



OBLIGATIONS ON REPORTING INSTITUTIONS UNDERTAKING PRIVATE PLACEMENT ACTIVITIES

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Background

For the purpose of complying with Parts III, V and Appendix A1 of the Securities Commission Malaysia's (SC) Guidelines on Prevention of Money Laundering, Countering Financing of Terrorism, Countering Proliferation Financing and Targeted Financial Sanctions for Reporting Institutions in the Capital Market (Guidelines), a Reporting Institution¹ (RI) must adhere to the provisions of the Guidelines in undertaking private placement exercises including the due diligence conducted and monitoring of the private placement. This is in addition to adherence to other laws and rules such as requirements which are prescribed under Chapter 6 of Bursa Malaysia Securities Main Market Listing Requirements (Main LR) and its relevant Practice Notes for all issuance of new securities.

RIs must ensure that it establishes adequate policies & procedures and controls to be in line with their obligations including under the Guidelines. Non-compliance with the Guidelines and such other requirements under the securities laws would be regarded as serious and may result in the SC taking regulatory or other appropriate actions against the RIs.

Examples of Potential Private Placement Scenarios

Arising from the SC's engagement with certain RIs and review of private placements by these RIs and towards facilitating compliance by RIs with the Guidelines, examples of potential private placement scenarios vis-a-vis compliance of the Guidelines are set out herein. These examples/scenarios are for illustrative purposes only and serve as a guide for RIs as to the SC's expectations on compliance including ensuring proper controls are in place to mitigate Money Laundering and Terrorism Financing (ML/TF) risks. These examples are not exhaustive and RIs must also consider other potential risks that are related to private placement exercises they undertake.

¹ Refers to Reporting Institutions that are Capital Market Services License holders for both dealing in securities and advising on corporate finance.

Conducting CDD and Enhanced CDD

EXAMPLE 1

W Securities Sdn Bhd (W Securities), a Malaysian stockbroking company acting as a Principal Adviser (PA) for ABC Bhd & XYZ Bhd had undertaken several private placement exercises for both companies. W Securities had onboarded multiple placees without performing any Customer Due Diligence (CDD) and assigning the proper risk profile to the placees. The total value of placement shares subscribed by the placees range from 10 times to 100 times of their declared annual income. For example, Mr. A who is a client of W Securities and works as a manager with an annual income of RM60,000 had subscribed to both private placement exercises amounting to RM750,000 and RM950,000 respectively. The total value of placement shares subscribed by Mr. A amounted to RM1.7 million which was 28 times his declared annual income.

In conducting CDD and assessing the need for enhanced CDD, W Securities as a PA must as a minimum take into consideration the following:

- (a) The value of the shares subscribed or acquired by Mr. A and whether this commensurate with his declared annual income; and
- (b) If (a) above is not met, conduct assessment towards better understanding as to the reasonableness of Mr. A's subscription /acquisition including Mr. A's latest employment and annual income as well as possibility of other /additional source of income and/or funds.

Due Diligence and Evaluation of Third-Party Deposits

EXAMPLE 2

Y Securities Sdn Bhd (Y Securities), a Malaysian stockbroking company is the PA undertaking a private placement exercise for its clients; C1 Bhd, D1 Bhd and E1 Bhd. These clients had provided the names of three placees; Mr. H, Mr. J and Mr. K, to Y Securities for this private placement exercise. Each of these placees maintains an account with a foreign stockbroking company, Foreign Company A, which is based outside of Malaysia.

Foreign Company A had transferred monies to pay for this private placement exercise from the placees' account maintained at Foreign Company A. In this regard, Y Securities must ensure that it has in place appropriate policies & procedures and control measures in accepting any third-party deposits/payments which must be in compliance with the requirement under paragraph 7.6.3 of the Guidelines. Among others, Y Securities' policies & procedures should, in respect of Foreign Company A, include the following:

- (a) evaluate the reasons for third-party deposits made by Foreign Company A on behalf of these placees to ensure that the payment made commensurate with the placees' profile (such as financial standing) and normal commercial practices (including the frequency and pattern of previous third-party deposits);
- (b) the evaluation in (a) above must include conducting further inquiries with the placees and obtaining corroborative evidence from relevant sources;
- (c) implement an ongoing monitoring of placees involving third-party deposits; and
- (d) perform immediate lodgement of a suspicious transaction report to the Financial Intelligence and Enforcement Department (FIED) of Bank Negara Malaysia when there are grounds for suspicion of ML/TF.

Additionally, Y Securities must conduct due diligence on the third-party payor by procuring the following details towards assessment and determination of any suspicious transactions:

- (a) The identity of the third-party payor, including national registration identity card number or passport number, residential address and contact number;
- (b) The relationship between the placees and the third-party payor;
- (c) The reason for making deposits into the placees account or on behalf of the placees; and
- (d) Whether the third-party exercises trading authority over the placees account.

Ongoing Due Diligence and Monitoring of Placees' Accounts in Multiple Private Placement Transactions

With reference to Example 2 above, the placees onboarded by Y Securities had subscribed to multiple tranches of placement shares for all three private placement exercises for amounts which do not commensurate with the placees declared annual income.

In order to conduct effective ongoing due diligence on the placees, Y Securities must as a minimum take into consideration as follows:

- (a) Placees' involvement in prior private placement exercises conducted by Y Securities;
- (b) Aggregate value of placement shares which were subscribed (or in tranches) by placees and comparing it to their declared income; and
- (c) Payment of placement shares originating from an unknown third-party (peculiar source of fund).

The table below provides an illustration of the above scenario.

	Mr. H	Mr. J	Mr. K
Declared Annual Income (RM)	240,000	180,000	250,000
C1 Bhd			
1st tranche – 26 January 2022	3,000,000*	4,000,000	3,500,000*
2nd tranche – 23 March 2022	1,900,000*	-	2,300,000
3rd tranche – 10 July 2022	2,000,000*	2,400,000*	2,300,000
D1 Bhd			
1st tranche – 22 July 2022	-	-	4,200,000
2nd tranche – 18 August 2022	3,200,000	-	2,100,000
E1 Bhd			
1st tranche – 10 March 2023	1,600,000	1,000,000	3,200,000
2nd tranche – 19 June 2023	2,240,000	-	6,300,000*
Grand Total (RM)	13,940,000	7,400,000	23,900,000
Grand Total / Declared Annual Income	58x	41x	95x

**Deposits by third-party foreign entity (Company A)*

The following are steps and/or processes that Y Securities should consider in order to address the money laundering/ terrorism financing/ proliferation financing (ML/TF/PF) risks and other risks of third-party deposits:

- (a) Additional scrutiny should be placed on the business relationships of third-party payor with the placees by reviewing activities that are inconsistent with the PAs knowledge of the places profile e.g. whether the placees' declared annual income commensurate with total value of placement shares to be subscribed/acquired (including for the total amount to be paid for each respective tranche as well as the cumulative amount of all the tranches;
- (b) In accepting third-party deposits originating from foreign entities, Y Securities must ensure that these deposits are in line with its internal policies & procedures which should meet the expectations as set out in item 2 above; and
- (c) Placees' accounts with third-party deposits must be monitored closely and on a regular basis for suspicious transactions and 'flag' accounts with suspicious transactions for monitoring purposes.

In the course of monitoring the above private placement exercises and bringing together all relevant risk factors, Y Securities should consider reclassifying the placees as higher risk and consider lodging a Suspicious Transaction Report (STR) with the FIED.

**Record Keeping, Employee Training on Third-Party Deposits and
Communication to Customers**

With reference to Example 2 above, Y Securities must:

- (a) Keep records of all documents and the findings of inquiries made together with the corroborative evidence obtained during the due diligence evaluation and approval of a third-party deposit; and
- (b) Provide relevant training and guidance to the employee responsible for the implementation of the reporting institution's policies and procedures in relation to third-party deposits.