outside Malaysia, under the corporation laws or securities laws;
 - (j) has not have any receiver, receiver and manager or an equivalent person appointed, whether within or outside Malaysia, in respect of any of his property; and

- (2) the SC is satisfied that–
- (a) the person is not 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;
 - (b) the person is not engaged in or has not been associated with any other business practices or has not conducted himself in such a way as to cast doubt on his competence and soundness of judgement;
 - (c) the person is not engaged in or has not 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;
 - (d) the person is suitably qualified to assume the position including having the relevant experience and track record in managing the business and affairs of the company;
 - (e) there are no other circumstances which are likely to lead to the improper conduct of operations by the person, or reflect discredit on the manner the person would carry out his duties; and
 - (f) it would not be contrary to public interest to approve, register or nominate the person.