



Suruhanjaya Sekuriti
Securities Commission
Malaysia

GUIDELINES ON ISLAMIC FUND MANAGEMENT

SC-GL/IFM – 2007 (R2-2021)

1st Issued: 3 December 2007

Revised: 22 September 2021

GUIDELINES ON ISLAMIC FUND MANAGEMENT

Effective Date upon Issuance:	3 December 2007
-------------------------------	-----------------

LIST OF REVISIONS (FROM 2007)

Revision Series	Revision Date	Effective Date of Revision	Series Number
1st Revision	18 May 2020	18 May 2020	SC-GL/IFM – 2007 (R1-2020)
2nd Revision	22 September 2021	22 September 2021	SC-GL/IFM – 2007 (R2-2021)

CONTENTS

	Page
Chapter 1	1
INTRODUCTION	
Chapter 2	4
DEFINITIONS	
SECTION A: REQUIREMENTS FOR ISLAMIC FUND MANAGEMENT BUSINESS	
Chapter 3	6
CONSTITUTION	
Chapter 4	7
APPOINTMENT OF SHARIAH ADVISER	
Chapter 5	9
ROLES AND RESPONSIBILITIES OF SHARIAH ADVISER	
Chapter 6	11
EMPLOYEES COMPETENCY	
Chapter 7	12
PORTFOLIO MANAGEMENT	
Chapter 8	14
RESPONSIBILITIES OF THE COMPLIANCE OFFICER	
Chapter 9	15
WRITTEN DISCLOSURE AND DECLARATION	

Chapter 10	16
INTERNAL AUDIT	
Chapter 11	17
FUND MANAGEMENT BUSINESS VIA ISLAMIC "WINDOW"	
SECTION B: REQUIREMENTS FOR CERTIFICATION OF ISLAMIC FUND	
Chapter 12	18
CERTIFICATION OF ISLAMIC FUND IN RESPECT OF TAX EXEMPTION	
Chapter 13	19
APPLICATION	
APPENDICES	
Appendix 1	20
SHARIAH PRINCIPLES AND CONCEPTS	
Appendix 2	23
TAX ORDERS	
Appendix 3	24
DOCUMENTS TO BE SUBMITTED FOR CERTIFICATION FRC THE SC IN RESPECT OF TAX EXEMPTION FOR THE ISLAMIC FUND MANAGEMENT INDUSTRY	

Chapter 1

INTRODUCTION

General

1.01 The *Guidelines on Islamic Fund Management* (Guidelines) is issued by the Securities Commission Malaysia (SC) under section 377 of the *Capital Markets and Services Act 2007* (CMSA).

1.02 These Guidelines are divided into two sections:

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

Applicability

1.03 These Guidelines apply 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”.

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

Chapter 2

DEFINITIONS

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

compliance officer means the compliance officer under Section 2.01 of the *Guidelines on Compliance Function for Fund Management Companies*;

CMSA means the *Capital Markets and Services Act 2007*;

CMSL means the Capital Markets Services Licence granted under section 61 of the CMSA;

fund management company means a CMSL holder carrying on the business of fund management as defined in Part 2 of Schedule 2 of the CMSA;

Islamic banking business has the same definition in the *Islamic Financial Services Act 2013*;

Islamic fund means a fund managed in accordance with Shariah principles;

Islamic fund management business means fund management business that complies with Shariah requirements;

Islamic fund management company	means a fund management company whose sole purpose is to carry on Islamic fund management business;
Islamic fund management business under an Islamic “window”	means activity of carrying out an Islamic fund management business together with conventional fund management business;
licensed Islamic bank	has the meaning assigned to it under the <i>Islamic Financial Services Act 2013</i> ;
SAC	means Shariah Advisory Council of the SC.

SECTION A: REQUIREMENTS FOR ISLAMIC FUND MANAGEMENT COMPANY

Chapter 3

CONSTITUTION

- 3.01 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 principles.

Chapter 4

APPOINTMENT OF SHARIAH ADVISER

- 4.01 An Islamic fund management company must appoint a Shariah adviser to carry out roles and responsibilities as set out in Chapter 5 of these Guidelines.
- 4.02 Only the following person may be appointed as a Shariah adviser–
- (a) An individual or a corporation, registered with the SC;
 - (b) A licensed Islamic bank; or
 - (c) A licensed bank or licensed investment bank approved to carry on Islamic banking business.
- 4.03 Where a Shariah adviser is subjected to any disqualification or no longer satisfies the fit and proper criteria for the registration of Shariah advisers, the Islamic fund management company must ensure that the Shariah adviser vacates the position immediately upon being notified by the Shariah adviser of his disqualification.
- 4.04 The Islamic fund management company must notify the SC immediately if the Shariah adviser–
- (a) resigns;
 - (b) vacates the post due to disqualification or no longer satisfies the fit and proper criteria for the registration of Shariah advisers; or
 - (c) ceases its service or business.

4.05 The Islamic fund management company must appoint a new Shariah adviser within one month from the resignation, vacation of the post or cessation of service or business.

Chapter 5

ROLES AND RESPONSIBILITIES OF SHARIAH ADVISER

5.01 The Shariah adviser must, among others:

- (a) provide Shariah expertise and advice on Shariah related matters in relation to the Islamic fund management business including providing guidance on all relevant matters to ensure that all aspects of the services are in accordance with Shariah requirements as well as any resolutions issued by the SAC;
- (b) review reports of compliance officer or any investment transaction report of the Islamic fund management company to ensure that the Islamic fund management business and investment activities are Shariah-compliant;
- (c) provide a written opinion and/or periodic report to confirm and certify whether the Islamic fund management business has been managed and/or administered in accordance with Shariah principles; and
- (d) apply *ijtihad* (intellectual reasoning) to ensure all aspects relating to the Islamic fund management business is in compliance with Shariah, in the absence of any rulings, principles and concepts endorsed by the SAC.

Guidance for paragraph 5.01(a)

Shariah related matters shall include but not be limited to documentation, (which includes the deed and offering document) structure, feature, investment instruments and ensuring compliance with relevant securities laws and guidelines issued by the SC.

- 5.02 In carrying out the roles above, a Shariah adviser must act with due care, skill and diligence.
- 5.03 Where there is ambiguity or uncertainty relating to any Shariah matters, the Shariah adviser must consult the SC.

Chapter 6

EMPLOYEES COMPETENCY

- 6.01 An Islamic fund management company must--
- (a) ensure, at all times, that it has adequate employees with necessary qualification, expertise and experience for its business;
 - (b) provide adequate and sufficient training, whether internal or otherwise, for all its employees and licensed representatives so that they acquire the necessary knowledge for its business; and
 - (c) ensure its compliance officer is well versed on Islamic fund management business and have adequate Shariah knowledge on Islamic finance and capital market.
- 6.02 The Islamic 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 7

PORTFOLIO MANAGEMENT

Shariah-compliant investment

7.01 An Islamic fund management company must ensure that its investment activities are limited to Shariah-compliant investments.

7.02 In the case of–

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

Maintenance of accounts

7.03 An Islamic fund management company must ensure that its clients' monies and properties are properly safeguarded under the securities law in accordance with Shariah requirements.

7.04 An Islamic fund management company must maintain all accounts with licensed Islamic bank. However, it is allowed to maintain the accounts in other licensed financial institutions approved by Bank Negara Malaysia provided the accounts are maintained in accordance with Shariah principles.

Risk management

7.05 Any risk management techniques and tools undertaken by the Islamic fund management company in relation to the Islamic fund management business must be in compliance with Shariah principles and endorsed by the Shariah adviser.

Chapter 8

RESPONSIBILITIES OF THE COMPLIANCE OFFICER

- 8.01 In addition to complying with statutory and general requirements imposed by the securities law, a compliance officer of an Islamic fund management company must ensure that the Islamic fund management business complies with these Guidelines and relevant SC regulations, including resolutions issued by the SAC.
- 8.02 A compliance officer of the Islamic 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 principles.
- 8.03 The compliance officer must report any Shariah non-compliance—
- (a) directly to the Shariah adviser and board of directors of the Islamic fund management company for consideration and/or immediate remedial action; and
 - (b) to the SC within 14 business days of the non-compliance being discovered.

Chapter 9

WRITTEN DISCLOSURE AND DECLARATION

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

Chapter 10

INTERNAL AUDIT

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

Chapter 11

ISLAMIC FUND MANAGEMENT BUSINESS UNDER AN ISLAMIC "WINDOW"

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

SECTION B: REQUIREMENTS FOR CERTIFICATION OF ISLAMIC FUND

Chapter 12

CERTIFICATION OF ISLAMIC FUND IN RESPECT OF TAX EXEMPTION

- 12.01 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 2 in relation to Islamic fund management business.
- 12.02 This chapter sets out the–
- (i) requirements which must be fulfilled by the fund management company for purposes of applying for the certification from the SC in respect of the tax exemptions; and
 - (ii) forms and documents that must be submitted by the fund management company, for the purpose of applying for the certification in respect of the tax exemptions.
- 12.03 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 2 of these Guidelines.
- 12.04 The SC may, at its discretion, request for additional information and documents other than those specified in these Guidelines.
- 12.05 The applicant must immediately inform the SC on any material change that may impact the application.

Chapter 13

APPLICATION

13.01 All completed applications must be submitted to the SC together with the documents as set out in Appendix 3 and other information, as may be required by the SC and addressed to:

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

13.02 The requirement under Section B (B) of Appendix 3 are not applicable to the fund management company managing a unit trust fund, exchange-traded fund, wholesale fund, real estate investment trust, business trust and private retirement scheme.

13.03 In addition to the submission of a hard copy of the documents as set out in Appendix 3, an electronic copy of such documents must be submitted to the SC via email in the following manner:

(a) Documents must be in a text searchable Portable Document Format (PDF);

(b) The PDF-text files must be in a readable and proper condition; and

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

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

SHARIAH PRINCIPLES AND CONCEPTS

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

Wakalah

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

Ujrah

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

Ji'alah

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

Wadiah yad amanah

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

Wadiah yad dhamanah

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

Mudharabah

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

Musharakah

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

Murabahah

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

Istisna`

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

Hibah

A gift awarded to a person on a voluntary basis.

Hiwalah

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

Hak Tamalluk

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

Tawarruq

The purchase of a commodity on deferred payment basis through a direct sale or *murabahah*. The commodity is then sold for cash to a party other than the original seller.

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 – P.U. (A) 282
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 – P.U. (A) 283
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 – P.U. (A) 284

APPENDIX 3

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	:	

Kindly provide the list of Islamic fund managed below:

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

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

Section B: Documents required to be submitted to the SC

Documents	SC's internal use
(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
(Attn: 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, we 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;
 - (B) Income Tax (Exemption) (No. 7) Order 2021 – P.U. (A) 283;
 - (C) Income Tax (Exemption) (No. 8) Order 2021 – P.U. (A) 284;

- (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 Licensing Application (ELA) system/ SC Common Reporting (ComRep) Portal*]*... on(date of submission)...

We confirm that no other tax incentive application¹ has been made for the Islamic fund listed in this application for the stipulated financial year.

¹ 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.

Yours faithfully

Signature:	Signature:
Name:	Name:
Designation:	Designation:
Company Seal or Stamp:	Company Seal or Stamp:
Date:	Date:

* *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.*

