

# DECLARATION ON MUTUAL CO-OPERATION ON DEVELOPMENT OF ISLAMIC CAPITAL MARKET AND ISLAMIC COLLECTIVE INVESTMENT SCHEMES

**BETWEEN**

**SECURITIES COMMISSION MALAYSIA (“SC”)**

**AND**

**SECURITIES AND FUTURES COMMISSION  
OF HONG KONG (the “SFC”)**



The SFC, established under the Repealed Securities and Futures Commission Ordinance (Chapter 24 of the Laws of Hong Kong) and continued in existence under section 3 of the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong, the "SFO").

**And**

The SC, established under Section 3 of the *Securities Commission Act 1993*,

SHARING the goals of maintaining and promoting fairness, efficiency, competitiveness, transparency, orderliness of the securities and futures markets and providing protection for members of the public investing in or holding financial products;

OBSERVING the growth of global Islamic financial products, cross-border Islamic investment services activities and offers of Shariah-compliant collective investment schemes; and

HAVING regard to the regulatory co-operation, mutual assistance and information sharing between the Authorities pursuant to:

- (a) the bilateral Memorandum of Understanding dated 22 February 1994 ("MoU");
- (b) the Letter of Intent dated 15 July 2005 ("LOI"); and
- (c) the Multilateral Memorandum of Understanding of the International Organization of Securities Commissions ("IOSCO MMoU");

THE AUTHORITIES HEREBY DECLARE their mutual intention to co-operate in the development of the Islamic capital market and the establishment and authorisation by the Authorities of Shariah-compliant collective investment schemes that are approved under this Declaration for offer to the public not only in the home jurisdiction of one Authority but also in the jurisdiction of the other Authority, together with such supervisory processes as may be agreed between the Authorities to ensure compliance by Dual Schemes with applicable laws, regulations, codes and guidelines and to protect the interests of the investing public in both jurisdictions.

## **IT IS HEREBY DECLARED THAT**

### **1. Definitions**

- 1.1 For the purposes of this Declaration, unless the context requires otherwise:
- (a) "Authorities" means both the SFC and the SC and "Authority" means either one of them;
  - (b) "Dual Scheme" means a collective investment scheme which is approved or authorised by both Authorities pursuant to this Declaration for offer to the public in the jurisdictions of both Authorities, subject to the applicable conditions as agreed between the Authorities from time to time;
  - (c) "Home Authority" means the Authority which is the primary regulator of the Dual Scheme;
  - (d) "Hong Kong CIS" means a mutual fund, unit trust or other form of collective investment scheme (as defined in Part 1 of Schedule 1 to the SFO) or contemplated under the *Unit Trust Code* which has been authorised by the SFC under section 104 of the SFO but does not include hedge funds or leveraged funds;

- (e) "Host Authority" means the Authority other than the Home Authority in whose jurisdiction a Dual Scheme is offered to the public;
- (f) "Islamic Collective Investment Schemes" means Malaysia CIS or Hong Kong CIS which are Shariah compliant and which are offered to the public in either Malaysia or Hong Kong;
- (g) "Laws and Regulations" means the provisions of any piece of legislation, subsidiary legislation, code or guidelines administered, followed or made by an Authority;
- (h) "Malaysia CIS" means a unit trust scheme or other collective investment scheme within the meaning of the *Guidelines on Unit Trust Funds* and the *Exchange-Traded Funds Guidelines* issued by the SC which has been authorised by the SC under section 212 of the *Capital Market Services Act 2007* (the "CMSA") but does not include:
  - (I) "wholesale funds", as defined under the *Guidelines on Wholesale Funds* issued by the SC;
  - (II) "real estate investment trusts", as defined under the *Guidelines on Real Estate Investment Trusts* issued by the SC;
- (i) "Registrant" means an investment management entity or person which is licensed or approved by, or registered with either Authority to operate, manage or offer to the public one or more collective investment schemes within the jurisdiction of the other Authority; and
- (j) "Unit Trust Code" means the *Code on Unit Trusts and Mutual Funds* issued by the SFC.

## **2. Mutual co-operation on development of a platform for cross-border offering of Islamic Collective Investment Schemes**

- 2.1 The Authorities intend to examine the possibility of establishing a framework for the mutual recognition of Islamic Collective Investment Schemes established in Hong Kong or Malaysia that will facilitate the cross-border marketing and distribution of Islamic Collective Investment Schemes in the jurisdictions of both Authorities.
- 2.2 Under the mutual recognition framework, the Authorities intend to recognise Islamic Collective Investment Schemes that:
- (a) invest in financial assets exclusively;
  - (b) are managed, operated or offered to the public by persons or entities that are licensed, registered or approved and supervised primarily by the scheme's Home Authority;
  - (c) are approved or authorised and primarily regulated by the Home Authority; and
  - (d) comply with the principles of investor protection of the Host Authority including, but not limited to, principles in respect of the segregation and custody of assets, scope of investments, operational practice and on-going disclosure.
- 2.3 The Authorities further agree to formalise the mutual recognition arrangement to the extent permitted under the law. The Authorities may issue announcements, circulars, guidelines and notices to provide guidance in connection with the implementation of the mutual recognition in this Declaration.

2.4 To the extent that may be agreed by the Authorities, the Host Authority may at any time require a Dual Scheme to comply with:

- (a) such reasonable disclosure requirements; or
- (b) any specific conditions,

as appear to the Authorities to be expedient.

### **3. Co-operation on capacity building**

3.1 The Authorities intend to co-operate on mutual capacity building and human capital development with a view to optimising the legal and regulatory infrastructure in their respective jurisdictions and meeting the training requirements of both Authorities to fulfil the objectives of this Declaration. In this regard, the Authorities will use their reasonable endeavours to co-operate and share information in areas including:

- (a) the development of the legal and regulatory framework in their respective jurisdictions in relation to Islamic Collective Investment Schemes;
- (b) the mutual exchange of regulatory experience relating to Shariah principles governing Islamic Collective Investment Schemes and other Islamic investment products;
- (c) the conduct of training in respect of international best practices in the investment funds industry and the promotion of educational programs concerning Islamic Collective Investment Schemes and other Islamic investment products; and

- (d) the facilitation of dialogue between the Authorities and members of the Shariah board and Shariah scholars.

## **4. Principles and applicability**

4.1 This Declaration does not:

- (a) create any legally binding rights or obligations;
- (b) modify or supersede any law, regulation, code or practice in the jurisdiction of either Authority; nor
- (c) affect any arrangements under the MoU, the LOI or the IOSCO MMoU.

4.2 The performance of the provisions of this Declaration shall be–

- (a) consistent with the Laws and Regulations of; and
- (b) not be contrary to the public interest in,

the jurisdiction of either Authority.

4.3 The Authorities will use their reasonable endeavours to meet the goals of this Declaration.

4.4 An offer of a Dual Scheme in the jurisdiction of the Host Authority must comply with all requirements under the Laws and Regulations of the Host Authority which may be applicable or specified by the Host Authority from time to time.

4.5 For the avoidance of doubt and without prejudice to any powers and authority conferred by law, the Host Authority has unfettered discretion–

- (a) to regulate the marketing of and dealing in a Dual Scheme within its jurisdiction, including the power to require persons marketing or dealing in the Dual Scheme within its jurisdiction to be licensed or authorised by the Host Authority;
- (b) to intervene in the offering of a Dual Scheme within its jurisdiction in accordance with the Laws and Regulations of the Host Authority notwithstanding that the Dual Scheme has been granted entry by the Host Authority within the parameters of this Declaration;
- (c) to obtain such information or documentation from a Registrant regarding the Registrant or a Dual Scheme for the purpose of monitoring, facilitating or assessing compliance with the requirements of the framework of mutual recognition as stipulated in this Declaration; and
- (d) to take such action as the Host Authority deems appropriate to enforce the obligations of a Registrant or a Dual Scheme in accordance with the Laws and Regulations of the Host Authority.

4.6 This Declaration may be amended or varied with the written consent of the Authorities and the amendments and variations shall form an integral part hereof.

## **5. Exchange of information**

- 5.1 Any exchange of information made for the purposes set out in this Declaration shall be made within the terms, and subject to the conditions, of the MoU and the IOSCO MMoU.
- 5.2 Each Authority intends:
- (a) upon request to inform the other Authority of the status, terms, conditions of and waiver granted to, any approval, authorisation or registration status of a Dual Scheme;
  - (b) to notify the other Authority on a timely basis of any significant changes to the registration, approval or authorisation status of a Dual Scheme or the licensing, registration or approval status of a Registrant;
  - (c) to consult the other Authority in relation to any matter in respect of which it may request assistance or information pursuant to the terms of this Declaration; and
  - (d) to keep the other Authority informed of the updated list of Dual Schemes and Registrants of which it is the Home Authority.
- 5.3 Each Authority intends to inform the other Authority of any significant changes in its jurisdiction in any Laws or Regulations and any announcements, circulars, guidelines and notices issued by the Authority that might have an impact on the matters covered by this Declaration.
- 5.4 The designated contact persons for the exchange of information for the purposes of this Declaration, and the contact particulars (as updated from time to time) are set forth in the Appendix.

- 5.5 Each Authority intends, upon request, and to the extent permitted by and subject to the applicable Laws and Regulations of the respective jurisdictions of SFC and SC, to:
- (a) provide other information which is significant about a Dual Scheme to the other authority;
  - (b) use reasonable efforts to provide other significant information to the other Authority in connection with—
    - (i) the supervision by the Host Authority of a Dual Scheme, or
    - (ii) the supervision by the Home Authority of a Dual Scheme or a Registrant; and
  - (c) provide information to the other Authority on its enforcement activities against any Registrant which have had or will have significant impact on the operations of such Registrant.

## **6. Consultations**

- 6.1 The Authorities intend to engage in regular consultations regarding investment activity in their markets, and to review this Declaration periodically for the purpose of assessing its operation or in light of any significant changes as mentioned in paragraph 5.3 above.

## **7. Confidentiality**

- 7.1 The Authorities will maintain the confidentiality of any information communicated between them for the purposes of this Declaration as if it were information obtained by one Authority upon receipt of a request for assistance made under the IOSCO MMoU and disclosed to the requesting Authority accordingly.
- 7.2 The confidentiality of any information communicated between the Authorities pursuant to this Declaration shall be maintained in perpetuity notwithstanding:
- (a) any revision of the terms of this Declaration subsequent to its execution by the Authorities; and
  - (b) the termination of this Declaration under clause 8.1 hereof.

## **8. Effective Date and Termination**

- 8.1 This Declaration takes effect from the date it is signed by the Authorities and will continue to have effect until terminated by mutual agreement of the Authorities or upon one Authority giving 30 days' advance written notice to the other Authority.

## 9. Notices

- 9.1 Any notice, request or other communication intended to be made pursuant to this Declaration shall be made in writing and delivered by any available means to the contact persons specified in the Appendix.

**IN WITNESS WHEREOF**, the Authorities have signed this Declaration to confirm their approval of, and agreement with, its contents.

Signed this 9 day of November 2009 by:

SECURITIES COMMISSION  
MALAYSIA



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**Tan Sri Zarinah Anwar**  
Chairman

SECURITIES AND FUTURES  
COMMISSION OF HONG KONG



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**Dr Eddy Fong**  
Chairman

## **APPENDIX**

### **SECURITIES AND FUTURES COMMISSION OF HONG KONG**

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