



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Fit and Proper Criteria

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PART A OVERVIEW

1. Introduction

- 1.1. Members of the board and senior management of financial institutions (FIs) provide strategic leadership that influences the financial position and future direction of an FI. As such, persons in these positions must have the necessary qualities, competencies and experience that will allow them to perform the duties and carry out the responsibilities required of the position in the most effective manner.
- 1.2. The performance of the board is in turn substantially influenced by the effectiveness of the company secretary in facilitating the efficient conduct of board processes and meaningful interaction of the board with senior management. As such, it is important that the board is assisted by a qualified and competent company secretary.

Policy objective

- 1.3. The expectations on the suitability of key responsible persons and the company secretary are an extension of the corporate governance framework and are aimed at ensuring that these persons have the integrity and competence required to perform their roles.

Scope of policy

- 1.4. This policy document specifies:
- (i) the definition of key responsible persons within an FI;
 - (ii) the conditions to be observed in the assessment and appointment of key responsible persons and the company secretary;
 - (iii) the responsibilities of the board, Nominating Committee (NC) and FIs in establishing and applying fit and proper policies and procedures; and
 - (iv) the minimum factors that need to be considered in assessing whether or not the fit and proper criteria for key responsible persons and the company secretary have been met.

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2. Applicability

- 2.1. This policy document shall be applicable to all licensed persons and financial holding companies (FHCs).
- 2.2. This policy document shall be read together with:
- (i) the Guidelines on Corporate Governance for Licensed Institutions;
 - (ii) the Guidelines on Corporate Governance for Licensed Islamic Banks;
 - (iii) the Guidelines on Minimum Standards for Prudential Management of Insurers (Consolidated);
 - (iv) the Guidelines on Directorship for Takaful Operators; and
 - (v) the Shariah Governance Framework for Islamic Financial Institutions.

3. Legal provision

- 3.1. This policy document is issued pursuant to:
- (i) section 47(1), 60(1), 143(2) and 266 of the Financial Services Act 2013 (FSA); and
 - (ii) section 29(2)(a)(ii), 57(1), 69(1), 155(2) and 277 of the Islamic Financial Services Act 2013 (IFSA).

4. Effective date

- 4.1. This policy document comes into effect on 30 June 2013.

5. Interpretation

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

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5.2. For the purpose of this policy document –

“**S**” denotes a standard, requirement or specification that must be complied with. Failure to comply may result in one or more enforcement actions;

“**G**” denotes guidance which may consist of such information, advice or recommendation intended to promote common understanding and sound industry practices which are encouraged to be adopted;

“**Financial institution**” means a licensed person and a FHC.

“**Key responsible persons**” refer to persons that are accountable or responsible for the management or oversight of the FI. These comprise:

- (i) directors;
- (ii) members of the Shariah Committee¹;
- (iii) the chief executive officer (CEO); and
- (iv) senior officers².

“**Senior officers**” refer to:

- (i) any person performing a senior management function whose primary or significant responsibility is for the management and performance of significant business activities of the FI, including a person who:
 - a. has the authority over, makes or has substantial influence in making, decisions that affect the whole or a substantial part of the FI’s business;
 - b. is principally accountable or responsible, whether solely or jointly with other persons, for implementing and enforcing policies and strategies approved by the board; or
 - c. is principally accountable or responsible, whether solely or jointly with other persons, for developing and implementing systems,

¹ Definition (ii) applies to FHCs if there is a single Shariah Committee established within the financial group at the FHC level pursuant to section 30(2) of the IFSA.

² For the avoidance of doubt, senior officers do not include the company secretary.

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internal controls and processes that identify, measure, monitor or control the FI's risks.

- (ii) any person who assumes primary or significant responsibility for key control functions, including a person who is principally accountable or responsible, whether solely or jointly with other persons, for monitoring the appropriateness, adequacy and effectiveness of the FI's internal controls, risk management and compliance systems and processes. This includes the chief internal auditor, chief risk officer/head of risk management, chief compliance officer/head of compliance, chief financial officer and the appointed actuary. It also includes any person who is mainly accountable or responsible for key functions of the institution under a centralised group function or shared services arrangement.

6. Policies superseded

- 6.1. This policy document supersedes the fit and proper policies specified in **Appendix 1**.

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PART B FIT AND PROPER CRITERIA, POLICIES AND PROCEDURES

7. Conditions for assessment and appointment

- S** 7.1. Any person to be appointed as a key responsible person must not be disqualified³ and have been assessed to have met all the fit and proper criteria based on, at minimum, the factors set out in **Part C** of this policy document relating to:
- (i) probity, personal integrity and reputation;
 - (ii) competency and capability; and
 - (iii) financial integrity.
- S** 7.2. Any person to be appointed as a company secretary must not be disqualified⁴ and must be fit and proper for the role of a company secretary based on the factors specified in **Part C** of this policy document relating to:
- (i) probity, personal integrity and reputation; and
 - (ii) competency and capability.

8. Responsibilities of the board and NC

- S** 8.1. The board and NC shall be directly responsible for conducting assessments on the fitness and propriety of directors, members of the Shariah Committee, the CEO and the company secretary and making decisions on their appointments.
- G** 8.2. For senior officers, the board and NC may delegate the responsibility for fit and proper assessments and decision on appointments to the CEO or a designated committee.
- S** 8.3. Where the board and NC delegates to the CEO or a designated committee as specified in paragraph 8.2, the board shall remain accountable for such

³ Pursuant to section 59(1) of the FSA or section 68(1) of the IFSA.

⁴ Pursuant to section 139C of the Companies Act 1965.

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assessments and decisions.

- G** 8.4. Section 61 and 62 of the FSA, and section 70 and 71 of the IFSA sets out the obligations to be observed by the FI in the event that a key responsible person is disqualified or is no longer fit and proper.
- S** 8.5. Where the board or NC has assessed that the company secretary no longer demonstrate the qualities specified in paragraph 7.2, the board must take immediate steps to reduce the risks associated with the person continuing to hold the position and remove the person from such position as soon as practicable. The FI must inform Bank Negara Malaysia (the Bank) in writing of the removal of such person within seven days.

9. Policies and procedures

- S** 9.1. FIs must develop detailed internal policies to be approved by the board on fit and proper procedures and assessment processes relating to key responsible persons and the company secretary. The policies must, at a minimum, address the following:
- (i) governance and operational arrangements for conducting fit and proper assessments, including any delegation of assessment or decision-making authority by the board and NC to the CEO or designated committee for the appointment of senior officers;
 - (ii) specific factors to be considered in assessing whether a person is fit and proper for the position of a key responsible person or company secretary;
 - (iii) steps to be taken to ensure that all persons to be appointed or that has been appointed as a key responsible person or the company secretary understands the FI's internal policies on fit and proper requirements and their obligation to continue to meet the fit and proper criteria set by the Bank on an on-going basis;
 - (iv) avenues to allow any person within the FI to disclose information that

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would be relevant for the assessment of key responsible persons and the company secretary while providing the necessary protection to such person from any discriminatory actions for providing such information;

- (v) procedures to be undertaken to deal with key responsible persons or the company secretary that no longer meets the fit and proper criteria set by the Bank;
- (vi) procedures to ensure all documentation on fit and proper assessments and supporting information are kept confidential, and the period for which the documentation of fit and proper assessments conducted on each person will be retained by the FI; and
- (vii) procedures for maintaining a current list of key responsible persons that are subjected to fit and proper policies and assessment processes.

- S** 9.2. The internal fit and proper policies and procedures shall be periodically reviewed by the board to ensure their relevance and alignment with the organisational needs and structure as well as material changes in the business and risk profile and strategies of the FI.
- S** 9.3. The list of key responsible persons for the FI shall be reviewed by the NC to confirm that the list has included all key positions within the FI.
- S** 9.4. Where the Bank determines that a person fulfils the definition of senior officers as specified by the Bank in this policy document but has not been identified by the FI as a key responsible person, the FI shall include the said person in the list of key responsible persons required under paragraph 9.1(vii) and subject such person to fit and proper assessments and requirements.
- S** 9.5. FIs shall provide all relevant information, as may be required by the Bank, including the list of senior officers within the FI and the records relating to the fit and proper assessment for each person who is subject to the requirements specified in this policy document and the FI's internal policies.

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10. Assessment of fitness and propriety

- S** 10.1. The fit and proper assessments on each person within the scope of this policy document shall be conducted both prior to initial appointments and at regular intervals of at least annually or whenever the FI becomes aware of information that may materially compromise a person's fitness and propriety.
- S** 10.2. The fit and proper assessments must be supported by relevant information in relation to the person being assessed. Where significant reliance is placed on information that is obtained from the person being assessed, and that information is material to the determination of the person's fitness and propriety, the FI shall take reasonable steps to verify the information against independent sources.
- S** 10.3. FIs shall have regard to the factors set out in **Part C** in assessing a person's fitness and propriety. The factors shall be assessed individually, as well as collectively, taking into account their relative importance.
- G** 10.4. Failure to meet one factor on its own does not necessarily mean failure to meet the fit and proper criteria. FIs should consider the specific circumstances surrounding a person's failure to meet specific factors, including the lapse of time since the occurrence of events, other contributing factors and the significance of the event from the perspective of potential risks posed to the FI.
- G** 10.5. The assessment process will involve a good measure of judgement, which should be exercised objectively and always in the best interests of the FI and the sound conduct of the FI's business. Information relevant to the assessment of the fitness and propriety of persons within the scope of this policy document may also vary depending on the degree of their influence and responsibilities in the affairs of the FI. For example, the FI may consider whether there have been material changes in the nature or scope of the responsibilities assumed by an individual which would call for higher standards of competence or judgement in

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order to properly perform the duties associated with the said position, or which may give rise to new conflicts that could impair the individual's performance in the position. Similarly, circumstances which warrant an individual to be considered as fit and proper may differ between positions and institutions.

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PART C MINIMUM ASSESSMENT FACTORS

11. Probity, personal integrity and reputation

- G** 11.1. Probity, personal integrity and reputation are values that can be demonstrated through personal qualities such as honesty, integrity, diligence, independence of mind and fairness. These qualities are demonstrated over time and demand a disciplined and on-going commitment to high ethical standards.
- S** 11.2. In assessing a person's level of probity, integrity and reputation, the board and NC shall consider factors which include, but are not limited to the following:
- (i) whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any impending proceedings or of any investigations, which might lead to such proceedings;
 - (ii) whether the person has contravened any provision made by or under any written law designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice;
 - (iii) whether the person has contravened any of the requirements and standards of a regulatory body, professional body, government or its agencies;
 - (iv) whether the person, or any business in which he has a controlling interest or exercises significant influence, has been investigated, disciplined, suspended or reprimanded by a regulatory or professional body, a court or tribunal, whether publicly or privately;
 - (v) whether the person has engaged in any business practices which are deceitful, oppressive or otherwise improper (whether unlawful or not), or which otherwise reflect discredit on his professional conduct;
 - (vi) whether the person has been dismissed, asked to resign or has resigned from employment or from a position of trust, fiduciary appointment or similar position because of questions about his honesty and integrity;
 - (vii) whether the person has been associated, in ownership or management capacity, with a company, partnership or other business association that

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- has been refused registration, authorisation, membership or a license to conduct any trade, business or profession, or has had that registration, authorisation, membership or license revoked, withdrawn or terminated;
- (viii) whether the person has held a position of responsibility in the management of a business that has gone into receivership, insolvency, or involuntary liquidation while the person was connected with that business;
 - (ix) whether the person has been a director of, or directly concerned in the management of, any corporation which is being or has been wound up by a court or other authority competent to do so within or outside Malaysia;
 - (x) whether the person has been a director of, or directly concerned in the management of any FI, the license of which has been revoked;
 - (xi) whether, in the past, the person has acted unfairly or dishonestly in his dealings with his customers, employer, auditors and regulatory authorities;
 - (xii) whether the person has at any time shown a strong objection or lack of willingness to cooperate with regulatory authorities resulting in a failure or potential failure to comply with legal, regulatory and professional requirements and standards, including compliance with tax requirements and obligations;
 - (xiii) whether a person has contributed significantly to the failure of an organisation or a business unit;
 - (xiv) whether the person has at any time shown strong objection or a lack of willingness to maintain effective internal control systems and risk management practices; and
 - (xv) whether the person is involved in any business or other relationship which could materially pose a conflict of interest or interfere with the exercise of his judgement when acting in the capacity of a key responsible person which would be disadvantageous to the FI or the FI's interests.

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12. Competency and capability

- G** 12.1. Competency and capability are demonstrated by a person who possesses the relevant knowledge, experience and ability to understand the technical requirements of the business, the inherent risks and the management process required to perform his role in a key function in the relevant capacity effectively.
- S** 12.2. In assessing a person's competency and capability, the board and NC shall consider factors which include, but are not limited to the following:
- (i) whether the person has the appropriate qualification, training, skills, practical experience and commitment to effectively fulfil the role and responsibilities of the position and in the case of directors, having regard to their other commitments; and
 - (ii) whether the person has satisfactory past performance or expertise in the nature of the business being conducted.

13. Financial integrity

- G** 13.1. Financial integrity is demonstrated by a person who manages his own financial affairs properly and prudently.
- S** 13.2. In assessing a person's financial integrity, the board and NC shall consider all relevant factors which include, but are not limited to the following:
- (i) whether the person has been and will be able to fulfil his financial obligations, whether in Malaysia or elsewhere, as and when they fall due; and
 - (ii) whether the person has been the subject of a judgement debt which is unsatisfied, either in whole or in part, whether in Malaysia or elsewhere.
- G** 13.3. The fact that a person may be of limited financial means does not in itself, affect the person's ability to satisfy the financial integrity criteria.

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PART D APPENDICES

Appendix 1 List of policies superseded

1. *Guidelines on Fit and Proper for Key Responsible Persons* issued on 10 March 2011.
2. Paragraph 2.49 and 2.50 of the *Guidelines on Corporate Governance for Licensed Institutions* issued on 19 June 2013.
3. Paragraph 2.50 and 2.51 of the *Guidelines on Corporate Governance for Licensed Islamic Banks* issued on 19 June 2013.
4. Paragraph 5.1, 5.2(a) and 5.2(b)(ii) of the *Minimum Standards for Prudential Management of Insurers (Consolidated)* issued on 24 December 2010.
5. Paragraph 2.1, 7.2 and 9.6(b)(iii) of the *Guidelines on Directorship for Takaful Operators* issued on 8 June 2011.
6. Paragraph 1 and 2 of the Disqualification section in Appendix 2 of the *Shariah Governance Framework for Islamic Financial Institutions* issued on 22 October 2010.