

FREQUENTLY-ASKED QUESTIONS ON THE CAPITAL MARKET SERVICES ACT 2007 (CMSA)

Updated: 28 February 2008

Single Licensing Framework

Licensing Handbook

1. Where can I get more information on the single licensing regime under the CMSA?

The SC is issuing a Licensing Handbook which outlines the requirements and responsibilities of licensed and registered persons. This Handbook is equivalent to a guideline issued by the SC under section 377 of the CMSA. A detailed series of FAQs on the single licensing regime is also available.

Fund-raising

Offshore Entities

2. Do paragraphs 2 & 3 of Schedule 5 of the CMSA only apply to the issuance of securities or do they also apply to the offering of securities?

Paragraphs 2 and 3 of Schedule 5 extend to the offering of securities that are made to offshore entities and exclusively to persons outside Malaysia.

3. What is the position under the CMSA on the offering or issuance of securities by an offshore company to other offshore companies?

Under the CMSA, the offering or issuance of securities of a foreign company to an offshore company are exempted under paragraph 3 of the Schedule 5. This would also cover the offering or issuance of securities by offshore companies to other offshore companies.

4. What is the scope of the exemption of the SIA under section 34 of the Offshore Banking Act 1990 in light of the CMSA?

Section 34 of the Offshore Banking Act 1990 does not displace or disapply the provisions of the CMSA and anyone, including an offshore entity, who carries on any regulated activity in Malaysia would not be allowed unless licensed under the CMSA.

5. What is the SC's policy in respect of the issue of debentures and Islamic securities by an offshore company to other offshore companies?

The SC's policy in respect of the issue of debentures and Islamic securities by an offshore company to other offshore companies would not be subject to SC's approval under section 212 of the CMSA.

In this respect, the expression “persons outside Malaysia” appearing in Schedules 5, 6, 7 and 8 of the CMSA include offshore companies based in Labuan and foreign offshore companies that are defined under the Offshore Companies Act 1990. In other words, debentures and Islamic securities that are issued by an offshore company and a foreign offshore company as defined under the Offshore Companies Act 1990 and the distribution of such products to such companies would be able to rely on this exemption.

In addition, the secondary market trading of foreign currency denominated debentures and Islamic securities would also not be subject to section 212 of the CMSA as it falls in the exemption specified in paragraph 18 of Schedule 5 of the CMSA.

6. What is the SC’s policy in respect of the issue of debentures and Islamic securities by an offshore company to onshore companies?

All issuance of debentures and Islamic securities by an offshore company to onshore companies in Malaysia would have to comply with the provisions in the CMSA.

Share Splits

7. What is the scope of the exemptions relating to share splits and share consolidations?

Generally share splits and share consolidations are exempted under paragraph 20 of Schedule 5 of the CMSA.

However, the SC’s approval is required for share splits made pursuant to a restructuring exercise.

Public Exposure of Prospectus

8. What is the time frame for the public exposure of prospectus?

The public exposure of prospectus under subsection 232(4) of the CMSA is for a period of 5 market days commencing from the date when the SC receives the registrable prospectus. This period is within the current registration timeframe of 14 market days in registering a full and complete registrable prospectus.

The SC’s intention for exposing the prospectus to the public is to provide an opportunity for the public to view and provide any comments on the registrable prospectus with the view to ensuring that the information disclosed in the prospectus is true and fair.

9. Would this add to the time-to-market for listings?

The prospectus exposure will not add to the time-to-market for listing as the SC will endeavor to review comments effectively and on a timely basis.

While it is possible that the review of any comments received may add to the time to market for listing, for example when added time is required to address concerns arising from the comments, the benefit of registering a prospectus with full and accurate information to enable the public to make informed investment decisions outweighs the cost of any added time-to-market for listing.

Replacement Prospectus

10. What is a replacement prospectus?

A replacement prospectus under section 238 of the CMSA is a prospectus that is issued to replace a prospectus that has been registered with the SC if there are substantial changes to the original prospectus.

11. How does one decide whether to issue a supplementary prospectus or replacement prospectus?

It depends on the nature and extent of changes relating to the original prospectus submitted to the SC for registration. If the changes are extensive as to make the usage of the supplementary prospectus no longer appropriate, a replacement prospectus should be issued.

Stop Orders

12. What changes have been made to the provisions on the stop order?

Section 245 of the CMSA clarifies the validity period for a stop order which is 21 days after the interim order is made or the conclusion of the hearing, whichever is later.

The CMSA clarifies the legal consequences following from the making of a stop order depending on whether the securities have been or have not been issued.

13. What is the effect of a stop order?

The effect of the stop order is dependent on whether the shares have been issued and are as follows:

If shares have not been issued by the issuer

- Applications for shares shall be deemed to be withdrawn

- All application monies to be returned to applicants within 14 days

If shares have been issued

- Issuance of the shares will be deemed void
- All application monies to be returned to applicants within 14 days
- The issuer is required to take the necessary steps to effect the order

Take-over and Mergers

14. Will the provisions relating to take-overs and mergers come into force on 28 September 2007?

Provisions relating to take-overs and mergers in Division 2 of Part VI of the CMSA will come into force in 2008 with the revised Code on Take-Overs and Mergers, which will be introduced after consultation with industry participants.

Investor Protection

Civil Actions for Market Misconduct Offences

15. What are the changes which have been effected to the market misconduct provisions?

Under section 200 of the CMSA the SC may obtain three times compensation of the pecuniary gain made or loss avoided through civil actions for market misconduct offences.

Application Monies to Be Held in Trust

16. What protection is available for application monies for issues to sophisticated investors where no prospectus is required?

All monies received following capital raising activities must be paid into a trust account (section 215 of the CMSA). The issuer is required to return the application monies in the event that the securities are not issued or transferred to the applicants.

Enhanced Protection for Bond Holders

17. How has the protection of bond holders been enhanced?

The following measures have been introduced to enhance the protection of bond holders:

- SC's pre-approval is required for a person to act as trustee (section 260);

- SC has the power to revoke approval of trustee (section 260);
- The SC can prescribe the standards and conduct of the approved trustees through regulations (section 378); and
- Statutory duties on borrowers and trustees have been reimposed (Schedule 9).

18. What statutory duties have been re-imposed on borrower and trustees for sophisticated investors?

The following statutory duties have been re-imposed:

- Duty of borrower to inform trustee about charge, etc (section 265);
- Duty of borrower to inform trustee and SC of occurrence of material event (section 267);
- Duties of trustees (section 273); and
- Duty of borrower to call a meeting where 10% of value of debenture direct borrower to consider financial statements, audited accounts give trustee directions (section 277).

Power to Take Interceptive Actions

19. What other actions can the SC take for the protection of clients of intermediaries?

The SC's range of powers to take interceptive action pursuant to section 125 of the CMSA has been expanded to cover all Capital Market Services Licence holders and approved trustees who act for unit trust holders and debenture holders and includes the following:

- Direct the licensed person not to deal with monies and properties of its clients
- Direct the licensed person or trustee to transfer the monies and properties of its clients and any records or documents in relation to such monies or properties to any other person as may be specified by the SC
- Prohibit the licensed person
 - from entering into transactions of a specified description, in specified circumstances or to a specified extent
 - from soliciting business from persons of a specified description
 - from carrying business in a specified manner
- Require the licensed person to maintain property of specified value in or out of Malaysia to enable it to meet its liabilities

Islamic Capital Market

20. What measures has been introduced to enable the development of Islamic products?

Clear statutory provisions recognizing Islamic products in section 316 of the CMSA have been introduced by providing the Finance Minister with the power to prescribe modifications to give full effect to the principles of *Shariah* in respect of Islamic securities.

Registered Electronic Facilities

21. What are the changes brought about by the CMSA in relation to registered electronic facilities (REF)?

An electronic facility that demonstrates features of a market under section 7 of the CMSA qualify as an REF. The provisions relating to REF are found in sections 34 to 36 of the CMSA.

The SC will carry out an assessment of an electronic facility against a list factors that are set out in the Guidelines on the Regulation of Markets to determine the appropriate level of regulation that must be imposed on the operator of the electronic facility. If the SC is of the view that the objectives of regulation of markets can be achieved by imposing a lower level of regulation than that imposed on an approved market, the SC may then register the electronic facility as an REF.

Self-Regulatory Organisations

22. How does the CMSA deal with SROs?

The CMSA provides for specific provisions to regulate SROs in Part VII. These relate to the list of pre-requisites that the SROs must fulfil before the SC grants recognition, the requirement to act in the public interest and submitting to the SC its audited financial accounts and regulatory audit report. The CMSA also provides for the specific situations in which recognition may be withdrawn.

Provisions applicable to listed corporations - Section 317

21. If a transaction took place before the date the CMSA came into force, would a director or chief executive be required to still notify the SC if he has interest in securities as required under section 99B of the repealed Securities Industry Act 1983 (SIA)?

The requirements of section 317 would be applicable to transactions on or after the date the CMSA came into force i.e. on 28 September 2007. Hence,

for transactions which took place prior to that date, the notifications to SC would have to be carried out as required under section 99B of SIA.

22. What are the requirements of section 317 CMSA?

Whilst under section 99B of SIA, the requirement is for the chief executive or director of a listed corporation to notify the SC of his interest in securities, the change effected by CMSA is that under section 317 the chief executive or director is required to notify the *listed corporation* in writing of his interest in securities.

23. What is the timeframe to notify the listed corporation of director's or chief executive's interest in securities as section 317(2) CMSA states that the listed corporation must be immediately notified?

The timeframe of this notification is 7 days which is similar to the practice that was observed under section 99B SIA.

24. Would the Proforma Form that was used for the purposes of notification under section 99B SIA be applicable for the purposes of notification to the listed corporation under section 317 CMSA?

The Proforma Form is no longer applicable as section 317 now requires notification to the listed corporation and not to the Commission