



Suruhanjaya Sekuriti
Securities Commission
Malaysia

GUIDELINES ON ISLAMIC FUND MANAGEMENT

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1.0 INTRODUCTION

- 1.01 The *Guidelines on Islamic Fund Management* is issued by the Securities Commission (SC) under section 377 of the *Capital Markets and Services Act 2007* (CMSA).
- 1.02 These guidelines set out the requirements that must be followed by an Islamic fund manager that carries on Islamic fund management.
- 1.03 These guidelines also set out the requirements for carrying on an Islamic fund management business under an Islamic “window”.
- 1.04 The Shariah principles applicable for an Islamic fund management business are set out in the Appendix 1.
- 1.05 These guidelines must be read with–
 - (a) *Guidelines on Compliance Function for Fund Managers*;
 - (b) *Guidelines on Unit Trust Funds*; and
 - (c) all other relevant guidelines, applicable requirements stipulated in the CMSA, and the *Licensing Handbook*.

2.0 DEFINITIONS

In these guidelines, the following terms have the following meanings, unless the context otherwise requires:

compliance officer	means the compliance officer under section 14.03 of the <i>Guidelines on Compliance Function for Fund Managers</i> .
fund management	has the same definition in the CMSA.
Islamic bank	has the same definition in the <i>Islamic Banking Act 1983</i> .
Islamic banking business	has the same definition in the <i>Islamic Banking Act 1983</i> .
Islamic fund management	means fund management that complies with Shariah requirements.
Islamic fund manager	means a Capital Market Services Licence (CMSL) holder, whose sole purpose is to carry on Islamic fund management business.
Islamic “window”	means a CMSL holder which carries on Islamic fund management business together with conventional fund management business.

recognised stock exchanges	mean the stock exchanges listed as the recognised stock exchanges in Bursa Malaysia's Participating Organisations Circular No. R/R 15 of 2005.
Shariah adviser	means a person or a company approved and registered by the SC as a Shariah adviser.
Shariah Advisory Council (SAC)	means the Shariah Advisory Council established by the SC under section 18 of the <i>Securities Commission Act 1993</i> .

3.0 MEMORANDUM AND ARTICLES OF ASSOCIATION

The Memorandum and Articles of Associations of an Islamic fund manager should state that the Islamic fund management aims to achieve its commercial objectives following Shariah principles.

4.0 APPOINTMENT OF SHARIAH ADVISER

4.01 An Islamic fund manager must appoint either–

- (a) an individual or a corporation as an independent Shariah adviser, approved and registered by the SC, and meets the following criteria:
 - (i) The person is not an undischarged bankrupt;
 - (ii) The person has not been convicted for any offence arising from a criminal proceeding;
 - (iii) The person is of good repute and character; and
 - (iv) The person possesses the necessary qualifications and expertise, particularly in *fiqh muamalah* and Islamic jurisprudence, and has experience and/or exposure in Islamic finance; or
- (b) an Islamic bank or a licensed institution approved by Bank Negara Malaysia to carry on an Islamic banking business.

4.02 Where the independent Shariah adviser under paragraph 4.01 above is a corporation, it must engage at least one Shariah expert who meets the criterion stipulated in paragraph 4.01(a). In addition, the Shariah expert and the corporation concerned should not have breached any securities or banking law since the date of incorporation. The corporation must not have a winding up order or resolution passed against it.

4.03 An Islamic fund manager may also appoint a non-resident Shariah adviser who may be an individual, a corporation or an Islamic bank. The Islamic fund manager should disclose and submit to the SC, information on the Shariah adviser, as listed in Appendix 2.

- 4.04 An Islamic fund manager must notify the SC of any resignation or cessation of services by a Shariah adviser within two weeks of resigning or ceasing of services. A new Shariah adviser must be appointed within one month from the resignation or cessation of services.
- 4.05 Where a Shariah adviser is subjected to any disqualification or becomes otherwise unfit to provide his or its services, the Islamic fund manager must ensure that the Shariah adviser vacates the position immediately. The Islamic fund manager must inform the SC of the disqualification and vacation of the post.

5.0 ROLE OF SHARIAH ADVISER

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

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

6.0 EMPLOYEES COMPETENCY

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

7.0 PORTFOLIO MANAGEMENT

7.01 Shariah-compliant investment

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

7.02 Maintenance of accounts

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

7.03 Risk management

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

8.0 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 manager must ensure that its business complies with these guidelines and relevant SC regulations and/or standards, including resolutions issued by the SAC.

8.02 The compliance officer must report any Shariah non-compliance directly to the Shariah adviser, and board of directors of the Islamic fund manager for consideration and/or immediate remedial action. The compliance officer must also report the matter to the SC.

- 8.03 The compliance officer is expected to assist the Shariah adviser in preparing and certifying that the Islamic fund management business is carried out in accordance to Shariah principles.

9.0 WRITTEN DISCLOSURE AND DECLARATION

- 9.01 An Islamic fund manager is expected to prepare at least, annually a written disclosure and declaration to the board of directors of the Islamic fund manager and the SC, that the Islamic fund management business is carried out in accordance with Shariah principles.
- 9.02 An Islamic fund manager 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 Managers*. The records must be available for examination upon the SC's request.

10.0 INTERNAL AUDIT

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

11.0 ISLAMIC FUND MANAGEMENT BUSINESS VIA ISLAMIC "WINDOW"

- 11.01 A fund manager 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 paragraph 3.0.
- 11.02 Islamic fund managers must segregate their accounts from those of conventional business.

Appendix 1

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.

Musyarakah

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

Murabahah

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

Istisna`

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

Hibah

A gift awarded to a person on a voluntary basis.

Hiwalah

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

Hak Tamalluk

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

Tawarruq

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

Appendix 2

INFORMATION REQUIRED ON SHARIAH ADVISERS (NON-RESIDENT)

For an individual:

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

For a corporation:

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

FREQUENTLY ASKED QUESTIONS

No. Questions

- 1 An Islamic bank is a registered person and non-CMSL holder under the CMSA. Is an Islamic bank considered as an Islamic fund manager if it carries on the Islamic fund management business? Is an Islamic bank governed by the *Guidelines on Islamic Fund Management* (Guidelines)?
- 2 We are a fund management company (a CMSL holder) carrying on both Islamic fund management and conventional fund management business. Are we considered an Islamic fund manager?
- 3 Is there any tax incentive given to fund management companies carrying on an Islamic fund management business?
- 4 How do I ensure that my employees are well versed in Islamic finance?
- 5 Can a foreign Shariah adviser be appointed as an independent Shariah adviser to oversee all Shariah matters?
- 6 How do we register for a new independent Shariah adviser?

Answers

No. An Islamic bank is not an Islamic fund manager. An Islamic fund manager refers to an institution (CMSL holder), which carries on a fund management business which complies with Shariah requirements. As a registered person under the CMSA, an Islamic bank is not governed by the Guidelines.

No, you are not recognised as an Islamic fund manager but instead you are termed as an Islamic “window”.

Budget 2008 announced that fund management companies will be given income tax exemption on all fees received in respect of Islamic fund management activities, until year of assessment 2016.

The designated fund manager and compliance officer are encouraged to attend at least two Islamic finance courses per year, organised by the Securities Industry Development Corporation (SIDC) or other training providers approved by the SIDC.

Yes. A foreign Shariah adviser can be appointed provided he is registered with the SC.

Submission for the registration of an independent Shariah adviser should be addressed to:

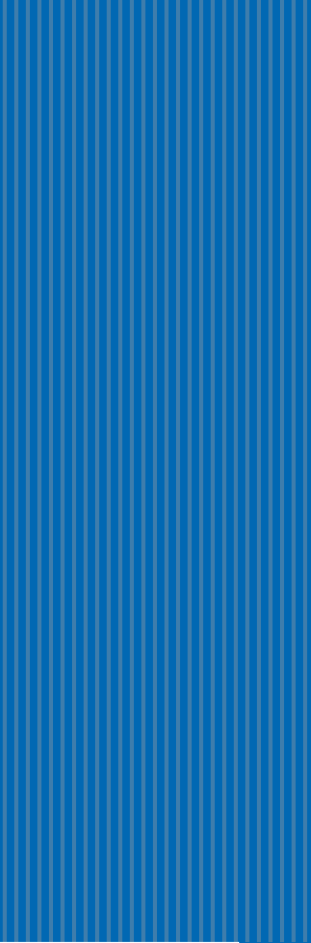
Head
Islamic Capital Market Department
Securities Commission Malaysia
3, Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur

No. Questions

- 7 If the Shariah adviser resigns, who is responsible for Shariah matters in the interim?

Answers

An Islamic fund manager must notify the SC within two weeks of the Shariah adviser's resignation. In the interim, the compliance officer will be responsible in monitoring the business but any endorsement must be made by the newly appointed Shariah adviser.



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