



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Fit and Proper Criteria

Applicable to:

1. Prescribed development financial institutions

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PART A OVERVIEW

1 Introduction

- 1.1 Members of the board and senior management of development financial institutions (DFIs) provide strategic leadership that influence the financial position and future direction of a DFI. 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 Further, the company secretary facilitates the efficient conduct of board processes and meaningful interaction of the board with senior management, thus influencing the performance of the board substantially. It is therefore important that the board is assisted by a qualified and competent company secretary.

Policy objective

- 1.3 The requirements and 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:
- (a) the definition of key responsible persons within an DFI;
 - (b) the conditions to observe in assessing and appointing key responsible persons and the company secretary;
 - (c) the responsibilities of the board, Nominating Committee (NC) and DFIs in establishing and applying fit and proper policies and procedures; and
 - (d) the minimum factors to consider in assessing whether a person is fit and proper as a key responsible person or company secretary.

2 Applicability

- 2.1 This policy document is applicable to DFIs as prescribed under the Development Financial Institutions Act 2002 (DFIA).

3 Legal provisions

- 3.1 The requirements in this policy document are issued pursuant to sections 41(1) and 116 of the DFIA.
- 3.2 The guidance in this policy document is issued pursuant to section 126 of the DFIA.

4 Effective date

4.1 This policy document comes into effect on 14 June 2017.

5 Interpretation

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

5.2 For purposes 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;

“**Development Financial institution**” or “**DFI**” means a prescribed development financial institution under the DFIA;

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

- a) directors;
- b) members of the Shariah Committee;
- c) the chief executive officer (CEO); and
- d) senior officers¹.

“**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 DFI, 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 DFI’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, internal controls and processes that identify, measure, monitor or control the DFI’s risks.

¹ For the avoidance of doubt, senior officers do not include the company secretary.

- 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 DFI'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 Related legal provisions, legal instruments and policy documents

- 6.1 This policy document must be read together with other relevant legal provisions and legal instruments as well as policy documents that have been issued by the Bank, in particular -
- (a) sections 6, 6A, 7, 8 and First Schedule of the DFIA;
 - (b) the Guidelines on Corporate Governance for DFIs; and
 - (c) the Shariah Governance Framework for Islamic Financial Institutions.

7 Policy documents superseded

- 7.1 This policy document supersedes –
- (a) Guidelines on Fit and Proper for Key Responsible Persons for Development Financial Institutions issued on 15 September 2011;
 - (b) Paragraph 2.48 and 2.49 of the Guidelines on Corporate Governance for Development Financial Institutions issued on 19 November 2011; and
 - (c) Paragraphs 1 and 2 of the Disqualification section in Appendix 2 of the Shariah Governance Framework for Islamic Financial Institutions issued on 22 October 2010.

PART B FIT AND PROPER CRITERIA, POLICIES AND PROCEDURES

8 Conditions for Assessment and Appointment

- S** 8.1 Any person to be appointed as a key responsible person must not be disqualified² and must 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:
- (a) probity and reputation;
 - (b) competency; and
 - (c) financial integrity.
- S** 8.2 Any person to be appointed as a company secretary must not be disqualified³ 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:
- (a) probity and reputation; and
 - (b) competency.

9 Responsibilities of the Board and NC

- S** 9.1 The board and NC shall be directly responsible for –
- (a) assessing the fitness and propriety of directors, members of the Shariah Committee, the CEO and the company secretary; and
 - (b) deciding on their appointments.
- G** 9.2 For senior officers, the board and NC may delegate the responsibility for fit and proper assessments and decisions on appointments to the CEO or a designated committee.
- S** 9.3 Where the board and NC delegate responsibility to the CEO or a designated committee, the board shall remain accountable for such assessments and decisions.
- G** 9.4 Sections 8 and 10 of the DFIA set out the obligations to be observed by the DFI in the event that a key responsible person is disqualified or is no longer fit and proper.
- S** 9.5 Where the board or NC has assessed that the company secretary no longer demonstrates the qualities specified in paragraph 8.2, 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 DFI must inform the Bank in writing of the removal of such person within seven days.

² Pursuant to section 8 of the DFIA.

³ Pursuant to section 238 of the Companies Act 2016

10 Policies and Procedures

- S** 10.1 DFIs 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:
- (a) governance and operational arrangements for conducting fit and proper assessments, including any delegation of assessment or decision-making authority under paragraph 9.2;
 - (b) specific factors to consider in assessing whether a person is fit and proper for the position of a key responsible person or company secretary;
 - (c) steps to be taken to ensure that all persons appointed or to be appointed as a key responsible persons or the company secretary understand:
 - (i) the DFI's internal policies on fit and proper requirements; and
 - (ii) the obligation to continue to meet the fit and proper criteria under DFIA on an on-going basis;
 - (d) avenues for any person within the DFI to disclose information relevant for the assessment of key responsible persons and the company secretary and provide the necessary protection for such person against any discriminatory action as a result of providing such information;
 - (e) procedures to deal with key responsible persons or the company secretary who no longer meets the fit and proper criteria;
 - (f) procedures to ensure all documentation on fit and proper assessments are kept confidential, including the retention period for such documentation; and
 - (g) procedures for maintaining and updating the list of key responsible persons and company secretary that are subjected to fit and proper criteria and assessment processes.
- S** 10.2 The board must periodically review the internal fit and proper policies and procedures 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 DFI.
- S** 10.3 The NC shall review the list of key responsible persons for the DFI to confirm that the list has included all key positions within the DFI.
- S** 10.4 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 DFI as a key responsible person, the DFI shall include the said person in the list of key responsible persons as required under paragraph 10.1(g) and subject such person to fit and proper assessments.
- S** 10.5 DFIs shall provide all relevant information as may be required by the Bank, including the list of key responsible persons and company secretary of the DFI and records relating to their fit and proper assessments.

11 Assessment of Fitness and Propriety

- S** 11.1 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 DFI becomes aware of information that may materially compromise a person's fitness and propriety.
- S** 11.2 A DFI must support the fit and proper assessments with 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 DFI shall take reasonable steps to verify the information against independent sources.
- S** 11.3 A DFI shall have regard to the factors set out in Part C in assessing a person's fitness and propriety. The DFI shall assess the factors individually, as well as collectively, taking into account their relative importance.
- G** 11.4 Failure to meet one factor on its own does not necessarily mean failure to meet the fit and proper criteria. A DFI should consider the 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 potential risks posed to the DFI.
- G** 11.5 The assessment process will involve a good measure of judgement, which should be exercised objectively and in the best interests of the DFI. The DFI should consider that information relevant to such assessment may vary depending on the degree of an individual's influence and responsibilities in the affairs of the DFI. For example, there may have been material changes in the nature or scope of the responsibilities assumed by an individual that –
- (a) calls for higher standards of competence or judgement in order to properly perform the duties associated with the said position; or
 - (b) give rise to new conflicts that could impair the individual's performance in the position

PART C MINIMUM ASSESSMENT FACTORS

12 Probity and Reputation

- G** 12.1 Probity and reputation are values that can be demonstrated through personal qualities such as honesty, integrity, trustworthiness, 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** 12.2 In assessing a person's level of probity and reputation, the board and NC shall consider factors⁴ which include -
- (a) 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;
 - (b) 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;
 - (c) whether the person has contravened any of the requirements or standards of a regulatory body, professional body, government or its agencies;
 - (d) 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;
 - (e) whether the person has engaged in any business practices which are deceitful, oppressive or otherwise improper (whether unlawful or not), or which otherwise reflects discredit on his professional conduct;
 - (f) 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;
 - (g) whether the person has been associated, in ownership or management capacity, with a company, partnership or other business association that 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;
 - (h) 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;
 - (i) 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;

⁴ In respect of key responsible person, these factors shall be read together with paragraphs 1(1A) and 1(2) of the First Schedule of the DFIA.

- (j) whether the person has been a director of, or directly concerned in the management of any FI, the license of which has been revoked;
- (k) whether the person has acted unfairly or dishonestly in his dealings with his customers, employer, auditors and regulatory authorities;
- (l) 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 or standards, including compliance with tax requirements and obligations;
- (m) whether a person has contributed significantly to the failure of an organisation or a business unit;
- (n) 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
- (o) whether the person is involved in any business or other relationships 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 DFI or the DFI's interests.

13 Competency

- G** 13.1 Competency is demonstrated by a person who has capability, 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 the relevant position effectively.
- S** 13.2 In assessing a person's competency, the board and NC shall consider factors⁵ which include -
- (a) 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
 - (b) whether the person has satisfactory past performance or expertise in the nature of the business being conducted.

⁵ In respect of key responsible person, these factors are in addition to paragraphs 1(1A) and 1(2) of the First Schedule of the DFIA.

14 Financial Integrity

- G** 14.1 Financial integrity is demonstrated by a person who manages his own financial affairs properly and prudently.
- S** 14.2 In assessing a person's financial integrity, the board and NC shall consider all relevant factors which include -
- (a) 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
 - (b) 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** 14.3 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.