



GUIDELINE NO. CMU/G-3/2017/3

**GUIDELINE TO PERSONS SEEKING FOR EXEMPTION UNDER
SECTION 158(2)(b) AND 159(1)(f), SECURITIES MARKETS ORDER, 2013
FROM HOLDING A CAPITAL MARKETS SERVICES LICENCE AND
CAPITAL MARKETS SERVICES REPRESENTATIVE'S LICENCE RESPECTIVELY
TO PROVIDE INVESTMENT ADVICE UPON CLIENT'S REQUEST**

1. INTRODUCTION

- 1.1 This Guideline is issued pursuant to Section 32 of the Autoriti Monetari Brunei Darussalam Order, 2010.
- 1.2 Section 22(1) of the SMO prohibits any person to carry on or hold himself out as carrying on or purporting to carry on a regulated activity in Brunei Darussalam unless he is licensed, recognised, designated or exempted by the Authority to do so.
- 1.3 A person may only conduct regulated activities, including providing Investment Advice, in Brunei Darussalam if they hold a CMSL or a CMSRL granted under the SMO. As such, persons who do not hold a CMSL and CMSRL but intend to conduct the regulated activity of providing Investment Advice in Brunei Darussalam, upon the request of their Clients in Brunei Darussalam, will need to apply for a CMSL and CMSRL (where applicable) or request for an exemption from the requirement to hold a CMSL or CMSRL from the Authority.
- 1.4 The objectives of this Guideline is to provide guidance and clarity to any applicant on the procedures and requirements in relation to applications for exemptions referred to in paragraph 1.3 under Sections 158(2)(b) and 159(1)(f) of the SMO.

2. APPLICABILITY

- 2.1 This Guideline applies to any person who wishes to apply for an exemption from holding a CMSL or CMSRL to provide Investment Advice in Brunei Darussalam, upon the request of their Clients in Brunei Darussalam.
- 2.2 This Guideline is not legally binding, exhaustive and subject to revision from time to time as deemed necessary by the Authority.
- 2.3 This Guideline is to be read together with the SMO and all applicable rules and regulations made thereunder.

2.4 This Guideline shall be effective on 4th December 2017.

3. DEFINITION OF THE TERMS

3.1 In this Guideline, the following terms shall have the following meanings, except where the context otherwise requires:

Term	Definition
“Approval Letter”	means the letter issued by the Authority informing the applicants that the request for the exemption has been approved;
“Authority”	means Autoriti Monetari Brunei Darussalam;
“CMSL”	means capital markets services licence;
“CMSRL”	means capital markets services representative’s licence;
“Client”	means any of the investor(s) defined under Section 20 of the SMO which includes accredited investors, expert investors and institutional investors;
“Exemption Period”	means the period of exemption granted in the Approval Letter as stipulated in paragraph 6.2;
“Exempt Person”	means a person who has been granted an exemption from holding a CMSL or a CMSRL to provide Investment Advice;

“Home Authority”	means the foreign authority, who are members of the IOSCO, that regulates and/or supervises the applicant company and its representative(s);
“Investment Advice”	has the meaning assigned to it under Part II of the Schedule – Activities Constituting Investment Business to the SMO;
“IOSCO”	means the International Organization of Securities Commissions;
“fit and proper requirements”	refers to the set of requirements under Regulation 29 of the SMR;
“representative”	means a person, by whatever name called, in the direct employment of, or acting for, or by arrangement with, a person who carries on business in any regulated activity, who carries out for that person any such regulated activity;
“SMO”	means the Securities Markets Order, 2013 and any regulations or other subsidiary legislation made thereunder;
“SMR”	means the Securities Markets Regulations, 2015.

3.2 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.

4. **PERMISSIBLE REGULATED ACTIVITY UNDER EXEMPTION STATUS**

- 4.1 A Person who intends to apply for an exemption from holding a CMSL must be a company incorporated outside Brunei Darussalam that holds a valid licence or equivalent to provide Investment Advice from their Home Authority.
- 4.2 A person who intends to apply for an exemption from holding a CMSRL must hold a valid licence or equivalent to provide Investment Advice from their Home Authority. Where the Home Authority does not have any licensing (or other regulatory equivalents) requirements in respect of representatives of a CMSL holder, the first-mentioned person must demonstrate, among other things, his fitness and propriety as part of the application under this paragraph.
- 4.3 An application for an exemption under paragraph 4.1 and 4.2 must be made by the applicant company and its representatives at the same time.
- 4.4 In addition to the definition of Investment Advice and for the purposes of this Guideline, providing Investment Advice may also include the following:
- (a) presenting investment updates, performance reporting and investment strategies to Clients;
 - (b) conducting investment training or speaking at conferences (either public or private events) which includes giving out investment strategies;
 - (c) providing investment consultation which may not necessarily lead to any form of selling or buying of securities. For example, consultation of asset allocation, actuarial studies or fund manager selections; or
 - (d) any other form that the Authority may determine as an Investment Advice.



4.5 Foreign companies who are invited by CMSL holders (who are licensed to undertake the regulated activity of providing Investment Advice) to provide Investment Advice for its Clients are not required to obtain a CMSL nor an exemption if the CMSL Holder can provide to the Authority a written agreement between the foreign company and the CMSL Holder appointing the foreign company as the CMSL Holder's authorized agent for the provision of Investment Advice to its Clients. However, the representatives of the foreign company carrying out the regulated activity of providing Investment Advice in Brunei Darussalam is still required to obtain a CMSRL or an exemption in accordance with this Guideline.

An application made pursuant to this paragraph 4.5 excludes the provisions of paragraph 4.3 and 7.1.

- 4.6 The written agreement specified in paragraph 4.5 above must specify that the CMSL Holder will be fully liable and responsible for the regulated activity of providing Investment Advice conducted by the foreign company.
- 4.7 Where a CMSL holder has issued an invite as mentioned in paragraph 4.5, the CMSL Holder should notify the Authority in writing prior to the foreign company coming into Brunei Darussalam.

5. **APPLICATION PROCEDURE**

5.1 Any person wishing to become an Exempt Person is required to submit to the Authority the relevant forms and documents as may be determined by the Authority. Copies of the supporting documentation must be submitted in accordance with the requirements stated in the form. This is to avoid delays in the processing of applications.

- 5.2 The Authority will only process the application for exemption upon receipt of a fully completed application form along with its supporting documents. The Authority will notify the applicant of the outcome of the application after it has been duly processed.
- 5.3 An application should be submitted to the Authority not less than ten (10) working days prior to the date on which the person plans to enter Brunei Darussalam.
- 5.4 An application should include a copy of the formal invitation in writing from the relevant Client to the applicant company to provide Investment Advice.
- 5.5 The applying representative(s) should have sufficient relevant experience to meet the fit and proper requirements set out in Regulation 29 of the SMR. The applicant company should make its own assessment to ensure that its representatives who are seeking to be exempted to provide Investment Advice to Clients in Brunei Darussalam can satisfy these expectations. This includes the following: -
- (a) Honesty, integrity and reputation;
 - (b) Competence and capability;
 - (c) Financial soundness;
 - (d) Requirements relating to competencies of representatives.
- 5.6 The applicant company and its representative(s) seeking an exemption must stipulate the number of years that the company and representative(s) have been involved in providing Investment Advice particularly to the specific classes of investors set out in Section 20, SMO.
- 5.7 The applying representatives seeking an exemption are expected to have fulfilled the licensing examinations or equivalent in their respective Home Authority, hence will not be required to take any capital markets licensing examinations in

Brunei Darussalam. Clients should conduct their own due diligence to assess and ensure the fitness and propriety of the Exempt Person who will be providing the Investment Advice.

- 5.8 The Authority may reject applications for exemption(s) if it appears or finds that licensing would be more appropriate.
- 5.9 The Authority's decision with respect to a refusal to grant an exemption shall be final. However, re-consideration of an application may be requested.
- 5.10 An applicant is responsible for its own tax and visa requirements with the relevant Authorities.

6. APPROVAL, REJECTION AND VALIDITY OF EXEMPTION

- 6.1 The Authority will provide an Approval Letter regarding approved applications to the successful applicant stating the conditions of their exemption. However, an Approval Letter is not to be treated as *prima facie* evidence of an Exempt Person's fitness and propriety but will merely act as a confirmation as to whether their application for an exemption has been approved or rejected.
- 6.2 Exemptions are only granted for a maximum period of 1 year. Upon the expiry of the exemption, the Exempt Person will no longer be allowed to provide Investment Advice to Clients in Brunei Darussalam unless a new exemption is granted. The Authority retains the right to refuse a grant of a new exemption for any reason deemed appropriate by the Authority.
- 6.3 Where a representative(s) of an existing Exempt Person intends to become an Exempt Person himself, any exemptions granted to that representative will expire on the same day as that of the existing Exempt Person. This paragraph also applies to applications made pursuant to paragraph 4.5 in that any exemptions granted to the first-mentioned representative will expire on the same day as the representatives of the foreign company who are Exempt Persons.

7. POST APPROVAL OBLIGATIONS

- 7.1 An Exempt Person is required to submit to the Authority a report using the relevant forms and documents as may be determined by the Authority within one month after the end of the validity of the Exemption Period. The completed form should be verified by the Clients in Brunei Darussalam.
- 7.2 An Exempt Person should not allow a representative who currently holds a CMSRL in Brunei Darussalam to carry on any one or more regulated activities or holds himself out as doing so on behalf of an Exempt Person.
- 7.3 The Authority views contraventions by an Exempt Person very seriously. Any breaches of conditions or obligations by an Exempt Person may incur regulatory and legal action against the Exempt Person under the SMO and all applicable rules and regulations.
- 7.4 Contraventions will also be taken into consideration by the Authority when deciding on what future actions it may take against the Exempt Person in the event of a subsequent contravention of the applicable laws and regulations, or when considering any licensing application by the Exempt Person.

8. SUBMISSION OF APPLICATION

8.1 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: 15 Rabiulawal 1439/ 4 December 2017