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SC's Guidelines On Offer Of Shares By Unlisted Public Companies (UPCs) To Sophisticated Investors

Contact Persons:

Ooi Bee Hong
Partner
+603 6209 5401
beehong@rdslawpartners.com

Chia Loong Thye
Partner
+04 370 1122
ltchia@rdslawpartners.com

Ong Eu Jin
Partner
+603 6209 5488
eujin@rdslawpartners.com

Tan Gek Im
Partner
+04 370 1122
gekim@rdslawpartners.com

Annabel Kok Keng Yen
Senior Associate
+603 6209 5400
annabel@rdslawpartners.com

The Securities Commission Malaysia (SC) has issued the Guidelines on Offer of Shares by UPCs to Sophisticated Investors (Guidelines), which came into effect on 1 August 2021.

The Guidelines are aimed to safeguard investors' interest in the wake of increased queries and complaints received by the SC on shares being offered by UPCs, marketed through phone calls, seminars, video recording via social media or unlicensed agents, to both sophisticated and non-sophisticated investors.

The Capital Markets and Services Act 2007 (CMSA) imposes an obligation on UPCs to issue a prospectus and thereafter register with the SC when offering shares to retail investors. The preparation of prospectus must comply with the requirements set out in the Prospectus Guidelines.

However, UPCs are not required to issue a prospectus when the shares are issued wholly to sophisticated investors as set out under Schedule 6 and Schedule 7 of the CMSA[1].

The Guidelines provide the following requirements and/or obligations for UPCs when offering shares to sophisticated investors:

1. Requirements Relating To Information Memorandum (IM)

- A UPC must ensure that any IM issued in respect of an offer of its shares must comply with, in addition to requirements under the Guidelines,

[1] SC has recently made amendments to the CMSA and expanded the categories of "sophisticated investors" in Schedules 6 and 7 of the CMSA, which came into force on 1 July 2021. Click here for more information in relation to such amendments.

the requirements as set out in the CMSA and any other guidelines issued by the SC.

- A caution statement shall be included on the cover page of any IM issued, to clearly state that while the IM is deposited with the SC, approval by the SC is not required for the offering or the IM.

2. Conduct Obligations Relating To Distribution

- A UPC that appoints an agent for the purposes of promoting or marketing its shares must ensure that the agent holds a Capital Markets Services Licence for the regulated activity of dealing in securities.

- A UPC and persons acting on its behalf must take reasonable steps to verify that any prospective investor is a sophisticated investor prior to approaching the investor for the offering of its shares.

3. Reporting Requirements

The following must also be submitted by a UPC to the SC irrespective of whether an offer of shares is accompanied by an IM:

(a) a post-issuance notification in such form as set out in Appendix 1 of the Guidelines no later than 7 days after the commencement of the offering.

(b) a report that is prepared on a quarterly basis (post-issuance update report) in such form as set out in Appendix 2 of the Guidelines no later than seven days after the end of each quarter of its financial year, as long as the offering is ongoing.

The information as set out in Appendices 1 and 2 of the Guidelines and any other information as may be required by the SC must be included in the post-issuance notification and post-issuance update report.

Additionally, a UPC must:

(a) submit to SC any revision to the post-issuance notification and/or post-issuance update report made by the UPC;

(b) ensure that all statements and information submitted to the SC are true, not misleading and do not contain material omission; and

(c) revise the post-issuance notification and/or post-issuance update report upon becoming aware of any change or a likelihood of any change that may render any information submitted with the SC to be false, misleading or contain any material omission.

Please note that for the purposes of the Guidelines:

"offer" in relation to any shares in a UPC, includes the issuance of such shares, the making available of, offering for subscription or purchase of, or issuance of an invitation to subscribe for or purchase of such shares.

"sophisticated investor" means any person who:

(a) falls within an any of the categories of investors set out in Part I, Schedules 6 and 7 of the CMSA; or

acquires shares pursuant to a private placement where the consideration for the acquisition in not less than RM250,000 or its equivalent in foreign currencies for each transaction whether such amount is paid for in cash or otherwise.

Nevertheless, the SC may, upon application, grant an exemption from or a variation to the requirements of the Guidelines if the SC is satisfied that:

(a) such variation is not contrary to the intended purpose of the relevant requirements in the Guidelines; or

(b) there are mitigating factors, which justify the said exemption or variation.

Authored by Lily Lee Zai Lii, an Associate and Wong Chia Li, a Paralegal with the firm's Capital Markets and M&A practice.

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beehong@rdslawpartners.com

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