

Maqasid Al-Shariah Guidance

Islamic Capital Market Malaysia

INTRODUCTION

The Malaysian Islamic capital market (ICM) constitutes a substantial segment of the overall capital market.

Total size of the ICM	Total size of ICM <i>vis-a-vis</i> the total size of capital market	Total market capitalisation of Shariah-compliant securities	Total sukuk outstanding
RM2.3 trillion*	64.4%*	RM1.1 trillion*	RM1.2 trillion*

*As at December 2022.

The *Maqasid Al-Shariah Guidance Islamic Capital Market Malaysia* (Guidance) is a fundamental developmental effort in underpinning a strong and resilient industry.

It is the objective of the Guidance to enhance ICM ecosystem's authenticity and align with the true spirit of Islamic finance. It will serve as a reference for the marketplace, in the wake of growing challenges and complexities.



Solidifying ICM's full potential to contribute to society and the real economy through sustainable and responsible investing.



Adherence with utmost ethical standards to ensure that ICM continues to uphold the core principles of Shariah and maintain the trust and confidence of its stakeholders.



Encourage emphasis on substance to ensure continuation of competitive advantage.

Adherence to Shariah in general and compliance with the relevant Shariah requirements should remain as the primary condition to be fulfilled before alignment with *maqasid al-Shariah* is further assessed.

The development of the Guidance is in line with the SC's *Capital Market Masterplan 3* (CMP3) which, among others, is to position Malaysia as a regional centre for Shariah-compliant sustainable and responsible investment (SRI), to be recognised as a global leader in ICM and to promote greater alignment with *maqasid al-Shariah*.

Overview of the Guidance

Human Welfare (*Masalih al-'Ibad*)

Ultimate Objectives

Serving Benefits and Preventing Harm (*Jalb al-Masalih wa Dar' al-Mafasid*)
[Interest of Mankind (*Maslahah*)]

Five Necessities of *Maqasid al-Shariah* (*Kulliyat Khams*)

Necessities
(*Dharuriyyat*)

Needs
(*Hajiyyat*)

Embellishments
(*Tahsiniyyat*)

Protection of Religion
(*Hifz al-Din*)

Protection of Life
(*Hifz al-Nafs*)

Protection of Lineage
(*Hifz al-Nasl*)

Protection of Intellect
(*Hifz al-'Aql*)

Protection of Wealth
(*Hifz al-Mal*)

Objectives of Financial Transactions (*Maqasid Khassah*)

Aspiration 1
Humanity

Aspiration 2
Justice and Benevolence

Aspiration 3
Clarity and Transparency

Aspiration 4
Flexibility and Innovation

Aspiration 5
Fiduciary and Accountability

Aspiration 6
Accessibility and Inclusivity

Objectives of ICM (*Maqasid Juz'iyah*)

- Principle 1:** Cultivating Attainment of Basic Needs
- Principle 2:** Demonstrating Positive Social Culture
- Principle 3:** Undertaking Initiatives in Preserving the Well-Being of Future Generations
- Principle 4:** Fostering an Ethical and Learning Culture
- Principle 5:** Promoting Efficiency and Avoiding Wastage
- Principle 6:** Upholding Best Practices, Codes of Conduct and Ethical Values
- Principle 7:** Adhering to the Validity and Objective of Contracts
- Principle 8:** Enhancing Disclosure and Documentation
- Principle 9:** Fostering Innovation via Flexibility and Dynamism

- Principle 10:** Honouring Freedom of Transactions and Dealings
- Principle 11:** Upholding Fiduciary Duty with Utmost Good Faith
- Principle 12:** Promoting Accountability in Performances and Activities
- Principle 13:** Broadening the Circulation of Wealth and Participation
- Principle 14:** Maximising Wealth Distribution with Focus on Social Finance
- Principle 15:** Nurturing Businesses with Supportive Ecosystem

Fundamental

Adherence to the requirements of Shariah



Aspiration 1: HUMANITY

Refers to the quality of being kind, and considerate towards human beings and other creatures. This involves showing empathy, respect, and a sense of moral responsibility towards the well-being and dignity of all individuals regardless of race, religion, lineage, or wealth.

Principle 1: Cultivating Attainment of Basic Needs

Emphasises on cultivating attainment of basic needs and the creation of resources to address such needs for the betterment and well-being of individuals and society as a whole.

Principle 2: Demonstrating Positive Social Culture

Aims to foster a positive impact to the social culture and avoid activities that contribute to negative social cultures. This ultimately promotes harmony and compassion among individuals and communities.

Principle 3: Undertaking Initiatives in Preserving the Well-Being of Future Generations

Focuses on safeguarding future generations through environmental preservation such as climate change mitigation and adaptation. These efforts will enable them in gaining access to resources while maintaining a healthy and balanced ecosystem.



Aspiration 2: JUSTICE AND BENEVOLENCE

The practice of treating others fairly and equitably, regardless of background or social status is a manifestation of Justice.

The practice of doing good deeds to or for others to the best of one's ability, going above and beyond the call of duty to help others is construed as a manifestation of Benevolence.

Principle 4: Fostering Ethical and Learning Culture

Promotion of learning culture through research and training, fostering individual and collective excellence; and maintenance of an atmosphere supporting ethical behaviour such as avoiding greed to cultivate a society that upholds the principles of justice.

Principle 5: Promoting Efficiency and Avoiding Wastage

Promoting efficiency highlights the implementation of efficient and effective actions in the market while maintaining fair competition. Avoiding wastage, on the other hand, emphasises optimisation of resources.

Principle 6: Upholding Best Practices, Codes of Conduct and Ethical Values

Adhering to exemplary standards, ethical guidelines, and moral principles in all aspects of behaviour and decision-making with integrity, fairness and justice.



Aspiration 3:

CLARITY AND TRANSPARENCY

Clarity focuses on clear, accurate and precise articulation in conveying the Shariah principles and *maqasid al-Shariah* which facilitates understanding.

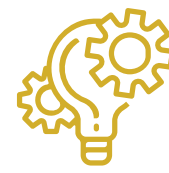
Transparency emphasises openness, disclosures, and ethical matters which promotes trust and ethical conduct.

Principle 7: Adhering to the Validity and Objective of Contracts

Ensures that contractual agreements are in accordance with Shariah requirements, clear and serve the intended purpose of contracting parties. This is to ensure the contract's substance is emphasised over its form.

Principle 8: Enhancing Disclosure and Documentation

Improves the quality of documents and level of information disclosed by furnishing comprehensive and accurate disclosure of relevant details, risks, terms, and conditions related to ICM products and services.



Aspiration 4:

FLEXIBILITY AND INNOVATION

Flexibility is a fundamental factor to ensure that the contracting parties can practice freedom of transaction without coercion.

Innovation emphasises developing existing and new products and services, which are beneficial to the contracting parties and can serve the best interests of society.

Principle 9: Fostering Innovation via Flexibility and Dynamism

Recognises the need for flexibility in the interpretation and application of Shariah principles and requirements; and the importance of adaptation and evolution serving the evolving needs of society with multifaceted contemporary complications.

Principle 10: Honouring Freedom of Transactions and Dealings

Stresses the importance of allowing individuals, the freedom to engage in transactions and dealings which is closely tied to two key concepts of *hurriyyah al-ta'aqud* (freedom of transaction) and preventing undue influence.



Aspiration 5: FIDUCIARY AND ACCOUNTABILITY

Fiduciary refers to the duty or conduct of individuals or groups of people who are entrusted and delegated with power to look after, manage, or safeguard the interests of others, grounded from the concept of *amanah* (trust).

Accountability underscores the principle that individuals and groups are obligated to take responsibility for their actions, with the acknowledgment that they will eventually face consequences for those actions.

Principle 11: Upholding Fiduciary Duty with Utmost Good Faith

Aims to highlight the obligation of a fiduciary to act in the best interests of its clients or beneficiaries by ensuring that duties are exercised diligently, avoid conflicts of interest; and providing responsible stewardship of the assets or responsibilities entrusted to them with utmost good faith.

Principle 12: Promoting Accountability in Performances and Activities

Pertains to the responsibility in actions and outcomes of an organisation, its products, and its supply chain which requires the entrusted person to act in a manner that can be justified, evaluated, and assessed by relevant stakeholders.



Aspiration 6: ACCESSIBILITY AND INCLUSIVITY

Accessibility aims to enable all individuals in society to participate in economic and financial activities, irrespective of their socio-economic status by providing equitable access to opportunities, resources, and services.

Inclusivity focuses on full integration of individuals in all aspects of societal and economic activities and ensure that varying needs and circumstances of individuals and groups of people are acknowledged and accommodated despite the differences.

Principle 13: Broadening Circulation of Wealth and Participation

Emphasises the need for an inclusive and accessible financial system involving the public at large regardless of financial background, reducing financial obstacles and ensuring that various groups have equal access to wealth.

Principle 14: Maximising Wealth Distribution with Focus on Social Finance

Emphasises the distribution of wealth and resources through social finance such as *zakat* (almsgiving), *sadaqah* (charity) and *waqf* (Islamic endowment). This is to support projects and initiatives that have a positive impact on communities and address social challenges.

Principle 15: Nurturing Businesses with Supportive Ecosystem

Wealth creation and distribution focuses on nurturing micro, small and medium-sized enterprises (MSMEs) and new firms. It includes providing infrastructure, resources and involves assistance to create a flourishing and inclusive business ecosystem.

KEY INFORMATION

What is *maqasid al-Shariah*?

Maqasid al-Shariah refers to the objectives or intents of Shariah as well as *asrar al-Shariah* (secrets of Shariah) and *al-hikam* (wisdoms), which are ordained by Allah s.w.t. comprehensively or in most situations, revelation of the commandments without specifying certain Shariah rulings.

Are the 15 principles exhaustive?

The 15 principles are non-exhaustive. It will continue to be enhanced in the future based on ICM's advancement.

To whom shall the Guidance be applicable?

The Guidance shall be applicable to industry players, products and services.

How would the Guidance be applied?

Initially, the Guidance will be applied for product issuance. When adopting the Guidance, Shariah advisers are to disclose that the product's terms and features are aligned with the Guidance.

What would be the approach of implementing the Guidance?

As a principle-based document, the industry players are strongly encouraged to adopt this Guidance.



*“The concepts of **jalb al-masalih** (serving benefits) and **dar’ al-mafasid** (preventing harm) ultimately guides human to sustain individual and societal well-being. Such concepts would not only be beneficial for human in this world but also in the hereafter.”*
– *al-Juwayni*

“Maqasid al-Shariah refers to the meanings and wisdoms focused by Shariah comprehensively or in most situations, revelation of the commandments without specifying certain Shariah rulings.”
– *Ibn `Ashur*



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