Global Financial Services Regulatory Guide - Malaysia

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# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

The banking and financial services sector falls within the purview of the Malaysian Minister of Finance (MOF). As the primary regulator, the MOF acts on the regulatory bodies' recommendations that supervise financial institutions and capital market intermediaries.

In Malaysia, the two regulatory bodies responsible for the licensing, approval or registration, regulation and supervision of banks, insurers, capital market intermediaries and other financial institutions are the Central Bank of Malaysia (CBM) (also known as Bank Negara Malaysia) and the Securities Commission Malaysia (SC).

The CBM regulates financial institutions, such as banks, insurers, payment system operators, insurance brokers, money brokers, financial advisers and adjusters. It also acts as a banker and an adviser to the government of Malaysia.

The SC regulates capital market activities and specifically, capital market intermediaries, such as fund managers, corporate finance advisors, investment advisors, financial planners and persons who deal in securities, derivatives and private retirement schemes.

Money laundering and terrorism financing in Malaysia is primarily governed by the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFA). The CBM, as the appointed competent authority, has oversight of the general administration of the AMLATFA and has wide enforcement powers to, among others, investigate and seize properties. The CBM and the SC, as the respective supervising authorities of prescribed financial institutions and capital market intermediaries that are reporting institutions under the AMLATFA, also have oversight of the regulatees' compliance with their respective guidelines issued pursuant to the AMLATFA.

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

The regulatory regime for financial services in Malaysia is governed by the Financial Services Act 2013 (FSA), the Islamic Financial Services Act 2013 (IFSA), and the Capital Markets and Services Act 2007 (CMSA). Rules, orders and regulations promulgated under the respective legislation are also applicable. The CBM administers the FSA and the IFSA, whereas the SC administers the CMSA.

In addition, the CBM and the SC have extensive powers to issue guidelines, handbooks, circulars and standards from time to time. Such guidelines, handbooks, circulars and standards set out, among others, the prudential and operational requirements that must be complied with by the relevant financial institutions and capital market intermediaries. For example, the CBM issued a framework setting out the prudential requirements applicable to banks and insurers. The SC issued a licensing handbook setting out the licensing and operational requirements applicable to capital market intermediaries.

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

Under the FSA and the IFSA, activities that require either a license or approval from the CBM, or a registration with the CBM (collectively, “FSA/IFSA Activities”), are as follows:

Banking and investment banking activities, which include accepting deposits, dealing with checks, providing financial services (i.e., consumer and retail lending, leasing, factoring, purchase of instruments such as promissory notes, and providing guarantees) or carrying out regulated activities under the CMSA

Insurance business and reinsurance business by way of effecting and carrying out contracts of insurance and reinsurance, both life and general

Operation of a payment system or issuance of a designated payment instrument, which covers a broad range of activities, such as the remittance of funds or securities and issuance of electronic money (including the provision of merchant- acquiring services)

Insurance broking business, which entails facilitating transactions for the entry into, or renewal of, contracts of insurance and reinsurance on behalf of clients

Money broking business, which entails facilitating transactions in the money market or foreign exchange market (but does not include transactions for the sale and purchase of currencies)

Financial advisory activities by way of arranging for contracts of insurance based on the individual needs of clients

Adjusting activities in respect of investigations of losses under insurance claims

Under the CMSA, entities carrying out the following regulated activities (collectively, “CMSA Activities”) require a capital markets services license (CMSL), and individuals employed to undertake the regulated activities require a capital markets services representative’s license (CMSRL) from the SC:

Dealing in securities and derivatives by inducing or potentially inducing clients to enter into transactions involving securities or derivatives

Fund management of a portfolio of securities, derivatives or assets

Advising on corporate finance, which covers advising on takeovers and mergers, issuance of securities, raising of funds and providing advice to listed companies

Providing investment advice on securities or derivatives

Financial planning for clients by analyzing their financial circumstances and introducing investment plans

Dealing in private retirement schemes by inducing or potentially inducing clients to acquire or dispose of interests in, or contribute to, a private retirement scheme

Clearing for securities or derivatives by assuming obligations for the delivery and payment of a person's transaction relating to listed securities or derivatives

Trustees of unit trust schemes and debenture holders must also be registered and approved by the SC.

Cryptocurrencies and cryptoassets (i.e., digital currency and digital tokens) are not recognized as legal tender in Malaysia. That said, cryptocurrencies and crypto-assets that satisfy certain prescribed requirements are regulated as securities under the CMSA.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

The licensing requirements under the FSA, IFSA and CMSA do not generally apply if the licensable activities are carried out wholly from a place outside of Malaysia. If the licensable services are carried out within Malaysia or from a cross-border basis into Malaysia, the licensing requirements will apply unless there are applicable exceptions.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

In assessing the written application for a license, approval or registration to carry out FSA/IFSA Activities, the CBM will consider the factors set out in Schedule 5 of the FSA and the IFSA, as well as other matters that the CBM considers relevant. These include the following:

Reputation and experience - The applicant should have a reputation that is consistent with the standards of good governance and integrity, and the business record and experience of the applicant will also be taken into account.

Detrimental effect - The business must not be detrimental to the interests of its future depositors, policy owners, participants, users or the public generally.

Business plan - The applicant must convince the CBM that its business plans for the business' future conduct and development s are sound.

Financial Resources - The applicant must be able to demonstrate sufficient financial resources as a source of continuing financial support. There may also be minimum paid-up capital requirements.

National interest - Whether the application will be in Malaysia's best interest, with regard to, among others, the contribution of the business to the Malaysian financial ecosystem, the economy and Malaysia’s relationship with other countries, should be determined.

Effective supervision - Whether the nature, scale and activities of the applicants' corporate group will impede effective regulation and supervision, having considered the nature and degree of regulation and supervision of any financial institution within that corporate group, should be considered.

The applicant must be considered “fit and proper” by the SC to apply for a CMSL to carry out the CMSA Activities. In assessing whether an applicant is fit and proper, the SC will consider the following:

Organizational requirements - The applicant should have a properly established business with clear lines of responsibility and authority, as well as the necessary infrastructure, policies and processes. The SC also mandates certain positions of authority; Bumiputera (i.e., the indigenous people of Malaysia) participation requirements apply to directors, CMSRL holders and employees, and job functions. The requirements for each would depend on the type of CMSA Activities undertaken.

Shareholding composition - There are generally no prescribed shareholding requirements unless the applicant intends to carry out investment banking or undertake portfolio management in connection with fund management.

Financial Resources - The applicant must fulfill minimum paid-up capital and shareholders’ funds requirements.

Competency of CMSRL holders - The applicants representatives must comply with prescribed qualification, experience, academic and licensing examination requirements.

National interest - Whether the application will be in Malaysia's best interest, having regard to, among others, the expertise that can contribute to the Malaysian capital market and economy and the ability to develop strategic sectors will also be considered.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

In order to be licensed, approved or registered, an applicant must submit an application letter together with the prescribed application forms (if any) and the supporting information to the CBM or the SC, as the case may be. The prescribed application forms must be completed for submission to the regulator depending on the nature of the regulated activities undertaken. The CBM and the SC may reject or approve the application, with or without conditions, at their discretion.

From the date of receipt of a completed application, the regulator will generally take approximately three to six months to review the application and provide a response to such application.

Note that as a matter of policy, the MOF does not generally grant new licenses to operate a banking business at present. That said, BNM introduced a licensing framework for digital banks and indicated that it might issue up to five digital bank licenses. Eligible interested persons were required to submit an application for a digital bank license to BNM by 30 June 2021.

 Moreover, financial institutions and fintech companies that are seeking to provide services (whether on their own or in collaboration with financial institutions) that are or are likely to be regulated by CBM may submit an application to participate in the Financial Technology Regulatory Sandbox ("**Sandbox**"). Only genuinely innovative products with clear potential will be accepted into the Sandbox.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

As part of the initiative of the ASEAN Capital Markets Forum (ACMF) to facilitate the mobility of professionals in carrying out investment advice activities among ASEAN countries, professionals may apply for an ACMF Pass to be a Recognized Representative under the ASEAN Capital Market Professional Mobility Framework.

An individual licensed, recognized, approved or authorized by their home regulator in a Recognized ACMF member country (i.e., Thailand, Singapore and the Philippines) may apply to undertake a regulated activity, including but not limited to “investment advice” under the CMSA in Malaysia, provided that the individual satisfies the relevant criteria stipulated by the SC.

As the ACMF Pass is country-specific, an individual needs to apply for an ACMF Pass at each Recognized ACMF member country if they wish to undertake the regulated activities specified in the framework.

However, there is currently no means for a Malaysian licensed, approved or registered person to passport into the European Economic Area member states.

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