



Date: 28 June 2023

APPENDIX A: GUIDANCE ON SYARIAH GOVERNANCE FRAMEWORK
FOR BANKS AND FINANCIAL INSTITUTIONS IN BRUNEI DARUSSALAM
[AMENDED VIA AMENDMENT NO-1]



Contents

PART A: Guidance on Syariah Governance Framework	3
PART B: General Requirements of Syariah Governance Framework	5
PART C: Oversight, accountability and responsibility	6
PART D: Independence	9
PART E: Competency.....	10
PART F: Confidentiality and consistency.....	11
PART G: Syariah Research and Syariah Control Functions.....	13
PART H: Syariah Advisory Body Meetings.....	16



PART A: Guidance on Syariah Governance Framework

1. INTRODUCTION

- 1.1 This Guidance is designed to meet the following objectives:
 - 1.1.1 To provide guidance to Banks and Financial Institutions in establishing a Syariah Governance Framework (SGF);
 - 1.1.2 To provide guidance to the Board of Directors, Syariah Advisory Body and senior management of Banks and Financial Institutions in discharging its duties in matters relating to Syariah;
 - 1.1.3 To ensure the Bank's and Financial Institution's operations, processes and arrangements are in accordance with Hukum *Syara*';

2. DEFINITION

- 2.1 For the purpose of this Guidance:
 - 2.1.1 "Authority" means the Brunei Darussalam Central Bank established under section 3(1) of the Brunei Darussalam Central Bank Order, 2010;
 - 2.1.2 "Bank(s)" has the same meaning to it under section 2 of the Brunei Darussalam Central Bank Order, 2010;
 - 2.1.3 "Board" means the Board of Directors of a Bank and Financial Institution;
 - 2.1.4 "Financial Institutions(s)" has the meaning assigned to it under section 2 of the Brunei Darussalam Central Bank Order, 2010. For the avoidance of doubt, this also includes Perbadanan Tabung Amanah Islam Brunei established under the Perbadanan Tabung Amanah Islam Brunei Act (Chapter 163);
 - 2.1.5 "*Fiqh al-Mu'amalat*" means commercial law of Islam;
 - 2.1.6 "*Hukum Syara*" has the same meaning assigned to it under section 2 of the Syariah Financial Supervisory Board Order, 2006;
 - 2.1.7 "Senior management" means persons having authority and responsibility for planning, directing and controlling the activities of a Bank and Financial Institution as appointed by the Board;
 - 2.1.8 "Syariah Advisory Body" or "SAB" means:



- (a) A body established pursuant to section 8(2)(g) of the Islamic Banking Order, 2008;
- (b) A body established pursuant to section 10(1)(e) of the Takaful Order, 2008;
- (c) A body appointed pursuant to section 23(2) of the Securities Markets Order, 2013;
- (d) A body established under section 14 of the Perbadanan Tabung Amanah Islam Brunei Act (Chapter 163); and
- (e) A body appointed pursuant to section 6(2)(g) of the Finance Companies Act, (Chapter 89).

- 2.1.9 **“Syariah Control Function”** refers to a function that is independent from business lines and is responsible to provide objective assessment, reporting and assurance on the effectiveness of a Bank and Financial Institution’s policies and operations, and its compliance with legal and regulatory obligations. This includes the Syariah risk management function, Syariah review function and the Syariah audit function;
- 2.1.10 **“Syariah non-compliance”** or **“SNC”** means any event of Syariah non-compliance that has been confirmed by an SAB; and
- 2.1.11 **“Syariah Financial Supervisory Board”** or **“SFSB”** means the Syariah Financial Supervisory Board established pursuant to section 3 of the Syariah Financial Supervisory Board Order, 2006.



PART B: General Requirements of Syariah Governance Framework

1. A sound and robust Syariah governance is reflected by an effective and competent Board, SAB and senior management, supported by a strong internal Syariah research capacity, and monitored through active Syariah control functions.
2. Banks and Financial Institutions should establish a formal reporting channel among the key functions to ensure that the reporting on Syariah financial matters are carried out effectively and in a timely manner.
3. Any Syariah non-compliance event should be reported to the Authority pursuant to the Notice on Syariah Non-Compliance (SYAFI/N/02/2023).



PART C: Oversight, accountability and responsibility

Banks and Financial Institutions should set out clearly the accountability and responsibility of every key function involved in the implementation of its SGF.

1. BOARD OF DIRECTORS

- 1.1 The Board is responsible in establishing and overseeing the implementation of the SGF. In fulfilling this role, the Board should:
 - 1.1.1 Oversee the implementation of SFSB rulings and decisions or advice of the SAB within all business and functional lines, including any business or risk implications arising from such implementation;
 - 1.1.2 Oversee the implementation of the internal control framework to prevent Syariah non-compliance and any rectification measures to resolve incidents or circumstances that may result in Syariah non-compliance;
 - 1.1.3 Oversee the performance of senior management and other officers entrusted to implement SGF such that the Board is satisfied that the measures of their performance are aligned with Syariah governance objectives; and
 - 1.1.4 Promote a sound corporate culture which reflects the importance of adhering to Syariah requirements in product development and marketing, strategy formulation, business operations, risk management practices and other aspects that promote end-to-end compliance with Syariah.
- 1.2 The Board is responsible for the appointment of its SAB members and obtaining written approval from the SFSB.
- 1.3 The Board may consider appointing the SAB Chairman as a member of the Board. The presence of a director with sound knowledge would foster greater understanding and appreciation amongst the Board members on the decisions made by the SAB.
- 1.4 The Board is responsible for putting in place a formal process to assess, at a minimum annually, the performance and effectiveness of the SAB and every SAB member. The assessment should consider the competence, knowledge and contribution of each SAB member to the overall functioning of the SAB.
- 1.5 The Board is responsible for putting in place and regularly reviewing succession plans for the SAB members. Such process should involve the assessment of candidates against the Guidelines of Fitness and Propriety of Syariah Advisory Bodies (SYAFI/G/01/2023).

2. SYARIAH ADVISORY BODY (“SAB”)



- 2.1 The SAB is responsible for providing objective and sound advice to the Bank and Financial Institution that its aims and operations, business, affairs and activities are in accordance with Hukum **Syara'**. These include:
 - 2.1.1 Providing decisions or advice to the Bank and Financial Institution on the application of any rulings of the SFSB that are applicable to the operations, business, affairs and activities of the Bank and Financial Institution;
 - 2.1.2 Providing decisions or advice on matters which require a reference to be made to the SAB;
 - 2.1.3 Approving any Syariah related internal policies and manual;
 - 2.1.4 Approving and validating relevant documentation related to the products and services being offered, or to be offered, by the Bank and Financial Institution;
 - 2.1.5 Providing decisions or advice on the operations, business, affairs and activities of the Bank and Financial Institution which may trigger a Syariah non-compliance event;
 - 2.1.6 Deliberating and affirming a Syariah non-compliance finding by any relevant functions;
 - 2.1.7 Endorsing rectification measure to address SNC; and
 - 2.1.8 Advising on zakat and distribution of SNC income to charities.
- 2.2 The SAB is responsible and accountable for all its decisions, views and opinions.
- 2.3 The SAB is responsible for establishing a robust methodology to guide its decision-making process. The SAB should take into account relevant business and risk practices in arriving at a decision or advice.
- 2.4 The SAB should be assisted by the Syariah Research and Syariah control compliance functions and any other related functions in implementing its roles and responsibilities.

3. SENIOR MANAGEMENT

- 3.1 Senior management has primary responsibility over the day-to-day management of the Bank and Financial Institution. This includes **ensuring that the Bank's and Financial Institution's** operations, business, affairs and activities are, at all times, in accordance with Hukum **Syara'**. In fulfilling this responsibility, the senior management should:



- 3.1.1 Establish a management structure and reporting arrangement that provides a clear scope of accountability between the Syariah Research and Syariah control functions;
 - 3.1.2 Implement effective Syariah governance policies, procedures and practices in accordance with the direction given by the Board;
 - 3.1.3 Implement SFSB and SAB rulings, decisions or advice with due regard by the Board;
 - 3.1.4 Implement an effective communication policy that supports a sound understanding of Syariah matters across the Bank and Financial Institution;
 - 3.1.5 Conduct regular assessments to evaluate the quality of operational support provided to the SAB and address any inadequacies arising thereof; and
 - 3.1.6 Report to the Board and SAB on a timely basis any potential or actual Syariah non-compliance events.
- 3.2 Given that the accountability for Syariah decisions rests with the SAB, senior management is expected to provide information and disclosures which are complete and accurate to the SAB in a timely manner, and be transparent in any areas that need clarification by the SAB to enable the SAB to discharge its duties effectively.
- 3.3 It is the responsibility of senior management to allocate adequate resources and manpower to support the SGF commensurate with the size, complexity and nature of the **Bank's and Financial Institution's business**. The **infrastructure and resources to be provided** should include, among others, budget allocation, reference and research materials, training, development, etc.
- 3.4 Senior management is responsible for providing continuous learning and training programs to the key internal stakeholders including the Board, SAB and all relevant staff. This is to ensure that every function in the Syariah governance structure is sufficiently exposed to current local and international developments in Syariah financial matters.
- 3.5 It is the responsibility of senior management to develop and adopt a holistic culture of Syariah compliance within the Bank and Financial Institution.
- 3.6 Senior management should ensure that the Syariah policies and procedures are accessible at all times to those involved in the implementation of the Syariah governance structure. The Syariah policies and procedures should provide clarification on matters related to the end-to-end process of Syariah governance in the Bank and Financial Institution. The senior management is also responsible in ensuring that the operations are executed according to the policies and procedures to reflect current market practices and developments.



PART D: Independence

Independence of the SAB should be observed at all times in exercising their duties to make objective and informed judgement.

1. The independence of the SAB should be recognized by the Board to ensure that the SAB is free from any undue influence that enables it to exercise objective judgement in deliberating issues brought before them.
2. The SAB should report administrative matters to the Board and regularly inform them on relevant Syariah financial matters.
3. The SAB should have access to accurate, timely and complete information.
4. In the event where the SAB is not provided with the required information, the Board should be informed of the fact and appropriate action should be taken to remedy the situation.
5. Where the SAB has reason to believe that the Bank and Financial Institution has been carrying on Syariah non-compliant activities, the SAB should inform the Board immediately and recommend remedial actions or measures to remedy the situations.
6. In the event where cases of SNC are not effectively or adequately addressed or no rectification measures are made by the Bank and Financial Institution, the SAB should immediately inform the Board.
7. A SAB member should exercise objectivity in coming up with his judgement and be free from associations or circumstances that may impair the exercise of his professional objectivity. In fulfilling his responsibility, a SAB member should ensure that his judgement in arriving at a Syariah decision or advice is not affected by his other professional commitments.
8. Every SAB member should disclose to the Bank and Financial Institution the nature and extent of his interest that constitutes or gives rise to a conflict or potential conflict of interest upon the appointment, reappointment or as soon as there are any changes in his circumstances that may affect his status.
9. Banks and Financial Institutions should ensure that the SAB members are given sufficient time to focus and to deliberate on matters tabled before the meeting.
10. A SAB member should not have competing time commitments that may impair his ability to discharge his duties effectively. In respect of multiple appointments, a SAB member is required to manage his commitments effectively, observe professional objectivity and confidentiality in carrying out his duties.



PART E: Competency

Any persons bearing responsibilities outlined in the SGF should continuously enhance their knowledge and understanding on principles of Syariah as well as keep abreast on the latest developments in the Islamic finance industry.

1. The Board and senior management are expected to have reasonable understanding on the principles of Syariah and its broad application in Islamic finance.
2. Banks and Financial Institutions should establish training policies to facilitate the continuous professional development of all persons bearing responsibilities outlined in its SGF.



PART F: Confidentiality and consistency

CONFIDENTIALITY

Internal and privileged information obtained by the SAB members in the course of their duties are to be kept confidential at all times and should not be misused.

1. The SAB are to be given the necessary access to files, records, draft materials and information, including those categorized as confidential so long as the information is related to work undertaken by the SAB. Confidential or sensitive information obtained by any SAB member while serving his duties are not to be used in any manner that could be detrimental to the Bank and Financial Institution.
2. Confidential information is information received by the SAB that is not public in nature and has not been authorised to be made public. Examples of confidential information are:
 - 2.1 Any customer information from the Bank and Financial Institution;
 - 2.2 Information on development of new products and services;
 - 2.3 Decisions of the Board or senior management;
 - 2.4 Any internal memorandum or reports prepared in connection with matters presented, or to be presented to the SAB;
 - 2.5 The content or occurrence of conversations among members of the SAB and representatives of the Bank and Financial Institution concerning matters deliberated in the meeting;
 - 2.6 Status of progress on a business transaction or action that has not been made public;
 - 2.7 Views expressed by various parties in the course of discussions on a particular matter deliberated by the SAB; and
 - 2.8 Any subject matter that the Bank and Financial Institution has indicated it to be confidential, such as internal policies and procedures.
3. The SAB should not be regarded as breaching confidentiality or secrecy if the sensitive information were disclosed to the Authority in good faith when reporting any breaches relating to Syariah by the Bank and Financial Institution.



CONSISTENCY

4. The SAB is responsible for ensuring Syariah decisions are documented, adopted and maintained at all times. When documenting the decisions, all necessary details should be recorded including the rationality behind the decisions as well as any Syariah justification(s).
5. In cases where there are uncertainties and differences of opinions, the Bank and Financial Institution may seek advice and refer for a ruling from the SFSB.



PART G: Syariah Research and Syariah Control Functions

Banks and Financial Institutions should establish Syariah control functions, comprising of Syariah review, Syariah audit, and Syariah risk management and supported by Syariah research.

1. SYARIAH RESEARCH

- 1.1 Syariah research refers to a function that performs in-depth research and studies on Syariah issues, including providing day-to-day Syariah advice and consultancy to relevant parties, including those involved in the product development processes.
- 1.2 In undertaking research, advice and input from persons with the relevant experience and expertise, whether internally or externally, on technical matters may be sought to ensure comprehensiveness and completeness in ensuring sound understanding of the relevant concepts and approaches.
- 1.3 The work carried out by Syariah research should be performed by officers with adequate knowledge in Syariah, Islamic finance and other relevant backgrounds.
- 1.4 In terms of its advisory and consultancy roles, Syariah research should assist and provide advice to relevant parties based on decisions of the SAB.

2. SYARIAH REVIEW

- 2.1 Syariah review refers to a function that conducts regular assessments of Syariah compliance in the activities and operations of Banks and Financial Institutions with the objective of ensuring that the activities and operations carried out are in accordance with Hukum *Syara'*.
- 2.2 Syariah review involves the examination and evaluation of a Bank's and Financial Institution's level of compliance to Syariah. Consultation with the SAB may be done prior to the conduct of any review.
- 2.3 The scope of Syariah review should cover a Bank's and Financial Institution's overall products and services, including the end-to-end product development process and product implementation process.
- 2.4 The Syariah review function, at a minimum, should:
 - 2.4.1 Identify, assess and monitor the compliance of a Bank's and Financial Institution's business operations and activities with Hukum *Syara'*;
 - 2.4.2 Report to the Board, SAB and senior management regularly on Syariah non-compliance issues and findings;



- 2.4.3 Inform and provide updates to the Board, SAB and senior management on the latest developments in legal and regulatory requirements in Islamic finance; and
- 2.4.4 Ensure adequate training and guidance are provided to the officers of the Bank and Financial Institution on relevant Syariah requirements governing the Bank's or Financial Institution's operations, business, affairs and activities.
- 2.5 Syariah review should only be performed by officers with adequate knowledge in Syariah, Islamic finance and other relevant backgrounds.

3. SYARIAH AUDIT

- 3.1 Syariah audit refers to a function that provides an independent and periodical assessment, conducted from time to time, to provide objective assurance designed to add value and improve the degree of compliance of a Bank's and Financial Institution's activities and operations. The main objective is to ensure a sound and effective internal control system for Syariah compliance.
- 3.2 The internal auditors may engage the expertise of the Bank's and Financial Institution's Syariah officers in performing the audit, as long as the objectivity of the audit is not compromised.
- 3.3 Banks and Financial Institutions should refer to the Guidelines on Internal Syariah Audit Framework (Guidelines No. IFAU/G/3/2018) when determining the scope and process of its Syariah audit.
- 3.4 Syariah audit should only be implemented by officers to perform internal audit with adequate knowledge in Syariah, Islamic finance and other relevant backgrounds.

4. SYARIAH RISK MANAGEMENT

- 4.1 Syariah risk management refers to a function that systematically identifies, monitors and reports Syariah non-compliance risks to prevent any Syariah non-compliance.
- 4.2 The Syariah risk management function, at a minimum, should:
 - 4.2.1 Integrate Syariah non-compliance risk considerations with enterprise-wide risk management;
 - 4.2.2 Identify material and emerging Syariah non-compliance risks in the business operations and activities of the Bank and Financial Institution;
 - 4.2.3 Assess the Syariah non-compliance risks and measure the potential impact of the risk exposure to the Bank and Financial Institution;



- 4.2.4 Establish appropriate risk mitigation measures;
 - 4.2.5 Monitor the risk-taking activities and align the Syariah non-compliance risk exposures with the board-approved risk appetite and risk limits;
 - 4.2.6 Report to the Board, SAB and senior management on the Syariah non-compliance risk exposures; and
 - 4.2.7 Influence or challenge decisions that may give rise to material Syariah non-compliance risks.
- 4.3 Syariah risk management should only be implemented by officers with adequate knowledge in Syariah, Islamic finance and other relevant backgrounds.



PART H: Syariah Advisory Body Meetings

1. The chairman of the SAB is responsible for the effective function of the SAB. In fulfilling this role, the Chairman of the SAB should:
 - 1.1 **Ensure appropriate procedures are in place to govern the SAB's deliberations and proceedings;**
 - 1.2 Act as a direct liaison between the Board and the SAB to foster greater understanding between both parties;
 - 1.3 Ensure that Syariah decisions or advice are made on a sound and well-informed basis, including based on a robust decision-making methodology which ensures that all business, operations and risk implications are considered by the SAB;
 - 1.4 Encourage discussion, participation and contribution and ensure that dissenting views can be freely expressed and discussed; and
 - 1.5 **Ensure sufficient records of the discussion leading to formulation of the SAB's decision or advice are maintained.**
2. Banks and Financial Institutions should hold its SAB meetings at least once in every two months.
3. A SAB member should attend at least 75% of the SAB meetings held in each financial year, and should not appoint another person to attend or participate in SAB meetings on his behalf.
4. Banks and Financial Institutions should ensure that attendance of SAB members at the SAB meetings, by any way other than physical presence, are subjected to appropriate safeguards to preserve the confidentiality of the deliberations.
5. In respect of the quorum for SAB meetings, Banks and Financial Institutions should ensure that the majority of members present at each meeting are those experienced in matters relating to Fiqh al-*Muamalat*.
6. In the event of absence of the Chairman, the Deputy Chairman can chair the meeting. In the event that both the Chairman or Deputy Chairman is absent from attending the meeting, the SAB members may elect one member amongst themselves to preside over the meeting.
7. Banks and Financial Institutions should ensure that any decision of the SAB is made on the basis of simple majority.
8. With reference to paragraph 16.8 above, if a matter brought before the SAB gives rise to a conflict of interest to any SAB members, that SAB member should excuse himself from the discussion and abstain from voting on that particular matter.



9. Banks and Financial Institutions should provide its SAB with access to all information required and ensure that the information provided is timely, accurate, comprehensive and clear.
10. Banks and Financial Institutions should provide its SAB with access to advice from third party experts on any matters deliberated by the SAB as and when required, and the cost of such advice should be borne by the Bank and Financial Institution.
11. While the Board or senior management may provide useful insights on any business and technical or operational matters discussed during a SAB meeting, the Board or senior management should not exercise undue influence that could hinder the SAB in exercising objective judgment in its deliberations and decision-making.
12. Banks and Financial Institutions should ensure that clear and accurate minutes of SAB meetings are maintained to record the decisions or advice of the SAB, including the key deliberations, rationale for each decision or advice made, and any significant concerns and dissenting views.
13. Banks and Financial Institutions should appoint a Secretariat to serve its SAB. The Secretariat has the responsibility to provide operational support for effective functioning of the SAB which includes, but is not limited to, the following:
 - 13.1 Coordinating communications and disseminating information among the SAB, Board and senior management;
 - 13.2 Providing operational and administrative support to the SAB; and
 - 13.3 Ensuring proper dissemination of decisions or advice of the SAB within the Bank and Financial Institution.



Illustration: A model structure of key Syariah governance roles and functions in Banks and Financial Institutions.

