



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Fit and Proper Criteria for Approved Person Exposure Draft

Applicable to:

1. Approved operator of payment system
2. Approved issuer of designated payment instrument
3. Approved issuer of designated Islamic payment instrument
4. Approved insurance broker
5. Approved takaful broker
6. Approved money broker
7. Approved financial adviser
8. Approved Islamic financial adviser

This exposure draft sets out Bank Negara Malaysia's (the Bank) proposed regulatory requirements to ensure that individuals in positions of strategic leadership in an approved person and financial adviser's representatives 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.

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 28 September 2018 to the following mailing or email address:

Pengarah
Jabatan Konsumer dan Amalan Pasaran
Bank Negara Malaysia
Jalan Dato' Onn
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Email: fitandproper@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)
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PART A OVERVIEW

1 Introduction

- 1.1 Members of the board and chief executive officer (CEO) are responsible for the effective oversight and management of an approved person in accordance with regulatory and professional standards applied to its business. As such, persons in these positions should have the necessary qualities, competencies and experience that will allow them to effectively perform the duties and carry out the responsibilities required of the position.
- 1.2 It is also important that a financial adviser's representative (FAR) appointed by an approved financial adviser or Islamic financial adviser is competent, qualified and professional as it provides financial advisory services, including advice and recommendations, that may affect the financial well-being of the consumers.
- 1.3 This policy document specifies:
 - (a) the definition of key responsible persons within an approved person;
 - (b) the conditions to be observed in the assessment and appointment of key responsible persons and a FAR;
 - (c) requirements to be observed by an approved person in establishing and applying fit and proper policies and procedures; and
 - (d) the minimum factors that need to be considered in assessing whether or not the fit and proper criteria for key responsible persons and FAR have been met.

2 Applicability

- 2.1 This policy document is applicable to approved persons as defined in paragraph 5.2 of this policy document.

3 Legal provisions

- 3.1 This policy document is issued pursuant to:
 - (a) sections 47(1), 60(1), 143(2) and 266 of the FSA; and
 - (b) sections 57(1), 69(1), 155(2) and 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;

“approved person” means –

- (a) a person approved under section 11(2) FSA to carry on insurance broking business, financial advisory business, money-broking business, issue a designated payment instrument or operate a payment system; and
- (b) a person approved under section 11(2) IFSA to carry on takaful broking business, Islamic financial advisory business, issue a designated Islamic payment instrument or operate a payment system;

“financial adviser’s representative” or “FAR” collectively means financial adviser’s representative and Islamic financial adviser’s representative, unless otherwise stated;

“key responsible persons” refer to persons who are accountable or responsible for the management or oversight of an approved person. These comprise-

- (a) the directors; and
- (b) the CEO.

PART B FIT AND PROPER CRITERIA, POLICIES AND PROCEDURES

6 Conditions for assessment and appointment

- S** 6.1 Any person to be appointed as key responsible persons or a FAR must not be disqualified¹ and 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, personal integrity and reputation;
 - (b) competency and capability; and
 - (c) financial integrity.
- S** 6.2 The persons appointed in accordance with paragraph 7.2 must meet the fit and proper criteria in this policy document at all times.

7 Responsibilities of the board

- G** 7.1 The requirements outlined in paragraph 7 should be read together with sections 61 and 62 of the FSA, and sections 70 and 71 of the IFSA.
- S** 7.2 The board must ensure an effective process is in place to conduct assessments on the fitness and propriety of key responsible persons or FARs, and making decisions on their appointments. This includes establishing internal policies on fit and proper procedures and assessment processes relating to key responsible persons and FARs which are commensurate with the nature, scale and complexity of its business.
- S** 7.3 The internal policies specified in paragraph 7.2 must be approved by the board and address, at minimum, the following:
- (a) governance and operational arrangements to conduct fit and proper assessments on key responsible persons or FARs, including any delegation of assessment or decision-making authority by the board;
 - (b) specific factors to be considered in assessing whether a person is fit and proper for the position of key responsible persons or FARs;
 - (c) steps to be taken to ensure that all persons to be appointed or who have been appointed as key responsible persons or FARs understand the approved person's internal policies on fit and proper requirements and their obligation to meet the fit and proper criteria specified by the Bank at all times;
 - (d) avenues to allow any person within the approved person to disclose information that would be relevant for the assessment of key responsible persons or FARs while providing the necessary protection to such person from any discriminatory actions for providing such information;

¹ Pursuant to section 59(1) of the FSA or section 68(1) of the IFSA.

- (e) procedures to be undertaken to deal with key responsible persons or FARs who no longer meet the fit and proper criteria set by the Bank; and
- (f) procedures to ensure all documentation on fit and proper assessments, including supporting information are kept confidential, and the period for which such documentation will be retained by the approved person.

- S** 7.4 The internal fit and proper policies and procedures must be periodically reviewed by the board to ensure their relevance and alignment with the approved person's organisational needs and structure as well as material changes in the business and risk profile of the approved person.
- S** 7.5 Where a key responsible person or a FAR no longer demonstrates the qualities specified in paragraph 6.1, the approved person must take immediate steps to reduce the risks associated with the key responsible person or FAR continuing to hold the position and remove the key responsible person or FAR from such position as soon as practicable. The approved person concerned must inform the Bank in writing of the removal of such key responsible person or FAR within seven days from the effective date of such removal.

8 Assessment of fitness and propriety

- S** 8.1 The fit and proper assessments on each person within the scope of this policy document must be conducted both prior to his appointment and at regular intervals or whenever the approved person becomes aware of information that may materially compromise a person's fitness and propriety.
- S** 8.2 The fit and proper assessments must be supported by 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 approved person must take reasonable steps to verify the information against independent sources.
- S** 8.3 An approved person must have regard to the factors set out in Part C in assessing a person's fitness and propriety. The factors must be assessed individually, as well as collectively, taking into account their relative importance.

PART C MINIMUM ASSESSMENT FACTORS

9 Probity, personal integrity and reputation

- G** 9.1 Probity, personal integrity and reputation are values that can be demonstrated through personal qualities such as honesty, integrity, 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** 9.2 In assessing a person's level of probity, integrity and reputation, an approved person must consider factors which include, but are not limited to the following:
- (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 and standards of a regulatory body, professional body, government or its agencies;
 - (d) whether the person has engaged in any business practices which are deceitful, oppressive or otherwise improper (whether unlawful or not), or which otherwise reflect discredit on his professional conduct;
 - (e) whether the person has been dismissed, asked to resign or has been resigned from employment or from a position of trust, fiduciary appointment or similar position because of questions about his honesty and integrity;
 - (f) whether, in the past, the person has acted unfairly or dishonestly in his dealings with his customers, employer, auditors and regulatory authorities; and
 - (g) whether the person is involved in any business or other relationship which could materially pose a conflict of interest or interfere with the exercise of his judgment when acting in the capacity of a key responsible person or FAR which would be disadvantageous to the clients or the clients' interest.
- S** 9.3 Further to paragraph 9.2, in assessing key responsible persons' level of probity, integrity and reputation, the board must also consider factors which include, but are not limited to the following:
- (a) whether a 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;
 - (b) 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 licence to conduct any trade, business or profession, or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated;

- (c) 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;
- (d) whether the person has been a director of, or directly concerned in the management of any authorised person, the approval of which has been revoked;
- (e) 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 and standards, including compliance with tax requirements and obligations; and
- (f) whether the person has at any time shown strong objection or lack of willingness to maintain effective internal control systems.

10 Competency and capability

- G** 10.1 Competency and capability are demonstrated by a person who possesses the 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 a key function in the relevant capacity effectively.
- S** 10.2 In assessing a person's competency and capability, the board must consider factors which include, but are not limited to the following:
 - (a) whether the person has the appropriate qualification, training, skills, practical experience and commitment to effectively fulfill the role and responsibilities of the position and in case of directors, having regard to their commitments; and
 - (b) whether the person has satisfactory past performance or expertise in the nature of the business being conducted.

11 Financial integrity

- G** 11.1 Financial integrity is demonstrated by a person who manages his own financial affairs properly and prudently.
- S** 11.2 In assessing a person's financial integrity, the board must consider all relevant factors which include, but are not limited to the following:
 - (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 judgment debt which is unsatisfied, either in whole or in part, whether in Malaysia or elsewhere.