

**GUIDELINE ON CONDUCTING ISLAMIC INVESTMENT BUSINESS – DEALING AND ARRANGING DEALS  
IN INVESTMENTS**



**GUIDELINE NO. CMU/G-5/2017/5**

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**1. INTRODUCTION**

- 1.1 This Guideline is issued pursuant to section 32 of the Autoriti Monetari Brunei Darussalam Order, 2010.
- 1.2 The objective of this Guideline is to:
- (a) Provide guidance and clarity to CMSL holders in respect of carrying on the regulated activities of dealing and arranging deals in investments in Islamic securities either as an Islamic investment institution or by operating an Islamic window; and
  - (b) Set out the requirements, operations, systems and procedures for CMSL holders in respect of carrying on regulated activity of dealing and arranging deals in investments in Islamic securities either as an Islamic investment institution or by operating an Islamic window.

**2. APPLICABILITY**

- 2.1 This Guideline is aimed at CMSL holders that have an endorsement to carry on the regulated activity of dealing and arranging deals in investments in Islamic securities as an Islamic investment institution or by operating an Islamic window under the SMO, 2013.
- 2.2 This Guideline is not legally binding, exhaustive and subject to revision from time to time as deemed necessary by the Authority.
- 2.3 This Guideline should be commensurate with the size, complexity and nature of business carried on by the CMSL holder.
- 2.4 This Guideline is to be read together with the SMO and all applicable rules and regulations made thereunder.
- 2.5 This Guideline shall not be applicable to Equity Based Crowdfunding Platform Operators within the meaning set out in the Notice on Equity Based Crowdfunding Platform Operators.

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2.6 This Guideline shall take effect on 14 December 2017.

**3. DEFINITION OF THE TERMS**

3.1 In this Guideline, the following terms shall have the following meanings, except where the context otherwise requires:

<b>Term</b>	<b>Definition</b>
Authority	means Autoriti Monetari Brunei Darussalam;
arranging deals in investments	has the same meaning as defined in Part II of the Schedule of the SMO;
CMSL	means capital markets services licence;
compliance officer	means the principal person responsible for compliance function;
dealing in investments	has the same meaning as defined in Part II of the Schedule of the SMO;
<i>Hukum Syara'</i>	has the same meaning as defined in the Syariah Financial Supervisory Board Order, 2006;
ICM Participant	means an Islamic investment institution and/or Islamic window operator;
Islamic investment institution	means a holder of a capital markets services licence or a market operator whose entire business operations are conducted in accordance with <i>Hukum Syara'</i> ;
Islamic securities	include any of the types of investment instruments specified in Part I of the Schedule of

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	the Securities Market Order, 2013 which are in accordance with <i>Hukum Syara'</i> ;
Islamic window	means where a holder of a capital markets services licence or a market operator, other than an Islamic investment institution, conducts Islamic investment business as part of his overall business operations;
outsourcing	means an arrangement of any form between a regulated person and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the regulated person himself;
service provider	means a group or an external entity, which carries out the outsourced functions;
SMO	means the Securities Markets Order, 2013 and any regulations or other subsidiary legislation made thereunder;
SMR	means the Securities Markets Regulations, 2015;
Syariah Advisory Body	means a body who is responsible to review, advise, give opinion(s) and approve Islamic product(s) and any Syariah-related operations and activities to ensure compliance with Syariah principles;
Syariah Financial Supervisory Board or SFSB	means the Syariah financial supervisory board established by section 3 of the Syariah Financial Supervisory Board Order, 2006.

- 3.2 Any expression used in this Guideline shall, except where expressly defined in this Guideline or where the context requires, have the same meaning as in the SMO.

## **PART I: GENERAL REQUIREMENTS**

Part I sets out the general requirements that apply to CMSL holders that carry on the regulated activity of dealing and arranging deals in investments in Islamic securities as an ICM Participant.

### **4. MEMORANDUM AND ARTICLES OF ASSOCIATION**

4.1 The memorandum and articles of association of an Islamic investment institution should state the following, which includes, but is not limited to:

- (a) Its business activities aim to achieve its commercial objectives which are in accordance with *Hukum Syara'*;
- (b) Its business operations are conducted in accordance with *Hukum Syara'*; and
- (c) Its business operations are permitted to undertake certain trading activities which are based on *Hukum Syara'* so as to facilitate Syariah compliant transactions.

4.2 The memorandum and articles of association of a CMSL holder operating an Islamic window should not impose any explicit restrictions to carry on Islamic investment business.

### **5. RESPONSIBILITY OF THE MANAGEMENT OF ICM PARTICIPANT**

5.1 The responsibility for ensuring compliance with *Hukum Syara'*, the SMO and any directions and/or guidelines issued by the Authority in respect of dealing and arranging deals in investments in Islamic securities should ultimately rest with the Board of Directors and senior management of the ICM Participant.

### **6. EMPLOYEES COMPETENCY FOR ISLAMIC INVESTMENT BUSINESS**

6.1 An ICM Participant, with respect to employees' competency, should:



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- (a) 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 who are involved in the operation and management of the ICM Participant so that they acquire the necessary knowledge for its business; and
- (c) ensure all employees, in particular its compliance officer, are well versed on the business activities carried out by the ICM Participant and have adequate Syariah knowledge on Islamic finance and capital markets.

**7. RESPONSIBILITIES OF THE COMPLIANCE OFFICER**

- 7.1 A compliance officer of an ICM Participant should ensure that its business operations is in compliance with *Hukum Syara'*, the SMO, this Guideline and any directions and/or other guidelines issued by the Authority.
- 7.2 The compliance officer should report any Syariah non-compliance directly to the Syariah Advisory Body and Board of Directors of the ICM Participant for consideration and immediate remedial action. The compliance officer should also report the matter to the Authority.
- 7.3 The compliance officer is expected to assist the Syariah Advisory Body in preparing and certifying that the business activities are carried out in accordance with *Hukum Syara'*.
- 7.4 Where the compliance function is outsourced, the ICM Participant should ensure that it –
  - (a) Appoints at least one local compliance officer to perform the compliance function; and

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- (b) That local compliance officer provides regular compliance reports to the Syariah Advisory Body, Board of Directors and senior management of the ICM Participant.

**8. WRITTEN DISCLOSURE AND DECLARATION**

- 8.1 An ICM Participant should prepare, on an annual basis, a written disclosure and declaration to be submitted to the Authority, that its business activities are carried out in accordance with *Hukum Syara'*, the SMO and any directions and/or guidelines issued by the Authority.
- 8.2 The written disclosure and declaration should be endorsed by the Syariah Advisory Body and Board of Directors of the ICM Participant before submission to the Authority.
- 8.3 An ICM Participant should ensure that the written disclosure and declaration made by the Syariah Advisory Body are maintained as required by the Authority. Such records should be available for examination upon the request of the Authority.
- 8.4 In the event of a failure to comply with paragraph 8.3 above, the Authority may impose any conditions or restrictions on the ICM Participant.

**9. INTERNAL AUDIT**

- 9.1 An ICM Participant should put in place appropriate systems and mechanisms within its internal audit requirements to monitor Syariah compliance in accordance with the SMO, this Guideline and any directions and/or other guidelines issued by the Authority.
- 9.2 The internal auditor should report any Syariah non-compliance directly to the Syariah Advisory Body and Board of Directors of the ICM Participant for consideration and immediate remedial action. The internal auditor should also report the matter to the Authority.

**10. TRANSPARENCY**

- 10.1 A CMSL holder that carries on the regulated activities of dealing and arranging deals in investments in Islamic securities should indicate very clearly and inform all its clients in an adequate manner that it operates as an ICM Participant.

**11. ADVERTISEMENT**

- 11.1 An ICM Participant should put in place internal policies in relation to advertisements which have been approved by its Syariah Advisory Body and its Board of Directors.

**PART II: SPECIFIC REQUIREMENTS**

Part II sets out the specific requirements that apply to CMSL holders that carry on the regulated activities of dealing and arranging deals in investments in Islamic securities as an ICM Participant.

**12. OPERATION, SYSTEMS AND PROCEDURES**

- 12.1 An ICM Participant should establish and implement adequate policies, systems, operational procedures and internal controls in relation to its day to day business operations in respect of its business activities to ensure that it complies with *Hukum Syara'*.
- 12.2 An ICM Participant should, at all times, carry on its business activities in adherence to *Hukum Syara'* which are as follows:

(a) **Accounting standards**

An ICM Participant should prepare and maintain all financial accounts and statements in accordance with the International Financial Reporting Standards and supplemented by the Accounting and Auditing Organisation for Islamic Financial Institutions Standards, where applicable.



(b) **Charges and fees**

An ICM Participant should ensure that all charges and fees imposed on any transactions in respect to any services rendered have been approved by their Syariah Advisory Body and Board of Directors.

(c) **Dealing and arranging deals in investments**

For investments in local Islamic securities, an ICM Participant should only be allowed to deal in Islamic securities:

- (i) approved by their SAB; and
- (ii) the SFSB.

For investments in foreign Islamic securities, an ICM Participant should only be allowed to deal in Islamic securities approved by their SAB. In the event of distribution of foreign Islamic securities in Brunei Darussalam, the approval of the SFSB will also be required.

(d) **Maintenance of accounts**

Any accounts opened, operated or maintained by the ICM Participant, either for its clients or for itself should not accrue or be attributed with interest.

An ICM Participant should ensure that its clients' monies and assets are properly safeguarded in accordance with *Hukum Syara'*, the SMO and any directions and/or guidelines issued by the Authority.

An ICM Participant is encouraged to maintain all accounts with an Islamic bank licensed in Brunei Darussalam. However, it is allowed to maintain its accounts with other banks licensed in Brunei Darussalam provided the accounts do not accrue any interest.

(e) **Outsourcing arrangement**

An ICM Participant should ensure that any outsourcing of important operational functions are not undertaken in such a way as to impair materially the quality of its

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internal control and the ability of the Authority to supervise its compliance with its obligations under the SMO, this Guideline and any directions and/or guidelines issued by the Authority.

An ICM Participant should enter into a written and binding agreement with the service provider to formalise the outsourcing arrangement.

An ICM Participant should ensure that any outsourcing arrangement does not impede the Authority from carrying out their regulatory oversight functions which includes, among others, the rights of the Authority to conduct examination, inspection and to have access to books, records and documents in relation to the outsourcing arrangement.

### (f) **Purification of non-permissible revenue**

An ICM Participant should put in place appropriate internal policies on the purification of non-permissible revenue which have been approved by its Syariah Advisory Body and its Board of Directors. Non-permissible revenue includes all forms of revenue or income that are considered non-permissible from a Syariah perspective including revenue derived from non-permissible business activities and interest income.

### (g) **Risk management**

An ICM Participant should ensure that any risk management arrangements, policies and procedures address Syariah operational and compliance risk.

### (h) **Segregation of funds**

An ICM Participant should ensure that all funds maintained by it, whether for itself or its clients, in respect to Islamic securities are segregated from those funds maintained in respect to non-Islamic securities. This is to avoid commingling of the funds derived from the Islamic dealing activities and funds derived from conventional dealing activities.

For the operation of an Islamic window, the CMSL holder should ensure that the trading accounts of its clients are clearly tagged and used as a trading account for

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the purpose of Islamic securities so as to enable clients in distinguishing between a trading account for the purpose of Islamic securities and a trading account for other purposes.

(i) **System**

The system that is being applied and operated by the ICM Participant should where possible facilitate and support the conduct of its activities and operations.

For the operation of an Islamic window, the systems and controls should be able to ensure a clear separation of the Islamic business activities from the conventional business activities.

The Authority may require the ICM Participants to provide all such information as to its systems and controls for the purpose of reviewing them.

(j) **Standard Operating Procedures**

An ICM Participant should put in place appropriate standard operating procedures which have been approved by their Syariah Advisory Body and Board of Directors.

(k) **Zakah**

An ICM Participant should put in place internal policies in relation to Zakah which have been approved by their Syariah Advisory Body and Board of Directors.



**MANAGING DIRECTOR**

**AUTORITI MONETARI BRUNEI DARUSSALAM**

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