

GUIDELINES FOR THE REGISTRATION OF VENTURE CAPITAL CORPORATIONS AND VENTURE CAPITAL MANAGEMENT CORPORATIONS

1. INTRODUCTION

- 1.1 Venture Capital Corporations (VCC) and Venture Capital Management Corporations (VCMC) are given “exempt dealer” status pursuant to the **Securities Industry (Exempt Dealer) Order (No. 2) 2002**, subject to registration and compliance requirements.
- 1.2 VCC and VCMC refer to corporations that deal, or manage investment, in securities of venture companies. In order to qualify for the “exempt dealer” status, the corporations shall register with the Securities Commission (SC) as a VCC or VCMC, as the case may be, and comply with the provisions of these Guidelines.
- 1.3
 - (a) A corporation that has not started to deal or manage investment in securities of venture companies on or after the effective date of these Guidelines, shall register with the SC before it commences operation;
 - (b) A corporation that is already dealing or managing investment in securities of venture companies prior to the effective date of these Guidelines, shall submit its application for registration to the SC within three (3) months from the effective date of these Guidelines.

2. DEFINITIONS

- 2.1 For the purpose of these Guidelines,

“designated person” means –

- (a) a director as defined under the Companies Act 1965; and/or
- (b) an officer who strategises investment decisions and leads the investment team;

“early-stage financing” means financing or funding provided by a VCC or VCMC to a venture company as –

- (a) capital expenditure or working capital to initiate commercialisation of technology or product;
- (b) additional capital expenditure or working capital to increase production capacity, marketing or product development; or

- (c) interim funding for a venture company expecting to be listed on the official list of a stock exchange;

“financial year” means the financial year of the VCC or VCMC within the meaning of the Companies Act 1965;

“seed-capital financing” means financing or funding provided by a VCC or VCMC to a venture company for the purpose of research, assessment and development of an initial concept or prototype;

“start-up financing” means financing or funding provided by a VCC or VCMC to a venture company for product development and initial marketing;

“VCC” and “VCMC” means a corporation that deals or manage investments in securities of venture companies, and is registered as a VCC or VCMC, as the case may be, under these Guidelines;

“venture company” means a company which utilises seed-capital, start-up or early-stage financing and –

- (a) in relation to VCC, is not listed on the stock market of any stock exchange; and
- (b) in relation to VCMC, is not listed on the stock market of any stock exchange at the point of first investment by such VCMC; and

“year-end” means the 31st of December of each year.

3. EFFECTIVE DATE

- 3.1 These Guidelines shall come into effect on 1 August 2002.

4. REGISTRATION CRITERIA

A. Minimum Financial Requirements

- (i) Where applicable, the applicant shall maintain a minimum shareholders' funds of RM100,000.
- (ii) The applicant shall immediately inform the SC of any failure to comply with this requirement.

B. Appointment of Designated Person(s)

- (i) The applicant shall have at least one (1) designated person, who shall be fit and proper for the position.

- (ii) Information on the designated person shall be submitted with the application for registration of the VCC or VCMC.
- (iii) Any change of designated person(s) shall only be made with prior approval of the SC.
- (iv) Any vacancy in relation to the position of a designated person shall be filled within 3 months from the date of the departure of the former designated person in compliance with clause 4.B.(i) of these Guidelines.

5. THE FIT AND PROPER CRITERIA FOR DESIGNATED PERSONS

- 5.1 In determining whether a person is fit and proper to be a designated person in accordance with clause 4.B of these Guidelines, regard shall be had to his probity, to his competence and soundness of judgement of fulfilling the responsibilities of a designated person, to the diligence with which he is fulfilling or likely to fulfil those responsibilities, and to whether the interests of customers, if any, are or are likely to be, in any way threatened by his holding of that position.
- 5.2 Without prejudice to the generality of clause 5.1 of these Guidelines, regard may be had to the previous conduct and activities in the business or financial matters of the person in question and in particular, to any evidence that he has –
- (a) committed an offence involving fraud or other dishonesty, or violence;
 - (b) contravened any provision made by or under any written law appearing to the SC to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
 - (c) engaged in any business practices appearing to the SC to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business; or
 - (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

6. REGISTRATION PROCEDURES

- 6.1 The application for registration shall be made to the SC by completing–
- (a) Form 1 entitled “**Application for the Registration of Venture Capital Corporations and Venture Capital Management Corporations**”, and
 - (b) Form 2 entitled “**Application for the Registration of Designated Person(s)/Director(s) of Venture Capital Corporations and Venture Capital Management Corporations**”.
- 6.2 Form 1 shall be submitted to the SC accompanied with the following documents:
- (a) A copy of the applicant’s Memorandum of Association and Articles of Association or other constituent document stating investment into venture companies as the core business of the company;
 - (b) A copy of the applicant’s profile and organisational structure depicting related, subsidiary, associate and holding companies with percentage of shareholding in each categories;
 - (c) Form 8 or 9 (whichever is applicable), 24 and 49 of the Companies Act 1965;
 - (d) Form 13 and/or 32A of the Companies Act 1965 if there is any change of name or transfer of shares of the applicant, where applicable; and
 - (e) Information on the amount of funds and type of investments that the applicant is currently managing, is projected to manage in the next five (5) years or the life of the fund (if applicable).

The applicant is encouraged to submit the names of all the members of the management team.

- 6.3 Form 2 shall be submitted to the SC accompanied with the following documents:
- (a) A curriculum vitae consisting details on the qualification and experience of the proposed designated person(s) appointed pursuant to clause 4.B.(i) of these Guidelines;
 - (b) A certified copy of relevant documents and certificates supporting the information content of clause 6.3(a) of these Guidelines;

- (c) A certified copy of the identity card (for Malaysian citizen) or passport (for non-Malaysian citizen) of the proposed designated person(s) named; and
 - (d) A recent passport-sized coloured photograph of the proposed designated person(s).
- 6.4 The applicant shall be notified by the SC upon approval or rejection of the application.

7. EFFECT OF REGISTRATION

- 7.1 Upon registration with the SC under these Guidelines, the applicant shall be designated as a VCC or VCMC, depending on the structure and activities of the applicant.
- 7.2 In relation to corporations registered as a VCC, the activities of dealing in securities are limited to the following –
- (a) the acquisition of, disposition of or subscription for, securities that are not listed on a stock market of a stock exchange; or
 - (b) the making or offering to make with any person, or inducing or attempting to induce any person, to enter into or to offer to enter into—
 - (i) an agreement to or with a view to acquire, dispose of or subscribe for securities that are not listed on a stock market of a stock exchange; or
 - (ii) an agreement, other than a futures contract, the purpose or avowed purpose of which is to secure a profit to any of the parties from the yield of securities that are not listed on a stock market of a stock exchange or by reference to fluctuations in the value of such securities;
- 7.3 In relation to corporations registered as a VCMC, the activities of dealing in securities are limited to the following –
- (a) prior to the listing of the securities, —
 - (i) the acquisition of, disposition of or subscription for, such securities; or

- (ii) the making or offering to make with any person, or inducing or attempting to induce any person, to enter into or to offer to enter into—
 - (A) an agreement to or with a view to acquire, dispose of or subscribe for such securities; or
 - (B) an agreement, other than a futures contract, the purpose or avowed purpose of which is to secure a profit to any of the parties from the yield of such securities or by reference to fluctuations in the value of such securities;
- (b) upon the securities referred to in clause 7.3(a) of these Guidelines being listed,—
 - (i) the disposition of such securities; or
 - (ii) the making or offering to make with any person, or inducing or attempting to induce any person, to enter into or to offer to enter into an agreement for or with a view to dispose of such securities;
- (c) in relation to the securities referred to in clause 7.3(a) of these Guidelines which have been listed and which the VCMC has not disposed of,—
 - (i) the acquisition of, disposition of or subscription for, any interest in respect of such securities; or
 - (ii) the making or offering to make with any person, or inducing or attempting to induce any person, to enter into or to offer to enter into an agreement for or with a view to acquiring, disposing of or subscribing for any interest in respect of such securities.

8. CONTINUOUS COMPLIANCE

- 8.1 A VCC or VCMC shall comply with the requirements of these Guidelines at all times.
- 8.2 A VCC or VCMC shall submit to the SC its annual periodic report in accordance with Form 3 entitled “Annual Activity Report for **Venture Capital Corporations and Venture Capital Management Corporations**”, within 30 days from each year-end.

- 8.3 A VCC or VCMC shall also submit to the SC its latest audited financial statements, within 3 months after the close of each financial year.
- 8.4 A VCC or VCMC may be required to submit other relevant information or documents deemed necessary by the SC.
- 8.5 A VCC or VCMC shall notify the SC (Licensing Department) of any material change in the information submitted to the SC within 14 days from the date of the change.

9. GENERAL

- 9.1 All registration forms, periodic reports and other additional documents as required in these Guidelines shall be submitted to the SC at the following address:

**The Licensing Department
Securities Commission
No. 3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur
Tel: (603) 6204 8000
Fax: (603) 6201 5282**

- 9.2 The SC may, where it deems appropriate, allow any exemption or variation from these Guidelines based on the merits of an individual case. Where the SC allows any exemption or variation from these Guidelines, the relevant VCC or VCMC shall not be absolved from any duty or liability under any law.
- 9.3 A VCC or VCMC may employ expatriate staff as set out in the **Guidelines for the Employment of non-Malaysian Nationals in the Securities and Futures Industries**.
- 9.4 Non-compliance with the provisions of these Guidelines may result in the corporation being de-registered as a VCC or VCMC.