



**BANK NEGARA MALAYSIA**  
CENTRAL BANK OF MALAYSIA

# **Shareholder Suitability**

## **- Notification and Application Procedures**

### **Exposure Draft**

Applicable to:

1. Shareholders of approved insurance broker
2. Shareholders of approved takaful broker
3. Shareholders of approved money broker
4. Shareholders of approved financial adviser
5. Shareholders of approved Islamic financial adviser

This exposure draft sets out Bank Negara Malaysia's (the Bank) proposed regulatory requirements for shareholders to meet on an on-going basis, as well as the notification and application procedures as required under the FSA/IFSA.

The proposals seek to ensure that shareholders of an approved person are persons of integrity and good reputation, and who maintain sound financial position to minimise risks that could threaten the safety and soundness of the approved person.

The Bank invites written feedback on the proposals in this exposure draft, including suggestions on areas to be clarified and alternative proposals that the Bank should consider. The written feedback should be constructive and supported with clear rationale, including accompanying evidence, analysis or illustrations, where appropriate.

Responses must be submitted to the Bank by 5 October 2018 to the following mailing or email address:

Pengarah  
Jabatan Konsumer dan Amalan Pasaran  
Bank Negara Malaysia  
Jalan Dato' Onn  
50480 Kuala Lumpur  
Email: [s.suitability@bnm.gov.my](mailto:s.suitability@bnm.gov.my)

In the course of preparing your feedback, you may direct any queries to the following officers at 03-26988044–

- a. Muhammad Syukri Shamsuddin (ext. 8636)
- b. Fairul Azli Mohamed (ext. 8171)

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## **PART A OVERVIEW**

### **1 Introduction**

- 1.1 Shareholders, through the exercise of voting rights or representation on the board, are in a position to influence decisions by which the business and affairs of an approved person are carried out. It is therefore important that the shareholders of an approved person are persons of integrity and good reputation, with adequate resources to support the professional conduct of an approved person, including its compliance with applicable laws and regulations.
- 1.2 This policy document sets out the following:
- (a) the notification and application procedures for an acquisition of interest in shares of an approved person; and
  - (b) the shareholder suitability requirements that must be complied with, at all times, by shareholders of an approved person.

### **2 Applicability**

- 2.1 This policy document is applicable to a shareholder as defined in paragraph 5.2.

### **3 Legal provisions**

- 3.1 The requirements in this policy document are specified pursuant to—
- (a) section 97(3) of the Financial Services Act 2013 (FSA), to give full effect to section 97(1) and section 97(2) of the FSA;
  - (b) section 109(3) of the Islamic Financial Services Act 2013 (IFSA), to give full effect to section 109(1) and section 109(2) of the IFSA; and
  - (c) section 143 of the FSA and section 155 of the IFSA.
- 3.2 The guidance in this policy document is issued pursuant to section 266 of the FSA and section 277 of the IFSA.

### **4 Effective date**

- 4.1 This policy document comes into effect on [Day Month 2018].
- 4.2 The Bank is committed to ensuring that its policies remain relevant and continue to meet the intended objectives and outcome. Accordingly, the Bank will review this policy document within five years from the date of issuance or the Bank's last review and, where necessary, amend or replace this policy document.

## 5 Interpretation

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

5.2 For the purposes of this policy document—

“**S**” denotes a standard, an obligation, 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;

“**shareholder**” refers to a person who holds an aggregate interest of 5% or more in the shares<sup>1</sup> of an approved person.

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<sup>1</sup> Interest in shares shall be construed as set out in Schedule 3 of the FSA or IFSA.

## PART B NOTIFICATION AND APPLICATION PROCEDURES

### 6 Notification procedures

- S** 6.1 A person who has entered into an agreement or arrangement to acquire any interest in shares of an approved person pursuant to section 97(1) FSA or section 109(1) IFSA must notify the Bank in writing within seven days after entering into such agreement or arrangement.

### 7 Application procedures

- G** 7.1 Where an application is received pursuant to section 97(2) FSA or section 109(2) IFSA, the Bank will take into consideration the following factors in assessing the applicant's suitability to be a shareholder of an approved person:
- (a) the character and integrity of the applicant, or if the applicant is a body corporate, its reputation for being operated in a manner that is consistent with the standards of good governance and integrity;
  - (b) the nature and sufficiency of the financial resources of the applicant to support the viable operations of the approved person, including the performance of its regulatory and professional obligations;
  - (c) the business record and experience of the applicant;
  - (d) whether the relationship of the shareholder with the approved person will affect the independent and professional status of an approved person; and
  - (e) whether the application will be in the best interest of Malaysia, having regard to—
    - (i) the effect of the investment on the level and nature of economic activity in Malaysia, including the effect on productivity, efficiency and quality of financial services;
    - (ii) the contribution towards enhancing international trade and investment linkages between Malaysia and other countries;
    - (iii) the effect of the investment on conduct and behaviours that could pose a risk to the financial system; or
    - (iv) the degree and significance of participation of Malaysians in the financial sector.

### 8 Information and document submission

- S** 8.1 The person referred to in paragraph 6.1 or 7.1, must submit a completed form for application or notification of acquisition of shares of approved person (Appendix I).

**S** 8.2 For the purpose of paragraph 7.1, an applicant who is a body corporate must also submit, in addition to that specified in paragraph 8.1, a copy of its audited financial statements for the past three years.

**S** 8.3 The complete information and documents must be submitted to—

Pengarah  
Jabatan Konsumer dan Amalan Pasaran  
Bank Negara Malaysia  
Jalan Dato' Onn  
50480 Kuala Lumpur.

## PART C REQUIREMENTS ON SHAREHOLDERS

### 9 General requirements

- S** 9.1 A shareholder must comply with the shareholder suitability requirements set out in paragraphs 10 and 11 at all times.
- G** 9.2 In assessing a shareholder's on-going suitability, the Bank will consider the specific circumstances of the shareholder, the significance of such circumstances and the potential risks posed to the approved person. Where it is uncertain as to whether a shareholder has complied with the requirements in this policy document, the Bank shall have full discretion to make that determination. The Bank may exercise its power under the law, including those that are accorded under section 234 of the FSA or section 245 of the IFSA, as the case may be, where the Bank has determined that the shareholder suitability requirements are not met.
- S** 9.3 Where the Bank requires a shareholder to submit all relevant documents or information, including documents or information relating to the shareholder's associate or its related corporations, and their ultimate beneficial owners, for the purpose of facilitating the Bank's on-going assessment of shareholder suitability, the shareholder must submit such documents or information to the Bank.

### 10 Upholding independence and professionalism

- S** 10.1 A shareholder must uphold the independent and professional status of an approved person by avoiding situations that may give rise to conflict of interest. In this regard, the table below specifies the persons that are not allowed to be the shareholders of an approved person:

Approved person	Persons not allowed to be shareholders
i. Insurance broker ii. Financial adviser	Licensed insurer, including its shareholders, directors, chief executive officer, staffs, agents and related companies.
iii. Takaful broker iv. Islamic financial adviser	Licensed takaful operator, including its shareholders, directors, chief executive officer, staffs, agents and related companies.

#### Question 1

In your view, would this requirement present specific challenges? If so, how can inherent conflicts be otherwise managed?

**11 Maintaining honesty, integrity and reputation**

- S** 11.1 A shareholder who has notified or obtained the approval of the Bank under section 97(1) or 97(2) of FSA or section 109(1) or 109(2) of IFSA, must not conduct its affairs in a manner that would cast aspersion on its character, professional integrity, and financial standing.
- G** 11.2 Examples of circumstances that may breach paragraph 11.1 are, if a shareholder—
- (a) is being subject to a bankruptcy or winding up proceeding;
  - (b) fails, or is likely to fail, to meet its financial obligations as and when they fall due;
  - (c) is, or has been, the subject of any criminal proceedings or convicted of any offence involving dishonesty, fraud or other financial crimes;
  - (d) fails, or is likely to fail, to comply with relevant laws, requirements, conditions or standards issued by a regulatory, professional or government body in Malaysia or any other jurisdiction, or has been, is expected to be or is being subject to disciplinary or enforcement action by such bodies;
  - (e) fails, or is likely to fail, to comply with an enforceable undertaking provided to the Minister or the Bank;
  - (f) engages, or is about to engage, in any business practice that is deceitful or reflects discredit on the shareholder's professional conduct;
  - (g) is or has been, the subject of any investigation relating to any criminal or regulated financial activity, or has been notified of any impending investigations;
  - (h) is refused registration, authorisation, membership or a license to carry out a trade, business or profession, or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated;
  - (i) influences the board and/or senior management to compromise the professional and responsible conduct of the approved person;
  - (j) in respect of an individual shareholder—
    - (i) is, or was, a director of a company or directly concerned in the management of the business of a company referred to in paragraph (c), (g) or (h) above; and
    - (ii) has been dismissed, asked to resign or has resigned from employment, a position of trust, fiduciary appointment or other similar appointments due to concerns about his honesty and integrity.

## APPENDICES

### Appendix 1: Form for application or notification of acquisition of shares of approved person

PART 1: TYPE OF APPLICANTS			
<input type="checkbox"/>	Individual Acquirer <i>(Please fill up personal particulars in PART 3)</i>		
<input type="checkbox"/>	Corporate Acquirer <i>(Please fill up corporate profile in PART 4)</i>		
PART 2: SHARE ACQUISITION			
ACQUISITION OF SHARES IN:			
NUMBER OF SHARES TO BE ACQUIRED		% OF SHAREHOLDING	
<b>(A) PURCHASE CONSIDERATION</b>			
To attach the details in separate sheet : Detailed computation and share valuation report (if any)			
<b>(B) IMPACT OF THE SHARE ACQUISITION EXERCISE</b>			
To attach the details in separate sheet : Detailed description on the proposed strategic and operating business plan for the Approved Person AFTER the acquisition			
<b>(C) SHAREHOLDING STRUCTURE BEFORE AND AFTER ACQUISITION</b>			
To attach the details in separate sheet : Diagram of the shareholding structure BEFORE and AFTER the acquisition			
<b>(D) SOURCE OF FINANCING FOR THE ACQUISITION</b>			
To attach the details in separate sheet : Any document evidences that the acquirer have access to financial resources to enable the funding of the investment as well as continuing to provide the financial support for Approved Person's growth and development.			
PART 3: PERSONAL PARTICULARS OF INDIVIDUAL ACQUIRER			
NAME [Encik/Puan/Others (please specify)]			
NRIC NO. - Please enclose photocopy of NRIC (front and back) marked 'For BNM use'		PASSPORT NO. (For foreign candidate only) - please enclose a photocopy of Passport (the personal particular pages only) marked 'For BNM use'	
New			
Old			
DATE OF BIRTH		NATIONALITY	
RESIDENTIAL ADDRESS		CONTACT DETAILS	
		Telephone No (House)	
		Email	
ACADEMIC AND PROFESSIONAL QUALIFICATION - Please state the latest qualification obtained first. (If space provided is insufficient, please provide a separate sheet)			
Qualification	Institution	Country	Year Obtained

CURRENT EMPLOYER INFORMATION						
Organisation Name						
Designation						
Main Responsibilities						
Address						
Telephone No.						
Email Address						
PREVIOUS WORKING EXPERIENCE - Please state the latest position held first. (If space provided is insufficient, please provide a separate sheet)						
Position Held/Dept	Main Responsibilities	Organisation	Principal Activity	Country	Duration	
					From	To
EXPECTED CONTRIBUTION TO THE PROPOSED ACQUISITION OF APPROVED BUSINESS						
PRESENT DIRECTORSHIP HELD IN COMPANIES - Including Authorized Person and Financial Holding Company (If space provided is insufficient, please provide a separate sheet)						
Company Name	Company Registration No.	Principal Activity	Country	Date of Appointment		
PAST DIRECTORSHIP HELD IN COMPANIES - Including Authorized Person and Financial Holding Company (If space provided is insufficient, please provide a separate sheet)						
Company Name	Company Registration No.	Principal Activity	Country	Duration		
				From	To	
<p><b>Person</b> includes an individual, any corporation, statutory body, local authority, society, trade union, co-operative society, partnership and any other body, organisation, association or group of persons, whether corporate or unincorporate.</p> <p><b>Authorized Person</b> - means a person licensed under section 10 of FSA/IFSA or approved under section 11 of FSA/IFSA to carry on an authorized business.</p> <p><b>Financial Holding Company</b> means a company which :</p> <p>(a) holds an aggregate of more than 50% of interest in shares of a licensed person, or has an aggregate interest in shares of 50% or less but has control over a licensed person; and</p> <p>(b) has obtained the approval of the Bank pursuant to subsection 112 (3) to be a financial holding company of such licensed person.</p>						

<b>INFORMATION ON FINANCIAL OBLIGATIONS</b>				
<i>(If space provided is insufficient, please provide a separate sheet)</i>				
<b>INFORMATION ON THE CANDIDATE'S INDIVIDUAL /JOINT/BUSINESS ACCOUNTS</b>				
Name of Borrower	Company Registration No./NRIC No.	Financial Institution	Type of Account	Account No.
<b>INFORMATION ON FAMILY-OWNED COMPANY BUSINESS ACCOUNTS</b>				
Name of Borrower	Company Registration No./NRIC No.	Financial Institution	Type of Account	Account No.
<b>FINANCIAL GUARANTEE GIVEN TO A PERSON</b>				
Name of Borrower	Company Registration No./NRIC No.	Financial Institution	Type of Account	Account No.

**PART 3 (A) STATUTORY DECLARATION BY INDIVIDUAL ACQUIRER***(Please make copies for each individual acquirer)*

I, \_\_\_\_\_ (Name of Acquirer)  
of \_\_\_\_\_ (Address of Acquirer)

I.C./Passport Number: \_\_\_\_\_ do solemnly declare that:

A. I am not disqualified from being a shareholder whereby:

- (i) I am not an undischarged bankrupt, I do not have any suspended payments and I have not compounded with my creditors, whether within or outside Malaysia. To my knowledge, there is no bankruptcy proceeding being initiated against me at present;
- (ii) I do not have any charge proven against me for a criminal offence relating to dishonesty or fraud under any written law or the law of any country, territory or place outside Malaysia;
- (iii) I am not prohibited from being a director of a company or in any way, whether directly or indirectly, be concerned or take part in the management of a company in Malaysia pursuant to a court order made under section 130A of the Companies Act 1965 and have not obtained any leave of the court under the same section; and
- (iv) Under any law relating to prevention of crime, drug trafficking or immigration:-
  - (a) There has not been any order of detention, supervision, or deportation made against me; and
  - (b) There has not been any form of restriction or supervision by bond or otherwise, imposed on.

- B. (i)  No penalty and no reprimand has been imposed or issued against me by any supervisory authority in or outside Malaysia
- A penalty and/or a reprimand has been imposed or issued against me by a supervisory authority in or outside Malaysia

*(Tick whichever applicable. If (ii) is selected, please provide details, i.e. name of supervisory authority, reasons and amount of penalty, in a separate attachment)*

- C. All the information submitted in this form and in any attached annexure (if any) is true, correct and complete;

**AND I MAKE THIS SOLEMN DECLARATION CONSCIENTIOUSLY BELIEVING THE SAME TO BE TRUE, AND BY VIRTUE OF THE PROVISIONS OF THE STATUTORY DECLARATIONS ACT 1960.**

**SUBSCRIBED AND SOLEMNLY DECLARED BY THE ABOVENAMED**

AT \_\_\_\_\_  
IN THE STATE OF \_\_\_\_\_  
THIS DAY OF \_\_\_\_\_ 20\_\_\_\_  
Before me:

(Signature of Sessions Court Judge,  
Magistrate or Commissioner for Oaths)

**PART 3 (B) CONSENT FOR DISCLOSURE OF INFORMATION BY INDIVIDUAL ACQUIRER***(Please make copies for each individual acquirer)*

Pursuant to paragraph 1 of Schedule 11 of section 134(1)(a) of the Financial Services Act 2013, paragraph 1 of Schedule 11 of section 146(1)(a) of the Islamic Financial Services Act 2013 and section 120(1)(c) of the Development Financial Institutions Act 2002, I hereby authorize all the licensed institutions and development financial institutions where I maintain my accounts or have financial liabilities with, to disclose to Bank Negara Malaysia, any document and information relating to my affairs, accounts or financial liabilities.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

**Note:**

1. Applicant from a foreign country is required to make the statutory declaration before the authorized Diplomatic/Consular Officer at the Malaysian Embassy in that foreign country;
2. Where there is no Malaysian Embassy in that foreign country, as an interim measure, the applicant may make a statutory declaration which shall be made under the law relating to statutory declaration or oaths prevailing in that foreign country. However, the applicant is required to make a new statutory declaration based on the Malaysian Statutory Declaration Act 1960 prior to his/her appointment as a shareholder of the approved person in Malaysia; and
3. This statutory declaration cannot be translated to any other language.

PART 4: CORPORATE PROFILE OF CORPORATE ACQUIRER				
<i>(Please make copies for each corporate acquirer and enclose past three years' audited financial</i>				
COMPANY NAME		PRINCIPAL ACTIVITY		
COMPANY REGISTRATION NO.				
DATE OF INCORPORATION				
PLACE OF INCORPORATION				
TELEPHONE NO.		OFFICE ADDRESS		
FAX NO.				
CONTACT PERSON		CONTACT DETAILS		
Name		Tel. No.		
Designation		Email		
PARTICULARS OF ACQUIRER'S SHAREHOLDING STRUCTURE				
<i>(If space provided is insufficient, please provide a separate sheet)</i>				
	Name of shareholder	Shares held		% Shareholding
		In Unit	In RM (or RM equivalent)	
i.				
ii.				
iii.				
iv.				
v.				
BOARD OF DIRECTORS				
<i>(If space provided is insufficient, please provide a separate sheet)</i>				
	Name	NRIC/ Passport No	Nationality	Designation
i.				
ii.				
iii.				
iv.				
v.				
vi.				

**PART 4 (A) STATUTORY DECLARATION BY CORPORATE ACQUIRER'S CEO**

I, \_\_\_\_\_ (*Name of CEO*)  
of \_\_\_\_\_ (*Address of CEO*)  
NRIC/Passport No.: \_\_\_\_\_ do solemnly declare that:

A. I am not disqualified under section 59(1) of the Financial Services Act 2013 (FSA) and/or section 68(1)

(i) I am not an undischarged bankrupt, I do not have any suspended payments and I have not compounded with my creditors, whether within or outside Malaysia. To my knowledge, there is no bankruptcy proceeding being initiated against me at present;

(ii) I do not have any charge proven against me for a criminal offence relating to dishonesty or fraud under any written law or the law of any country, territory or place outside Malaysia;

(iii) I am not prohibited from being a director of a company or in any way, whether directly or indirectly, be concerned or take part in the management of a company in Malaysia pursuant to a court order made under section 130A of the Companies Act 1965 and have not obtained any leave of the court under the same section; and

(iv) Under any law relating to prevention of crime, drug trafficking or immigration:-

(a) There has not been any order of detention, supervision, or deportation made against me; and

(b) There has not been any form of restriction or supervision by bond or otherwise, imposed on.

B. (i)  No penalty and no reprimand has been imposed or issued against me by any supervisory authority in or outside Malaysia

(ii)  A penalty and/or a reprimand has been imposed or issued against me by a supervisory authority in or outside Malaysia

*(Tick whichever applicable. If (ii) is selected, please provide details, i.e. name of supervisory authority, reasons and amount of penalty, in a separate attachment)*

C. I understand that in my tenor as the CEO of \_\_\_\_\_ (*name of company*)  
\_\_\_\_\_ (*name of company-continued*) I shall not:

(i) engage in any activities or practices that would result in conflict of interest and will disclose any conflicts which may impair the objectivity and integrity of \_\_\_\_\_ (*name of company*)  
\_\_\_\_\_ (*name of company-continued*)

(ii) hold any directorship in an insurer or a takaful operator or registered as an insurance or takaful agent; and

(iii) hold any shares in an insurer or a takaful operator or own an insurance or a takaful agency.

E. All the information submitted in this form and in any attached annexure (if any) is true, correct and complete;

**AND I MAKE THIS SOLEMN DECLARATION CONSCIENTIOUSLY BELIEVING THE SAME TO BE TRUE, AND BY VIRTUE OF THE PROVISIONS OF THE STATUTORY DECLARATIONS ACT 1960.**

**SUBSCRIBED AND SOLEMNLY DECLARED BY THE ABOVENAMED**

AT \_\_\_\_\_  
IN THE STATE OF \_\_\_\_\_  
THIS DAY OF \_\_\_\_\_ 20\_\_\_\_\_  
Before me:

(Signature of Sessions Court Judge,  
Magistrate or Commissioner for Oaths)

**PART 4 (B) CONSENT FOR DISCLOSURE OF INFORMATION BY CORPORATE ACQUIRER'S CEO**

Pursuant to paragraph 1 of Schedule 11 of section 134(1)(a) of the Financial Services Act 2013, paragraph 1 of Schedule 11 of section 146(1)(a) of the Islamic Financial Services Act 2013 and section 120(1)(c) of the Development Financial Institutions Act 2002, I hereby authorize all the licensed institutions and development financial institutions where I maintain my accounts or have financial liabilities with, to disclose to Bank Negara Malaysia, any document and information relating to my affairs, accounts or financial liabilities.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

**Note:**

1. Applicant from a foreign country is required to make the statutory declaration before the authorized Diplomatic/Consular Officer at the Malaysian Embassy in that foreign country;
2. Where there is no Malaysian Embassy in that foreign country, as an interim measure, the applicant may make a statutory declaration which shall be made under the law relating to statutory declaration or oaths prevailing in that foreign country. However, the applicant is required to make a new statutory declaration based on the Malaysian Statutory Declaration Act 1960 prior to his/her appointment as a CEO of the approved person in Malaysia; and
3. This statutory declaration cannot be translated to any other language.