

Investment ‘Guru’, Beware

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It was reported that retail investors are on the rise of late, making up approximately 40% of the total investors trading on the local bourse.¹ The increased market activity has emanated a proliferation of self-proclaimed investment advisers who provide investment advice to unsuspecting and gullible retail investors through social media platforms, online blogs or even chat rooms in messaging applications.

SC Guidance Note

Noting that the public has been seeking clarification concerning investment advice activities, the Securities Commission of Malaysia (SC) issued a timely Guidance Note on Provision of Investment Advice² (**Guidance Note**) to offer some clarity on this matter.



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As one of the seven regulated activities,³ an individual who wishes to carry on a business of advising others concerning securities or derivatives is required to obtain a licence from the SC.⁴

Investment advice

Under the Guidance Note, any communication involving providing recommendations or opinions which are likely to induce a person to take any action or position (whether to buy, sell or hold) concerning a particular class, sector or instrument in relation to securities or derivatives, is likely to be considered as provision of investment advice.

This includes seemingly innocuous discussion on specific stocks in social media platforms, online blogs or forums, if such a discussion may induce a reader to take any action or position (whether to buy, sell or hold) concerning the specific stock.

¹ Kang Siew Li, ‘Even if you’re an investment guru, you can be jailed up to 10 years without a licence’, *The Edge Weekly* (3-9 August 2020).

² The SC’s “Guidance Note on Provision of Investment Advice” dated 30 December 2020

³ Capital Markets and Services Act 2007, Schedule 2

⁴ Capital Markets and Services Act 2007, s 58



Carrying on a business

It is more likely that the SC would consider an individual as carrying on a business if the activity of providing investment advice is undertaken in a structured manner with regularity, or where the *modus operandi* is any of the following:

- (a) Pay-for-advice arrangements;
- (b) Offering a fee-based subscription to a channel or group, including on social media, which offers investment advice; or
- (c) Expectation of benefits or gratification, whether direct or indirectly, from the provision of investment advice.

It is mentioned in the Guidance Note that, by and large, conducting trainings or seminars on general stock trading techniques for a fee would not likely require a licence from the SC. However, there is still a need for a licence if it includes any material, content or statement which amounts to a recommendation or inducement to take any action or position (whether to buy, sell or hold) concerning a particular class, sector or instrument in relation to securities or derivatives.

In *Anuar Abdul Aziz*,⁵ a self-proclaimed “senior investment adviser” was charged for conducting a seminar and giving out investment advice without a licence.⁶ The High Court, in affirming the decision of the trial judge, held that the accused had acted as an investment adviser by giving out investment advice in the form of recommendation to a group of persons in relation to buying or selling securities, systemically and regularly. It was also stressed that the paraphernalia used by the accused demonstrated system and continuity.

Sanction

If an unlicensed investment adviser is found to have carried on a business advising others concerning securities or derivatives, he would have committed an offence under the securities laws and may, upon conviction, face a fine not exceeding RM10 million or imprisonment not exceeding 10 years, or both.

⁵ *Anuar Abdul Aziz v Public Prosecutor* [2006] 1 MLJ 380 (HC)

⁶ Pursuant to s 14 of the since repealed Securities Industry Act 1983



The SC further issued a stern reminder that apart from the provision of investment advice, an unlicensed individual may also be liable to a fine not less than RM1 million or imprisonment not exceeding 10 years, if he participates in any of the following acts:

- (a) Engaging in any transaction which has or is likely to have the effect of raising, lowering or maintaining the price of securities or derivatives, for the purpose which may include inducing another person to buy or sell the securities or derivatives;⁷
- (b) Making a false or misleading statement that is likely to induce another person to buy or sell the securities or derivatives or is likely to have the effects of raising, lowering or maintaining the price of securities or derivatives;⁸ or
- (c) Recklessly making any statement, promise or forecast that is misleading, false or deceptive to induce or attempt to induce another person to deal in securities or derivatives.⁹

Authors' comments

In its press release, the SC cautioned members of the public against dealing with unlicensed investment advisers as they could be defrauded or worse still if they were unknowingly exploited as part of a market manipulation scheme.

It is best advised that investors be on the lookout and always stay vigilant against unscrupulous and self-proclaimed investment gurus. Investors can also be more proactive in verifying the licensing status of individuals or companies offering capital market services or products through the Public Register of Licence Holders, List of Registered Recognised Market Operators and Investor Alert List. On the flipside, budding and aspiring investment gurus have to ensure that they are validly licensed and registered with the SC to avoid finding themselves up against enforcement actions.

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⁷ Capital Markets and Services Act 2007, s 176
⁸ Capital Markets and Services Act 2007, s 177
⁹ Capital Markets and Services Act 2007, s 178

