

Chapter 12

ADDITIONAL REQUIREMENTS FOR AN ISLAMIC UNIT TRUST FUND

PART 1: APPOINTMENT OF SHARIAH ADVISER

General

- 12.01 A Shariah adviser must be appointed by the management company to advise on all Shariah matters in relation to an Islamic unit trust fund.
- 12.02 A Shariah adviser must either be—
- (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.
- 12.03 Where individuals are appointed as Shariah adviser, they must comprise at least three individuals to form a Shariah committee.
- 12.04 The Shariah adviser appointed under paragraph 12.02(a) must be independent from the management company, and must not hold office as a member of the oversight arrangement of the same fund or any other funds managed and administered by the management company.

Roles and Responsibilities of Shariah Adviser

- 12.05 The Shariah adviser appointed must carry out the following roles and responsibilities:
- (a) Provide Shariah expertise and advice on Shariah matters in relation to the Islamic unit trust fund including matters relating to documentation (which includes the deed and

prospectus), structure, feature, investment instruments and ensure that all aspects of the Islamic unit trust fund are in accordance with Shariah requirements as set out in the relevant securities laws and guidelines issued by the SC;

- (b) Ensure that an Islamic unit trust fund complies with the applicable Shariah rulings, principles and concepts endorsed by the SAC;
- (c) Review the Islamic unit trust fund's compliance report and investment transaction report to ensure that the Islamic unit trust fund's investment are in line with Shariah;
- (d) Prepare a report to be included in the fund reports of an Islamic unit trust fund stating its opinion whether the Islamic unit trust fund has been managed in compliance with Shariah, including Shariah rulings, principles and concepts endorsed by the SAC; and
- (e) Apply *ijtihad* (intellectual reasoning) to ensure all aspects relating to the Islamic unit trust fund are in compliance with Shariah, in the absence of any rulings, principles and concepts endorsed by the SAC.

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

12.07 Where there is any ambiguity or uncertainty relating to any Shariah matters, the Shariah adviser must consult the SC.

PART 2: INVESTMENTS OF UNIT TRUST FUND

Permissible investments for Islamic unit trust fund

12.08 An Islamic unit trust fund's assets may only consist of assets that comply with Shariah principles.

12.09 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

12.10 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

12.11 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) Islamic securities selling and buying negotiated transactions (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.

PART 3: REQUIREMENTS FOR ISLAMIC UNIT TRUST FUND WITH WAQF FEATURE

12.12 This Part sets out the additional requirements that are required to be complied with by a new or existing Islamic unit trust fund with *waqf* feature.

- 12.13 An Islamic unit trust fund with *waqf* feature refers to an Islamic fund 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.
- 12.14 Only an Islamic unit trust fund that comply with this Part can hold itself out as a fund with *waqf* feature.

Investment objective and distribution policy

- 12.15 The primary investment objective of an Islamic unit trust fund with *waqf* feature is to provide income and allows its unit holders to channel all or part of the distribution of the income for *waqf* purposes.
- 12.16 The distribution policy of the Islamic unit trust fund must include the percentage of distribution to be channeled for *waqf* purposes.

Eligible *waqf* recipients

- 12.17 The Islamic unit trust fund may only channel the distribution declared for *waqf* purposes to the following recipients-
- (a) any state Islamic religious council (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

- 12.18 The Islamic unit trust fund must disclose in its prospectus and product highlights sheet, detailed description of the following information—

- (a) information relating to the *waqf* arrangement including the name of the *waqf* recipient and *waqf* initiatives as well as disclosing how the investors can obtain more information on the *waqf* recipient and the progress of the *waqf* initiatives; and
- (b) policies and processes relating to the selection of the *waqf* recipient and *waqf* initiatives and the circumstances where the fund will replace the *waqf* recipient, or add additional *waqf* recipient.

12.19 In addition to information set out in Schedule A, the management company of the Islamic unit trust fund 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

12.20 The Islamic unit trust fund's reports as required under Chapter 10, 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.