Suruhanjaya Sekuriti
Securities Commission
Malaysia

PRACTICAL GUIDE ON VENTURE CAPITAL AND PRIVATE EQUITY IN MALAYSIA

PRACTICAL GUIDE ON

VENTURE CAPITAL AND PRIVATE EQUITY IN MALAYSIA

June 2024

Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur
Tel: +603–6204 8000
Fax: +603–6201 5078
Websites: www.sc.com.my | www.investsmartsc.my
@SecComMalaysia

DISCLAIMER

The *Practical Guide on Venture Capital and Private Equity in Malaysia* aims to provide a general understanding of the subject and is not an exhaustive write-up and may be updated or revised from time to time. The information contained herein does not constitute any recommendation and it is neither intended to be a substitute for legal advice nor does it diminish any duty (statutory or otherwise) that may be applicable to any person under existing laws.

Contents

This page is intentionally left blank.

ACKNOWLEDGEMENT

This guide is a collaborative effort of the Securities Commission Malaysia (SC), Bank Negara Malaysia (BNM), Labuan Financial Services Authority (Labuan FSA), contributions from Artem Ventures, Kairous Capital, Izwan & Partners as members of Malaysian Venture Capital and Private Equity Association (MVCA) and Ernst & Young Tax Consultants (EY Tax).

The SC wishes to express its sincere gratitude and appreciation to all those who contributed to the completion of this guide.

This page is intentionally left blank.

INTRODUCTION

The aim of this guide is to provide an overview of venture capital (VC) and private equity (PE) fund management practices in Malaysia. Contents in this guide is intended to help prospective fund managers, investors and service providers to better navigate the Malaysian landscape and covers matters on regulations, fund structuring, marketing and tax considerations applicable to VC and PE fund operations.

This guide is not a regulatory document and should not be taken as legal advice, but instead intended to provide information on relevant rules, policies and practices of the Malaysian VC and PE industry. Relevant policies included in this document are current at the time of writing but readers should stay abreast of policy changes under the SC and other regulatory authorities.

This guide is structured as follows:

Part 1

Regulations and registration of VC and PE firms
An overview of capital market regulations and relevant rules applicable to VC and PE firms in Malaysia.

Part 2

Fund structuring
Available legal vehicles in Malaysia and structuring considerations for VC and PE funds domiciled in Malaysia.

Part 3

Foreign Exchange Policy
Information on applicable foreign exchange policy administered by BNM that may be applicable to investors and, VC or PE funds in Malaysia.

Part 4

Tax matters
Information on taxation of VC and PE funds in Malaysia.

Part 5

Fund Management Operations
A summary of various services and parties involved in VC and PE fund management operations.

Part 6

Fund Marketing
Considerations, practice and process of marketing of VC and PE funds.

This page is intentionally left blank.

PART 1

Regulations and Registration of VC and PE Firms

PART 1
REGULATIONS AND REGISTRATION OF VC AND PE FIRMS

1.1 Capital Market Regulations on VC and PE Activities

Capital Market Services Act 2007

Capital market activities and product in Malaysia are regulated by the SC under the *Capital Markets and Services Act 2007* (CMSA). In addition, the SC may issue guidelines and practice notes in respect of the CMSA or in respect of any particular provision of CMSA.

Any person carrying on a business in any regulated activity as defined under the CMSA in Malaysia, must be licensed or registered by the SC. Activities by VC and PE firms constitute the regulated activity of 'fund management' activity under the CMSA. In this respect, VC and PE firms are not required to be licensed by the SC. Instead, the SC has set out a registration framework specifically for VC and PE firms[1] under the *Guidelines on the Registration of Venture Capital and Private Equity Corporations and Management Corporations* (VCPE Registration Guidelines) which will facilitate the VC and PE firms to carry out fund management activities and its incidental activities such as dealing in securities. The registration framework under the VCPE Registration Guidelines takes cognisance of the nature of the service provided by the VC and PE firms, thus making it more facilitative and proportionate.

Labuan fund managers and regulations on services onshore

Labuan FSA is the regulatory authority for Labuan International Business and Financial Centre (Labuan IBFC). Labuan IBFC offers facilitative policies and a variety of fund vehicles. VC and PE funds in Labuan are subject to mutual fund and other relevant laws and requirements issued by Labuan FSA. VC and PE funds may be treated as private mutual funds where licensing by Labuan FSA is not required but are subject to restrictions on marketing and investor limits depending on investment terms of the fund. More information on Labuan mutual funds is outlined in Part 3 of this guide.

While Labuan private mutual funds are not required to be licensed under Labuan FSA, Labuan mutual funds servicing clients onshore are required to comply with the CMSA, including obtaining the relevant license or be registered with the SC.

Labuan fund managers operating solely in Labuan and not offering services onshore are not required to comply with the CMSA.

1.2 The SC's VC and PE Registration Framework

The VCPE Registration Guidelines set out registration requirements for corporations undertaking fund management activity in relation to VC or PE funds. The VCPE Registration Guidelines is applicable to the fund management entity itself, and not fund vehicles. More details on the SC regulations on funds are explained in paragraph 1.5 of this guide.

---

1 The word 'VC and/or PE firms' mentioned throughout the guide refers to the registered corporations as defined under the VCPE Registration Guidelines.

Prospective applicants should prepare a business plan including but not limited to key persons involved in the business, proposed legal structure, staffing relating to the fund management activities and governance processes, and any other information required by the SC.

TABLE 1

Summary of registration requirements

Criteria	Requirements
Financial requirements	Net assets of RM100,000 must be maintained at all times.
Personnel requirements	Must appoint at least 1 Responsible Person (RP) which, among others: • must have a minimum of five years of relevant industry experience at least at a managerial level; and • must be fit and proper. RP eligibility criteria and assessment: • An RP must adequately map and demonstrate his/her competency against the stipulated criteria in the VCPE Registration Guidelines and accompanying FAQs (VCPE FAQ) (pertaining to relevant work experience); • An RP must conduct due diligence and assessment to ascertain his/her fit and proper standing; • An RP who is responsible for investment strategies and decision must be a director as defined in *Companies Act 2016* and/or *Limited Liability Partnership Act 2012*; and • An RP is expected to assume the role on a full-time basis as per the VCPE FAQ. Staff and key persons of VC and PE firms are not required to complete relevant modules of the SC Licensing Examinations.
Permitted investors	VC and PE funds may only be offered to sophisticated investors as defined in the VCPE Registration Guidelines. See further explanation on permitted investors below.
Investment limits in listed securities	No more than 20% of committed capital invested in listed securities. Exceptions for certain circumstances are as defined in the VCPE Registration Guidelines.
Custodian requirements	Required for investments in listed securities. If fund only invests in unlisted investments, opt-out is available subject to consent by clients and annual financial audit on applicable fund(s).
Reporting requirements	VC and PE firms must submit to the SC the following: • Form 3 - Annual Activity Report (by 30 January each year) • Form 3A - Mid-year Filing (by 14 July each year) • Audited financial statements (within three months from financial year end) • Shariah adviser annual report (only for VC or PE firms managing Islamic VC and PE funds).
Application fees	Currently, the SC does not charge fees on VC and PE registration applications.

A note on limited partnership fund structure and manager registration

Limited partnerships (LP) are common fund vehicles used by VC and PE firms. Depending on the legal arrangement, a special purpose entity (GP Co.) would be established to act as a general partner in the limited partnership and management services may be delegated to an onshore entity (Management Co.). More information on how limited partnership funds is structured is outlined in Part 2 of this guide.

Applicants for registration with the SC, in relation to a limited partnership fund structure should make clear where fund management functions will be carried out, through, among others, setting out the legal arrangement between the entities, fund governance processes and staffing relating to the fund management activities. If the SC is satisfied that substantial regulated functions are undertaken by the Management Co., only the Management Co. is required to be registered with the SC and no additional registration is required on GP Co.'s for each fund under management.

Permitted investors

VC and PE firms are restricted to dealings with sophisticated investors as defined under the *Guidelines on Categories of Sophisticated Investors* (SI Guidelines) issued on 5 February 2024. Categories of sophisticated investors include high-net-worth individuals, entities and accredited investors. Additionally, the SI Guidelines also recognises individual investors with professional experience in the capital markets and accreditation or membership of professional bodies relevant to the financial services industry. This includes angel investors who are members of the Malaysian Business Angels Network. This expansion was introduced to deepen the pool of investors that would channel growth capital into start-ups and other small and medium-sized businesses.

Additionally, investors who acquire securities where the consideration is not less than RM250,000 (or its equivalent in foreign currencies) for each transaction are also eligible to invest in VC and PE funds since they are also prescribed as sophisticated investor.

Investments in listed securities

A VC or PE firm may only invest up to 20% of the VC or PE fund's committed capital in listed securities. Notwithstanding the aforementioned, the following listed investments are not included in this 20% calculation:

- The investment was made prior to the listing of the investee company;
- Holding of listed securities was the result of corporate action involving an investee company;
- The investment was for the purpose of taking the investee company private; or
- The investment is a private investment in public equity,

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

1.3 Exemptions and Activities Which Do Not Require Registration

While in general, any person who carry out VC or PE firm activities may trigger the regulated activity of fund management and must be registered with the SC, there are certain types of VC or PE firm activities that are exempted from registration. Readers can refer to Schedule 3 of CMSA which sets out the specified person who do not require licensing or registration with the SC.

Some examples include:

- ***Corporate venturing or innovation units (CVCs).*** Some corporate groups may establish subsidiaries or affiliates to administer corporate innovation programmes, which may include investments in VC funds or portfolios of start-up investments. These portfolios are typically proprietary monies or services offered to related entities in the same group of companies, hence they may rely on exemptions available in Schedule 3 of CMSA. However, registration is required should CVCs extend these capital market services to third-party investors.

- ***Government programmes.*** Some national programmes with investments in start-ups or VC and PE funds are deployed through agencies or government-linked entities. Similarly to CVCs, these are generally proprietary monies or services to related entities and do not provide capital market services to outside investors, hence they may rely on exemptions in Schedule 3 of CMSA. Similarly, should these agencies or entities offer capital market services to third-party investors, registration with the SC is required.

In addition to the above, the licensing and registration requirement are also not applicable to the following persons:

- ***International investors*** including VC and PE firms solely seeking investment opportunities in Malaysia but not offering any services regulated by the SC in Malaysia do not require registration. However, if a firm intends to offer services regulated by the SC in Malaysia, it must seek authorisation from the SC.

- ***Fund managers currently licensed by the SC***. If an entity is already licensed by the SC for fund management and intends to offer VC and PE fund management services, registration is not required under the VCPE Registration Guidelines.

1.4 Registration Process

Consultation

Prior to any formal submission to apply for a VC and PE firm registration, prospective applicants are required to reach out to the SC's Authorisation and Licensing Department (ALD) to arrange a consultation. This is an engagement to understand the applicant's business plan, including key people, scope and proposed business operations. Prospective applicants must also demonstrate that the proposed responsible person meets the fit and proper requirements under the Guidelines. Prospective applicants must also conduct its own self-assessment and due diligence for any adverse records against key personnel and shareholders up to ultimate beneficial owner.

For consultation and enquiries, prospective applicants would need to contact the SC's ALD via email at VCPEApps@seccom.com.my.

Formal submission and approval

Post-consultation with the SC's ALD, the formal submission of VC and PE firm registration application must be made only via the SC's EASy platform. Applicant must complete relevant forms and provide supporting documentation on the platform.

In February 2024, the SC introduced the Focused Scope Assessment (FSA) which applies to selected capital market intermediaries including VC and PE firms. This will require the prospective applicant to obtain a validation report from an advisor licensed by Audit Oversight Board to endorse that the requirements under FSA are met, at the point of making the formal application submission to the SC.

Post-registration

Post-registration with the SC, registered VC and PE firms are required to continuously comply with the reporting obligations as set out in Chapter 10 of the VCPE Registration Guidelines. This includes but are not limited to:

- Form 3 - Annual Activity Report, to be submitted via the SC's Common Reporting platform (ComRep), due on 30 January each calendar year;
- Form 3A - Mid-year Filing, to be submitted via ComRep, due on 14 July each calendar year;
- Audited financial statements of the registered corporation, to be submitted via ComRep within three (3) months after closing each financial year; and
- In the case of VC and PE firms managing Islamic funds, a copy of Shariah adviser's report prepared on an annual basis (more information on rules applicable to Islamic VC and PE funds and services below).

A registered VC and PE firm is also obligated to notify the SC via EASy platform on material changes as set out in Chapter 13 of the VCPE Registration Guidelines. This may include, but not limited to:

- Breach or potential breach of minimum financial requirement;
- Vacancy of RP position;
- Change of business particulars including but not limited to changes of shareholders/ shareholding details, appointment of partner/directors/senior management/ RP/designation for director; and
- Cessation of business / deregistration.

Expatriates filling roles in the firm will be required to apply to the Immigration Department for an Employment Pass, unless he or she already holds a residence pass which allow for stay and work in Malaysia. This will require a letter of approval from the SC before applying to the Immigration Department. Applications and enquiries on this process can be made to the SC's ALD.

De-registration

If a registered VC or PE firm intends to cease business in Malaysia, notification must be made to the SC for deregistration via EASy.

1.5 The SC Regulations Applicable to VC and PE firms

In addition to requirements under the VCPE Registration Guidelines, VC and PE firms should comply with the relevant requirements under securities laws, including relevant regulations and guidelines issued under the CMSA. The following list sets out some of the relevant requirements but is not an exhaustive list and may be updated from time to time. VC and PE firms must stay abreast of all current rules and regulations applicable to the firm as a registered entity with the SC.

Fund offerings and approvals

Generally, any offering of securities (including those of fund entities) requires the SC's approval under section 212 of CMSA, unless exemptions are available under Schedule 5 of CMSA. In practice, VC and PE managers may rely on existing exemptions for LP or issuance of shares of private companies under paragraph 7 and 8(a), Schedule 5 of CMSA respectively, hence no approval by the SC is required for funds structured using these vehicles. More details on these common fund structures are explained in Part 2 of this Guide.

Fund structures which cannot rely on existing exemptions under Schedule 5 of CMSA will require the SC's approval under Section 212 of CMSA.

Disclosure Documents and notification to the SC

VC and PE firms are exempted from the requirement to issue a prospectus since they are only restricted to dealings with sophisticated investors (Schedules 6 & 7 of the CMSA).

However, if an information memorandum (or similar disclosure documents such as private placement memorandum) has been issued by the VC and PE firm, it must be deposited with the SC as set out in subsection 229(4) of the CMSA. A fee of RM500 is chargeable upon the deposit of information memorandum. For more information, please reach out to Equities Filing unit in the SC via email at equitiesfiling@seccom.com.my.

While the SC currently does not prescribe information to be disclosed to investors in the above documents, VC and PE firms should observe section 92A of the CMSA on any disclosures to investors.

Conduct standards

The SC sets out the general conduct requirements under the *Guidelines on Conduct for Capital Market Intermediaries* (Conduct Guidelines). The Conduct Guidelines are applicable to all capital market intermediaries licensed and registered with the SC as well as their representatives, including VC and PE firms.

Islamic VC and PE funds and services

VC and PE firms offering Islamic fund management services must be regularly reviewed by a Shariah advisor to ensure Shariah compliance. The SC sets out rules applicable to Islamic VC and PE funds and other Islamic products in the capital markets under the *Guidelines on Islamic Capital Market Products and Services.*

Regulations against money laundering, terrorism financing and proliferation financing (AML/CFT)

VC and PE firms should observe laws to prevent money laundering and terrorism financing, and to counter proliferation financing. The *Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001* (AMLA) is the primary statute governing AML/CFT policies in Malaysia. While VC and PE firms are not reporting institutions, VC and PE firms are encouraged to incorporate relevant internal processes and policies that are in line with SC's *Guidelines on Prevention of Money Laundering and Terrorism Financing for Reporting Institutions in the Capital Market* applicable to licensed capital market intermediaries.

It should be noted that VC and PE firms must comply with requirements under the *Guidelines on Implementation of Targeted Financial Sanctions Relating to Proliferation Financing for Capital Market Intermediaries* (TF/PF Guidelines). This includes keeping up to date on targeted financial sanctions in relation to proliferation financing and screening new, existing and potential clients against sanctions list under UN Security Council resolutions (UNSCR).

Regulations and guidance for capital market intermediaries on anti-money laundering and measures against terrorist and proliferation financing are available on SC's website.

Sustainable and responsible investment (SRI) funds and sustainability best practices

VC and PE funds seeking to offer SRI labelled fund are required to apply to the SC and demonstrate that the fund meets requirements as set out in the relevant guidelines.

In this regard, the SC has set out requirements on fund products, including VC and PE funds, seeking to be labelled as SRI Funds under the *Guidelines on Sustainable and Responsible Investment Funds* (SRI Fund Guidelines). SRI Funds are required to include detailed information on its sustainability policies and investment strategies in its disclosure documents. SRI Funds are also required to include sustainability matters in their annual and interim reports issued to investors.

The SC has also made available the SRI Guide for Private Markets. This document is intended to provide general guidance specifically to VC and PE firms and recognised market operators on incorporating sustainability considerations in the investment and due diligence process. Guidance provided through this document is voluntary and intended to help VC and PE firms adopt sustainability considerations in their investment operations.

Advertising and promotional activities

The *Guidelines on Advertising for Capital Market Products and Related Services* sets out a general framework with respect to advertising and promotional activities of capital market products and services. These guidelines outline policies on advertisements, other than disclosure documents, in all forms including digital and print. This guideline is applicable to all persons carrying out regulated activities under CMSA, including VC and PE firms.

Further reading

- Guidelines on the Registration of Venture Capital and Private Equity Corporations and Management Corporations
- Guidelines on Categories of Sophisticated Investors
- Guidelines on Conduct for Capital Market Intermediaries
- Guidelines on Islamic Capital Market Products and Services
- Guidelines on Prevention of Money Laundering and Terrorism Financing for Reporting Institutions in the Capital Market
- Guidelines on Implementation of Targeted Financial Sanctions Relating to Proliferation Financing for Capital Market Intermediaries
- Guidelines on Sustainable and Responsible Investment Funds
- Guidelines on Advertising for Capital Market Products and Related Services
- SRI Guide for Private Markets

This page is intentionally left blank.

PART 2

Fund Structuring

PART 2
FUND STRUCTURING

Generally, a VC or PE fund may be formed as:

(a) an onshore fund in Malaysia structured as a private company under the *Companies Act 2016* of Malaysia; or

(b) as a fund entity formed under the laws in Labuan IBFC.

In practice, a VC or PE fund may also be formed offshore in other jurisdictions. However, for the purposes of this guide, we will only cover common legal entities under Malaysian laws.

For ease of reference, Appendix 1 outlines comparisons of these fund structures.

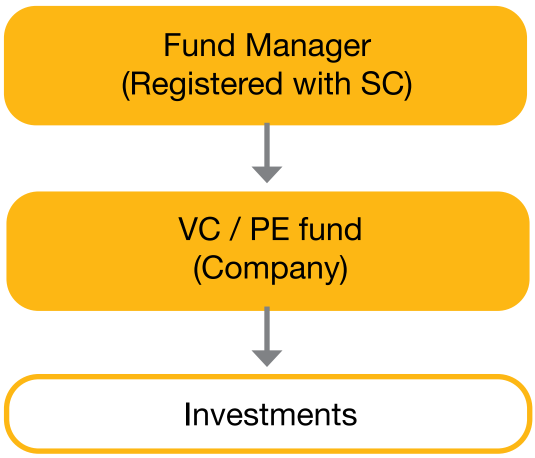
2.1 Fund Vehicles and Structures

Private Company

A typical onshore private company fund structure is as below:

DIAGRAM 1

Fund structure using a company legal structure as a VC or PE fund



In an onshore fund set up, a special purpose private company limited by shares is usually formed under the *Companies Act 2016.* The VC or PE fund shall hold the investments and manages the investment by making deployment by purchasing securities of portfolio investments i.e. venture companies or startups.

The VC or PE fund company's shareholding structure will consist of two primary types:

Ordinary shareholder

This share class is reserved for the management team of the VC or PE firm. The ordinary shareholders have the right to participate in day-to-day fund management activities, vote, and make investment decisions.

Preference shareholder

Investors or clients of a VC or PE firm subscribe to preference shares issued by the VC or PE fund. Depending on the agreement by the VC or PE firm, additional capital commitments from new or existing investors may also include subscription of the same class of shares. The exact preference shareholding will be determined by each investor's contribution amount, ultimately establishing the shareholding of each participant after the fundraising is closed.

This shareholder class has the right to participate in dividends and holds priority rights to claims on company assets in the event of company liquidation. However, they generally do not participate in the day-to-day operations or have the rights to be involved in investment decisions, unless otherwise agreed.

Further, as a preference shareholder, the features and characteristics of the rights of the preference shareholder shall be enshrined and reflected in the constitution, a statutory document governing the relationships among the shareholders in the VC or PE fund, restrictions on the transfer of shares, the requirements for the conduct and proceedings of the general meetings and terms dealing with the appointment and removal of directors. The constitution shall also be lodged with the Companies Commission of Malaysia by the company secretary of the VC or PE fund.

Board of Directors

The VC or PE fund must designate a board of directors to oversee the governance of the structure. The Board has a fiduciary duty to act in the best interests of the fund and its investors and ensuring that decisions made are in accordance with the fund's objectives and strategies and are fair to the investors. They provide oversight in ensuring the fund complies with the relevant jurisdictions' applicable regulations.

Typically, the board will consist of the representative of the VC or PE firm. The investors will form an advisory board to oversee the investment activities of the fund.

Labuan Limited Partnership

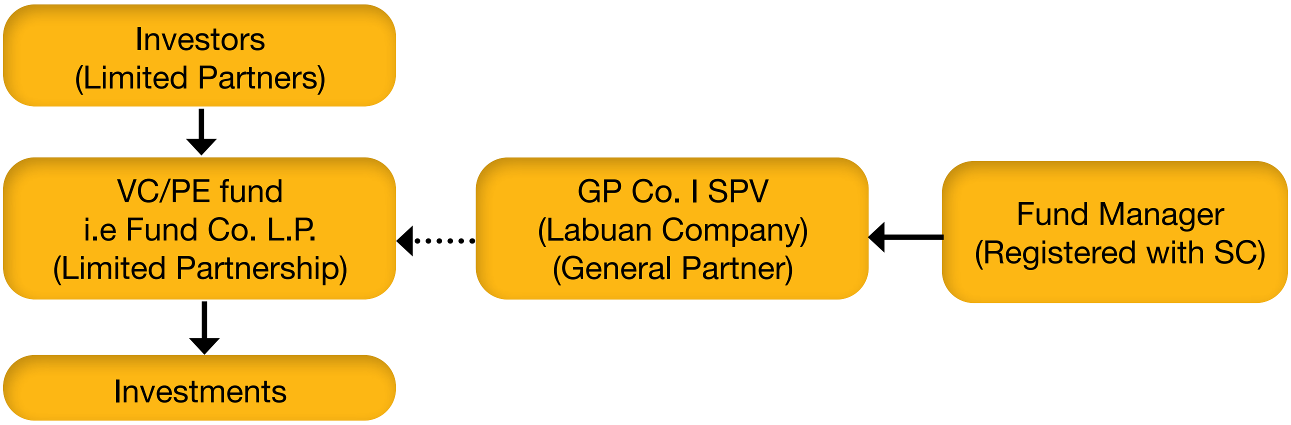
A VC or PE fund may also be formed as a Labuan limited partnership under the Labuan Limited Partnerships and *Limited Liability Partnerships Act 2010*.

A Labuan limited partnership legally distinguishes between a general partner role (i.e. the fund manager) and the limited partners (i.e. the investors committing capital into the VC or PE fund set up as a Labuan limited partnership).

Depending on the business and structuring requirements, another special purpose entity may also be formed as a Labuan company to act as the general partner in the Labuan limited partnership, whereas the investors may be the limited partners of the said Labuan private fund.

DIAGRAM 2

Fund structure using a limited partnership legal structure as a VC/ PE fund



Where the fund is formed as a limited partnership, other transaction and investment documents shall include:

(a) **a limited partnership agreement** between the limited partnership, the general partner and the limited partners to set out the rights and obligations of each of the partners in the limited partnership;

(b) **a management agreement** between the limited partnership and the general partner (i.e. VC or PE fund manager, or its affiliate SPV) regarding the terms upon which the VC or PE fund manager shall manage the VC or PE fund and its assets; and

(c) **subscription agreement** between the limited partnership and the limited partner (i.e. the investor) to set out the agreement by the investor in making a capital commitment to the fund.

Kindly note that considering the set-up is domiciled in Labuan, other requirements under the Labuan FSA may also be applicable on the said VC or PE fund set up. For instance, it is a requirement for a written notification to be made by the Labuan private fund including lodgement of an information memorandum (this is usually facilitated by a Labuan trust company).

From a fund structuring perspective, Labuan offers other structuring options including a Labuan company, partnership, protected cell company, foundation, unit trust or a corporation incorporated under the laws of any recognised country or jurisdiction, who is a member of International Organization of Securities Commissions (IOSCO). For further details regarding the fund vehicles and structures available in Labuan, please refer to the *Guidelines on the Establishment of Labuan Mutual Funds including Islamic Mutual Funds* issued by Labuan FSA.

Labuan mutual fund

Labuan Financial Services and Securities Act 2010 (LFSSA) and *Labuan Islamic Financial Services and Securities Act 2010* define mutual fund as:

(a) collect and pool funds for the purpose of collective investment with the aim of spreading investment risk; and

(b) issue interests in a mutual fund which entitles the holder to redeem his investments that is agreed upon by the parties and receive an amount computed by reference to the value of a proportionate interest in the whole or part of the net assets of the aforesaid types of entities, as the case may be,

and include an umbrella fund in which interests in a mutual fund or units are split into a number of different class funds or sub-funds and whose participants are entitled to exchange rights in one part for rights in another.

TABLE 1

Types of Labuan mutual funds

	Private mutual funds	Public mutual funds
Investor limits	• **Maximum of 50 investors** if first time investment by each investor is no less than RM 250,000 (or equivalent in foreign currency); or • **No limits if first time investment** by each investor is no less than RM 500,000 (or equivalent in foreign currency).	No restrictions
Offering restrictions	Cannot be offered to general public.	Offered to any member of general public.
Product registration or notifications	No approval required from Labuan FSA. Notification to Labuan FSA prior to launching of fund by submission of fund offering documents.	Funds must be registered with Labuan FSA before commencement of business.
Licensing requirements	Fund manager need not be licensed.	Fund manager, other than authorised manager of mutual fund in recognised country permitted by the Labuan FSA or a bank licensee, needs to be licensed.
Other requirements	None	• Must appoint fund manager, trustee/ custodian and fund administrator that are licensed or otherwise authorised by Labuan FSA. • Must appoint an approved auditor in Labuan.
Fees	Lodgement fee to Labuan FSA for each information memorandum is US$600.	• Registration fee to Labuan FSA for each prospectus is US$600. • Annual license fee of US$600. • Subsequent payment of annual license fee is payable by 15 January of each year.

Closed or open-ended investment companies

Investment Company is a company engaged in the business of investing the pooled capital of investors in financial securities. This is most often done either through a closed-end fund or an open-end fund.

Investment companies are business entities, both privately and publicly owned, that manage, sell, and market funds to the public. They typically offer investors a variety of funds and investment services, which include portfolio management, recordkeeping, custodial, legal, accounting and tax management services.

Note that Investment Company can be public company limited by shares or private company limited by shares.

Special Purpose Vehicles (SPV)

SPVs are corporate vehicles private companies established for a variety of purposes, including to isolate financial and legal risk by ring-fencing assets and liabilities. SPVs can be established as subsidiaries, project or joint venture vehicles to ensure that only those assets linked to a related transaction are exposed to the liabilities associated with that transaction. The key feature of an SPV is its separate legal personality, therefore claims by the SPV's creditors cannot be attached to the assets of the SPV's shareholders or any related companies.

Master-feeder structures

VC or PE fund managers may consider structuring using a combination of offshore and onshore vehicles. These funds may also take the form of 'master-feeder' or 'fund of fund' structures where it generally comprises of a feeder fund and a master fund. A feeder fund is an investment pooling vehicle into which investors would invest their moneys. The feeder fund would then invest all or substantially all of its assets into a master fund, which is the investment holding company that would in turn make the investments.

2.2 Fund Documentation

Where the fund is formed as an offshore fund company, other transaction and investment documents shall include:-

(a) a shareholders agreement between the VC or PE fund, the ordinary shareholder (i.e. the VC or PE fund manager) and the preference shareholders (i.e. the investors) to set out the rights and obligations of each of the shareholders in the company;

(b) a fund management agreement between the VC or PE fund, and the fund manager (i.e. VC or PE fund manager, or its affiliate SPV) regarding the terms upon which the fund manager shall manage the VC or PE fund and its assets; and

(c) a subscription agreement between the VC or PE fund, and the preference shareholder (i.e. the investor) to set out the agreement by the investor in making a capital commitment to the VC or PE fund.

In addition to the above, other key documents involved in the formation of a fund include, but are not limited to the following:

(a) Constitution of the Fund;

(b) Fund Administration Agreement;

(c) Information Memorandum (or Private Placement Memorandum);

(d) Limited Partnership Agreement; and

(e) Board Resolution.

In addition to the aforementioned, there may be other documentation that are required based on the specific circumstances of each case. It is advisable for the legal counsel to engage in proactive discussions with the fund manager to anticipate and address these needs and ensuring alignment with the commercial objectives of the fund.

PART 3

Foreign Exchange Policy

PART 3
FOREIGN EXCHANGE POLICY

3.1 Introduction

The foreign exchange policy (FEP) forms part of BNM's broader prudential toolkit to ensure monetary and financial stability. The FEP safeguards the balance of payments position and value of the Malaysian ringgit, while supporting competitiveness of the economy through facilitation of a more conducive environment for cross-border real economic activities.

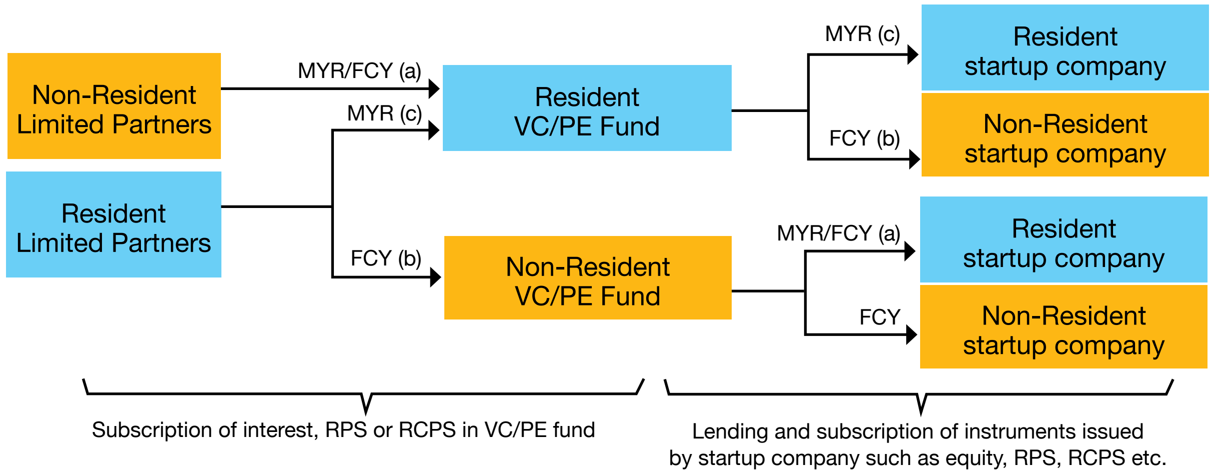
The FEP Notices are administered by BNM under the *Financial Services Act 2013* (FSA) and *Islamic Financial Services Act 2013* (IFSA) which sets out the direction for external stakeholders (i.e., individuals, businesses, corporations, banks or government agencies), as well as financial institutions on the transactions that are allowed by BNM which otherwise are prohibited under Schedule 14 of FSA and IFSA. The FEP Notices shall be read together with the Declaration on Entities Created, Incorporated, etc. in Labuan and the Direction on Dealings with Specified Person and in Restricted Currency.

Malaysia generally maintains a liberal FEP regime that supports efficient movement of capitals for cross-border transactions. However, a person or entity must obtain approval from BNM to undertake or engage in any transactions that are not allowed by BNM under any of the Notices.

Further details of the FEP are available at https://www.bnm.gov.my/fep.

3.2 Applicable FEP rules to PE Firms

DIAGRAM 1
Flowchart on the VC or PE ecosystem[2]



Note: RPS / RCPS is deemed as borrowing under the FEP.

Note: For purposes of this Part, the foregoing words are abbreviated as follows: Malaysian ringgit (MYR), foreign currency (FCY), redeemable preference shares (RPS) and redeemable convertible preference shares (RCPS).

[2] The flowchart is intended to illustrate the common business model of a VC/ PE firm. However, it is non-exhaustive.

The table below provides the summarised FEP rules applicable to VC/PE players. However, the table shall be read together with the FEP Notices and other related documents including the Preamble and Interpretation document available on the FEP website for better interpretation and comprehensive understanding of the FEP rules.

FEP rules	Applicable Scenario
1. Non-residents investing into Malaysia	**Scenario (a)**

- Non-residents are free to invest in any type of MYR or FCY assets in the form of direct investment or portfolio investment.
- Non-residents are free to repatriate divestment proceeds, profits, dividends or any income arising from investments in Malaysia in FCY.

2. Onshore and Offshore Borrowing[3] (Notice 2)	**Scenario (a)**

- **Borrowing in FCY**
  - ▶ Resident entities are free to borrow **any amount** of FCY borrowing from:–
    - (i) Licensed onshore banks;
    - (ii) Resident and non-resident companies within their corporate group;
    - (iii) Resident and non-resident direct shareholders; and
    - (iv) Other residents via the issuance of FCY denominated debt securities.
  - ▶ Resident entities are free to obtain FCY borrowing from non-resident financial institutions and non-resident entities outside their group up to a prudential limit of **RM100 million** eq. in aggregate on a corporate group basis.

  Applicants requiring approval for FCY borrowing from non-residents exceeding RM100 million eq. may submit Form OB-NR via this Website.

- **Borrowing in MYR**
  - ▶ Resident entities are free to obtain MYR borrowing of any amount from:–
    - (i) non-resident entities within their group and non-resident direct shareholders to finance activities in the real sector in Malaysia; or
    - (ii) any non-resident via the issuance of redeemable preference shares for use in Malaysia or corporate debt securities (excluding non-tradable corporate debt securities issued to non-related non-resident entities or non-resident financial institutions).

  Applicants requiring approval for issuance of RPS to non-residents (for use outside Malaysia) may submit Form OB-RPS via this Website.

  - ▶ Resident entities may borrow up to RM1 million in aggregate from any non-resident (excluding financial institutions) for use in Malaysia.

3. Investment in FCY assets (Notice 3)	**Scenario (b)**

- Residents without domestic MYR borrowing[4] are free to undertake any amount of investment in FCY asset onshore or abroad.
- Resident entities with domestic MYR borrowing are free to undertake investment in FCY asset onshore or abroad up to a prudential limit of RM50 million eq. in aggregate per calendar year on a corporate group basis using funds sourced from:
  - ▶ Conversion of MYR into FCY;
  - ▶ Trade Foreign Currency Account (FCA);
  - ▶ FCY borrowing obtained from a licensed onshore bank for purposes other than direct investment abroad; or
  - ▶ Swapping of a financial asset in Malaysia for a financial asset outside Malaysia.

Applicants requiring approval for investment in FCY assets above the permissible limit may submit Form IA-EQ / IA-LNR / IA-OT, depending on the instrument, via FEP Website.

---

[3] Redeemable preference shares (conventional or Islamic) are deemed as Borrowing under the FEP Notices. Please refer to the definition of Borrowing in the Preamble and Interpretation document for clarity.

[4] 'Domestic MYR borrowing' refers to any MYR borrowing obtained by a resident from another resident, or any obligation considered or deemed as domestic MYR borrowing under any of the FEP Notices. Please refer to Preamble and Interpretation for further clarity on the definition of Domestic Ringgit Borrowing.

FEP rules	Applicable Scenario
4. Payment in ringgit	**Scenario (c)**
• Residents are free to make or receive payments in MYR to or from other residents in Malaysia for any purpose. Payment in FCY between residents is allowed for specific purposes only as per paragraph 4 of Notice 4, available at FEP Website.	
5. Dealings with Specified Persons and in Restricted Currency	
• Any person in Malaysia is prohibited from undertaking or engaging in any dealing or transaction involving the State of Israel, its residents (including entities directly owned by them) or in the Israeli Shekel Currency. Further details of this prohibition are outlined in this document *Direction on Dealings with Specified Persons and in Restricted Currency.*	

3.3 Application Procedures

To facilitate better services to external stakeholders, BNM provides an online platform for submission of applications, compliance reports and enquiries through the *FEP Website* through a workflow management system known as the FEP Portal.

Submission of application

Residents and non-residents shall apply for approval from BNM prior to undertaking approval-based transactions by submitting online application forms through the *FEP Portal.*

Applicants may refer to the *guide* on the submission of application, which includes the relevant forms and supporting documents required.

Supporting information/ document

Details on the investment proposal including but not limited to, mode of investment (equity or lending), expected timeline of the capital call, expected minimum lock-in period, source of funding, utilisation of proceeds by the investee, flow of funds, and benefits to Malaysia (for investment abroad).

Other supporting information or document include minutes of the meeting capturing the decision on the investment plan.

Timeline

The approval process will require 14 business days upon receipt of full information. Applicants will be promptly notified of the outcome of the application, including any requests for additional information.

3.3 Frequently Asked Questions (FAQ)

(a) I have a foreign VC investing into my Malaysian company in foreign currency. Are there any restrictions for me to remit foreign currency funds from abroad?

There is no restriction for non-residents to invest in any type of MYR or FCY assets in the form of direct investment or portfolio investment in Malaysia.

A non-resident that intends to convert their FCY funds to MYR can do so with any Licensed Onshore Banks (LOB) or Appointed Overseas Office (AOO). However, resident entities shall observe relevant FEP Notices and prudential limit for borrowing in foreign currency or ringgit from non-residents, if applicable.

(b) If my Malaysian company own a subsidiary overseas, would I be subject to restrictions under FEP if I remit funds to my overseas subsidiary?

Under the prevailing FEP, capital injection or lending to a non-resident subsidiary is deemed as a form of investment in FCY asset. A resident entity without domestic MYR borrowing is free to invest in foreign currency assets up to any amount.

Meanwhile, a resident entity with domestic MYR borrowing can invest in FCY assets up to RM50 million equivalent per calendar year. Prior approval from BNM is required if the investment amount exceeds the limit and applications can be submitted via *FEP Website*. Domestic MYR borrowing refers to any borrowing in MYR obtained by a resident from another resident. Please refer to *Preamble and Interpretation* for further clarity on the definition of Domestic Ringgit Borrowing.

(c) It is common for funds incorporated onshore in Malaysia to issue RPS to investors. Similarly, equity deals are typically structured using RPS. Will the RPS be deemed to be an equity instrument instead of a borrowing and will the RPS issuance be subject to approval processes under the FEP?

For the purpose of FEP, RPS is considered as a borrowing. For the case of MYR RPS, resident entities are free to issue RPS of any amount in MYR to any non-resident for use in Malaysia.

FCY RPS is subject to the FCY borrowing rules, where resident entities can issue FCY RPS up to a prudential limit of **RM100 million** equivalent in aggregate on a corporate group basis to any non-residents.

Applicants requiring approval for the following may submit their application via *FEP Website*:

- issuance of MYR RPS where proceeds are not for use in Malaysia (Application Form OB-RPS); or
- FCY borrowing exceeding RM100 mil equivalent (Application Form OB-NR).

(d) My fund is structured using a Labuan vehicle (e.g. Labuan Limited Partnership). Am I subject to FEP restrictions when dealing with resident clients or making investments in resident entities?

All Labuan entities are deemed as non-residents under the FEP.

There is no restriction for non-residents to invest in any type of MYR or FCY assets in the form of direct investment or portfolio investment in Malaysia. Non-residents are also free to repatriate divestment proceeds, profits, dividends, or any income arising from the investments in Malaysia, and such repatriation must be made in FCY. Nonetheless, resident entities shall observe the prudential limit for borrowing in FCY or MYR from non-residents, if applicable.

In addition, resident entities investing in or via Labuan is subject to investment in foreign currency assets rules. Please refer to (b).

(e) VC and PE funds issue capital calls to draw capital from investors for both investments and management fee charges. Is FEP approval required for these capital calls to resident clients?

Capital call for investment purposes is subject to investment in FCY assets rules. Please refer to (b).

Given the nature of capital call which is drawn upon on an as-needed basis, resident entities are advised to seek approval from BNM in advance upon committing to such investment. However, a resident entity is free to make payment in foreign currency to a non-resident for the capital calls relating to management fee charges.

3.3 Other Matters

For the purpose of efficiency in facilitating the application, applicants are encouraged to seek early engagement with BNM prior to submission of application.

Alternatively, for enquiries FEP matters, applicants may refer to the FAQ of the Notices available on *FEP Website* or submit queries via *FEP online enquiry system*.

Should technical assistance be required on the FEP Portal, please contact:

FEPinfo@bnm.gov.my

+6 (03) 2698 8044 extensions 8982 / 7351

PART 4

Tax Matters

PART 4
TAX MATTERS

4.1 Taxation in Malaysia (other than Labuan)

Taxation of the fund vehicle

Generally, Malaysian income tax is chargeable on income accruing in or derived from Malaysia and, from 1 January 2022, foreign sourced income received in Malaysia from outside Malaysia. From 1 January 2024, certain capital gains may also be subject to tax.

Foreign-sourced income (FSI) received in Malaysia will be taxed at the prevailing tax rate(s) of the taxpayer and based on applicable tax rules. Nevertheless, bilateral or unilateral tax credits may be allowed if the same income has suffered foreign tax, and where relevant conditions are met.

Based on the *Income Tax (Exemption) (No. 6) Order 2022 [P.U.(A) 235/2022]*, exemption is given to a 'qualifying person'[5] from the payment of income tax in respect of foreign-sourced dividend income received in Malaysia, effective from 1 January 2022 to 31 December 2026. However, the exemption will not apply to a person carrying on the business of banking, insurance or sea or air transport.

Further, Section 6 of the *Income Tax Act 1967* (ITA) states that income tax shall be charged for each year of assessment (YA) on the chargeable income for each person, as specified in Part I of Schedule 1 of ITA. Part I of Schedule 1 of ITA sets out the applicable tax rates.

If a Malaysian tax-resident VC or PE fund is not eligible for the tax exemption under the *Income Tax (Exemption) (No.2) Order 2022 [P.U.(A) 115/2022]*, it would be subject to tax at the following tax rates:

Malaysian income tax rates	
A company with paid-up capital in respect of ordinary shares of not more than RM2.5 million (at the beginning of the basis period for the year of assessment) and gross income from a source or sources consisting of a business not exceeding RM50 million for the basis period for the YA[6,7]	• First RM150,000 of chargeable income @ 15% • Next RM450,000 of chargeable income @ 17% • Chargeable income in excess of RM600,000 @ 24%
A company with paid up capital in respect of ordinary shares of more than RM2.5 million at the beginning of the basis period for the YA	24%

---

5 "Qualifying person" in this context means a person resident in Malaysia who is—
(a) An individual who has dividend income received in Malaysia from outside Malaysia in relation to a partnership business in Malaysia;
(b) A limited liability partnership which is registered under the *Limited Liability Partnerships Act 2012*; or
(c) A company which is incorporated or registered under the *Companies Act 2016*.

6 A company would not be eligible for the concessionary tax rate on the first RM600,000 of chargeable income if:-
(a) more than 50% of the paid-up capital in respect of the ordinary shares of the company is directly or indirectly owned by a related company which has paid-up capital in respect of ordinary shares of more than RM2.5 million at the beginning of a basis period for a year of assessment;
(b) the company owns directly or indirectly more than 50% of the paid-up capital in respect of the ordinary shares of a related company which has paid-up capital in respect of ordinary shares of more than RM2.5 million at the beginning of a basis period for a year of assessment;
(c) more than 50% of the paid-up capital in respect of the ordinary shares of the company and a related company which has a paid-up capital in respect of ordinary shares of more than RM2.5 million at the beginning of a basis period for a year of assessment is directly or indirectly owned by another company.
(d) more than 20% of the paid-up capital in respect of the ordinary shares of the company at the beginning of a basis period for a year of assessment are directly or indirectly owned by one or more companies incorporated outside Malaysia or by one or more individuals who are not citizens of Malaysia (effective from YA2024).

7 The above excludes a business trust and a company which is established for the issuance of asset-backed securities in a securitisation transaction approved by the SC.

Taxation on investors

Dividend income

Dividends paid by Malaysian tax-resident companies are exempt from Malaysian income tax, irrespective of whether the dividends are paid to Malaysian residents or non-residents. Further, Malaysia does not impose dividend withholding tax.

Divestment gains from the disposal of shares

(a) Malaysian tax resident investors

The Malaysian tax treatment of divestment proceeds would depend on whether the gains are income in nature or capital in nature. If they are of a capital nature, then no tax would apply, unless the disposer is a company, limited liability partnership, co-operative body or trust body, in which case capital gains tax may apply unless exempted – see further discussion on introduction of income tax on Capital Gains below. However, different rules may apply for individuals disposing of shares in a real property company as defined under the *Real Property Gains Tax Act 1976* (RPGTA) – these are not discussed in this document.

For gains of a revenue nature (e.g. where the gains are earned by a share trader), the tax rates below would apply:

Malaysian tax resident	Malaysian income tax rates
Individual	Progressive tax rates ranging from 0% to 30%*
A company with paid-up capital in respect of ordinary shares of not more than RM2.5 million (at the beginning of the basis period for the year of assessment) and gross income from a source or sources consisting of a business not exceeding RM50 million for the basis period for the YA	• First RM150,000 of chargeable income @ 15% • Next RM450,000 of chargeable income @ 17% • Chargeable income in excess of RM600,000 @ 24%
A company with paid up capital in respect of ordinary shares of more than RM2.5 million at the beginning of the basis period for the YA	24%

** Please refer to the table below for the tax rates for individuals.*

Chargeable Income	Calculations (RM)	Rate %	Tax (RM)
0 – 5,000	On the First 5,000	0	0
5,001 – 20,000	On the First 5,000 Next 15,000	1	0 150
20,001 – 35,000	On the First 20,000 Next 15,000	3	150 450
35,001 – 50,000	On the First 35,000 Next 15,000	6	600 900
50,001 – 70,000	On the First 50,000 Next 20,000	11	1,500 2,200
70,001 – 100,000	On the First 70,000 Next 30,000	19	3,700 5,700
100,001 – 400,000	On the First 100,000 Next 300,000	25	9,400 75,000
400,001 – 600,000	On the First 400,000 Next 200,000	26	84,400 52,000
600,001 – 2,000,000	On the First 600,000 Next 1,400,000	28	136,400 392,000
Exceeding 2,000,000	On the First 2,000,000 Next Ringgit	30	528,400

(b) Non-Malaysian tax resident investors

Non-Malaysian tax resident investors would typically not be subject to tax on the disposal of shares in Malaysian companies, unless such gains are earned through a business presence in Malaysia or where capital gains tax applies. Different rules may apply for individuals disposing of shares in a real property company as defined under the RPGTA - these are not discussed in this document.

For completeness, the tax rates applicable to non-residents are generally as follows:

Non-Malaysian tax resident (Note)	Malaysian income tax rates
Individual and non-corporate	30%
Corporate taxpayer	24%

Note:
Non-resident taxpayer may be subject to tax in their respective countries depending on the provisions of the tax legislation in the respective countries and any existing double taxation arrangements with Malaysia.

Sales and Services Tax (SST)

Service Tax at the rate of 6% or 8% is charged on certain prescribed taxable services performed by taxable persons as stipulated under *Service Tax Regulations 2018*. Any service tax incurred is not recoverable and will form a cost element for businesses.

Currently, management services provided by asset and fund managers who are licensed or registered with the SC for carrying out the regulated activity of fund management under the CMSA, are specifically excluded from the scope of Service Tax.

Hence, if the fund incurs expenses such as management fees, performance fee and other administrative charges charged by persons other than licensed asset / fund managers, these may be subject to 8% service tax provided they fall within the scope of service tax (i.e. are provided by a 'taxable person', who exceeds the required annual threshold (in most cases RM500,000 per annum) and the services qualify as 'taxable services').

Introduction of income tax on Capital Gains (typically referred to as Capital Gains Tax or 'CGT')

Effective 1 January 2024, a company, a limited liability partnership, a trust body and a co-operative society will be subject to CGT on the following:

(a) Disposal of shares of a company incorporated in Malaysia not listed on the stock exchange (including any rights or interests thereof) and shares of a foreign controlled company (foreign company), where the foreign company directly or indirectly owns real property in Malaysia exceeding certain thresholds, as determined based on the parameters of the law.

(b) Disposal of all capital assets (movable or immovable property) situated outside Malaysia including any rights or interest thereof, where the gains are received in Malaysia.

However, gains or profits from the disposals of shares under item (a) above will be exempted from tax, if the disposal takes places between 1 January and 29 February 2024. Hence, CGT will only be payable on such disposals from 1 March 2024. Gains from disposal of capital assets situated outside Malaysia will be exempted from tax from 1 January 2024 to 31 December 2026, subject to economic substance requirements being met.

The CGT rates are as follows:

Description	CGT rates
Disposal of shares under item a) above which were acquired before 1 January 2024	Taxpayer can elect to pay CGT at: i) 10% of chargeable income from disposal; or ii) 2% of gross proceeds from disposal
Disposal of shares under item a) above which were acquired on or after 1 January 2024	10% of chargeable income from disposal
Disposal of foreign capital asset	Prevailing tax rate of the disposer (e.g., generally 24% if the disposer is a Malaysian company) on chargeable income

Impact of CGT to the VC investment and investors participating in VC funds

A VC or PE fund, or investors who are a company, a limited liability partnership, a trust body or a co-operative society, who invest in an investee corporation and thereafter dispose of the shares in a transaction of a capital nature, may be subject to CGT, unless exempted.

CGT exemptions

In the Budget 2024 speech, it was indicated that the Government is considering exemptions for share disposals in connection with venture capital related investments as well as in other specified circumstances, subject to stipulated conditions. At the time of writing, legislation on these proposed exemptions is still in progress.

Stamp duty

Stamp duty is imposed on the execution of certain instruments which are chargeable with duty as specified in the First Schedule of the *Stamp Act 1949* (SA) and not upon a transaction. An instrument is defined as any written document instrument. Effective 1 January 2024, the word 'written' document under the SA now includes any handwriting, typewriting, printing, electronic record or transmission which is in an electronically readable form.

Generally, stamp duty is applicable to VCC in Malaysia when it executes instruments which trigger stamp duty liability (as set out in the First Schedule of the SA), such as the instruments of transfer of shares or properties, or loan agreements.

Instruments executed in Malaysia which are chargeable with duty must be stamped within 30 days from the date of execution. When the instruments are executed outside Malaysia, it must be stamped within 30 days after it has first been received in Malaysia. Effective 1 January 2024, in the case where the instrument is received by way of electronic transmission, the date of receipt thereof is to be verified by the production of a copy or print out of the electronic transmission.

4.2 Tax Incentives

Tax exemption for a qualifying VC fund (referred to as 'venture capital company' or 'VCC')

Income Tax (Exemption) (No.2) Order 2022 [P.U.(A) 115/2022] provides that a VCC is exempted from the payment of income tax in respect of statutory income on all sources of income, other than interest income arising from savings or fixed deposits and profits from Shariah-based deposits,

- Commencing from the YA the VCC obtains its first certification from the SC.
- The first certification received shall not be later than 31 December 2026.

Exemption period

The exemption shall be for a period of five YAs or the YAs equivalent to the remaining life of the fund established for the purpose of investing in start-ups, whichever is lesser.

The exemption applies from YA 2018.

Conditions to qualify for the tax exemption

For each YA in the exemption period the VCC shall obtain a certification from the SC confirming that:

(a) It has invested at least 50% of its invested funds in the form of seed capital financing, start-up financing, early-stage financing or any combination of such financing in qualifying start-ups (referred to as 'venture companies');

(b) It was registered with the SC between 27 October 2017 and 31 December 2023; and

(c) It has not invested in a venture company which is a related company[8] of the VCC at the point the first investment is made.

Loss from disposal of investments

Where a VCC incurs a loss from the disposal of investment in a venture company for any YA within the exemption period, the loss can be carried forward to the YA following the post-exemption period and to be deducted against the statutory income on all sources of income.

Savings provisions upon revocation of Order

A VCC that has been granted an exemption under the repealed Order, *Income Tax (Exemption) (No. 11) Order 2005* [P.U.(A) 75] will continue to enjoy the exemption for the remaining YAs of the relevant exemption period.

Tax exemption for VC Management Company (VCMC)

Income Tax (Exemption) (No.3) Order 2022 [P.U.(A) 116/2022] provides that a VCMC is exempted from the payment of income tax in respect of the following statutory income derived from the management of VCC that has been certified by SC for tax exemption under P.U.(A) 115/2022:

(a) Share of profits;
(b) Management fees; and
(c) Performance fees (including performance bonus and carried interest).

The income received by the VCMC from a VCC is to be stipulated in the agreement on the management of the investments of the VCC, entered into by both parties.

Exemption period

The exemption applies from YA 2018 to YA 2026.

Losses in the exemption period

If VCMC incurs losses from the management of VCC fund within the exemption period, the losses can be carried forward to the post-exemption period, to be deducted against the statutory income derived from management of VCC fund (as specified above).

[8] As defined under Section 2(1) of the *Promotion of Investments Act 1986* (PIA).

Separate account

- VCMC is required to maintain a separate account for income derived from the management of VCC fund (as specified above).
- The income derived from the management of VCC funds is to be treated as a separate and distinct source of business income for the VCMC.

Savings provisions upon revocation of Order

A VCMC that has been granted an exemption under the repealed Order, the *Income Tax (Exemption) (No. 12) Order 2005* [P.U.(A) 77/2005] will continue to enjoy the exemption for the remaining YAs of the relevant exemption period.

Tax deduction for Investors

Income Tax (Deduction for Investment in a Venture Company or Venture Capital Company) Rules 2022 [P.U.(A) 117/2022] provides that in ascertaining the adjusted income of a company or an individual from its business for a YA, there shall be allowed a deduction equivalent to the:

(a) Value of investment made in a venture company, or

(b) Value of investment or RM20 million, whichever is less, made in a VCC.

The investment made shall be deemed to be incurred (and allowed a deduction) in the YA the investment has been held for a period of three years from the date the investment was made. The investment holding period is to be certified by the SC.

Effective date

The deduction rules are effective from YA 2018.

Conditions to qualify for the tax deduction

Conditions to qualify for tax deduction
• The company or individual is required to make the investment between 27 October 2017 and 31 December 2026.
• The investment is in the form of the holding of shares, which at the point of acquisition was not listed for quotation on the official list of a stock exchange.
• The investment was held for at least three years from the date the investment was made.

Conditions to qualify for tax deduction	
Specific conditions for investments in a venture company	**Specific conditions for investments in a VCC**
• The investment, in relation to a company, was not made in a venture company which is its related company at the point the first investment was made; and • The investment was made by providing seed capital financing, start-up financing or early-stage financing.	• (i) The investment, in relation to a company, was not made in a VCC which is its related company at the point the first investment was made; and (ii) The investment by the VCC (referred to in Point (i) above) is not made in a VC which is a related company of the first-mentioned company. • Investment was made by the VCC in a venture company by providing seed capital financing, start-up financing or early-stage financing; and • The VCC has maintained, on average over a three-year period (based on its annual audited financial statement), at least 50% of the VCC's investments in one or more venture companies.

Savings provisions upon revocation of Order

Any company or individual who has made an investment for the YAs before YA 2018 and complied with the provisions of the P.U.(A) 117/2022 but has not applied for a deduction under *Income Tax (Deduction for Investment in a Venture Company) Rules 2005* [P.U.(A) 76/2005], is entitled to apply for a deduction under P *P.U.(A) 117/2022.*

Mutually exclusive

This exemption shall not apply to a VCC which is exempted under P.U.(A) 115/2022 (see tax incentive on VCC) for the whole of the tax-exempt period. Both incentives are mutually exclusive.

Venture Capital Investments in High Growth Sectors in Malaysia and the Relevant Government Incentives

Companies/sectors that are steadily gaining momentum and investment due to the high growth potentials in the recent years by Venture Capital investors are technology-based companies/digital-platform/AI-driven companies, healthtech, edtech, biotechnology, Greentech, producing the high-technology products, etc.

The Malaysian Government offers tax incentives to attract investments in the country which includes pioneer status or investment tax allowance for biotechnology companies or Malaysia Digital companies in the form of corporate tax exemptions or investment tax allowances on qualifying capital expenditure. Double tax deductions or grants may be available for companies spending on R&D/high tech projects, etc. These sectors are seeing continued growth and interest, but it is worth noting that Venture Capital companies look at the potential benefits when making investment decisions.

4.3 Taxation in Labuan

Labuan Business Activity Tax Act 1990 (LBATA) governs the imposition, assessment and collection of tax on a Labuan business activity conducted by a Labuan entity in, from or through Labuan. Labuan entities that engaged in non-Labuan business activities are subject to tax under the *Income Tax Act 1967*.

'Labuan business activity' means a Labuan trading or a Labuan non-trading activity carried on in, from or through Labuan, where–

(a) Labuan trading activity includes banking, insurance, trading, management, licensing, shipping operations or any other activity which is not a Labuan non trading activity.

(b) Labuan non trading activity means an activity relating to holding of investments in securities, stock, shares, loans, deposits or any other properties situated in Labuan by a Labuan entity on its own behalf.

Labuan entities engaging in business activities as defined in the *Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulation 2021*, [P.U. (A) 423/2021] (Regulations) must meet substance requirements specified for each activity listed in the Regulations. This compliance enables them to qualify for the preferential tax rate of 3% on audited net profits for Labuan trading activities and 0% for Labuan non-trading activities. Failure to comply will result in the chargeable profit to be taxed at 24% in the year of assessment under the LBATA. Chargeable profit means net profit as reflected in the audited accounts in respect of the Labuan business activity of the Labuan Entity.

Substance Requirements under LBATA

In compliance with section 2B(1)(b) of LBATA, Labuan entities must, for the purpose of conducting Labuan business activities, fulfil the following requirements:

(a) Maintain a sufficient number of full-time employees in Labuan; and

(b) Maintain an adequate level of annual operating expenditure in Labuan, as specified in the Regulations enacted by the Minister under the LBATA.

The Regulations outlines the substance requirements for Labuan trading activities in the first schedule and for Labuan non-trading activities in the second schedule.

Under the second schedule of the Regulations, Labuan non-trading activity is further categorised into two types, namely:

(a) Labuan entities that undertake investment holding activities other than pure equity holding activities; and

(b) Labuan entities that undertake pure equity holding activities.

Pure Equity Holding Activity

- Compliance requires holding at least one board meeting in Labuan annually and spending a minimum of RM20,000 on operating expenses in Labuan each year.

Non-Pure Equity Holding Activity

- Compliance requires employing at least one full-time employee in Labuan and incurring a minimum annual operating expenditure of RM20,000 in Labuan.

Pure equity holding activities involve holding equity participations and earning only dividends and capital gains, while non-pure equity holding activities encompass holding various assets and earning different types of income (e.g., interest, rents, and royalties).

Considering that funds typically engage in investment activities falling under non-trading activities, either in pure equity holding or non-pure equity holding, they must adhere to the Substance Requirements specified in the second schedule.

Other Tax Exemptions offered in Labuan IBFC

Labuan IBFC also offers withholding tax exemption on various type of payments made to a non-resident person or another Labuan Entity, such as interest and technical or management services.

Dividend and interest income received from a Labuan Entity is exempted from income tax.

All instruments executed by Labuan Entities in connection with their **Labuan business activities** are exempted from stamp duty. These instruments include agreements, contracts, and other legal documents related to Labuan business activities. The exemption facilitates cross-border transactions and investments making it more attractive for businesses to operate in Labuan. Labuan entities seeking the exemption must submit the necessary documents to the Inland Revenue Board of Malaysia (IRBM). Applications for assessment of stamp duty for Labuan entities are submitted via the IRBM's **online STAMPS system.**

This page is intentionally left blank.

PART 5

Fund Management Operations

PART 5
FUND MANAGEMENT OPERATIONS

Choosing the jurisdiction for a fund is critical as each jurisdiction offers different frameworks, schemes, regulations, and a range of service providers who will enable the fund and the fund manager to meet their specific objectives and strategies.

The Cayman Islands remains the most popular jurisdiction among fund managers and advisors[9] to set up investment funds. For these investment funds, Malaysia's Labuan, Singapore and Hong Kong are often being considered by fund managers and advisors as onshore fund domiciles, especially within the Asia Pacific Region.

The Malaysian VC and PE fund management landscape is currently niche but poised for growth, buoyed by a well-capitalised financial sector, strategic geographical positioning, and a diverse economy. With its robust economic foundation spanning manufacturing, services, agriculture, and commodities, Malaysia presents a compelling investment proposition within the ASEAN region. Its diversified economic structure mitigates risks associated with overdependence on any single industry, ensuring a stable investment climate.

The Malaysian government demonstrates its dedication to positioning the country as a premier investment destination through a range of incentives, grants, and support initiatives for strategic growth sectors of the economy. These efforts, particularly focused on high-growth sectors like technology, green energy, and the digital economy, underscore Malaysia's commitment to fostering investment opportunities and economic growth.

Labuan, a federal territory of Malaysia, is known for its favourable international financial and business services environment. As an international business and financial centre, Labuan IBFC offers a competitive edge for companies looking to establish themselves in the ASEAN region and beyond. Labuan companies are companies incorporated under the *Labuan Companies Act 1990*. Labuan companies can avail to other types of incentives, such as income tax exemptions (please refer to Section 4.3 of this guide), regulatory framework, operational flexibility, and strategic location, coupled with Malaysia's economic stability and infrastructure, making it uniquely positioned for businesses seeking a base in Asia.

Below is a list of service providers that fund managers will typically work closely with. It should be noted however, whether or not to engage in these external services is up to your discretion as a VC/PE firm.

5.1 Legal Counsel

The legal counsel is responsible for creating the fund documentation for the fund and often guides the fund manager to ensure adherence to the local jurisdiction's requirements.

The following are some key aspects of their role:

(a) Fund Formation and Structuring:

- **Advising on the legal structure:** They advise on the most suitable legal structure for the fund, considering factors such as tax implications, investor preferences, and regulatory requirements.

[9] Private Fund Statistics, SEC Division of Investment Management Analytics Office, published 16 October 2023.

- **Drafting investment and funding agreements / documents:** Upon confirmation of the fund's legal structure, the legal counsel would draft various legal documents like the limited partnership agreement (LP Agreement) for VC funds, which outlines the rights and obligations of the fund manager (general partner) and investors (limited partners). They also draft subscription agreements, carried interest agreements, and other relevant documents.

- **Compliance with regulations:** The legal counsel also helps the fund manager to ensure adherence with the present regulations, including securities laws, AML/CFT regulations, etc. This involves conducting legal due diligence on investors and ensuring proper investor disclosures pursuant to the SC's guidelines.

(b) Investment Structuring:

- **Negotiating investment terms:** During the fund life, lawyers may also be engaged from time to time by the fund to assist in proposing and negotiating the terms of investment with portfolio companies, including the investment amount, valuation, voting rights, and liquidation preferences.

- **Drafting and reviewing investment documents:** Counsel drafts and reviews various agreements for each investment, such as stock purchase agreements, shareholder agreements, and convertible notes. They ensure these documents are legally sound and adequately address potential risks.

(c) Ongoing Support

- **Providing ongoing legal advice:** Lawyers offer ongoing legal advice to the fund manager on various matters, including corporate governance, regulatory compliance, and potential disputes with investors or portfolio companies.

- **Assisting with exits:** Legal counsels assist the fund manager during exits from investments, such as mergers and acquisitions or initial public offerings (IPOs). This involves drafting and reviewing legal documents and ensuring a smooth exit process.

Overall, legal counsel acts as a strategic partner throughout the entire fund lifecycle, from the formation of the fund to exits from investments. They bring their legal expertise to the table, helping navigate the complex legal and regulatory landscape, and ultimately contributing to the success and sustainability of the fund.

5.2 Fund Administrator

The fund administrator's duties include the independent calculation of the fund's net asset value (NAV), maintaining records of all transactions, calculating the management and incentive fees of the fund manager, providing financial information including performance, income and expenses and maintaining certain investor-relation functions relating to the fund (those include but are not limited to maintaining the unitholder register and making the fund's documents available to investors).

Moreover, the Fund Administrator typically serves as the transfer agent - managing investor onboarding, processing investor transactions such as subscriptions, redemptions and distributions, maintaining the share registry, and often acting as a point of contact between the fund and its investors. The Fund Administrator is typically appointed to ensure the Fund and its investors comply with all applicable AML/KYC regulations including periodic review and submissions (refer to Appendix 2 for more details).

Providing multifaceted support, the fund administrator ensures the smooth and compliant operations of the fund.

Typical roles for the Fund Administrator include but not limited to:

(a) Fund accounting pertaining to the fund, maintain records, and ensure compliance to financial reporting standards;

(b) Limited partner reporting that covers periodic fund reporting, investment updates, financial statements, NAV statements;

(c) Cashflow management and capital allocation. Distribution of funds to investors. Management of capital calls and distributions between investors and fund;

(d) Compliance assistance – fund administration also should cover the compliance to terms outline in Limited Partnership Agreement (LPA), shareholders agreement and investment management agreement as required;

(e) Audit support and tax filing; and

(f) Periodic reporting back to the regulators via Form 3/3A and other forms.

5.3 Fund Auditor

The fund auditor collaborates with the fund manager and administrator to assess and audit the fund's financial statements. Based on the structure, jurisdiction and regulatory requirements, the audited financial statements are commonly prepared following *International Financial Reporting Standards* (IFRS), *Malaysia Financial Reporting Standards* (MFRS), US Generally Accepted Accounting Principles (US GAAP) or the financial reporting standards applicable to the fund's jurisdiction.

5.4 Custodian

The custodian is responsible for safeguarding the fund's assets, including cash and financial instruments. They provide cash management solutions, handle trade settlements, process corporate actions, and maintain records of the fund's investment holdings.

Although the present SC guidelines allow an opt-out to the appointment of a custodian subject to certain requirements, unless the fund intends to deal with listed securities, a custodian can help investors ensure that their assets are safe and secure.

5.5 Corporate Secretary

A corporate secretary or company secretary, holds several responsibilities over a company, which includes coordinating for annual regulatory filings, payment of annual government fees, prepare requisite standard proxies, notices, share transfers and agendas, ensuring that records and minutes of the board of directors' actions accurately reflect the appropriate fulfilment of their fiduciary responsibilities, maintaining the books and records and undertaking other statutory duties including Certificates of Incumbency, certified resolutions and documents. They provide administrative support to the board of directors and maintain proper corporate governance practices on behalf of the fund. Other than that, a company secretary is responsible for maintaining a register containing the members of a company and update other registers such as allotment of shares, in accordance with transactions relating to capital calls, redemptions, share transfers and distributions.

5.6 Tax Advisor

A tax advisor plays a crucial role in setting up a fund by providing expert guidance and insight on various tax-related matters. Their responsibilities typically include:

(a) **Tax Structure:** Advising on the most tax-efficient structure for the fund, considering factors such as the jurisdiction of operation, investor base, and applicable tax laws.

(b) **Tax Planning:** Developing tax-efficient strategies to minimise the fund's tax liabilities while maximising investor returns. This may involve optimising the fund's investment portfolio, utilising tax deductions, and managing tax implications associated with different types of investments.

(c) **Regulatory Compliance:** Ensuring compliance with tax laws and regulations relevant to the fund's operations, including reporting requirements, tax filings, and any applicable tax exemptions or incentives.

(d) **Investor Taxation:** Advising investors on the tax implications of investing in the fund, including income tax, capital gains tax, withholding tax, and any cross-border tax issues.

(e) **Structuring Transactions:** Assisting with structuring transactions to minimise tax exposure and maximise tax benefits for the fund and its investors.

(f) **International Taxation:** Providing guidance on international tax considerations, including tax treaties, transfer pricing, and foreign tax credits for funds operating across multiple jurisdictions.

Overall, the tax advisor's role is essential in ensuring that the fund is structured and operated in a tax-efficient manner, thereby enhancing its attractiveness to investors and maximising overall returns.

5.7 Independent Valuer

It is best practice for fund managers to value their assets on annual basis. Typically, the fund manager will perform the evaluation in-house and may engage with third party valuer on an annual basis. The *International Private Equity and Venture Capital Valuation (IPEV) Guideline*s set out recommendations, intended to represent current best practice, on the valuation of Private Capital Investments. The objectives of these Valuations Guidelines are to set out best practice where Private Capital Investments are reported at 'fair value'.

Financial reporting standards require financial instruments to be evaluated based on fair value measurement. Various valuation techniques, such as discounted cash flow models, ratios, historical analysis, or comparing similar companies, can be employed for instruments with unobservable inputs.

The independent valuer provides an unbiased and objective assessment of the investment based on industry standards, and market conditions while applying the applicable valuation techniques.

This page is intentionally left blank.

PART 6

Fund Marketing

PART 6
FUND MARKETING

6.1 Identifying Sources of Capital

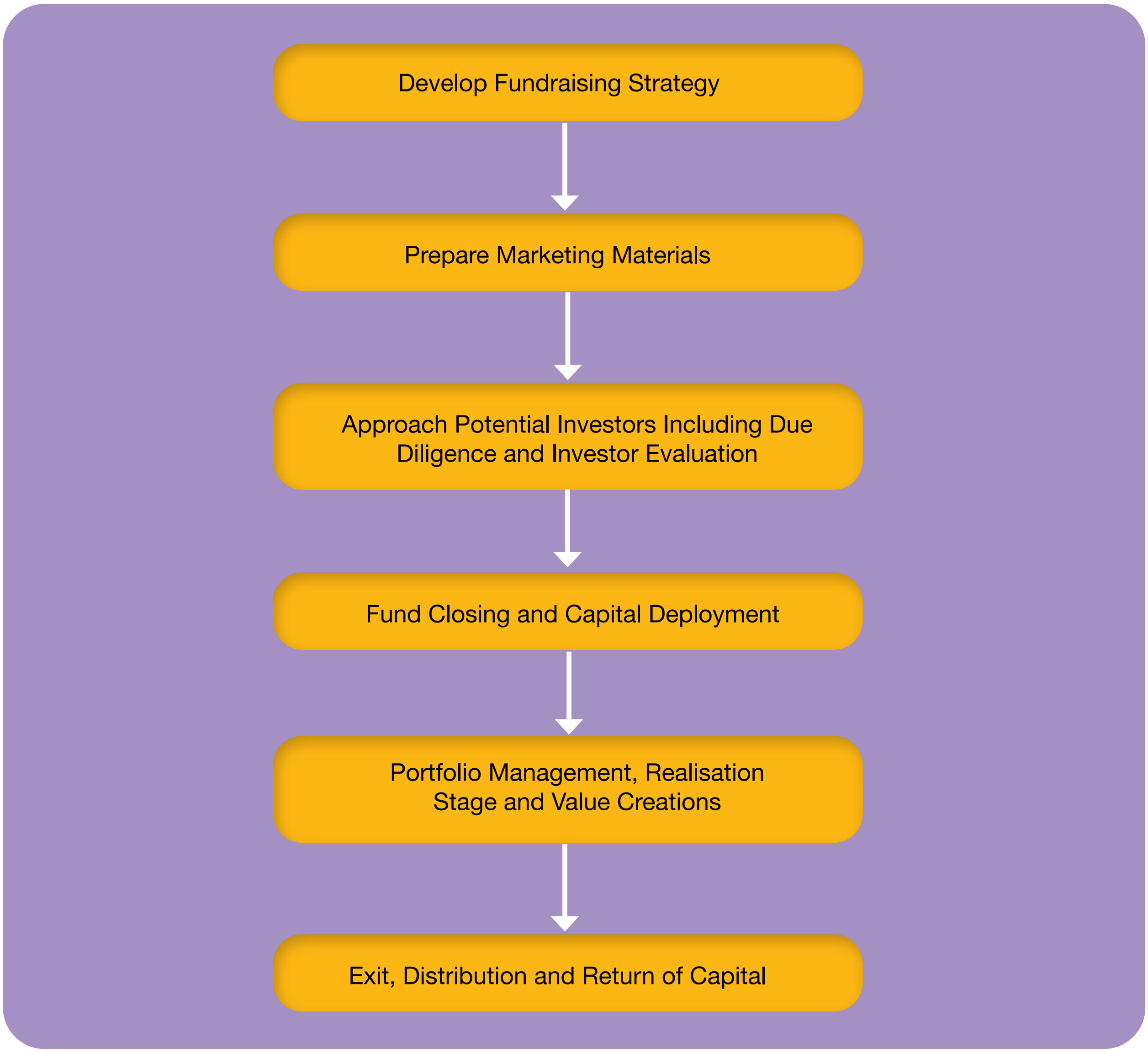
When engaging potential investors, it is important to understand that each investor will have different investment objectives, risk tolerance and requirements. Additionally, some investors may have specific parameters such as Shariah compliance or requirements on sustainability when assessing potential relationships with fund managers.

Below is a table outlining different types of investors along with key conversations you may need to have when engaging each investor, as well as general needs or motivations when engaging with fund managers:

Investor Type	Key Discussion Areas	Motivations
Endowments	• Alignment with mission/goals of the institution • Investment size • Risk tolerance • Social or environmental impact	• Long-term sustainable returns • Alignment with institutional mission • Diversification of investments
Corporate Venture Capital	• Alignment with corporate strategy • Industry focus • Stage of start-ups (early-stage, growth-stage)	• Strategic partnerships and access to innovative technologies • Potential for future acquisitions or collaborations
High-Net-Worth Individuals (HNWIs)	• Investment preferences (e.g., sector, stage, risk level) • Investment size • Geographical focus	• Diversification of investment portfolio • Potential for high returns • Access to exclusive investment opportunities
Family Offices	• Wealth size and structure • Investment preferences • Risk tolerance • Legacy considerations	• Wealth preservation and growth • Personalised investment strategies • Estate planning and wealth transfer
Government Agencies	• Economic development goals • Industry focus • Geographic focus • Policy alignment	• Promoting job creation and economic growth • Addressing societal or environmental challenges • Strategic investments for national priorities

6.2 Fundraising Process and Considerations

Below is a flow chart outlining the fundraising process and steps:



This flow chart illustrates the key stages of the fundraising process, from the pre-fundraising stage to the final closing. Each stage involves specific actions and activities aimed at successfully raising capital, deploying investments, realising returns, and distributing profits to investors.

Below are general considerations for VC and PE firms prior to marketing funds or services:

- **Understand Regulatory Requirements:** Get acquainted with the rules and regulations in Malaysia, including those under the SC, Labuan FSA, BNM and the Companies Commission Malaysia. Similarly, should the VC or PE fund be marketed overseas, VC and PE firms should adhere to applicable rules and regulations in that jurisdiction. This includes licensing or registration requirements, product approvals or notifications and disclosure rules, where applicable. When in doubt, it is best to seek professional legal advice.

- **Preparation of offering documents:** Ensure information to be disclosed to investors are accurate and contain necessary information reasonably expected by investors to evaluate the VC or PE firm and fund. This may include detailed information about the VC or PE firm and fund, parties involved in the management of the fund, its investment strategy, risks associated with the fund and funds' investments, fees, and salient terms and obligations to investors of the fund. VC and PE firms should not include any false or misleading statements, or wilfully omit material information when communicating to investors. If an information memorandum or similar disclosure documents is prepared, VC and PE firms must ensure the document is deposited to the SC.

- **Investor assessment:** VC and PE firms should take reasonable steps to ensure that investors to be engaged qualify as sophisticated investors. This is also necessary to ensure disclosure documents qualify for prospectus exemptions under Schedules 6 and 7 of the CMSA.

- **Marketing through placement agents and fund distributors:** Placement agents and fund distributors enable fund managers to access a wider network of investors including institutional funds, asset managers, family offices and HNWI. These service providers are compensated via a percentage of total funds raised on behalf of the fund manager. Placement agents and fund distributors may typically screen prospective fund managers before they agree to market the manager's funds to their clientele.

  If there are plans to market the funds through placement agents or fund distributors, it is best to ensure that they are appropriately licensed or authorised in Malaysia. VC and PE firms should also ensure information communicated to investors through these distributors are accurate, does not contain any misleading statements or wilful omission of material information. VC and PE firms should also ensure distributors take reasonable steps to assess whether target investors qualify as sophisticated investors. It is advisable for VC and PE firms to establish clear arrangements with fund distributors including roles and responsibilities of both parties in the distribution arrangement.

- **Prepare contingencies for key man risk.** Senior management or partners and key members of the investment team are important representatives for a VC and PE firm. Should key persons leave or become incapacitated, investors' may re-evaluate the relationship with the firm. The firm should have succession planning and other mitigation measures in place to prepare for these unforeseen events.

- **Plan for regular engagements with investors.** Communication and engagement with investors are essential to build trust and demonstrate capabilities of the firm. This will be crucial especially for future fund launches as investors may be more willing to commit to subsequent funds by fund managers where they are familiar with and satisfied with the relationship. The firm should plan and ensure prompt delivery of reports to investors. They should also conduct annual meetings with investors to provide updates on the progress and performance of fund(s), as well as address concerns or questions investors may have. These meetings offer opportunity for fund managers to showcase capabilities, achievements and to share future plans of the firm.

- **Plan early:** The fundraising process for a new fund typically may take 12-18 months or possibly longer. For managers with ongoing mandates, plans should begin when existing fund(s) are nearly fully invested (e.g. close to 70% invested).

6.3 Private Placement Memorandum

The private placement memorandum (PPM) is an important document for conveying information about the offering of interests in a fund. It provides potential investors with detailed information about the fund's investment strategy, objectives, risks, terms and other pertinent details. While the PPM is an essential tool in the fundraising process, it is important to note that the success of fundraising efforts is not solely dependent on the PPM itself.

While it is common practice to prepare one PPM for all parallel funds within a VC or PE fund structure, it is essential to highlight any material differences among the parallel entities to ensure transparency and clarity for investors. This approach streamlines the fundraising process and reduces administrative burdens for both fund managers and investors.

Excessive redrafting of the PPM can indeed have negative consequences, as it may lead to delays in finalising the offering and potentially result in lost capital commitments. Investors may have time constraints on making fund commitments or may lose interest if the fundraising process is prolonged. Additionally, economic downturns or changes in market conditions during excessive drafting could further exacerbate these challenges.

To mitigate these risks, fund managers should strive to strike a balance between thoroughness and efficiency in preparing the PPM. This may involve engaging legal and compliance professionals early in the process to ensure compliance with regulations and industry best practices while avoiding unnecessary delays. Clear communication with investors regarding the timing and progress of the fundraising process can also help manage expectations and maintain investors' confidence.

Ultimately, while the PPM is an important component of the fundraising process, success ultimately hinges on the fund manager's track record, investment strategy, market conditions and the strength of their relationships with investors.

Below are the key components typically included in a PPM for a fund marketing:

(a) Investment Strategy, Team, and Track Record:

- The PPM should provide a clear and succinct description of the fund's investment strategy, outlining the types of investments it intends to make, target sectors or industries, geographic focus, and any special considerations.

- Information about the investment team should be included, highlighting key members' backgrounds, expertise, track record and experience relevant to the fund's strategy.

- A summary of the fund's track record, including past performance if applicable, should be provided to demonstrate the team's ability to execute the stated investment strategy effectively.

(b) Summary of Partnership Agreement Terms, including but not limited to:

- Capital commitments and contribution requirements from investors.

- Management fee structure, including the management fee percentage and calculation methodology.

- Incentive allocation or carried interest arrangement, outlining how profits will be distributed between the manager and investors.

- Fund expenses and reimbursement policies.

- Terms of the fund, including any provisions for extensions or early termination.

- Governance and decision-making processes, such as voting rights and procedures for amending the partnership agreement.

(c) Legal and Tax Descriptions:

- Legal disclosures typically cover important legal considerations and risks associated with investing in the fund, including regulatory compliance, potential conflicts of interest, and litigation or regulatory proceedings.

- Tax descriptions provide an overview of the fund's tax structure, potential tax implications for investors, and any tax-related risks or considerations. This may include information on tax treatment of management fees, carried interest, and distributions.

The foregoing components in a PPM collectively provide investors with a comprehensive understanding of the fund's investment strategy, terms, and relevant legal and tax considerations, enabling them to make informed investment decisions. It is important for fund managers to ensure that the information presented in the PPM is accurate, transparent, and compliant with regulatory requirements.

Additionally, the investment team's track record is indeed a critical component of the PPM. Potential investors often place significant emphasis on the experience and past performance of the team managing the fund, as it provides valuable insight into their ability to execute the stated investment strategy effectively and generate returns.

The following are the reasons the investment team's track record is essential and how it is typically presented in the PPM:

- **Demonstrates Experience and Expertise:** The track record serves as evidence of the team's experience, expertise, and skill in identifying investment opportunities, conducting due diligence, and executing successful investment strategies. This information helps investors assess the team's capabilities and competence.

- **Builds Investors' Confidence:** A strong track record can instil confidence in LPs, reassuring them that their capital is being entrusted to a team with a proven history of delivering results. This can be particularly important for first-time funds or emerging managers seeking to establish credibility in the market.

- **Highlights Past Successes:** The PPM typically includes details of the team's past investment successes, including notable deals, exits, and investment performance metrics. This information demonstrates the team's ability to generate attractive returns for investors and provides tangible examples of their investment acumen.

- **Provides Performance Metrics:** Performance metrics such as internal rate of return (IRR), cash-on-cash return, and multiple on invested capital (MOIC) may be included to quantitatively assess the team's track record. Comparisons to relevant benchmarks or industry standards can further contextualise the team's performance.

- **Addresses Potential Risks:** While highlighting successes, the PPM should also address any challenges or setbacks encountered by the team and how they were navigated. Transparency about past failures and lessons learned can enhance credibility and demonstrate the team's ability to manage risk effectively.

In summary, the investment team's track record is a pivotal aspect of the PPM, providing investors with critical insights into the team's capabilities, past performance, and ability to deliver returns. Fund managers should carefully craft this section of the PPM to effectively showcase the team's strengths and differentiate themselves in a competitive fundraising environment.

CONCLUSION

With heightened level of due diligence by investors and increased regulatory scrutiny of fund managers including VC and PE firms, it is increasingly crucial for fund managers to demonstrate professionalism and cultivate trust with clients and other stakeholders through good conduct, transparency and integrity.

Proactive steps are needed by fund managers through implementation of internal controls and processes, as well as adoption of technology or digital services to ensure cost and time efficiency. These efforts go a long way to foster investors' trust and confidence, maintain long-term relationships particularly during challenging times, and build a positive reputation for a VC or PE firm.

This page is intentionally left blank.

APPENDIX 1:
DIFFERENCE OF FUND LEGAL STRUCTURES

Comparison table of different legal structures for a fund set up in Malaysia for considerations.

	Company	Limited Partnership
Acts, Rules and Regulations	• *Companies Act 2016 (CA 2016)* • Companies Regulations 2017 *[P.U. (A) 37/2017]*	• *Labuan Limited Partnership and Limited Liability Partnerships Act 2010*
Entity Name Appearances	Company's name ends with 'Sendirian Berhad', 'Sdn. Bhd.', 'Berhad' or 'Bhd.'	Entity's name end with the word 'L.P' (Limited Partnership)
Incorporation Process	Appointment of a company secretary is required by law to act as the designated company secretary for the fund company	Appointment of a Labuan trust company for the formation of the Labuan LP, all documentation required to be submitted to Labuan FSA must be filed through a Labuan trust company A Labuan limited partnership's registered office in Labuan is the registered office of a Labuan trust company. For further details on the cost, please visit: Labuan Partnership
Capital Contribution	Share capital	Partnership contribution
Owner(s) of the fund	• Shares in the Company. • In general, a share in a Company gives the right to vote at shareholder meetings, to receive dividends (if declared) from the profits of the Company, and to receive a distribution from the proceeds of the liquidation of the assets of the Company on a winding up	• The partners collectively own the property of the LP – they will be entitled to: • A distribution of the profits of the LP in accordance with the terms of the partnership agreement; and • A distribution of the partnership property in accordance with the terms of the partnership agreement upon dissolution of the partnership
Legal status	Separate legal entity	
Party that is liable for debts of the fund	• An obligation of the Company is solely the obligation of the company The liability of a shareholder to contribute is limited to the amount, if any, unpaid on his shares • The liabilities of the company are to be met out of the property of the Company	• General partner: Liable for all the debts and obligations of the LP incurred while being a general partner • Limited partner: Liable for the debts and obligations of the LP incurred while being a limited partner but only up to the amount of his agreed contribution

	Company	Limited Partnership
Responsibility for management of the fund	Board of Directors will oversee the governance of the fund, particularly adherence to the fund's objectives and strategies, and will provide oversight in ensuring the fund complies with the relevant regulations	• By the general partners. Any general partner may, generally speaking, bind the LP • A limited partner does not have the power to bind the LP and should not take part in the management of the LP. • A limited partner that takes part in the management of the LP will be liable for the debts and obligations of the LP as though he were a general partner
Personal liability	No personal liability of individual director or shareholder. Liabilities borne by the shareholders are to the extent of unpaid shares only	Not applicable
No. of Shareholders/ Partners	• At least 1 shareholder. • For a Sdn. Bhd. - maximum fifty (50) • For a Bhd. - no maximum number	• Partners, comprising of at least 1 general partner and 1 limited partner. No maximum limit
Annual Compliance	Annual Return (AR) Audited/ Unaudited Financial Statement and reports (FS)	Not applicable
Statutory Audit Requirement	FS is required to be audited. However, for certain category of companies that meet the qualifying criteria, they may be exempted from audit	Not applicable
Timeline for Annual Compliance	AR to be lodge within 30 days from the anniversary date of the company. FS for: • Private company is within 30 days from the circulation of FS; or • Public company is within 30 days after annual general meeting (AGM)	Not applicable
Taxes	• A company with paid-up capital in respect of ordinary shares of not more than RM2.5 million (at the beginning of the basis period for the year of assessment) and gross income from a source or sources consisting of a business not exceeding RM50 million for the basis period for the year of assessment would be subject to tax at the following rates (subject to certain conditions): • First RM150,000 of chargeable income @15%	A Labuan LP as a Labuan entity carrying on an activity relating to the holding of investments in shares of Labuan business activity is a Labuan non-trading activity and it is not chargeable to tax, provided it has fulfilled the substance requirements For further details, refer to section 4.3 of this guide. The tax rate of 3% of the net profits as reflected in audited accounts applies, subject to compliance with substance requirements. Dividends paid out of the income from Labuan business activities is tax-exempted. A statutory declaration in a prescribed form, instead of an annual tax return to be made for a Labuan entity carrying out non-trading activity

	• Next RM450,000 of chargeable income @17% • Chargeable income in excess of RM600,000 @24% • A company with paid-up capital in respect of ordinary shares of more than RM2.5 million at the beginning of the basis period for the year of assessment, would be subject to tax at the corporate tax rate of 24%. Malaysia is under a single-tier tax regime. Dividends paid out by a Company to its shareholders are tax exempt in the hands of shareholders. Under Section 108 of the ITA, companies are not required to deduct tax from the dividends paid to shareholders	
Tax Incentives	Tax exemption incentive is only available for a fund formed under the CA 2016 • Exempt period of 5 years or remaining life of the fund (whichever shorter) • Exemption on all sources of statutory income (other than interest income arising from savings or fixed deposits and profits from Shariah-based deposits) Requirements: • Fund formed under CA 2016; and • Registered with the SC before 31 December 2023; • At least 50% of the funds are deployed in qualifying venture companies For further details, please read: VC Tax Incentives	Not applicable
Distributions	Redemption of preference shares out of capital shall be based on duly paid shares and will require the solvency statement from the directors and lodgement of the said solvency statement with the Registrar of Companies from the redemption date	The partners are to decide as to how the redemption should take place based on the limited partnership agreement
Closing of the Fund	There are two modes of closing/cessation: Winding Up • Voluntarily by its shareholders or creditors; or • Compulsorily by the High Court. Striking off • By application of director, shareholder or liquidator; or • Registrar's initiative	An LP may be dissolved by the agreement of the general partners or in accordance with the terms of the Limited Partnership Agreement and a notice to be served to the Labuan FSA

APPENDIX 2:
AMLA AND KYC

Money laundering and terrorism financing threats continue to be a serious concern in international financial systems especially with the rapid growth of sophisticated technology. The Financial Action Task Force (FATF) periodically revises its Anti-Money Laundering and Counter-Terrorism Financing (AML/CFT) standards to effectively combat such threats as well as the financing of proliferation of weapons of mass destruction.

In Malaysia, the *Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001* (AMLA) is the primary statute governing AML/CFT policies and imposes reporting obligations on Reporting Institutions (RIs). RIs are not limited to financial institutions and capital market intermediaries. Certain measures are applicable to, among others, company secretaries, trust companies, and legal and accounting professionals. Specific rules are also issued by relevant authorities such as the SC and Labuan FSA on respective activities under each authorities' purview. RIs should stay abreast of policies under AMLA and relevant rules applicable to their business activities, as well as ensure internal processes are in place and regularly updated to adhere to these regulations.

In establishing and maintaining business relations with any investor, it is essential to have a framework in place to perform Customer Due Diligence (CDD) procedures in accordance with the governing regulations.

Identification

The fund manager is required to:

- Identify the customer and verify the identity using reliable, independent source documents, data or information;

- Identify and verify the identity of the authorised person whom is acting on behalf of the customer;

- Identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner, using the relevant information or data obtained from a reliable source, such that the manager is satisfied that it knows who the beneficial owner is;

- Understand, and where relevant, obtain information on the purpose and intended nature of the business relationship; and

- Where information or record obtained during CDD process are in foreign language, the manager is required to have and maintain a translation of the same in National or English language. The translation shall be made available to governing authority upon request.

Verification

Steps must be taken to verify the identification received which can be done by obtaining reliable, independent source data, documents or information from the investor. Where the investor is a legal person or arrangement, verification of the legal form, proof of existence, constitution and the powers that regulate and bind the customer, as well as the names of relevant natural persons ultimately owning the legal form and/or having effective control of the legal form.

Screening

Fund managers are required to conduct screening on the investor, the natural persons appointed to act on behalf of the investor, connected parties and beneficial owners against relevant money laundering and terrorism financing (ML/TF) information sources, as well as the relevant sanctions lists and information. Screening shall be conducted as part of the CDD process and ongoing due diligence. Specific requirements applicable to capital market intermediaries (including VC and PE fund managers) are outlined in the TF/PF Guidelines.

Risk Assessment

Managers are required to appropriately identify, assess and understand their ML/TF risk, in relation to the investor, covering several factors such as: the jurisdiction, expected transactions, source of funds, source of wealth, activities of the legal form, and other relevant risk areas.

The fund manager is required to have processes in place to document the risk assessments and findings, consider relevant risk factors and the type of mitigation to be applied, keeping the assessment up-to-date through periodic review, and having appropriate mechanisms to provide risk assessment information to the regulator upon request.

To conduct the risk profiling, the manager must consider the following factors:

- Investor risk (e.g. resident or non-resident, type of investor, occasional or one-off, legal person structure, types of politically exposed persons (PEPs), types of occupation);
- Country or geographic risk (e.g. location of business, origin of investor);
- Products, services, transactions or delivery channels (e.g. cash-based, face-to-face or non-face-to-face, cross-border); and
- Any other information suggesting that the customer is of higher risk.

Investors assessed to be high-risk should be subjected to more stringent controls, including more frequent monitoring, compared to investors assessed as low-risk.

Enhanced CDD

The fund manager is required to perform enhanced CDD where the ML/TF risks are assessed as higher risk. An enhanced CDD, shall include at least, the following:

- Obtaining CDD information;
- Obtaining additional information on the customer and its beneficial owner (e.g. volume of assets and other information from public databases);
- Enquiring on the source of wealth or source of funds. In the case of PEPs, both sources must be obtained; and
- Obtaining approval from Senior Management of the regulated entity before establishing (or continuing, for existing customer) such business relationship with the customer. In the case of PEPs, Senior Management refers to Senior Management at the parent company.

Politically Exposed Persons

Where investors or beneficial owners are identified as PEPs, the investment manager is required to:

- Inform the Senior Management before the payout of the redemption or distribution proceeds;
- Conduct enhanced scrutiny on the whole business relationship with the investor; and
- Consider lodging a suspicious transaction report.

Ongoing Due Diligence

The fund manager is required to conduct ongoing due diligence on the business relationship with its investors. Such measures shall include:

- Scrutinising transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the manager's knowledge of the customer, their business and risk profile, including where necessary, the source of funds; and
- Ensuring that documents, data or information collected under the CDD process is kept up-to-date and relevant, by undertaking reviews of existing records particularly for higher risk customers.

The frequency in implementing a refresher due diligence and enhanced refresher due diligence shall commensurate with the risk assessed by the manager on the investor, typically: annually for high-risk investors, once in two years for medium-risk or once in three years for low-risk investors.

Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur
Tel: +603–6204 8000
Fax: +603–6201 5078
Websites: www.sc.com.my | www.investsmartsc.my
@SecComMalaysia