



CLIENT ASSETS MODULE

DRAFT



MODULE:

CL (Client Assets)

Table of Contents

		Date Last Changed
CL-A	Introduction	
	CL-A.1 Purpose	XX/2014
	CL-A.2 Module History	XX/2014
CL-B	Scope of Application	
	CL-B.1 Scope of Application	XX/2014
	CL-B.2 Overseas Subsidiaries and Branches	XX/2014
CL-1	Client Asset Protection	
	CL-1.1 Client Asset Protection Rules	XX/2014
	CL-1.2 Financial Instruments Lending Rules	XX /2014
	CL-1.3 Client Notification	XX /2014
	CL-1.4 Record-keeping	XX /2014
	CL-1.5 Auditor Reports	XX /2014
CL-2	Custody Services	
	CL-2.1 General Requirements	XX /2014
	CL-2.2 Segregation	XX /2014
	CL-2.3 Reconciliation	XX /2014
	CL-2.4 Client Statements	XX /2014
	CL-2.5 Third Party Custodians	XX /2014
	CL-2.6 Record-keeping	XX /2014
CL-3	Collateral	
	CL-3.1 General Requirements	XX /2014
	CL-3.2 Collateral Held by Third Parties	XX /2014
	CL-3.3 Record-keeping	XX /2014
CL-4	Mandates	
	CL-4.1 Mandates	XX /2014
CL-5	Third Party Related Distribution	
	CL-5.1 General Requirements	XX /2014
	CL-5.2 Third Party Related Distribution	XX /2014
CL-6	Appendix	
	CL-6.1 Appendix	XX /2014
Supplementary Information		
(included in Volume 2 (Islamic Banks) Part B)		
<i>Appendix Number</i>	<i>Subject</i>	
CL-(i)	Client Asset Protection: Agreed Upon Procedures	XX /2014



MODULE	CL: Client Assets
CHAPTER	CL-A: Introduction

CL-A.1 Purpose

Executive Summary

- CL-A.1.1 This Module presents requirements that have to be met by Islamic bank licensees with regards to safeguarding and administrating financial instruments or when they hold or control assets of clients for which they are responsible. This module does not apply to accepting Shari'a money placements or deposits to managing unrestricted profit sharing investment accounts (see LR-1.3.1 a & c).
- CL-A.1.2 The Rules contained in this Module are aimed at ensuring proper protection of client assets to minimise the risk of client assets being used by Islamic bank licensees without the client's written consent (except to the extent permitted by the Rules) and to restrict the commingling of client assets with those of the Islamic bank licensees. This Module builds upon Principle 6 – Customer Assets (see Module PB (Principles of Business)). Principle 6 requires Islamic bank licensees to take reasonable care to safeguard the assets of clients for which they are responsible.
- CL-A.1.3 The Rules contained in this Module are largely principle-based and focus on desired outputs rather than on prescribing detailed processes. This gives Islamic bank licensees flexibility in how to implement the basic standards prescribed in this Module.

Legal Basis

- CL-A.1.4** This Module contains the Central Bank of Bahrain's ('CBB') Directive (as amended from time to time) on client assets, with respect to Islamic bank licensees, and is issued under the powers available to the CBB under Article 38 of the Central Bank of Bahrain and Financial Institutions Law 2006 ('CBB Law'). The Directive in this Module is applicable to all Islamic bank licensees (including their approved persons).
- CL-A.1.5 For an explanation of the CBB's rule-making powers and different regulatory instruments, see Section UG-1.1.



MODULE	CL: Client Assets
CHAPTER	CL-A: Introduction

CL-A.2 Module History

Evolution of Module

CL-A.2.1 This Module was first issued in [Month Year] by the CBB. Any material changes that have subsequently been made to this Module are annotated with the calendar quarter date in which the change was made. Chapter UG-3 provides further details on Rulebook maintenance and version control.

Summary of Changes

CL-A.2.2 The most recent changes made to this Module are detailed in the table below:

Module Ref.	Change Date	Description of Changes



MODULE	CL: Client Assets
CHAPTER	CL-B: Scope of Application

CL-B.1 Scope of Application

CL-B.1.1 This Module applies to every Islamic bank licensee that undertakes the activity of safeguarding clients' financial instruments; or holds or controls client assets. For greater certainty, this Module does not apply to accepting Shari'a money placements, deposits or to managing unrestricted profit sharing investment accounts (see LR-1.3.1 a & c).

CL-B.1.1A This Module applies to all Shari'a compliant financial instruments, with the exception of:

- (a) Securities which are covered under Volume 6 of the CBB Rulebook; and
- (b) Collective Investment Undertakings (CIUs) which are covered under Volume 7 of the CBB Rulebook.

CL-B.1.2 Client assets comprise money in transit (hereinafter referred to as 'client money') or financial instruments belonging to clients of an Islamic bank licensee, which are held or controlled by the Islamic bank licensees.

CL-B.1.3 For the purpose of Paragraph CL-B.1.2 above, 'client money' is recognized where an Islamic bank licensee:

- (a) Receives money from clients in the course of, or in connection with the funding of a specific investment project/fund or the anticipated purchase of a financial instrument (whether as a private placement or a public offering of securities or financial instruments); or
- (b) Receives money as a result of the termination or completion of a project, fund or sale of a financial instrument for the benefit of a client until it has been repaid to the concerned client.

CL-B.1.4 Client assets are held or controlled by an Islamic bank licensee on behalf of a client if they are:

- (a) Directly held by the Islamic bank licensee;
- (b) Held in an account in the name of the Islamic bank licensee;
- (c) Held by a person, or in an account in the name of a person, controlled by the Islamic bank licensee; or
- (d) Held in an account with another person, controlled by an Islamic bank licensee.



MODULE	CL:	Client Assets
CHAPTER	CL-B:	Scope of Application

CL-B.1 Scope of Application (continued)

CL-B.1.5 The CBB considers a person to be controlled by an Islamic bank licensee if that person is compelled to act in accordance with the instructions of the Islamic bank licensee.

CL-B.1.6 The CBB considers an account to be controlled by an Islamic bank licensee if that account is operated in accordance with the instructions of the Islamic bank licensee.



MODULE	CL:	Client Assets
CHAPTER	CL-B:	Scope of Application

CL-B.2 Overseas Subsidiaries and Branches

CL-B.2.1 Islamic bank licensees must ensure that their branches and subsidiaries operating in foreign jurisdictions comply, at a minimum, with local client asset rules (where applicable).

CL-B.2.2 Where client asset rules applied by overseas branches and subsidiaries of an Islamic bank licensee fall below the standards set out in this Module, the Islamic bank licensee must notify the CBB of the fact.

CL-B.2.3 The CBB encourages its Islamic bank licensees to apply – with respect to its overseas branches and subsidiaries – client asset rules at least equivalent to those set out in this Module. Where this is not the case, then the CBB will consider any potential risk to the Islamic bank licensee that may arise through adverse reputational or other consequences.



MODULE	CL: Client Assets
CHAPTER	CL-1: Client Asset Protection

CL-1.1 Client Asset Protection Rules

Segregation of Client Assets

CL-1.1.1

Except to the extent permitted by these rules, an Islamic bank licensee must hold client assets separate from its own. An Islamic bank licensee may only use a client's assets for its own account, and/or for the account of any of its other clients if:

- (a) That client has given his express consent in writing;
- (b) The use of the client assets is restricted to the terms agreed by him; and
- (c) The document in which that client's consent is requested by the Islamic bank licensee gives clear information to him on:
 - (i) The obligations and responsibilities of the Islamic bank licensee and/or of the clients for whose account the Islamic bank licensee has been allowed to use the client's financial instruments, with respect to the use of the financial instruments (including the terms for the restitution of the financial instruments); and
 - (ii) The risks involved.

CL-1.1.2

An Islamic bank licensee must communicate to its clients in writing, at a minimum, the information specified in Guidance Paragraph CL-6.1.2, regarding client assets held. This information must be reported as soon as practicable, but no later than 10 business days from the initial transaction date. Subsequent statements must be provided in accordance with client notification requirements under Section CL-1.3.



MODULE	CL:	Client Assets
CHAPTER	CL-1:	Client Asset Protection

CL-1.1 Client Asset Protection Rules (continued)

Client Money

CL-1.1.3

An Islamic bank licensee must hold client money in a client bank account at another bank which is not connected by way of control, directorship or ownership to the Islamic bank licensee which receives the funds.

CL-1.1.4

On no account may an Islamic bank licensee hold its own clients' money as a liability on its own balance sheet.

CL-1.1.4A

On no account may an Islamic bank licensee take deposits from projects or operating companies that it has promoted or managed. These funds must be placed with banks which are not connected, by way of control or ownership or directorship, to the concerned operating company or project.

CL-1.1.5

For the purposes of CL-1.1.3, a client bank account is an account holding client money of one or more clients in a bank account designated as such in accordance with the terms of agreement with the client/clients.

CL-1.1.6

Client bank accounts may only be opened with licensed retail banks, after being subject to due diligence by the Islamic bank licensee.



MODULE	CL:	Client Assets
CHAPTER	CL-1:	Client Asset Protection

CL-1.1 Client Asset Protection Rules (continued)

Transfer of Money to Eligible Third Parties

CL-1.1.7

An Islamic bank licensee may only pay, or permit to be paid, client money into an account which is not a client bank account if the person holding the account is an eligible third party.

CL-1.1.8

Eligible third parties are recognised exchanges, clearing houses, trustees and third party intermediaries (such as brokers), that are duly authorised or licensed by the appropriate regulatory oversight body to conduct investment activities.

CL-1.1.9

An Islamic bank licensee may allow an eligible third party to hold or control client money, only if the Islamic bank licensee transfers the client money:

- (i) For the purpose of a transaction for a client through or with that eligible third party;
- (ii) To meet a client's obligations to provide collateral for a transaction; or where the client has been notified in writing that the client money may be transferred to the other person.

CL-1.1.10

For the purposes of Paragraph CL-1.1.7, an Islamic bank licensee must assess the suitability of an eligible third party before allowing it to hold or control client money.



MODULE	CL: Client Assets
CHAPTER	CL-1: Client Asset Protection

CL-1.1 Client Asset Protection Rules (Continued)

CL-1.1.11

An Islamic bank licensee must not hold money other than client money in a client bank account unless it is:

- (a) A minimum sum required to open the account or to keep it open;
- (b) Money temporarily held in the account in accordance with the mixed remittance rule stated in Paragraph CL-1.1.13; or
- (c) Profit credited to the account which exceeds the amount due to clients as profit and which has not yet been withdrawn by the Islamic bank licensee.

CL-1.1.12

If it is prudent to do so to ensure that client money is protected, an Islamic bank licensee may pay into a client bank account money of its own, and that money will then become client money for the purposes of the client asset protection rules until the Islamic bank licensee retrieves it.

CL-1.1.13

If an Islamic bank licensee receives a mixed remittance (that is part client money and part other money), it must:

- (a) Pay the full sum into a client bank account; and
- (b) Withdraw the money that is not client money out of the client bank account within one business day.

CL-1.1.14

An Islamic bank licensee should not hold excess client money in its client transaction accounts with intermediate brokers, settlement agencies and over the counter (OTC) counterparties; it should be held in a client bank account.

Reconciliation

CL-1.1.15

An Islamic bank licensee must ensure that a system is implemented to perform reconciliations of both client bank accounts and eligible third party accounts in which client money is held. These reconciliations must be carried out on a regular basis, sufficient to ensure the accuracy of its records (but at a minimum, on a monthly basis as at the last business day of each calendar month).

CL-1.1.16

An Islamic bank licensee must complete the reconciliations required under Rule CL-1.1.15 within 10 business days of the date to which the reconciliation relates.

CL-1.1.17

An Islamic bank licensee must complete a reconciliation between the individual ledger balances and client bank accounts/third party balances subject to the deadlines outlined in Paragraphs CL-1.1.15 and CL-1.1.16.



MODULE	CL:	Client Assets
CHAPTER	CL-1:	Client Asset Protection

CL-1.1 Client Asset Protection Rules (Continued)

CL-1.1.18

In respect of reconciliation, the Islamic bank licensee must ensure that unresolved differences, shortfalls and excess balances are investigated and, where applicable, corrective action is taken as soon as is practicable.



MODULE	CL: Client Assets
CHAPTER	CL-1: Client Asset Protection

CL-1.2 Financial Instruments Lending Rules

CL-1.2.1

An Islamic bank licensee must not undertake or otherwise engage in financial instruments lending activity for a client unless the Islamic bank licensee has obtained the consent of the CBB and the client.

CL-1.2.2

If a safe custody investment belonging to a client is used for financial instruments lending activity, the Islamic bank licensee must ensure that:

- (a) Relevant collateral is provided by the borrower in favour of the client;
- (b) The current realisable value of the safe custody financial instrument and of the relevant collateral is monitored daily; and
- (c) The Islamic bank licensee provides relevant collateral to make up the difference where the current realisable value of the collateral falls below that of the safe custody financial instrument, unless otherwise agreed in writing by the client.

CL-1.2.3

If safe custody financial instruments of more than one client are held together, none of those safe custody financial instruments may be used for a financial instruments lending activity unless:

- (a) All of those clients have consented to their safe custody financial instrument being used for that activity; or
- (b) The Islamic bank licensee has adequate systems and procedures in place to ensure that only safe custody financial instruments belonging to clients who have given their consent are used for financial instruments lending activity.



MODULE	CL:	Client Assets
CHAPTER	CL-1:	Client Asset Protection

CL-1.3 Client Notification

CL-1.3.1

An Islamic bank licensee that holds client assets for a client must send a statement of all client assets held by the Islamic bank licensee to its client at least quarterly or as often as agreed with that client.

CL-1.3.2

The statement of client assets referred to in Paragraph CL-1.3.1 must:

- (a) Identify any clients' assets which have been provided as collateral;
- (b) Identify any client assets which have been lent; and
- (c) Show any movement of client assets based on either trade date or settlement date clearly and consistently.

CL-1.3.3

An Islamic bank licensee may include the information required in paragraph CL-1.3.1 in any periodic statement provided by the Islamic bank licensee to the client, or by other separate documents, as long as all sets of information:

- (a) Are prepared in relation to the same date and period; and
- (b) Are delivered to the client within a reasonable period.



MODULE	CL:	Client Assets
CHAPTER	CL-1:	Client Asset Protection

CL-1.4 Record-keeping

CL-1.4.1

Islamic bank licensees must ensure that proper records, sufficient to show and explain the Islamic bank licensee's transactions and commitments in respect of its client assets, are maintained and demonstrate compliance with the provisions of this Module. These records must be retained for a period of a minimum of ten years after they were created, unless otherwise required by law.

CL-1.4.2

An Islamic bank licensee that holds client assets must:

- (a) Check its record-keeping and client asset procedures regularly; and
- (b) Subject its record-keeping and client asset procedures to an appropriate independent review (refer to Section CL-1.5).

CL-1.4.3

Detailed record-keeping requirements are contained in Module OM (Operational Risk Management) and Module FC (Financial Crime).



MODULE	CL:	Client Assets
CHAPTER	CL-1:	Client Asset Protection

CL-1.5 Auditor Reports

CL-1.5.1 Islamic bank licensees that hold or control client assets (including where it pools financial instruments held for more than one client) must arrange for their external auditor to report on the Islamic bank licensees' compliance with the requirements contained in this Module.

CL-1.5.2 The report must be in the form agreed by the CBB, and must be submitted to the CBB within three months of the Islamic bank licensee's financial year end.

CL-1.5.3 The External Auditor's Report should be in accordance with the agreed upon procedures included in Part B of the Rulebook, as part of the Supplementary Information.

CL-1.5.4 Islamic bank licensees are required to comply with the requirements of Section CL-1.5, effective for the period ending 31 December 2014.



MODULE	CL: Client Assets
CHAPTER	CL-2: Custody Services

CL-2.1 General Requirements

CL-2.1.1 The Rules in this Section apply to Islamic bank licensees that undertake safeguarding of client assets.

CL-2.1.2 An Islamic bank licensee which holds or controls safe custody financial instruments must have systems and controls in place to:

- (a) Ensure the proper safeguarding of such safe custody assets;
- (b) Ensure that such safe custody assets are identifiable and secured at all times; and
- (c) Be able to evidence compliance with the requirements in Section CL-2 to its external auditor and the CBB.

CL-2.1.3 As part of these protections, the custody rules require an Islamic bank licensee to take appropriate steps to protect safe custody assets for which it is responsible. These Rules are designed primarily to restrict the commingling of client and Islamic bank licensee assets and minimise the risk of the client's safe custody assets being used by the Islamic bank licensee without the client's agreement or contrary to the client's wishes, or being treated as the Islamic bank licensee's assets in the event of insolvency.



MODULE	CL:	Client Assets
CHAPTER	CL-2:	Custody Services

CL-2.2 Segregation

CL-2.2.1

An Islamic bank licensee must segregate safe custody financial instruments, including cash, from its own financial instruments except to the extent required by law or permitted by this Module.



MODULE	CL:	Client Assets
CHAPTER	CL-2:	Custody Services

CL-2.3 Reconciliation

CL-2.3.1

An Islamic bank licensee must, as often as is necessary, but at a minimum on a monthly basis, perform a reconciliation of its records of safe custody financial instruments for which it is accountable but which it does not physically hold, with statements obtained from custodians. In the case of dematerialised safe custody financial instruments not held through a custodian, this reconciliation must be performed with statements obtained from the person who maintains the records of legal entitlement.

CL-2.3.2

An Islamic bank licensee must, as often as is necessary, but not less than every six months (or twice in a period of twelve months but at least five months apart), carry out:

- (a) A count of all safe custody financial instruments it physically holds on behalf of clients and reconcile the result of that count with its records of safe custody financial instruments that it physically holds on behalf of clients; and
- (b) A reconciliation between the Islamic bank licensee's records of client holdings, and the Islamic bank licensee's records of the location of safe custody financial instruments.

CL-2.3.3

Wherever possible, an Islamic bank licensee should ensure that the reconciliations are carried out by a person (for example an employee of the Islamic bank licensee) who is independent of the production or maintenance of the records to be reconciled.



MODULE	CL: Client Assets
CHAPTER	CL-2: Custody Services

CL-2.4 Client Statements

CL-2.4.1

Before Islamic bank licensees provide safe custody services to a client, they must notify the client as to the appropriate terms and conditions which apply to this service. These must cover, at a minimum, the following matters, wherever applicable:

- (a) The registration of the safe custody financial instruments, if these are not registered in the Islamic bank licensee clients' name;
- (b) The extent of the Islamic bank licensees' liability in the event of default by a custodian, except that the Islamic bank licensee must accept the same level of responsibility to its client for any nominee company controlled by the Islamic bank licensee or its affiliated company as for itself and may not disclaim responsibility for losses arising from the fraud, wilful default or negligence of the Islamic bank licensee;
- (c) The circumstances in which the Islamic bank licensee may realise a safe custody financial instrument held as collateral to meet the client's liabilities;
- (d) The claiming and receiving of dividends, profit payments and other entitlements accruing to the client;
- (e) Dealing with takeovers, other offers or capital reorganisations and exercising voting, conversion and subscription rights;
- (f) Arrangements for the distribution of entitlements to shares and any other benefits arising from corporate events, where client balances have been pooled;
- (g) Arrangements for the provision of information to the client relating to the safe custody financial instruments which the Islamic bank licensee, or its nominee company, holds on behalf of the client;
- (h) How often a statement of custody assets will be sent to the client and the basis on which the assets shown on the statement are valued;
- (i) Fees and costs for safe custody services to the extent that they are not notified to the client elsewhere; and
- (j) If the firm intends to pool a safe custody financial instrument with that of one or more other clients, notification of its intention and an explanation of the effects of pooling to that client.



MODULE	CL: Client Assets
CHAPTER	CL-2: Custody Services

CL-2.4 Client Statements (continued)

CL-2.4.2

All statements produced by or on behalf of an Islamic bank licensee must list all safe custody assets held for the client and for which the Islamic bank licensee is accountable and:

- (a) Identify any safe custody financial instruments registered in the client's own name separately from those registered in any other name;
- (b) Identify any safe custody assets which are being used as collateral or have been pledged to third parties, separately from any custody assets;
- (c) Show the market value of any collateral held, as at the date of the statement;
- (d) Base the statement on either trade date or settlement date information for cash balances and safe custody investment and notify the basis to the client; and
- (e) Details of movements of each client asset.



MODULE	CL: Client Assets
CHAPTER	CL-2: Custody Services

CL-2.5 Third Party Custodians

CL-2.5.1 An Islamic bank licensee must require that if a safe custody financial instrument is recorded in an account with a custodian, the custodian makes it clear in the title of the account that the safe custody financial instrument belongs to one or more clients of the Islamic bank licensee.

CL-2.5.2 Before an Islamic bank licensee recommends a third party custodian to a client it must undertake an appropriate risk assessment of that custodian.

CL-2.5.3 An Islamic bank licensee that holds safe custody financial instruments with a custodian or recommends custodians to clients, is expected to establish and maintain a system for assessing the appropriateness of its selection of the custodian and to assess the continued appointment of that custodian periodically as often as is reasonable in the relevant market. The Islamic bank licensee is also expected to make and retain a record of the grounds on which it satisfies itself as to the appropriateness of its selection or, following a periodic assessment, continued appropriateness of the custodian.

CL-2.5.4 In undertaking an appropriate risk assessment of the custodian in accordance with Paragraph CL-2.5.2, Islamic bank licensees may take into account any or all of the following:

- The expertise and market reputation of the custodian, and once a safe custody financial instrument has been lodged by the firm with the custodian, the custodian's performance of its services to the Islamic bank licensee;
- The arrangements for holding and safeguarding financial instruments;
- An appropriate legal opinion as to the protection of custody assets in the event of insolvency of the custodian;
- Current industry standard reports;
- Whether the custodian is regulated and by whom;
- The capital or financial resources of the custodian;
- The credit rating of the custodian; and
- Any other activities undertaken by the custodian and, if relevant, any affiliated company.



MODULE	CL:	Client Assets
CHAPTER	CL-2:	Custody Services

CL-2.6 Record-keeping

CL-2.6.1

An Islamic bank licensee must ensure that proper records of the custody assets which it holds or receives, or arranges for another to hold or receive, on behalf of the client, are made and retained for a period of ten years after the account is closed.

CL-2.6.2

For the purpose specified in Paragraph CL-2.6.1, an Islamic bank licensee must maintain proper records in relation to a client account. These records must capture at a minimum the following details:

- (a) The name of the account;
- (b) The account number;
- (c) Type of account;
- (d) Type of asset;
- (e) The location of the account;
- (f) Whether the account is currently opened or closed;
- (g) Details of assets held and movements in each category account; and
- (h) The date of opening and where applicable, closure.

CL-2.6.3

Detailed record-keeping requirements are contained in Module OM (Operational Risk Management) and Module FC (Financial Crime).



MODULE	CL:	Client Assets
CHAPTER	CL-3:	Collateral

CL-3.1 General Requirements

CL-3.1.1 An Islamic bank licensee must take care to establish and maintain appropriate systems and controls when it receives or holds assets as collateral in connection with securing a client obligation to it.

CL-3.1.2 The purpose of this Section is to ensure that an appropriate level of protection is provided for those client assets over which a client gives an Islamic bank licensee the right to use, subject only to an obligation to return equivalent assets to the client upon satisfaction of the client's obligation to the Islamic bank licensee.

CL-3.1.3 This Chapter does not apply to an Islamic bank licensee that has only a bare security interest (without rights to hypothecate) in the client asset. In such circumstances, the Islamic bank licensee should comply with the custody rules or client asset protection rules as appropriate.

CL-3.1.4 For the purpose of this Section only, a bare security interest in the client's asset gives an Islamic bank licensee the right to realise the assets only on a client's default and without the right to use those assets other than in default.

CL-3.1.5 Differing levels of regulatory protection to the assets form the basis of the two different types of arrangement described in Paragraphs CL-3.1.2 and CL-3.1.3. Under the bare security interest arrangement, the asset continues to belong to the client until the Islamic bank licensee's right to realise that asset crystallises. But under a "right to use arrangement", the client has transferred to the Islamic bank licensee the legal title and associated rights to the asset, so that when the bank exercises its right to treat the asset as its own, the asset ceases to belong to the client and in effect becomes the Islamic bank licensee's asset and is no longer in need of the full range of client asset protection.



MODULE	CL: Client Assets
CHAPTER	CL-3: Collateral

CL-3.2 Collateral held by Third Parties

CL-3.2.1

An Islamic bank licensee may only permit a client's collateral to be held by a third party where:

- (a) It has reasonable grounds to believe that the third party is suitable to hold that collateral; and
- (b) The Islamic bank licensee is able to demonstrate to the CBB's satisfaction the grounds upon which it considers the third party to be suitable to hold clients' collateral.

CL-3.2.2

Before an Islamic bank licensee deposits client assets with a third party it must notify the third party that:

- (a) The collateral does not belong to the Islamic bank licensee; and
- (b) The third party is not entitled to claim any lien or right of retention or sale over the collateral except to cover the obligations of the client which gave rise to that deposit, pledge, charge or security arrangement or any charges relating to the administration or safekeeping of the collateral.



MODULE	CL: Client Assets
CHAPTER	CL-3: Collateral

CL-3.3 Record-keeping

CL-3.3.1

An Islamic bank licensee that receives or holds client assets under an arrangement in this Chapter and which exercises its right to treat the assets as its own must ensure that it maintains adequate records to enable it to meet any future obligations including the return of equivalent assets to the client.

CL-3.3.2

Detailed record-keeping requirements are contained in Module OM (Operational Risk Management) and Module FC (Financial Crime).

Client Reports

CL-3.3.3

An Islamic bank licensee which holds assets under an arrangement described in this Chapter must (at least every six months or at other intervals as agreed in writing with the client) send to the client a statement listing those assets and their market/fair value as at the date of reporting.

CL-3.3.4

The statement sent to the client must be prepared and despatched to the client within one calendar month of the date of reporting.



MODULE	CL: Client Assets
CHAPTER	CL-4: Mandates

CL-4.1 Mandates

CL-4.1.1

This Section applies to an Islamic bank licensee in respect of any written mandate from a client under which the Islamic bank licensee may control a client's assets or liabilities.

Systems and Controls

CL-4.1.2

An Islamic bank licensee that holds mandates of the sort described in Paragraph CL-4.1.1 must establish and maintain adequate records and internal controls in respect of its use of the mandates, which must include:

- (a) An up-to-date list of the mandates and any conditions placed by the client or the Islamic bank licensee's management on their use;
- (b) A record of all transactions entered into using the mandates, and internal controls to ensure that they are within the scope of authority of the person and the Islamic bank licensee entering into the transaction;
- (c) The details of the procedures for the giving and receiving of instructions under the authority; and
- (d) Where the Islamic bank licensee holds a passbook or similar documents belonging to the client, internal controls, for the safeguarding (including against loss, unauthorised destruction, theft, fraud or misuse) of any passbook or similar document belonging to the client held by the Islamic bank licensee.



MODULE	CL: Client Assets
CHAPTER	CL-5: Third Party Related Distribution

CL-5.1 General Requirements

CL-5.1.1

The third party related distribution rules under Chapter CL-5 apply to Islamic bank licensees that hold client money with a third party who becomes insolvent (“third party related distribution event”).



MODULE	CL: Client Assets
CHAPTER	CL-5: Third Party Related Distribution

CL-5.2 Third Party Related Distribution

CL-5.2.1

Upon the insolvency of a third party to which client money has been transferred or is held, the Islamic bank licensee continues to be accountable to the client in a fiduciary capacity. However, consistent with a fiduciary's responsibility (whether as an agent or trustee) for third parties under law, an Islamic bank licensee will, generally, not be held responsible for a shortfall in the return on invested client money unless the general laws in the Kingdom of Bahrain or in the relevant jurisdiction requires otherwise.

CL-5.2.2

To comply with its duties, the Islamic bank licensee must show proper care:

- (a) In the selection of a third party;
- (b) When monitoring the performance of the third party; and
- (c) When notifying clients in its terms of business the distribution rules applicable in the event of a third party distribution event.

CL-5.2.3

Following the occurrence of a third party-related distribution event in relation to a designated bank or eligible third party:

- (a) The Islamic bank licensee must, as soon as is practicable, make and retain a record of each client's share of the shortfall and must promptly notify the amount of the shortfall to the affected clients (except where the Islamic bank licensee chooses to make good the shortfall);
- (b) Unless the Islamic bank licensee chooses to make good any shortfalls in the client money balances held (or which should have been held) in the client bank accounts, or third party accounts held by an Islamic bank licensee with the relevant designated bank or eligible third party, such shortfalls shall be borne by clients, in proportion to the respective value of their client money balances; and
- (c) Client money received after the third party-related distribution event:
 - (i) Must not be transferred to the designated bank or eligible third party which has suffered the third party-related distribution event unless this is on the specific instructions of the client (given after the occurrence of the third party-related distribution event) in order to settle an obligation of that client to that designated bank or eligible third party; and



MODULE	CL: Client Assets
CHAPTER	CL-5: Third Party Related Distribution

CL-5.2 Third Party Related Distribution (continued)

- (ii) Must, subject to (i), be placed in a separate client bank account that has been opened with a different designated bank after the third party related distribution event has occurred.

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MODULE	CL: Client Assets
CHAPTER	CL-6: Appendix

CL-6.1 Appendix

CL-6.1.1 The minimum information that should be assessed by an Islamic bank licensee to determine the suitability of an eligible third party should include but not be limited to the following information:

- (a) The eligible third party's credit rating, capital and financial resources;
- (b) The regulatory and insolvency regimes of the jurisdiction in which the eligible third party is located;
- (c) The eligible third party's reputation;
- (d) Its regulatory status and history; and
- (e) The other members of the eligible third party's group and their activities.

CL-6.1.2 The minimum information that should be notified by the Islamic bank licensee to its client in respect of its holdings of that client's assets includes but is not limited to the following:

- (a) The basis and terms governing the way in which the client assets will be held;
- (b) That the client is subject to the protection conferred by the client asset protection rules and as a consequence:
 - (i) The client assets will be held separately from assets belonging to the Islamic bank licensee; and
 - (ii) In the event of an Islamic bank licensees' insolvency, winding-up or other similar event, the client's assets will be subject to the Laws of the Kingdom of Bahrain.
- (c) Whether profit is payable to the client and, if so, the terms and frequency of such payments;
- (d) That, notwithstanding that the client assets will benefit from the protections conferred by the client asset protection rules, the client will still be taking unsecured credit risk on any bank or third party with whom the Islamic bank licensee places the client assets that it holds;
- (e) If applicable, that the client assets may be held in a jurisdiction outside the remit of the CBB and that the market practices, insolvency and legal regimes applicable in that jurisdiction may differ from the regime applicable in the CBB;
- (f) If applicable, that the Islamic bank licensee holds or intends to hold the client money in a client bank account with a designated bank or in a third party account with an eligible third party which is in the same group as the Islamic bank licensee and the identity of the designated bank or eligible third party concerned;
- (g) If applicable, details about how any client money arising out of Islamic financial business is to be held; and
- (h) Details of any claims or set offs which the Islamic bank licensee may have in client assets held on behalf of the client in satisfaction of a default by the client or otherwise, and any rights which the Islamic bank licensee may have to closeout or liquidate contracts or positions in respect of any of the client assets, without the client's prior instruction or consent.