

HSBC AMANAH MALAYSIA BERHAD
(“HSBC Amanah”)

TERMS OF REFERENCE OF SHARIAH COMMITTEE

AUGUST 2023

1. Membership and Tenure

- 1.1 The Shariah Committee shall consist of at least five (5) members. The appointment and reappointment of Shariah Committee members must be made upon:
- i. recommendation of the HSBC Amanah’s Nomination and Remuneration Committee (“NRC”);
 - ii. approval of the HSBC Amanah’s Board of Directors (“the Board”); and
 - iii. subsequently approval of Bank Negara Malaysia (“BNM”).
- 1.2 Pursuant to clause 1.1, the appointment and reappointment of a Shariah Committee member shall fulfil the following conditions:
- i. the person is a Muslim individual;
 - ii. the person has been assessed to have met the requirements specified in the BNM Policy Document (PD) on Fit and Proper Criteria on a continuous basis; and
 - iii. The person shall either:
 - a. Shariah qualified person; or
 - b. an expert who possesses skills, knowledge and experience relevant to support the roles and responsibilities of the Shariah Committee.
- 1.3 Pursuant to clause 1.2(iii)(a), a Shariah qualified person shall fulfil the following conditions:
- i. holds, at minimum, a bachelor’s degree in Shariah, which includes study in Usul Fiqh (principles of Islamic jurisprudence) or Fiqh Muamalat (Islamic transaction/Commercial Law);
 - ii. possesses solid knowledge in Shariah with reasonable Islamic finance knowledge and experience of the relevant industry; and
 - iii. demonstrates strong proficiency and knowledge in written and verbal Arabic, with good command in the preferred language of the IFI, either Bahasa Malaysia or English language.
- 1.4 The tenure of the appointment shall be valid for a renewable term of up to two (2) years.
- 1.5 Pursuant to clause 1.4, HSBC Amanah shall have the right to appoint individual members on differentiated tenure of appointment.
- 1.6 A Shariah Committee member shall not serve HSBC Amanah for more than nine (9) consecutive years. Upon serving two (2) years cooling-off period, HSBC Amanah may submit an application for BNM’s approval on the reappointment of the member.

- 1.7 Majority of the Shariah Committee members must possess qualification in Shariah.
- 1.8 The Chairman of the Shariah Committee must possess qualification in Shariah.
- 1.9 A Shariah Committee member may be appointed as a member of the Board to foster closer integration of Shariah governance consideration within the business and risk strategy of HSBC Amanah.

2. Meetings, Quorum and Decision Making

- 2.1 The Shariah Committee shall meet at least once in every two (2) months and whenever required and should report regularly to the Board.
- 2.2 In respect of the quorum for Shariah Committee meetings, a majority of Shariah qualified members are required to make quorum.
- 2.3 At all meetings of the Shariah Committee, the Chairman of the Shariah Committee if present shall preside.
- 2.4 If the Chairman of the Shariah Committee is unable to attend the meeting, the members shall elect one (1) member from among themselves who have a qualified Shariah background to become the chairman of the meeting.
- 2.5 A Shariah Committee member shall attend at least 75% of the Shariah Committee meetings held in each financial year and shall not appoint another person to attend or participate in Shariah Committee meetings on his behalf.
- 2.6 The Shariah Committee shall have the right of access to all accurate, comprehensive and clear information that is required for deliberation and decision making.
- 2.7 The Shariah Committee, as and when required, may invite any other parties deemed as subject matter expert to its meeting, to provide information or advise on any matters deliberated by the Shariah Committee.
- 2.8 Majority of member's attendance at a Shariah Committee meeting shall be by way of physical presence. Other form of presence is allowed provided that the member shall ensure appropriate safeguards to preserve confidentiality of the deliberations.
- 2.9 Any decisions by the Shariah Committee shall be made on the basis of simple majority, provided that the simple majority is supported by a majority of the Shariah qualified members.
- 2.10 A Shariah Committee member shall abstain from the discussion and voting on issue or matter that gives rise to a conflict of interest as a result of involvement in activities stipulated in clause 9.1 herein.

3. Objectives

- 3.1 The primary objectives of the Shariah Committee are to:

- i. provide objective and sound decisions or advice to ensure that HSBC Amanah is operated and managed in accordance with the Shariah¹, and ensure the Shariah rulings and principles resolved by the SAC are complied with; and
- ii. to provide Shariah Advisory services for all HSBC Malaysia full entities, through performing its responsibilities stipulated in clause 4 herein.

4. Responsibilities

4.1 Without limiting the generality of the Shariah Committee's objectives, the Shariah Committee shall have the following responsibilities, authorities and discretion:

- a. to provide sound decisions on Shariah matters in an independent and objective manner without undue influence or duress and to be responsible and accountable for the quality, accuracy, consistency and soundness of its Shariah decisions, opinions and views;
- b. ensure that Shariah decisions or advice are made on a sound and well-informed basis and a robust decision-making methodology. The methodology that guides the Shariah Committee's decision-making process must at minimum:
 - i. take into account relevant business, operations and risk implications; and
 - ii. include facts, key deliberations, rationale and basis, and any significant concerns or dissenting views to the decision or advice where applicable.

In the event where the Shariah Committee decides or advises to place additional restrictions on the operations, business, affairs and activities of the bank in applying the Shariah Advisory Council ("SAC") rulings, the decisions or advice shall:

- i. include deliberations and justifications;
 - ii. ascertain the Board's views on the decision or advice made by the Shariah Committee with regards to the SAC ruling; and
 - iii. be notified immediately to BNM.
- c. to advise the Board and provide input to HSBC Amanah on Shariah matters in order for HSBC Amanah to comply with the Shariah principles at all times;
 - d. to attend all the Board and/or Board Committee meetings whenever required and accordingly update the Board on any pertinent Shariah matters relating to HSBC Amanah;
 - e. to endorse Shariah policies and procedures prepared by HSBC Amanah to ensure that the contents are Shariah compliant;
 - f. to approve the product structures and transactions that are being managed, executed and entered into by HSBC Amanah;
 - g. to endorse and validate the following documentations including but not limited to:

¹ Compliance with Shariah is interpreted in accordance with Islamic Financial Services Act (IFSA) 2013 and HSBC Amanah Internal Shariah Governance Policy.

- i. the terms and conditions contained in the forms, contracts, agreements or other legal documentations used in effecting the transactions; and
 - ii. the product manual, marketing advertisements, sales illustrations and brochures used to describe the products.
- h. to assess the work carried out by Shariah Review and Shariah Audit functions;
- i. to perform an oversight role on Shariah matters related to the HSBC Amanah's business operations and activities through the Shariah Review and the Shariah Audit functions;
- j. to provide necessary assistance on Shariah matters to HSBC Amanah's related parties such as its legal counsel, compliance department and auditors to ensure continuous compliance with Shariah;
- k. to provide written Shariah decisions or pronouncement in cases that HSBC Amanah submits an application to BNM or Securities Commission (SC) for approval on any new product / transaction including Islamic capital market products/transactions that cover the documentation, structure feature, investment instruments and ensure that all aspects are in accordance with Shariah requirements as set out in the relevant laws and guidelines;
- l. to request a reference by HSBC Amanah to the SAC in cases where the SAC has not made any rulings or the Shariah Committee is not able to arrive at a decision or advice on a particular matter;
- m. to review and ratify the list of approved or rejected matters prepared by the Shariah Department as per delegated authority by the Shariah Committee that the operations and business activities of HSBC Amanah are in compliance with Shariah;
- n. if deemed fit, to provide Shariah compliant endorsement in the annual financial statement of HSBC Amanah, supported by the Annual Shariah Committee Report;
- o. to provide consultation to the Audit Committee in the course of the Audit Committee in determining the deliverables of the Shariah Audit function;
- p. to identify issues that require its attention and where appropriate, to propose corrective measures based on regular Shariah Review reports and the Shariah Audit observations; and
- q. provide a decision or advice on the operations, business, affairs and activities of HSBC Amanah which may trigger a Shariah Non-Compliance (SNC) event.

The following Shariah non-compliant events/breaches are considered Material and require escalation to the Shariah Committee for triggering an Actual SNC event reportable to BNM:

- i. Income from *`Aqd Bathil*: Generating income under a transaction without a valid underlying Shariah contract; or
- ii. A transaction involving a practice that is clearly prohibited by Shariah (*Mu`amalath Muharramah*) as determined by the Rulings of the Shariah Advisory Council (SAC) or decision of the Shariah Committee. This

includes breach of prohibitions outlined in the Shariah Requirements of BNM's PD on Shariah contracts, or other relevant Shariah guidelines, policies or PDs issued by BNM. The examples of prohibitions include but not limited to the following: charging commitment fees, practice of *bai` wa salaf*, inclusion of inter-conditionality/inter-linkages of *hibah* in *qard* contract, etc.

Events or breaches of Shariah requirements that do not meet the above criteria may not be considered as Material breaches requiring escalation to the Shariah Committee for triggering an SNC Event reportable to BNM. Nonetheless, they will be treated as Shariah Review, Risk or Audit findings that require management action and appropriate remediation. These events and breaches typically occur due to unintended errors and mistakes (*ghalat*) and may include:

- i. *'Aqd Fasidh*: a voidable contract due to a deficiency in the Shariah contract, which can be remedied (*thashih*) and does not entirely invalidate the Shariah contract/transaction.
 - ii. *Shart Fasidh*: a voidable term or condition in the Shariah contract, which can be severed (*ilghaa'*), and does not entirely invalidate the Shariah contract/transaction;
 - iii. *Ghalat*: Errors or mistakes can be in the form of:
 - Breach of agreed contractual conditions or obligations, which can be remedied (*thashih*) and do not entirely invalidate the Shariah contract/transaction (for example omission of Wakil to perform an instruction by the *Muwakkil*, overcharging fee or profit beyond the agreed amounts which can be refunded, etc.); or
 - Operational errors (due to human errors or system failures) that do not lead to either clearly prohibited practices by Shariah or does not entirely invalidate the Shariah contract/transaction; or
 - iv. Breach of operational regulatory requirements (that are not premised on Shariah requirements) prescribed in the relevant PD on Shariah contract.
- r. if the Shariah Committee has a reasonable ground to believe that HSBC Amanah is involved in Shariah non-compliant activities or upon finding by relevant functions of the bank, the Shariah Committee shall:
- i. inform the Board;
 - ii. deliberate and affirm the finding; and
 - iii. provide decision or endorsement on the rectification measure, propose or rectify as necessary to ensure its conformity to Shariah requirements at all times. The decision must be supported with key deliberations, rationale and any significant concerns or dissenting views to the decision or advice.

In cases where Shariah non-compliant activities are not effectively or adequately addressed or no rectification measures are made by HSBC Amanah, the Shariah Committee shall inform BNM of the same in accordance with the Shariah Non-Compliance reporting requirements outlined in BNM PD on Operational Risk Integrated Online Network (ORION);

- s. to foster closer integration of Shariah governance consideration within the business and risk strategy of the bank in the case that the Shariah Committee member is appointed as a Board member;
- t. to continuously develop skills and expertise to ensure that each member possesses the requisite and reasonable knowledge and skills of the business and operations of the bank and keep abreast with relevant market and regulatory developments. This includes attending at least three SIDC's CPE-approved courses on capital market annually;
- u. to update the Board immediately on any Shariah issues or matter that member has reason to believe may affect the safety and soundness of the bank;
- v. to exercise objectivity in coming up with judgment and be free from associations or circumstances that may impair the exercise of his professional objectivity. The judgement must not have affected by other professional commitments; and
- w. to devote sufficient time to prepare for and attend Shariah Committee meetings.

4.2 Pursuant to clause 4.1, in addition to the responsibilities of the Shariah Committee members, the Chairman shall:

- a. ensure effective functioning of the Shariah Committee meeting;
- b. ensure appropriate procedures are in place to govern the Shariah Committee's deliberations and proceedings;
- c. act as a direct liaison between the Board and Shariah Committee to foster greater understanding between both organs;
- d. ensure that Shariah decisions or advice are made on a sound and well-informed basis, including based on a robust decision-making methodology which ensures that all business, operations and risk implications are considered by the Shariah Committee;
- e. encourage healthy discussion, participation and contribution, and ensure that dissenting views can be freely expressed and discussed;
- f. ensure sufficient records of the discussion leading to formulation of the Shariah Committee's decision or advice are maintained; and
- g. lead efforts in managing the Shariah Committee's developmental plans.

5. Confidentiality & Consistency

- 5.1 All internal and privileged information obtained by any Shariah Committee member in the course of their duties shall be kept confidential at all times and shall not be disclosed to anyone or be misused.
- 5.2 Professional ethics, judgment and consistency in providing views shall be exercised and must not act in a manner that would undermine the rulings of the SAC or any decisions of the Shariah Committee.

6. Written or Circulating Resolution

- 6.1 Any resolution in writing, signed or assented to by all the members of the Shariah Committee shall be as valid and effectual as if it had been passed at a meeting of the Shariah Committee duly called and constituted and may consist of several documents in the like form each signed by one or more of such members.

7. Disqualifications

- 7.1 A Shariah Committee member is disqualified from being appointed or elected, reappointed, accepting any appointment or reappointment, or holding office, as a Shariah Committee member of an HSBC Amanah if:

- a. the Shariah Committee member is an undischarged bankrupt, has suspended payments or has compounded with his creditors whether in or outside Malaysia;
- b. a charge for a criminal offence relating to dishonesty or fraud under any written law of any country, territory or place outside Malaysia, has been proven against him;
- c. he is prohibited from being a director of a company or in any way, whether directly or indirectly, be concerned or take part in the management of a company in Malaysia pursuant to a court order made under section 130A of the Companies Act 1965 and has not obtained any leave of the court under the same section; or
- d. under any law relating to prevention of crime, drug trafficking or immigration –
 - i- an order of detention, supervision or deportation has been made against that person; or
 - ii- any form of restriction or supervision by bond or otherwise, has been imposed on him or her.

- 7.2 Where any criminal proceedings² is pending in any court for any offence referred to in clause 7.1(b) against a Shariah Committee member, such member shall not:

- i. act in such capacity, hold any other office or act in any other capacity, in HSBC Amanah; or
- ii. be concerned with, take part or engage in, any manner, whether directly or indirectly, in any activity, affairs or business of, or in relation to HSBC Amanah,

except as may be permitted by the Board subject to such conditions as may be specified by BNM.

8. Restrictions

- 8.1 The Shariah Committee member shall not have any relationship that could interfere or be reasonably perceived to interfere with the exercise of independent judgment, with the following persons:

² For the purpose of this paragraph, "criminal proceedings" shall be deemed to be pending from the date that the accused person is first charged in court for the offence until the date of the final conclusion of the proceedings, whether in the court of original jurisdiction or, in the event of any appeal by any party, in the court of final appellate jurisdiction.

- a. an immediate family member such as spouse, children or siblings who are, or who were during the last financial year, employed by HSBC Amanah or any of its related companies as a senior executive officer (CEO) or non-independent board members; and
- b. a substantial shareholder or a partner in (with a stake of 5% or more) or an executive officer of, or a director of any for-profit business organization to which HSBC Amanah or any of its subsidiaries made or from which HSBC Amanah or any of its subsidiaries received, significant payments in the current or immediate past financial year.

8.2 The Shariah Committee Member shall not be:

- a. a member of Shariah Advisory Council of BNM;
- b. a Shariah Committee member of more than one licensed Islamic bank, one licensed takaful operator and one prescribed financial institution in Malaysia; or
- c. an active politician³.

8.3 The Shariah Committee or his immediate family member shall not be:

- a. an executive of HSBC Amanah or any of its related companies during the tenure of his appointment or within the last two (2) years of his proposed appointment as a Shariah Committee member;
- b. a substantial shareholder, executive director or senior officer of HSBC Amanah or any of its affiliates; or
- c. have a significant business or other contractual relationship with HSBC Amanah or any of its affiliates within the last two (2) years.

8.4 A Shariah Committee member whose tenure has expired and is being proposed for reappointment must immediately cease to hold office and act in such capacity, including by participating in any Shariah Committee meetings or holding himself out as a Shariah Committee member of HSBC Amanah.

9. Disclosure of Interest

9.1 Members of the Shariah Committee shall disclose and declare to the bank the nature and extent of his or her interest that constitutes or gives rise to a conflict or potential conflict of interest, in respect to involvement in any financial institutions. The HSBC Amanah Board's Conflict of Interest Policy and HSBC Global Functions Conflict of Interest Procedure Policy shall apply to the Shariah Committee where relevant. The disclosure of interest includes but not limited to the following activities:

- a. any additional activities or services performed by the Shariah Committee for HSBC Amanah;
- b. any other external professional commitments performed by the Shariah Committee member; or
- c. consultancy services to any clients of HSBC Amanah, with or without remuneration.

³ Refers to an individual who is a member of any national or state legislative body, or who is an office bearer of, or holds any similar office or position in a political party.

9.2 The Shariah Committee member must notify such matter to the Shariah Secretariat by submitting the Notification Form available in Conflict of Interest Policy and subsequently will be presented to the Board.

10. Recommendations

10.1 Where, in the course of meeting its objectives and performing its obligations, the Shariah Committee discovers an issue of concern or any undue influences that hamper its professional objectivity and independence or for which there is scope for improvement, the Shariah Committee shall escalate and make recommendations to the Board on action needed to address the issue or to make improvements.

10.2 A Shariah Committee member shall immediately disclose to the Board any circumstances that may affect his or her ability to meet any of the requirements stipulated in the Terms of Reference.

10.3 Pursuant to clauses 2.6 and 2.7 herein, in the case such request by the Shariah Committee is denied, declined or withheld by any officers or employees of the bank, the Shariah Committee must inform the Board of the situation and recommend appropriate action to rectify the situation.

10.4 The Terms of Reference must be reviewed on annual basis and any changes to these Terms of Reference must be recommended to the Board.

11. Matters Advised and/or Delegation by the Shariah Committee

11.1 The Shariah Committee may delegate any of its responsibilities deemed fit, as outlined in the relevant internal policies, to the Shariah Department. However, the Shariah Committee is still the ultimate approver and remain fully accountable for the decisions and any ensuing implications arising from the delegated authority.

11.2 The areas of delegated authority shall be limited to the following:

- a. Variation to product proposal or features approved by the Shariah Committee whereby the variation does not involve in changes to the underlying Shariah contract or concept;
- b. Variation to the product documentations or legal documents approved by the Shariah Committee, whereby the variation does not have any Shariah implications;
- c. Legal documents for new transaction or facility based on existing structure and Shariah contract approved by the Committee;
- d. Marketing collaterals and advertisement materials;
- e. Variation to certain terminologies used in the system;
- f. Website content;
- g. Statement for public and media⁴;
- h. Product campaign;
- i. Digital platform or system;

⁴ It excludes Shariah Committee's Attestation in the HSBC Amanah Financial Statement.

- j. Pre and Post launch assessment for newly launched and migrated products;
 - k. Ratification by Shariah Committee on all matters delegated to Shariah Department;
 - l. Assessment of Shariah Non-Compliance (SNC) event in the operations, business, affairs and activities of HSBC Amanah; and
 - m. Any other matters deemed necessary by the Shariah Committee.
- 11.3 The Shariah Department shall report, update, ratify and keep the Shariah Committee informed on the significant issues, key deliberations, recommendations and decisions on delegated matters.

12. Law and Guidelines

- 12.1 The provisions of these Terms of Reference must be read together with all applicable laws and guidelines including all relevant laws, regulations, as well as guidelines, circulars and directives issued by BNM and other relevant authorities, the HSBC Amanah's Memorandum and Articles of Association, policies and manuals which HSBC Amanah must adhere to by virtue of being a member of the HSBC Group of companies.
- 12.2 In the event of any conflict between these Terms of Reference and such laws and guidelines, the provisions of such laws and guidelines must prevail.