



GUIDELINE NO. CMU/G-2/2017/2

**GUIDELINE ON LICENSING AND RECOGNITION APPLICATIONS
FOR COLLECTIVE INVESTMENT SCHEMES**

1. INTRODUCTION AND APPLICABILITY

- 1.1 This Guideline is issued pursuant to section 32 of the Autoriti Monetari Brunei Darussalam Order, 2010.
- 1.2 This Guideline is aimed at any person who wishes to apply for licensing or recognition of collective investment schemes under the SMO.
- 1.3 The Authority expects all applicants to adhere to this Guideline where applicable, so as to ensure consistency and efficiency in the processing of applications for a licence or recognition.
- 1.4 This Guideline is to be read together with the SMO and all applicable rules and regulations made thereunder.
- 1.5 This Guideline shall take effect on 20th November 2017.

2. DEFINITION OF THE TERMS

- 2.1. For the purpose of this Guideline, the following terms shall have the following meanings, except where the context otherwise requires:

Term	Definition
“Authority”	means Autoriti Monetari Brunei Darussalam;
“CMSL”	means capital market services licence;
“Distributor”	means A CMSL holder licensed to conduct the regulated activity of dealing in investments under the SMO;
“prospectus”	has the same meaning under Section 115, SMO;

“SMO” means the Securities Markets Order, 2013 and any regulations or other subsidiary legislation made thereunder;

“SMR” means the Securities Markets Regulation, 2015.

2.2 Any expression used in this Guideline shall, except where expressly defined in this Guideline or where the context requires, have the same meaning as in the SMO.

3. APPLICATION PROCESS FOR LICENSING OF COLLECTIVE INVESTMENT SCHEMES

3.1 Any applications for the licensing of a CIS should be submitted by an operator and custodian, or proposed operator and custodian, who are independent of each other. The operator and the custodian must each:

(a) be a body corporate incorporated in Brunei Darussalam; and

(b) have a place of business in Brunei Darussalam.

3.2 Applicants who wish to apply for a licence of a public collective investment scheme should refer to the following Regulations:

(a) *Regulation 155 – Application;*

(b) *Regulation 156 (1) – Requirements for licence.*

3.3 The application for a CIS licence along with any supporting documents should be made in English. An application which is made in a language other than English should be accompanied by an English translation confirmed by the operator as being an accurate translation of the original documents. In any event, the English version will be regarded as the main application by the Authority.

- 3.4 Applications must also be submitted with the prospectus (or draft prospectus, where applicable) of the CIS which has been prepared in accordance with paragraph 6 where applicable and any other relevant requirements in the SMO.
- 3.5 Applications that do not comply with the requirements of the Authority or which are deemed unsatisfactory may be returned to the applicant(s).
- 3.6 A complete application must be accompanied by a non-refundable application fee which is specified by the Authority.
- 3.7 Where a collective investment scheme administrator is intended to be appointed, the functions that are and will be performed by the collective investment scheme administrator should be clearly stated in the draft delegation agreement, which must be submitted to the Authority as part of the application for a CIS licence.
- 3.8 The name of the proposed CIS should satisfy Regulation 90, SMR in that, among other things, it must not be undesirable, misleading or does not conflict with the name of another CIS.
- 3.9 Payment of the annual fee should be made within 14 days of the issue date of the approval letter by the Authority.

Example:

Scenario A.1

For three (3) CISs, which are not considered as an umbrella fund, the annual fee will be charged based on each CIS as illustrated below:

Annual Fee of BND 100 x 3 CISs = BND 300.

Scenario A.2

For three (3) CISs under one umbrella fund, then the annual fee is as below:

*Annual Fee of an umbrella fund + Annual fee for each sub-fund under the umbrella
= BND 100 + BND 100 x 3 sub-funds = BND 400.*

- 3.10 The prospectus of a licensed CIS is subject to an annual prospectus fee of BND 50 and the issue date of the prospectus should be clearly stated.
- 3.11 The details on fees payable for various types of applications can be found in the Securities Markets (Fees) Regulations, 2015.
- 3.12 Payment should be made in the form of a cheque or telegraphic transfer payable to “Autoriti Monetari Brunei Darussalam”. Payment can also be made via online banking.
- 3.13 Payment made to the Authority should be accompanied with a Payment Instruction Form issued by the Authority, of which can be requested from the Authority.
- 3.14 The Authority should be immediately informed of:
- (a) Any material change or development in circumstances that would affect the Authority’s consideration of the application; and/or
 - (b) Any material change or development in circumstances relating to the application occurring subsequent to the Authority’s approval.
- 3.15 The Authority may take up to 4 months to determine an application, beginning with the date it receives a complete application.
- 3.16 The Authority may also determine an incomplete application if it thinks fit to do so, and must in any event determine such an application within 12 months beginning with the date on which it first receives the application.

- 3.17 Form 5 list out the items that are required for submission. This form must be completed for a CIS that wishes to apply for a licence. However, in the case of an umbrella fund and the sub-funds under it, only one application form will need to be submitted. This should be submitted by the operator and custodian of the umbrella fund and verified by the sub-funds operators and custodians.
- 3.18 The operator, and in the case of a CIS structured as an investment trust, both the operator and the trustee are responsible for maintaining the constitution, where details of a written constitution requirement can be found under Regulation 89, SMR.
- 3.19 Disclosure requirements in a prospectus submission may differ depending on the type of CIS. Please refer to Paragraph 6 of this Guideline.
- 3.20 An operator of a CIS must notify the Authority of the appointment of an auditor to the CIS, including the name and business address of the auditor and the date of the commencement of the appointment.
- 3.21 If the operator of a CIS appoints a third party to distribute the units of the CIS, such proposed appointment should be notified to the Authority upon application. The draft distribution agreement between the operator and the Distributor must be submitted to the Authority as part of the application process.

4. APPLICATION PROCESS FOR RECOGNITION OF COLLECTIVE INVESTMENT SCHEMES

- 4.1 A CIS which is managed in, and licensed under the law of, a country or territory outside Brunei Darussalam may be deemed as a recognised CIS if it satisfies the requirements set out in section 223 (1) SMO as follows:
- (a) the country or territory in which it is licensed is designated by an order made by the Authority; and

- (b) the operator and custodian of the relevant CIS has given notice in writing to the Authority that he wishes it to be recognised.

For the purpose of sub-paragraph (a), the Authority has the discretion not to make an order designating any country if the requirements set out in section 223 (2) SMO are not fully complied with.

For the purpose of sub-paragraph (b), such notice must contain the address for service in Brunei Darussalam and any other information and documents as may be specified by the Authority.

- 4.2 Applicants who wish to apply for a recognition of a public collective investment scheme should refer to the following Regulations:

- (a) *Regulation 155 – Application;*

- (b) *Regulation 156 (2) – Requirements for recognition.*

- 4.3 An operator of a recognised CIS may appoint a local third party collective investment scheme administrator being the address for service in Brunei Darussalam. The local Distributor may also act as the collective investment scheme administrator for the recognised CIS.

- 4.4 In addition to this paragraph 4, the provisions under paragraph 3.3, 3.4, 3.6, 3.7, 3.8, 3.9, 3.10, 3.12, 3.13, 3.14, 3.17 and 3.21 should also be adhered to mutatis mutandis for any applications for recognition of a CIS.

- 4.5 Payment of the annual fee should be made within 14 days after issue date of the approval letter by the Authority.

5. APPLICATION PROCESS FOR ISLAMIC COLLECTIVE INVESTMENT SCHEMES

- 5.1 In addition to paragraph 3 and paragraph 4 where applicable, any applications for a licence or recognition of a Syariah-compliant CIS in Brunei Darussalam must also obtain the prior approval of the Syariah Financial Supervisory Board Order, 2006 (“SFSBO”).
- 5.2 Any documents submitted together with an application for SFSB approval referred to in paragraph 5.1 above should also be submitted together with their application for a licence or recognition of the CIS.

6. PREPARATION OF PROSPECTUS

6.1 In preparing a prospectus, the operator and the board of directors of a public CIS should refer to the following Regulations:

- (a) *Regulation 4 - Disclosure of information in prospectus;*
- (b) *Regulation 159 – Drawing up and availability of prospectus;*
- (c) *Regulation 160 – Mandatory statement for public collective investment scheme prospectus.*

6.2 In preparing the prospectus of a CIS, the following Regulations should be referred to where applicable:

Types of CIS	Licence	Recognition
Public property CIS	R. 162 (1)(a) –(m), (2), (3)	-
Public Real Estate Investment Trust (REIT)	R. 162 (1) - (3)	-
Public Feeder Fund	R. 161	-
Private CIS	R. 188	
Private Property CIS	R. 191	
Private Equity CIS	R. 192	

Private Hedge fund	R. 154(2)(b), 193
Private Feeder Fund	R.190

6.3 The prospectus of a foreign CIS:

- (a) should be made in English; and
- (b) should contain in a prominent position or attached to it a statement that clearly:
 - i. describes the foreign jurisdiction and the legislation in that jurisdiction that applies to the foreign collective investment scheme;
 - ii. states the name of the relevant financial services regulator in that jurisdiction and describes the regulatory status accorded to the foreign collective investment scheme by that regulator;
 - iii. clearly states the name and address of the local representative of the foreign collective investment scheme in Brunei Darussalam;
 - iv. includes the following warning:

“This prospectus relates to a foreign collective investment scheme which is not subject to any form of domestic regulation by the Authority. The Authority is not responsible for reviewing or verifying any prospectus or other documents in connection with this collective investment scheme. The Authority has not approved this prospectus or any other associated documents nor taken any steps to verify the information set out in this prospectus, and is not responsible for it.

The units to which this prospectus relates may be illiquid or subject to restrictions on their resale. Prospective purchasers should conduct their own due diligence on the units.

If you do not understand the contents of this document, you should consult a licensed financial adviser”;

- v. if the offer is not directed to retail clients, it must include a prominent statement to that effect to be incorporated within the warning set out in paragraph (iv).

7. SUBMISSION OF APPLICATION

- 7.1 All submissions relating to an application and any correspondence should be addressed to:

**Managing Director,
Autoriti Monetari Brunei Darussalam,
Level 14, Ministry of Finance Building,
Commonwealth Drive,
Bandar Seri Begawan BB3910,
Brunei Darussalam.**

**(Attention: Head of Capital Market Unit)
(or) email at capmarket@ambd.gov.bn**

**MANAGING DIRECTOR
AUTORITI MONETARI BRUNEI DARUSSALAM**

Issue Date: 28 Safar 1439/ 17 November 2017