



GUIDELINES NO. CMA/G-1/2023/13

GUIDELINES ON CONDUCTING ISLAMIC INVESTMENT BUSINESS



1. INTRODUCTION AND APPLICABILITY

- 1.1 These Guidelines are issued pursuant to section 32 of the Brunei Darussalam Central Bank Order, 2010.
- 1.2 The objectives of these Guidelines are to –
- (a) Provide guidance and clarity to CMSL holders in respect of Islamic investment business either as an Islamic investment institution or by operating an Islamic window; and
 - (b) Set out the guidelines, operations, systems and procedures for CMSL holders in respect of Islamic Investment business either as an Islamic investment institution or by operating an Islamic window.
- 1.3 These Guidelines are aimed at CMSL holders that have an endorsement to conduct Islamic investment business as an Islamic investment institution or by operating an Islamic window under the SMO.
- 1.4 These Guidelines are not exhaustive and subject to revision from time to time as deemed necessary by the Authority.
- 1.5 The applicability of these Guidelines is commensurate with the size, complexity and nature of business carried on by the CMSL holder.
- 1.6 These Guidelines will supersede the Guideline on Conducting Islamic Investment Business – Dealing and Arranging Deals in Investments (Guideline No. CMU/G-5/2017/5) issued on 14 December 2017.
- 1.7 These Guidelines should be read together with the SMO and any regulations, notices, directives and guidelines made thereunder. These Guidelines should also be read together with the following –
- (a) Notice on Conducting Islamic Investment Business [Notice No. CMA/N-3/2023/19];
 - (b) Notice to Banks and Financial Institutions on Syariah Governance Framework (Notice No. IFAU/N1/2018 – Amendment No. 1);
 - (c) Notice to Financial Institutions and Banks Offering Islamic Financial Products and Services in Brunei Darussalam on Internal Syariah Audit Framework (Notice No. IFAU/N/2/2018);



- (d) Notice on Market Conduct [Notice No. FCI/N2/2021/1];
- (e) Guideline on Syariah Governance Framework for Financial Institution in Brunei Darussalam (Guidelines No. IFAU/G/2/2018);
- (f) Guidelines on Internal Syariah Audit Framework for Financial Institutions and Banks Offering Islamic Financial Products and Services in Brunei Darussalam (Guidelines No. IFAU/G/3/2018); and
- (g) **Guidelines on Fit and Proper Criteria for Financial Institutions' Frontline Staff** (Guidelines No. FCI/G1/2018/1).

1.8 These Guidelines shall take effect on 29 September 2023.

2. DEFINITION OF THE TERMS

2.1 In these Guidelines, the following terms shall have the following meanings, except where the context otherwise requires –

- 2.1.1 “**Authority**” means Brunei Darussalam Central Bank established under section 3(1) of the Brunei Darussalam Central Bank Order, 2010;
- 2.1.2 “**board**” has the same meaning assigned to it under section 2(1) of the SMO;
- 2.1.3 “**CMSL**” means capital markets services licence;
- 2.1.4 “**compliance officer**” means the principal person responsible for compliance function;
- 2.1.5 “**Islamic investment business**” has the same meaning assigned to conducting Islamic investment business under section 23(5)(a) of the SMO;
- 2.1.6 “**Hukum Syara**” has the same meaning as defined in section 2 of the Syariah Financial Supervisory Board Order, 2006;
- 2.1.7 “**ICM Participant**” means an Islamic investment institution and/or a CMSL holder operating an Islamic window;
- 2.1.8 “**Islamic investment institution**” has the same meaning assigned to it under section 23(5)(b) of the SMO;
- 2.1.9 “**Islamic securities**” includes any of the types of investment instruments specified in Part I of the Schedule of the SMO which are in accordance with *Hukum Syara*’;



- 2.1.10 “**Islamic window**” has the same meaning assigned to it under section 23(5)(c) of the SMO;
 - 2.1.11 “**non-permissible income**” means all forms of income that are considered non-permissible from a Syariah perspective including, but not limited to, income derived from non-permissible business activities and interest income;
 - 2.1.12 “**senior management**” has the same meaning assigned to it under section 2(1) of the SMO;
 - 2.1.13 “**SMO**” means the Securities Markets Order, 2013 and any regulations or other subsidiary legislation made thereunder;
 - 2.1.14 “**SMR**” means the Securities Markets Regulations, 2015;
 - 2.1.15 “**Syariah Advisory Body**” has the same meaning as defined in the Notice to Financial Institution on Syariah Governance Framework; and
 - 2.1.16 “**Syariah Financial Supervisory Board**” means the Syariah Financial Supervisory Board established under section 3 of the Syariah Financial Supervisory Board Order, 2006.
- 2.2 Any expression used in these Guidelines will, except where expressly defined in these Guidelines or where the context requires, have the same meaning as in the SMO.



PART I: GENERAL GUIDELINES

Part I sets out the general guidelines that apply to CMSL holders that carry on any regulated activity as an ICM Participant.

3. MEMORANDUM AND ARTICLES OF ASSOCIATION

- 3.1 The memorandum and articles of association of an Islamic investment institution should, among other things, specify that –
- (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) It is permitted to undertake investment activities which are based on Hukum Syara’ so as to facilitate Syariah compliant transactions.
- 3.2 The memorandum and articles of association of a CMSL holder operating an Islamic window should clearly state that it is permitted to conduct Islamic investment business.

4. RESPONSIBILITY OF THE MANAGEMENT OF ICM PARTICIPANTS

- 4.1 The responsibility for ensuring compliance with Hukum Syara’ based on the policies and procedures approved by **an ICM Participant’s** Syariah Advisory Body, the SMO, its regulations and any notices and directives issued by the Authority should ultimately rest with the board and senior management of the ICM Participant.

5. EMPLOYEES COMPETENCY FOR ISLAMIC INVESTMENT BUSINESS

- 5.1 An ICM Participant should –
- (a) have adequate employees with necessary qualifications, expertise and experience for Islamic investment 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 required to be appointed under regulation 36(b) of the SMR, are well versed on the business activities carried out by the ICM Participant and have adequate knowledge on matters relating to capital markets, Syariah, Islamic finance and other relevant competencies.

6. WRITTEN DISCLOSURE AND DECLARATION

- 6.1 An ICM Participant should prepare, on an annual basis, a written disclosure and declaration to be submitted to the Authority that its Islamic investment business activities are carried out in accordance with Hukum Syara' based on the policies and procedures approved by its Syariah Advisory Body, the SMO, its regulations and any notices, directives and/or guidelines issued by the Authority. Such written disclosure and declaration should be included in the annual report of the ICM Participant.
- 6.2 The written disclosure and declaration referred to in paragraph 6.1 above should be endorsed by the Syariah Advisory Body and the board of the ICM Participant before submission to the Authority.
- 6.3 An ICM Participant should ensure that the written disclosure and declaration endorsed by the Syariah Advisory Body are maintained and preserved in such form and manner as required by the Authority for a period of not less than 7 years. Such records should be available for examination upon the request of the Authority.

7. TRANSPARENCY

- 7.1 A CMSL holder that is conducting Islamic investment business should indicate very clearly to its clients that it operates as an ICM Participant.

8. ADVERTISEMENT

- 8.1 An ICM Participant should put in place internal policies in relation to advertisements pertaining to its Islamic investment business. These internal policies should be approved by its Syariah Advisory Body and its board.

9. OPERATION, SYSTEMS AND PROCEDURES

- 9.1 An ICM Participant should establish and implement adequate policies, systems, operational procedures and internal controls in relation to its day to day Islamic investment business activities to ensure that Hukum Syara' is **observed**.



9.2 An ICM Participant should, at all times, carry on its Islamic investment business activities in adherence to Hukum Syara'. **This includes, but is not limited to, the following –**

(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, fees and expenses**

An ICM Participant should ensure that all charges and fees imposed from any services rendered by the ICM Participant have been approved by their Syariah Advisory Body and the board. Notwithstanding this, the Syariah Advisory Body and the board may delegate their responsibilities as specified in the Notice to Banks and Financial Institutions on Syariah Governance Framework, under such conditions as they may decide.

(c) **Risk management**

An ICM Participant should ensure that any risk management arrangements, tools and techniques address operational risk including Syariah non-compliant risk.

(d) **System**

The system used and operated by the ICM Participant should, where possible, facilitate and support the conduct of its activities and operations.

For a CMSL holder operating 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 relating to its systems and controls as is necessary.

(e) **Policies and Procedures Manual**



An ICM Participant should establish and maintain appropriate policies and procedures in respect of its Islamic investment business. Such policies and procedures are to be approved by their Syariah Advisory Body and board.

(f) **Zakah**

An ICM Participant should put in place internal policies in relation to Zakah which have been approved by its Syariah Advisory Body and the board.

10. FINANCIAL STATEMENT – SPECIFIC DISCLOSURE

10.1 A CMSL holder that operates an Islamic window is encouraged to ensure that its audited report required under the SMO contain the following disclosures –

- (a) a detailed financial statement segregating its Islamic investment business from its conventional investment business; and
- (b) funds attributable to its Islamic investment business are properly segregated from its conventional investment business (if any).

PART II: SPECIFIC GUIDELINES FOR THE REGULATED ACTIVITY OF DEALING AND ARRANGING DEALS IN INVESTMENTS

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

11. DEALING IN ISLAMIC SECURITIES

11.1 Prior to dealing in any Islamic securities other than units of Islamic collective investment schemes, an ICM Participant should ensure –

- (a) in the case of shares, that the issuer of such Islamic securities has been screened against a Syariah screening methodology which has been approved by its Syariah Advisory Body and the Syariah Financial Supervisory Board;
- (b) in the case of sukuk, such Islamic securities has been approved by its Syariah Advisory Body and the Syariah Financial Supervisory Board.



- 11.2 Prior to dealing in units of an Islamic collective investment scheme, an ICM Participant should ensure that such Islamic collective investment scheme has been approved by its Syariah Advisory Body and the Syariah Financial Supervisory Board.

12. PURIFICATION OF NON-PERMISSIBLE INCOME

- 12.1 An ICM Participant should put in place appropriate internal policies and procedures on the purification of non-permissible income, including its distribution, which have been approved by its Syariah Advisory Body and its board.

13. COUNTERPARTY BROKER ARRANGEMENT

- 13.1 When dealing in foreign Islamic securities, an ICM Participant should ensure that it only enters into arrangements with a counterparty broker that has been approved by its Syariah Advisory Body and the board.
- 13.2 An ICM Participant should ensure that, prior to appointing a counterparty broker, the counterparty broker should be able to –
- (a) understand the nature of business and extent of services of the ICM Participant; and
 - (b) demonstrate that it can facilitate and support the business activities and operations of the ICM Participant.
- 13.3 For the purpose of this paragraph 13, counterparty broker means the person who is licensed, registered, approved, authorised or regulated by a foreign regulator to perform the regulated activity of dealing in investments (or its equivalent) as regulated by the foreign regulator in the foreign jurisdiction.

PART III: SPECIFIC GUIDELINES FOR THE REGULATED ACTIVITY OF MANAGING SECURITIES

Part III sets out the specific guidelines that apply to CMSL holders that carry on the regulated activity of managing securities as an ICM Participant.



14. CONSTITUTION AND PROSPECTUS

14.1 An ICM Participant should ensure that the constitution, prospectus and investment objectives and policies of any Islamic collective investment scheme it manages are, and remain, approved by its Syariah Advisory Body and the board.

15. INVESTMENTS IN ISLAMIC SECURITIES

15.1 An ICM Participant should ensure that its investment activities are limited to activities carried out in accordance with Hukum Syara'.

15.2 Prior to investing in Islamic securities that are offered in Brunei Darussalam, an ICM Participant should ensure that such Islamic securities have been approved by its Syariah Advisory Body.

16. PURIFICATION OF NON-PERMISSIBLE INCOME

16.1 An ICM Participant should put in place appropriate internal policies and procedures on the purification of non-permissible income, including its distribution, which have been approved by its Syariah Advisory Body and its board.

ACTING MANAGING DIRECTOR
BRUNEI DARUSSALAM CENTRAL BANK

Issue Date: 10 Rabiulawal 1445/ 26 September 2023