

Response to feedback received

Shareholder Suitability

Introduction

The Bank today finalised for issuance the policy document on *Shareholder Suitability*, incorporating the proposals from the concept paper issued in March 2016 and taking into account feedback received during the consultation period.

The Bank received written responses from over 20 respondents during the consultation period. Key comments received and the Bank's responses are provided in the following sections. Other comments and suggestions for clarification have been incorporated in the policy document, where appropriate.

Bank Negara Malaysia
18 August 2016

1. General requirements

- 1.1 The concept paper proposed requirements to ensure that the shareholders of a licensed person are persons of integrity, good reputation, and who maintain a sound financial position in order to minimise the risks they may pose to the safety and soundness of a licensed person.
- 1.2 As part of its ongoing supervision of licensed persons, the Bank will monitor a shareholder's compliance with this policy document. In this regard, the concept paper clarified that the Bank may also consider the circumstances of a shareholder's associate corporations, related corporations, and their beneficial owners (affiliates). Several respondents have highlighted concerns that the extension of the shareholder suitability assessments to include the circumstances of these affiliates would be too wide, particularly in the case of associate corporations which the shareholder may not have control over.
- 1.3 The Bank is of the view that the circumstances of a shareholder, in many cases, cannot be viewed in isolation from its affiliates. This is especially the case in the context of corporate groups where there is greater financial, operational and reputational inter-linkages between entities in the group. These heighten the potential for contagion risks which could undermine the safety and soundness of licensed persons. The potential for transmission of risks are exacerbated where there are strong reputational associations between a shareholder and its affiliate (which may arise through common branding, name sharing, etc.). To this end, the final policy document clarifies that the Bank's shareholder suitability assessments may consider the circumstances of the shareholder's affiliates and the consequential impact they may have on the reputation of the shareholder or the licensed person.
- 1.4 Several respondents also sought clarification as to how they are to ensure compliance by its shareholders with the requirements in the policy document. We wish to clarify that the onus for compliance with the policy document lies with the shareholders of licensed persons. Hence, the shareholders are expected to conduct themselves in a manner that fulfils these requirements on an on-going basis. However, licensed persons are required, pursuant to section 93(1)(b) of the FSA and section 105(1)(b) of the IFSA, to notify the Bank if a shareholder fails, or is likely to fail, to comply with the standards of this policy document.

2. Examples of circumstances set out in paragraphs 8, 9 and 10

- 2.1 The concept paper set out several examples to illustrate circumstances which may be considered to be a breach of the standards in paragraphs 8 (maintaining honesty, integrity and good reputation), 9 (exercise of influence), and 10 (financial soundness). Some respondents were concerned that the examples identified appeared to be very broad. In particular, respondents highlighted that one minor event may be construed as a breach of the policy document.

- 2.2 The Bank wishes to clarify that the circumstances are drafted broadly to reflect the wide range of circumstances that could have a detrimental impact on a licensed person. In assessing whether a shareholder has breached any of the requirements in the policy document, the Bank will consider the matter holistically taking into account the specific circumstances of the shareholder, the significance of a particular event and the risks posed to the licensed person. The Bank's assessment will be underpinned by the objective of ensuring that the safety and soundness of a licensed person will not be undermined.
- 2.3 Clarification was also sought as to what is meant by the phrase "shareholders unduly imposing their interests on the board or senior management" under paragraph 9.4 of the concept paper.
- 2.4 The Bank wishes to clarify that this is an extension of the Bank's expectations in the policy document on *Corporate Governance* where a healthy delineation needs to be maintained between the board and management of a licensed person, and its shareholders to preserve their objectivity in discharging their duties in the interest of the licensed person. While shareholders' interests are reasonably expected to be considered in the affairs of a licensed person through the exercise of their voting rights or board representation, the licensed person has a broader responsibility to consider the interests of a wider spectrum of stakeholders such as the licensed person's depositors or policy owners.