



# **GUIDELINES AND BEST PRACTICES ON ISLAMIC VENTURE CAPITAL**

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## 1.0 INTRODUCTION

- 1.01 The *Guidelines and Best Practices on Islamic Venture Capital* (Guidelines and Best Practices) specifies the core requirements for establishing an Islamic venture capital corporation (VCC) or an Islamic venture capital management corporation (VCMC), and sets out the best practices which are intended to assist such VCCs and VCMCs in carrying out Islamic venture capital business activities.
- 1.02 The Shariah principles and concepts commonly applied for venture capital are set out in Appendix 2.
- 1.03 The Guidelines and Best Practices may be reviewed as and when necessary.

## 2.0 DEFINITIONS

- 2.01 In the Guidelines and Best Practices, the following definitions have the following meanings, unless the context otherwise requires:

**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 expected to be listed on the stock exchange.

**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.

<b>Start-up financing</b>	means financing or funding provided by a VCC or VCMC to a venture company for product development and initial marketing.
<b>Shariah Advisory Council or SAC</b>	means Shariah Advisory Council established by the Securities Commission under section 18 of the <i>Securities Commission Act 1993</i> .
<b>Shariah adviser</b>	means a person or a company: <ul style="list-style-type: none"> <li>• approved and registered with the Securities Commission as a Shariah adviser; or</li> <li>• recognised or appointed by a foreign financial services provider as a Shariah adviser.</li> </ul>
<b>Venture capital corporation (VCC)</b>	means a corporation that manages on its own behalf, investment in securities of venture companies in different business stages, i.e. seed, start-up, or early-stage financing.
<b>Venture capital management corporation (VCMC)</b>	means a corporation that manages on behalf of a VCC, investment in securities of venture companies in different business stages, i.e. seed, start-up, or early-stage financing.
<b>Venture capital</b>	means a mode of financing a venture company at the seed, start-up, or early-stage financing, where a VCC or VCMC acquires an agreed portion of the venture company's share capital.
<b>Venture company</b>	means a company which receives venture capital funding and is typically not listed on the stock market of a stock exchange at the point of investment.

## Part 1

### 3.0 GUIDELINES

#### Core Requirements

3.01 A VCC or VCMC must be registered under the *Guidelines for the Registration of Venture Capital Corporations and Venture Capital Management Corporations* issued by the Securities Commission.

3.02 In addition, the following requirements must be complied with for the establishment of an Islamic VCC or VCMC:

- (a) An independent Shariah adviser must be appointed to provide expertise and guidance on conformance to the Shariah principles in all matters of the Islamic VCC or VCMC (please refer to Appendix 2 for the criteria on the appointment of Shariah Adviser); and
- (b) The activities of the venture companies must be Shariah compliant. Non-permitted Shariah activities include–
  - (i) financial services based on riba (interest);
  - (ii) gambling/gaming;
  - (iii) manufacture or sale of non-halal products or related products;
  - (iv) conventional insurance;
  - (v) entertainment activities that are non-permissible according to Shariah;
  - (vi) manufacture or sale of tobacco-based products or related products;
  - (vii) stockbroking or share trading in Shariah non-compliant securities; and
  - (viii) hotels and resorts.

*Note: Apart from the activities listed above, the Shariah adviser may apply ijtiḥad<sup>1</sup> for other activities that may be deemed non-permissible, as a criterion in assessing the activities for Islamic venture capital.*

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<sup>1</sup> Reasoning by qualified scholars to obtain legal rulings from the sources of the Shariah.

## **Part 2**

### **4.0 BEST PRACTICES**

4.01 A VCC or VCMC which has met the core requirements for establishing an Islamic VCC or Islamic VCMC under Part 1 is highly encouraged to adopt the best practices as set out below:

#### **Responsibilities of a Shariah Adviser**

4.02 A Shariah adviser is to act with due care, skill, and diligence–

- (a) to ensure all aspects of the Islamic venture capital business activities including portfolio management, trading practices, and other administrative and operational matters are in accordance with Shariah principles;
- (b) to provide Shariah expertise and guidance on all matters, particularly in regard to documentation, structuring, and investment instruments, and ensure compliance with the general Shariah principles and regulations, standards or resolutions including those issued by the SAC from time to time. In the event of doubt, clarification must be sought from the SAC;
- (c) to take responsibility in scrutinising any compliance report prepared by the Shariah compliance officer or any investment transaction report, to ensure that the investment activities are Shariah compliant; and
- (d) to provide a written opinion and/or periodic report to confirm and certify that the venture capital activities have been managed and/or administered in accordance with Shariah principles.

#### **Written Disclosure and Declaration by Shariah Adviser**

4.03 The Shariah adviser is expected to prepare, at least on an annual basis, a written disclosure and declaration to the board of directors that the VCC is managed in accordance with Shariah principles.

## **Compliance Officer**

- 4.04 A VCC or VCMC is encouraged to appoint a compliance officer for the purposes of ensuring the company's full compliance with the specific requirements for an Islamic VCC or Islamic VCMC.
- 4.05 The compliance officer is expected to–
- (a) report any Shariah non-compliance directly to the Shariah adviser and the board of directors for consideration and/or immediate remedial action; and
  - (b) assist the Shariah adviser in certifying that the business of the VCC or VCMC is in accordance to Shariah principles.
- 4.06 The compliance officer of the VCC or VCMC is expected to ensure that the written disclosure and declaration made by the Shariah adviser and other compliance records are maintained as required.
- 4.07 A compliance officer is encouraged to acquire basic knowledge of Islamic finance.

## **Portfolio Management**

- 4.08 Any investment decision, either local or abroad, is expected to be endorsed by the Shariah adviser to ensure that the investment complies with the general Shariah principles and regulations, standards or resolutions issued by an established or recognised Shariah authority or body.
- 4.09 A VCC or VCMC is expected to ensure that the activities of the venture companies remain Shariah compliant until the point of full divestment.

## **Maintenance of Accounts**

4.10 A VCC or VCMC is expected to ensure that its clients' monies or properties are properly managed in accordance to Shariah principles. In particular:

- (a) a VCC or VCMC is expected to maintain Shariah-based accounts; and
- (b) where a VCMC is managing on behalf of VCCs, it must segregate the funds managed for an Islamic VCC from those for a conventional VCC.

## SHARIAH PRINCIPLES AND CONCEPTS

Shariah principles and concepts commonly applied to venture capital are as follows:

### **Musharakah**

A partnership between two parties or more to finance a business venture whereby all parties contribute capital either in the form of cash or in kind.

If the venture is profitable, the profit will be distributed based on a pre-agreed ratio. In the event of a loss, the loss shall be shared on the basis of capital contribution.

### **Mudharabah**

A contract made between two parties to finance a business venture. The parties are a *rabb al-mal* (investor) who solely provides the capital and a *mudharib* (entrepreneur) who solely manages the project.

If the venture is profitable, the profit will be distributed based on a pre-agreed ratio. In the event of a business loss, it should be borne solely by the capital provider, to the extent of the capital contribution.

### **Wakalah**

A contract which gives the power and rights to another party or parties to act on his behalf, based on the agreed terms and conditions.

**APPOINTMENT OF SHARIAH ADVISER**

- 1.0 An Islamic VCC or VCMC must appoint either:
- (a) an individual or a corporation as an independent Shariah adviser, who is approved and registered by the SC, and meets the following criteria:
    - (i) The person is not an undischarged bankrupt;
    - (ii) The person has not been convicted for any offence arising from a criminal proceeding;
    - (iii) The person is of good repute and character; and
    - (iv) The person possesses the necessary qualifications and expertise, particularly in *fiqh muamalah* and Islamic jurisprudence, and has experience and/or exposure in Islamic finance;

or

  - (b) an Islamic bank or a licensed institution approved by Bank Negara Malaysia to carry on an Islamic banking business.
- 2.0 Where the independent Shariah adviser under paragraph 1.0 above is a corporation, it must engage at least one Shariah expert who meets the criterion stipulated in paragraph 1.0(a). In addition, the Shariah expert and the corporation concerned should not have breached any securities or banking law since the date of incorporation. The corporation must not have a winding up order or resolution passed against it.
- 3.0 An Islamic VCC or VCMC may also appoint a non-resident Shariah adviser who may be an individual, a corporation or an Islamic bank. The Islamic VCC or VCMC should disclose and submit to the SC, information on the Shariah adviser. For a non-resident Shariah Adviser, the following information is required to be submitted:

**For an individual:**

- (a) Full name;
- (b) Correspondence address;
- (c) Jurisdiction of residence;
- (d) Contact information;
- (e) Shariah qualification and experience; and
- (f) Letter of appointment/registration as Shariah adviser from any other jurisdiction.

**For a corporation:**

- (a) Name;
- (b) Jurisdiction of incorporation and company number;
- (c) Registered address;
- (d) Shariah qualification and experience of relevant personnel;
- (e) Letter of appointment/registration as Shariah adviser from any other jurisdiction;
- (f) Contact person; and
- (g) Contact details.

4.0 Submission for the registration of an independent Shariah adviser should be addressed to:

Head  
Islamic Capital Market Department  
Securities Commission Malaysia  
3, Persiaran Bukit Kiara  
Bukit Kiara  
50490 Kuala Lumpur