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Unlisted Public Companies (“UPCs”) To Comply With The Securities Commission Malaysia’s Guidelines And Securities Laws

UPCs

UPCs, in short, are public companies which are not listed in any stock exchange. Although unlisted, UPCs are bound by the Securities Commission Malaysia’s (“SC”) guidelines and securities laws.

Compliance with SC guidelines and securities law

The SC has recently reminded UPCs intending to raise funds from members of the public to comply with the Capital Markets and Services Act 2007 (“**CMSA**”) and the relevant guidelines, particularly when an offer is made to retail investors.

The SC has stated that there has been an increasing number of queries and complaints regarding UPCs offering their shares, including preference shares, to both retail and sophisticated investors.

When shares of UPCs are offered to retail investors, a prospectus is required to be issued pursuant to the CMSA and thereafter, registered with the SC. The UPC must include all information that are required under the [Prospectus Guidelines](#) in the prospectus for the purpose of registration with the SC.

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

Should UPCs decide to issue an information memorandum (“**IM**”) for offering their shares to sophisticated investors, they are required to deposit the IM with the SC and also state

¹ Sophisticated investors include high net worth individuals (with net asset threshold of RM3 million, excluding the value of primary residence), high net worth entities and accredited investors.

clearly in the IM that the SC's approval is not required for the offering of the shares despite it being deposited with the SC.

Penalty

It is a breach of the CMSA if UPCs offer shares to retail investors without a prospectus.

A person found liable for such breach may be punished with a fine not exceeding RM10 million or imprisonment not exceeding ten years, or both.²

Conclusion

It should be noted by UPCs that they have the duty to provide all the relevant information to investors, including sophisticated investors, to enable them to make an informed assessment, including the merits of investing in the shares of the UPCs and the extent of the risks involved.

Readers can click [here](#) for the full announcement by the SC.

Authored by Lee Zai Lii (Lily)³

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² Section 232 of the CMSA.

³ Lily is an Associate with the firm's Capital Markets and M&A Practice. A barrister by training, she holds a First Class law degree from University of Reading.

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We are operating as usual and clients may pose any queries including those in relation to this alert via e-mail or telephone to:

- Mr Ong Eu Jin
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About Us

We are a full-service commercial law firm with a head office in Kuala Lumpur and a branch office in Penang. Our key areas of practice are as follows:-

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