

GUIDELINES ON ISLAMIC CAPITAL MARKET PRODUCTS AND SERVICES

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GUIDELINES ON ISLAMIC CAPITAL MARKET PRODUCTS AND SERVICES

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¹ Save for the requirements in Chapter 34 relating to listed REITs and ETFs which will take effect on 3 April 2023 and paragraph 14.01(d) which will take effect on 1 January 2023.

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Chapter 1

INTRODUCTION

- 1.01 The *Guidelines on Islamic Capital Market Products and Services* (Guidelines) are issued by the Securities Commission Malaysia (SC) pursuant to section 377 of the *Capital Markets and Services Act 2007* (CMSA).
- 1.02 These Guidelines are divided into the following two parts:
- (a) **Part A** sets out the requirements in relation to the carrying out of an Islamic capital market activity; and
 - (b) **Part B** sets out the additional requirements to be complied with for the purposes of making available, offering or issuing an Islamic capital market product.

Chapter 2

APPLICABILITY

2.01 These Guidelines apply to—

- (a) a person who is a Shariah adviser or intending to apply to be registered as a Shariah adviser;
- (b) an Islamic fund management company;
- (c) a fund management company that carries on an Islamic fund management business under an Islamic 'window';
- (d) an issuer seeking to make available, issue or offer an Islamic capital market product;
- (e) a Registered Corporation undertaking Islamic venture capital or private equity activity; and
- (f) a recognized market operator seeking to facilitate the making available, issuance or offering of an Islamic capital market product through its platform.

2.02 These Guidelines must be read together with the relevant provisions in the securities laws and the relevant guidelines issued by the SC including—

- (a) *Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework* (LOLA Guidelines);
- (b) *Guidelines on Issuance of Corporate Bonds and Sukuk to Retail Investors*;
- (c) *Guidelines on Unit Trust Funds*;
- (d) *Guidelines on Listed Real Estate Investment Trusts*;
- (e) *Guidelines on Real Estate Investment Trusts*;
- (f) *Guidelines on Exchange-traded Funds*;
- (g) *Business Trusts Guidelines*;
- (h) *Guidelines on Private Retirement Schemes*;

- (i) *Guidelines on Recognized Markets;*
- (j) *Guidelines on the Registration of Venture Capital and Private Equity Corporations and Management Corporations; and*
- (k) *Guidelines on the Registration and Conduct of Capital Market Services Providers;*
- (l) *Licensing Handbook; and*
- (m) *Guidelines on Compliance Function for Fund Management Companies.*

2.03 These Guidelines shall supersede and replace the following:

- (a) *Guidelines for Shariah Advisers; and*
- (b) *Guidelines on Islamic Fund Management.*

2.04 Shariah advisers who have been registered under the *Guidelines for Shariah Advisers* shall be deemed to have been registered under these Guidelines and shall continue to comply with the corresponding provisions in these Guidelines.

2.05 In the case of Islamic business trusts, the requirements set out in these Guidelines shall supersede paragraphs 4.01 to 4.05, 4.08 to 4.12, 4.14, Appendices 3 and 4, and paragraphs 7 and 8 of Appendix 7 of the *Business Trust Guidelines*.

2.06 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.

2.07 To assist with the interpretation of the requirements under these Guidelines and their application, Guidance has been provided, where appropriate. Any departure from the Guidance will be taken into consideration in the SC's assessment on whether a breach of these Guidelines had occurred.

2.08 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 requirements in these Guidelines; or
- (b) there are mitigating factors which justify the said exemption or variation.

- 2.09 In the case of an Islamic capital market product under the Lodge and Launch Framework as set out in the LOLA Guidelines, the approval for exemption or variation under paragraph 2.08 above must be obtained prior to any lodgement as required under the LOLA Guidelines with the SC.

Chapter 3

DEFINITION

3.01 Unless otherwise defined, all words used in these Guidelines shall have the same meaning as defined in the CMSA. In these Guidelines, unless the context otherwise requires—

BNM	means Bank Negara Malaysia;
Bursa Securities	means Bursa Malaysia Securities Bhd;
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;
collective investment scheme or CIS	includes the following: <ul style="list-style-type: none">(a) A unit trust fund;(b) An exchange-traded fund;(c) A real estate investment trust;(d) A wholesale fund; and(e) A business trust;
compliance officer	has the meaning as defined in paragraph 1.06 of the <i>Licensing Handbook</i> ;
corporation	has the meaning as defined in the CMSA but does not include a financial institution;
CPE	means Continuing Professional Education;
exchange-traded fund or ETF	has the meaning as defined in the <i>Guidelines on Exchange-traded Funds</i> ;
financial institution	means any one or more, as the context may require, of the following: <ul style="list-style-type: none">(a) A licensed Islamic bank; or(b) A licensed bank or licensed investment bank, approved by BNM to carry on Islamic banking business;

fit and proper	means meeting the criteria as set out in Appendix 1 of these Guidelines;
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;
fund report	means the reporting document as set out in the relevant section under the guidelines issued by the SC relating to an Islamic fund;
Islamic banking business	has the meaning as defined in the <i>Islamic Financial Services Act 2013</i> ;
Islamic capital market service	means any regulated activity or capital market service which is conducted in accordance with Shariah and shall include regulated activities or capital market services conducted under an Islamic 'window';
Islamic capital market products	has the meaning as defined in section 316 of the CMSA;
Islamic fund	means a fund managed in accordance with Shariah;
Islamic fund management business under an Islamic 'window'	means activity of carrying out an Islamic fund management business together with conventional fund management business;
Islamic fund management business	means carrying out of any of the following activities in accordance with Shariah: <ul style="list-style-type: none"> (a) Managing a collective investment scheme, but excluding real estate investment trust and business trust; (b) Managing a private retirement scheme or a closed-end fund; or (c) Managing a portfolio of securities or derivatives or a combination of both, whether on a discretionary or non-discretionary mandate;

Islamic fund management company	means a fund management company licensed by the SC solely to carry on Islamic fund management business;
Islamic investment note	has the same meaning assigned to it in the <i>Capital Markets and Services (Prescription of Securities and Islamic Securities)(Investment Note and Islamic Investment Note) Order 2016</i> ;
Islamic structured product	means a structured product structured in compliance with Shariah;
ISSBNT	means Islamic Securities Selling and Buying–Negotiated Transaction;
issuer	means— <ul style="list-style-type: none"> (a) in relation to a collective investment scheme, other than a business trust, the management company; (b) in relation to a business trust, the trustee-manager; and (c) in relation to a private retirement scheme (PRS), the PRS Provider;
licensed bank	has the meaning as defined in the <i>Financial Services Act 2013</i> ;
licensed investment bank	has the meaning as defined in the <i>Financial Services Act 2013</i> ;
licensed Islamic bank	has the meaning as defined in the <i>Islamic Financial Services Act 2013</i> ;
obligor	means the issuer of a sukuk, or where the issuer is not an obligor, the entity that is specified to be an obligor and is contractually obliged to honour the financial obligations of the issuer arising from the issuance of the sukuk;
private retirement scheme or PRS	has the meaning as defined in the <i>Guidelines on Private Retirement Schemes</i> ;

real estate investment trust or REIT	has the meaning as defined in the <i>Guidelines on Listed Real Estate Investment Trusts</i> ;
recognized market operator or RMO	means an operator who is registered pursuant to section 34 of the CMSA;
Registered Corporation	means a corporation which is registered under the <i>Guidelines on the Registration of Venture Capital and Private Equity Corporations and Management Corporations</i> ;
SAC	means Shariah Advisory Council of the SC;
SC	means the Securities Commission Malaysia;
senior management	means— <ul style="list-style-type: none"> (a) a person, by whatever name called, having the authority and responsibility for the planning, directing or controlling the activities of the entity, including the chief executive and chief financial officer; and (b) any other person performing any function as may be specified by the SC;
Shariah adviser	means a person registered as a Shariah adviser under Section I, Part A of these Guidelines and includes— <ul style="list-style-type: none"> (a) a licensed Islamic bank; and (b) a licensed bank or licensed investment bank, approved by BNM to carry on Islamic banking business;
Shariah officer	means a full-time officer employed by the Shariah adviser who is a corporation, for providing Shariah advice;
Shariah committee	has the meaning as defined in the <i>Islamic Financial Services Act 2013</i> ;
SIDC	means Securities Industry Development Corporation;
SIRC	means the State Islamic Religious Council;

sukuk	<p>means certificates of equal value evidencing undivided ownership or investment in the assets using Shariah principles and concepts endorsed by the SAC.</p> <p>For avoidance of doubt, sukuk does not include sukuk issued by—</p> <ul style="list-style-type: none"> (a) the Federal Government; (b) any State Government; or (c) Bank Negara Malaysia;
sukuk <i>bai' bithaman ajil</i>	refers to certificates of equal value evidencing the certificate holder's undivided ownership of the asset, including the rights to the receivables arising from the underlying contract;
sukuk <i>ijarah</i>	refers to certificates of equal value evidencing the certificate holder's undivided ownership of the leased asset and/or usufruct and/or services and rights to the rental receivables from the said leased asset and/or usufruct and/or services;
sukuk <i>istisna`</i>	refers to certificates of equal value evidencing the certificate holder's undivided ownership of the asset, including the rights to the receivables arising from the underlying contract;
sukuk <i>mudharabah</i>	refers to certificates of equal value evidencing the certificate holder's undivided ownership in the <i>mudharabah</i> venture;
sukuk <i>murabahah</i>	refers to certificates of equal value evidencing the certificate holder's undivided ownership of the asset, including the rights to the receivables arising from the underlying contract;
sukuk <i>musharakah</i>	refers to certificates of equal value evidencing the certificate holder's undivided ownership in the <i>musharakah</i> venture;
sukuk programme	means a facility which allows multiple issues, offers or invitations to subscribe or purchase Islamic medium-term notes, Islamic commercial papers or a

			combination of Islamic commercial papers and Islamic medium-term notes, within an availability period which is disclosed to the SC and sukukholders;
sukuk	<i>wakalah</i>	<i>bi</i>	refers to certificates of equal value evidencing the certificate holder's undivided ownership in the investment assets pursuant to their investment through the investment agent;
	<i>al-istithmar</i>		
unit trust fund			has the meaning as defined in in the <i>Guidelines on Unit Trust Funds</i> ;
wholesale fund			has the meaning as defined in in the <i>Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework</i> .

PART A

**REQUIREMENTS FOR ISLAMIC CAPITAL
MARKET SERVICES**

SECTION I
SHARIAH ADVISER

Chapter 4

INTRODUCTION

- 4.01 The service of providing advice to others concerning compliance with Shariah matters for the purposes of—
- (a) making available, offering or issuing an Islamic capital market product; or
 - (b) carrying on an Islamic capital market service,
- is specified to be a capital market service for the purposes of section 76A of the CMSA.
- 4.02 This section sets out the—
- (a) requirements for registration of a Shariah adviser; and
 - (b) continuous obligations and conduct requirements relating to a Shariah adviser.
- 4.03 For avoidance of doubt, compliance with the requirements under this section does not relieve a Shariah adviser from other obligations which may be imposed on the Shariah adviser by any other relevant authorities.

Applicability

- 4.04 This section applies to any person who intends to provide the services described in paragraph 4.01 including a financial institution.
- 4.05 For the purposes of this section—
- (a) a licensed Islamic bank; and
 - (b) a licensed bank or licensed investment bank, approved by BNM to carry on Islamic banking business,
- are deemed to be registered with the SC as a Shariah adviser.

Chapter 5

REGISTRATION

5.01 The SC may register a person as a Shariah adviser, subject to the person satisfying the requirements set out in this Section.

Application and fees

5.02 An applicant is required to submit to the SC the relevant forms and documents as specified in Appendices 2 and 3 of these Guidelines and any other information as may be required by the SC.

5.03 An applicant must ensure that the application submitted pursuant to paragraph 5.02 is accompanied with the prescribed fees. An application is deemed incomplete if the appropriate fee is not submitted.

5.04 Notwithstanding paragraph 4.05, a financial institution who is a Shariah adviser must pay the prescribed fees in the form and manner as specified by the SC.

Criteria for registration

5.05 The SC may register an applicant as a Shariah adviser, if the SC is satisfied that all the following requirements are fulfilled:

(a) In the case of an individual, the person—

(i) must be a Muslim;

(ii) holds, at a minimum, a degree in any of the following:

(A) Shariah;

(B) Law, with a focus on Shariah; or

(C) Islamic Studies,

in which the degree must include study in *fiqh muamalat* (Islamic transaction/commercial law) or *usul fiqh* (Islamic jurisprudence);

(iii) has at least three consecutive years of relevant working experience in Islamic finance preceding the application; and

- (iv) is fit and proper; or

Guidance to paragraph 5.05(a)(iii)

Relevant working experience in Islamic finance include working in—

- (i) financial institutions;
- (ii) licensed capital market intermediaries;
- (iii) academia; or
- (iv) government agencies and ministries,

that has direct involvement in Islamic finance practices or activities.

- (b) In the case of a corporation—

- (i) the applicant, its directors and senior management are fit and proper;
- (ii) the applicant must have at least one full-time Shariah officer; and
- (iii) the Shariah officer has met the requirements as specified in paragraph 5.05(a) for an individual.

Guidance to paragraph 5.05(b)(ii)

The Shariah officer must be employed as full-time Shariah officer by one corporation only at any point in time for the purpose of registration of a corporation as a Shariah adviser with the SC.

Terms and conditions

- 5.06 The SC may, in registering a Shariah adviser, impose any term or condition.
- 5.07 Notwithstanding paragraph 5.06, the SC may at any time, by notice in writing, amend or revoke any of the term or condition imposed or impose new terms or conditions.

Chapter 6

ROLES AND RESPONSIBILITIES OF SHARIAH ADVISER

6.01 A Shariah adviser must, among others—

- (a) provide Shariah expertise and advice on Shariah matters in relation to the Islamic capital market products or the Islamic capital market service including matters relating to documentation, structure, feature, investment instruments and ensure that all aspects of the products or activities are in accordance with Shariah requirements as set out in the relevant securities laws and guidelines issued by the SC;

Guidance to paragraph 6.01

Documentation includes, where applicable, the deed, prospectus, offering documents and circular to unit holders relating to acquisition or disposal of assets.

- (b) ensure that the applicable Shariah rulings, principles and concepts endorsed by the SAC are complied with; and
 - (c) apply *ijtihad* (intellectual reasoning) to ensure all aspects relating to the Islamic capital market products and the Islamic capital market service are in compliance with Shariah, in the absence of any rulings, principles and concepts endorsed by the SAC.
- 6.02 In carrying out the roles and responsibilities above, a Shariah adviser must act with due care, skill and diligence.
- 6.03 Where there is ambiguity or uncertainty relating to any Shariah matters, the Shariah adviser must consult the SC.

Chapter 7

CONTINUOUS OBLIGATIONS

7.01 A Shariah adviser must comply with the following continuous obligations:

- (a) In the case where the Shariah adviser is an individual, the individual must—
 - (i) remain fit and proper at all times; and
 - (ii) attend at least three SIDC's CPE-approved courses on capital market annually before the anniversary date of his registration;
- (b) In the case where the Shariah adviser is a corporation, the corporation must ensure that—
 - (i) its directors, senior management and Shariah officer remain fit and proper at all times;
 - (ii) its Shariah officer attends at least three SIDC's CPE-approved courses on capital market annually before the anniversary date of their registration;
 - (iii) it informs the SC within 10 business days from the date when the Shariah officer is no longer employed by the corporation;
 - (iv) it takes the necessary steps to recruit a new Shariah officer within three months from the date of vacancy, unless otherwise approved by the SC; and
 - (v) only its Shariah officer may provide Shariah advice; or
- (c) In the case where the Shariah adviser is a financial institution, the financial institution must ensure that its directors, senior management and Shariah committee members remain fit and proper at all times.

7.02 In addition to paragraph 7.01(c), the financial institution is encouraged to send its Shariah committee members to attend at least three SIDC's CPE-approved courses on capital market annually.

Submission of annual declaration

7.03 A Shariah adviser must submit the annual declaration forms as specified in Appendices 3 and 4 of these Guidelines to the SC within 10 business days from the anniversary date of their registration.

7.04 Paragraph 7.03 shall not apply to a financial institution.

Notification

Individual Shariah adviser

7.05 The individual must provide written notification to the SC within 10 business days from the date when he is no longer fit and proper.

Corporation Shariah adviser

7.06 The corporation must provide written notification to the SC within 10 business days from the occurrence of any of the following events:

- (a) Where the corporation, its directors, senior management or Shariah officer are no longer fit and proper;
- (b) Where there is a change of its directors, senior management or Shariah officer;
or
- (c) Any other material changes.

Financial Institution Shariah adviser

7.07 The financial institution must provide written notification to the SC within 10 business days from the date when the financial institution, its directors, senior management or Shariah committee are no longer fit and proper.

Chapter 8

CONDUCT REQUIREMENTS FOR SHARIAH ADVISER

General duties

8.01 In carrying out his roles and responsibilities, the Shariah adviser must—

- (a) act honestly and uphold the principles of Shariah;
- (b) take all reasonable steps to ensure fair treatment in discharging his duties; and
- (c) carry out any other duties or responsibilities as may be specified by the SC relating to Shariah matters.

Conflict of interest

8.02 A Shariah adviser must use their best endeavours to identify and avoid any actual or potential conflict of interest.

8.03 Where a conflict of interest cannot be avoided, the Shariah adviser must have adequate arrangements in place to effectively manage or mitigate the conflict of interest including—

- (a) disclosing any material interest or conflict to clients; and
- (b) taking all reasonable steps to ensure fair treatment of clients before proceeding with the transaction.

8.04 A company making available, offering or issuing an Islamic capital market product or carries on an Islamic capital market service must not appoint a Shariah adviser who is an employee of the company.

8.05 Any disclosure made to address an actual or potential conflict of interest must be timely and accurate to enable clients to make an informed assessment of whether such conflict is managed appropriately and not detrimental to the clients' interests.

Chapter 9

REFUSAL OF REGISTRATION AND DEREGISTRATION

Refusal of registration

- 9.01 The SC may refuse an application for registration as a Shariah adviser if the requirements as set out under this Section are not met.
- 9.02 Notwithstanding paragraph 9.01, the SC may refuse an application if the SC has reason to believe that it is necessary for the protection of investors or to approve such application would be contrary to the public interest.

Suspension and deregistration

- 9.03 The SC may suspend or withdraw the registration of a Shariah adviser under this Section if it is necessary for the protection of investors or in the public interest or if any term or condition imposed by the SC has not been complied with.
- 9.04 For the purposes of paragraph 9.03, events or circumstances involving a Shariah adviser that may jeopardise the protection of investors or which is not in the public interest includes, but is not limited to, the following:
- (a) The Shariah adviser is no longer fit and proper;
 - (b) The Shariah adviser fails to remedy any breach or non-compliance as directed by the SC;
 - (c) The Shariah adviser engages in any misleading or deceptive acts, and make or attempt to make any false or misleading statement including falsifying or submitting any falsified documents;
 - (d) The Shariah adviser acts in a manner that would actually or potentially bring the capital market into disrepute; and
 - (e) Circumstances or events involving the Shariah adviser that may jeopardise the interests of the investors or the integrity of the capital market.
- 9.05 The Shariah adviser must immediately notify the relevant parties concerned once its registration has been withdrawn by the SC.

Withdrawal of registration

- 9.06 The Shariah adviser may, in writing, apply to the SC to withdraw its registration and provide reasons for his or its withdrawal.
- 9.07 Unless otherwise permitted by the SC, a withdrawal of registration shall not take effect until the SC is satisfied that—
- (a) adequate arrangements have been made to meet all the liabilities and obligations of the Shariah adviser that are outstanding at the time when the application for the withdrawal is submitted; and
 - (b) the withdrawal is not use as a means to—
 - (i) avoid or affect any agreement, transaction or arrangement entered into by the Shariah adviser whether the agreement, transaction or arrangement was entered into before or after the withdrawal of the registration; or
 - (ii) affect any right, obligation or liability in force prior to the withdrawal.

Power of the SC to issue directions

- 9.08 The SC may issue a direction to the Shariah adviser, the Shariah adviser's Board, any of the Shariah adviser's directors or any of the Shariah adviser's senior management if the SC considers it necessary or expedient for the protection of investors, or in the public interest.
- 9.09 A direction issued under this chapter must be complied with and nothing in this Section shall preclude the SC from exercising its powers under the securities laws.

Chapter 10

SUBMISSION OF APPLICATION

10.01 All applications to the SC must include all forms and documents as set out in this Section and addressed to the following:

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

10.02 All documents must be submitted to the SC via e-mail 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 e-mail to ICMShariahAdviser@seccom.com.my.

10.03 The SC may return any application which is deemed unsatisfactory or which do not comply with the requirements of the SC.

SECTION II

ISLAMIC FUND MANAGEMENT

Chapter 11

INTRODUCTION

11.01 This section is divided into two subsections as follows:

- (a) **Subsection A** sets out the requirements that must be complied with by a fund management company carrying on an Islamic fund management business in addition to those set out in the other relevant guidelines issued by the SC; and
- (b) **Subsection B** sets out the requirements to be complied with by a fund management company for the purposes of applying for a certification from the SC in respect of tax exemptions granted to the Islamic fund management industry.

Applicability

11.02 This section applies to—

- (a) an Islamic fund management company; and
- (b) a fund management company that carries on an Islamic fund management business under an Islamic 'window'.

11.03 Subsection A of this Section is not applicable to a trustee-manager of a business trust and a fund management company of a real estate investment trust.

SUBSECTION A: REQUIREMENTS FOR A FUND MANAGEMENT COMPANY UNDERTAKING ISLAMIC FUND MANAGEMENT BUSINESS

Chapter 12

CONSTITUTION OF AN ISLAMIC FUND MANAGEMENT COMPANY

- 12.01 The constitution of an Islamic fund management company must state that the Islamic fund management company aims to achieve its commercial objectives in compliance with Shariah.

Chapter 13

SHARIAH ADVISER

Appointment

- 13.01 A fund management company undertaking an Islamic fund management business must appoint a Shariah adviser.
- 13.02 The fund management company must take all reasonable steps to ensure that the Shariah adviser vacates its position immediately upon becoming aware that the Shariah adviser has been subjected to any disqualification or no longer satisfies the fit and proper criteria as specified in these Guidelines.
- 13.03 The fund management company must appoint a new Shariah adviser within one month from the date of resignation, vacation of the post or cessation of service or business of the Shariah adviser, unless otherwise approved by the SC.
- 13.04 The fund management company must provide written notification to the SC immediately upon the occurrence of the following events:
- (a) Where the Shariah adviser is no longer fit and proper;
 - (b) Where there is a change of the Shariah adviser; or
 - (c) Any other material changes relating to the Shariah adviser.

Roles and responsibilities

- 13.05 In addition to the roles and responsibilities as set out in Chapter 6 of these Guidelines, the Shariah adviser must—
- (a) review reports of the compliance officer or any investment transaction report to ensure that the Islamic fund management business and investment activities are Shariah-compliant;
 - (b) prepare a report stating its opinion whether the Islamic fund management business has been managed or administered in accordance with Shariah;

- (c) in relation to an Islamic fund management company, the Shariah adviser must—
 - (i) ensure that the operation and investment activities of the Islamic fund management company is in compliance with Shariah, in line with paragraph 12.01 of these Guidelines; and
 - (ii) prepare a report stating its opinion on compliance by the Islamic fund management company pursuant to paragraph (c)(i); and
- (d) provide the report as required under paragraph (b) and (c) to the investors on a periodic basis, where the fund is managed under a private mandate.

Chapter 14

EMPLOYEES COMPETENCY AND ASSISTANCE TO SHARIAH ADVISERS

14.01 A fund management company must—

- (a) ensure, at all times, that it has adequate employees with necessary qualification, expertise and experience for its Islamic fund management 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 Islamic fund management business;
- (c) have at least one compliance officer who is well versed on Islamic fund management business and have adequate Shariah knowledge on Islamic finance and capital market; and
- (d) ensure that the compliance officer attend two courses on Islamic finance or Islamic capital market on annual basis.

14.02 The fund management company must take reasonable steps to ensure that its employees provide such assistance as the Shariah adviser reasonably requires to discharge its duties.

Chapter 15

PORTFOLIO MANAGEMENT

Shariah-compliant investment

15.01 A fund management company must ensure that its Islamic fund management business is limited to Shariah-compliant investments.

15.02 In the case of—

- (a) investment in securities listed on Bursa Securities, a fund management company must invest only in securities that are classified as Shariah-compliant securities by the SAC;
- (b) investment in securities traded on an exchange outside Malaysia, a fund management company must invest only in securities endorsed by the Shariah adviser; and
- (c) investment in unlisted securities, a fund management company is encouraged to follow the SAC's methodology in determining the Shariah status of the unlisted securities or any other methodologies as advised by the Shariah adviser.

Maintenance of accounts

15.03 A fund management company must ensure that all accounts relating to the clients' assets under an Islamic fund management business are opened and maintained in an Islamic account with licensed Islamic banks.

Guidance to paragraph 15.03

Accounts relating to the clients' assets include collection accounts, trust accounts, custodian accounts and any other account operated relating to clients' assets.

15.04 Notwithstanding paragraph 15.03, where clients' assets are received or managed in a place outside Malaysia, the fund management company may deposit such assets into a non-interest bearing account maintained outside Malaysia, subject to approval from the Shariah adviser.

Accounts of Islamic fund management company

15.05 An Islamic fund management company must open and maintain all its accounts with licensed Islamic banks.

Risk Management

15.06 Any risk management policies and procedures undertaken by the fund management company in relation to the Islamic fund management business must be in compliance with Shariah and endorsed by the Shariah adviser.

Chapter 16

RESPONSIBILITIES OF THE COMPLIANCE OFFICER

- 16.01 In addition to complying with statutory and general requirements imposed by the securities law, a compliance officer of a fund management company must ensure that the Islamic fund management business complies with these Guidelines and relevant SC regulations, including resolutions issued by the SAC.
- 16.02 A compliance officer of the fund management company must assist the Shariah adviser in preparing and certifying that the Islamic fund management business is carried out in accordance with Shariah.
- 16.03 The compliance officer must report any Shariah non-compliance—
- (a) directly to the Shariah adviser and board of directors of the fund management company immediately for consideration and immediate remedial action; and
 - (b) to the SC within 14 business days of the non-compliance being discovered.

Chapter 17

WRITTEN DECLARATION

- 17.01 A fund management company must prepare on annual basis a written declaration to its board of directors and the SC, that the Islamic fund management business is carried out in accordance with Shariah.
- 17.02 For an Islamic fund management company, the company must prepare on annual basis, a written declaration that its operation and investment activities is in compliance with Shariah.
- 17.03 A fund management company must ensure that any reports and other records made by the Shariah adviser are maintained as required under the *Guidelines on Compliance Function for Fund Management Companies* and must be made available for examination upon the SC's request.
- 17.04 The fund management company must submit the declaration pursuant to paragraphs 17.01 and 17.02, as the case may be, and report from the Shariah adviser pursuant to paragraph 13.05(c) to the SC and addressed to the following:

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

- 17.05 The documents pursuant to paragraph 17.04 must be submitted to the SC via e-mail 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 e-mail to ICMsubmission@seccom.com.my.

Chapter 18

INTERNAL AUDIT

- 18.01 A 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 and relevant SC regulations including resolutions issued by the SAC.

SUBSECTION B: CERTIFICATION OF ISLAMIC FUND IN RESPECT OF TAX EXEMPTION

Chapter 19

REQUIREMENTS FOR CERTIFICATION OF ISLAMIC FUND

- 19.01 The SC has been empowered to provide certification for the purpose of an application by a fund management company for the tax exemption as set out in Appendix 5 of these Guidelines in relation to Islamic fund management business.
- 19.02 This chapter sets out the—
- (a) requirements which must be fulfilled by the fund management company for the purposes of applying for the certification from the SC in respect of the tax exemption; and
 - (b) forms and documents that must be submitted by the fund management company, for the purpose of applying for the certification from the SC in respect of the tax exemption.
- 19.03 A fund management company who wish to apply for the certification from the SC in respect of the tax exemption must fulfil the qualifying conditions as specified in the relevant tax orders as set out in Appendix 5 of these Guidelines.
- 19.04 The SC may, at its discretion, request for additional information and documents other than those specified in these Guidelines.
- 19.05 The applicant must immediately inform the SC on any material change that may impact the application.

Chapter 20

SUBMISSION OF APPLICATION

20.01 All completed applications must be submitted to the SC together with the documents as set out in Appendix 6 and other information, as may be required by the SC and addressed to the following:

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

20.02 The requirement under Section B (B) of Appendix 6 of these Guidelines is not applicable to a fund management company managing a unit trust fund, exchange-traded fund, wholesale fund, real estate investment trust, business trust and private retirement scheme.

20.03 The documents as set out in Appendix 6 must be submitted to the SC via e-mail 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 e-mail to: ICMsubmission@seccom.com.my.

20.04 The SC may return any applications which are deemed unsatisfactory or which do not comply with the requirements of the SC.

PART B
ADDITIONAL REQUIREMENTS FOR ISLAMIC CAPITAL MARKET PRODUCTS

Chapter 21

INTRODUCTION

21.01 This Part is divided into two sections as follows:

- (a) **Section I** sets out the general requirements applicable for the making available, offering or issuing of an Islamic capital market product; and
- (b) **Section II** sets out the additional requirements applicable to specific Islamic capital market products.

SECTION I

GENERAL REQUIREMENTS

Chapter 22

COMPLIANCE WITH SHARIAH RULINGS, PRINCIPLES AND CONCEPTS

- 22.01 For the purposes of this chapter, an issuer includes an issuer of sukuk, an issuer of Islamic structured product (Eligible Issuers), and an issuer of Islamic convertible notes (ICNs).
- 22.02 An Islamic capital market product must comply with the approved Shariah principles and concepts that are specified under these Guidelines, as well as any other Shariah rulings, principles and concepts endorsed by the SAC from time to time.
- 22.03 An issuer must obtain the SAC's prior endorsement for the purpose of making available, offering or issuing the relevant Islamic capital market products as set out in Section II of Part B of these Guidelines.
- 22.04 Where the Islamic capital market product departs from or does not comply with—
- (a) the approved Shariah principles and concepts that are specified in Appendix 7 of these Guidelines; or
 - (b) any other Shariah rulings, principles and concepts endorsed by the SAC from time to time,
- prior endorsement from the SAC must be obtained.

Chapter 23

SHARIAH ADVISER

Appointment

Issuer

- 23.01 For the purposes of this chapter, an issuer includes an issuer of sukuk, an Eligible Issuer, issuer of ICNs and a Registered Corporation.
- 23.02 An issuer seeking to issue or offer an Islamic capital market product must appoint a Shariah adviser.
- 23.03 In the case of a foreign currency-denominated sukuk, the issuer must ensure that at least one Shariah adviser appointed must be a person as set out under Chapter 3 of these Guidelines.
- 23.04 Paragraph 23.03 does not apply to an issuer of foreign currency-denominated sukuk through a roadshow.
- 23.05 The requirement under paragraphs 6.01(b) and (c) of these Guidelines do not apply to a Shariah adviser who advise on foreign currency-denominated sukuk.
- 23.06 Where an issuer intends to appoint an individual as a Shariah adviser, the issuer must appoint at least three individuals so as to form a Shariah committee.
- 23.07 In the case of Islamic fund, the issuer must submit details of appointment and where relevant, the resignation of the Shariah adviser to the SC.

RMO

- 23.08 Where an Islamic capital market product is offered, on or through the recognized market, the RMO must appoint a Shariah Adviser.

General obligations

- 23.09 The Shariah adviser appointed must—
- (a) carry out roles and responsibilities as set out in Chapter 6 of these Guidelines;
 - (b) be independent from the issuer and the RMO; and

- (c) not hold office as a member of the oversight arrangement, which may include an investment committee, of the same Islamic fund or any other Islamic fund managed and administered by the issuer.

23.10 Paragraphs 23.06 and 23.09(b) and (c) do not apply to an issuer of sukuk, an Eligible Issuer, and an issuer of ICNs.

23.11 Paragraphs 23.06 and 23.09(c) do not apply to a Registered Corporation.

Chapter 24

EMPLOYEES AND COMPLIANCE OFFICER

- 24.01 The issuer must take reasonable steps to ensure that its employees provide such assistance as the Shariah adviser may reasonably requires to discharge its duties.
- 24.02 The issuer must ensure the compliance officer appointed has basic knowledge of Shariah laws and principles.
- 24.03 Paragraph 24.02 does not apply to Islamic business trusts.

SECTION II

**ADDITIONAL REQUIREMENTS APPLICABLE
TO SPECIFIC ISLAMIC CAPITAL MARKET
PRODUCTS**

Chapter 25

INTRODUCTION

25.01 This section is divided into three subsections as follows:

- (a) **Subsection A** sets out the specific requirements relating to sukuk, ICNs and Islamic structured product;
- (b) **Subsection B** sets out the specific requirements relating to Islamic collective investment scheme; and
- (c) **Subsection C** sets out the specific requirements relating to other Islamic capital market products.

SUBSECTION A: SUKUK, ICNs AND ISLAMIC STRUCTURED PRODUCT

Chapter 26

RINGGIT-DENOMINATED SUKUK

Endorsement of the SAC

- 26.01 An issuer must seek the endorsement of the SAC prior to lodgement as required under the *Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework*. For the purpose of the endorsement, the issuer must submit to the SC the information and documents as specified in Appendix 8 of these Guidelines at least 10 business days prior to the date of lodgement as required under Part 3 Section B of the *Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework*.
- 26.02 An issuer, through the principal adviser, must seek endorsement of the SAC for any revision to the principal terms and conditions of a ringgit-denominated sukuk that has any Shariah implication as determined by the Shariah adviser.

Guidance to paragraph 26.02

Revision to the principal terms and conditions that has any Shariah implication includes, but not limited to—

- (i) revision to the Shariah principles in the structure of the sukuk;
- (ii) revision to terms and conditions of the sukuk as specified under paragraphs 26.60 to 26.65 of these Guidelines; or
- (iii) any update and amendment to the relevant SAC resolutions pursuant to the revision whether as an addition, a deletion or a variation.

- 26.03 For the purpose of the endorsement under paragraph 26.02, the principal adviser must submit to the SC the information and documents as specified in Appendix 9 of these Guidelines at least 10 business days prior to—
- (a) relodgement of pre-issuance revision or submission of notification on post-issuance revision to the SC as specified under the *Guidelines on Unlisted Capital Market under the Lodge and Launch Framework*;

- (b) seeking approval from, or submission of notification to, the SC as specified under the *Guidelines on Issuance of Corporate Bonds and Sukuk to Retail Investors*.

26.04 If the revision to the principal terms and conditions of a ringgit-denominated sukuk has no Shariah implications, the principal adviser must lodge the confirmation from the Shariah adviser as set out in the Lodgement Kit.

Roles and responsibilities of Shariah adviser

26.05 In addition to the roles and responsibilities set out in Chapter 6 of these Guidelines, the Shariah adviser must also issue a Shariah pronouncement where the signing procedures must comply with the requirements specified by the SAC. The Shariah pronouncement must include, amongst others, the following:

- (a) Basis and rationale of the pronouncement, detail Shariah reasoning or justification for the structure and mechanism of the ringgit-denominated sukuk;
- (b) Confirmation that the utilisation of proceeds are for Shariah-compliant purposes;
- (c) The applicable Shariah rulings, principles and concepts used in the ringgit-denominated sukuk; and
- (d) The relevant Shariah matters relating to the documentation of the ringgit-denominated sukuk.

Utilisation of Proceeds

26.06 An issuer must ensure that the proceeds from a sukuk issuance are utilised for Shariah-compliant purposes only.

Requirements on identified assets, ventures or investment

26.07 In relation to sukuk *bai` bithaman ajil*, sukuk *murabahah*, sukuk *istisna`* and sukuk *ijarah*, an asset, whether tangible or intangible, available for such sukuk issuance are subject to the following:

- (a) The identified asset and its use must comply with Shariah;
- (b) If the identified asset is subject to any encumbrance or is jointly-owned with another party, prior consent must be obtained from the chargee or joint-owner; and

- (c) Where the identified asset is in the form of a receivable, it must be *mustaqir* (established and certain) and transacted on spot either in the form of cash or commodities.

26.08 In relation to sukuk *musharakah*, sukuk *mudharabah* and sukuk *wakalah bi al-istithmar*, the ventures or investment must comply with Shariah.

Requirement on assets that may be securitised for an asset-backed sukuk

26.09 For an asset-backed sukuk, the assets that are the subject matter of the securitisation transaction must be Shariah-compliant.

Asset pricing requirements

26.10 The purchase price of an identified asset under sukuk issuance structured based on any Shariah principles must not exceed 1.51 times of—

- (a) the fair value of the asset; or
- (b) any other appropriate value of such asset.

26.11 The asset pricing requirements under paragraph 26.10 are not applicable to sukuk which are structured based on any Shariah principles that do not involve the sale and purchase of identified assets including but not limited to sukuk *ijarah* that involves the lease and lease-back of the identified assets.

***Ibra'* (Release of rights)**

26.12 *Ibra'* may be applied in the following contracts (including but not limited to):

- (a) *Bai' bithaman ajil, Murabahah and Musawamah*
Ibra' refers to release of rights on debts or amount due and payable under a contract; and
- (b) *Ijarah*
Ibra' refers to release of rights on accrued rental.

26.13 *Ibra'* may be applied in the event of an early redemption as follows:

- (a) Sukukholders may offer *ibra'* to the issuer based on the application made by the issuer for early redemption of sukuk upon occurrence of any event of default, call option, regulatory redemption or tax redemption;
- (b) The formula for the computation of early settlement may be stated as a guide to the issuer; and
- (c) The *ibra'* clause and the formula for the computation of early settlement may be stated in the main agreement of sukuk *bai' bithaman ajil*, sukuk *murabahah* and sukuk *ijarah*. However, the *ibra'* clause in the main agreement shall be separated from the part related to the price of the transacted asset. The *ibra'* clause shall only be stated under the section for mode of payment or settlement in the said agreement.

26.14 Floating profit rate and combination of fixed and floating profit rate mechanism may be applied in sukuk *murabahah*, sukuk *istisna'* or sukuk *bai' bithaman ajil* based on the principle of *ibra'*.

***Ta'widh* (Compensation)**

26.15 *Ta'widh* is permissible under sukuk *bai' bithaman ajil*, sukuk *murabahah*, sukuk *istisna'* and sukuk *ijarah* only if the issuer or the obligor delays the payment of any amount due and payable to the sukukholders.

26.16 *Ta'widh* is permissible under sukuk *musharakah* and sukuk *mudharabah* if the issuer or the obligor—

- (a) fails to distribute the realised profit to the sukukholders on the agreed date. *Ta'widh* does not apply to the failure to pay expected profit; or
- (b) delays the payment of any amount due and payable to the sukukholders upon dissolution of *musharakah* or *mudharabah* arrangement.

26.17 *Ta'widh* is permissible under sukuk *wakalah bi al-istithmar* if the issuer or the *wakil* (agent)—

- (a) breaches its fiduciary duty as an investment manager due to its failure to distribute the realised profit to the sukukholders on the agreed date; or

- (b) delays the payment of any amount due and payable to the sukukholders upon dissolution of *wakalah* arrangement.

***Kafalah* (Guarantee)**

- 26.18 *Kafalah* may be provided with or without the imposition of fee.
- 26.19 *Kafalah* must be executed separately from the underlying contract of the sukuk, whereby any *termination* of the underlying contract would not affect the *kafalah* arrangement and vice-versa.
- 26.20 Where a guarantee based on the principle of *kafalah* cannot be procured from Islamic banks or *kafalah* providers, conventional guarantee is allowed to be procured.
- 26.21 Under sukuk *bai` bithaman ajil*, sukuk *murabahah*, sukuk *istisna`* and sukuk *ijarah*, *kafalah* may be provided by any party and the amount that may be guaranteed is limited to the amount due and payable under any obligation arising from the relevant contracts under the said sukuk issuance including *ta`widh*, fees and expenses imposed on the sukuk.
- 26.22 Under sukuk *musharakah* and sukuk *mudharabah*, the parties who may provide guarantee and the amount that may be guaranteed are limited to the following:
- (a) By third party, companies with common shareholders with the issuer or associate company² of the issuer—
 - (i) the capital and profit amount arising from the contracts under the Shariah principles of *musharakah* and *mudharabah*;
 - (ii) the payment of any amount due and payable to the sukukholders upon dissolution of *musharakah* and *mudharabah* arrangement; or
 - (iii) *ta`widh*, fees and expenses imposed on the sukuk; or
 - (b) By parent company or subsidiary³ of the issuer—
 - (i) the payment of any amount due and payable to the sukukholders upon dissolution of *musharakah* and *mudharabah* arrangement; or

² Associate company has the meaning given to 'associate' under the accounting standards issued or adopted by the Malaysian Accounting Standards Board

³ The definition of parent company (which is also known as a holding company) and subsidiary is as defined in the *Companies Act 2016*

- (ii) *ta`widh*, fees and expenses imposed on the sukuk.

26.23 Under sukuk *wakalah bi al-istithmar*, the parties who may provide guarantee and the amount that may be guaranteed are limited to the following:

- (a) By third party, companies with common shareholders with the issuer or associate company of the issuer—
 - (i) the nominal amount of the sukuk, profit or rental arising from contracts under the Shariah principles of *bai` bithaman ajil*, *murabahah*, *istisna`* and *ijarah*;
 - (ii) the capital and profit amount arising from contracts under the Shariah principles of *musharakah*, *mudharabah* and *wakalah*;
 - (iii) the payment of any amount due and payable to the sukukholders upon dissolution of *wakalah* arrangement; or
 - (iv) *ta`widh*, fees and expenses imposed on the sukuk;
- (b) By wakil or sub-wakil appointed by the issuer—
 - (i) the amount due and payable under any obligation arising from contracts under the Shariah principles of *bai` bithaman ajil*, *murabahah*, *istisna`* and *ijarah*;
 - (ii) the payment of any amount due and payable to the sukukholders upon dissolution of *wakalah* arrangement; or
 - (iii) *ta`widh*, fees and expenses imposed on the sukuk; or
- (c) By parent company or subsidiary of the issuer—
 - (i) the amount due and payable under any obligation arising from contracts under the Shariah principles of *bai` bithaman ajil*, *murabahah*, *istisna`* and *ijarah*;
 - (ii) the payment of any amount due and payable to the sukukholders upon dissolution of *wakalah* arrangement; or
 - (iii) *ta`widh*, fees and expenses imposed on the sukuk.

Early Redemption Charges

26.24 Under sukuk *murabahah*, sukuk *bai' bithaman ajil* or sukuk *istisna'*, the sukukholders may impose early settlement charges pursuant to an early redemption up to the unearned profit amount within the deferred sale price and subject to mutual agreement between the issuer and the sukukholders.

Tanazul (Waiver of right)

26.25 A partner or sukukholder may waive his right on the profit payment arising from the *musharakah* venture, *mudharabah* venture or *wakalah* arrangement.

Shariah-compliant designated account

26.26 In a case where an issuer opens and maintains designated accounts in relation to a sukuk issuance, the accounts must be opened and maintained under a Shariah-compliant account with financial institutions.

Waiver of sukukholder's right in Additional Tier 1 (AT 1) Sukuk and Tier 2 sukuk⁴

A. Write-off of AT 1 Sukuk at the point of Non-Viability or Loss Absorption Events

26.27 AT1 Sukuk structured based on the Shariah principles of *musharakah*, *mudharabah* or *wakalah bi al-istithmar*, whichever is applicable, may be written-off (in whole or in part) at the point of non-viability or loss absorption events based on the following Shariah concepts (whichever is applicable):

- (a) *Tanazul*, whereby the sukukholders waive their rights or interests on the capital payment or profit payment (if any); or
- (b) *Ibra'*, whereby the sukukholders release their rights of claim on any amounts due, arising from the AT1 Sukuk.

B. Write-off of Tier 2 Sukuk at the point of Non-Viability Event

26.28 Tier 2 Sukuk structured based on the Shariah principle of *wakalah bi al-istithmar* may be written-off (in whole or in part) at the point of non-viability event based on the following Shariah concepts (whichever is applicable):

⁴ AT 1 sukuk and Tier 2 sukuk refer to the instruments that meet the requirements under the policy document on capital adequacy framework issued by Bank Negara Malaysia

- (a) *Tanazul*, whereby the sukukholders waive their rights or interests on the capital payment or profit payment (if any); or
 - (b) *Ibra'*, whereby the sukukholders release their rights of claim on any amounts due, arising from the Tier 2 Sukuk.
- 26.29 Tier 2 Sukuk structured based on the Shariah principle of *murabahah* may be written-off (in whole or in part) at the point of non-viability event based on the Shariah concept of *ibra'*, whereby the sukukholders release their rights of claim on any amount due arising from the Tier 2 Sukuk.
- 26.30 Tier 2 Sukuk structured based on the Shariah principle of *ijarah* may be written-off (in whole or in part) at the point of non-viability event based on the following:
- (a) The Shariah concept of *ibra'*, whereby the sukukholders release their rights of claim on any amounts due arising from the Tier 2 Sukuk; and
 - (b) The Shariah principle of *hibah*, whereby the sukukholders give away their rights in the asset under the Tier 2 Sukuk (from the principal amount, in whole or in part) without any consideration.

C. Cancellation of Discretionary Payment by the Issuer of AT1 Sukuk

- 26.31 The payment of profit arising from the AT1 Sukuk structured based on the Shariah principles of *musharakah*, *mudharabah* or *wakalah bi al-istithmar*, whichever is applicable, that is due on the periodic distribution date may be waived (in whole or in part) by the sukukholders based on the Shariah concept of *tanazul*.

Naming of ringgit-denominated sukuk

- 26.32 The name of a ringgit-denominated sukuk must not be misleading and must be based on the following:
- (a) Where the sukuk are structured using a single Shariah principle, the sukuk must be named according to that Shariah principle. For example, sukuk that are structured under the *musharakah* principle must be named sukuk *musharakah*; or
 - (b) Where the sukuk are structured using multiple Shariah principles, the sukuk may be named—

- (i) according to the name of the issuer or obligor (where applicable);
- (ii) sukuk *istithmar* (investment); or
- (iii) based on any other names according to the principles endorsed by the SAC from time to time.

26.33 The application of the multiple Shariah principles must be disclosed in the principal terms and conditions of the sukuk.

Shariah rulings applicable for sukuk *ijarah*

Rate of lease and lease period

26.34 The rate of lease rental and lease period must be determined upon the '*aqd*' (contract).

Usage of leased asset

26.35 The leased asset must be used for the purpose of Shariah-compliant activities only.

Sublease of leased asset to third party by lessee

26.36 The lessee may sublease the leased asset to a third party provided that—

- (a) there is no objection from the owner of the asset; and
- (b) the sublease period must not be longer than the period of the initial or primary lease.

Sublease of leased asset to the owner of the asset by lessee

26.37 The lessee may sublease the leased asset to the owner of the asset provided that the sublease period must not be longer than the initial or primary lease.

Lease of a leased asset to third party by owner of asset

26.38 The owner of the leased asset must not lease the asset to a third party while the same asset is being leased to another party during the lease period.

Implied sublease

- 26.39 In the event the asset of an existing lease is sold by the original owner or lessor to the purchaser, the original owner or lessor must provide prior written notification to the existing lessee on the sale of the asset.
- 26.40 Upon purchase of the asset, if the same asset is leased back (new lease) by the purchaser to the original owner or new lessee, the existing lease will be considered as implied sublease while the new lease will be considered as head lease.
- 26.41 The notification provided under paragraph 26.39 does not terminate the existing lease.

Maintenance of leased asset

- 26.42 The lessor is responsible for maintaining the leased asset. However, the maintenance of leased asset may also be determined as agreed between the lessor and the lessee as stated in the terms and conditions of the *ijarah* agreement. The lessor may also assign the responsibility to the lessee as service agent at the lessor's cost.

Ijarah mawsufah fi zimmah (Forward lease)

- 26.43 An *ijarah mawsufah fi zimmah* is a permissible contract for the issuance of sukuk.
- 26.44 An *ijarah mawsufah fi zimmah* is a lease contract where the asset will be delivered in the future. The contract must state the following:
- (a) The rate of lease rental;
 - (b) The nature of the leased asset;
 - (c) The lease period; and
 - (d) The method of lease payment.
- 26.45 However, if upon delivery, the lessor fails to deliver the asset based on the agreed specification, the lessee is entitled to either—
- (a) demand a replacement of the asset with another asset that conforms to agreed specifications; or

- (b) terminate the *ijarah* contract, and if the lessee has paid the advance rental, the lessor must refund the amount paid.

Rental rate based on fixed or floating rate

- 26.46 The rate of lease rental may be based on fixed or floating rate where it must be mutually agreed by both the lessor and the lessee and must be agreed upon *'aqd*.
- 26.47 Where the rate of lease rental is based on floating rate, the following conditions must be complied with:
- (a) The amount of the rental payment for the first lease period must be fixed; and
 - (b) The rental payment for the subsequent lease period may be based on floating rate based on mutually agreed benchmark or formula.

Transfer of ownership of leased asset

- 26.48 At the end of the lease period, the ownership of the leased asset may be transferred from the lessor to the lessee or to any third party through any one of the following methods:
- (a) By way of selling the leased asset at an agreed price; or
 - (b) By way of *hibah* (gift) of the leased asset.

Requirement of takaful for identified asset

- 26.49 All identified assets must be covered by a *takaful* scheme. However, if the *takaful* scheme is unavailable or is not commercially viable as determined by the Shariah adviser, conventional insurance is allowed to be procured.
- 26.50 If the asset has been covered under conventional insurance policy upon entering into the contract, the said insurance policy can still be used until its expiry date. Upon its expiry, the asset owner must procure a *takaful* scheme if it is available.

Shariah rulings applicable for sukuk *musharakah*

Musharakah capital

- 26.51 Capital contributed by each of the *musharik* (partners) must be in the form of cash, in kind or a combination of both.

Musharakah partners

26.52 There must be at least two partners to form a *musharakah*. However, there is no minimum number of *musharakah* partners (i.e. investors) in the secondary market.

Profit and loss

26.53 The profit from *musharakah* venture will be distributed among the partners according to the pre-agreed profit sharing ratio. However, any loss must be shared among the partners according to their respective capital contribution.

Management of the musharakah venture

26.54 One of the partners or issuers or a third party may be appointed as the manager to manage the *musharakah* venture.

Shariah rulings applicable for sukuk *mudharabah*

Mudharabah capital

26.55 Capital contributed by a *rabb al-mal* (capital provider) must be in the form of cash, in kind or a combination of both.

Rahn (Collateral)

26.56 The *rabb al-mal* may request *mudharib* (entrepreneur) to place *rahn* as protection from possibility of loss on capital that may occur as a result of negligence and misconduct by the *mudharib*.

Profit and loss

26.57 The profit from *mudharabah* venture must be distributed between the *rabb al-mal* and the *mudharib* according to the pre-agreed profit sharing ratio. However, any loss must be borne in entirety, solely by the *rabb al-mal*, unless the loss is due to the negligence or mismanagement of the *mudharib* in managing the *mudharabah* venture.

Management of the mudharabah venture

26.58 The management of the *mudharabah* venture may be carried out by the *mudharib* or a third party appointed by the *mudharib*.

Shariah rulings applicable for sukuk *wakalah bi al-istithmar*

Wakalah (agency) appointment

26.59 There must be a *wakalah* agreement between the investors and the issuer, appointing the issuer as *wakil* for the purpose of investment. In the absence of a *wakalah* agreement, a clause for the appointment of the *wakil* must be provided in the trust deed.

Revision to terms and conditions

Revision of profit rate

26.60 In the case of sukuk *bai' bithaman ajil*, sukuk *murabahah* and sukuk *istisna'* —

- (a) a revision to reduce the profit rate may only be effected by applying the principle of *ibra'* without the need to execute a supplemental contract; and
- (b) a revision to increase the profit rate through a selling price in a new contract may only be effected by executing a new and separate contract to incorporate the new profit rate, after which the outstanding obligation under the initial contract will be settled and terminated. This arrangement must be carried out before the maturity of the deferred payment in the initial contract.

26.61 In the case of sukuk *musharakah*, sukuk *mudharabah* and sukuk *wakalah bi al-istithmar*, a revision to increase or reduce the expected profit rate may be effected by executing a supplemental contract subject to agreement by all contracting parties.

26.62 In the case of sukuk *ijarah*, a revision to increase or reduce the rental may be effected by executing a supplemental contract subject to agreement by all contracting parties.

Revision of profit sharing ratio

26.63 In the case of sukuk *musharakah* and sukuk *mudharabah*, a revision to increase or reduce the profit sharing ratio may be effected by executing a supplemental contract subject to agreement by all contracting parties.

Revision to maturity date

26.64 In the case of sukuk *bai' bithaman ajil*, sukuk *murabahah* and sukuk *istisna'*, a revision to the maturity date may be effected by executing a supplemental contract subject to the following conditions:

- (a) The revision is agreed by all contracting parties; and
- (b) There is no revision to increase the selling price.

26.65 In the case of sukuk *musharakah*, sukuk *mudharabah*, sukuk *wakalah bi al-istithmar* and sukuk *ijarah*, a revision to the maturity date may be effected by executing a supplemental contract subject to agreement by all contracting parties.

26.66 A supplemental contract that is executed under paragraphs 26.61, 26.62, 26.63, 26.64 and 26.65 does not terminate the initial contract of the sukuk *bai` bithaman ajil*, sukuk *murabahah*, sukuk *istisna`*, sukuk *musharakah*, sukuk *mudharabah*, sukuk *wakalah bi al-istithmar* and sukuk *ijarah* (as the case may be).

Chapter 27

ISLAMIC CONVERTIBLE NOTES TO SPECIFIC REGISTERED PERSON

Compliance with SAC rulings

27.01 An issuer who issues Islamic convertible notes (Eligible ICNs) must comply with all the Shariah requirements as set out in Chapter 26 of these Guidelines and relevant rulings of the SAC that are ordinarily applied to ringgit-denominated sukuk.

Utilisation of Proceeds

27.02 For Eligible ICNs, the issuer must ensure that the proceeds from the issuance of the Eligible ICNs are utilised for Shariah-compliant purposes only.

Chapter 28

ISLAMIC STRUCTURED PRODUCT

Endorsement of the SAC

- 28.01 An Eligible Issuer must seek endorsement of the SAC for a new Islamic structured product programme together with any initial Islamic structured product series under it prior to lodgement of the Islamic structured product programme. For the purpose of the endorsement, the Eligible Issuer must submit to the SC the relevant information and documents as specified in Appendices 10 and 11 of these Guidelines.
- 28.02 For new Islamic structured product series under an endorsed programme, the Eligible Issuer must—
- (a) seek endorsement of the SAC prior to submission of information and documents as required under Part 2, Section B of the *Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework*; and
 - (b) submit to the SC the relevant information and documents as set out in Appendix 11 of these Guidelines for the purpose of seeking endorsement of the SAC.

Roles and responsibilities of Shariah adviser

- 28.03 In addition to the roles and responsibilities set out in Chapter 6 of these Guidelines, the Shariah adviser must also issue a Shariah pronouncement where the signing procedures must comply with the requirements specified by the SAC. The Shariah pronouncement must include, amongst others, the following:
- (a) Basis and rationale of the pronouncement, detail Shariah reasoning or justification for the structure and mechanism of the Islamic structured product issue;
 - (b) Confirmation that the utilisation of proceed are for Shariah-compliant purposes;
 - (c) The applicable Shariah rulings, principles and concepts used in the Islamic structured product issue; and
 - (d) The relevant Shariah matters relating to the documentation of the Islamic structured product issue.

SUBSECTION B: ISLAMIC COLLECTIVE INVESTMENT SCHEME

Chapter 29

ROLES AND RESPONSIBILITIES OF A SHARIAH ADVISER IN RELATION TO AN ISLAMIC COLLECTIVE INVESTMENT SCHEME

29.01 In addition to the roles and responsibilities set out in Chapter 6 of these Guidelines, the Shariah adviser must—

- (a) review the Islamic CIS' compliance report and investment transaction report to ensure that the Islamic CIS' investments are in compliance with Shariah; and
- (b) prepare a report that is to be included in the Islamic CIS' fund report stating its opinion whether the Islamic CIS has been operated and managed in compliance with Shariah, including rulings, principles and concepts endorsed by the SAC for the financial period concerned.

Paragraph 29.01(a) does not apply to an Islamic business trust.

29.02 For the purposes of paragraph 29.01(b), in the case of a unit trust fund, exchange-traded fund and wholesale fund, if the funds have not been operated and managed according to Shariah and requirements set out for the funds, the Shariah adviser's report must also highlight the steps taken to address the situation and to prevent the recurrence of the situation.

Chapter 30

ISLAMIC UNIT TRUST FUND

Permissible investments for Islamic unit trust fund

- 30.01 An Islamic unit trust fund's assets must only consist of assets that comply with Shariah.
- 30.02 An Islamic unit trust fund may only use derivatives for hedging purposes. Such derivatives must be Islamic derivatives. However, if Islamic derivatives are not available or are not commercially viable, the Islamic unit trust fund may use conventional derivatives subject to prior approval from the Shariah adviser being obtained.

Acceptable indices

- 30.03 In the case where the Islamic unit trust fund is an index fund, the index must be a Shariah index consisting of Shariah-compliant securities.

Securities lending and repurchase transactions

- 30.04 An Islamic unit trust fund may not lend its assets, but it can undertake the following activities for the sole purpose of efficient portfolio management:
- (a) Shariah-compliant securities lending subject to approval from the Shariah adviser;
 - (b) ISSBNT, subject to the rules and directives issued by Bursa Securities, Bursa Malaysia Depository Sdn Bhd and Bursa Malaysia Securities Clearing Sdn Bhd on ISSBNT; or
 - (c) Shariah-compliant repurchase transaction subject to approval from the Shariah adviser.

Guidance to paragraph 30.04

Subject to the Shariah adviser's prior approval, a fund management company may undertake securities lending involving foreign securities and repurchase transaction on behalf of its Islamic unit trust fund.

Shariah adviser's report

30.05 The report by the Shariah adviser must be prepared in the form provided in Appendix 12 of these Guidelines.

Chapter 31

ISLAMIC EXCHANGE-TRADED FUND

Permissible investments for Islamic ETF

- 31.01 An Islamic ETF's assets must only consist of assets that comply with Shariah.
- 31.02 An Islamic ETF may only use derivatives for hedging purposes. Such derivatives must be Islamic derivatives. However, if Islamic derivatives are not available or are not commercially viable, the Islamic ETF may use conventional derivatives subject to prior approval from the Shariah adviser being obtained.

Acceptable indices

- 31.03 Where the ETF is expressed to be managed and administered in accordance with Shariah principles, the index must be a Shariah index consisting of Shariah-compliant securities.

Securities lending and repurchase transactions

- 31.04 An Islamic ETF may not lend its assets, but it can undertake the following activities for the sole purpose of efficient portfolio management:
- (a) Shariah-compliant securities lending subject to approval from the Shariah adviser;
 - (b) ISSBNT, subject to the rules and directives issued by Bursa Securities, Bursa Malaysia Depository Sdn Bhd and Bursa Malaysia Securities Clearing Sdn Bhd on ISSBNT; or
 - (c) Shariah-compliant repurchase transaction subject to approval from the Shariah adviser.

Guidance to paragraph 31.04

Subject to the Shariah adviser's prior approval, a fund management company may undertake securities lending involving foreign securities and repurchase transaction on behalf of its Islamic ETF.

Specific requirements for Islamic ETF based on gold and silver

Creation of Islamic ETF based on gold or silver units

- 31.05 The creation of the Islamic ETF based on gold or silver units must be backed by physical gold and silver bullions or bars with specified quantity and quality.
- 31.06 Upon the creation of the Islamic ETF based on gold or silver units, the management company and the Shariah adviser must verify that—
- (a) the gold and silver bullions or bars, with the correct quantity and quality as per the specification, are in existence; and
 - (b) the gold and silver bullions or bars are kept in a segregated and allocated manner.

Guidance to paragraph 31.06

The Islamic ETF based on gold or silver units represent an equivalent amount of physical gold and silver bullions or bars held by the custodian on behalf of the Islamic ETF based on gold or silver. Hence, the Islamic ETF based on gold or silver units represent the unit holders' ownership of the gold and silver bullions or bars on a pro-rata basis.

Trading of the Islamic ETF based on gold or silver units

- 31.07 The trading of the Islamic ETF based on gold or silver units between the buyer and the seller must be carried out in cash and on the spot basis.

Guidance to paragraph 31.07

The Islamic ETF based on gold or silver units can only be traded through cash accounts or margin facility.

Redemption of the Islamic ETF based on gold or silver units

- 31.08 The unit holders may redeem the Islamic ETF based on gold or silver units by taking physical delivery of gold and silver bullions or bars or its equivalent value in cash.

Roles and responsibilities of Shariah adviser

31.09 In addition to the roles and responsibilities set out in Chapters 6 and 29 of these Guidelines, the Shariah adviser must—

- (a) conduct at least an annual audit including a site visit to the place where the gold and silver bullions or bars are kept to confirm on the following:
 - (i) The gold and silver bullions or bars are in existence;
 - (ii) The quantity and other details of the gold and silver bullions or bars including the record of its movement; and
 - (iii) The gold and silver bullions or bars are kept in a segregated and allocated manner; and
- (b) prepare a report on any audit carried out under paragraph (a).

Shariah adviser's report

31.10 The report by the Shariah adviser must also include the report on the annual audit conducted in relation to paragraph 31.09(a) of these Guidelines.

31.11 The report by the Shariah adviser must be prepared in the form provided in Appendix 13 of these Guidelines.

Chapter 32

ISLAMIC WHOLESALE FUND

Permissible investments for Islamic wholesale fund

32.01 An Islamic wholesale fund's assets must only consist of assets that comply with Shariah.

32.02 An Islamic wholesale fund may only use derivatives for hedging purposes. Such derivatives must be Islamic derivatives. However, if Islamic derivatives are not available or are not commercially viable, the Islamic wholesale fund may use conventional derivatives subject to prior approval from the Shariah adviser being obtained.

Acceptable indices

32.03 In the case where the Islamic wholesale fund whose principal objective is to track, replicate or correspond to an index (index fund), the index must be a Shariah index consisting of Shariah-compliant securities.

Chapter 33

ISLAMIC REAL ESTATE INVESTMENT TRUST

Investments in real estate for the purpose of initial listing or establishment, whichever applicable

33.01 An Islamic REIT may invest in real estate where—

- (a) all of its tenants carry out fully Shariah-compliant activities; or
- (b) some of the tenants carry out Shariah non-compliant activities, provided the percentage of rental received from all Shariah non-compliant activities (Shariah Non-Compliant Rental) is less than 20% of the total turnover of the Islamic REIT (the 20% Threshold).

33.02 An Islamic REIT must not invest in a real estate where all the tenants carry out fully Shariah non-compliant activities, even if the percentage of the Shariah Non-Compliant Rental is less than the 20% Threshold.

33.03 For the purpose of paragraph 33.01(b) and paragraph 33.02, the list of Shariah non-compliant activities as determined by the SAC is attached in Appendix 14 of these Guidelines.

33.04 Where a tenant's activities comprise both Shariah-compliant and Shariah non-compliant activities, the following requirements apply for the purposes of ensuring that the Shariah Non-Compliant Rental is less than the 20% Threshold:

- (a) The calculation of the Shariah Non-Compliant Rental must be based on the percentage of area occupied for Shariah non-compliant activities to the total area occupied by such tenant; and
- (b) Notwithstanding paragraph 33.04(a), for activities that do not involve the usage of space such as service-based activities, the Shariah adviser may apply *ijtihad* (intellectual reasoning) in assessing the Shariah Non-Compliant Rental for such tenant.

33.05 An Islamic REIT must reduce the percentage of the Shariah Non-Compliant Rental from less than the 20% Threshold to less than 5% of the Islamic REIT's total turnover (the 5% Threshold) by the end of the 10th financial year post listing or establishment, whichever applicable.

Acceptance of new tenancy and renewal of existing tenancy

Up to the end of the 10th financial year

33.06 Prior to an Islamic REIT reaching the end of the 10th financial year post listing or establishment, whichever applicable, the Islamic REIT may accept new tenants and renew tenancy agreements of existing tenants whose activities are Shariah non-compliant, provided that—

- (a) the percentage of the Shariah Non-Compliant Rental after such acceptance of new tenants and renewal of existing tenants is less than the 20% Threshold; and
- (b) the Islamic REIT reduces the percentage of the Shariah Non-Compliant Rental to less than the 5% Threshold by the end of the 10th financial year.

After the end of the 10th financial year

33.07 After the end of the 10th financial year post listing or establishment, whichever applicable, an Islamic REIT may accept new tenants and renew tenancy agreements of existing tenants whose activities are Shariah non-compliant, provided that the percentage of Shariah Non-Compliant Rental after such acceptance of new tenants and renewal of existing tenants is less than the 5% Threshold.

Acquisition of real estate post listing or establishment

Up to the end of the 10th financial year

33.08 Prior to an Islamic REIT reaching the end of the 10th financial year post listing or establishment, whichever applicable, the Islamic REIT may acquire real estate provided that—

- (a) the percentage of the Shariah Non-Compliant Rental after such acquisition is less than the 20% Threshold; and
- (b) the Islamic REIT reduces the percentage of the Shariah Non-Compliant Rental to less than the 5% Threshold by the end of the 10th financial year.

After the end of the 10th financial year

33.09 After the end of the 10th financial year post listing or establishment, whichever applicable, an Islamic REIT may acquire real estate provided that the percentage of the Shariah Non-Compliant Rental after such acquisition is less than the 5% Threshold.

- 33.10 For the purposes of this chapter, the calculation of the 1st financial year shall commence on the next financial year after the Islamic REIT has been listed or established, whichever applicable.

Non-permissible acquisition of real estate

- 33.11 Notwithstanding paragraphs 33.08 and 33.09, an Islamic REIT must not acquire real estate where all tenants carry out fully Shariah non-compliant activities, even if the percentage of the Shariah Non-Compliant Rental after such acquisition is less than the 20% Threshold or less than the 5% Threshold, whichever applicable.

Non-compliance with the less than the 5% Threshold

- 33.12 In the event that an Islamic REIT fails to reduce the percentage of the Shariah Non-Compliant Rental to less than the 5% Threshold pursuant to paragraph 33.05 and paragraphs 33.06(b) and 33.08(b), the excess amount of the Shariah Non-Compliant Rental must be channelled to *baitulmal* or charitable bodies as advised by the Shariah adviser. The excess amount must be channelled within one year from the end of each financial year for as long as the Islamic REIT is unable to reduce its Shariah Non-Compliant Rental to less than the 5% Threshold.

Takaful

- 33.13 All real estate of an Islamic REIT must be covered by a *takaful* scheme. However, if the *takaful* scheme is not available or is not commercially viable as determined by the Shariah adviser, such real estate may be covered under conventional insurance.
- 33.14 Notwithstanding paragraph 33.13, where a real estate is already covered under an existing conventional insurance policy, the said conventional insurance policy may still be used until its expiry. Once the policy expires, such real estate must be covered by a *takaful* scheme unless the *takaful* scheme is not available or is not commercially viable.

Usage of Islamic derivatives

- 33.15 An Islamic REIT may only use derivatives for hedging purposes. Such derivatives must be Islamic derivatives. However, if Islamic derivatives are not available or are not commercially viable, the Islamic REIT may use conventional derivatives subject to prior approval from the Shariah adviser being obtained.

Permissible investments other than real estate and financing facilities for Islamic REITs

33.16 An Islamic REIT must ensure compliance with Shariah principles for the following:

- (a) Investments in non-real estate assets, deposits and money market instruments; and
- (b) Financing facilities.

Conversion to an Islamic REIT

33.17 A conventional REIT may be converted to an Islamic REIT provided that it complies with the requirements under this Section.

Endorsement from the SAC

33.18 The management company must seek the endorsement of the SAC prior to the conversion. For the purpose of the endorsement, the management company or the principal adviser must submit to the SC the information and documents as specified in in Appendix 15 of these Guidelines.

Shariah Non-Compliant Rental

33.19 For the purpose of conversion to an Islamic REIT, the percentage of the Shariah Non-Compliant Rental must be less than 40% of the total turnover of the REIT (the 40% Threshold) upon submission of information and documents to the SC as specified under paragraph 33.18.

33.20 Upon conversion, the Islamic REIT must reduce the percentage of the Shariah Non-Compliant Rental to less than the 20% Threshold by the end of the 5th financial year post conversion.

33.21 By the end of the 10th financial year post conversion, the Islamic REIT must further reduce the percentage of the Shariah Non-Compliant Rental to less than the 5% Threshold.

33.22 Notwithstanding paragraph 33.19, the Islamic REIT must not have a real estate where all the tenants carry out fully Shariah non-compliant activities, even if the percentage of the Shariah Non-Compliant Rental is less than the 40% Threshold.

Acceptance of new tenants and renewal of existing tenants

Up to the end of the 5th financial year post conversion

33.23 Prior to an Islamic REIT reaching the end of the 5th financial year post conversion, the Islamic REIT may accept new tenants and renew tenancy agreements of existing tenants whose activities are Shariah non-compliant, provided that—

- (a) the percentage of the Shariah Non-Compliant Rental after such acceptance of new tenants and renewal of existing tenants is less than the percentage of the Shariah Non-Compliant Rental at the point of conversion; and
- (b) the Islamic REIT reduces the percentage of the Shariah Non-Compliant Rental to less than the 20% Threshold by the end of the 5th financial year.

Up to the end of the 10th financial year post conversion

33.24 Prior to an Islamic REIT reaching the end of the 10th financial year post conversion, the Islamic REIT may accept new tenants and renew tenancy agreements of existing tenants whose activities are Shariah non-compliant, provided that—

- (a) the percentage of the Shariah Non-Compliant Rental after such acceptance of new tenants and renewal of existing tenants is less than the 20% Threshold; and
- (b) the Islamic REIT reduces the percentage of the Shariah Non-Compliant Rental to less than the 5% Threshold by the end of the 10th financial year.

After the end of the 10th financial year post conversion

33.25 After the end of the 10th financial year post conversion, an Islamic REIT may accept new tenants and renew tenancy agreements of existing tenants whose activities are Shariah non-compliant, provided that the percentage of Shariah Non-Compliant Rental after such acceptance of new tenants and renewal of existing tenants is less than the 5% Threshold.

Acquisition of real estate

Up to the end of the 5th financial year post conversion

33.26 Prior to an Islamic REIT reaching the end of the 5th financial year post conversion, the Islamic REIT may acquire real estate, provided that—

- (a) the percentage of the Shariah Non-Compliant Rental after such acquisition is less than the percentage of the Shariah Non-Compliant Rental at the point of conversion; and
- (b) the Islamic REIT reduces the percentage of the Shariah Non-Compliant Rental to less than the 20% Threshold by the end of the 5th financial year.

Up to the end of the 10th financial year post conversion

33.27 Prior to an Islamic REIT reaching the end of the 10th financial year, the Islamic REIT may acquire real estate, provided that–

- (a) the percentage of the Shariah Non-Compliant Rental after such acquisition is less than the 20% Threshold; and
- (b) the Islamic REIT reduces the percentage of the Shariah Non-Compliant Rental to less than the 5% Threshold by the end of the 10th financial year post conversion.

After the end of the 10th financial year post conversion

33.28 After the end of the 10th financial year post conversion, an Islamic REIT may acquire real estate, provided that the percentage of Shariah Non-Compliant Rental is less than the 5% Threshold.

33.29 For the purpose this chapter, the calculation of the 1st financial year shall commence on the next financial year after the deed to effect the conversion has been registered with the SC.

Non-permissible acquisition of real estate

33.30 Notwithstanding paragraphs 33.26, 33.27 and 33.28, an Islamic REIT must not acquire real estate in which all the tenants carry out fully Shariah non-compliant activities, even if the percentage of the Shariah Non-Compliant Rental after such acquisition is less than the respective thresholds mentioned in the said paragraphs.

Non-compliance with the relevant thresholds in relation to Shariah Non-Compliant Rental

33.31 In the event that an Islamic REIT fails to reduce the percentage of the Shariah Non-Compliant Rental to less than the 20% Threshold or the 5% Threshold, whichever applicable, the excess amount of the Shariah Non-Compliant Rental must be channelled to *baitulmal* or charitable bodies as advised by the Shariah adviser. The excess amount must

be channelled within one year from the end of each financial year for as long as the Islamic REIT is unable to reduce its Shariah Non-Compliant Rental to less than the 20% Threshold or the 5% Threshold, whichever applicable.

Borrowings

33.32 For the purpose of conversion to an Islamic REIT, a listed or an unlisted REIT which has existing conventional borrowings must, as soon as practicable, refinance such borrowings with Islamic financing facilities. The management company must submit to the SC, detailed plans of the refinancing proposal as part of its application for the SAC's endorsement under paragraph 33.18.

Takaful

33.33 Where a real estate is already covered under an existing conventional insurance policy at the point of conversion, the said conventional insurance policy may still be used until its expiry. Once the policy expires, such real estate must be covered by a *takaful* scheme unless the *takaful* scheme is not available or is not commercially viable as determined by the Shariah adviser.

Usage of Islamic derivatives

33.34 Upon conversion, the Islamic REIT may continue to use its existing conventional derivatives. However, all new derivatives for the purposes of hedging the Islamic REIT's existing risk exposure must be Islamic derivatives. If Islamic derivatives are not available or are not commercially viable, an Islamic REIT may use conventional derivatives subject to prior approval from the Shariah adviser being obtained.

Permissible investments other than real estate

33.35 At the point of conversion, all investments in non-real estate assets, deposits and money market instruments must comply with Shariah principles.

Shariah adviser's report

33.36 In addition to the requirements set out in paragraphs 29.01(b), the report by the Shariah adviser must also include the following:

- (a) In the event the investment portfolio of the Islamic REIT includes non-real estate assets, a statement to the effect that such investment portfolio comprises instruments classified as Shariah-compliant by the SAC or the Shariah Advisory Council of Bank Negara Malaysia. For instruments that are not classified as

Shariah-compliant by the SAC or the Shariah Advisory Council of Bank Negara Malaysia, a statement stating that the status of the instruments has been determined in accordance with the ruling issued by the Shariah adviser;

- (b) The percentage ratio of Shariah Non-Compliant Rental for the financial year;
- (c) A statement whether the relevant thresholds for Shariah Non-Compliant Rental in relation to acquisition of real estate under paragraphs 33.08, 33.09, 33.26, 33.27 and 33.28 have been complied with. Where there are no acquisitions during the financial year, a negative statement to that effect;
- (d) At the end of the 10th financial year post listing or establishment, whichever applicable, a confirmation that the percentage of Shariah Non-Compliant Rental pursuant to paragraph 33.05 has been complied with. In the event such requirement is not complied with, a statement that the Shariah adviser will ensure that the management company will channel the excess of Shariah Non-Compliant Rental in accordance with paragraph 33.12; and
- (e) After the end of the 10th financial year post listing or establishment, whichever applicable, in the event there is any excess of Shariah Non-Compliant Rental, a confirmation that the Shariah adviser—
 - (i) will channel the excess to the appropriate parties; and
 - (ii) has channelled the excess from the previous financial year to the appropriate parties,

in accordance with paragraph 33.12.

33.37 In relation to conversion to Islamic REIT pursuant to Section II of this chapter—

- (a) paragraph 33.36(d) will apply from the 5th financial year post conversion instead; and
- (b) paragraph 33.36(e) will apply after the end of the 5th financial year post conversion instead,

pursuant to paragraphs 33.20, 33.21 and 33.31.

Chapter 34

ISLAMIC COLLECTIVE INVESTMENT SCHEME WITH *WAQF* FEATURE

Applicability

34.01 This chapter is only applicable to the following Islamic CIS:

- (a) Unit trust fund;
- (b) Wholesale fund;
- (c) ETF listed on the Main Market of Bursa Securities; and
- (d) REIT listed on the Main Market of Bursa Securities.

Requirements for Islamic CIS with *waqf* feature

34.02 An Islamic CIS with *waqf* feature refers to an Islamic CIS that allows its unit holders to—

- (a) retain their rights over the units purchased; and
- (b) *waqf* all or part of the distribution of the income received.

34.03 Only an Islamic CIS that comply with paragraphs 34.02 to 34.09 can hold itself out as an Islamic CIS with *waqf* feature.

Investment objective and distribution policy

34.04 The primary investment objective of an Islamic CIS with *waqf* feature is to provide income and allow its unit holders to channel all or part of the distribution of the income for *waqf* purposes.

34.05 The distribution policy of the Islamic CIS must include the percentage of distribution to be channelled for *waqf* purposes.

Eligible *waqf* recipients

34.06 The Islamic CIS must only channel the distribution declared for *waqf* purposes to the following recipients—

- (a) Any SIRC; or
- (b) Any institutions or organisation authorised by the SIRC to act as a *mutawalli* (*waqf* administrator) or collection agent for *waqf* purposes.

Disclosure

34.07 The Islamic CIS must disclose in its prospectus, disclosure document, information memorandum or Product Highlights Sheet (PHS), as the case may be, detailed description of the following information:

- (a) The investment objective that allows the unit holders to channel all or part of the distribution of the income for *waqf* purposes;
- (b) The percentage of distribution of income that is to be channelled for *waqf* purposes and the amount to be paid to the unit holders;
- (c) Information relating to the *waqf* arrangement including—
 - (i) the name of the *waqf* recipient;
 - (ii) the *waqf* initiatives; and
 - (iii) how investors can obtain more information on the *waqf* recipient and the progress of the *waqf* initiatives; and
- (d) Policies and processes relating to—
 - (i) the selection of the *waqf* recipient and *waqf* initiatives; and
 - (ii) the circumstances where the Islamic unit trust fund, listed Islamic ETF or listed Islamic REIT will remove, replace or add additional *waqf* recipient.

34.08 The management company of the Islamic CIS must publish the following information relating to the *waqf* on its website:

- (a) Details of the *waqf* recipient; and
- (b) Hyperlink to the *waqf* recipient's website.

Fund report

34.09 The Islamic CIS' fund reports must include a detailed breakdown of the total amount distributed to the—

- (a) *waqf* recipient(s) and where applicable, further breakdown of payment to each *waqf* recipient; and
- (b) unit holders, if any.

Chapter 35

ISLAMIC BUSINESS TRUST

Business of an Islamic business trust

35.01 The Shariah adviser of an Islamic business trust may employ the following criteria in determining the Shariah-compliant status of the business trust:

- (a) The core business of the business trust is not in the following Shariah non-compliant activities:
 - (i) Financial services based on *riba'* (interest);
 - (ii) Gambling and gaming;
 - (iii) Manufacture or sale of non-halal products or related products;
 - (iv) Conventional insurance;
 - (v) Entertainment activities that are non-permissible according to Shariah;
 - (vi) Manufacture or sale of tobacco-based products or related products;
 - (vii) Stockbroking or share trading in Shariah non-compliant securities; and
 - (viii) Other activities deemed non-compliant according to Shariah principles as determined by the SAC; and
- (b) If the Islamic business trust comprises both Shariah-compliant and Shariah non-compliant activities, the contribution of Shariah non-compliant activities to the total revenue and profit before tax of the Islamic business trust must be less than the business activity benchmarks as follows:
 - (i) The 5% benchmark
This benchmark is used to assess the level of mixed contributions from the activities that are clearly prohibited such as—
 - (A) conventional banking and lending;
 - (B) conventional insurance;

- (C) gambling;
- (D) liquor and liquor-related activities;
- (E) pork and pork-related activities;
- (F) non-halal food and beverages;
- (G) tobacco and tobacco-related activities;
- (H) interest income from conventional accounts and instruments (including interest income awarded arising from a court judgement or arbitrator);
- (I) dividends from Shariah non-compliant investments;
- (J) Shariah non-compliant entertainment; and
- (K) other activities deemed non-compliant according to Shariah principles as determined by the SAC; or

(ii) The 20% benchmark

This benchmark is used to assess the level of mixed contributions from the activities that are generally permissible according to Shariah and have an element of *maslahah* (public interest), but there are other elements that may affect the Shariah status of these activities. Activities that fall under this category include but not limited to—

- (A) share trading;
- (B) stockbroking business;
- (C) rental received from Shariah non-compliant activities; and
- (D) other activities deemed non-compliant according to Shariah principles as determined by the SAC.

35.02 In addition to paragraph 35.01, a 33% benchmark is applicable in determining the Shariah-compliant status of an Islamic business trust. The 33% benchmark is used to assess the following financial ratios, which is intended to measure *riba'* and *riba'*-based elements in terms of investment, deposit and financing:

- (a) Cash over Total Assets
Cash will only include cash placed in conventional accounts and instruments, whereas cash placed in Islamic accounts and instruments will be excluded from the calculation; and
- (b) Debt over Total Assets
Debt will only include interest-bearing debt whereas Islamic financing or sukuk will be excluded from the calculation.

Each of the above ratios must be less than 33%.

35.03 The Shariah adviser may also employ any other methodologies, as may be appropriate, in determining the Shariah-compliant status of an Islamic business trust, subject to prior endorsement of the SAC of such methodology, prior to the establishment of the Islamic business trust. In endorsing such methodology, the SAC may impose any conditions as it may deem fit.

35.04 The SAC may also take into account the public perception or image in assessing Shariah-compliant status of the Islamic business trust.

Takaful

35.05 Where an Islamic business trust intends to insure its assets or properties, it must procure a *takaful* scheme. Only if the *takaful* scheme is unable to provide the required and/or sufficient coverage, the Islamic business trust may procure a conventional insurance scheme to ensure sufficient coverage of the same.

Shariah adviser's report

35.06 The Shariah adviser's report should provide particulars of the Shariah adviser of the Islamic business trust as follows:

- (a) If individuals are appointed—
 - (i) name, age, nationality, and qualification; and
 - (ii) working experience and occupation.
- (b) If a corporation is appointed—

- (i) name, address, telephone, and facsimile numbers of the registered office of the Shariah adviser;
- (ii) experience relevant to its appointment as Shariah adviser; and
- (iii) name, qualifications, and experience of the Shariah officer responsible for Shariah matters of the Islamic business trust.

SUBSECTION C: OTHER ISLAMIC CAPITAL MARKET PRODUCTS

Chapter 36

ISLAMIC PRIVATE RETIREMENT SCHEME

Permissible investments for Islamic PRS fund

36.01 An Islamic PRS fund's assets must only consist of assets that comply with Shariah.

36.02 An Islamic PRS fund may only use derivatives for hedging purposes. Such derivatives must be Islamic derivatives. However, if Islamic derivatives are not available or are not commercially viable, the Islamic PRS fund may use conventional derivatives subject to prior approval from the Shariah adviser being obtained.

Acceptable indices

36.03 In the case where the Islamic PRS fund is an index fund, the index must be a Shariah index consisting of Shariah-compliant securities.

Securities lending and repurchase transactions

36.04 An Islamic PRS fund may not lend its assets, but it can undertake the following activities for the sole purpose of efficient portfolio management:

- (a) Shariah-compliant securities lending subject to approval from the Shariah adviser;
- (b) ISSBNT, subject to the rules and directives issued by Bursa Securities, Bursa Malaysia Depository Sdn Bhd and Bursa Malaysia Securities Clearing Sdn Bhd on ISSBNT; or
- (c) Shariah-compliant repurchase transaction subject to approval from the Shariah adviser.

Roles and responsibilities of Shariah adviser

36.05 In addition to roles and responsibilities set out in Chapter 6 of these Guidelines, the Shariah adviser must—

- (a) review the Islamic PRS fund's compliance report and investment transaction report to ensure that the Islamic PRS fund's investments are in line with Shariah; and

- (b) prepare a report that is to be included in the Islamic PRS fund's report stating its opinion whether the relevant fund under the PRS has been operated and managed in compliance with Shariah (including rulings, principles and concepts endorsed by the SAC) and requirements set out for the fund for the financial period concerned. If it has not been operated and managed according to the principles and requirements, then the steps taken to address the situation and to prevent the recurrence of the situation must be highlighted.

36.06 The report by the Shariah adviser must be prepared in the form provided in Appendix 16 of these Guidelines.

Chapter 37

ISLAMIC VENTURE CAPITAL AND PRIVATE EQUITY

Shariah-compliant Investment

- 37.01 Any investment activities of the Registered Corporation must be Shariah-compliant. In determining the Shariah-compliant status of the venture corporations, the Shariah adviser may employ the Shariah screening methodology of the SAC or any other methodologies as advised by the Shariah adviser.
- 37.02 In the event the Registered Corporation invests in securities listed on Bursa Securities, the investment must only be limited to the securities classified as Shariah-compliant securities by the SAC.
- 37.03 Any investment decision, either local or abroad, must be approved by the Shariah adviser to ensure that the investment complies with the Shariah principles, standards or resolutions issued by the SAC or any established or recognised Shariah authority or body.

Shariah adviser's report

- 37.04 The Shariah adviser must prepare a report on annual basis stating its opinion that the investment activities of the Registered Corporation have been managed in compliance with Shariah, including rulings, principles and concepts endorsed by the SAC for the financial period concerned.
- 37.05 The Registered Corporation must submit the Shariah adviser's report pursuant to paragraph 37.04 to the SC and addressed to the following:

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

- 37.06 The Shariah adviser report must be submitted to the SC via e-mail in the following manner:
- (i) Documents must be in a text searchable Portable Document Format (PDF);
 - (ii) The PDF-text files must be in a readable and proper condition; and

- (iii) In a size of up to 10 MB per e-mail to ICMsubmission@seccom.com.my.

Chapter 38

ISLAMIC CAPITAL MARKET PRODUCTS OFFERED THROUGH A RECOGNIZED MARKET OPERATOR

Disclosure

38.01 Where an Islamic capital market product is offered, on or through the recognized market, the RMO must disclose the following:

- (a) The name of the Shariah adviser appointed to advise on the offering of Islamic capital market product; and
- (b) The information relating to the structure of the Islamic capital market product.

Roles and responsibilities of Shariah adviser

38.02 In addition to the roles and responsibilities of as set out in Chapter 6 of these Guidelines, a Shariah adviser appointed by an RMO must issue a Shariah pronouncement, which must include—

- (i) the basis and rationale of the pronouncement, detail Shariah reasoning or justification for the structure and mechanism of the Islamic capital market products offered;
- (ii) structure and mechanism of the Islamic capital market product comply with Shariah; and
- (iii) the applicable Shariah rulings, principles and concepts used in the Islamic capital market product.

38.03 In the case where an issuer proposes to carry out a Shariah-compliant fundraising via an equity crowdfunding (ECF) platform, the Shariah adviser of the ECF operator must ensure that the activities of the issuer are Shariah-compliant.

Guidance to paragraph 38.03

In determining the Shariah-compliant status of the issuer, the Shariah adviser may employ the Shariah screening methodology of the SAC or any other methodologies as advised by the Shariah adviser.

Trust account relating to monies received for issuers and investors

38.04 Where an Islamic investment note is executed or offered, on or through a peer-to-peer (P2P) platform, the P2P operator must establish and maintain a Shariah-compliant trust account with a financial institution for the purposes of—

- (a) the funds raised in relation to the Islamic investment note; and
- (b) monies received as payment to the investors in relation to the Islamic investment note.

38.05 In the case of a Shariah-compliant fundraising on an ECF platform, the ECF operator must establish and maintain a Shariah-compliant trust account with a financial institution for the purposes of the fund raised.

FIT AND PROPER CRITERIA

A person is considered to be fit and proper if—

- (1) the person—
 - (a) has not been convicted, whether within or outside Malaysia, of an offence involving fraud or dishonesty, or violence or the conviction of which involved a finding that he acted fraudulently or dishonestly;
 - (b) has not been convicted, whether within or outside Malaysia, of an offence under securities laws or any laws relating to capital market;
 - (c) has not been issued, whether within or outside Malaysia, with any compounds or subject to any administrative action taken by a regulator or law enforcement agency for any offence involving bribery, fraud, dishonesty, mismanagement of a company or violence;
 - (d) has no pending investigations or criminal charge against him in any court of law, whether within or outside Malaysia, for an offence involving bribery, fraud, dishonesty, mismanagement of a company or violence;
 - (e) has not had any civil enforcement action filed against him in any court of law by any regulator or law enforcement agency, whether within or outside Malaysia;
 - (f) is not an undischarged bankrupt or is in the course of being wound up or otherwise dissolved, as the case may be, whether within or outside Malaysia;
 - (g) has no execution against him in respect of a judgment debt, whether within or outside Malaysia;
 - (h) has not, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
 - (i) is not disqualified to be a director, whether within or outside Malaysia, under the corporation laws or securities laws; and
 - (j) has not have any receiver, receiver and manager or an equivalent person appointed, whether within or outside Malaysia, in respect of any of his property; and

- (2) the SC is satisfied that—
- (a) the person is not engaged in any business practices appearing to the SC to be deceitful, oppressive or otherwise improper, whether unlawful or not, or which otherwise reflect discredit on his method of conducting business;
 - (b) the person is not engaged in or has not been associated with any other business practices or has not conducted himself in such a way as to cast doubt on his competence and soundness of judgment;
 - (c) the person is not engaged in or has not been associated with any conduct that cast doubt on his ability to act in the best interest of investors, having regard to his reputation, character, financial integrity and reliability;
 - (d) the person is suitably qualified to assume the position including having the relevant experience and track record;
 - (e) there are no other circumstances which are likely to lead to the improper conduct of operations by the person, or reflect discredit on the manner the person would carry out his duties; and
 - (f) it would not be contrary to public interest to register the person.

**FORM 1(a) APPLICATION FOR THE REGISTRATION OF A SHARIAH ADVISER
(INDIVIDUAL)**

FORM 1(a)

**APPLICATION FOR THE REGISTRATION OF A SHARIAH ADVISER
(INDIVIDUAL)**

Applicant's
passport-sized
colour
photograph

A. PERSONAL DETAILS

Full name of applicant : _____

Identity card number : _____

Passport number : _____ **Country of issue:** _____

Date and place of birth : _____

Gender : _____

Nationality : _____

Religion : _____

B. ADDRESS AND CONTACT DETAILS

Residential Address : _____

Office Address : _____

Tel number :

Home	:	_____
Office	:	_____
Mobile	:	_____
Fax	:	_____
E-mail	:	_____

C. ACADEMIC OR PROFESSIONAL QUALIFICATION

Qualification	Institution of Learning	Country	Year

D. EMPLOYMENT HISTORY (PAST AND PRESENT)

Name of Employer	Designation Held	Description	Period

E. PUBLISHED WORKS, RESEARCH, PAPERWORK, FACILITATOR, ETC

Topic	Year	Publisher

F. APPOINTMENT AS SHARIAH ADVISER/COMMITTEE/CONSULTANT IN OTHER ORGANISATIONS

Organisation	Year

G. SUPPORTING DOCUMENTS *(please ensure all scanned documents are clear and legible)*

No	Description	Reference
1	A copy of the Shariah adviser's NRIC (for Malaysian citizen) or passport(s) (for non-Malaysian citizen) <i>(must be crossed out with the remarks 'For the SC Use Only')</i> .	-
2	Result of bankruptcy search on Shariah adviser from the Malaysian Department of Insolvency or, if outside Malaysia, the competent authority <i>(no more than 31 days old as at the date of submission)</i> .	Paragraph 5.05(a)(iv)
3	A copy of degree or relevant academic certificate of the Shariah adviser.	Paragraph 5.05(a)(ii)

DECLARATION

I hereby declare that all information given in this application and the attached documents are true and accurate.

.....

Signature :

Full Name :

Date of Signature (*dd mmm yyyy*):

Notes

- (i) If a question is not applicable, please state 'N/A' in the space provided.
- (ii) Please initial on each page of the form.
- (iii) If there is insufficient space in the application form to give the required information, the information is to be given in a separate paper. Please indicate which question the additional information relates to.

**FORM 1(b) APPLICATION FOR THE REGISTRATION OF A SHARIAH ADVISER
(CORPORATION)**

FORM 1(b)

**APPLICATION FOR THE REGISTRATION OF A SHARIAH ADVISER
(CORPORATION)**

A. GENERAL

Name of company : _____

Address : _____

Contact Number : _____

Fax Number : _____

E-mail : _____

Date of incorporation : _____

Date of commencement of operations : _____

Company number : _____

Issued/paid up capital : _____

Board of Directors

	Name	Directorship
1		
2		
3		

4		
5		

B. SHAREHOLDERS AND THEIR RESPECTIVE SHAREHOLDINGS

Shareholders	Percentage Shareholding (as at __ / __ / __)	
	Direct	Indirect
Total		

C. SHARIAH OFFICER (BASED ON THE CRITERIA IN THE GUIDELINES)

Name	Position	Religion

D. SHARIAH OFFICER - ACADEMIC OR PROFESSIONAL QUALIFICATION

Qualification	Institution of Learning	Country	Year

E. SHARIAH OFFICER - EMPLOYMENT HISTORY (PAST AND PRESENT)

Name of Employer	Designation Held	Description	Period

F. PRINCIPAL ACTIVITIES OF THE CORPORATION

G. JUSTIFICATION/COMMENT

Justification/comment on the ability of the Shariah adviser to advise matters related to Shariah-compliant products.

H. RELEVANT INFORMATION

Any other relevant information to support this application.

I. SUPPORTING DOCUMENTS *(please ensure all scanned documents are clear and legible)*

No	Description	Reference
1	A copy of the Shariah officer's NRIC (for Malaysian citizen) or passport(s) (for non-Malaysian citizen) <i>(must be crossed out with the remarks 'For the SC Use Only')</i> .	-
2	Result of bankruptcy search on Shariah officer from the Malaysian Department of Insolvency or, if outside Malaysia, the competent authority <i>(no more than 31 days old as at the date of submission)</i> .	Paragraph 5.05(b)(i)
3	A copy of degree or relevant academic certificate of the Shariah officer.	Paragraph 5.05(a)(ii)

- 4 A copy of certificate of incorporation under the *Companies Act 2016* or any equivalent form under foreign jurisdiction.

-

DECLARATION
I hereby declare that all information given in this application and the attached documents are true and accurate.
..... Signature :
Name of Director of the Company :
Designation :
Date of Signature (<i>dd mmm yyyy</i>):

Notes

- (i) If a question is not applicable, please state 'N/A' in the space provided.
- (ii) If there is insufficient space in the application form to give the required information, the information is to be given in a separate paper. Please indicate which question the additional information relates to.

FORM 2(a) DECLARATION FORM (INDIVIDUAL/SHARIAH OFFICER)

FORM 2(a)

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

Dear Sir
APPLICANT (Individual/Shariah Officer)

I, _____ (NRIC/Passport No _____), hereby declare that:

1.	Has the individual, in Malaysia or elsewhere—
a.	<p>been convicted of any offence, or are there any proceedings now pending that may lead to a conviction of any offence involving fraud or other dishonesty, or violence?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes (please provide details*)</p>
b.	<p>has judgment involving findings of fraud or other dishonesty, violence, misrepresentation, breach of contract, breach of fiduciary duty or professional negligence given against him in any civil proceedings, or are there any proceedings now pending that may lead to such a judgment or finding?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes (please provide details*)</p>

c.	contravened any written law for protecting members of the public against financial loss due to dishonesty, incompetence, malpractice or negligence by persons concerned in the provision of financial services or the management of companies, or against financial loss due to the conduct of discharged or undischarged bankrupts?	
	<input type="checkbox"/> No	<input type="checkbox"/> Yes (please provide details*)
d.	been declared a bankrupt or entered into a composition or arrangement with creditors?	
	<input type="checkbox"/> No	<input type="checkbox"/> Yes (please provide details*)
e.	been subjected to any form of disciplinary proceedings or actions by, or entered into a settlement with, any regulatory, supervisory or professional body?	
	<input type="checkbox"/> No	<input type="checkbox"/> Yes (please provide details*)
f.	acted in any manner which may make him unfit to act as a Shariah adviser?	
	<input type="checkbox"/> No	<input type="checkbox"/> Yes (please provide details*)
<i>* To indicate the date of conviction/judgment/contravention/bankruptcy/discharge, nature of offence, jurisdiction where the offence was committed and any other relevant information (where applicable)</i>		

DECLARATION OF TRUTH AND ACCURACY OF INFORMATION

<input type="checkbox"/> I am aware that any representation to the Securities Commission Malaysia (SC) by whatever means or in any form that includes false or misleading statement can result in the SC taking action under section 369 of the Capital Markets and Services Act 2007 or other provisions under the securities laws. In addition, it can adversely affect my (i) application or submission; and (ii) fit and proper standing to participate in the capital market industry.
<i>Section 369 is in relation to the submission of any false and misleading statement to the SC. Examples of information submitted to the SC include, but not limited to, notification and reporting to the SC, provision of supplementary information or clarification regarding a submission, and any other information the SC may request. Contravention of section 369 may result in imprisonment</i>

<i>for a term not exceeding 10 years and shall also be liable to a fine not exceeding three million ringgit upon conviction.</i>	
<input type="checkbox"/>	I hereby declare that all information provided in this submission is true and correct and I have neither concealed nor omitted any material fact or information.
<p>.....</p> <p>Signature :</p>	
Full Name :	
Date of Signature <i>(dd mmm yyyy) :</i>	

FORM 2(b) DECLARATION FORM (DIRECTOR/SENIOR MANAGEMENT)

FORM 2(b)

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

Dear Sir

APPLICANT (Director or Senior Management*)

I, _____ (NRIC/Passport No _____),
Director/Senior Management** of _____, hereby declare that:

**In the event there is more than one Director or Senior Management, please submit complete Form 2(b) for each Director or Senior Management.*

***Strike where not applicable.*

1.	Has the individual been involved in the management of a corporation, in Malaysia or elsewhere, which at the time of his involvement, the corporation—
a.	been convicted of any offence, or are there any proceedings now pending that may lead to a conviction of any offence involving fraud or other dishonesty, or violence? <input type="checkbox"/> No <input type="checkbox"/> Yes (please provide details*)
b.	has judgment involving findings of fraud or other dishonesty, violence, misrepresentation, breach of contract, breach of fiduciary duty or professional negligence given against him in any civil proceedings, or are there any proceedings now pending that may lead to such a judgment or finding? <input type="checkbox"/> No <input type="checkbox"/> Yes (please provide details*)

<p>c. contravened any written law for protecting members of the public against financial loss due to dishonesty, incompetence, malpractice or negligence by persons concerned in the provision of financial services or the management of companies, or against financial loss due to the conduct of discharged or undischarged bankrupts?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes (please provide details*)</p>
<p>d. been declared a bankrupt or entered into a composition or arrangement with creditors?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes (please provide details*)</p>
<p>e. been subjected to any form of disciplinary proceedings or actions by, or entered into a settlement with, any regulatory, supervisory or professional body?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes (please provide details*)</p>
<p>f. acted in any manner which may make him unfit to act as a Director or Senior Management of the said corporation?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes (please provide details*)</p>
<p><i>* To indicate the date of conviction/judgment/contravention/bankruptcy/discharge, nature of offence, jurisdiction where the offence was committed and any other relevant information (where applicable)</i></p>

<p>DECLARATION OF TRUTH AND ACCURACY OF INFORMATION</p>
<p><input type="checkbox"/> I am aware that any representation to the Securities Commission Malaysia (SC) by whatever means or in any form that includes false or misleading statement can result in the SC taking action under Section 369 of the Capital Markets and Services Act 2007 or other provisions under the securities laws. In addition, it can adversely affect my (i) application or submission; and (ii) fit and proper standing to participate in the capital market industry.</p>
<p><i>Section 369 is in relation to the submission of any false and misleading statement to the SC. Examples of information submitted to the SC include, but not limited to, notification and reporting to the SC, provision of supplementary information or clarification regarding a submission, and any other information the SC may request. Contravention of Section 369 may result in</i></p>

<i>imprisonment for a term not exceeding 10 years and shall also be liable to a fine not exceeding three million ringgit upon conviction.</i>
<input type="checkbox"/> I hereby declare that all information provided in this submission is true and correct and I have neither concealed nor omitted any material fact or information.
<p>.....</p> <p>Signature :</p>
<p>Full Name :</p>
<p>Date of Signature (<i>dd mmm yyyy</i>) :</p>

FORM 2(c) DECLARATION FORM (CORPORATION)

FORM 2(c)

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

Dear Sir
APPLICANT (Corporation)

We,
(i) _____ (NRIC/Passport No _____); and
(ii) _____ (NRIC/Passport No _____),
authorised signatories of _____, hereby declare that:

For Corporation, the declaration must be signed by the authorised signatories pursuant to the authority granted by the resolution of the Board of Directors of the Corporation.

1. Has the corporation, in Malaysia or elsewhere—

a. been convicted of any offence, or are there any proceedings now pending that may lead to a conviction of any offence involving fraud or other dishonesty?

☐

No

☐

Yes (please provide details*)

b. has judgment involving findings of fraud or other dishonesty, misrepresentation, breach of contract, breach of fiduciary duty or professional negligence given against the corporation in any civil proceedings, or are there any proceedings now pending that may lead to such a judgment or finding?

☐

No

☐

Yes (please provide details*)

c.	contravened any written law for protecting members of the public against financial loss due to dishonesty, incompetence, malpractice or negligence by persons concerned in the provision of financial services or the management of companies, or against financial loss due to the conduct of discharged or wind up?	
	<input type="checkbox"/> No	<input type="checkbox"/> Yes (please provide details*)
d.	has a receiver and/or manager been appointed in respect of any of the assets of the said corporation?	
	<input type="checkbox"/> No	<input type="checkbox"/> Yes (please provide details*)
e.	entered into a compromise or arrangement with creditors or members?	
	<input type="checkbox"/> No	<input type="checkbox"/> Yes (please provide details*)
f.	has a petition presented in a court for its winding up?	
	<input type="checkbox"/> No	<input type="checkbox"/> Yes (please provide details*)
g.	been subjected to any actions by, or entered into a settlement with, any regulatory, supervisory or professional body?	
	<input type="checkbox"/> No	<input type="checkbox"/> Yes (please provide details*)
h.	acted in any manner which may make the corporation unfit to act as a Shariah adviser?	
	<input type="checkbox"/> No	<input type="checkbox"/> Yes (please provide details*)
<i>* To indicate the date of conviction/judgment/contravention/bankruptcy/discharge, nature of offence, jurisdiction where the offence was committed and any other relevant information (where applicable)</i>		

DECLARATION OF TRUTH AND ACCURACY OF INFORMATION

- ☐ We are aware that any representation to the Securities Commission Malaysia (SC) by whatever means or in any form that includes false or misleading statement can result in the SC taking action under Section 369 of the Capital Markets and Services Act 2007 or other provisions under the securities laws. In addition, it can adversely affect our (i) application or submission; and (ii) fit and proper standing to participate in the capital market industry.

Section 369 is in relation to the submission of any false and misleading statement to the SC. Examples of information submitted to the SC include, but not limited to, notification and reporting to the SC, provision of supplementary information or clarification regarding a submission, and any other information the SC may request. Contravention of Section 369 may result in imprisonment for a term not exceeding 10 years and shall also be liable to a fine not exceeding three million ringgit upon conviction.

- ☐ We hereby declare that all information provided in this submission is true and correct and we have neither concealed nor omitted any material fact or information.

- ☐ In addition to the declaration of truth and accuracy of information above, on the basis of a due and diligent enquiry made of the background of the named individual (Shariah Officer) in Form 2 (a) and other information available, we believe him to be a good character and reputation and have the competence and experience to perform the identified functions.

.....
Signature (Authorised signatory) :

.....
Signature (Authorised signatory) :

Full Name :

Full Name :

Designation :

Designation :

Date of Signature (dd mmm yyyy) :

Date of Signature (dd mmm yyyy) :

FORM 3 DECLARATION FORM IN RELATION TO ATTENDANCE OF 3 SIDC CPE-APPROVED COURSES ON CAPITAL MARKET

FORM 3

DECLARATION FORM IN RELATION TO ATTENDANCE OF 3 SIDC CPE-APPROVED COURSES ON CAPITAL MARKET

DETAILS

Name of Shariah adviser; or : _____

Name of Shariah officer and Corporation : _____

Identity card No. /Passport No. : _____

Shariah Adviser Registration No. : _____

I have attended three SIDC CPE-approved courses on Capital Market as follows:

COURSES ATTENDED

No.	Title	Training Provider	Year

DECLARATION

I hereby declare that all information given in this declaration form and the attached documents are true and accurate.

.....

Signature :

Full Name :

Date of Signature (*dd mmm yyyy*) :

Note

Please attach the relevant documents (i.e. certificates of the courses attended) together with this Declaration Form.

APPENDIX 5

TAX ORDERS

No	Exemption	Legislation
1.	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.	Income Tax (Exemption) (No. 6) Order 2021 [<i>P.U. (A) 282/2021</i>]
2.	Income tax exemption on statutory income derived from fund management services of managing a fund in accordance with Shariah principles for local investors.	Income Tax (Exemption) (No. 7) Order 2021 [<i>P.U. (A) 283/2021</i>]
3.	Income tax exemption on statutory income derived from fund management services of managing a fund in accordance with Shariah principles for foreign investors.	Income Tax (Exemption) (No. 8) Order 2021 [<i>P.U. (A) 284/2021</i>]

APPENDIX 6

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

This document contains the following:

- (a) **Section A:** Application form for certification from the SC in respect of Tax Exemption for the Islamic Fund Management Industry;
- (b) **Section B:** Documents required to be submitted to the SC; and
- (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 Fund Management Company	:	
Licensing Number	:	
Financial Year End	:	
Year of Assessment	:	
Income Tax Reference Number	:	
Name of Contact Person of Fund Management Company	:	
Contact Number	:	
Fax Number	:	

E-mail	:	
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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, closed-end 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
(A)	Written declaration by the fund management company in the format as specified in Section C.	
(B)	Written confirmation by the Shariah adviser that the fund has been managed in accordance with Shariah principles*.	

Note:

**This document is 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 have two signatories signed by the Director and the Compliance Officer of the fund management company pursuant to the authority granted by the resolution of the Board of Directors of the fund management company)

[Company Letterhead]

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

Dear Sir

APPLICANT *(name of fund management company)*

We, *(name of fund management company)*...., confirm, that, after having made enquiries as were reasonable in the circumstances, have reasonable grounds to believe and do believe that, the information which is provided to the Securities Commission Malaysia (SC) in the application for the certification in respect of tax exemption provided for the Islamic fund management industry, is not false or misleading and contains no material omission.

We hereby declare that:

- (i) the application is in full compliance with the conditions as specified in the following tax orders*:
 - (A) Income Tax (Exemption) (No. 6) Order 2021 [*P.U. (A) 282/2021*];
 - (B) Income Tax (Exemption) (No. 7) Order 2021 [*P.U. (A) 283/2021*]; and
 - (C) Income Tax (Exemption) (No. 8) Order 2021 [*P.U. (A) 284/2021*];
- (ii) the Islamic fund management business/portfolio management* is undertaken in accordance with Shariah principles**;
- (iii) we have conducted the fund management services for the Islamic fund listed in the application in Malaysia;
- (iv) we have incurred annual operating expenditure of at least RM250,000 in Malaysia; and

- (v) we have at least two full-time employees in Malaysia of which one of the employees holds a Capital Markets Services Representative's Licence under the *Capital Markets and Services Act 2007*.

We also undertake to provide to the SC all information the SC may require on the application, including the submission of the audited financial statements for the financial year ended (dd/mm/yyyy) which has been made through the (*Electronic Application System (EASy)/SC Common Reporting (ComRep) Portal*)*... on(*date of submission*)....

We confirm that no other tax incentive application⁵ has been made for the Islamic fund listed in this application for the stipulated financial year.

Yours faithfully

Signature: Name: Designation: Company Seal or Stamp: Date:	Signature: Name: Designation: Company Seal or Stamp: Date:
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* *To delete where not relevant.*

** *This confirmation is 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.*

⁵ The tax exemption on the management fee for Islamic funds and the tax exemption on the management fee for Shariah-compliant Sustainable and Responsible Investment (SRI) funds are mutually exclusive. The fund management company managing an Islamic fund is only allowed to apply for either one of the tax exemptions and not both

APPROVED SHARIAH PRINCIPLES AND CONCEPTS FOR ISLAMIC CAPITAL MARKET PRODUCTS AND SERVICES

The following are approved Shariah principles and concepts for Islamic capital market products and services:

A. Primary principles

- *Bai` bithaman ajil* (BBA) (Deferred-payment sale)
A contract that refers to the sale and purchase of assets on a deferred and instalment basis with pre-agreed payment period.
- *Bai` 'inah* (Sale with immediate repurchase)
A contract which involves the sale and buy back transaction of an asset by a seller. A seller will sell the asset to a buyer for cash. The seller will immediately buy back the same asset on a deferred payment basis at a price that is higher than the cash price. It could also be applied when a seller sells the asset to a buyer on a deferred basis. The seller will later buy back the same asset for cash at a price which is lower than the deferred price.
- *Bai` istijrar* (Supply sale)
A contract between a client and a supplier, whereby the supplier agrees to supply a particular product on an ongoing basis, for example monthly, at an agreed price and on the basis of an agreed mode of payment.
- *Bai` salam* (Advance purchase)
A sale and purchase contract whereby the payment is made in cash at the point of contract but the delivery of the asset purchased will be deferred to a pre-determined date.
- *Bai` wafa'* (Sale and repurchase)
A contract with the condition that when the seller pays back the price of goods sold, the buyer returns the goods to the seller.
- *Ijarah* (Leasing)
A contract whereby a lessor (owner) leases out an asset to a lessee at an agreed lease rental for a predetermined lease period. The ownership of the leased asset shall always remain with the lessor.

- *Ijarah thumma bai`* (Lease to purchase)
A contract which begins with an *ijarah* contract for the purpose of renting out a lessor's asset to a lessee. Consequently, at the end of the lease period, the lessee will purchase the asset at an agreed price from the lessor by executing a purchase contract.
- *Istisna`* (Purchase order)
A purchase order contract where a buyer requires 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. The payment term can be as agreed by both parties in the contract.
- *Mudharabah* (Profit sharing)
A contract made between two parties to enter into a venture. The parties consist of the *rabb al-mal* (capital provider) who shall contribute capital to finance the venture, and the *mudharib* (entrepreneur) who will manage the venture. If the venture is profitable, the profit will be distributed based on a pre-agreed ratio. In the event of a loss, the loss shall be borne solely by the *rabb al-mal*, unless the loss is due to the negligence or mismanagement of the *mudharib* in managing the venture.
- *Murabahah* (Cost-plus sale)
A contract that refers to the sale and purchase of assets whereby the cost and profit margin (mark-up) are made known.
- *Musawamah* (Negotiated sale)
A contract that refers to the sale and purchase of asset where the selling price of the asset is negotiated between the seller and the buyer, with the cost price not being disclosed or made known to the buyer.
- *Musharakah* (Profit and loss sharing)
A partnership arrangement between two or more parties to finance a venture whereby all parties contribute capital either in the form of cash or in kind for the purpose of financing the said venture. 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 capital contribution.
- *Qardh hasan* (Benevolent loan)
A contract of loan between two parties on the basis of social welfare or to fulfil a short-term financial need of the borrower. The amount of repayment must be equivalent to the amount borrowed. It is however legitimate for a borrower to pay

more than the amount borrowed as long as it is not stated or agreed at the point of contract.

- Tawarruq (Tripartite sale)
Purchasing a commodity on a deferred price and then selling it to a third party for cash.
- Tawliyah (Sale at cost price)
A contract that refers to the sale and purchase of asset at cost price whereby the cost is made known.
- Wadhi`ah (Sale at discounted price)
A contract that refers to the sale and purchase of asset at discount whereby the cost and the discounted amount are made known.
- Wakalah (Agency)
A contract where a party authorises another party to act on behalf of the former based on the agreed terms and conditions as long as he is alive.

B. Supplementary principles and concepts

- Bai` dayn (Debt trading)
A transaction that involves the sale and purchase of debt.
- Bai` muzayadah (Open-bidding trading)
An action by a person to sell his asset in the open market through a bidding process among potential buyers. The asset for sale will be awarded to the person who has offered the highest bid/price. This is also known as the sale and purchase transaction based on tender.
- Kafalah (Guarantee)
A contract of guarantee whereby a guarantor underwrites any claim and obligation that should be fulfilled by an owner of the asset. This concept is also applicable to a guarantee provided on a debt transaction in the event a debtor fails to fulfil his debt obligation.
- Haq tamalluk (Ownership right)
An asset in the form of ownership rights as classified by Shariah which are tradable.
- Hibah (Gift)
A gift awarded to a person on voluntary basis.

- Hiwalah (Transfer of debt)
A contract that allows a debtor to transfer his debt obligation to a third party.
- Ibra' (Release of rights)
An act of releasing absolutely or conditionally one's rights and claims on any obligation against another party which would result in the latter being discharged of his/its obligations or liabilities towards the former. The release may be either partially or in full.
- Ju'alah (Reward)
Contract of reward; a unilateral contract promising a reward for a specific act or accomplishment.
- Rahn (Collateral)
An act whereby a valuable asset is made as collateral for a debt. The collateral will be utilised to settle the debt when a debtor is in default.
- Tanazul (Waiver of rights)
Waiver of right by one party to another party in *musharakah*, *mudharabah* and *wakalah bi al-istithmar* contracts where the right waived is transferred to other party.
- Ujrah (Fee)
A financial fee for the utilisation of services or *manfa'ah* (usufruct). In the context of today's economy, it can be in the form of salary, allowance, commission and any other permissible form of assets.
- Wadi'ah yad amanah (Safekeeping based on trust)
Goods or deposits kept with a custodian (who is not the owner) for safekeeping based on trust. The custodian is not allowed to use the deposits nor entitled to any share of the profits.
- Wadi'ah yad dhamanah (Safekeeping with guarantee)
Goods or deposits kept with a custodian (who is not the owner) for safekeeping. When the custodian utilises the deposits, the custodian guarantees the repayment of the whole amount of the deposits or any part of it, when demanded. In this case, the rule of *qardh* shall apply and the depositors are not entitled to any return on the deposits. However, the custodian may provide rewards to the depositors as a token of appreciation in the form of *hibah*.

APPENDIX 8

INFORMATION AND DOCUMENTS TO BE SUBMITTED TO THE SC FOR THE PURPOSE OF SEEKING ENDORSEMENT OF THE SHARIAH ADVISORY COUNCIL FOR RINGGIT-DENOMINATED SUKUK

- (1) A cover letter addressed to:

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

- (2) Such cover letter must disclose the following:

- (a) Name of parties involved in the proposal as follows:

- (i) Principal adviser;
- (ii) Facility agent;
- (iii) Solicitors;
- (iv) Shariah adviser;
- (v) Trustee; and
- (vi) Guarantor, if applicable.

- (b) Corporate information on the issuer and/or obligor and/or originator (if applicable) as follows:

- (i) Name;
- (ii) Principal activities of—
 - (A) issuer and its group of companies;
 - (B) obligor or issuer's holding company and its group of companies; and

- (C) originator and its group of companies;
- (c) If the issuer is a special-purpose vehicle company, state the name of the entity that established it and its principal activities; and
- (d) Proposed date of lodgement of the sukuk.
- (3) Shariah pronouncement including detailed Shariah reasoning or justification where the signing procedures must comply with the requirements as specified by the SAC.
- (4) Details of sukuk facility (for one-off issue) or sukuk programme as follows:
 - (a) Name of facility and facility descriptions including transaction diagram and explanatory notes;
 - (b) Shariah principles;
 - (c) Guarantee or *Kafalah* – details on guarantee or *Kafalah*, if applicable;
 - (d) Utilisation of proceeds;
 - (e) Identified asset or Trust asset;
 - (f) Tenure (Programme and/or Issue);
 - (g) Purchase and selling price or rental, where applicable – compliance with asset pricing requirements;
 - (h) Profit/coupon/rental rate (fixed or floating);
 - (i) Mechanism for convertible, exchangeable, call or put option, if applicable;
 - (j) Conditions precedent relating to Shariah approval;
 - (k) Recourse available to the sukukholders in the event of default and/or dissolution;
 - (l) Details of designated accounts;
 - (m) Details of security or collateral pledged, if applicable;
 - (n) Permitted Investment;

- (n) *Ta`widh* (Compensation);
 - (o) *Ibra`*;
 - (q) If the sukuk is to be issued under Sustainable and Responsible Investment (SRI) sukuk framework, details of the following:
 - (i) Category of eligible SRI project; and
 - (ii) terms of the SRI sukuk (including the description of the eligible SRI projects, appointment of external reviewer, impact objective of the SRI project (if applicable));
 - (r) If the sukuk is to be issued under Sustainable and Responsible Investment Linked (SRI-linked) sukuk framework, details of the following:
 - (i) SRI-linked sukuk characteristic; and
 - (ii) terms of the SRI-linked sukuk (including the description of the Key Performance Indicators, calibration of Sustainability Performance Targets, appointment of external reviewer and independent verifier); and
 - (s) Other terms.
- (5) If the sukuk is to be issued under SRI sukuk framework or SRI-linked sukuk framework, a copy of the issuer's internal SRI framework or SRI-linked sukuk framework, respectively (if available).
 - (6) Any other supporting documents or information as may be required by the SC.
 - (7) All documents must be submitted to the SC via e-mail 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 e-mail to ICMsubmission@seccom.com.my.

**INFORMATION AND DOCUMENTS TO BE SUBMITTED TO THE SC FOR REVISION
TO TERMS AND CONDITIONS OF RINGGIT-DENOMINATED SUKUK**

- (1) A cover letter addressed to:

Chairman
Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur
(Attention: Islamic Capital Market Development)
- (2) Such cover letter must disclose details of the revised transaction and structure diagram of the sukuk, where applicable.
- (3) Shariah pronouncement including detailed Shariah reasoning or justification where the signing procedures must comply with the requirements as specified by the SAC.
- (4) Marked-up version of the revised principal terms and conditions of the sukuk.
- (5) Table of comparison on the proposed revision.
- (6) Any other supporting documents or information as may be required by the SC.
- (7) All documents must be submitted to the SC via e-mail 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 e-mail to ICMsubmission@seccom.com.my.

APPENDIX 10

INFORMATION AND DOCUMENTS TO BE SUBMITTED TO THE SC FOR THE PURPOSE OF SEEKING ENDORSEMENT OF THE SHARIAH ADVISORY COUNCIL OF AN ISLAMIC STRUCTURED PRODUCT PROGRAMME PRIOR TO LODGEMENT

- (1) A cover letter addressed to:

Chairman
Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur
(Attention: Islamic Capital Market Development)
- (2) Such cover letter must disclose the following:
 - (a) Name of Eligible Issuer;
 - (b) Name of Principal Adviser, if applicable;
 - (c) Name of Shariah adviser; and
 - (d) Name of guarantor, if applicable.
- (3) Details of the Islamic structured product programme as follows:
 - (a) Name of Islamic structured product programme;
 - (b) Classes of underlying references; and
 - (c) Size of Islamic structured product programme.
- (4) Statement by the Shariah adviser acknowledging the establishment of the Islamic structured product programme as detailed in (3).
- (5) Any other supporting documents or information as may be required by the SC.
- (6) All documents must be submitted to the SC via e-mail 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 e-mail to ICMsubmission@seccom.com.my.

INFORMATION AND DOCUMENTS TO BE SUBMITTED TO THE SC FOR THE PURPOSE OF SEEKING ENDORSEMENT OF THE SHARIAH ADVISORY COUNCIL ON THE ISLAMIC STRUCTURED PRODUCT SERIES UNDER AN ISLAMIC STRUCTURED PRODUCT PROGRAMME PRIOR TO SUBMISSION OF PRE-ISSUANCE NOTIFICATION

- (1) A cover letter addressed to:

Chairman
Securities Commission Malaysia
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur
(Attention: Islamic Capital Market Development)
- (2) Such cover letter must disclose the following:
 - (a) Name of Eligible Issuer;
 - (b) Name of Principal Adviser, if applicable;
 - (c) Name of Shariah adviser; and
 - (d) Name of guarantor, if applicable.
- (3) Details of the Islamic structured product series under the Islamic structured product programme as follows:
 - (a) Name of the Islamic structured product series;
 - (b) Classes of underlying references for the Islamic structured product series as follows;
 - (i) Equity;
 - (ii) Currency;
 - (iii) Index;

- (iv) Interest rate/Profit rate;
 - (v) Commodity;
 - (vi) Credit-linked; or
 - (vii) Others (To specify. For example, combinations of assets or underlying reference, etc.);
- (c) The Shariah principles or concepts adopted for the Islamic structured product series and description of their application in the Islamic structured product series;
- (d) The detailed structure of the Islamic structured product series including—
 - (i) transaction diagrams and explanatory notes; and
 - (ii) scenario analysis on the possible outcome of the investment;
- (e) The detailed hedging mechanism between the Eligible Issuer and the immediate hedging counterparty describing the structure of any embedded derivatives including transaction diagrams and explanatory notes;
- (f) Investment tenure;
- (g) Principal protected/non-principal protected;
- (h) Profit rate (fixed, floating or a combination of both, including pay out conditions);
- (i) Profit pay out frequency;
- (j) Settlement method;
- (k) The events and mechanisms for early termination or call option by the Eligible Issuer;
- (l) The events and mechanisms for early termination or early redemption by the investors;
- (m) Any charges or fees imposed on the investors (e.g. charges in the event of early termination or early redemption, administrative fees, etc.);

- (n) *Ibra'* and the circumstances, if applicable;
 - (o) *Ta'widh* (compensation) and the circumstances, if applicable; and
 - (p) Any other terms and conditions.
- (4) Shariah pronouncement including detailed Shariah reasoning or justification on the Islamic structured product series where the signing procedures must comply with the requirements as specified by the SAC.
 - (5) For new Islamic structured product series under Part 2, Section B of the *Guidelines on Unlisted Capital Market Products under the Lodge and Launch Framework*, a copy of the letter issued by the SC in relation to the endorsement by the SAC for the Islamic structured product programme.
 - (6) Any other supporting documents or information as may be required by the SC.
 - (7) All documents must be submitted to the SC via e-mail 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 e-mail to ICMsubmission@seccom.com.my.

SHARIAH ADVISER'S REPORT FOR ISLAMIC UNIT TRUST FUND

To the unit holders of *(name of fund)* (Fund),

We hereby confirm the following:

1. To the best of our knowledge, after having made all reasonable enquiries, *(name of management company)* has operated and managed the Fund during the period covered by these financial statements in accordance with the Shariah principles and requirements and complied with the applicable guidelines, rulings or decisions issued by the Securities Commission Malaysia pertaining to Shariah matters^{^1}: and
2. The assets of the Fund comprise instruments that have been classified as Shariah-compliant^{^2}.

For *(name of Shariah adviser)*

(Name of signatory)

(Designation of signatory)

Date: *(Date of report)*

Notes:

^{^1} If the Fund has not been operated and managed according to the Shariah principles and requirements, to amend the statement in item 1 accordingly, and to also state the steps taken to address the situation and to prevent the recurrence of the situation.

^{^2} If there was any reclassification of Shariah-compliant status of the instruments, to insert the following:

'except for [name of instrument(s)] which has/have been reclassified as Shariah non-compliant by [name of the authority]. This/These* reclassified Shariah non-compliant instrument(s) shall be disposed/has(ve) been disposed on [state the date]* in accordance with the Fund's Shariah investment guidelines as provided in the Fund's deed and disclosed in the Fund's prospectus.'*

SHARIAH ADVISER'S REPORT FOR ISLAMIC EXCHANGE-TRADED FUND

To the unit holders of *(name of ETF)* (Fund),

We hereby confirm the following:

1. To the best of our knowledge, after having made all reasonable enquiries, *(name of management company)* has operated and managed the Fund during the period covered by these financial statements in accordance with the Shariah principles and requirements and complied with the applicable guidelines, rulings or decisions issued by the Securities Commission Malaysia pertaining to Shariah matters^{^1}.
2. The assets of the Fund comprise instruments that have been classified as Shariah-compliant^{^2}.
3. We have conducted audit/site visit* at *(place where the gold and silver bullion/bars are kept)* on *(date of audit/visit)* and we hereby confirm on the following^{^3}:
 - (a) The gold and silver bullion/bars are in existence;
 - (b) The quantity and other details of the gold and silver bullion/bars are correct as per the specification and record maintained by the custodian including the record of its movement; and
 - (c) The gold and silver bullion/bars are kept in a segregated and allocated manner.

For *(name of Shariah adviser)*

(Name of signatory)

(Designation of signatory)

Date: *(Date of report)*

Notes:

^{^1} If the Fund has not been operated and managed according to the Shariah principles and requirements, to amend the statement in item 1 accordingly, and to also state the steps taken to address the situation and to prevent the recurrence of the situation.

^{^2} If there was any reclassification of Shariah-compliant status of the instruments, to insert the following:

'except for [name of instrument(s)] which has/have been reclassified as Shariah non-compliant by [name of the authority]. This/These* reclassified Shariah non-compliant instrument(s) shall be disposed/has(ve) been disposed on [state the date]* in accordance with the Fund's Shariah investment guidelines as provided in the Fund's deed and disclosed in the Fund's prospectus.'*

^{^3} This confirmation is only applicable for Islamic ETF based on gold and silver.

* To delete word that is not applicable.

**LIST OF SHARIAH NON-COMPLIANT ACTIVITIES IN RELATION TO ISLAMIC
REAL ESTATE INVESTMENT TRUST**

- (a) Conventional banking and lending;
- (b) Conventional insurance;
- (c) Gambling;
- (d) Liquor and liquor-related activities;
- (e) Pork and pork-related activities;
- (f) Non-halal food and beverages;
- (g) Tobacco and tobacco-related activities;
- (h) Stockbroking or share trading in Shariah non-compliant securities;
- (i) Shariah non-compliant entertainment; and
- (j) Other activities deemed non-compliant according to Shariah principles as determined by the SAC.

INFORMATION AND DOCUMENTS TO BE SUBMITTED TO THE SC FOR THE PURPOSE OF SEEKING ENDORSEMENT OF THE SHARIAH ADVISORY COUNCIL FOR CONVERSION TO AN ISLAMIC REAL ESTATE INVESTMENT TRUST (REIT)

(1) Cover letter

An application submitted for the SAC's endorsement for conversion of a conventional REIT to an Islamic REIT must comprise a cover letter which contains the following:

- (a) Name of parties involved in the proposal, including the adviser, management company, Shariah adviser and solicitor;
- (b) Rationale and justification of the proposed conversion;
- (c) List and type of existing real estate;
- (d) The current percentage of Shariah Non-Compliant Rental based on the latest audited financial statements and the proposed plan to reduce the percentage of such rental; and
- (e) Proposed refinancing plan of existing conventional borrowings, if any, detailing amongst others outstanding amount, remaining tenure of the borrowings and penalty clause for conversion, if any.

(2) Other documents

- (a) Shariah pronouncement by the Shariah adviser, including detailed reasoning or justification supporting the proposed conversion exercise;
- (b) A checklist of compliance with Chapter 33 of these Guidelines, including commentary on whether the requirements are met, not met, where applicable, and to provide explanation or justification thereof; and
- (c) Any other supporting documents or information as may be required by the SC.

(3) **Submission of application**

Applications under this Appendix must be submitted as follows:

- (a) All submission documents must be in electronic copies. The electronic copies must be in text-searchable format (PDF-text);
- (b) The PDF-text files must be in a readable and proper condition;
- (c) In a size of up to 10 MB per e-mail, to ICMsubmission@seccom.com.my; and
- (d) Submission of applications must be addressed to the following:

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

SHARIAH ADVISER'S REPORT FOR ISLAMIC PRIVATE RETIREMENT SCHEME FUND

To the members of *(name of Fund)* (Fund),

We hereby confirm the following:

1. To the best of our knowledge, after having made all reasonable enquiries, *(name of PRS Provider)* has operated and managed the Fund during the period covered by these financial statements in accordance with the Shariah principles and requirements and complied with the applicable guidelines, rulings or decisions issued by the Securities Commission Malaysia pertaining to Shariah matters^{^1}: and
2. The assets of the Fund comprise instruments that have been classified as Shariah-compliant^{^2}.

For *(name of Shariah adviser)*

(Name of signatory)
(Designation of signatory)
Date: *(Date of report)*

Notes:

^{^1} If the Fund has not been operated and managed according to the Shariah principles and requirements, to amend the statement in item 1 accordingly, and to also state the steps taken to address the situation and to prevent the recurrence of the situation.

^{^2} If there was any reclassification of Shariah-compliant status of the instruments, to insert the following:

'except for [name of instrument(s)] which has/have been reclassified as Shariah non-compliant by [name of the authority]. This/These* reclassified Shariah non-compliant instrument(s) shall be disposed/has(ve) been disposed on [state the date]* in accordance with the Fund's Shariah investment guidelines as provided in the deed and the disclosure document of the [name of the Scheme].'*