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PART A: OVERVIEW

1. Introduction

- 1.1 Members of the board and senior management of financial institutions (FIs) provide strategic leadership that influences the financial position and future direction of an FI. As such, persons in these positions should 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 expectations on the suitability of persons in key positions are an extension of the corporate governance framework and are also aimed at ensuring that the financial institution is led by persons of integrity, credibility, and competency.
- 1.2 The Guidelines on Fit and Proper for Key Responsible Persons (the guidelines) set out the requirements on the obligations of FIs to assess and determine the fitness and propriety of key responsible persons. It further defines:
- (i) the minimum fit and proper criteria applicable to key responsible persons; and
 - (ii) the responsibilities of FIs, the board and board nominating committee (NC) to adopt and ensure effective implementation and compliance to the fit and proper policies.

2. Applicability

- 2.1 The guidelines shall be applicable to the following institutions:
- (i) Banking institutions licensed under Banking and Financial Institutions Act 1989 (BAFIA);
 - (ii) Islamic banking institutions licensed under Islamic Banking Act 1983 (IBA);
 - (iii) Insurers licensed under Insurance Act 1996 (IA);

- (iv) Takaful operators licensed under Takaful Act 1984 (TA); and
- (v) Holding companies as defined under the Guidelines on Corporate Governance for Licensed Institutions.

2.2 The guidelines should be read together with:

- (i) the Guidelines on Corporate Governance for Licensed Institutions;
- (ii) the Guidelines on Corporate Governance for Licensed Islamic Banks;
- (iii) the Guidelines on Minimum Standards for Prudential Management of Insurers (Consolidated);
- (iv) the Guidelines on Directorship for Takaful Operators; and
- (v) the Shariah Governance Framework for Islamic Financial Institutions.

3. Legal Provision

3.1 The guidelines are issued pursuant to section 126 of BAFIA, section 53A of IBA, section 201 of IA, and section 69 of TA; and should be read together with sections 56 of BAFIA, section 23 of IBA, sections 70 and 71 of IA, and section 31(1) of TA.

3.2 The guidelines come into force with immediate effect.

PART B: FIT AND PROPER CRITERIA AND POLICIES

4. Definition

- 4.1 Key responsible persons in these guidelines refer to key persons that are accountable or responsible for the management and oversight of the FI. These comprise:
- (i) directors;
 - (ii) members of Shariah Committee;
 - (iii) chief executive officers (CEO);
 - (iv) any person performing a senior management function who has primary or significant responsibility for the management and performance of significant business activities of the FI; and
 - (v) any person who has primary or significant responsibility for key control functions.
- 4.2 For the purpose of paragraph 4.1 (iv), the key responsible persons are defined as a person who:
- (i) has the authority, makes or has substantial influence in making decisions that affect the whole, or a substantial part of, the FI's business;
 - (ii) is principally accountable or responsible, whether solely or jointly with other persons, for implementing and enforcing policies and strategies approved by the board; or
 - (iii) 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 FI's risks.
- 4.3 A key responsible person under paragraph 4.1 (v) refers to a person who is principally accountable or responsible, whether solely or jointly with other persons, for monitoring the appropriateness, adequacy and effectiveness of the

- FI's internal controls, risk management and compliance systems and processes, and includes the chief internal auditor, head of risk management, head of compliance, chief financial officer, and appointed or signing actuaries.
- 4.4 These guidelines also apply to persons that are mainly accountable or responsible for key functions that are performed outside of the FI (such as under centralised group and outsourced key functions).
- 4.5 The Bank may further designate any person as a key responsible person if the Bank is satisfied that the person plays a significant role in the management and/or the control of the FI. Where the Bank makes such determination, that fact will be notified in writing to the FI.

5. Application of Guidelines

- 5.1 FIs shall establish policies and procedures that are approved by the board to ensure that all key responsible persons are fit and proper to direct and manage the FI's key business activities and functions. These policies and procedures shall be periodically reviewed to ensure their relevance and alignment with material changes in the business and risk profile and strategies of the FI. The board is responsible for monitoring and ensuring on-going compliance with the internal policies and procedures, including policies on ethical behaviour, codes of conduct, as well as disclosure and reporting obligations relating to the fit and proper requirements.
- 5.2 The fit and proper policies and procedures must incorporate:
- (i) minimum fit and proper criteria as set out in Part 6 of these guidelines;
 - (ii) procedures and processes for conducting fit and proper assessments;
 - (iii) factors considered in assessing whether a person is fit and proper for a specific position;

- (iv) actions, including internal governance process requirements, to be taken where a key responsible person is assessed to be no longer fit and proper for a specific position; and
 - (v) list of key responsible persons for the FI.

- 5.3 The policies and procedures should also provide for any person within the FI to disclose information to the board or NC that may be relevant for a fit and proper assessment and afford protection to such persons against any discriminatory actions by the FI for providing such information.

- 5.4 FIs shall take all reasonable steps to ensure that each key responsible person to be appointed or already appointed to assume key functions is aware of, and understands, the FI's fit and proper policy and their obligation to continue to meet the fit and proper requirements on an on-going basis.

- 5.5 The board and NC are primarily responsible for ensuring that all key responsible persons fulfil fit and proper requirements and for conducting assessments of the fitness and propriety of directors, members of Shariah Committee and the CEO. For other key responsible persons, decisions on appointments and assessments of fit and proper may be made by the CEO or a designated committee under the delegated authority of the board and NC¹. This shall be clearly provided for in the FI's policies and procedures with appropriate reporting by the CEO or the designated committee to the NC.

- 5.6 The Bank expects that the fit and proper assessments on each key responsible person to be conducted both prior to initial appointments and at regular intervals of at least annually or whenever the NC becomes aware of information that may materially compromise a key responsible person's fitness and propriety to ensure that the key responsible persons fulfil the fit and proper criteria at all times. In addition, the NC is expected to review the list of key

¹ The term board nominating committee (NC) used henceforth should also refer to the CEO or the designated committee.

responsible persons for the FI and be satisfied that the list is comprehensive and has taken into account all key positions within the FI.

- 5.7 The fit and proper assessments must be supported by relevant information in relation to a key responsible person. 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 NC is expected to take reasonable steps within permissible written laws to verify the information against independent sources.
- 5.8 The documentation of fit and proper assessments for each key responsible person should be retained by the FI for a reasonable period and the period must be specified in the FI's fit and proper policy. FIs shall safeguard the confidentiality of information collected and assessments made.
- 5.9 To support the supervisory assessment process to determine the rigour and effectiveness of the fit and proper assessment policies and procedures within an FI, the following information should be made readily available for inspection by the Bank upon request:
- (i) FI's internal fit and proper policies and procedures;
 - (ii) List of key responsible persons within the FI; and
 - (iii) Documentation of fit and proper assessment for each key responsible person.
- 5.10 Where the NC has assessed that a person:
- (i) is not fit and proper for a position, the board shall not appoint the person to the said position; and
 - (ii) is no longer fit and proper for a position, the board shall take reasonable steps to remove the person from such position as soon as practicable and in the interim, institute necessary measures to mitigate risks associated with the person continuing to hold the position. Under these

circumstances, the board shall notify the Bank immediately of such a fact.

6. Fit and Proper Criteria

- 6.1 For the purpose of establishing whether a person is fit and proper to hold a key responsible person position, the FI shall have regard to the person's:
- (i) **Probity, personal integrity and reputation** - person must have the personal qualities such as honesty, integrity, diligence, independence of mind and fairness.
 - (ii) **Competence and capability** - person must have the necessary skills, experience, ability and commitment to carry out the role.
 - (iii) **Financial integrity** - person must manage his debts or financial affairs prudently.

The assessment of the above criteria shall have regard to the considerations set out in paragraph 6.5 – 6.11 of these guidelines.

- 6.2 The FI shall also ensure that the person is not disqualified pursuant to section 56 of BAFIA, section 23 of IBA, section 71 of IA, or section 31(1) of TA.
- 6.3 In determining whether a person meets the fit and proper requirements, the considerations set out under these guidelines should be assessed individually (according to their relative importance) as well as on cumulative basis. Failure to meet one indicator may not, on its own, necessarily mean failure to meet the fit and proper criteria. FIs should consider the specific circumstances surrounding a person's failure to meet specific indicators, including the lapse of time since the occurrence of events and the significance of the event from the perspective of potential risks posed to the FI. This process will involve a good measure of judgement, which must be exercised objectively and always in the best interests of the FI and the sound conduct of the FI's business.

6.4 Considerations relevant to the assessment of the fitness and propriety of key responsible persons may vary depending on the degree of their influence and responsibilities in the affairs of the FI. For example, the NC should consider whether there have been material changes in the nature or scope of the responsibilities assumed by an individual which would call for higher standards of competence or judgement in order to properly perform the duties associated with the said position, or which may give rise to new conflicts that could impair the individual's performance in the position. Similarly, circumstances which warrant an individual to be considered as fit and proper may differ between positions and institutions.

Probity, Personal Integrity and Reputation

6.5 Probity, personal integrity and reputation are values that are demonstrated over time. These attributes demand a disciplined and on-going commitment to high ethical standards.

6.6 In assessing a person's level of probity, integrity and reputation to hold a position of a key responsible person, the NC should consider matters including, but not limited to the following:

- (i) 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;
- (ii) 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;
- (iii) whether the person has contravened any of the requirements and standards of a regulatory body, professional body, government or its agencies;
- (iv) 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;
- (v) whether the person has been 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;
 - (vi) 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;
 - (vii) 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;
 - (viii) 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;
 - (ix) 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, or of any licensed institution, the license of which has been revoked under any written law;
 - (x) whether, in the past, the person has acted unfairly or dishonestly in his dealings with his customers, employer, auditors and regulatory authorities;
 - (xi) whether the person has at any time shown a strong objection or lack of willingness to cooperate with regulatory authorities and failure to comply with legal, regulatory and professional requirements and standards, including compliance with tax requirements and obligations;
 - (xii) whether a person has contributed significantly to the failure of an organisation or a business unit;

- (xiii) 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
- (xiv) whether the person is free from any business or other relationship 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 FI or the FI's interest.

Competence and Capability

- 6.7 Competence and capability are demonstrated by a person who possesses the relevant competence, experience and ability to understand the technical requirements of the business, the inherent risks and the management process required to perform his role as a key responsible person in the relevant capacity effectively.
- 6.8 In assessing a person's competence and capability, the NC should consider matters including, but not limited to the following:
- (i) 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
 - (ii) whether the person has satisfactory past performance or expertise in the nature of the business being conducted.

Financial Integrity

- 6.9 Financial integrity is demonstrated by a person who manages his own financial affairs properly and prudently.

- 6.10 In assessing a person's financial integrity, the NC must consider all relevant factors, including but not limited to the following:
- (i) 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
 - (ii) 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.
- 6.11 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.