

GUIDELINES APPLICABLE FOR SHARIAH SCHOLARS WHO PROVIDE SERVICES TO A MARKET INSTITUTION, MARKET INTERMEDIARY, LISTED PUBLIC COMPANY OR A COLLECTIVE INVESTMENT SCHEME

<p>General interpretation</p>	<p>1. The words and terms defined in the Securities and Exchange Commission of Sri Lanka Act No. 19 of 2021 shall be used unless the context so requires have the same meaning assigned to them in the said Act.</p> <p>“Shariah Scholar” means a person who certifies Islamic financial products as being compliant with Rules and Principles of Shariah to a market institution, market intermediary, listed public company, an unlisted company which has made a public offer of securities in accordance with Section 80 or 81 of the SEC Act or a Collective Investment Scheme and falls within the definition of a Supplementary Service Provider under the SEC Act.</p> <p>Shariah Compliant Debt Securities mean: Debt Securities of an entity, such as Sukuk, which are certified as Shariah compliant for investment by a minimum of three (03) Shariah Scholars who fall under the Guidelines set out herein.</p> <p>“Commission” means the Securities and Exchange Commission of Sri Lanka established in terms of the Securities and Exchange Commission of Sri Lanka Act No. 19 of 2021 as amended;</p> <p>“SEC Act” means the Securities and Exchange Commission of Sri Lanka Act No. 19 of 2021 as amended.</p>
<p>Applicability</p>	<p>2. The guidelines set out herein shall apply to a Shariah Scholar who provides services to a market institution, market intermediary, listed public company, an unlisted company which has made a public offer of securities in accordance with Section 80 or 81 of the SEC Act or a Collective Investment Scheme.</p> <p>3. Every Shariah Scholar shall comply with:</p> <p>(a) the requirements set out herein and any amendments thereto;</p> <p>(b) provisions of the SEC Act which are applicable to a Shariah Scholar;</p> <p>(c) directives issued from time to time by the Commission; and</p> <p>(d) all requirements and practices as morefully contained in the Code of Ethics for Islamic Finance Professionals issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and Guiding Principles on Shariah</p>

	<p>Governance Systems for Institutions Offering Islamic Financial Services by the Islamic Financial Services Board (IFSB).</p> <p>4. The Commission may waive compliance with any of the guidelines set out herein in circumstances deemed appropriate.</p> <p>5. An entity seeking to list Shariah Compliant Debt Securities on an Exchange licensed by the SEC shall obtain certified approval for the product's compliance with Rules and Principles of Shariah from three (03) Shariah Scholars who are accredited as Supplementary Service Providers under the Guidelines set out herein.</p>
<p>Duties of a Shariah Scholar</p>	<p>6. The scope of work for a Shariah Scholar shall include:</p> <p>(a) Certifying that the Shariah Compliant Debt Securities proposed to be listed by an entity is compliant with Rules and Principles of Shariah and is consistent with recognized global standards such as standards issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB) ;</p> <p>(b) Providing expertise and advice on matters in relation to Shariah Compliant Debt Securities proposed to be listed, including on matters relating to documentation (which include the deed and prospectus/introductory document), structure, features, investment instruments and to ensure that all aspects of the product is compliant with Rules and Principles of Shariah ;</p> <p>(c) Providing advice on how the issuing entity should address and rectify any Shariah non - compliance status at the point of listing the Shariah Compliant Debt Security ;</p> <p>(d) Advising on any matter relating to listed Shariah Compliant Debt Securities; and</p> <p>(e) Any other function as may be determined by the SEC from time to time.</p>
<p>Submission of reports and maintenance of records</p>	<p>7. A Shariah Scholar shall:</p> <p>(a) submit any information, clarification or explanation in relation to services rendered by him/her to a market institution, market intermediary, listed public company, unlisted company which has made a public offer of securities in accordance with Section 80 or 81 of the SEC Act or a Collective Investment Scheme upon request of the Commission as provided for in Section 169 of the SEC Act;</p>

	<p>(b) The Commission may issue a directive to a Shariah Scholar to take any corrective action as determined by the Commission where the Commission is of the view that the services rendered by the Shariah Scholar to a market institution, market intermediary, listed public company, unlisted company which has made a public offer of securities in accordance with Section 80 or 81 of the SEC Act or a Collective Investment Scheme is likely to cause harm to the interests of any investor as provided for in Section 169 of the SEC Act; and</p> <p>(c) Ensure that all documentation for the work undertaken on behalf of an entity is maintained for a period of six (06) years.</p>
<p>Qualifications and experience of Shariah Scholar</p>	<p>8. A Shariah Scholar who is involved in providing services to a market institution, market intermediary, listed public company, unlisted company which has made a public offer of securities in accordance with Section 80 or 81 of the SEC Act or a Collective Investment Scheme, shall possess the following minimum qualifications and experience:</p> <p>(a) i. A Bachelor's Degree from a recognized university with minimum 2nd Class Honours in the fields of Economics/ Finance/ Accountancy/ Commerce/ Banking/ Law;</p> <p>or</p> <p>ii. Post Graduate qualifications in Shariah/ Islamic Jurisprudence/ Islamic Finance from a recognized university.</p> <p>and in addition to i or ii,</p> <p>iii. A professional qualification from a recognized standard setting organization for the global Islamic finance industry such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI).</p> <p>(b) Proven competence and expertise in jurisprudence of financial transactions;</p> <p>(c) Sound comprehension in finance in general and Islamic finance in particular and should have worked in the spectrum of Islamic finance and/or Shariah supervision for a minimum of five (5) years either in direct employment or advisory level;</p> <p>(d) Good knowledge of the capital markets and the legal and supervisory framework related to Islamic financial activities ;</p> <p>(e) Excellent knowledge of Arabic and good working knowledge of English; and</p>

	(f) Good oral and written communication skills.
Governance and conflicts of interest	<p>9. A Shariah Scholar providing services to a market institution, market intermediary, listed public company, unlisted company which has made a public offer of securities in accordance with Section 80 or 81 of the SEC Act or a Collective Investment Scheme shall at all times follow and abide by the relevant legislation, regulations, other technical standards and code of conduct/ethics of recognized global standard setting organizations for Islamic financial industry.</p> <p>10. A Shariah Scholar shall not knowingly perform services to a market institution, market intermediary, listed public company, unlisted company which has made a public offer of securities in accordance with Section 80 or 81 of the SEC Act or a Collective Investment Scheme involving an actual or potential conflict of interest unless:</p> <p>(a) the Shariah Scholar’s ability to act fairly is unimpaired; (b) there has been disclosure of the conflict to all present and known prospective clients whose interests would be affected by the conflict.</p>
Fit & Proper Criteria	<p>11. Fit & Proper Criteria applicable to a Shariah Scholar shall include the below:</p> <p>i. An individual proposed to be appointed, elected or nominated or who intends to continue to serve in the capacity of Shariah Scholar shall submit an affidavit to the issuing entity affirming that such person is not subject to any of the infirmities morefully described in these guidelines prior to such individual being appointed and/or reappointed.</p> <p>ii. The information contained in the affidavit shall not be misleading or vague and shall contain a statement that the contents are true and accurate.</p> <p>iii. The Shariah Scholar shall immediately inform of any matter that may disqualify the appointment or the continuation in office and the final decision shall be made by the issuing entity in respect of such matter.</p> <p>iv. Honesty, integrity and reputation The Shariah Scholar shall not:</p> <p>a. be a person who has been found guilty/held responsible by a court of law in Sri Lanka or abroad for the commission of any criminal offence;</p> <p>b. be a person who has been found guilty/held responsible by a court of law in Sri Lanka or abroad for the</p>

	<p>commission of a capital market offence or against whom an offence has been compounded in terms of the SEC Act during a period of three (3) years immediately preceding the date of the application;</p> <ul style="list-style-type: none">c. have been a Key Management Person of a body corporate who has been found guilty/held responsible by a court of law in Sri Lanka or abroad for the commission of any criminal offence or capital market offence having proved to have been committed with the knowledge or involvement or negligence attributable to such person;d. be a person who has been subject to an administrative sanction by the Commission during a period of three (3) years immediately preceding the date of the application;e. be a Key Management Person of a company, partnership or other organization whose license has been suspended or cancelled by the Commission for violating any provision of the SEC Act or any rules or regulations made thereunder;f. be a person who has been censured, disciplined, suspended or refused membership or registration by the Commission and any other regulatory authority in Sri Lanka or elsewhere during a period of three (3) years immediately preceding the date of the application;g. be a person against whom a finding has been made by the Commission or any other regulatory/supervisory authority/professional body in Sri Lanka or abroad that such individual has committed any act which involves fraud, deceit or dishonesty;h. be a person who has been disqualified from acting as a director of a company, or has been dismissed or requested to resign from any position or office due to mismanagement of funds or the commission of financial fraud by the Commission, any other regulatory body or professional body;i. be a person against whom an inquiry and/or investigation by the Commission and/or an Exchange or any other regulatory/professional body in Sri Lanka or elsewhere is presently pending for the commission of suspected capital
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	<p>market offences or any matter that involves fraud, deceit or dishonesty; and/or</p> <p>j. be a person who has contravened any written law enacted for the protection of the members of the public against financial loss due to dishonesty or malpractice of such person.</p> <p>v. Financial soundness</p> <p>The Shariah Scholar shall not:</p> <ul style="list-style-type: none"> a. have proceedings instituted to be declared bankrupt or have been declared bankrupt and/or had assets sequestered; b. have been subject to any judgment debt or award in Sri Lanka or abroad that remains unpaid in whole or in part; c. have been a person of a company in a position that exercises significant influence in a company that: <ul style="list-style-type: none"> 1. has been subject to any judgment debt or award in Sri Lanka or abroad that remains unpaid in whole or in part; or 2. has in Sri Lanka or abroad, made any arrangements in composition with its creditors, filed for bankruptcy, been declared bankrupt, had assets sequestered, involved in winding-up proceedings ordered by a court of law or been involved in proceedings relating to any of the foregoing. d. have been associated with any illegal activities or been a subject of a court conviction involving financial integrity and moral turpitude; and/or e. have been subjected to any administrative sanctions, adverse findings any settlement in civil or criminal proceeding by any regulatory authority. <p>vi. Competence and capability</p> <p>The Shariah Scholar shall:</p> <ul style="list-style-type: none"> a. not have been declared by a court of competent jurisdiction in Sri Lanka or abroad to be of unsound mind; b. possess the required qualifications and experience;
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	<p>c. have satisfied the relevant training and competence requirements in relation to the regulated function the person performs or intends to perform;</p> <p>d. possess adequate time to perform the regulated function and meet the responsibilities associated with that function;</p> <p>e. have not contravened any written law enacted for the protection of the members of the public against financial loss due to incompetence of such person; and/or</p> <p>f. have an impeccable track record, good conduct and behaviour particularly with regard to credibility, integrity and reputation in professional and financial transactions.</p>
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