



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Employee Screening Exposure Draft

Applicable to:

1. Licensed banks
2. Licensed investment banks
3. Licensed Islamic banks
4. Licensed insurers
5. Licensed takaful operators
6. Prescribed development financial institutions
7. Financial holding companies

This Exposure Draft sets out the Bank's proposals for employee screening.

The proposals seek to promote an ethical workforce for the financial industry, through strengthening of the employee screening practices of financial institutions and the conditions for meaningful disclosures of employees' conduct histories for informed hiring decisions.

The Bank invites written feedback on the proposed requirements, including suggestions on areas to be clarified and alternative proposals that the Bank should consider. The written feedback should be supported with clear rationale, including accompanying evidence or illustrations where appropriate, to facilitate an effective consultation process.

Responses must be submitted to the Bank by 10 November 2017 to–

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50480 Kuala Lumpur
Email: pfpcconsult@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 03-26988044:

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PART A OVERVIEW

1 Introduction

- 1.1 The highest standard of integrity and professionalism by employees of financial institutions is critical to sustain public confidence in the financial sector. The behaviour of each individual employed by financial institutions may be perceived to be a reflection of the broader state of conduct and culture within the financial sector. Financial institutions are collectively responsible to uphold the integrity of the industry and it is in each institution's interest to conduct a thorough due diligence on the individuals it seeks to employ. The recruitment process presents a critical opportunity for financial institutions to screen appropriate candidates and mitigate the risk of 'rolling bad apples' within the industry. In doing so, financial institutions play an important role in perpetuating a culture of ethical conduct.
- 1.2 The Bank's aim, with the issuance of this policy document, is to promote an ethical workforce for the financial industry. To this end, the proposals seek to improve the transparency of employees' past conduct for informed hiring decisions, by strengthening the screening practices of financial institutions and the conditions for meaningful disclosures within employment references. The financial institution will continue to retain full discretion over its recruitment strategies and final hiring decisions. However, it is important that these are consistent with the desired corporate culture and values the financial institution seeks to promote.

2 Applicability

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

3 Legal provisions

- 3.1 This policy document is issued pursuant to—
- (a) sections 47(1) and 266 of the Financial Services Act 2013 (FSA);
 - (b) sections 57(1) and 277 of the Islamic Financial Services Act 2013 (IFSA); and
 - (c) sections 41(1) and 126 of the Development Financial Institutions Act 2002 (DFIA).

4 Effective date

- 4.1 This policy document comes into effect on 1 January 2018.

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 and 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;

“**employment**” refers to any contractual arrangement between an organisation and an individual (including a contract of service or contract for service), under which the individual personally undertakes to perform services for the organisation, and the terms “employer”, “employee” and “employ” shall be construed accordingly;

“**financial institution**” refers to–

- (a) a licensed person;
- (b) a financial holding company; and
- (c) a prescribed development financial institution.

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) *Anti-Money Laundering Counter Financing of Terrorism (AML/CFT) – Banking and Deposit-Taking Institutions (Sector 1)*;
- (b) *Anti-Money Laundering Counter Financing of Terrorism (AML/CFT) – Insurance and Takaful (Sector 2)*;
- (c) *Corporate Governance*; and
- (d) *Code of Conduct for Malaysia Wholesale Financial Markets*.

PART B SCREENING REQUIREMENTS

7 Minimum screening requirements

- S** 7.1 A financial institution must not employ any individual in any position, other than as a director, until the financial institution completes a screening of the individual's–
- (a) past employment records, in accordance with paragraph 8; and
 - (b) criminal convictions, in accordance with paragraph 9¹.

Question 1

Please specify the functions or categories of staff within your institution for which it is not practicable to obtain and provide employment references. Please include–

- (a) the reason(s); and
- (b) a clear description of the scope and nature of the work for the functions and categories proposed.

Question 2

Please detail any operational challenges your institution may face in complying with the screening requirements for individuals engaged under an agency arrangement (e.g. insurance agents, remisiers).

- S** 7.2 In respect of an individual who–
- (a) is to be employed in a position of a dealer or broker²; or
 - (b) was previously employed as a dealer or broker in the period of seven years prior to the date of the application for employment,
- a financial institution must, in addition to the requirements in paragraph 7.1, make an inquiry with the Financial Markets Association Malaysia as to whether the individual has been involved in any case of financial market misconduct, including breaches of the *Code of Conduct for Malaysia Wholesale Financial Markets* and contravention of section 141 of the FSA and section 153 of the IFSA.
- S** 7.3 In processing an application for employment, a financial institution must obtain a written consent from the individual which authorises an inquiry into, and disclosures of information pertaining to, his/her previous employment(s). This written consent must cover the requesting financial institution and all former employers within the scope of this policy document.

¹ For the avoidance of doubt, the requirements in this policy document apply in addition to any other screening requirements imposed by law or a regulatory authority (e.g. under the policy documents on *Anti-Money Laundering Counter Financing of Terrorism (AML/CFT) – Banking and Deposit-Taking Institutions (Sector 1)* and *Anti-Money Laundering Counter Financing of Terrorism (AML/CFT) – Insurance and Takaful (Sector 2)*).

² As defined in the *Code of Conduct for Malaysia Wholesale Financial Markets*.

8 Employment references

Obligation to obtain references

- S** 8.1 A financial institution must obtain references from all the individual's employers in the period of seven years prior to the date of the application for employment.
- S** 8.2 Where an individual's current or former employer is not a financial institution or is based overseas, a financial institution must take reasonable steps to obtain a reference from such an employer.
- S** 8.3 A financial institution must document relevant correspondences and applicable legal restrictions, and maintain appropriate records of the same to demonstrate compliance with paragraph 8.2.
- S** 8.4 Subject to paragraph 8.2, a financial institution is expected to review an individual's references before making an offer for employment. However, where it would not be feasible or appropriate for a financial institution to do so³, the financial institution may make an offer for employment prior to the review of the references, provided that such offer is conditional upon—
- (a) receipt of all references from the individual's current and past employers; and
 - (b) the financial institution's discretion to withdraw the offer thereafter.

Obligation to provide references

- S** 8.5 Upon receiving a request for a reference made pursuant to paragraph 8.1, a financial institution must provide the requesting financial institution a reference for the individual using the template in Appendix 1, within 15 working days.

Question 3

Is 15 working days a feasible timeframe for your institution to prepare and issue a reference? If it is not, please specify the reasons why and a reasonable period within which you would be able to do so.

- G** 8.6 Where a financial institution receives a request for a reference from an organisation that is not a financial institution or is based overseas, the financial institution should disclose relevant information on a best effort basis, having regard to the obligations owed to its employees as set out in Part C.
- S** 8.7 The obligation to provide references will apply irrespective of—
- (a) the tenure of the individual's employment with the institution;
 - (b) the position held by the individual within the financial institution⁴;
 - (c) the manner in which the employment ended (e.g. resignation,

³ For example, where the individual is presently employed and has requested to maintain the confidentiality of the job-seeking process.

⁴ For the avoidance of doubt, a financial institution is required to provide references for its director, where the director's prospective position is as an officer of another financial institution.

- termination, or contractual tenure coming to an end); and
- (d) any agreement or arrangement the financial institution may have with the individual that limits its ability to disclose information required in this policy document.

Obligation to update references provided

- S** 8.8 A financial institution is required to update a reference it has provided for a former employee if the financial institution becomes aware of information that, had the financial institution been aware of when providing the reference, would have caused the reference to be drafted differently⁵. The financial institution must, as soon as practicable–
- (a) provide the individual's current employer with details of the newly acquired information in an updated reference;
- (b) ensure that records maintained by the financial institution are updated to reflect such a change; and
- (c) notify the individual that an update has been made to his/her reference.
- S** 8.9 The obligation in paragraph 8.8 will apply for a period of seven years from the date the individual's employment with the financial institution ceased.

Scope of references

- S** 8.10 A reference referred to in paragraphs 8.1 and 8.5 must cover, at a minimum, the information required in Part A and Part B of the template as set out in Appendix 1 ("mandatory information"). A financial institution must disclose mandatory information on or relating to an incident which occurred or existed during the individual's employment in the institution in the seven years before the date of the request for a reference.
- G** 8.11 In addition to mandatory information required to be disclosed under paragraph 8.10, a financial institution may be aware of other information, whether positive or negative, which may be relevant to an assessment of the individual's honesty or integrity. Financial institutions may disclose such information in Part C of the template ("optional information"). Examples of information that could be disclosed in Part C include–
- (a) evidence of good behaviour or exemplary conduct by the individual;
- (b) how transparent and cooperative the individual was in relation to any internal investigation or disciplinary proceedings;
- (c) subsequent corrective actions taken by the individual following a finding of misconduct; and
- (d) information relating to an incident which occurred more than seven years before the date of request for a reference, which the financial institution considers significant⁶ or otherwise relevant to be disclosed to the requesting organisation.

⁵ For example, where the financial institution concluded internal investigations on alleged misconduct after a reference was provided.

⁶ For example, where an individual was found to have misappropriated clients' assets for personal gain.

- S** 8.12 For the purposes of paragraphs 8.10 and 8.11, a financial institution is required to make its own assessment on a case-by-case basis whether an incident to be disclosed is one which relates to an individual's honesty and integrity⁷.
- G** 8.13 A requesting organisation is not precluded from appending to the template, requests for additional information, to which a financial institution may disclose on a best effort basis.

Question 4

Please describe the scenarios which you are unsure as to how to include in the template.

9 Statutory declaration

- S** 9.1 A financial institution must obtain a statutory declaration⁸ from an individual it is considering employing, detailing–
- (a) past criminal convictions under any law, whether in or outside Malaysia, relating to companies, financial services, capital markets, money laundering or terrorism financing, and offences involving dishonesty or fraud, if any; and
 - (b) all the individual's past employers in the period of seven years prior to the date of the application for employment.

⁷ Examples of incidents that relate to an individual's honesty and integrity include theft and falsification of documents, or alternatively, exemplary conduct and good behaviour.

⁸ In accordance with the Statutory Declarations Act 1960.

PART C OPERATIONAL REQUIREMENTS

10 General

- G** 10.1 A financial institution is required to observe the requirements in the Personal Data Protection Act 2010 (PDPA), including the requirement to obtain consent for the processing of personal data and provisions relating to data correction.
- S** 10.2 A financial institution must ensure that its internal arrangements will enable the financial institution to comply with its obligations under this policy document.
- S** 10.3 A financial institution must not enter into any agreement or arrangement which will, in any way, impede its ability to comply with the obligations in this policy document.
- S** 10.4 For the purpose of paragraph 10.3, the Bank expects a financial institution to undertake a comprehensive review of its recruitment documents and employment contracts, to ensure that there are no legal impediments to its ability to process and disclose its employees' information in accordance with this policy document.

11 Internal disciplinary process

- S** 11.1 A financial institution must have in place a code of ethics which articulates minimum standards of conduct, and written policies and procedures governing its internal disciplinary process. The code of ethics and internal disciplinary policies and procedures must be communicated to all employees upon employment and be made accessible to them on an ongoing basis.
- S** 11.2 A financial institution is required to address any breaches of its internal policies and procedures, including its code of ethics, without undue delay and in a manner that upholds high standards of integrity. Where the internal disciplinary process is initiated, this must be conducted in an objective manner and concluded promptly.
- S** 11.3 The policies and procedures governing a financial institution's internal disciplinary process must outline, at a minimum, the rights of its employees throughout the disciplinary process, which must include–
- (a) a mechanism for appeals; and
 - (b) a reasonable opportunity for an employee to make a representation in response to allegations⁹ before conclusion of the disciplinary process.

⁹ For the avoidance of doubt, an opportunity to make a representation does not constitute a right for the employee to edit the content of an employment reference.

Question 5

- (a) Please describe your institution’s internal disciplinary process. In particular, please identify–
- i. what step would constitute a formal initiation of the disciplinary process;
 - ii. all the stages leading up to the conclusion of such process; and
 - iii. the types of disciplinary action contemplated by your institution.
- (b) Are there any circumstances where your institution would take disciplinary action without undergoing an internal disciplinary process? Please elaborate.

12 Preparation of references

- S** 12.1 A financial institution must prepare a reference in good faith and must not intentionally cast doubt on the honesty and integrity of an employee¹⁰ without basis.
- S** 12.2 A financial institution must exercise due care and skill to ensure that the reference does not provide an unfair or misleading impression of the employee¹¹. To this end, a financial institution must ensure–
- (a) that all facts included in a reference are true, accurate and documented;
 - (b) that expressions of opinions are based on, and supported by, facts that are true, accurate and documented; and
 - (c) that it does not withhold relevant information, where to withhold such information would render the information provided in a reference unfair or inaccurate.
- S** 12.3 The obligation in paragraph 12.2(c) applies even after a reference has been provided where there has been a request for further information from the requesting organisation.
- S** 12.4 A financial institution must provide an employee the right to view a reference that the financial institution has provided.

¹⁰ For purposes of paragraph 12, a reference to the term “employee” includes a reference to the financial institution’s former employee.

¹¹ This includes addressing requests for data correction for personal data that is inaccurate, incomplete, misleading or not up-to-date in accordance with the requirements of PDPA 2010.

13 Record keeping

- S** 13.1 A financial institution must maintain comprehensive records of documents and information relating to, or relied on, in the screening process and preparation of references, including documents and information produced in the course of any internal disciplinary process, and retain them for the period necessary to enable the financial institution to comply with the requirements in this policy document¹².
- S** 13.2 A financial institution must keep all documents and information relating to its employees' references and disciplinary process strictly confidential. A financial institution is required to establish systems and controls to safeguard the security, confidentiality and integrity of all such documents and information, which includes the following:
- (a) only allowing designated personnel to have access to the disciplinary records and references of an employee; and
 - (b) only disclosing references to employers who provide proof of consent of the employee.

¹² For the avoidance of doubt, a financial institution must maintain all relevant records for at least a period of seven years from the date a reference is provided.

PART D TRANSITIONAL ARRANGEMENTS

14 Transitional arrangements

- S** 14.1 A financial institution has until 31 March 2018 to–
- (a) complete a comprehensive review of its internal disciplinary policies and procedures, for compliance with paragraph 11.1; and
 - (b) effect the necessary amendments to its employment contracts, to enable the financial institution to make inquiries for, and to disclose, employment references.

Question 6

- (a) What is your institution's record keeping period? Does your institution have relevant records to be able to fully comply with the disclosures required under paragraph 8.10 upon the operationalisation of this policy document? Please note that the expectation is for disclosures to be supported by documented facts under paragraph 12.2.
- (b) Are there any other arrangements for which your institution would require a transition period?

APPENDIX 1 REFERENCE TEMPLATE

PART A BACKGROUND

Information requested	
Individual's name	
Name and contact details of the financial institution providing the reference	
Name and contact details of the financial institution requesting the reference	
Date of request for the reference	
Date the reference is provided	

PART B MANDATORY INFORMATION

The answers to Questions 1 to 3 cover the period the individual was employed by the institution, beginning seven years before the date of request for a reference, ending on the date this reference is provided.

Question 1

Please provide the details of all positions held by the individual in the financial institution, and the dates during which the individual held the positions.

Position	Date	Description of role

Question 2

Has the individual been the subject of any of the following, for an incident which relates to his/her honesty or integrity:

	Yes	No
a) formal notification of an impending internal investigation or disciplinary proceeding;		
b) internal investigation; or		
c) internal disciplinary proceedings?		

If yes, please provide the following information (to be reported separately for each incident):

- i) Date of incident;
- ii) Factual description of the incident (e.g. nature of the misconduct);
- iii) Date of notification OR date of commencement of internal investigation/disciplinary proceedings;
- iv) Details of the representation, in cases where the individual has made a representation in response to the allegation or suspicion;

- v) Status/outcome of investigation/disciplinary proceedings; and
vi) Action(s) taken, if any.

Question 3

To your knowledge, has the individual been found by a regulatory authority to be in breach¹³ of legal or regulatory requirements under laws, whether in or outside Malaysia, relating to–

	Yes	No
a) Financial services;		
b) Capital markets;		
c) Money laundering or terrorism financing?		

If yes, please provide the following information (to be reported separately in respect of each incident):

- i) Date of incident (date of breach);
- ii) Factual description of the incident;
- iii) Date of notification by regulatory authority; and
- iv) Enforcement action(s) taken, if any.

PART C OPTIONAL INFORMATION**Question 4**

If you are aware of any additional information (positive or negative)¹⁴ that you consider relevant for an assessment of the individual's honesty or integrity, please provide the information below.

¹³ For the avoidance of doubt, this covers breaches of legal and regulatory requirements that do not attract a criminal penalty.

¹⁴ For example, evidence of good behaviour or exemplary conduct by the individual, or information relating to an incident which occurred more than seven years before the date of request for a reference.