



Explanatory Notes

SHARIAH PRINCIPLES IN CLEARING GUARANTEE FUND

(ICM/iPO-CGF/001)

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SHARIAH PRINCIPLES IN CLEARING GUARANTEE FUND

INTERPRETATION

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<i>“Al-dhamanat”</i>	-	Guarantee
<i>“Al-kafalah”</i>	-	Guarantee
<i>“Al-rahn”</i>	-	Pledge
<i>“Muqasah”</i>	-	Settlement of the outstanding debt on the basis of set-off.
<i>“Qard”</i>	-	A contract of lending money by a lender to a borrower where the latter is bound to return an equivalent replacement amount to the lender.
<i>“Wakalah bil istithmar”</i>	-	An agency contract whereby the agent is appointed to invest the principal’s capital for the benefit of the principal.
<i>“Wakalah bil ujr”</i>	-	Paid Agency
<i>“Wakalah fee”</i>	-	Agency fee.

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Note:

This document should be read together with the following documents:

- (i) Best Practices in the Islamic Stockbroking Services Undertaken by Participating Organisations
- (ii) Rules of Bursa Malaysia Securities Clearing
- (iii) Clearing Guarantee Fund Operational Procedures
- (iv) Equities Margining Operational Procedures

1. INTRODUCTION

The purpose of this document is to set out the Shariah principles in relation to the contribution by a Trading Clearing Participant (“TCP”) to the Clearing Guarantee Fund (“CGF”) (“Contributions”) where the Contributions may be used in the event of a default of the contributing TCP or a default by the other TCP of Bursa Malaysia Securities Clearing (“BMSC”).

The table below sets out the overall view of applied Shariah principles in CGF covering the roles played by various parties, including the provision of contribution by TCP and the application of the CGF by BMSC in the event of a default:

TCP	BMSC	Default
Contributions	Management	Application of the CGF
Cash Contributions	Investment Agency (<i>wakalah bil istithmar</i>)	Set off (<i>muqasah</i>) from defaulting TCP’s contribution
Non-cash Contributions	Pledge or mortgage (<i>al-rah</i>) or Guarantee (<i>al-Dhamanat</i> or <i>al-Kafalah</i>)	Loan (<i>qard</i>) to defaulting TCP

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2. UNDERLYING SHARIAH PRINCIPLES IN CLEARING GUARANTEE FUND

2.1. Contributions

TCPs that wish to provide cash Contributions in compliance with Shariah principles are deemed to have appointed BMSC as an agent to manage the investment of the fund by way of *wakalah bil istithmar* (investment agency). For non-cash Contributions, the applicable concept would be *al-rahn* (pledge) or *al-kafalah* (guarantee).

2.2. Management of the Contributions

(A) Cash

The management of the cash Contributions by BMSC in compliance with Shariah principles applies the principle of investment agency (*wakalah bil istithmar*). TCPs who have made Contributions on this basis will have rights over any return from the investment and a certain amount of an agency fee will be made payable to the BMSC under the principle of *wakalah bi al-ujr* (paid agency). The agency fee will be paid to BMSC at the same rate as and in lieu of the administrative charges and fees in relation to the CGF.

In relation to the return from the investment referred to above, TCPs will have the options of either making a request for the withdrawal of such amount failing which such sums will be considered as additional sums contributed by the TCP to the CGF under the principle of *wakalah bil istithmar*.

(B) Non-Cash

The management of non-cash Contributions by BMSC in compliance with Shariah principles applies the principle of pledge or mortgage (*al-rahn*) or guarantee (*al-kafalah/ al-dhamanat*). The *al-rahn* or *al-kafalah* fee will be paid to BMSC at the same rate as and in lieu of the collateral lodgement fees in relation to the CGF.

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2.3. Application of the CGF

A TCP that provides the Contributions to BMSC on the basis of investment agency and pledge or guarantee is deemed to have given upfront consent for BMSC to utilize the Contributions in the manner set out in the Rules of Bursa Malaysia Securities Clearing Sdn Bhd should there be any amount due to the BMSC as a result of a default by a TCP.

The application of the Contributions from defaulting TCP as prescribed under Rule 6.13.1(a) of the Rules of BMSC will be under the principle of set-off (*muqasah*).

The application of the Contributions as prescribed under Rule 6.13.1(b) of the Rules of BMSC will be under the principle of loan (*qard*).

(Also to refer to Diagram 1 - Overall CGF structure and the applicable Shariah principles)

2.4. Replenishment

As prescribed under Rule 6.5 and 6.14 of the Rules of BMSC, BMSC shall require additional contribution following a review of the Contribution required from a TCP and a replenishment of the deficiency of contributions, where necessary.

2.5. Opting Out of Contribution Exceeding Limit

With reference to Rule 6.15 of the Rules of BMSC, any termination by the TCP of participation in the services provided by BMSC shall be tantamount to a termination of participation of a particular TCP in the arrangement of *wakalah bil istithmar* in relation to CGF.

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2.6 Rights of the Clearing House

For the avoidance of any doubt, nothing in these Explanatory Notes shall affect the rights of BMSC to take the actions available to BMSC under the Rules of BMSC or under any law in the event of a breach by the TCP of the Rules of BMSC including in the event of a default as specified in the Rules.

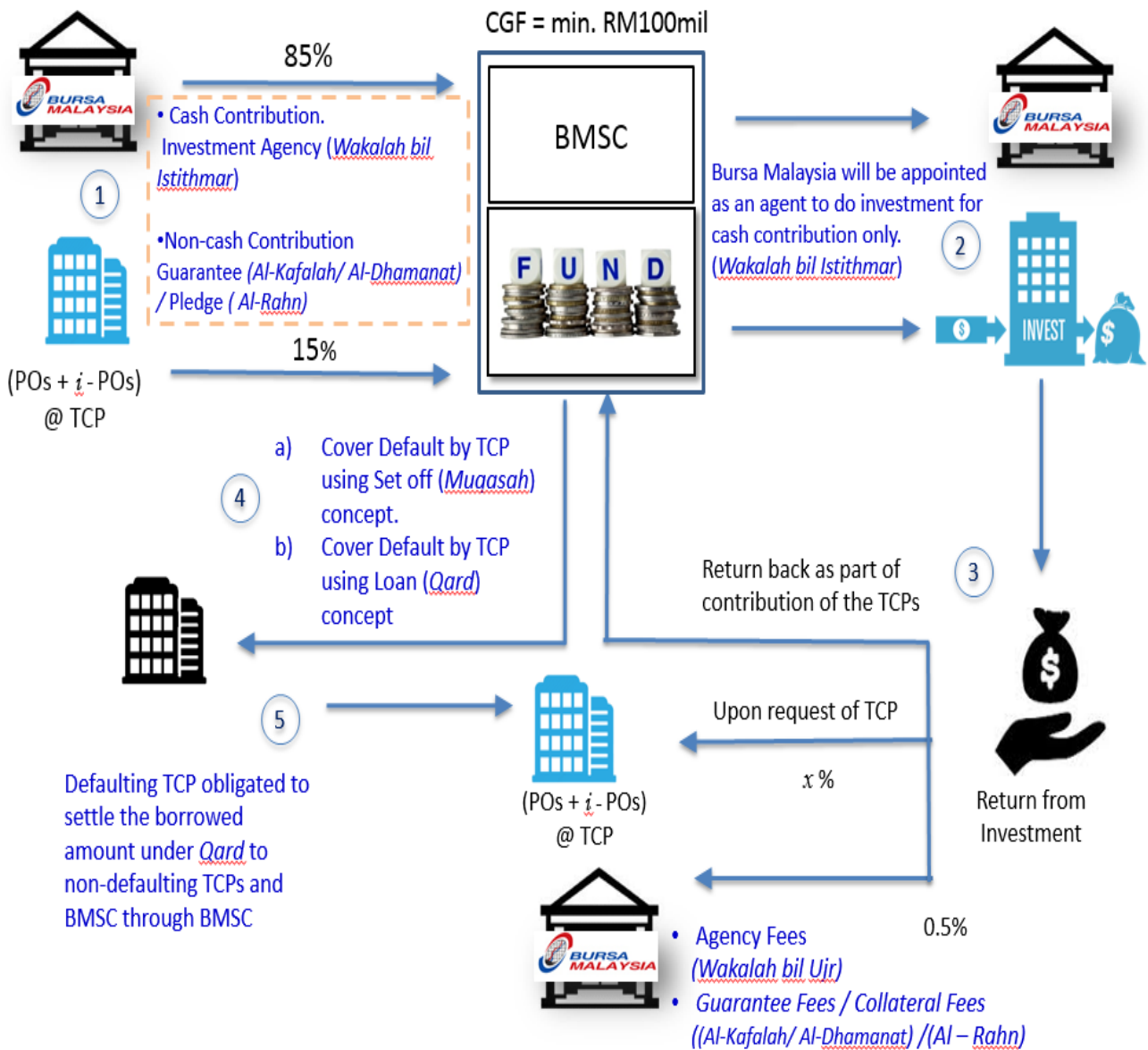


Diagram 1 - Overall CGF structure and the applicable Shariah principles

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