

LAWS OF BRUNEI

CHAPTER 295

SYARIAH FINANCIAL SUPERVISORY BOARD

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CHAPTER 295

SYARIAH FINANCIAL SUPERVISORY BOARD

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SCHEDULE — FINANCIAL INSTITUTIONS

SYARIAH FINANCIAL SUPERVISORY BOARD ACT

An Act to establish the Syariah Financial Supervisory Board and to provide for the control of the administration and business dealings of financial institutions concerning Islamic products and any matters connected therewith and incidental thereto

Commencement: 17th January 2006

Citation

1. This Act may be cited as the Syariah Financial Supervisory Board Act.

Interpretation

2. In this Act, unless the context otherwise requires —

“Authority” means the Brunei Darussalam Central Bank established by section 3(1) of the Brunei Darussalam Central Bank Order, 2010 (S 103/2010);

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“Board” means the Syariah Financial Supervisory Board established by section 3;

“Chairman” means the Chairman of the Board;

“financial institution” means any of the institutions set out in the Schedule;

“*Fiqh al-Mu’amalat*” means the commercial law of Islam;

“*Hukum Syara’* ” means the Laws of Islam according to the *Syafeite, Hanafi, Maliki or Hanbali* sect of *Ahlis Sunnah Waljamaah*;

“Islamic banking business” has the same meaning as in section 2 of the Islamic Banking Order, 2008 (S 96/2008);

[S 36/2022]

“Islamic financial business” means financial business whose aims and operations are in accordance with *Hukum Syara’*;

“Islamic product” means any product of any financial institution submitted by it to be in accordance with *Hukum Syara’*;

“Majlis” means the Majlis Ugama Islam constituted under section 5 of the Religious Council and Kadis Courts Act (Chapter 77);

“Minister” means the Minister charged with the responsibility for financial matters;

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“member” means any member of the Board;

“takaful business” means the business of takaful whose aims and operations are in accordance with *Hukum Syara’*.

Establishment of Board

3. There is hereby established a Board known as the Syariah Financial Supervisory Board, which shall be the authority for the ascertainment of the Laws of Islam for the purposes of Islamic banking business, takaful business, Islamic financial business, Islamic development financial business and any other business which is based on syariah principles and which is carried out, supervised or regulated by the Authority.

[S 36/2022]

Functions of Board

4. (1) The Board shall have such functions as may be determined by the Authority.

(2) The Authority may consult the Board on syariah matters relating to Islamic banking business, takaful business, Islamic financial business, Islamic development financial business and any other business which is based on syariah principles.

[S 36/2022]

Directives

5. (1) The Authority may issue written directives in relation to the businesses referred to in section 4(2) in accordance with the advice of the Board.

(2) Any financial institution which fails to comply with or contravenes any written directive issued under subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$500,000 and to

a further fine not exceeding \$5,000 for every day during which the contravention continues.

Power to issue guidelines etc. [S 36/2022]

5A. (1) The Authority may issue, in such manner as it considers appropriate, such guidelines, circulars or notes as it considers desirable in respect of —

- (a) any of the provisions of this Act; or
- (b) the conduct of any financial institution.

(2) Any financial institution which fails to comply with any of the provisions of a guideline, circular or note issued under this section that applies to it shall not of itself render that financial institution liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied on by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(3) Any guideline, circular or note issued under this section —

- (a) may be of general or specific application; and
- (b) may specify that different provisions thereof apply to different circumstances or provide for different cases or classes of cases.

(4) For the avoidance of doubt, any guideline, circular or note issued under this section is deemed not to be subsidiary legislation.

Membership of Board [S 36/2022]

6. (1) The Board shall consist of the following members —

- (a) a Chairman;
- (b) a Deputy Chairman;
- (c) not less than six other persons —

(i) at least four of whom —

- (A) being the citizens of Brunei Darussalam, are followers of the Shafeite sect of Ahlis Sunnah Waljamaah and are religious scholars who are experts in Islamic knowledge or experienced in *Fiqh al-Mu'amalat*; or
- (B) not being citizens of Brunei Darussalam, are followers of the Shafeite, Hanafi, Maliki or Hanbali sect of Ahlis Sunnah Waljamaah and religious scholars who are experienced in *Fiqh al-Mu'amalat*; and

(ii) at least two of whom are experienced in banking, economics, finance, Syariah law or any other related discipline.

(2) The members of the Board shall be appointed by His Majesty the Sultan and Yang Di-Pertuan on the recommendation of the Authority after consultation with the Majlis.

(3) No person shall be appointed as a member unless he is professing the Islamic Religion.

Period of office [S 36/2022]

7. (1) Any member appointed under section 6 shall hold office for a term not exceeding 3 years and shall be eligible for re-appointment.

(2) If any member appointed under section 6 dies, resigns or otherwise vacates his office before the expiry of the period for which he has been appointed, another person may be appointed by His Majesty the Sultan and Yang Di-Pertuan, on the recommendation of the Authority after consultation with the Majlis, for the unexpired period of office of the member in whose place he is appointed.

Secretary

8. The Chairman may appoint any person, not being a member, to be the secretary of the Board.

Notification of appointments [S 36/2022]

9. Notices of appointments under section 6 shall be published in the *Gazette*.

Meetings of Board

10. (1) In the absence of the Chairman from any meeting of the Board, his functions under this section shall be exercised by the Deputy Chairman of the Board.

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(2) The Chairman of a meeting shall have an original vote and also a casting vote.

(3) The Board shall meet at such place and time as the Chairman may appoint.

(4) The Chairman shall summon meetings as often as may be required but not less than six in one year.

(5) The Board may invite any person, not being a member, to attend a meeting of the Board for the purpose of giving advice to the Board on any matter.

(6) The Board shall cause proper records of its proceedings to be kept.

(7) Subject to the provisions of this Act, the Board may determine its own procedure.

(8) All acts done by the Board shall, notwithstanding any vacancy in the Board or that it is afterwards discovered that there was a defect in the appointment of any person purporting to be a member thereof, be valid as if no such vacancy or defect has existed.

Quorum and decisions

11. (1) No business shall be transacted at a meeting unless a *quorum* is present.

(2) At every meeting of the Board, two-thirds of the numbers of members including the Chairman or Deputy Chairman shall constitute a *quorum*.

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(3) A decision at a meeting of the Board shall be adopted by a simple majority of the members present and voting.

[S 36/2022]

Conformity and observance with *qaul muktamad*

12. (1) When making any decision pursuant to the performance of its duties under this Act, the Board shall conform to and observe the accepted views (*qaul muktamad*) of the *Syafeite*, *Hanafi*, *Maliki* or *Hanbali* sect of *Ahlis Sunnah Waljamaah*.

(2) If the Board considers that such accepted views (*qaul muktamad*) are or are likely to be incompatible with the public interest or that there is no apparent guidance in such views on any matters, the Board may decide according to *maslahah*.

(3) In this section, “*maslahah*” means any interest, benefit, ease or welfare of the public which is not contrary to *Hukum Syara’*.

Annual report

13. The Board shall, as soon as practicable after the end of each calendar year, cause to be made and transmitted to the Authority and the Majlis a report dealing with the activities of the Board during the preceding year and with any proposed activity.

Board to approve Islamic product or services

[S 36/2022]

14. (1) Every financial institution shall apply to the Authority for the approval by the Board with respect to its submission that its Islamic product or services is in accordance with *Hukum Syara’* before it enters into any business transaction with respect thereto.

[S 36/2022]

(2) In an application for approval under subsection (1), the financial institution shall comply with such requirements as the Board or Authority may determine.

[S 36/2022]

Board to approve appointments etc.

15. (1) Unless the Board otherwise approves in writing, no financial institution shall appoint, engage or employ, as the case may be, any person —

(a) to become a member of any syariah advisory body of;

(b) to act as a syariah consultant or syariah advisor of,

that financial institution.

(2) In an application for approval pursuant to subsection (1), the financial institution shall submit to the Board such information as the Board may determine.

(3) The decision of the Board to grant or refuse to grant an application for approval shall be final and shall not be subject to any appeal.

(4) No purported employment or purported engagement of any such person shall be valid for any purpose if the prior approval in writing of the Board has not been obtained in respect of that person.

Offence committed by director etc.

16. (1) Where an offence against this Act is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of that body, or of a person purporting to act in any such capacity, he, as well as the body corporate, is also guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In relation to a body corporate whose affairs are managed by its members, “director”, in subsection (1), means any member of that body corporate.

Proceedings relating to Islamic banking business etc.

17. Where in any proceedings relating to Islamic banking business, takaful business, Islamic financial business, Islamic development financial business or any other business which is based on syariah principles before any court or arbitrator, any question arises concerning a syariah matter, the court or arbitrator, as the case may be, may take into consideration any written directive, guidelines, circulars or notes issued by the Authority pursuant to section 5 or 5A or may refer such question to the Authority for a ruling from the Board.

[S 36/2022]

Composition of offences

18. (1) The Authority or any person authorised by the Authority in writing in that behalf may, subject to such conditions as the Authority considers fit to impose, compound any offence against this Act by collecting from the person reasonably suspected of having committed that offence a sum of money not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted of the offence.

(2) On compliance with any such conditions and on payment of such sum of money, no further proceedings shall be taken against that person in respect of that offence.

Consent to prosecute

19. A prosecution under this Act shall not be instituted except by or with the consent of the Public Prosecutor.

Limitation of liability

20. No action shall be brought against the members in respect of anything done or omitted to be done by any of them in good faith in the exercise, performance or purported exercise or performance, of any powers or duties under this Act.

Penalty

21. Any financial institution which fails to comply with or contravenes the provisions of sections 14 and 15 is guilty of an offence and liable on conviction to a fine not exceeding \$500,000 and to a further fine not exceeding \$5,000 for every day during which the contravention continues.

Publication

22. The Board may, with the approval of the Authority, cause any decision of the Board to be published by notification published in the *Gazette*.

Amendment of Schedule

23. The Authority may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the *Gazette* amend the Schedule.

[S 36/2022]

Regulations

24. (1) The Authority may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to and carrying out the provisions of this Act, including the prescription of fees and of any other thing required to be or which may be prescribed under this Act, and for the due administration thereof.

[S 36/2022]

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Authority considers necessary or expedient.

[S 36/2022]

SCHEDULE

[S 36/2022]

(section 2)

FINANCIAL INSTITUTIONS

1. Any bank licensed under the Banking Order, 2006 (S 45/2006).
2. Any finance company licensed under the Finance Companies Act (Chapter 89).
3. Any Islamic bank licensed under the Islamic Banking Order, 2008 (S 96/2008).
4. Any licensee under the Money-Changing and Remittance Businesses Act (Chapter 174).
5. Any licensee under the Moneylenders Act (Chapter 62).
6. Any licensee under the Pawnbrokers Order, 2002 (S 60/2002).
7. Any insurer registered under the Insurance Order, 2006 (S 48/2006).
8. Any regulated person within the meaning of the Securities Market Order, 2013 (S 59/2013).
9. Any takaful operator registered under the Takaful Order, 2008 (S 100/2008).
10. The Perbadanan Tabung Amanah Islam Brunei established by section 3(1) of the Perbadanan Tabung Amanah Islam Brunei Act (Chapter 163).