

## **Chapter 3**

### **THE MANAGEMENT COMPANY**

3.01 A management company is a company that–

- (a) establishes a fund;
- (b) issues, offers for subscription, makes an invitation to subscribe for or purchase, units of the fund; and
- (c) operates and administers the fund.

3.02 A management company must–

- (a) be an entity incorporated in Malaysia; and
- (b) have a minimum shareholders' funds of RM10 million at all times.

### **Directors**

3.03 The board of directors of a management company must comprise at least two independent members, while maintaining a minimum ratio of at least one-third independent members (board composition). Should there be a change to the board composition resulting in a breach of this requirement, the management company must take necessary steps to rectify the breach as soon as practicable and in any case, no later than three months from the date of change.

- 3.04 The independent directors of a management company must, in addition to their duties and responsibilities as directors, represent and safeguard the interests of unit holders.
- 3.05 A director of a management company must not hold office as director of more than one management company at any one time.
- 3.06 Paragraph 3.05 does not apply where the management companies satisfy the following conditions:
- (a) The management companies are related companies whereby—
    - (i) the management company is an ultimate holding company which wholly-owns the other management company;
    - (ii) the management company is a wholly-owned subsidiary of the other management company; or
    - (iii) the management companies concerned are wholly-owned subsidiaries of the same ultimate holding company; and
  - (b) The management companies have notified the respective unit holders of such director's appointment.

### **Roles and Responsibilities**

- 3.07 In performing its duties as stipulated under the CMSA, a management company must—

- (a) exercise the degree of care and diligence that a reasonable person would exercise in the position of a management company;
- (b) act in the best interests of unit holders and, if there is a conflict between unit holders' interests and its own interests, give priority to unit holders' interests;
- (c) observe high standards of integrity and fair dealing in managing the fund to the best and exclusive interest of unit holders;
- (d) ensure that the assets of the fund are—
  - (i) clearly identified as the fund's assets; and
  - (ii) held separately from the assets of the management company and any other fund managed by the management company;
- (e) conduct all transactions for the fund on arm's length basis;
- (f) appoint a compliance officer who must directly report to the board of directors;
- (g) appoint an individual as a designated person responsible for the fund management function of the fund, whether the function is undertaken internally within the management company or externally. Where the fund management function is undertaken by an external party, the management company must ensure that the fund manager appoints a designated person for the fund;

- (h) for the purpose of paragraph 3.07(g), the designated person must be a holder of a Capital Markets Services Representative's Licence to carry on the regulated activity of fund management. Where the designated person is in a foreign fund management company, the designated person must be licensed, registered, approved or authorised to carry on the activity of fund management by the relevant regulator in his home jurisdiction;
- (i) ensure that the financial statements of the fund give a true and fair view of the fund's financial position as at the end of the fund's financial period;
- (j) establish, implement and maintain a risk management framework that is commensurate with its business;
- (k) establish, implement and maintain risk management policy and procedures of the fund, which is to be documented in a standalone document, to effectively monitor, measure and manage risks of the investment positions of the fund and their overall contributions to the risk profile of the fund. The management company must at all times—
  - (i) ensure that suitable and effective risk management and control systems are in place to monitor, measure, and manage all relevant risks in relation to the fund;
  - (ii) ensure that an effective liquidity risk management is being implemented and maintained; and

- (iii) implement and maintain effective internal policy and procedures to assess the credit risk that the fund is exposed to or will be exposed to. External ratings shall only be one of the factors to consider in assessing the credit quality of a security or instrument. Mechanistic reliance on external ratings must be avoided;
- (l) ensure that the human resource, technology and systems employed are adequately and appropriately resourced, at all times, for the proper establishment, implementation and maintenance of the risk management policy and procedures under paragraphs (j) and (k);
- (m) establish, implement, maintain policies and procedures and ensure proper records are in place in relation to the fund's valuation and pricing;
- (n) maintain an internal audit function to report on the adequacy, effectiveness and efficiency of the management, operations, risk management and internal controls; and
- (o) where any change to the fund may materially prejudice the interest of the unit holders, obtain the approval of not less than two-thirds of all unit holders at a unit holders' meeting duly convened and held.

3.08 [Deleted]

3.09 [Deleted]

## **Oversight on the operation and management of the fund**

- 3.10 A management company must have oversight arrangement to ensure that the fund is managed in accordance with–
- (a) its deed;
  - (b) its prospectus;
  - (c) the internal investment restrictions and policies; and
  - (d) the requirements prescribed under these Guidelines.
- 3.11 The arrangement for the oversight function must be appropriate and proportionate to the nature and complexity of funds being managed by the management company. A person who undertakes the oversight function must:
- (a) In the case of an individual, the individual must be independent from the functions where the oversight arrangements are on to enable the individual to undertake its role effectively; and
  - (b) In the case of a committee, the committee may comprise of some members who are not independent from the functions of the oversight arrangements, provided that the committee as a whole must be able to undertake its roles and responsibilities effectively.
- 3.12 The roles and responsibilities of the person undertaking the oversight function includes the following:

- (a) Ensure that the investment strategies selected are properly and efficiently implemented by the fund manager;
  - (b) Actively monitor, measure and evaluate the fund management performance of the fund manager; and
  - (c) Approve the appointment of a broker or dealer as prescribed under paragraph 3.15.
- 3.13 Any person, including any members of a committee who carries out the oversight function must not be a member of the Shariah adviser appointed for the same fund.
- 3.14 Where a fund manager undertakes cross-trades between the funds it manages, or between the fund it manages and its other clients' accounts,—
- (a) the person undertaking the oversight function must approve the policies and procedures governing cross-trades; and
  - (b) the management company must provide details of any cross trades transacted to the person undertaking the oversight function.

### **Use of broker or dealer**

- 3.15 A management company in appointing a broker or dealer must be satisfied that the dealings in the fund's assets will be effected by the broker or dealer on terms which are the most favourable for the fund (best execution basis).

## **Maintenance of records**

- 3.16 A management company must maintain, or cause to be maintained for a period of at least seven years,—
- (a) the accounting records and other books to sufficiently explain the transactions and financial position of the fund and enable true and fair financial statements to be prepared from time to time; and
  - (b) such accounting records and other books in such a manner as will enable them to be conveniently and properly audited.

## **Provision of information**

- 3.17 A management company must submit or make available any information relating to the fund, its business and any other information as may be required by the trustee from time to time.

## **Maintenance of a website**

- 3.18 A management company is required to maintain a website incorporating information relating to the management company and any of its funds.
- 3.19 The details of the information to be included on the website are as set out in Schedule A.

## **Holding of units by management company**

- 3.20 Where a management company or its related corporation holds units in a fund that it manages, it must ensure that



there are adequate policies, procedures and controls established to manage any potential conflict of interests.

### **Conflict of interest or related-party transactions**

- 3.21 A management company and a fund manager must avoid any conflict of interest. However, where a conflict cannot be avoided, appropriate safeguards must be put in place to protect the interests of the investors and to ensure that the fund is not disadvantaged by the transactions concerned.
- 3.22 Any related party transaction, dealing, investment and appointment involving parties to a fund must be made on terms which are the best available for the fund and which are no less favourable to the fund than an arm's length transaction between independent parties.
- 3.23 The appointment or renewal of appointment of a fund manager who is a related party must be approved by the independent directors of the management company.

### **Training requirements**

- 3.24 A management company must ensure that—
- (a) its executive directors and employees, including its compliance officer and personnel involved in operations are adequately trained and kept abreast of industry developments; and
  - (b) details of all training provided are to be properly maintained.

## **Corporate governance**

- 3.25 A management company and the fund manager must implement good corporate governance practices and best industry standards for all activities conducted in relation to the fund.

## **Electronic communication**

- 3.26 A management company may use any form of electronic communication to distribute fund reports, statements and other notices as required under these Guidelines, provided that the management company complies with the following:
- (a) Investors are notified of the mode of communication at the point of account opening; or
  - (b) Prior to utilising electronic communication as the default mode for communication, the management company must send a notice to all investors by post, informing that investors will be automatically enrolled to receive such documents via electronic communication unless investors expressly choose to opt out of such mode of communication.
- 3.27 Notwithstanding paragraph 3.26, a management company must ensure that printed copies of such documents are made available upon request of, and without charge to, the investors.

### **Distribution of fund outside Malaysia**

- 3.28 A management company may distribute its fund in Labuan or outside Malaysia, provided the SC is notified prior to its distribution.
- 3.29 A management company must report details relating to the offering in Labuan or outside Malaysia in the monthly Statistical Return.