



GUIDELINES FOR THE OFFERING, MARKETING AND DISTRIBUTION OF FOREIGN FUNDS

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CONTENTS

	Pages
1.0 APPLICATION OF GUIDELINES	3
2.0 DEFINITIONS	3
3.0 PERMITTED FOREIGN FUNDS	5
4.0 OFFERING DOCUMENT	5
5.0 MARKETING AND DISTRIBUTION	7
 APPENDICES	
Appendix 1 LIST OF RECOGNISED JURISDICTIONS AND RECOGNISED FUNDS	10
Appendix 2 ADDITIONAL REQUIREMENTS FOR OFFERING BY HONG KONG RECOGNISED FUNDS	12
Appendix 3 APPLICATION PROCEDURES	14

1.0 APPLICATION OF GUIDELINES

- 1.01 The *Guidelines for the Offering, Marketing and Distribution of Foreign Funds* is issued by the Securities Commission Malaysia (SC) under section 377 of the *Capital Markets and Services Act 2007* (CMSA). These guidelines set out the requirements that must be complied with by any person who intends to offer, market, or distribute in Malaysia a collective investment scheme that is incorporated, constituted, or domiciled in a jurisdiction other than Malaysia.
- 1.02 The SC may take action against persons who fail to comply with or observe any of the provisions in these guidelines, as are permitted under section 354 of the CMSA and/or other relevant provisions under the CMSA.
- 1.03 The SC may exempt where it deems appropriate or, upon application, grant waivers or variations from compliance with any requirements in these guidelines.
- 1.04 The SC may, from time to time, issue practice notes to further provide greater clarity and guidance. The practice notes must be complied with in the same manner as these guidelines.
- 1.05 These guidelines (including practice notes) may be reviewed as and when necessary.

2.0 DEFINITIONS

In these guidelines, the following words have the following meanings, unless the context otherwise requires:

adviser	a Malaysian incorporated– (a) investment bank/merchant bank; (b) universal broker; or (c) such other person who provides advice/information to the applicant where such advice/information is submitted to the SC in relation to any proposal.
registered distributor	an institutional unit trust adviser (IUTA) and corporate unit trust adviser (CUTA).
collective investment scheme	any arrangement where– (a) it is made for the purpose, or having the effect, of providing facilities for persons to participate in or receive profits or income arising from the acquisition, holding, management or disposal of securities, futures contracts or any other property (hereinafter referred to as “scheme’s assets”) or sums paid out of such profits or income;

	<p>(b) the persons who participate in the arrangements do not have day-to-day control over the management of the scheme's assets; and</p> <p>(c) the scheme's assets are managed by an entity who is responsible for the management of the scheme's assets and is approved/authorised/ licensed by a relevant regulator to conduct fund management activities.</p>
corporate unit trust advisers or CUTA	an institution, a corporation or an organisation of financial planners that is registered with a body approved by the SC to deal in units of a fund.
foreign fund or fund	a collective investment scheme that is constituted in a jurisdiction other than Malaysia, whether unlisted or listed on an exchange.
foreign operator	means a foreign-incorporated entity responsible for the management of assets held for or within a fund, and/or who otherwise operates a fund.
institutional unit trust advisers or IUTA	an institution, a corporation or an organisation that is registered with a body approved by the SC to deal in units of a fund.
net asset value (NAV)	the value of all the fund's assets less the value of all the fund's liabilities at the valuation point.
NAV per unit	the NAV of the fund divided by the number of units in circulation, at the valuation point.
offering document	a prospectus, information memorandum or any other document inviting subscriptions or offering to subscribe for or purchase, securities or units of a fund.
private fund	a fund that is open for subscription only to qualified investors.
prospectus	has the same meaning as assigned in the CMSA.
qualified investors	<p>refers to–</p> <p>(a) an individual whose total net personal assets exceed RM3 million or its equivalent in foreign currencies;</p> <p>(b) a corporation with total net assets exceeding RM10 million or its equivalent in foreign currencies based on the last audited accounts;</p> <p>(c) a unit trust scheme or prescribed investment scheme;</p>

- (d) a company registered as a trust company under the *Trust Companies Act 1949* or a corporation that is a public company under the *Companies Act 1965* or under the laws of any other country which has been allowed by the SC to be a trustee for the purposes of this Act and has absolute discretion in the investment of the trust assets of a trust with total net assets exceeding RM10 million or its equivalent in foreign currencies; or
 - (e) a pension fund approved by the Director General of Inland Revenue under section 150 of the *Income Tax Act 1967*.
- recognised fund a category or type of fund that is allowed for distribution in Malaysia and listed in Appendix 1.
- recognised jurisdiction a foreign jurisdiction recognised by the SC and listed in Appendix 1.
- retail fund a fund that is open for subscription to the general public.

3.0 PERMITTED FOREIGN FUNDS

3.01 Foreign funds¹ that meet the following criteria are permitted to be offered, marketed and distributed in Malaysia–

- (a) the fund is a recognised fund;
- (b) the fund is approved, registered or authorised by the relevant regulator in the recognised jurisdiction; and
- (c) if the fund is listed, it must be listed and traded on an exchange that is regulated by the relevant regulator in the recognised jurisdiction.

3.02 In addition to clause 3.01, parties responsible for the fund must be licensed, registered, authorised or approved by the relevant regulator in the recognised jurisdiction to operate and manage the fund.

4.0 OFFERING DOCUMENT

4.01 For a retail fund, the offering document should be a prospectus and must–

- (a) be registered with the SC; and

¹ SC's approval is required under section 212 of the CMSA prior to the offering, marketing and distribution of foreign funds in Malaysia.

- (b) comply with clauses 4.03, 4.04, 4.05, 4.06 and 4.07.
- 4.02 For a private fund, the offering document should be an information memorandum and should be deposited with the SC within seven days after it is issued in Malaysia.

Contents of prospectus

- 4.03 A prospectus should contain statements that describes clearly the following:
- (a) The regulatory status of the fund;
 - (b) The foreign jurisdiction from where the fund originates, the name of the regulator responsible for regulating the fund, and parties responsible for the fund; and
 - (c) The applicable legislation in the foreign jurisdiction that applies to the fund.
- 4.04 A prospectus–
- (a) should be dated;
 - (b) should contain a statement that no unit of the fund will be issued on the basis of the offering document after its expiry date; and
 - (c) should, if it contains statements made by an expert or contains what purports to be a copy of or an extract from a report, memorandum or valuation of an expert, state the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the offering document.
- 4.05 The prospectus should contain the following warning and disclaimer statements:
- “The fund which is the subject of this prospectus was established in a recognised jurisdiction or is regulated by the regulator in the recognised jurisdiction. As such, the fund is not subjected to the requirements of the Guidelines on Unit Trust Funds issued by the Securities Commission Malaysia”.*
- “The Securities Commission Malaysia has approved the issue of, offer for subscription or purchase, or issue an invitation to subscribe for or purchase units of the fund which is the subject of this prospectus in Malaysia and a copy of the prospectus has been registered with the Securities Commission Malaysia”.*
- “The approval and registration of the fund's prospectus, should not be taken to indicate that the Securities Commission Malaysia recommends the fund or assumes responsibility for the correctness of any statement made or opinion or report expressed in the prospectus”.*

“The Securities Commission Malaysia is not liable for any non-disclosure on the part of the parties responsible for the fund and takes no responsibility for the contents of the prospectus, makes no representation as to its accuracy or completeness and expressly disclaims any liability whatsoever arising from, or in reliance upon the whole or any part of the contents of this prospectus”.

“INVESTORS SHOULD RELY ON THEIR OWN EVALUATION TO ASSESS THE MERITS AND RISKS OF THE INVESTMENT. IN CONSIDERING THE INVESTMENT, INVESTORS WHO ARE IN DOUBT AS TO THE ACTION TO BE TAKEN SHOULD CONSULT PROFESIONAL ADVISERS IMMEDIATELY”.

- 4.06 The prospectus of a Shariah-compliant fund should also contain the following statement:

“The fund described in this prospectus has been certified as being Shariah compliant by the Shariah Supervisory Board/Shariah adviser appointed for the fund”.

- 4.07 The statement required under clauses 4.03, 4.04, 4.05 and 4.06 must be in a prominent position or is attached firmly to the prospectus of the fund.

Contents of prospectus of a Shariah-compliant fund

- 4.08 For a Shariah-compliant fund, the following information should be clearly disclosed if not already in the prospectus:

- (a) The names, relevant qualifications and experience of each member of the Shariah Supervisory Board/Shariah adviser;
 - Where the Shariah Advisory Board/Shariah adviser is a company, the corporate information of the company, including experience relevant to its appointment, number of funds it currently acts as an adviser and staff strength.
- (b) Roles and primary functions of the Shariah Supervisory Board/Shariah adviser including the frequency of meetings;
- (c) Clear description of the Shariah approval process including details in relation to methodologies, rulings and screening process; and
- (d) Frequency of review by the Shariah Supervisory Board/Shariah adviser on the assets of the fund to ensure compliance with Shariah principles at all times.

5.0 MARKETING AND DISTRIBUTION

- 5.01 Unlisted foreign funds may only be marketed and distributed in Malaysia through a registered distributor.

- 5.02 The registered distributor must keep a register of unit holders and enter into the register–
- (a) for individuals, the name, address and the number of the identity card issued under the *National Registration Act 1959* (if any);
 - (b) for corporations, the name, registered address and registration number of that corporation;
 - (c) the number of units held by each unit holder;
 - (d) the date on which the name was entered in the register as a unit holder;
 - (e) the date on which any person ceased to be a unit holder; and
 - (f) any other relevant information or particulars of the unit holder.
- 5.03 The registered distributor must ensure that the offering document of the fund–
- (a) is offered to investors prior to any transaction for units;
 - (b) is accompanied with an application form; and
 - (c) is in either Bahasa Malaysia or English language.
- 5.04 The registered distributor must ensure that it has in its principal place of business and its branches (if any) copies of the prospectus for inspection by potential investors.

Marketing and distribution to retail investors

- 5.05 In marketing and distributing foreign retail funds to Malaysian investors, the registered distributor must observe and ensure compliance with relevant securities laws and the following guidelines:
- (a) *Guidelines on Marketing and Distribution of Unit Trust Funds;*
 - (b) *Guidelines on Unit Trust Advertisements and Promotional Materials;* and
 - (c) *Guidelines on Online Transactions of, and Online Activities in Relation to, Unit Trusts.*
- 5.06 The registered distributor must also comply with the relevant guidelines, codes of conduct and any other relevant rules issued by the body approved by the SC.
- 5.07 The registered distributor must ensure that the unit prices and NAV per unit of the fund is readily and publicly available daily. Daily publication of the unit prices and NAV per unit in at least one national Bahasa Malaysia newspaper and one national English newspaper is encouraged.

Report to unit holders

- 5.08 The registered distributor must ensure that any report of the fund is sent to the unit holders of the fund in a timely and efficient manner.

Report to the SC

- 5.09 The registered distributor must submit a quarterly report to the SC comprising the following information:
- (a) The name of the fund and its operator;
 - (b) The jurisdiction in which the fund is constituted;
 - (c) For each fund and for each month of the reporting period–
 - (i) the net sales or repurchase; and
 - (ii) the number of unit holders' accounts (broken down into Bumiputera, non-Bumiputera, local and foreign).
- 5.10 The quarterly report referred to in clause 5.07 must be submitted to the SC by the seventh business day after the end of the quarter.
- 5.11 The registered distributor must immediately notify the SC of any material change to the fund or developments relating to the fund and parties responsible for the fund.

Appendix 1

LIST OF RECOGNISED FUNDS AND JURISDICTIONS

Recognised Jurisdiction	Recognised Funds
Dubai International Financial Centre	<p>Islamic funds which are:</p> <ul style="list-style-type: none">• constituted and domiciled in the Dubai International Financial Centre; and• notified or registered with the Dubai Financial Services Authority and includes:<ul style="list-style-type: none">– Public funds– Private funds [100 participants]– Umbrella funds– Property funds (including REITs)– Feeder funds– Fund-of-funds– Private equity funds– Commodity-related funds
Hong Kong	<p>Islamic funds (excluding hedge funds and leveraged funds) which are:</p> <ul style="list-style-type: none">• authorised and primarily regulated by Securities and Futures Commission Hong Kong (SFC);• managed by SFC licensed managers;• in compliance with the requirements under these guidelines and additional requirements under Appendix 2; and

	<ul style="list-style-type: none"> • domiciled in– <ul style="list-style-type: none"> - Hong Kong; or - jurisdictions that have broadly implemented International Organization of Securities Commissions (IOSCO) Principles relating to collective investment scheme (principles 17–20) and signatories to IOSCO Multilateral Memorandum of Understanding concerning consultation and cooperation and the exchange of information.
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For the purposes of this Appendix, the term “Primarily regulated” refers to SFC-authorized funds which are managed by SFC licencees and do not include funds that are authorised under any mutual recognition agreement between SFC and another jurisdiction.

Appendix 2

ADDITIONAL REQUIREMENTS FOR OFFERING BY HONG KONG RECOGNISED FUNDS

1. Shariah Supervisory Board/Shariah adviser

Appointment of a Shariah Supervisory Board/Shariah adviser to–

- (a) certify that the fund is Shariah compliant;
- (b) review and ensure compliance with Shariah principles/rulings at least on an annual basis; and
- (c) ensure that the fund's monies and properties are properly safeguarded and segregated in accordance with Shariah requirements.

The Shariah Supervisory Board/Shariah adviser should state in the annual report whether the fund has been operated and managed in accordance with Shariah principles. The report by the Supervisory Board/Shariah adviser must also include a statement to the effect that the status of securities has been determined or classified as Shariah compliant.

2. Jurisdiction

Nothing in the constitutive documents may exclude the jurisdiction of the court of Malaysia to entertain any action concerning the foreign fund.

3. Additional requirements on the registered distributor of unlisted funds

In addition to the role and responsibilities under clause 5, the registered distributor must undertake the following:

- (a) Represent the foreign fund and the foreign operator for all matters relating to the fund;
- (b) Accept any notice/correspondence, including service of process, which unit holders may wish to serve on the fund, trustee or the foreign operator;
- (c) Provide unit holders with information on the fund including the fund's annual and interim report; and
- (d) Make available for public inspection in Malaysia, free of charge the constitutive documents.

The foreign operator must ensure there is a registered distributor throughout the period the fund is approved in Malaysia.

In the event the registered distributor retires or is dismissed, the foreign operator should suspend offering of the foreign fund for that period and another registered distributor should be appointed within 30 days. A foreign operator which fails to appoint another registered distributor may request for an extension of time to rectify the situation.

4. Additional requirements for exchange-traded funds (ETF)

For ETF, the foreign operator must observe and ensure compliance of the following:

- (a) Clause 21.08(b)(iv), (f) & (g) and Clause 21.11 under Part II of the *Prospectus Guidelines for Collective Investment Schemes*;
- (b) Chapter 16 and 17 of the *Exchange-traded Funds Guidelines*; and
- (c) Main market listing requirements of Bursa Malaysia Securities Bhd.

Guidance

1. Clause 16.20(b) of *the Exchange-traded Funds Guidelines* would not apply where in-kind creation/redemption transactions can only be made outside Malaysia.
2. Clause 16.23(b) of *the Exchange-traded Funds Guidelines* would not apply where the fact sheet of the fund is made available instead of key features of the fund.

Appendix 3

APPLICATION PROCEDURES

1. Legal requirements

Under the CMSA, a proposal to issue, offer for subscription or purchase, or issue an invitation to subscribe for or purchase units of a fund in Malaysia must be approved by the SC.

For a retail fund, the prospectus must be registered with the SC.

For a private fund, the offering document (i.e. information memorandum) must be deposited with the SC.

2. Submitting party

Applications to the SC must be submitted by an adviser.

The adviser has a duty to ensure that all the requirements of the SC pertaining to submission of an application are met and is responsible for dealing with the SC on all matters relating to the application.

Submissions that do not comply with the requirements of the SC or which are unsatisfactory may be returned.

The adviser and any other persons accepting responsibility for all or part of the information and documents submitted to the SC should exercise due diligence for all or any part of the information submitted relating to the application.

The adviser and any other persons accepting responsibility for all or any part of the statement or information submitted should not submit or cause to be submitted any statement or information that is false or misleading, or from which there is a material omission.

The SC reserves the right to request for additional information from the submitting party to support the application.

3. Submission of applications

For a retail fund, an application should comprise–

- (a) a cover letter, specifying the approval/registration sought;
- (b) the fund's deed or constitution, certified by a notary public (two copies);
and
- (c) the fund's prospectus (two copies).

For a private fund, item 10(c) does not apply. A copy of the information memorandum should be deposited with the SC within seven days after it is issued in Malaysia.

Submission of an application should be addressed to–

The Chairman
Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur

(Attention: Trust and Investment Management Department)

4. Application fees

Applications should be accompanied with the appropriate fee (where applicable). An application is deemed incomplete if the fee is not submitted.

The details on fees payable to the SC for various types of applications are set out in the *Securities Commission (Fees) (Amendment) Regulations 2004*.

Payment should be made in the form of a crossed cheque/draft order made in favour of "Suruhanjaya Sekuriti" or "Securities Commission".