Applicable to—
1. Licensed banks
2. Licensed investment banks
3. Licensed Islamic banks
4. Licensed insurers
5. Licensed takaful operators
6. Financial holding companies
7. Prescribed development financial institutions
This exposure draft sets out—

(a) the Bank’s approval requirements for a financial institution to establish or acquire a subsidiary, or hold a material interest in any corporation in or outside Malaysia; and

(b) the scope of permissible equity investment in non-financial corporations by a financial institution.

The Bank invites written feedback on the proposals in this exposure draft, including suggestions for issues or areas to be clarified or elaborated further and any alternative proposals that the Bank should consider. To facilitate the Bank’s assessment, please support each comment with clear rationale, accompanying evidence or illustrations where appropriate.

In addition to providing general feedback, financial institutions are required to provide responses to the specific questions set out in this exposure draft.

Responses must be submitted to the Bank by 28 February 2019 to—

Pengarah
Jabatan Dasar Kewangan Pruden
Bank Negara Malaysia
Jalan Dato’ Onn
50480 Kuala Lumpur
Email: pfpconsult@bnm.gov.my

Electronic submission is encouraged. Submissions received may be made public unless confidentiality is specifically requested for the whole or part of the submission.

In the course of providing your feedback, you may direct queries to the following officers at 03-2698 8044:
1. Zafirah Adrus at zafirah@bnm.gov.my (ext: 7487); or
2. Nishyodhan Balasundram at nishyodhan@bnm.gov.my (ext: 7534).
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PART A OVERVIEW

1 Introduction

1.1 Section 85 of the Financial Services Act 2013 (FSA), section 97 of the Islamic Financial Services Act 2013 (IFSA) and section 25 of the Development Financial Institutions Act 2002 require a financial institution to obtain the Bank's approval for the establishment or acquisition of a subsidiary, or the acquisition or holding of material interest in a corporation. The approval requirement is intended to ensure that such acquisitions do not expose a financial institution to undue contagion risk as a result of the association with these corporations or hinder effective supervision by the Bank. The Bank generally limits a financial institution from investing in non-financial corporations, given the inherent differences in the nature of risks involved and to ensure that the focus of the financial institution is not diverted from its core financial business. In addition, the approval regime also complements the existing prudential safeguards to address risks arising from the equity exposures, including capital adequacy requirements and prudential limits.

1.2 The transformation of the financial landscape in recent years has seen an increased integration between e-commerce activities and e-payments services. The growing interest in integrated digital ecosystems offered by these corporations has further spurred financial institutions to either collaborate with, or hold material equity interest in, these corporations in order to realise business synergies. In light of these developments, a review of the current requirement on equity investments is necessary to ensure that financial institutions continue to remain relevant, competitive and are able to offer a fuller range of services to their customers. Moving away from a “one-size-fits-all” limit on equity exposures allows greater flexibility for financial institutions to manage their equity exposures, and facilitates business expediency. The Bank therefore expects greater oversight by the board in ensuring that the financial institution clearly articulates the equity investment risk appetite and determines its own internal limits, consistent with the institution's business strategy, level of expertise and risk management capabilities.

1.3 This policy document therefore sets out the approval and notification requirements relating to equity interests held by financial institutions in corporations. In addition, prudential safeguards are introduced to address risks from equity exposures, including a targeted prudential limit which is intended to replace existing aggregate limits on equity-related exposures applied to banking institutions specified under the Guidelines on Investment in Shares, Interest-in-Shares and Collective Investments Schemes (IIS) and IIS for Islamic Banks.

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1 Non-financial corporations refer to corporations that are not financial or financial-related corporations. Examples of financial and financial-related corporations are set out in Appendix 1.
2 Applicability

2.1 This policy document is applicable to financial institutions as defined in paragraph 5.2.

2.2 In the case of a financial institution which operates in Malaysia as a branch of a foreign institution, the requirements in this policy document shall apply only in respect of the Malaysian operations of the branch.

2.3 The requirements in paragraphs 8.6, 9, 10 and 11 shall not apply to a prescribed development financial institution.

3 Legal provisions

3.1 This policy document is specified pursuant to–
(a) section 47(1), section 85(2), section 114(2), section 143 and section 266 of the Financial Services Act 2013 (FSA);
(b) section 57(1), section 97(2), section 126(2), section 155 and section 277 of the Islamic Financial Services Act 2013 (IFSA); and
(c) section 25(5), section 41(1), and section 126 of the Development Financial Institutions Act 2002 (DFIA).

4 Effective date

4.1 This policy document comes into effect on [date of publication of final policy document], save for the transitional arrangements as set out in paragraph 11.

5 Interpretation

5.1 The terms and expressions used in this policy document shall have the same meanings assigned to them in the FSA, IFSA or DFIA, as the case may be, unless otherwise defined in this policy document.

5.2 For the purpose of this policy document–

“S” denotes a standard, an obligation, a requirement, specification, direction, condition and any interpretative, supplemental and transitional provisions that must be complied with. Non-compliance may result in enforcement action;

“G” denotes guidance which may consist of statements or information intended to promote common understanding and advice or recommendations that are encouraged to be adopted;

“financial institution” refers to a licensed person, prescribed development financial institution and a financial holding company;

“indirect interest” refers to material interest acquired or held by a subsidiary of a financial institution;
“indirect acquisition” or “indirect holding” refers to acquisition or holding of material interest by any subsidiary of a financial institution; and

“material interest” refers to 20% or more of the voting shares or voting power in a corporation.

6 Related legal instruments and policy documents

6.1 This policy document must be read together with other relevant legal instruments and policy documents that have been issued by the Bank, in particular—
(a) Approach to Regulating and Supervising Financial Groups;
(b) Capital Adequacy Framework (Basel II – Risk-Weighted Assets);
(c) Capital Adequacy Framework (Capital Components);
(d) Capital Adequacy Framework for Islamic Banks (Capital Components);
(e) Capital Adequacy Framework for Islamic Banks (Risk-Weighted Assets);
(f) Risk-Based Capital Framework for Insurers;
(g) Risk-Based Capital Framework for Takaful Operators;
(h) Single Counterparty Exposure Limit; and
(i) Single Counterparty Exposure Limit for Islamic Banking Institutions.

7 Policy documents superseded

7.1 This policy document supersedes the following guidelines and policy documents:
(a) Guidelines on Investment in Shares, Interest-in-Shares and Collective Investment Schemes (IIS) issued on 10 October 2008; and
(b) Guidelines on Investment in Shares, Interest-in-Shares and Collective Investment Schemes (IIS) for Islamic Banks issued on 29 June 2007.
PART B  POLICY REQUIREMENTS

8  Approval and notification requirements

S 8.1  A financial institution must obtain the Bank’s prior written approval for—
(a)  the establishment or acquisition of a subsidiary; or
(b)  any direct or indirect acquisition or holding of—
   (i)  material interest in a corporation; or
   (ii) 33% or more of the voting shares or voting power in a corporation.

G 8.2  In assessing the application, the Bank will have regard to the following factors:
(a)  whether the acquisition would complement or facilitate the business of the financial institution;
(b)  impact of the proposed acquisition on the risk profile and resources of the financial institution, taking into account the financial capacity and risk management capabilities, readiness of existing infrastructure and resources to manage the proposed acquisition; and
(c)  impact of the proposed acquisition on the Bank’s ability to supervise and implement corrective measures, including on the orderly resolution of the financial institution.

S 8.3  An application for approval must be supported by the submission of the following documents:
(a)  a copy of the relevant approval by an approving authority as determined under the financial institution’s internal governance framework on the proposed acquisition, including—
   (i)  deliberation on the business case for the acquisition and the financial institution’s assessment of the—
      (A)  impact of the acquisition to the financial institution’s risk profile, financial condition, business continuity, and recovery and resolution plans;
      (B)  readiness of existing infrastructure, internal controls and governance arrangements to manage the risk arising from the proposed acquisition; and
      (C)  risk mitigation measures and remedial actions (including exit strategies) in the event of material deterioration in the performance of the investee corporation;
   (ii)  any representation of the financial institution in the board or management of the investee corporation;
   (iii)  whether there is any restriction in terms of the financial institution’s ability to obtain information and documents of the investee corporation; and

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2  For example, where a financial institution has obtained the Bank’s approval to acquire or hold a material interest in a corporation (e.g. at 20%) under paragraph 8.1 (b)(i), the financial institution must also obtain the Bank’s approval under paragraph 8.1(b)(ii) if the financial institution increases its shareholding to or exceeding 33% (e.g. to 35%).
(iv) any centralised and shared services or functions between the financial institution and the investee corporation;

(b) amount (in Ringgit Malaysia) and type of consideration for the acquisition\(^3\), including details as to how the acquisition will be funded and the basis for the valuation;

(c) where relevant, details of other interest-in-shares\(^4\) held in the investee corporation;

(d) details of the investee corporation, including–
   (i) past financial records and future business plans;
   (ii) shareholding structure depicting legal and beneficial ownership; and
   (iii) organisational structure including information on composition of the board and management team;

(e) where relevant, a copy of the Shariah Committee’s decision that the proposed equity investment in the investee corporations is in compliance with Shariah; and

(f) any other information as may be required by the Bank.

S 8.4 Where the Bank’s approval has been obtained under paragraph 8.1, the financial institution must notify the Bank of any subsequent acquisition where it results in an increase in shareholding at multiples of five (5) per cent above the material interest threshold, at least one month before the proposed acquisition. The notification must be supported by the submission of the following documents:

(a) details of the investee corporation;

(b) proposed increase in, and the resultant level of, shareholding in the investee corporation; and

(c) amount (in Ringgit Malaysia) and type of consideration for the acquisition\(^3\), including details as to how the acquisition will be funded and the basis for the valuation.

A summary of the notification required at the relevant thresholds is provided in Appendix 2.

S 8.5 Notwithstanding paragraph 8.4, the Bank may require a financial institution to obtain its written approval prior to any subsequent increase in the direct or indirect interest beyond the material interest threshold. In considering this, the Bank shall have regard to the following:

(a) the impact of the subsequent increase on the financial or capital position of the financial institution and the effectiveness of the financial institution’s risk management capabilities and internal controls to manage risks emanating from such interests, particularly for interest in corporations outside of Malaysia; or

(b) the impact of the performance of the investee corporation on the ongoing safety and soundness of the financial institution.

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\(^3\) For example, cash, in-kind, equity or assumption of liabilities.

\(^4\) Refers to any right to purchase or receive shares of a corporation e.g. equity options, warrants, convertible loan stocks etc.
8.6 The Bank will not consider an application where the investee corporation will be, or is carrying on, any of the following activities:
(a) manufacturing, processing, refining or otherwise altering goods;
(b) direct selling of non-financial services and products to consumers;\(^5\)
(c) property development;
(d) provision of hotel and resort facilities to non-employees; and
(e) management of properties that are not held by the financial institution or any of its subsidiaries.

8.7 The prohibition in paragraph 8.6 however does not apply to material interest held in non-financial corporations arising from the following:
(a) in satisfaction of debts or foreclosure of shares pledged as collateral to the financial institution;
(b) debt-to-equity conversion schemes;
(c) holding of shares arising from equity underwriting activities;
(d) interest held arising from fund or asset management business (including private equity, venture capital or unit trust investments);\(^6\) and
(e) Islamic financial services.

8.8 An application under paragraph 8.1 and notification under paragraph 8.4 must be submitted to Jabatan Penyeliaan Konglomerat Kewangan, Jabatan Penyeliaan Perbankan, or Jabatan Penyeliaan Insurans dan Takaful, as the case may be.

9 Prudential limits and maximum holding period

Aggregate limit on non-financial investments

9.1 A financial institution’s direct and indirect acquisition or holding of interest in non-financial corporations, including those held below the material interest threshold, must not exceed 10%\(^7\) of its Tier 1 Capital\(^8\).

Question 1
Please detail out specific challenges your institution may face in meeting the requirements in paragraph 9.1.

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\(^{5}\) For the avoidance of doubt, this does not prohibit a financial institution from acquiring or holding interest in corporations that operate digital platforms which solely match buyers and sellers of goods and services.

\(^{6}\) For the avoidance of doubt, a financial institution is permitted to acquire or hold interest in non-financial corporations arising from private equity or venture capital activities.

\(^{7}\) For the avoidance of doubt, a financial institution shall continue to aggregate its equity exposures with other exposures in the computation of the prudential limits as set out in the policy documents on Single Counterparty Exposure Limit and the Single Counterparty Exposure Limit for Islamic Banking Institutions, as the case may be.

\(^{8}\) As defined in the policy documents on Capital Adequacy Framework (Capital Components), Capital Adequacy Framework for Islamic Banks (Capital Components), Risk-Based Capital Framework for Insurers, or Risk-Based Capital Framework for Takaful Operators, as the case may be.
9.2 A financial institution shall comply with the prudential limits at the entity\(^9\) and consolidated levels.

9.3 The 10% limit shall exclude—
(a) interests which are deducted in the calculation of Tier 1 Capital;
(b) interest in non-financial corporations which are acquired or held arising from the provision of financial services as set out in paragraph 8.7; and
(c) interest in non-financial corporations which are acquired or held for the purpose of trading.

**Maximum holding period**

9.4 Where the material interest in a non-financial corporation is acquired or held arising from the provision of financial services as set out in paragraphs 8.7(a) to 8.7(d), a financial institution must not hold these interests beyond the holding period as set out below:

<table>
<thead>
<tr>
<th>Types of equity interest</th>
<th>Maximum holding period</th>
</tr>
</thead>
<tbody>
<tr>
<td>In satisfaction of debts and debt-to-equity conversion schemes</td>
<td>12 months from date of acquisition of equity interest</td>
</tr>
<tr>
<td>Equity underwriting activities</td>
<td>30 days after issuance date of the shares</td>
</tr>
<tr>
<td>Fund management activities</td>
<td>12 months upon liquidation of fund</td>
</tr>
</tbody>
</table>

For the avoidance of doubt, the maximum holding period shall not apply in respect of material interest in a non-financial corporation that is acquired or held arising from the provision of Islamic financial services as set out in paragraph 8.7(e).

9.5 A financial institution must deduct any material interest held after the maximum holding period in the calculation of its CET1 Capital\(^{10}\).

**Annual reporting requirement**

10.1 A financial institution must submit on an annual basis, its holdings of equity interests for the 31 December reporting position using the reporting template attached, within 30 calendar days.

10.2 The electronic copy of the reporting template must be submitted to Jabatan Penyeliaan Konglomerat Kewangan, Jabatan Penyeliaan Perbankan, or Jabatan Penyeliaan Insurans dan Takaful, as the case may be. Unless otherwise specified by the Bank, submission of the printed copy of the reporting template is not required.

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\(^9\) A financial holding company is only required to comply with the limit at the consolidated level.

\(^{10}\) In the case of a licensed insurer/takaful operator, this refers to Tier 1 Capital.
### Question 2
Please submit a complete list of your institution’s equity holdings for reporting position as at 30 June 2018, using the reporting template attached.

### 11  Transitional arrangements

#### S 11.1
A financial institution must ensure that all existing holdings of equity interest in non-financial corporations that exceed the 10% limit specified under paragraph 9.1 as at the effective date of this policy document must be brought into compliance by [1 year after effective date].
APPENDIX 1  EXAMPLES OF FINANCIAL AND FINANCIAL-RELATED CORPORATIONS

1.  A financial corporation includes, but is not limited to, a corporation engaged in any of the following:
   (a) licensed business, approved business or registered business as defined under the FSA or IFSA or corresponding businesses for corporations outside Malaysia;
   (b) Labuan financial business as defined under the Labuan Financial Services and Securities Act 2010 and Labuan Islamic financial business under the Labuan Islamic Financial Services and Securities Act 2010;
   (c) money services business as defined under the Money Services Business Act 2011 or a corresponding business for corporations outside Malaysia;
   (d) regulated activity carried out pursuant to a Capital Markets Services Licence as defined under the Capital Markets and Services Act 2007 or corresponding activities for corporations outside Malaysia;
   (e) moneylending business as defined under the Moneylenders Act 1951 or a corresponding business for corporations outside Malaysia;
   (f) custodial or trust business; or
   (g) operating a financial market infrastructure\(^\text{11}\) that is used for the purposes of clearing, settling, or recording financial transactions.

2.  A financial-related corporation refers to a corporation engaged in services which serve or support the business or operations of corporations within a financial group\(^\text{12}\).

\(^{11}\) Including central securities depositories, payment and securities settlement systems, central counterparties, trade repositories.

\(^{12}\) For example, risk management, finance, legal and compliance, information technology, human resources, security services.
APPENDIX 2 SUMMARY OF APPROVAL AND NOTIFICATION REQUIREMENTS

<table>
<thead>
<tr>
<th>Interest held (%)</th>
<th>Prior notification required?</th>
<th>Prior approval required?</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;20%</td>
<td>✗</td>
<td>✗</td>
<td>Below the material interest threshold</td>
</tr>
<tr>
<td>20%</td>
<td>✗</td>
<td>✓</td>
<td>Material interest threshold</td>
</tr>
<tr>
<td>25%, 30%</td>
<td>✓</td>
<td>✗</td>
<td>Multiple of 5 per cent above the material interest threshold</td>
</tr>
<tr>
<td>33%</td>
<td>✗</td>
<td>✓</td>
<td>Mandatory offer threshold</td>
</tr>
<tr>
<td>35%, 40%, 45%, 50%</td>
<td>✓</td>
<td>✗</td>
<td>Multiple of 5 per cent above the material interest threshold</td>
</tr>
<tr>
<td>&gt;50%</td>
<td>✗</td>
<td>✓</td>
<td>Acquisition of a subsidiary</td>
</tr>
<tr>
<td>55%, 60%, ..., 100%</td>
<td>✓</td>
<td>✗</td>
<td>Multiple of 5 per cent above the material interest threshold</td>
</tr>
</tbody>
</table>

For indirect holdings of voting shares or voting power in a corporation, only those held by a subsidiary of a financial institution would require the Bank’s approval. A financial institution must also notify the Bank for any subsequent increase in indirect interest beyond the material interest threshold.