

FREQUENTLY ASKED QUESTIONS
GUIDELINES ON OFFER OF SHARES BY UNLISTED PUBLIC COMPANIES
Issued on: 28 March 2025

1. What is the rationale for the issuance of the Guidelines on Offer of Shares by Unlisted Public Companies (Guidelines)?

The SC has observed an increasing number of regulatory concerns including the significant number of complaints received, on misconduct pertaining to fundraising activities by an unlisted public company (UPC) that typically offer preference shares.

Among the key issues identified includes misleading information disclosed in the information memorandum (IM), with promises of unrealistic high target dividends and returns. In addition, there are other concerns on possible breaches of securities laws including offering of shares intended for sophisticated investors to retail investors without registering a prospectus with the SC and the appointment of unlicensed marketing agents.

To address the regulatory concerns, the Guidelines have been introduced to enhance the regulatory requirements to ensure that investors' interest are protected whilst at the same time ensuring that a UPC can continue to raise funds for its business.

2. What are the broad requirements imposed by the Guidelines?

The Guidelines aims to enhance investor protection by mandating a UPC that wishes to offer preference shares to appoint a corporate finance adviser (CFA) and to consult the SC prior to commencement of the offering. The Guidelines also mandates a UPC that wishes to offer Shariah-compliant shares to appoint a Shariah adviser registered with the SC. Conduct requirements will also be imposed on the parties involved in the offering by a UPC which include the board of directors of the UPC, CFA, agents appointed by the UPC to market and promote their shares, as well as the Shariah adviser.

Further, a UPC that intends to issue an IM for the purpose of the offering, must comply with the IM content requirement and the offering period with a maximum validity of 18-months. To facilitate the SC's monitoring on the progress of the UPC's fundraising and utilisation of proceeds, periodic reporting is required to be submitted to the SC and the utilisation of proceeds must be audited by an auditor annually.

3. What are the key requirements in the Guidelines?

The Guidelines sets out the key requirements for the offerings by a UPC to retail investors and sophisticated investors, as follows:

| Requirements | Offer to solely sophisticated investors | Offer to retail investors |
|--------------------------------|---|---|
| Consultation with the SC | <ul style="list-style-type: none"> • Required, save for those offers stipulated under paragraph 6.02 of the Guidelines • Must appoint CFA and Shariah adviser (if applicable) for submission of consultation | Not applicable |
| Offer documents | <ul style="list-style-type: none"> • Deposit of IM if issued, pursuant to Section 229 and 230 of CMSA • IM requirements subject to Appendix 2 of the Guidelines. | <ul style="list-style-type: none"> • Registration of prospectus, submitted by a recognised principal adviser (RPA) • Prospectus requirement subject to Division 1, Part II of the <i>Prospectus Guidelines</i> |
| Offering validity period | 18 months | 6 months |
| Appointment of Shariah adviser | Required for Shariah-compliant shares | Required for Shariah-compliant shares |
| Conduct obligations | <ul style="list-style-type: none"> • UPC and its board of directors, CFA, agents and Shariah adviser (if applicable) are subject to conduct obligations in the Guidelines | <ul style="list-style-type: none"> • UPC and its board of directors, agents and Shariah adviser (if applicable) are subject to conduct obligations in the Guidelines • RPA is subject to conduct obligations in <i>Guidelines on Submission of Corporate and Capital Market Product Proposals</i> |
| Reporting requirements | <ul style="list-style-type: none"> • Submission of Post-issuance Notice (PIN) and Post-issuance-update-report (PIUR) • Utilisation of proceeds must be audited by auditor | <ul style="list-style-type: none"> • Submission of PIN and PIUR • Utilisation of proceeds must be audited by auditor |

4. When will the Guidelines come into effect?

The Guidelines takes effect on 28 March 2025 (Effective Date) and will apply to all offering of UPC shares to sophisticated investors and non-sophisticated investors (retail investors).

Concurrent with the coming into effect of the Guidelines, the *Guidelines on Offer of Shares by Unlisted Public Companies to Sophisticated Investors* will be disappplied.

5. What are the steps that must be taken by a UPC for its ongoing offering as at the Effective Date?

A UPC that is exempted from consultation under paragraph 6.02 of the Guidelines, may continue its offering subject to a maximum period of 18-months from the Effective Date.

A UPC that is not exempted from consultation under paragraph 6.02 of the Guidelines, is required to cease offering from the Effective Date.

Should a UPC wish to continue its offering after the Effective Date, a CFA and/or a Shariah adviser are required to be appointed to advise and prepare a submission for consultation with the SC in accordance with Chapter 6 of the Guidelines.

Should a UPC not wish to continue with its offering after the Effective Date, the UPC is required to act in accordance with paragraphs 2.08 and 2.09 of the Guidelines.

6. Can a UPC appoint a Shariah adviser who is not registered with the SC?

No, a UPC must only appoint a Shariah adviser who is registered with the SC. For any offering by a UPC advised by a Shariah adviser not registered with the SC and that has commenced prior to the Effective Date, the UPC must terminate such appointment. If the UPC wishes to continue its offering, a Shariah adviser registered with the SC is required to be appointed.

7. How many principles of the *Maqasid Al-Shariah Guidance Islamic Capital Market Malaysia (Maqasid Guidance)* must be considered by the Shariah adviser in advising on the alignment of the Shariah-compliant UPC shares with the Maqasid Guidance?

There is no specified number of the Maqasid Guidance principles that must be considered by the Shariah adviser in advising on the alignment of the Shariah-compliant UPC shares with the Maqasid Guidance. The Shariah adviser is required to assess the Shariah-compliant UPC shares and determine the suitability of aligning it with the relevant Maqasid Guidance principles.

8. Is a UPC required to consult the SC prior to the commencement of its offering?

Yes, consultation is required unless the UPC is exempted under the following categories, set out under paragraph 6.02 of the Guidelines–

- (i) offers shares that is accompanied by a prospectus registered with the SC under section 232 of the CMSA;
- (ii) intends to offer solely equity shares;
- (iii) offers shares solely to its directors or pursuant to an employee share scheme or employee share option scheme; or
- (iv) is licensed, registered, approved, recognised or otherwise authorised by the SC or Bank Negara.

9. Is a UPC only allowed to commence its offering after consultation with the SC?

A UPC that is exempted from consultation under paragraph 6.02 of the Guidelines, is not required to consult the SC and may commence its offering subject to compliance with the other relevant requirements of the Guidelines.

For offering by a UPC that is not exempted from consultation under paragraph 6.02 of the Guidelines, the UPC may only commence its offering after clearance from the SC during the consultation.

Such offering must commence within 3 months from the date of consultation with the SC. The UPC must consult the SC again if it wishes to commence its offering after 3 months from the initial consultation.

10. What are the situations that are likely to give rise to conflict of interest?

Situations that are likely to give rise to conflict of interest includes, among others, circumstances where:

- (i) A director or substantial shareholder of the UPC–
 - (a) has an interest in a competing business with that of the UPC or the UPC's subsidiary companies;
 - (b) conducts or has interest in business transactions involving goods or services, either directly or indirectly, with the UPC or the UPC's subsidiary companies;
 - (c) provides or receives financial assistance which includes advances, loans and personal or corporate guarantees to or from the UPC or the UPC's subsidiary companies;
 - (d) leases property to or from the UPC or the UPC's subsidiary companies, or
- (ii) The CFA, agents or Shariah adviser has any existing or potential interest in the UPC.

Reasonable measures must be taken to avoid, resolve or adequately mitigate situations that are likely to involve a conflict-of-interest situations. Steps taken to mitigate or resolve any situations of conflict, must be disclosed to the SC and in the IM, where relevant.

11. Is a UPC and its agents, required to provide investors with a prospectus that has been registered with the SC or an IM deposited with the SC, when marketing and promoting its shares?

In the case where a UPC has registered a prospectus with the SC under Section 232 of the CMSA, in marketing and promoting its shares to investors, the UPC and its agents are required to inform the investor of the right to obtain a copy of the registered prospectus.

In the case where a UPC intends to offer its shares to only sophisticated investors, and an IM has been deposited with the SC under Section 229 and 230 of the CMSA, the UPC and its agents are required to inform the sophisticated investor of the right to obtain a copy of the IM.

Additionally, a UPC and its agents are required to advise investors that it would be in their interests to carefully read the prospectus or IM, before making any investment decisions. This is to ensure that the investors have a complete understanding of the UPC's business and the terms of offering, enabling them to make well-informed investment decisions.

12. Is a UPC allowed to continue its fundraising activities for more than 18-months from the issuance of the prospectus or IM?

Any offering by a UPC is now subject to a maximum 18-month validity period from the date of commencement of offering. Any offering beyond the 18-month period is considered a new offering subject to requirements stated in the Guidelines and will require a new PIN to be submitted.

Notwithstanding, offering accompanied with a prospectus that is registered with the SC is subject to a maximum 6-month offering period.

13. If the commencement date of the offering is in the same calendar month as the end of the UPC's most recent quarter of financial year, or end of the UPC's financial year, is the UPC required to submit both PIN and PIUR to the SC at the same time?

For example, if a UPC's financial year end is on 31 December 2025, and it has commenced offering on 29 June 2025. The UPC is required to submit a PIN to the SC no later than 6 July 2025, in accordance with paragraph 10.01(a) of the Guidelines. PIUR is not required to be submitted for the financial quarter ending 30 June 2025.

PIUR to be submitted on a quarterly basis in compliance with paragraph 10.01(b) of the Guidelines.

In this case, the UPC is required to submit its first PIUR no later than 7 October 2025, for its financial quarter ending 30 September 2025, and second PIUR to be submitted to the SC no later than 7 January 2026, for its financial quarter ending 31 December 2025.

PIUR to be submitted on a yearly basis in compliance with paragraph 10.01(c) of the Guidelines.

Given that the UPC's financial year end is on 31 December 2025, the PIUR required to be submitted on a yearly basis, is to be audited by an approved company auditor and to be submitted to the SC no later than 30 June 2026.

14. What are the documents and records a UPC must retain to demonstrate compliance with securities law and the Guidelines?

The documents and records to demonstrate compliance with securities law and the Guidelines must be retained for a period of at least seven (7) years. This includes, but not limited to, documents and records that ensure offerings made without registration of prospectus are not offered to retail investors.

At all times, a UPC is also required to maintain up-to-date information or records as stated under paragraph 7.05 of the Guidelines.

15. How to make a submission to the SC via electronic copy?

A UPC may submit an electronic copy of their application to equitiesfiling@seccom.com.my, and a hard copy a CD-ROM or USB thumb-drive to the same address as stated in paragraph 5.12 of the Guidelines.