



'Ensuring Investor Protection'

## SECURITIES AND EXCHANGE COMMISSION

# DRAFT GUIDELINES FOR LEGAL PRACTITIONERS WORKING IN THE SECURITIES INDUSTRY

**NUMBER: XXXXXXXXXXXXXX**

### 1.0 Preamble

These Guidelines are issued by the Securities and Exchange Commission (hereinafter referred to as "the Commission") pursuant to sections 146 and 209 of the Securities Industry Act, 2016 (Act 929) with respect to services provided by legal practitioners to public companies and SEC licencees (hereinafter referred to as "client firms"). The Commission hereby publishes these guidelines for legal practitioners of client firms.

### 2.0 General Statement

These guidelines shall apply to legal practitioners of client firms.

### 3.0 Requirements for legal practitioners

A legal practitioner of a client firm shall -

- i. be a person holding a Qualifying Certificate and a licence to practice under the Legal Profession Act, 1960 (Act 32).
- ii. be registered with the Commission. The registration shall be renewed annually at a fee specified by the Commission from time to time.
- iii. have professional indemnity insurance acceptable to the Commission.

- iv. be required to have knowledge and skills or experience in the securities market.
- v. The Commission may grant a waiver under clause 3 (iv).
- vi. The application for registration and renewal shall be in the form specified in Form XXX

#### 4.0 Scope of work

The legal practitioner may perform the following functions, :

- (1) Review the statutory corporate documents of an issuer and other transaction parties to ensure that the parties have the necessary legal capacity and authority to enter into a transaction;
- (2) Conduct due diligence to ensure that all information material to a transaction are disclosed in the transaction documents;
- (3) Advise on the legal structure and risks associated with the transaction.
- (4) Negotiate, draft and review all legal documentation required for a transaction including but not limited to a prospectus, scheme particulars, trust deeds, vending agreements, powers of attorney/consents and underwriting agreements;
- (5) Advise parties on disclosure obligations and general observance of and compliance with sound corporate governance principles, rules and regulations as they relate to a transaction;
- (6) Advise on compliance with the requirements of the Securities Industry Act, 2016 (Act 929), the listing requirements of a securities exchange on which the securities shall be listed, statutes *in pari materia*, and other relevant legislation.
- (7) Ensure compliance with all statutory and regulatory requirements by the issuer and other parties to a transaction;
- (8) Ensure all statutory filings are executed and provide confirmation (legal opinion) as to the enforceability and effectiveness of transaction documents;
- (9) File necessary applications in Court in support of the transaction where required;
- (10) Perform any other roles that the Commission may require.

## 5.0 Confirmation of registration

A client firm shall confirm that the legal practitioner is registered with the Commission before using his services.

## 6.0 Independence of a legal practitioner

- a. The legal practitioner shall be independent of the client firm.
- b. The legal practitioner shall not be considered independent where the:
  - i. person holds 5% or more shares in a client firm it intends to provide services to.
  - ii. person is indebted to the client firm unless lending is the ordinary course of business of client firm

## 7.0 Suspension or Cancellation of registration

- (a) The Commission may suspend or cancel the registration of the legal practitioner where:
  - (i) a levy of execution in respect of that legal practitioner has not been satisfied;
  - (ii) the legal practitioner ceases to hold a licence to practice;
  - (iii) the legal practitioner is adjudged bankrupt in any jurisdiction;
  - (iv) the Commission has reason to believe that the legal practitioner has not performed his functions efficiently, honestly or fairly;
  - (v) the legal practitioner is convicted of an offence involving fraud or dishonesty;

Prior to any cancellation or suspension by the Commission, the affected legal practitioner/lawyer shall be given a hearing.

- (b) A suspension or cancellation of the registration of a legal practitioner/shall not affect rights or responsibilities attached to a previous assignment.

## 8.0 Sanctions for Non-Compliance:

(a) Where there is a breach of any provision stipulated in these guidelines by legal practitioner:

- i. The Commission may take action(s) specified under section 209 of the Securities Industry Act 2016.
- ii The Commission reserves the right to cancel the registration of the legal practitioner from its register.

The Commission may revoke, vary, revise or amend these guidelines.

These Guidelines shall be effective XXXXX 2017