

**TERMS OF REFERENCE OF SHARIAH SUPERVISORY COUNCIL (“SSC”)
BANK ISLAM MALAYSIA BERHAD (“The Bank” or “The Company”)**

1. Introduction

Shariah Supervisory Council (“SSC”) plays critical role in ensuring sound, prudent and comprehensive compliance with Shariah rules and principles at all times and in all aspects of the Bank’s business operations and activities.

The SSC is established pursuant to Section 30 (1) of the Islamic Financial Services Act (IFSA) 2013, which provides that the Bank (as licensed person under the act) shall establish a Shariah Committee for purposes of advising the Bank in ensuring its business, affairs and activities comply with Shariah.

2. Authority

In line with the Shariah Governance Framework for Islamic Financial Institutions (“SGF”) issued by Bank Negara Malaysia (“BNM”), the SSC during the discharge of its duties shall have:

- (a) Authority to decide on Shariah related matters referred to the SSC by taking into consideration of the published rulings of the Shariah Advisory Council (SAC) of BNM. In the event where the decision given by the SSC is different from the ruling given by the SAC, the rulings of the SAC shall prevail. However, the SSC is allowed to adopt a more stringent Shariah decision;
 - (b) Authority to decide on Shariah related matters referred to the SSC without undue influence that would hamper the SSC from exercising objective judgment in deliberating issues brought before them;
 - (c) Authority to ensure that decisions made by the SSC are duly observed and implemented by the Bank. Decisions made by the SSC should not be set aside or modified without its consent;
 - (d) Access to accurate, timely and complete information from the management including but not limited to all relevant records, transactions, or manuals as required by them in performing their duties. If the information provided is insufficient, the SSC may request for additional information which shall be duly provided by the Bank;
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- (e) Authority to inform the Board of Directors (the Board) in any case that the SSC has reason to believe that the Bank has been carrying on Shariah non-compliant activities and to recommend suitable measures to rectify the situation. In cases where Shariah non-compliant activities are not effectively or adequately addressed or no rectification measures are made by the Bank, the SSC shall inform BNM of the fact. In this case, the SSC will not be regarded as breaching the confidentiality and secrecy code if the sensitive information were disclosed to BNM in good faith.

Notwithstanding the above the SSC shall also have the authority on any other matters that may be prescribed pursuant to any other policy documents or standards issued pursuant to Section 29(2)(a)(ii) of the IFSA 2013.

3. Primary Duties and Responsibilities

The primary duties and responsibilities of the SSC are to:

- (a) Perform an oversight role on Shariah matters related to the Bank’s business operations and activities including oversight requirements;
- (b) Advise the Board and Management on Shariah related matters in order for the Bank to comply with Shariah rules and principles at all time. The SSC members are responsible and accountable for all Shariah decisions, opinions and views provided by them.
- (c) Endorse Shariah related policies and guidelines.
- (d) Approve products and services to ensure compliance with Shariah rules and principles which include:
- i. validating the terms and conditions contained in the forms, contracts, agreements or legal documents used in executing the transactions; and
 - ii. validating the product manual, marketing advertisements, sales illustrations and brochures used to describe the product and services.
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- (e) Assess work carried out by Shariah review and Shariah audit which forms part of the SSC duties in providing assessment of Shariah compliance and assurance information in the annual report of the Bank.
- (f) Advise related parties such as the Bank’s parent company, subsidiaries, clients, legal counsels, auditors or consultants on Shariah matters for advice upon request.
- (g) Advise the Bank to consult the SAC of BNM and Securities Commission on Shariah matters that cannot be resolved.
- (h) Provide written Shariah opinions in circumstances where the Bank makes reference to the SAC for further deliberation, or where the Bank submits application to BNM for new product approval.
- (i) Approve the computation, payment and distribution of Zakat of the Bank and subsidiaries.

Notwithstanding the above, the SSC is also responsible to perform any specific duties and responsibilities outlined in any policy documents or standards issued by the relevant authority at all times. List of the enforceable policy documents or standards as at DEC14 is as per Appendix 1.

4. Reporting Line The SSC shall report directly to the Board of Directors.

5. Fit & Proper Criteria The SSC members at all times must ensure that they meet all the fit and proper criteria based on, at minimum, the factors set out in Appendix 2 relating to:

- (a) probity, personal integrity and reputation;
- (b) competency and capability; and
- (c) financial integrity.

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6. Membership

- (a) The SSC members shall be appointed by the Board subject to written approval by BNM.
 - (b) Member of the SSC shall at least hold bachelor’s degree in Shariah, which includes study in *Usul Fiqh* (the origin of Islamic law) or *Fiqh Mu’amalat* (Islamic commercial law). This member is considered as Shariah-qualified member.
 - (c) Experts from relevant backgrounds such as finance and law, which could support the depth and breadth of SSC deliberations, may also be appointed as a member of SSC. This member is considered as non-Shariah-qualified member.
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7. Composition

- (a) The majority of members in the SSC shall be Shariah-qualified member. Non-Shariah-qualified member must not form the majority of the SSC.
 - (b) The following directors shall attend the SSC meeting, however they do not have voting rights:
 - i. Managing Director
 - ii. Any other directors as determined by the Board.
 - (c) The following officers shall attend the SSC meeting as and when considered appropriate by the SSC and in the absence of the appointed invitees, a representative from the invitee’s office may be called for presence:
 - i. Head of Managing Director’s Office
 - ii. Chief Internal Auditor
 - iii. Chief Compliance Officer
 - iv. Head of Product Management Department
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8. Chairman

The Chairman of the SSC shall be appointed by the Board for a period of two years.

9. Secretary

The Secretary shall be the Head of Shariah Division.

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10. Frequency of Meetings	The SSC meetings shall be held at least once in every two (2) months.
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11. Notice of Meetings	<p>(a) The Secretary shall convene the meetings of the SSC upon receipt of request by the Chairman.</p> <p>(b) Unless otherwise agreed by the members, the notice for each meeting confirming the venue, date and time together with the agenda of the meetings shall be forwarded to each member of the SSC at least five (5) days prior to the date of the meeting.</p>
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12. Quorum for Meetings	<p>(a) The quorum for meeting shall be two-third with majority of attending members must be members with qualified Shariah background.</p> <p>(b) In the event the appointed Chairman is unable to attend the meeting, the members present may elect one (1) of the members to be the Chairman of the meeting. The alternate Chairman shall be a member with qualified Shariah background.</p> <p>(c) Any member who participates in the meeting via tele-conferencing device shall be counted for the purpose of determining a quorum.</p>
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13. Attendance	Each individual member is required to attend at least 75% of the SSC meetings held in each financial year.
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14. Decision-Making	<p>Decision shall be made on the basis of two-third (2/3) of the members with majority of the votes shall be members with qualified Shariah background.</p> <p>In the event of absence of SSC member(s) in the meeting, any written comment(s) provided by him/her shall be treated as his/her view on the issue(s) and shall be taken into consideration to make a decision.</p> <p>In reaching to the decision on matter(s) referred to the SSC, the SSC must always observe the methodology and means</p>
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of Shariah decision making process as detailed out in Appendix 3.

15. Circular Resolution

- (a) Decision by the SSC may be made via circular resolution where the mode of communication can be via telephone, email, facsimile etc.
 - (b) Decisions made via circular resolutions are deemed effective after being executed by two-third (2/3) of the members with majority of the votes shall be members with qualified Shariah background.
 - (c) All decisions made via circular resolution shall be presented at the subsequent SSC meeting for notation.
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16. Minutes of Meetings

- (a) The Secretary shall minute the proceedings and resolutions of all meetings of the SSC.
 - (b) The Secretary shall ascertain, at the beginning of the meeting, the existence of any conflicts of interest and minute them accordingly.
 - (c) Minutes of meetings shall be submitted to the Board for notification.
 - (d) Minutes and resolutions of meeting shall be circulated to respective division for necessary action.
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17. Delegation of Authority

The SSC reserves its right to delegate its authorities to:

- (a) The Zakat and Charity Committee (ZCC) to approve application for *zakat* within the below authority limit:

Asnaf	Limit	Authority
<i>Fuqara’ and masakin</i>	≤ RM 10,000	ZC
	> RM 10,000	SSC
NGO/ Institutional	≤ RM 20,000	ZC
	> RM 20,000	SSC
Universities and colleges (educational assistance)	≤ RM 30,000	ZC
	> RM 30,000	SSC

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<i>Gharimin</i>	All amount	SSC
Zakat to eligible staff	All amount	SSC
Other <i>asnaf</i>	All amount	SSC

(b) The Head of Shariah and his deputy to approve:

- i. Marketing advertisements (including radio script), sales illustration and brochures used to describe the products;
- ii. Guidelines and standards (e.g. those instituted at business and support units) which is NOT related to product and services;
- iii. Operational manuals and users guide which is NOT related to product and services;
- iv. Legal document between the Bank and third party which is NOT related to products and services; and
- v. Zakat application of not more than RM1000.

The detail of the above delegations of authority is further tabulated in the Appendix 4.

The minutes of meetings of ZCC and decisions of the Head of Shariah and his deputy shall be submitted to the SSC for notification.

18. Code of Conduct

In performing of his/ her duties, a SSC member is expected to possess good character and competence, diligence, capability and soundness of judgment as detailed in Appendix 5.

19. Review of Terms of Reference

The Board of Directors and the SSC may review this Terms of Reference once every two years or as and when is necessary.

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Appendix 1

SPECIFIC DUTIES & RESPONSIBILITIES

The SSC members’ specific duties and responsibilities associated with the requirements outlined by relevant authorities:

1. Bank Negara Malaysia

- (a) Imposition of Fees and Charges on Financial Products and Services (Effective Date : 2011);
- (b) Shariah Governance Framework for Islamic Financial Institutions (Effective Date: 01/01/2011);
- (c) Ibra’ (Rebate) for Sale Based Financing (Effective Date: 01/11/2011);
- (d) Investment Account (Effective Date: 14/03/2014) ;
- (e) Late Payment Charges for Islamic Banking Institutions (Effective Date: 01/01/2012).
- (f) Fit and Proper Criteria (Effective Date: 30/06/2013);
- (g) Guidelines on Corporate Governance for Licensed Islamic Banks (GP1-i) (Effective Date: 19/06/2013);
- (h) Financial Reporting for Islamic Banking Institutions (Effective Date: 30/06/2013);
- (i) Introduction of New Products (Effective Date: 14/03/2014).

2. Securities Commission Malaysia

- (a) Registration Of Shariah Advisers Guidelines (Effective Date: 10/09/2009)

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Appendix 2

FIT & PROPER CRITERIA – MINIMUM ASSESSMENT FACTORS

A. Probity, Personal Integrity and Reputation

1. Probity, personal integrity and reputation are values that can be demonstrated through personal qualities such as honesty, integrity, diligence, independence of mind and fairness. These qualities are demonstrated over time and demand a disciplined and on-going commitment to high ethical standards.
2. In ensuring the SSC’s level of probity, integrity and reputation, the SSC member shall ensure at all time that he/she is not:
 - (a) being the subject of any proceedings of a disciplinary or criminal nature, or being notified of any impending proceedings or of any investigations, which might lead to such proceedings;
 - (b) contravene any provision made by or under any written law designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice;
 - (c) contravene any of the requirements and standards of a regulatory body, professional body, government or its agencies;
 - (d) being investigated, disciplined, suspended or reprimanded by a regulatory or professional body, a court or tribunal, whether publicly or privately either on himself/herself or any business that he/she has controlling interest or exercises significant influence;
 - (e) engaged in any business practices which are deceitful, oppressive or otherwise improper (whether unlawful or not), or which otherwise reflect discredit on his professional conduct;
 - (f) being dismissed, asked to resign or has resigned from employment or from a position of trust, fiduciary appointment or similar position because of questions about his honesty and integrity;
 - (g) being associated, in ownership or management capacity, with a company, partnership or other business association that has been refused registration, authorisation, membership or a license to conduct any trade, business or profession, or has had that registration, authorisation, membership or license revoked, withdrawn or terminated;

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- (h) held a position of responsibility in the management of a business that has gone into receivership, insolvency, or involuntary liquidation while the person was connected with that business;
- (i) being a director of, or directly concerned in the management of, any corporation which is being or has been wound up by a court or other authority competent to do so within or outside Malaysia;
- (j) being a director of, or directly concerned in the management of any Financial Institution, the license of which has been revoked;
- (k) acting unfairly or dishonestly in his dealings with his customers, employer, auditors and regulatory authorities;
- (l) showing a strong objection or lack of willingness to cooperate with regulatory authorities resulting in a failure or potential failure to comply with legal, regulatory and professional requirements and standards, including compliance with tax requirements and obligations;
- (m) contributing significantly to the failure of an organisation or a business unit;
- (n) showing strong objection or a lack of willingness to maintain effective internal control systems and risk management practices; and
- (o) involving in any business or other relationship which could materially pose a conflict of interest or interfere with the exercise of his judgment when acting in the capacity of a key responsible person which would be disadvantageous to the FI or the FI’s interests.

B. Competency and Capability

1. Competency and capability are demonstrated by a person who possesses the relevant knowledge, experience and ability to understand the technical requirements of the business, the inherent risks and the management process required to perform his role in a key function in the relevant capacity effectively.
2. In ensuring the SSC’s competency and capability, the SSC member shall:
 - (a) Ensure that himself/herself is kept abreast with current developments in Islamic finance;
 - (b) Ensure that himself/herself has the appropriate qualification, training, skills, practical experience and commitment to effectively fulfil the role and responsibilities as SSC member; and
 - (c) Ensure that himself/herself has satisfactory past performance or expertise in performing his/her duties as SSC member.

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C. Financial Integrity

1. Financial integrity is demonstrated by a person who manages his own financial affairs properly and prudently.
2. In ensuring the SSC’s financial integrity, the SSC member shall:
 - (a) Ensure that himself/herself been and will be able to fulfil his financial obligations, whether in Malaysia or elsewhere, as and when they fall due; and
 - (b) Ensure that himself/herself is not been the subject of a judgment debt which is unsatisfied, either in whole or in part, whether in Malaysia or elsewhere.

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Appendix 3

A. METHODOLOGY AND MEANS OF DECISION MAKING

Methodology and means for the SSC members in reaching the decision on Shariah related matters referred are as follow:

1. Building detailed knowledge about the presented issue through questioning the Bank, consulting other Shariah scholars, resorting to expert and specialized parties and taking into consideration the prevailing norms and tradition.
2. Decision should be founded on what has been explicitly stated in the Quran and the Sunnah along with what has been reported by *ijma'* (unanimity) and proved by *qiyas* (analogy).
3. After resorting to the preceding sources, the decision with regard to the different viewpoints of the *fuqaha'* e.g. *istihsan* (approbation) and *maslahah mursalah* (public interest) may be considered as the basis for issuing the decision. Reference may also be made to classical *fiqhi* reference including but not limited to the view of prominent scholars of mazhabs i.e. Shafie, Hanafi, Hanbali and Maliki.
4. Decision should not be based on personal viewpoint that does not cater for the sources referred to in item A (1) above, or contradict to the general texts of the Quran and the Sunnah that have explicit indications. Moreover, the decision should not fall in disparity with well-established *ijma'*.
5. In the absence of explicit directives in the Quran and the Sunnah on a given issue, or non-existence of the issue in the prevailing fiqh literatures; the decision may be derived through Shariah-sanctioned rules and methods of deduction (*istiqra'*).
6. The rulings of the SAC of BNM must be respected and observed in the decision making.¹ The same treatment shall be treated on SAC of Securities Commission in case of capital market matters.
7. The collective contemporary *fatwas* issued by non-regulatory body such as resolutions of International Islamic Fiqh Academy (Jeddah – Organizations of Islamic Countries), Islamic Fiqh Academy (Makkah – Muslim World League), National Fatwa Committee, other Shariah committees as well as Shariah Standards issued by Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) may be referred to in deciding the matters.

¹ Principle 6.2 of the Shariah Governance Framework for Islamic Financial Institutions (BNM/RH/GL_012_3).

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8. If necessary, the SSC may advise the Bank to consult the SAC of BNM or SC on any Shariah matters which have not been resolved or endorsed by the SSC. In the case when the Bank submitting applications to BNM for new product approval, the SSC shall provide written Shariah opinions for deliberation at the SAC level.²
9. SSC should issue decision whenever the Bank approaches it for that purpose, except when it feels that the Bank may use the decision for committing a Shariah-banned action. In that case, the SSC may either refrain from issuing the decision, or make it subject to certain restrictions

B. DECISION PRONOUNCEMENT

1. The decision should be clearly stated, so that it may not be misunderstood by the layman, or taken to mean different things to those who have bad intentions.
2. When there are more than one *fiqh* opinions on the same issue, the SSC should declare the specific opinion that it subscribes to. If the issue is controversial, the SSC has to explain the specific bases of its choice.
3. The decision pronouncement should be precise, concise and free from any confusing details. However, if the subject requires detailed statement for the sake of public interest or so as to convince the regulatory bodies, it would be better to add such expressions, for knowledge on the justification of the decision, and also to indicate the goal behind it and avoidance from any kind of losses.
4. In addition, the SSC may provide more information than what has been requested by the Bank in order to leave no room for confusion, or to distinct the decision from other decisions, or to serve a future need of the Bank.

C. RETREAT FROM A MISTAKEN DECISION AND REVIEW TO THE PREVIOUS DECISION

1. The SSC has to retreat from its decision if it is proved to be wrong on reviewing or on examination by higher authorities. In such case, the SSC has to inform the Bank and the Bank should refrain from adopting it any more.
2. The SSC, on its own initiative or on request of the Bank, has the right to review a previous decision even if such revision would lead to issuing a new decision that contravenes the former one. In such case, the Bank has to follow the new decision in the future.

² Appendix 4 of the Shariah Governance Framework for Islamic Financial Institutions and in accordance with the Guidelines on Introduction of New Products for Banking Institutions issued by BNM.



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Appendix 4

DELEGATION OF SSC AUTHORITIES

No.	Documents	Authority		Remarks
		Head of Shariah	SSC	
1.	Shariah Compliance Policy* and other Shariah related guidelines. E.g. - Shariah Compliance Risk Management Guideline - Business Zakat Payment Guideline	R	A	*covered in Authority Limits Policy - mentioned in the BNM's SGF.
2.	Guidelines and standards (e.g. those instituted at departments and business/ function units to govern respective operations)* <u>related to products and services</u> . E.g. - Business Financing-i (Tawarruq) Standard - Revolving Credit-i (Tawarruq) Standard - Business Cash Line-i (Tawarruq) Standard	R	A	*covered in Authority Limits Policy - mentioned in the BNM's SGF.
	Guidelines and standards (e.g. those instituted at departments and business/ function units to govern respective operations)* NOT <u>related to products and services</u> . E.g. - Guideline on Reporting of Fraud & Breach of Code of Ethics - Product Development Guideline - Takaful/ Insurance Guideline	S	-	*covered in Authority Limits Policy
3.	Operational manual and user's guide* <u>related to products and services</u> . E.g. - Automobile Financing Operational Manual-New Vehicle - Remittance Operational Manual - Business Financing-i (Tawarruq) Manual	R	A	*covered in Authority Limits Policy - mentioned in the BNM's SGF.



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No.	Documents	Authority		Remarks
		Head of Shariah	SSC	
	Operational manual and user’s guide* NOT related to products and services. E.g. - Disbursement Before Registration-i (DBR-i) Manual - Security and Safety Operational Manual	S	-	*covered in Authority Limits Policy
4.	Terms and conditions contained in the forms, contracts, agreements or other legal documentations used in executing the transaction.	R	A	mentioned in the BNM’s SGF.
5.	Marketing advertisements (including radio script), sales illustration and brochures used to describe the product.	A	N	mentioned in the BNM’s SGF.
	Television commercial (TVC).	R	A	covered in the BNM’s SGF under “marketing advertisements”.
6.	Legal document between the Bank and 3 rd party which is related to products and services. E.g. - Agreement between the Bank and broker 1 & broker 2 for Tawarruq commodity transaction - Agreement between the Bank and Western Union for money transfer service.	R	A	New
	Legal document between the Bank and 3 rd party which is NOT related to products and services. E.g. - Tenancy Agreement	S	-	New



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No.	Documents	Authority		Remarks
		Head of Shariah	SSC	
	- SLA with vendor such as security company, etc.			
7.	Documents of 3 rd party’s products to be distributed by the Bank as agent. E.g. - Distribution of Asia Pacific Shariah Equity Fund managed by Eastspring Investment Berhad - Distribution of Home Content Takaful Plan issued by Takaful Malaysia Berhad - Distribution of Islamic Estate Planning Products of As Salihin Trustee Berhad	R	A	New

Legend:

(R) – Recommend for approval (A) – Approve (N) – Notify (S) – Sign off

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Appendix 5

CODE OF CONDUCT

1. **Good character** means demonstrating honesty, integrity, fairness and reputation over time in dealing with the Bank as well as personal relationship with public.
2. **Independence and professionalism** should be demonstrated while carrying out his/ her duties; a SSC member should always have complete moral, intellectual and professional independence. A SSC member should consider carefully and thoroughly the following in carrying out their obligations by striving to:
 - i. Uphold fairness and equity of all stakeholders.
 - ii. Act in a manner that preserves his or her honesty and integrity.
 - iii. Exercise appropriate discretion in decision making by taking into consideration not only technical aspects of Shariah compliance; and
 - iv. Appreciate diversity of opinions among various *mazhabs* and differences in expertise among his/ her fellow members of the SSC.
3. The duty to observe **confidentiality** applies to all information with which a SSC member is entrusted by the Bank or which is brought to his/ her attention during or at any time after the carrying out of his/ her assignment. Confidential information here refers to information received by the members of the SSC in the course of their duties that is not public and is not authorized to be made public.
4. The interpretation of the Shariah rules and principles based on the discipline of *fiqh al-mu’amalat* is a matter of the professional judgment of the SSC members. **Consistency** in this respect is related to the level of competency and independency, as mentioned above, and it is also a matter of professional ethics