

GUIDELINES ON ISLAMIC FUND MANAGEMENT

SC-GL/IFM – 2007 (R1-2020)

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SECTION A: GENERAL REQUIREMENTS

Chapter 1

INTRODUCTION

General

- 1.01 The *Guidelines on Islamic Fund Management* (Guidelines) is issued by the Securities Commission (SC) under section 377 of the *Capital Markets and Services Act 2007* (CMSA).
- 1.02 These Guidelines set out the requirements to be complied by–
- (a) an Islamic fund management company; and
 - (b) a fund management company that carries on an Islamic fund management business under an Islamic “window”.
- 1.03 The SC pursuant to the relevant legislation set out in Appendix 3 has been given mandate to set out qualifying conditions which must be fulfilled by a fund management company for the purpose of tax exemption on its statutory income derived from a business of providing fund management of an Islamic fund.
- 1.04 These Guidelines are divided into three sections:
- (a) **Section A** sets out the general requirements for purposes of these Guidelines;
 - (b) **Section B**, subject to paragraph 1.05 of these Guidelines, sets out the requirements that must be complied with by an Islamic fund management company and a fund management company that carries on an Islamic fund management business under an Islamic “window”; and
 - (c) **Section C** sets out the qualifying conditions and requirements to be complied by the fund management company for purposes of applying for a certification of Islamic fund in respect of tax exemption granted to the Islamic fund management industry.
- 1.05 Section B of these Guidelines is not applicable to a trustee-manager of a business trust and a fund management company of a real estate investment trust.

- 1.06 The Shariah principles applicable for an Islamic fund management business are set out in the Appendix 1 of these Guidelines.
- 1.07 These Guidelines must be read together with the relevant provisions in the securities laws and other relevant guidelines issued by the SC.
- 1.08 These Guidelines are in addition to and not in derogation of any other guidelines issued by the SC or any requirements as provided for under securities laws.
- 1.09 The SC may, upon application, grant an exemption from or a variation to the requirements of these Guidelines if the SC is satisfied that—
- (a) such variation is not contrary to the intended purpose of the relevant requirement in these Guidelines; or
 - (b) there are mitigating factors which justify the said exemption or variation.

Chapter 2

DEFINITIONS

2.01 Unless otherwise defined, all words used in these Guidelines, shall have the same meaning as defined in the CMSA. In these Guidelines, the following terms have the following meanings, unless the context otherwise requires:

compliance officer	means the compliance officer under Section 2.01 of the <i>Guidelines on Compliance Function for Fund Management Companies</i> ;
CMSA	means the <i>Capital Markets and Services Act 2007</i> ;
CMSL	means the Capital Markets Services Licence granted under Section 61 of the CMSA;
fund management company	means a CMSL holder carrying on the business of fund management as defined in Part 2 of Schedule 2 of the CMSA;
Islamic banking business	has the same definition in the <i>Islamic Financial Services Act 2013</i> ;
Islamic fund	means a fund managed in accordance with Shariah principles;
Islamic fund management	means fund management that complies with Shariah requirements;
Islamic fund management company	means a fund management company whose sole purpose is to carry on Islamic fund management business;
Islamic "window"	means activity of carrying out an Islamic fund management business together with conventional fund management business;
licensed Islamic bank	has the meaning assigned to it under the <i>Islamic Financial Services Act 2013</i> ;
SAC	means Shariah Advisory Council of the SC.

SECTION B: REQUIREMENTS FOR ISLAMIC FUND MANAGEMENT

Chapter 3

CONSTITUTION

- 3.01 The Constitution of an Islamic fund management company should state that the Islamic fund management company aims to achieve its commercial objectives following Shariah principles.

Chapter 4

APPOINTMENT OF SHARIAH ADVISER

- 4.01 An Islamic fund management company must appoint either–
- (a) an individual or a corporation as an independent Shariah adviser, approved and registered by the SC, and meets the following criteria:
 - (i) The person is not an undischarged bankrupt;
 - (ii) The person has not been convicted for any offence arising from a criminal proceeding;
 - (iii) The person is of good repute and character; and
 - (iv) The person possesses the necessary qualifications and expertise, particularly in *fiqh muamalah* and Islamic jurisprudence, and has experience and/or exposure in Islamic finance; or
 - (b) a licensed Islamic bank or a licensed financial institution approved by Bank Negara Malaysia to carry on an Islamic banking business.
- 4.02 Where the independent Shariah adviser under paragraph 4.01 above is a corporation, it must engage at least one Shariah expert who meets the criterion stipulated in paragraph 4.01(a). In addition, the Shariah expert and the corporation concerned should not have breached any securities or banking law since the date of incorporation. The corporation must not have a winding up order or resolution passed against it.
- 4.03 An Islamic fund management company may also appoint a non-resident Shariah adviser who may be an individual, a corporation or a licensed Islamic bank. The Islamic fund management company should disclose and submit to the SC, information on the Shariah adviser, as listed in Appendix 2.
- 4.04 An Islamic fund management company must notify the SC of any resignation or cessation of services by a Shariah adviser within two weeks of resigning or ceasing of services. A new Shariah adviser must be appointed within one month from the resignation or cessation of services.

4.05 Where a Shariah adviser is subjected to any disqualification or becomes otherwise unfit to provide his or its services, the Islamic fund management company must ensure that the Shariah adviser vacates the position immediately. The Islamic fund management company must inform the SC of the disqualification and vacation of the post.

Chapter 5

ROLE OF SHARIAH ADVISER

5.01 The roles of a Shariah adviser include the following:

- (a) To advise on all aspects of Islamic fund management business in accordance with Shariah principles;
- (b) To provide Shariah expertise and guidance on all matters, particularly in documentation, structuring and investment instruments, and ensure compliance with relevant SC regulations and/or standards, including resolutions issued by the SAC;
- (c) To review reports of compliance officers of the Islamic fund management company or any investment transaction report to ensure that investment activities are Shariah-compliant; and
- (d) To provide a written opinion and/or periodic report to confirm and certify whether the Islamic fund management business has been managed and/or administered in accordance with Shariah principles.

In carrying out the roles above, a Shariah adviser must act with due care, skill and diligence.

Chapter 6

EMPLOYEES COMPETENCY

6.01 An Islamic fund management company should–

- (a) at all times, have adequate employees with necessary qualification, expertise and experience for its business;
- (b) provide adequate and sufficient training, whether internal or otherwise, for all its employees and licensed representatives so that they acquire the necessary knowledge for its business; and
- (c) ensure its compliance officer is well versed on Islamic fund management business and have adequate Shariah knowledge on Islamic finance and capital market.

Chapter 7

PORTFOLIO MANAGEMENT

7.01 Shariah-compliant investment

- (a) An Islamic fund management company must ensure that its investment activities are limited to Shariah-compliant investments;
- (b) For investment in listed securities on Bursa Malaysia, an Islamic fund management company should invest only in securities listed on the SAC's list of Shariah-compliant securities;
- (c) For investment in unlisted securities, an Islamic fund management company is encouraged to follow the SAC's methodology in determining the Shariah status of listed securities; and
- (d) For investment in securities traded on an exchange outside Malaysia, an Islamic fund management company should only invest in securities endorsed by the Shariah adviser or by an international Shariah standard setting body.

7.02 Maintenance of accounts

- (a) An Islamic fund management company should ensure that its clients' monies and properties are properly safeguarded under the securities law in accordance with Shariah requirements; and
- (b) An Islamic fund management company is encouraged to maintain all accounts with licensed Islamic bank. However, it is allowed to maintain the accounts in other licensed financial institutions approved by Bank Negara Malaysia provided they are maintained in accordance with Shariah principles.

7.03 Risk management

To manage risk, an Islamic fund management company is permitted to undertake appropriate risk management techniques and tools for its Islamic fund management business. Such tools and techniques must be in compliance with Shariah principles and endorsed by its appointed Shariah adviser.

Chapter 8

RESPONSIBILITIES OF THE COMPLIANCE OFFICER

- 8.01 In addition to complying with statutory and general requirements imposed by the securities law, a compliance officer of an Islamic fund management company must ensure that its business complies with these Guidelines and relevant SC regulations and/or standards, including resolutions issued by the SAC.
- 8.02 The compliance officer must report any Shariah non-compliance directly to the Shariah adviser and board of directors of the Islamic fund management company for consideration and/or immediate remedial action. The compliance officer must also report the matter to the SC.
- 8.03 The compliance officer is expected to assist the Shariah adviser in preparing and certifying that the Islamic fund management business is carried out in accordance with Shariah principles.

Chapter 9

WRITTEN DISCLOSURE AND DECLARATION

- 9.01 An Islamic fund management company is expected to prepare at least, annually a written disclosure and declaration to the board of directors of the Islamic fund management company and the SC, that the Islamic fund management business is carried out in accordance with Shariah principles.
- 9.02 An Islamic fund management company must ensure that the disclosure, declaration and other records made by the Shariah adviser are maintained as required under the *Guidelines on Compliance Function for Fund Management Companies*. The records must be available for examination upon the SC's request.

Chapter 10

INTERNAL AUDIT

10.01 An Islamic fund management company must put in place appropriate systems and mechanisms within its internal audit requirements to monitor Shariah compliance in accordance with these Guidelines, relevant SC regulations and/or standards, including resolutions issued by the SAC.

Chapter 11

FUND MANAGEMENT BUSINESS VIA ISLAMIC "WINDOW"

- 11.01 A fund management company that carries on an Islamic fund management business under an Islamic "window" must also comply with the requirements of these Guidelines, with the exception of Section B, Paragraph 3.01.
- 11.02 A fund management company that carries on an Islamic fund management business under an Islamic "window" must segregate the accounts from its Islamic fund management business and those from its conventional fund management business.

SECTION C: REQUIREMENTS FOR CERTIFICATION OF ISLAMIC FUND

Chapter 12

CERTIFICATION OF ISLAMIC FUND IN RESPECT OF TAX EXEMPTION

- 12.01 This chapter sets out the qualifying conditions which must be fulfilled by a fund management company for the purpose of applying for the certification of Islamic fund in respect of tax exemption.
- 12.02 For the purpose of the tax exemption referred to under Section A, Paragraph 1.03, a fund management company must manage a fund in accordance with Shariah principles.
- 12.03 The fund management company referred to under paragraph 12.02 must at all times conduct substantive fund management activity in Malaysia. For this purpose, the fund management company must comply with the following:
- (a) have at least three employees, two of which must hold a Capital Markets Services Representative's Licence for fund management activity; and
 - (b) have incurred annual operating expenditure of not less than RM500,000 based on its latest audited financial statements.

Chapter 13

APPLICATION

13.01 All applications to the SC must include all documents as set out in Appendix 4 and addressed to:

Chairman
Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur
(Attn: Islamic Capital Market Development)

13.02 The requirements under Section B(A)(i) and (B) of Appendix 4 are not applicable to the fund management company managing a unit trust fund, exchange-traded fund, wholesale fund, real estate investment trust, business trust and private retirement scheme.

13.03 In addition to the submission of a hard copy of the documents as set out in Appendix 4, an electronic copy of such documents must be submitted to the SC via email in the following manner:

- (a) Documents must be in a text searchable Portable Document Format (PDF);
- (b) The PDF-text files must be in a readable and proper condition; and
- (c) In a size of up to 10 MB per email to ICMsubmission@seccom.com.my.

SHARIAH PRINCIPLES AND CONCEPTS

The following are acceptable Shariah principles and concepts which may be applied in an Islamic fund management business.

Wakalah

A contract which gives the power to a person to act on his behalf, as long as he is alive, based on agreed terms and conditions.

Ujrah

Financial payment for services used. In today's economy, it can be in the form of salary, wage, allowance, commission and the like.

Ji'alah

The contract of reward; a unilateral contract promising a reward for a specific act or accomplishment.

Wadiah yad amanah

Goods or deposits kept with another person (not the owner) for safekeeping. The depositors are not entitled to any share of the profits but the depository may provide returns to the depositors as a token of appreciation.

Wadiah yad dhamanah

Goods or deposits kept with another person (not the owner) for safekeeping. The depositors become the guarantor and guarantees repayment of the whole amount or part of it that is outstanding in the account of depositors, when demanded. The depositors are not entitled to any share of the profits but the depository may provide returns to the depositors as a token of appreciation.

Mudharabah

A contract made between two parties to finance a business venture. The parties are a *rabb al-mal* or an investor who solely provides the capital and a *mudharib* or an entrepreneur who solely manages the project. If the venture is profitable, the profit will be distributed based on a pre-agreed ratio. If there is a business loss, it should be borne solely by the capital provider.

Musarakah

A partnership between two parties or more to finance a business venture whereby all parties contribute capital either in the form of cash or in kind. Any profit derived from the venture will be distributed based on a pre-agreed profit-sharing ratio but a loss will be shared on the basis of equity participation.

Murabahah

A contract which refers to the sale and purchase transaction for the financing of an asset whereby the cost and profit margin (mark-up) are made known and agreed to by all parties involved. The settlement for the purchase can be settled either on a deferred lump-sum basis or instalment basis, and is specified in the agreement.

Istisna`

A purchase order contract of assets whereby a buyer will place an order to purchase an asset to be delivered in the future. In other words, a buyer will require a seller or a contractor to deliver or construct the asset to be completed in the future according to the specifications given in the sale and purchase contract. Both parties to the contract will decide on the sale and purchase prices and the settlement can be delayed or arranged based on the schedule of work completed.

Hibah

A gift awarded to a person on a voluntary basis.

Hiwalah

A contract which allows a debtor to transfer his debt obligation to a third party.

Hak Tamalluk

An asset in the form of ownership rights as classified by the Shariah which are tradeable.

Tawarruq

The purchase of a commodity on deferred payment basis through a direct sale or *murabahah*.

The commodity is then sold for cash to a party other than the original seller.

APPENDIX 2

INFORMATION REQUIRED ON SHARIAH ADVISER (NON-RESIDENT)

For an individual:

- (a) Full name;
- (b) Correspondence address;
- (c) Jurisdiction of residence;
- (d) Contact information;
- (e) Shariah qualification and experience; and
- (f) Letter of appointment/registration as Shariah adviser from any other jurisdiction.

For a corporation:

- (a) Name;
- (b) Jurisdiction of incorporation and company number;
- (c) Registered address;
- (d) Shariah qualification and experience of relevant personnel;
- (e) Letter of appointment/registration as Shariah adviser from any other jurisdiction;
- (f) Contact person; and
- (g) Contact details.

APPENDIX 3

TAX EXEMPTION ORDERS

	Exemption	Available to	Legislation
(a)	Income tax exemption on statutory income derived from fund management services of managing a fund in accordance with Shariah principles for local or foreign investors.	Fund management company	<ul style="list-style-type: none"> • Income Tax (Exemption) (No.15) Order 2007 – P.U. (A) 199 and Income Tax (Exemption) (Amendment) Order 2016 – P.U (A) 104 • Income Tax (Exemption) (No.6) Order 2008 – P.U. (A) 255 and Income Tax (Exemption) (Amendment) (No. 2) Order 2016 – P.U (A) 105
(b)	Income tax exemption on statutory income derived from fund management services of managing a business trust or a real estate investment trust in accordance with Shariah principles.	Qualifying company	<ul style="list-style-type: none"> • Income Tax (Exemption) Order 2014 – P.U.(A) 150 and Income Tax (Exemption) (Amendment) (No.3) Order 2016 – P.U. (A) 106



DOCUMENTS TO BE SUBMITTED FOR CERTIFICATION OF ISLAMIC FUND IN RESPECT OF TAX EXEMPTION FOR THE ISLAMIC FUND MANAGEMENT INDUSTRY

This document contains the following:

- (a) Section A: Application form for certification of Islamic Fund in respect of Tax Exemption for the Islamic Fund Management Industry
- (b) Section B: Documents required to be submitted to the SC
- (c) Section C: Declaration

Section A: Application Form

(Please complete the form and submit together with the supporting documents required as set out in Section B)

Name of Applicant	:	
Licensing No	:	
Financial Year End	:	
Year of Assessment	:	
Income Tax Reference No	:	
Name of Contact Person of Applicant	:	

Telephone No	:	
Fax No	:	
E-mail	:	

Kindly provide the list of Islamic fund managed below:

No.	Name of Fund	Please specify the fund (i.e. unit trust fund/ exchange traded fund, wholesale fund, real estate investment trust, business trusts, private retirement scheme or private mandate)	Managing for Local/ Foreign Investors (please specify)

If there is insufficient space in the application form to give the required information, the information is to be given in a separate annexure.

Section B: Documents required to be submitted to the SC

Documents	SC's internal use
<p>(A) Written confirmation by the applicant confirming that:</p> <ul style="list-style-type: none"> i. the fund management business is carried out in accordance with Shariah principles*; ii. the qualifying conditions as set out under Section C, Paragraph 12.03 of the <i>Guidelines on Islamic Fund Management</i> have been complied with; and 	

<p>iii. the latest annual audited financial statements had been submitted through the SC Common Reporting Portal (ComRep).</p> <p>(B)Written confirmation by the appointed Shariah Adviser that the fund has been managed in accordance with Shariah principles*.</p>	
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Note:

**These documents are not applicable to the fund management company managing a unit trust fund, exchange-traded fund, wholesale fund, real estate investment trusts, business trust and private retirement scheme.*

Section C: Declaration

(The declaration must be signed by the Director and the Compliance Officer of the applicant pursuant to the authority granted by the resolution of the Board of Directors of the applicant)

- i. I hereby certify and declare that, to the best of my knowledge and belief, all the information submitted are true and correct.

Signature:

Name:

Designation:

Company Seal or Stamp:

Date:

- ii. I hereby certify and declare that, to the best of my knowledge and belief, all the information submitted are true and correct.

Signature:

Name:

Designation:

Company Seal or Stamp:

Date: