



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Application Procedures for Acquisition of Interest in Shares and to be a Financial Holding Company

Applicable to-

1. Prospective applicants and applicants under section 87, 88 and 110 FSA
2. Prospective applicants and applicants under section 99, 100 and 122 IFSA

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PART A OVERVIEW

1 Introduction

- 1.1 The Financial Services Act 2013 (FSA) and Islamic Financial Services Act 2013 (IFSA) prohibit a person from entering into an agreement or arrangement to acquire any interest in shares of a licensed person by which, if the agreement or arrangement is carried out, will result in the person holding an aggregate interest in shares of the licensed person of any multiple of 5%¹ or more, without the prior approval of the Bank². The FSA and IFSA also prohibit a person from having control or holding an aggregate interest in shares of a licensed person of more than 50%³, without the prior approval of the Minister on the recommendation of the Bank. A company which will hold an aggregate interest in shares of a licensed person of more than 50% is also required to submit an application to the Bank to be approved as a financial holding company⁴.
- 1.2 This policy document sets out–
- (a) considerations under the law in assessing an application to acquire interest in shares or control of a licensed person or a proposed licensed person, or to be a financial holding company;
 - (b) the application procedure; and
 - (c) the documents and information to be submitted to the Bank to facilitate the assessment of the application.

2 Applicability

- 2.1 This policy document is applicable to a person that is required to obtain an approval pursuant to–
- (a) section 87 of the FSA or section 99 of the IFSA;
 - (b) section 88 of the FSA or section 100 of the IFSA; or
 - (c) section 110 of the FSA or section 122 of the IFSA,
- including where it is a proposed acquisition of interest in shares in a person who is in the process of applying for a licence under section 10 of the FSA or section 10 of the IFSA, as the case may be.

3 Legal provisions

- 3.1 This policy document is issued pursuant to–
- (a) sections 90(1), 112(1), 143 and 266 of the FSA; and
 - (b) sections 102(1), 124(1), 155 and 277 of the IFSA.

¹ A summary of the approval required at the relevant thresholds is provided in Appendix 1.

² Section 87 of the FSA and section 99 of the IFSA. This includes a proposed acquisition of effective interest in shares through one or more body corporates, even if the person acquiring is located in a jurisdiction outside Malaysia. Refer to Appendix 3.

³ Sections 87(2) and 88 of the FSA, and sections 99(2) and 100 of the IFSA.

⁴ Section 110 of the FSA and section 122 of the IFSA.

4 Effective Date

4.1 This policy document comes into effect on 27 December 2019.

5 Interpretation

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

5.2 For the purpose of this document–

“**S**” denotes a standard, an obligation, a requirement, specification, direction, condition and any interpretive, supplement and transitional provisions that must be complied with; and

“**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.

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–

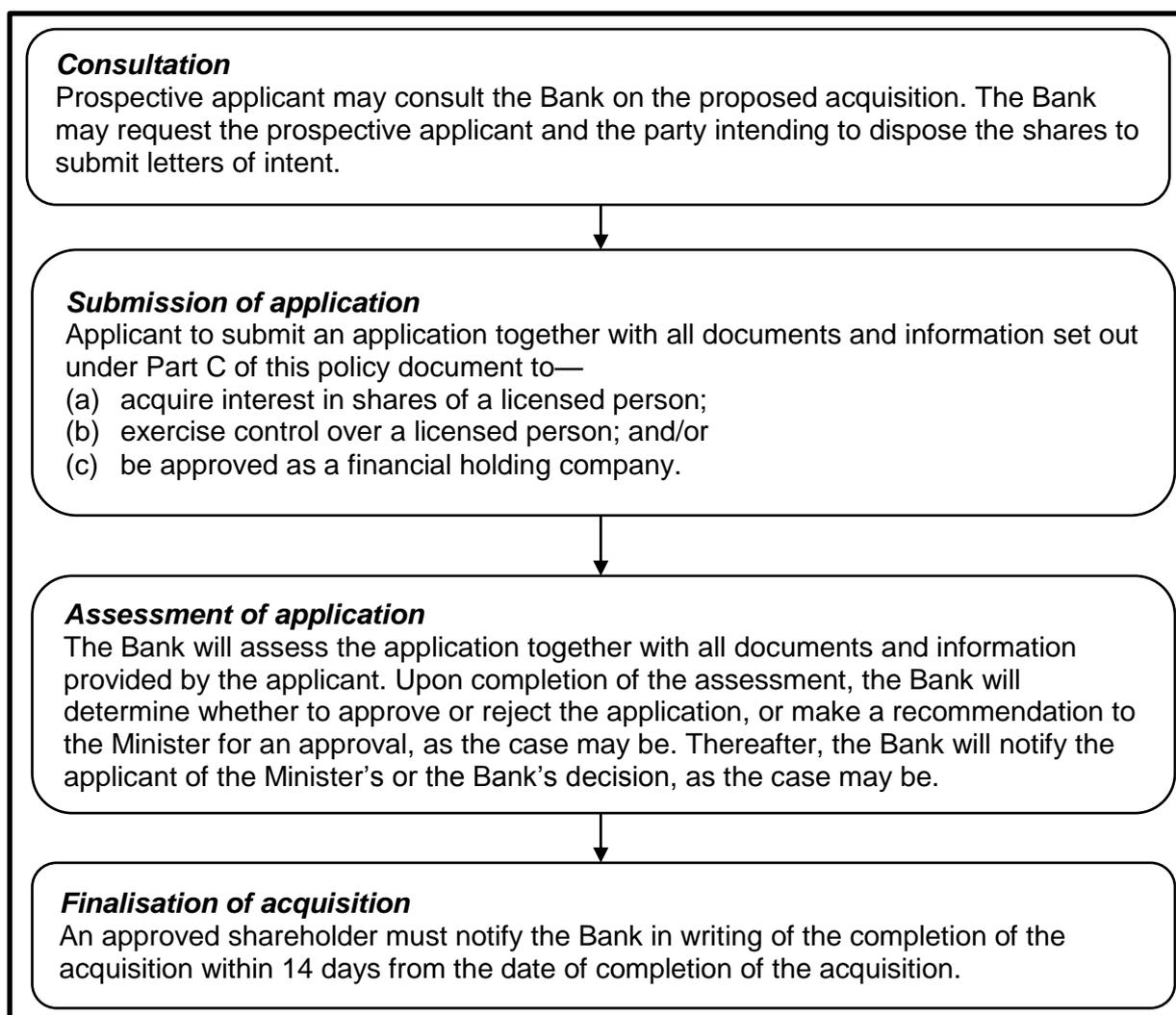
- (a) *Application Procedures for New Licences under Financial Services Act 2013 and Islamic Financial Services Act 2013;*
- (b) *Approach to Regulating and Supervising Financial Groups;* and
- (c) *Shareholder Suitability.*

PART B APPLICATION PROCEDURES

7 Application Process

- G** 7.1 The application procedures consist of the following stages:
- (a) Consultation;
 - (b) Submission of application;
 - (c) Assessment of application; and
 - (d) Finalisation of acquisition.

A flowchart depicting the application process is as follows:



Consultation

- G** 7.2 Prior to submitting a formal application to the Bank, a prospective applicant should consult the relevant departments of the Bank as set out in Appendix 2. Depending on the complexity or materiality of the proposed acquisition, the Bank may also invite the prospective applicant to a meeting to discuss the proposed acquisition.
- G** 7.3 Following the consultation, the Bank may request the prospective applicant and the party intending to dispose the shares to submit letters of intent⁵, either jointly or separately, indicating their intention to negotiate the proposed acquisition, together with information about the prospective applicant and an overview of the proposed acquisition.
- G** 7.4 Alternatively, the Bank may advise the prospective applicant to submit an application without the need for a letter of intent.

Submission of application

- S** 7.5 An application made by an applicant under section 90 or 112 of the FSA, or section 102 or 124 of the IFSA must be—
- (a) made in writing; and
 - (b) submitted together with the documents and information set out in Part C, in English or in Bahasa Malaysia. For documents and information which are in other languages, the applicant must provide a certified translation⁶ in English or Bahasa Malaysia accompanied by the original document.
- G** 7.6 Where more than one person in a series of body corporates is required to obtain the approval of the Bank or the Minister, as the case may be, such persons may propose one among them to submit an application on their behalf. The Bank would typically expect the ultimate holding company or the ultimate beneficial owner of the series of body corporates to submit the application.
- S** 7.7 Notwithstanding paragraph 7.6, where the Bank requires any person within the series of body corporates to provide additional documents or information to the Bank, such person shall submit the requested additional documents or information.

⁵ Generally, the Bank may require the prospective applicant to submit letters of intent for cases, among others, where the proposed acquisition results in—

- (a) the applicant holding more than 5% aggregate interest in shares in the licensed person for the first time;
- (b) where the licensed person is a listed entity, the applicant holding an aggregate interest in shares in a licensed person of, or exceeding, the percentage holding for a mandatory offer under the Malaysian Code on Take-Overs and Mergers prescribed under section 217 of the Capital Markets and Services Act 2007; or
- (c) a change in control over the licensed person.

⁶ The documents and translation must be certified by a notary public and authenticated at the Malaysian diplomatic mission of the applicant's home country.

- S** 7.8 An application is deemed submitted once the complete set of documents and information have been submitted to the Bank.

Assessment of application

- G** 7.9 In assessing the suitability of an applicant, the Bank will take into consideration matters that the Bank considers relevant⁷, including any of the factors set out in Schedule 6 of the FSA or IFSA and the policy document on *Shareholder Suitability*.
- G** 7.10 In line with the Bank's approach to regulating and supervising financial group, an applicant with a proposed aggregate interest in shares of more than 50% in a licensed person is expected to be—
- (a) an existing licensed person under the FSA or IFSA;
 - (b) a financial holding company approved under the FSA or IFSA; or
 - (c) a foreign financial institution regulated by a supervisory authority outside Malaysia which exercise functions corresponding to those of the Bank.
- G** 7.11 In assessing an application under paragraph 7.9, the Bank may also consult the relevant supervisory authorities in Malaysia or outside Malaysia. The Bank may also take into account other matters including information from publicly available sources, to assess the suitability of the applicant(s).
- G** 7.12 Where the Bank is satisfied with the suitability of the applicant(s), the Bank may—
- (a) make a recommendation to the Minister in respect of acquisitions which will result in a person holding an aggregate interest in shares of a licensed person of more than 50% or exercising control over a licensed person; or
 - (b) approve the application in respect of acquisitions which will result in a person holding an aggregate interest of 5% or more in the shares or a licensed person.
- G** 7.13 The Bank will notify the applicant in writing of the Minister or the Bank's decision, as the case may be, pertaining to the application.
- S** 7.14 Where an approval is granted with conditions⁸, the approved shareholder or financial holding company must comply with all the conditions⁹.

Finalisation of acquisition

- S** 7.15 An approved shareholder must notify the Bank in writing of the completion of the acquisition within 14 days from the date of completion of the acquisition.

⁷ In respect of an applicant which is not an individual, consideration will also be given to the circumstances of the applicant's related corporations and their inter-relationships.

⁸ The conditions may include the timeline for the acquisition to be completed.

⁹ For the avoidance of doubt, this includes compliance with section 91(2) of the FSA and section 103(2) of the IFSA.

Additional procedural requirements in respect of an application to be a financial holding company

- G** 7.16 The Bank's approval for a company to be a financial holding company aims to ensure that the financial holding company is able to establish and implement group-wide policies and procedures in accordance with the Bank's expectations for financial groups. The Bank would typically expect the ultimate holding company to submit the application to be a financial holding company.
- S** 7.17 To facilitate the Bank's assessment on the adequacy of resources and infrastructure of the proposed financial holding company to manage the financial group's risks, the applicant must submit details on—
- (a) its plans to put in place systems, policies and procedures to identify, control, monitor and report risks and compliance issues within the proposed financial group; and
 - (b) information systems to be put in place to produce reports in accordance with relevant financial and regulatory reporting requirements in an accurate and timely manner.
- G** 7.18 The Bank may also approve an intermediate financial holding company in the following cases:
- (a) where the financial group operates in both banking and insurance/takaful sectors; and
 - (b) in the case of an acquisition by a foreign entity, the intermediate holding company in Malaysia to hold the combined Malaysian operations of the foreign entity.
- S** 7.19 Where an applicant is approved as a financial holding company or an intermediate financial holding company, as the case may be, the company must submit the following applications to the Bank:
- (a) application for the appointment of the chairman, directors and chief executive officer of the approved financial holding company pursuant to section 54(2) of the FSA or section 63(2) of the IFSA; and
 - (b) application for the appointment of an auditor of the approved financial holding company pursuant to section 67(2) of the FSA or section 76(2) of the IFSA.

PART C SUBMISSION OF DOCUMENTS AND INFORMATION

8 Specification of documents and information to be submitted by the applicant

- S** 8.1 For the purpose of paragraphs 8.2 and 9.1, the documents and information submitted must include the applicant and all persons in the series of body corporates, including their ultimate beneficial owners, that are subject to regulatory approval.
- S** 8.2 An applicant must submit the following documents and information to the Bank together with its application:
- (a) name of the applicant;
 - (b) in respect of an applicant who is **an individual**–
 - (i) residential and mailing address;
 - (ii) date of birth;
 - (iii) nationality;
 - (iv) Malaysian national registration identity number or passport number;
 - (v) working experience (to also state the position held, main responsibilities and name of organisation); and
 - (vi) academic and professional qualification.
 - (c) in respect of an applicant which is **not an individual**–
 - (i) the address of the principal place of business and head office;
 - (ii) date and place of incorporation or establishment;
 - (iii) entity identification number (e.g. the company number or the business registration number);
 - (iv) business activities within the same corporate group or related companies, including location of business; and
 - (v) description of the principal business;
 - (d) a summary of the proposed transactions to effect the acquisition of interest in shares of the licensed person, including–
 - (i) the number and percentage of shares proposed to be acquired by the applicant and the resultant interest in shares of a licensed person proposed to be held by the applicant;
 - (ii) in the case where the shares proposed to be acquired is not the shares of a licensed person, the name of the entity whose shares the applicant is proposing to acquire and the resultant effective interest in shares in a licensed person;
 - (iii) the person(s) from whom the shares will be acquired;
 - (iv) an illustration of the shareholding structure of the licensed person depicting–
 - (A) the shareholding structure before and after the proposed acquisition; and

- (B) the amount of effective interest in shares to be held by the applicant and other shareholders¹⁰ who hold an aggregate interest in shares of the licensed person of 5% or more;
 - (v) the amount (in ringgit, RM) and type of consideration for the acquisition (e.g. cash, equity or assumption of liabilities), including details as to how the acquisition will be funded and the basis for the valuation;
 - (vi) a demonstration of how the proposed application will be in the best interest of Malaysia, in line with paragraph 6 of Schedule 6 of the FSA or IFSA;
 - (vii) a draft of the shareholders' agreement and other agreements reflecting the right and obligations of the shareholders; and
 - (viii) the draft contracts or agreements that, once finalised and executed, would give effect to the proposed acquisition;
- (e) whether in the past five years, the applicant, and, in the case of a person who is not an individual, its subsidiaries, have been subject to any of the following:
- (i) civil suits affecting the applicant's ability to meet its financial or contractual obligations;
 - (ii) criminal convictions; or
 - (iii) enforcement actions for breaches of any statutory, regulatory or other administrative requirements relating to, but not limited to, financial services, securities or tax laws¹¹;
- (f) details of whether any entity within the applicant's corporate group has previously had its licence suspended or revoked, been denied an application to establish a financial institution or had restrictions imposed on its operations by any regulator, and the reasons; and
- (g) a list of conditions precedent or events that must occur in order to effect the proposed acquisition, including in respect of approvals of other stakeholders such as prudential regulatory authorities, competition authorities and shareholders.

¹⁰ This includes any beneficial owner that has interest in shares in the licensed person.

¹¹ This includes prudential, conduct and anti-money laundering and terrorism financing requirements.

9 Specification of additional documents and information to be submitted for applications to hold more than 50% interest in shares or to have control¹²

- S** 9.1 In respect of an acquisition which will result in a person acquiring control or holding an aggregate interest in shares of a licensed person of more than 50%, an applicant must also submit the following documents and information to the Bank together with its application:
- (a) certified copy of the board resolution(s) of the applicant approving the application;
 - (b) a chart of the corporate group structure before and after the proposed acquisition which includes the licensed persons, the applicant and all the significant shareholders¹³, subsidiaries, associate corporations and jointly controlled entities of the applicant. The corporate group chart must be supplemented by information about each person or entity identified in the chart including—
 - (i) in respect of information pertaining to a corporate entity—
 - (A) a description of the principal business (including if the company is for the purpose of investment holding); and
 - (B) the place of establishment; and
 - (ii) in respect of information pertaining an individual, the name and nationality of the individual;
 - (c) an overview of the applicant's financial position and, in respect of a person which is not an individual, the following:
 - (i) the applicant's track record of its investment in regulated financial institutions;
 - (ii) the annual audited financial statements¹⁴ for the last three financial years, unless otherwise specified by the Bank; and
 - (iii) where available, a copy of the most recent credit rating report¹⁵ for the applicant, its subsidiaries, associate corporations and jointly controlled entities, respectively;
 - (d) in the case of a foreign institution regulated by a supervisory authority outside Malaysia which exercises functions corresponding to those of the Bank—
 - (i) indicate the name of the home supervisory authority(s), including the name and contact details of the officer that is principally responsible for supervising the applicant; and

¹² The Bank may require an applicant intending to acquire non-controlling interest in shares of a licensed person to also submit information as set out in this paragraph.

¹³ Shareholders include the ultimate beneficial owners, who own an aggregate interest in shares of 5% or more in the applicant.

¹⁴ Both the separate and consolidated financial statements.

¹⁵ e.g. Standard & Poor's, Moody's Investors Service, Fitch Ratings, RAM Ratings or Malaysian Rating Corporation.

- (ii) provide a confirmation from the home supervisory authority that—
 - (A) there are no objections to the applicant's intention to acquire interest in shares of the licensed person in Malaysia;
 - (B) the applicant is of good financial standing;
 - (C) the applicant complies with the regulatory requirements in the home jurisdiction¹⁶, and, to the best of knowledge of the home supervisory authority(s), has no record of material breaches of any legal or regulatory requirements;
 - (D) the home supervisory authority(s) practices prudential supervision in accordance to the Core Principles for Effective Banking Supervision or Insurance Core Principles and Methodology promulgated by the Basel Committee on Banking Supervision or International Association of Insurance Supervisors, respectively;
 - (E) the home supervisory authority(s) performs consolidated supervision over the applicant and its related entities (including the licensed person) and will co-operate and share information with the Bank to facilitate the Bank's supervision of the licensed person in Malaysia; and
 - (F) there are no impediments (including legal or regulatory) that may hinder the applicant from providing prompt financial support to the licensed person, as and when necessary;
- (e) an overview of any proposed change to the licensed person's board of directors, chief executive officer or senior officers;
- (f) where an applicant is proposing changes to the licensed person's business plans, the applicant must demonstrate how they will improve the business prospects, competitiveness and sustainability of the licensed person. This should be supported by the following information—
 - (i) an overview of each line of business to be conducted and business targets, details of new products and services, delivery channels and technology to be introduced, and, in respect of a takaful business, the takaful operational model;
 - (ii) how the proposed business plans fit within the licensed person's business as well as the applicant's corporate group strategy and, where relevant, global operations;
 - (iii) how the risks arising from these plans will be managed, including any changes to the licensed person's existing risk management framework and outsourcing arrangements within the group or to an external service provider;

¹⁶ This includes prudential, conduct and anti-money laundering and terrorism financing requirements

- (iv) an assessment of the viability of the business strategy and plans, supported by pro-forma financial statements¹⁷, information on the applicant's requisite track record, as well as managerial, organisational and financial resources needed to support the new business plan. This may include new expertise to be introduced to drive the business strategy; and
 - (v) implementation plan covering 3 years from the proposed acquisition, including clear timelines and milestones to be achieved; and
- (g) comments and observations by the current board of directors of the licensed person on the feasibility and viability of the proposed business plans.

- S** 9.2 Where there are proposed changes to the business plans of the licensed person submitted pursuant to paragraph 9.1(f) upon, or subsequent to, the completion of an acquisition by an approved controlling shareholder, the board of the licensed person shall notify the Bank of such changes and may be required to provide periodic updates on the progress of the proposed business plans.

¹⁷ The pro-forma financial statements must show separately major asset, liability, income, expense and off-balance sheet categories, including key assumptions underlying these calculations. For insurers, applicants should also detail the actuarial assumptions.

APPENDIX 1 SUMMARY OF THE APPROVAL REQUIRED AT RELEVANT THRESHOLDS

Shareholder A, who is currently approved to hold an aggregate of 8% interest in shares of Bank Z (i.e. approved to hold an aggregate interest in shares greater than 5% but not more than 10%), intends to acquire another 4% interest in shares of Bank Z. As the proposed acquisition would result in Shareholder A holding an aggregate interest in shares of 12%, which is more than 10% (i.e. a multiple of 5%), Shareholder A is required to obtain the Bank's prior written approval under the FSA or IFSA.

In summary, approval for shareholding changes is required at the following thresholds:

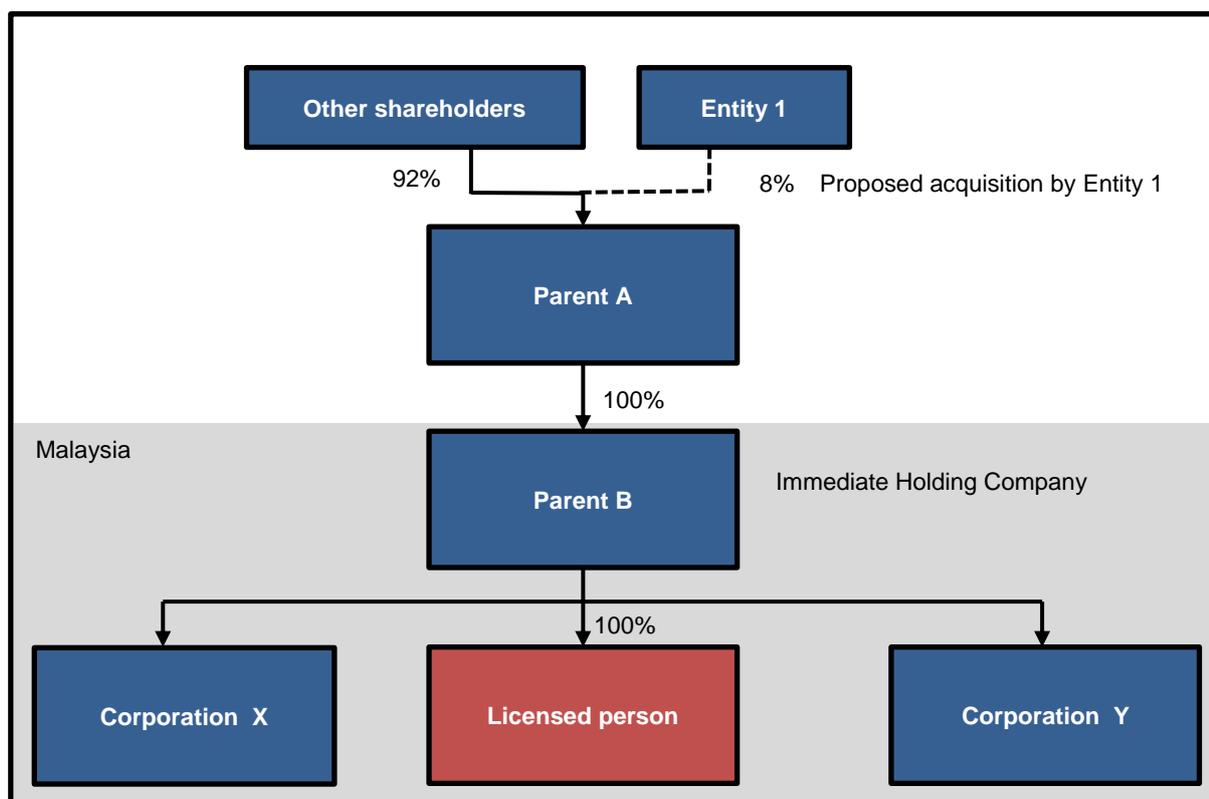
- (a) multiple of 5% i.e. 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 55%, 60%, 65%, 70%, 75%, 80%, 85%, 90%, 95%, 100%; and
- (b) percentage holding for a Mandatory Offer.

APPENDIX 2 CONTACT POINTS FOR CONSULTATION

1. A prospective applicant who is an existing approved shareholder of a licensed person may contact either of the following departments:
 - (a) Jabatan Penyeliaan Konglomerat Kewangan;
 - (b) Jabatan Penyeliaan Perbankan; or
 - (c) Jabatan Penyeliaan Insurans dan Takaful.

2. Other prospective applicants may contact the relevant departments as follows:
 - (a) Jabatan Pembangunan dan Inovasi Kewangan (for an application in respect of a licensed person under the FSA and for an application in respect of licensed persons under both the FSA and IFSA); or
 - (b) Jabatan Perbankan Islam dan Takaful (for an application in respect of a licensed person under the IFSA).

APPENDIX 3 AN EXAMPLE OF ACQUISITIONS THROUGH ONE OR MORE BODY CORPORATES



Where Entity 1 intends to enter into an arrangement or agreement to acquire 8% of shares of Parent A, the Bank’s prior approval is required pursuant to section 87 of the FSA or section 99 of the IFSA as the transaction would result in Entity 1 holding an aggregate interest in shares of the licensed person of 8% (8% x 100% x 100%). Approval is required even if Entity 1 is located in a jurisdiction outside Malaysia.

In assessing the suitability of Entity 1, the Bank will consider matters that the Bank considers relevant, including the circumstances of Entity 1’s associate or related corporations, and their ultimate beneficial owners, whether a body corporate or an individual.