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## **PART A: PRELIMINARY**

### **INTRODUCTION**

1. The compliance with Shariah principles is an integral feature in the Islamic banking and finance. An effective and conducive Shariah framework is imperative in assuring such compliance. It will underpin a comprehensive and wholesome development of this sector. An effective Shariah framework will harmonise the Shariah interpretations, strengthen the regulatory and supervisory oversight of the industry and will also foster and nurture a pool of competent Shariah advisers.
2. To achieve the above objectives, Bank Negara Malaysia has amended the Central Bank of Malaysia Act 1958 to enhance the role and functions of its Shariah Advisory Council for Islamic Banking and Takaful (SAC). This amendment has accorded the SAC as the sole Shariah authority in Islamic finance. As the sole Shariah authority, the SAC will be referred to by the court or arbitrator in disputes involving Shariah issues in Islamic banking, finance and takaful cases.
3. To effectively play its role, the SAC operates as an independent body. An independent SAC with high level of integrity will command public confidence and thereby will boost the industry to a greater height. There is also a crucial need to define the relationship between the SAC and Shariah bodies which act as Shariah advisers in the industry. Towards this end, the Shariah bodies in the Islamic financial institution need to be rationalised. A Shariah body in the industry which is to be known as a Shariah Committee, will play a complementary role to the SAC of Bank Negara Malaysia.

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4. In light of the above, Bank Negara Malaysia has prepared the ***Guidelines on the Governance of Shariah Committee for the Islamic Financial Institutions*** that regulates the governance of Shariah Committee of an Islamic financial institution.

## OBJECTIVES

5. These Guidelines aim at achieving the following:
- (a) to set out the rules, regulations and procedures in the establishment of a Shariah Committee;
  - (b) to define the role, scope of duties and responsibilities of a Shariah Committee; and
  - (c) to define relationship and working arrangement between a Shariah Committee and the SAC of Bank Negara Malaysia.

## SCOPE OF APPLICATION

6. These Guidelines shall be applicable to all Islamic financial institutions regulated and supervised by Bank Negara Malaysia. The reference to "Islamic financial institution" for the purpose of these Guidelines means:
- (a) an Islamic bank licensed under the Islamic Banking Act 1983 (IBA);
  - (b) a financial institution licensed under the Banking and Financial Institutions Act 1989 (BAFIA) which participates in the Islamic Banking Scheme (BAFIA IBS bank);
  - (c) a development financial institution prescribed under the Development Financial Institutions Act 2002 (DFIA) which carries on Islamic Banking Scheme; and
  - (d) a takaful operator registered under the Takaful Act 1984 (TA).

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## **PART B: ESTABLISHMENT**

### **ESTABLISHMENT OF SHARIAH COMMITTEE**

7. Every Islamic financial institution is required to establish a Shariah Committee. In the case of a BAFIA IBS bank, it may establish one Shariah Committee for the banking group. However, if a takaful operator is part of that group, the takaful operator must establish its own separate Shariah Committee, due to the legal requirement under the TA.

## **PART C: MEMBERSHIP**

### **APPOINTMENT AND REAPPOINTMENT**

8. The Board of Directors of an Islamic financial institution upon recommendation of its Nomination Committee shall appoint the members of the Shariah Committee. The appointment and reappointment of a Shariah Committee member shall obtain prior written approval of Bank Negara Malaysia. The appointment shall be valid for a renewable term of two years.
9. In approving the appointment and reappointment, Bank Negara Malaysia may impose necessary conditions it deems fit in addition to the requirements in these Guidelines. The failure to comply with any of such conditions shall nullify the approval.

### **APPLICATION PROCEDURES**

10. The application for the appointment or reappointment of members of the Shariah Committee shall be submitted to Bank Negara Malaysia at least **sixty days**

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before the proposed date of appointment takes effect. The application shall be made in the form BNM/JKS 1 as enclosed in the Appendix.

## **QUALIFICATION**

11. A member of a Shariah Committee shall be an individual. A company, institution or body shall not constitute a Shariah Committee for the purpose of these Guidelines.
12. The proposed member of the Shariah Committee shall at least either have qualification or possess necessary knowledge, expertise or experience in the following areas:
  - (a) Islamic jurisprudence (*Usul al-Fiqh*); or
  - (b) Islamic transaction/commercial law (*Fiqh al-Mu'amalat*).
13. It should however be noted that paper qualification on the above subjects will not be mandatory as long as the candidate has the necessary expertise or experience in the above areas.

## **COMPOSITION**

14. To ensure that the Shariah Committee would be able to function effectively, the composition of the Shariah Committee shall consist a minimum of three (3) members.

## **SECRETARIAT**

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15. In addition to the Shariah Committee, an Islamic financial institution is required to have a minimum of one officer, preferably a person with knowledge in Shariah, who will serve as the secretariat to the Shariah Committee.

## DISQUALIFICATION

16. The members of the Shariah Committee shall be persons of acceptable reputation, character and integrity. Bank Negara Malaysia reserves the right to disqualify any member who fails to meet the requirements. In particular, any member may be disqualified due to any of the following breach of corporate governance:
- (a) he has acted in a manner which may cast doubt on his fitness to hold the position of a Shariah Committee member;
  - (b) he has failed to attend 75 per cent of meetings scheduled for Shariah Committee in a year without reasonable excuse;
  - (c) he has been declared a bankrupt, or a petition under bankruptcy laws is filed against him;
  - (d) he was found guilty for any serious criminal offence, or any other offence punishable with imprisonment of one year or more; or
  - (e) he is subject to any order of detention, supervision, restricted residence or banishment.
17. Where upon the discovery of any fact that any member of a Shariah Committee becomes subject to any ground of disqualification or otherwise becomes unfit to hold such appointment as provided in these Guidelines and/or in the letter of approval from Bank Negara Malaysia, the Islamic financial institution shall terminate the appointment of the Shariah member.

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## RESIGNATION AND TERMINATION

18. An Islamic financial institution shall notify Bank Negara Malaysia of any resignation or termination of a member of the Shariah Committee within **fourteen days** of the date of resignation or termination. The notice shall state the reasons of such termination.

## PART D: RESTRICTIONS

### RESTRICTIONS ON SHARIAH COMMITTEE

19. The members of the Shariah Committee are subjected to the following restrictions:
- (a) In line with section 16B(6) of the Central Bank of Malaysia Act 1958, an Islamic financial institution is not allowed to appoint any member of the SAC to serve in its Shariah Committee; and
  - (b) To avoid conflict of interest and for reasons of confidentiality within the industry, an Islamic financial institution shall not appoint any member of a Shariah Committee in another Islamic financial institution of the same industry.

For this purpose, Islamic financial institutions which are regulated under the IBA, BAFIA and DFIA are classified as of the "Islamic banking industry", whilst Islamic financial institutions that are regulated under the TA are classified as of the "takaful industry". Memberships in other categories of industry are excluded from the restriction.

### Illustration

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- **A** is appointed as a Shariah Committee member of one Islamic financial institution in Islamic banking industry;
- **A** is still eligible to be appointed as a Shariah Committee member of another Islamic financial institution in takaful industry;
- **A** is also eligible to be a member of a Shariah body of any institution in other industries e.g. funds management.

## **PART E: DUTIES AND RESPONSIBILITIES**

### **SHARIAH COMMITTEE**

20. All Shariah Committee members are expected to participate and engage themselves actively in deliberating Shariah issues put before them. The main duties and responsibilities of the Shariah Committee are as follows:<sup>1</sup>

**(a) To advise the Board on Shariah matters in its business operation**

The Shariah Committee shall advise the Board on Shariah matters in order to ensure that the business operations of the Islamic financial institution comply with Shariah principles at all times.

**(b) To endorse Shariah Compliance Manuals**

The Islamic financial institution shall have a Shariah Compliance Manual. The Manual must specify the manner in which a submission or request for advice be made to the Shariah Committee, the conduct of the Shariah

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<sup>1</sup> As per circular on Shariah Compliance issued on 9 March 2006, Bank Negara Malaysia reminds the Islamic financial institutions to ensure compliance with these provisions which require the Shariah Committee to provide a complete Shariah endorsement in their submission of new product application to Bank Negara Malaysia. In particular, the Shariah Committee's endorsement shall be supported by relevant and clear Shariah basis and *fiqh* opinions from the established sources. Any submission without the necessary basis and opinion will not be duly considered.



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Committee's meeting and the manner of compliance with any Shariah decision. The Manual shall be endorsed by the Shariah Committee.

**(c) To endorse and validate relevant documentations**

To ensure that the products of the Islamic financial institutions comply with Shariah principles in all aspects, the Shariah Committee must endorse the following:

- i) the terms and conditions contained in the proposal form, contract, agreement or other legal documentation used in executing the transactions; and
- ii) the product manual, marketing advertisements, sales illustrations and brochures used to describe the product.

**(d) To assist related parties on Shariah matters for advice upon request**

The related parties of the Islamic financial institution such as its legal counsel, auditor or consultant may seek advice on Shariah matters from the Shariah Committee. The Shariah Committee is expected to provide assistance to them so that compliance with Shariah principles can be assured completely.

**(e) To advise on matters to be referred to the SAC**

The Shariah Committee must advise the Islamic financial institution to consult the SAC on any Shariah matters which have not been resolved or endorsed by the SAC.

**(f) To provide written Shariah opinion**

The Shariah Committee is required to record any opinion given. In particular, the Committee shall prepare written Shariah opinions in the following circumstances:

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- i) where the Islamic financial institution make reference to the SAC for advice; or
- ii) where the Islamic financial institution submits applications to Bank Negara Malaysia for new product approval in accordance with guidelines on product approval issued by Bank Negara Malaysia.

**(g) To assist the SAC on reference for advice**

The Shariah Committee must explain the Shariah issues involved and the recommendations for a decision. It must be supported by relevant Shariah jurisprudential literature from the established sources. The Shariah Committee is also expected to assist the SAC on any matters referred by the Islamic financial institution. Upon obtaining any advice of the SAC, the Shariah Committee shall ensure that all SAC's decisions are properly implemented by the Islamic financial institution.

## ISLAMIC FINANCIAL INSTITUTIONS

21. To ensure the smooth running of the Shariah Committee, an Islamic financial institution is responsible: -

**(a) To refer all Shariah issues to the Shariah Committee**

The Islamic financial institution must refer all Shariah issues in its business operations to the Shariah Committee for advice. The submission for an advice or a decision must be made in a comprehensive manner for an effective deliberation by the Shariah Committee. This will include explaining the process involved, documents to be used and other necessary information.

**(b) To adopt the Shariah Committee's advice**

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The Islamic financial institution is required to adopt and take necessary measures for implementation of Shariah Committee's advice.

**(c) To ensure that product documents be validated**

The Islamic financial institution shall obtain validation of the Shariah Committee relating to Shariah issues in all product documentations.

**(d) To have a Shariah Compliance Manual**

The Islamic financial institution shall ensure that the Shariah Compliance Manual referred to in Paragraph 20(b) is endorsed by the Shariah Committee.

**(e) To provide access to relevant documents**

The Islamic financial institution must provide necessary assistance to the Shariah Committee. The Shariah Committee must be given access to relevant records, transactions, manuals or other relevant information, as required by them to perform their duties. For this purpose, the Shariah Committee members are granted exemptions from the secrecy provisions under the respective legislations.

**(f) To provide sufficient resources**

The Islamic financial institution must provide the Shariah Committee with sufficient resources, such as budget allocation, independent expert consultation, reference materials and trainings. It is also the duty of the Islamic financial institution to familiarise the Shariah Committee on its operation and business.

**(g) To remunerate the members of the Shariah Committee accordingly**

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The Board shall determine the remuneration of the Shariah Committee members (through its Remuneration Committee). The remuneration shall commensurate and reflect the roles and functions of the Shariah Committee.

## **PART F: REPORTING STRUCTURE**

### **REPORTING STRUCTURE**

22. With regard to the reporting structure, the Shariah Committee will report functionally to the Board of Directors of the Islamic financial institution. This reporting structure reflects the status of the Shariah Committee as an independent body of the Islamic financial institution.

## **PART G: EFFECTIVE DATE**

### **EFFECTIVE DATE**

23. These Guidelines shall be complied with by **1 April 2005**.

## **PART H: SECRETARIAT**

### **SECRETARIAT OF THE SAC BANK NEGARA MALAYSIA**

24. Any reference or request for advice of the SAC shall be communicated through the Secretariat at Bank Negara Malaysia. All correspondence shall be directed to:

**Pengarah  
Jabatan Perbankan Islam dan Takaful  
Bank Negara Malaysia  
Jalan Dato' Onn  
50480 Kuala Lumpur  
(Attn.: Secretariat Shariah Advisory Council)  
Tel : 03 - 2698 8044 Fax : 03 - 2693 3826**

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## APPENDIX

### APPLICATION FORM (Form BNM/JKS 1)

BORANG BNM/JKS 1  
FORM BNM/JKS 1

## PERMOHONAN PELANTIKAN ANGGOTA JAWATANKUASA SYARIAH *Application to Appoint Member of Shariah Committee*

### ARAHAN

Borang BNM/JKS 1 ini hendaklah diisi oleh calon yang dicadangkan oleh institusi sebagai anggota Jawatankuasa Syariah. Sekiranya ruang yang disediakan tidak cukup, sila gunakan kertas tambahan. Sila tandatangi **setiap muka surat** termasuk kertas tambahan yang digunakan dan pastikan **semua** maklumat yang dikehendaki dalam borang ini diisi. Nyatakan "Tiada" atau "Tidak Berkenaan" sekiranya maklumat tersebut tidak berkenaan bagi calon.

Borang yang lengkap hendaklah dihantar ke seperti alamat di bawah:

### INSTRUCTION

*This Form BNM/JKS 1 should be completed by the candidate proposed by the institution as Shariah Committee member. If the space allocated is not sufficient, additional paper may be attached. Please initial **on each page**, including on the additional papers used and provide **all** the information as required in this form. Indicate "Nil" or "Not Applicable" if the items are not relevant to the candidate.*

*The completed form should be sent to the address below:*

**Pengarah  
Jabatan Perbankan Islam dan Takaful  
Bank Negara Malaysia  
Jalan Dato' Onn  
50480 Kuala Lumpur**

**NAMA INSTITUSI YANG MEMOHON  
(Name of Applicant Institution)**

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### **A. BUTIR-BUTIR PERIBADI**

*(Personal Particulars)*

<b>1. NAMA (Name)</b>	
<b>2. NO. KAD PENGENALAN (NRIC No.)</b>	
<b>3. NO. PASPORT (Passport No.)</b>	
<b>4. TARIKH / TEMPAT LAHIR (Date / Place of Birth)</b>	
<b>5. JAWATAN SEKARANG (Present Designation/Post)</b>	
<b>6. ALAMAT KEDIAMAN SEKARANG (Present Residential Address)</b>	
<b>7. NAMA, ALAMAT &amp; NO. TELEFON MAJIKAN SEKARANG (Name, Address &amp; Telephone No. of Current Employer)</b>	
<b>8. KEWARGANEGARAAN (Nationality)</b>	
<b>9. TARAF PERKAHWINAN (Marital Status)</b>	
<b>10. BAHASA PERHUBUNGAN (Language of Communication)</b>	

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## **B. KELAYAKAN DAN PENGALAMAN**

*(Qualification and Experience)*

### **11. KELAYAKAN AKADEMIK DAN IKHTISAS (Academic and professional qualification)**

<b>KELULUSAN (Qualification)</b>	<b>INSTITUSI PENGAJIAN/ BADAN PROFESSIONAL (Institution of Learning/ Professional Body)</b>	<b>NEGARA (Country)</b>	<b>TAHUN KELAYAKAN DIPEROLEHI (Year qualification is obtained)</b>

### **12. PENGALAMAN PEKERJAAN (Working Experience)**

<b>JAWATAN (Position)</b>	<b>TANGGUNGJAWAB UTAMA (Main Responsibility)</b>	<b>NAMA ORGANISASI (Name of Organisation)</b>	<b>TEMPOH (Period)</b>

### **13. PENULISAN, KAJIAN ATAU KERTAS KERJA (Writings, Research or Paperwork)**

<b>TAJUK (Topic)</b>	<b>TAHUN (Year)</b>

### **14. KEANGGOTAAN SEBAGAI PENASIHAT SYARIAH DI ORGANISASI LAIN (Membership as Shariah Adviser in Other Organisations)**

<b>ORGANISASI (Organisation)</b>	<b>TAHUN (Year)</b>

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### C. PENGAKUAN DAN PENGESAHAN CALON

(Declaration and Confirmation of Candidate)

#### 15. PENGAKUAN (Declaration)

Sila nyatakan sama ada anda pernah dicadangkan / dilantik / diluluskan pelantikan oleh Bank Negara Malaysia sebagai seorang anggota Jawatankuasa Syariah di mana-mana institusi yang dikawalselia oleh Bank Negara Malaysia di bawah undang-undang berikut dalam tempoh 3 bulan lepas: -

- i) Akta Bank Islam 1983;
- ii) Akta Bank dan Institusi Kewangan 1989;
- iii) Akta Institusi Kewangan Pembangunan 2002; dan
- iv) Akta Takaful 1984.

Please indicate if you have been nominated / appointed / approved for the appointment by Bank Negara Malaysia as a member of Shariah Committee of any institution regulated and supervised by Bank Negara Malaysia under the following law in the past 3 months: -

- i) *Islamic Banking Act 1983;*
- ii) *Banking and Financial Institutions Act 1989;*
- iii) *Development Financial Institutions Act 2002; and*
- iv) *Takaful Act 1984.*

	Tidak / (No)		Ya / (Yes)
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Jika jawapan anda adalah "Ya", sila nyatakan institusi tersebut.  
(If the answer is "Yes", please indicate the institution(s) concerned.)  
Institusi / (Institution):

Saya mengaku bahawa saya:  
*I declare that I:*

- (a) bukan seorang muflis, tidak pernah diisytiharkan sebagai seorang muflis, dan tidak menghadapi sebarang tindakan di bawah sebarang undang-undang muflis;  
*am not a bankrupt, have never been declared a bankrupt, no petition under bankruptcy laws has been filed against me;*
- (b) tidak pernah dibuktikan atas kesalahan jenayah berat atau sebarang kesalahan yang boleh dihukum penjara selama satu tahun atau lebih;  
*have not been convicted for a serious criminal offence or any other offence punishable with imprisonment for one year or more;*
- (c) tidak terikat kepada sebarang perintah tahanan, pengawasan, kediaman terhad atau buang negeri;  
*am not subject to any order of detention, supervision, restricted residence atau banishment;*
- (d) tidak menghadapi sebarang siasatan oleh mana-mana badan kerajaan, pihak berkuasa berkanun, yang mana penemuan yang tidak memuaskan telah diperolehi.



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*am not subject to any inquiry/investigation carried out by any governmental/ statutory authority or body, in which an adverse finding was found.*

**16. PENGESAHAN (Confirmation)**

**Saya dengan ini mengesahkan bahawa semua maklumat yang dikemukakan di atas adalah benar dan lengkap.**

***I hereby confirm that all the information given above is true and complete.***

.....  
**Tandatangan / (Signature)**

.....  
**Nama Penuh / (Name in Full)**

.....  
**Tarikh / (Date)**