

FREQUENTLY-ASKED QUESTIONS SETTING UP AN ISLAMIC FUND MANAGEMENT COMPANY IN MALAYSIA

INTRODUCTION

In tandem with Malaysia's initiatives to promote its Islamic capital market, efforts have been focused to develop and internationalize the Islamic fund management segment. There are several initiatives and incentives to make Malaysia an attractive wealth management and intermediation centre in respect of Islamic finance. These measures include liberalizing regulatory requirements, which are further complemented by various fiscal incentives.

Summarily, the measures are as follows:

- Islamic fund management companies set up in Malaysia are allowed to be wholly owned by foreign entities;
- Islamic fund management companies coming under this scheme can manage both institutional and retail funds such as unit trust funds, including wholesale funds
- Islamic fund management companies can manage funds sourced from within or outside Malaysia
- Islamic fund management companies are permitted to invest 100% of their assets abroad
- Islamic fund management companies are not required to comply with 30% Bumiputra of its directors, representatives or employees
- Islamic fund management companies are given income tax exemption on all fees received from Islamic fund management activities, until assessment year 2016;
- Tax exemption on income earned by foreign experts in Islamic finance

This FAQ is intended to provide guidance on the application process and clarification on the various regulatory requirements in establishing an Islamic fund management company.

ESTABLISHING AN ISLAMIC FUND MANAGEMENT COMPANY

1. What is the applicable regulatory structure in establishing an Islamic fund management company

An Islamic fund management company in Malaysia must be licensed by the Securities Commission to carry out fund management activities. The primary guidelines and policies that would be relevant to the establishment of an Islamic fund management company are as follows:

- Capital Market Services Act 2007
- The Securities Commission Licensing Handbook

- Application for Establishment of Foreign Fund Management Companies Under the Special Scheme
- Guidelines on Islamic Fund Management
- Guidelines on Compliance Function for Fund Managers

2. Who can apply to become an Islamic fund management company?

The application is open to both local and foreign companies. The applicants should have the requisite qualifications and expertise in fund management, in particular Islamic fund management. At the same time, the company should be able to demonstrate the ability to bring value to the Malaysian capital market through the injection of business and expertise. It is expected that the presence of foreign companies in the local fund management market will add greater depth and breadth to the pool of players within the industry.

3. What are the application procedures with respect to the establishment of a foreign Islamic fund management company?

The license application is a two step process, which consist of the establishment stage and the licensing stage. Applicants with no local presence are required to undertake both stages of the process while applicants with local presence need not undertake the first stage. Please refer to question 4 for further guidance on 'local presence'.

(1) Establishment Process

The 'Applicant' will need to complete the 'Form for Establishment of a Foreign Fund Management Company', which is annexed to the Guidelines on the Application for Establishment of Foreign Fund Management Companies Under the Special Scheme. The Guidelines are available on the Securities Commission's website.

The 'Applicant' would typically be the parent or related company of the proposed Islamic fund management company or which ever company that is anticipated to hold equity in the proposed licensed Islamic fund management company. The information required in the form includes a background on the Applicant, compliance information and information on the activities of the group and business plan and model for the proposed company. The Securities Commission will meet with the Applicant as part of the assessment process.

Following an assessment and if the application is in order, the Securities Commission will provide its approval in principle (AIP) for the establishment of the foreign fund Islamic management company.

The application for establishment may be addressed to the Securities Commission at:

Investment Management Supervision Department
Securities Commission Malaysia
3, Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur
Tel: 62048000

(2) Licensing

Upon receipt of the approval in principle, the Applicant can proceed with the second step of the process which is to apply for the license. The detail process and requirements are described below.

4. Does the above process apply if the Applicant is already present in Malaysia direct or indirectly in the capital market?

The 'Applicant', may for this purpose, be considered to have a 'local presence' if it has a direct or indirect subsidiary, that is a licensed capital market intermediary in Malaysia.

An 'Applicant' which has a local presence need not undertake step 1 above, that is, it need not apply for the establishment of the Islamic fund management company.

Similarly, step 1 also does not apply to 'Applicants' which are local licensed capital market intermediaries.

These Applicants may proceed to apply for the license as described in step 2 above.

5. What does the 'Approval in Principle' (AIP) mean and what are the obligations of 'Applicants' on receiving the AIP?

The AIP means that the Applicant can proceed to establish and incorporate the proposed Islamic fund management company. Generally, the AIP will be granted for a period of 6 months during which the 'Applicant', must make plans to apply for the Islamic fund management license. During this time the 'Applicant' should establish or incorporate the company, identify the directors, key management, the fund management representatives, compliance officer and the Shariah adviser.

6. Are companies required to establish a separate entity to undertake Islamic fund management business?

This is a commercial decision and companies may decide based on their circumstances and the business model to be adopted. Companies may wish to undertake the activity in a separate entity as a full fledged Islamic fund management company or undertake the activity by applying the concept of 'window' within the existing conventional business.

Companies undertaking the activity within the window concept may still avail themselves to tax benefits. However, the liberalized requirements in terms of equity will not apply.

7. Will there be funds available for Islamic fund management companies?

The Islamic fund management companies may contact the relevant agencies directly to obtain information on the mandates available.

LICENSING PROCESS AND REQUIREMENTS

8. How does the Applicant make an application for the license for fund management?

The Applicant must complete the relevant forms which are available on the SC website. The forms include:

- Form 1 which is in regard to the Application for New Capital Market Services License,
- Form 1A, IB, IC, and Forms 3 and 24 which are in regard to the Application for New Capital Market Services Representatives License, Directors, key management and compliance officer
- Readiness Checklists

The detail forms and application procedures are available on the SC website.

The Applicant may direct the application for license to the SC Licensing Department at:

Licensing Department
Securities Commission Malaysia
3, Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur
Tel: 62048000

9. How soon will the license be issued after the application is made?

Generally, if documents and all requirements are met, the license will be issued within 6 weeks of the complete application being submitted.

10. Should the proposed Islamic fund management be incorporated in Malaysia?

Yes. The proposed Islamic fund management company must be incorporated in Malaysia and registered with the Companies Commission of Malaysia. The Applicant must incorporate the company prior to applying for the license.

11. What is the minimum financial requirement for the regulated activity mentioned?

The company is required to have a minimum paid-up capital of RM2million and to maintain minimum shareholders' funds of RM2 million at all times.

If however, the company wishes to undertake retail activities such as the manufacture and distribution of unit trust funds, the paid up capital required is RM10 million. The company would also have to make a separate application to the SC to act as a management company in relation to a unit trust scheme under Section 289 of the CMSA as well as seek registration with FMUTM.

The distribution and selling of the unit trust products also triggers a different regulated activity which is 'dealing in securities', which requires the Islamic fund management company to hold a CMSL dealing in securities restricted to unit trusts products.

12. What are the requirements for the appointment of a Chief Executive Officer?

The increased liberalization of the fund management industry is also to facilitate the transfer of skill and expertise into Malaysia. The SC expects the CEO to be someone of high caliber with relevant experience and skill sets. The CEO should be dedicated to the company and should not hold multiple positions, such as being an executive in companies within or outside the Group. The CEO may however hold non executive positions.

13. What is the requirement for the appointment of the Board of Directors?

As a licensed company, there must be at least one licensed director in fund management. The director must have a minimum of 10 years of relevant experience in the fund management industry.

Generally, the SC will also make an assessment of the members of the board. The board members should be people of distinguished characters and have demonstrated the experience and able to provide direction to the company with respect to its fund management activities.

14. How many licensed representatives does the company need to have at the point of submitting an application for license to the SC?

The fund management company is required to have at least two licensed representatives, i.e. two CMSRL holders, for the Islamic fund management activity.

The requirement of two licensed representatives may include a licensed director. In this case, this requirement will be met by having one licensed director and one other representative for fund management.

15 Is there a requirement for the company to appoint Bumiputera directors, representatives or employees?

As an Islamic fund management company, there is no requirement to meet the Bumiputera requirement for directors, representatives or employees.

16. What are the requirements with regard to the appointment of key personnel?

While, the experience requirement of key personnel is not expressly stated, it is considered good practice for the company to appoint persons with the requisite knowledge and skill to carry out the fund management activities. In particular, the company should be able to demonstrate the skill and ability of its key personnel to conduct Islamic fund management activities.

The SC also requires the Islamic fund management company to register a compliance officer.

17. Can the compliance function be outsourced?

Yes, the compliance function may be outsourced to a company within the group of companies to which the Islamic fund management company belongs to. However, the company providing the services must be located in Malaysia. In any case, the Board of Directors is accountable for the compliance of the fund management company.

It should be noted that the compliance officer plays a critical role in the company's level of compliance and instilling best practices in compliance. More importantly, given that the Islamic fund management business is specialized, the compliance officer is expected to have some level of experience and knowledge in Islamic finance and Shariah related matters. In addition, the compliance officer takes on a major role in the event the Shariah adviser resigns. The compliance officer will be responsible for monitoring the business and seek endorsement with the newly appointed Shariah adviser.

18. Can the Islamic fund management company outsource its fund management activities?

The fund management company cannot outsource its primary function; which is the fund management activities. However, it may outsource its backroom and middle room functions. The back room and middle room functions would include activities such as accounting, fund accounting, risk management, compliance, internal audit and others.

Your company must submit an application for SC's approval for the outsourcing of back office function in accordance with the *Guiding Principles on Outsourcing of Back Office Functions for Capital Market Intermediaries*. The Guidelines is available on the SC website.

19. Can a foreign Shariah adviser be appointed as an independent Shariah adviser to oversee all Shariah matters?

Yes. A foreign Shariah adviser can be appointed provided he is registered with the SC.

20. How do we register for a new independent Shariah adviser?

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.

21. An Islamic bank is a registered person and non-CMSL holder under the CMSA. Is an Islamic bank considered as an Islamic fund manager if it carries on the Islamic fund management business? Is an Islamic Bank governed by the *Guidelines on Islamic Fund Management*?

No. An Islamic bank is not an Islamic fund manager. It is a 'registered person' under Schedule 4 of the CMSA. An Islamic fund manager refers to an institution (CMSL holder), which carries on a fund management business which complies with Shariah requirements. As a registered person under the CMSA, an Islamic bank is not governed by the *Guidelines on Islamic Fund Management*.

22. Is a fund management company (a CMSL holder) carrying on both Islamic fund management and conventional fund management business considered an Islamic fund manager?

No. You are not recognised as an Islamic fund manager.

DISTRIBUTING AND SELLING UNIT TRUST FUNDS

23. What are the licensing requirements to distribute and sell unit trust funds?

The company must apply for a CMSL for dealing in securities restricted to unit trust products and apply to be a member of FMUTM. The shareholders' fund requirement is RM10 million. Agents and employees who deal in unit trust products on behalf of the company are also required to register with FMUTM. There must be at least 2 personnel who are registered with FMUTM and a director with 10 years relevant experience who is registered with FMUTM.

The Company must also make a separate application to the SC to act as a Unit Trust Management Company in accordance with Section 289 of the CMSA with respect to a unit trust scheme. The relevant application procedures are available on the SC website.

There is no requirement to fulfill the requirement for Bumiputra employees, directors or equity for a foreign owned Islamic fund management company.

However, a local Islamic fund management company must have 51% local shareholding, including 30% Bumiputra shareholding and meet the relevant Bumiputra requirements with regard to CMSRL representatives and directorship, in order to distribute and sell unit trust funds.

24. For Islamic fund management companies intending to distribute and sell Shariah unit trust products, do the employees need to hold a CMSRL?

The company would have to obtain a restricted CMSL for dealing in securities restricted to unit trust products. However, the relevant employees do not need to hold a CMSRL for dealing in securities restricted to unit trust products. They must, however, be registered with the Federation of Malaysian Unit Trust Managers (FMUTM).

25. My company is licensed as a CMSL holder to carry on the regulated activity of Islamic fund management and currently, has one director licensed for fund management. If my company decides to apply to add on a second regulated activity, for instance, dealing in securities restricted to unit trust products, to the CMSL, how many directors are required to be licensed?

As a CMSL holder, you are required to have at least one licensed director. If you decide to expand your business to include a new regulated activity, you need to only appoint a head of a regulated activity (*by whatever title, description or position called*) for the second regulated activity. The person must have at least 8 years of relevant experience to head the regulated activity. In this example, the company will need to appoint a head for the regulated activity of dealing in securities restricted to unit trust products. The person may be a director of your company. The licensed director may also act as the head of the regulated activity for dealing in securities restricted to unit trust. The director must be registered with FMUTM.

26. Can asset management and unit trust mandates be transferred from existing subsidiaries to the new Islamic fund management company?

Yes. The group's Shariah mandates may be consolidated into the new company. This is a commercial decision by the company. The SC does not prescribe or place restrictions or conditions. The Islamic fund management company however must comply with the paid up capital requirement of RM10million if it involves unit trust activities.

TAX INCENTIVES AND WORK PERMIT APPLICATIONS

27. How does the Islamic fund management company apply for the tax incentives?

- (i) Income tax exemption on fee income
Please refer to the SC website for the application details.
- (ii) Income tax exemption on income earned by foreign experts
Please refer to the MIFC secretariat on the application details. They may be contacted at 0326988044.

28. Can the Islamic fund management company employ foreigners as the CEO, directors, compliance office, licensed representatives and other key management personnel?

Yes. It is also envisaged that the employment of foreigners will promote the transfer of skill and talent to the Malaysian capital market.

The foreign individuals as employees of the Islamic fund management company will require a work permit from the Malaysian Immigration Department. The SC acts as a one stop centre to assist companies in the application for the work permit. Companies may refer to the Licensing Department for details of the application process or refer to the SC website for the application forms and other information with regard to work permit applications.

Application for work permit may only be made after the company is licensed.

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