

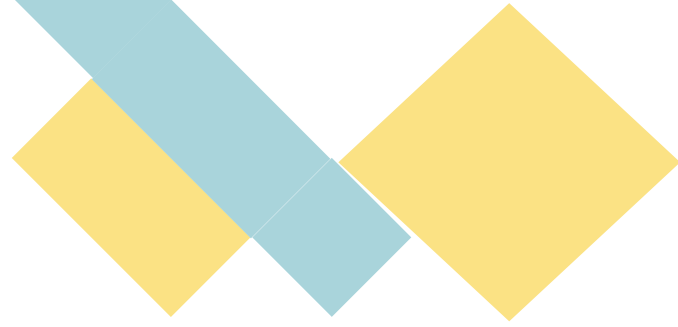
THE 288TH SHARIAH ADVISORY COUNCIL OF THE SECURITIES COMMISSION MALAYSIA MEETING (24 FEBRUARY 2025)

APPLICABILITY OF THE EXISTING SHARIAH ADVISORY COUNCIL RESOLUTIONS ON SHARIAH SCREENING METHODOLOGY FOR LISTED SECURITIES AND SHARIAH-COMPLIANT LISTED PREFERENCE SHARES TO SHARES OFFERED BY UNLISTED PUBLIC COMPANIES

INTRODUCTION

Unlisted public companies (UPC) are public companies whose shares are not listed and are not seeking for its shares to be listed on the stock market of the stock exchange. The offering of equity shares and preference shares by UPC (UPC Shares) is regulated by the Securities Commission Malaysia (SC) under its regulatory framework. In this regard, UPC must adhere to high governance standards, provide adequate disclosures, and mitigate potential risks to investors to ensure investors' protection and market confidence.

In order to determine the Shariah status of UPC Shares, a key question arises whether the existing Shariah Advisory Council (SAC) resolutions on Shariah screening methodology for listed securities and Shariah-compliant listed preference shares are applicable to UPC Shares.



RESOLUTION

In the 288th SAC meeting held on 24 February 2025, the SAC had resolved that the existing SAC resolutions on Shariah screening methodology for listed securities and Shariah-compliant listed preference shares are applicable to UPC Shares.

SHARIAH JUSTIFICATION

Shariah justifications for the SAC resolution above are as follows:

(1) Standardising the Application of the SAC Resolutions for Shariah-Compliant Shares Offered by UPC

The extension of the aforementioned existing SAC resolutions to UPC aims to standardize its application to Shariah-compliant listed securities, Shariah-compliant listed preference shares and UPC Shares for uniformity and consistency. This standardisation is driven by the roles of the SC in regulating listed securities, listed preference shares and UPC Shares for the protection of investors. This is in line with the following Islamic legal maxim:

تصرف الإمام على الرعية منوط بالمصلحة

*"Acts of those with authority over people must take their maslahah (interest of mankind) into account."*¹

¹ Jalaluddin 'Abdul Rahman al-Suyuti, *al-Ashbah wa al-Nazair fi Qawa'id wa Furu' Fiqh al-Syafie*, Dar al-Kutub al-'Ilmiah, Beirut, Lebanon, 1983, p. 121.

The above maxim entails that the decision of a legal authority over people takes into consideration of their interest.² From *siyasah shar'iyah*³ perspective, the decision of the SAC in extending the said SAC resolutions to Shariah-compliant shares offered by UPC takes into consideration *maslahah* (public interest) of investors. This is in line with the SC's roles and regulatory oversight on listed securities, listed preference shares and UPC Shares respectively.

(2) Providing Guidance and Clarity to UPC for the Offering of Shariah-Compliant Shares to Investors

The above extension of the existing SAC resolutions serves as a guidance to UPC in structuring and offering its Shariah-compliant shares. Such guidance is part of the roles undertaken by the SAC in ascertaining the application of Shariah principles for Islamic capital market (ICM) products and services including UPC Shares. This is supported by the following verse:

فَاسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ

*"If ye realise this not, ask of those who possess the Message."*⁴

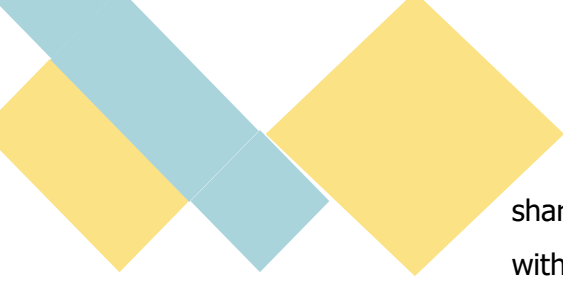
The above verse demonstrates that Islam teaches people to ask guidance and opinion particularly on religious matters from those who deeply possess scholarly-religious knowledge in Islam.⁵ In the context of this resolution, any UPC that intends to offer Shariah-compliant

² Ahmad bin Muhammad al-Zarqa', *Syarah al-Qawa'id al-Fiqhiyyah*, Dar al-Qalam, Damsyik, Syria, 1989, p. 309.

³ *Siyasah Shariyyah* refers to the area in Islamic jurisprudence that explains rulings related to policies and approaches taken in organising the national administrative structure (and its people) in accordance with the spirit of the Shariah. It covers the issues of central and regional administration, economy, judiciary, peace, international relations, etc. Refer to Resolutions of the Securities Commission Shariah Advisory Council, 2nd Edition, 2006, p. 11-12.

⁴ Surah al-Anbiya 21: 7.

⁵ Abd al-Rahman Nasir al-Sa'di, *Taisir al-Karim al-Rahman fi Tafsir Kalam al-Manan*, Muassasah al-Risalah, Beirut, Lebanon, 2002, p. 519.



shares is to be guided by the existing SAC resolutions. This is in line with the SAC's roles as the highest authority for the ascertainment of the application of Shariah principles for ICM business or transaction and its functions as a reference centre for all matters relating to ICM.

In addition, the extension of the above SAC resolutions also aims to provide clarity to UPC. This is aligned with Principle 8 (Enhancing Disclosure and Documentation), Aspiration 3 (Clarity and Transparency) of the Maqasid al-Shariah Guidance Islamic Capital Market Malaysia. This Principle emphasizes the importance of transparency, enabling informed decision making, and promotion of clear understanding of the rights and obligations of all parties involved.