BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Shareholder Suitability

Concept Paper

Issued on: 18 March 2016

BNM/RH/CP 029-11

TABLE OF CONTENT

PART A OVERVIEW 2
1. Introduction 2
2. Applicability 2
3. Legal provision 2
4. Effective date 2
5. Interpretation 2
6. Policy document superseded 3

PART B REQUIREMENTS ON SHAREHOLDERS 4
7. General requirements 4
8. Maintaining honesty, integrity and reputation 4
9. Exercise of influence 5
10. Financial soundness 5

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 a licensed person are carried out. This concept paper therefore sets out the shareholder suitability requirements that must be complied with at all times by shareholders of a licensed person.

The Bank invites written feedback on the proposed regulatory 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, accompanying evidence or illustrations, as appropriate to facilitate effective review of this Concept Paper.

Responses must be submitted to the Bank by **15 April 2016** to the following:

Pengarah
Jabatan Dasar Kewangan Pruden
Bank Negara Malaysia
Jalan Dato' Onn
50480 Kuala Lumpur
Email: pfpconsult@bnm.gov.my

In the course of providing your feedback, you may direct any queries to Stephanie Tan at stephanie@bnm.gov.my or 03-26988044 (ext:7187) and Muhammad Syukri at msyukri@bnm.gov.my or 03-26988044 (ext:8538).

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 a licensed person are carried out. It is therefore important that the shareholders of the licensed person are persons of integrity and good reputation, and who maintain a sound financial position in order to minimise risks that could threaten the safety and soundness of the licensed person.

1.2. This policy document sets out the shareholder suitability requirements that must be complied with at all times by shareholders of a licensed person.

2. Applicability

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

3. Legal provision

3.1. The requirements in this policy document are specified pursuant to—
(a) section 91(1) of the Financial Services Act 2013 (FSA) and section 103(1) of the Islamic Financial Services Act 2013 (IFSA) to give full effect to Schedule 6 of the FSA and IFSA, respectively; and
(b) 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 [date of publication of final 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 and IFSA, 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;

"shareholder" refers to a person that holds an aggregate interest in shares of a licensed person of 5% or more.

6. Policy document superseded

6.1. This policy document supersedes the policy document on *Shareholder Suitability* issued on 8 October 2014.

PART B REQUIREMENTS ON SHAREHOLDERS

7. General requirements

S 7.1. A shareholder must comply with the shareholder suitability requirements set out in paragraphs 8, 9 and 10 on an on-going basis.

G 7.2. In assessing a shareholder's compliance with the requirements in this policy document, the Bank will consider all matters that the Bank considers relevant, including the circumstances of the shareholder's associate or related corporations, and their ultimate beneficial owners, whether a body corporate or an individual.

G 7.3. In the event that a shareholder has failed to comply with any of the shareholder suitability requirements, the Bank will consider the specific circumstances surrounding the shareholder's failure to meet the specific requirement and the potential risks to the licensed person arising from this failure. The Bank may exercise its powers under the law, including those that are accorded under section 94(2) or section 234 of the FSA, or section 106(2) or section 245 of the IFSA, as the case may be, if the Bank is satisfied that the shareholder suitability requirements are not met.

S 7.4. Where the Bank requires a shareholder to submit all relevant information or documents to the Bank for the purpose of facilitating the Bank's on-going assessment of shareholder suitability, the shareholder must submit such information or documents to the Bank.

8. Maintaining honesty, integrity and reputation

S 8.1. A shareholder must not act or, in the case of a corporate shareholder, conduct its business or operations in a manner that tarnishes or could tarnish its reputation or the reputation of the licensed person.

G 8.2. The following are examples of circumstances that may not be consistent with paragraph 8.1:

(a) being subject to a bankruptcy or winding up proceeding;
(b) failure to meet debt obligations on a timely basis;
(c) being the subject of any criminal proceedings, or convicted of any offences involving dishonesty, fraud or other financial crimes;
(d) non-compliance with relevant laws, requirements or standards issued by a regulatory, professional or government body, in Malaysia or any other jurisdiction, or being subject to disciplinary or enforcement action by such bodies;
(e) engaging in any business practice that is deceitful or reflects discredit on the shareholder's professional conduct;

(f) being the subject of any investigation relating to regulated financial activities;
(g) being refused registration, authorisation, membership or a licence to carry out a trade, business or profession, or has had that registration, authorisation, membership or license revoked, withdrawn or terminated;
(h) where the circumstances of the shareholder's associate or related corporations, or their ultimate beneficial owners, adversely affects, or otherwise discredits in any way, the reputation or integrity of the shareholder or the licensed person; and
(i) in respect of an individual shareholder—
  (i) is or was a director of a company that has gone into insolvency, liquidation or administration, or directly concerned in the management of the business of such company or a company referred to in paragraph (c), (e) or (g) above; and
  (ii) is being or has been dismissed, asked to resign from employment, a position of trust, fiduciary appointment or other similar appointments.

9. Exercise of influence

S 9.1. A shareholder, in exercising its rights as a shareholder of a licensed person, must act in a manner that is consistent with the standard of good governance.

S 9.2. Where a shareholder has a controlling ownership in the licensed person, the shareholder must not exercise its influence in a manner that undermines the safety and soundness of the licensed person or conflicts or could conflict with the effective oversight of the licensed person's group.

G 9.3. A shareholder should observe the principles of sound corporate governance, particularly those espoused under the Bank's corporate governance framework and corporate governance codes issued by other bodies such as Bursa Malaysia and the Securities Commission.

G 9.4. The following are examples of circumstances that may not be consistent with paragraph 9.1 or 9.2:
(a) shareholders unduly imposing their interests on the board or senior management in respect of the business or operations of the licensed person; and
(b) shareholders, whether collectively or individually, acting in a manner that disrupts the operations of the board or the licensed person in a manner detrimental to its safety and soundness (e.g. shareholder disputes).

10. Financial soundness

S 10.1. A shareholder must have adequate control of its financial risks and maintain a sound financial position on a continuous basis so that it can serve as a source of financial strength for the licensed person in the event that capital support is

needed.

G 10.2. The following are examples of circumstances that may not be consistent with paragraph 10.1:

(a) failure to fulfill its financial obligations, as and when they fall due; and

(b) in respect of a corporate shareholder specifically—

(i) insufficient assets, capital or reserves to withstand any financial shocks;

(ii) excessive risk-taking by the shareholder or aggressive expansion plans by the shareholder which are not reasonably supported by adequate financial capacity; and

(iii) where the financial circumstances of the shareholder's associate or related corporations, or their ultimate beneficial owners could affect the shareholder's financial position or ability to provide financial support to the licensed person when needed.