



## NOTICE TO FINANCE COMPANIES

### NOTICE NO. BU/N-2/2019/62 CORPORATE GOVERNANCE

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#### 1. INTRODUCTION

- 1.1. Effective corporate governance is critical to the proper functioning of the financial sector and the economy as a whole. Financial institutions perform a crucial role in the economy by intermediating funds activities that support enterprise and help drive economic growth. The safety and soundness of financial institutions are key to financial stability, and the manner in which they conduct their business, therefore, is central to economic health.
- 1.2. In fostering effective foundations for corporate governance for the finance company industry, this Notice outlines the specific requirements that finance companies are mandated to comply with. This Notice is issued pursuant to Section 54 of the Autoriti Monetari Brunei Darussalam (AMBD) Order, 2010 and applies to all finance companies in Brunei Darussalam.
- 1.3. This Notice shall be read in conjunction with the Code of Corporate Governance, the Companies (Corporate Governance) (Public companies) Rules 2016, Finance Companies Act, Chapter 89, Guidelines on Corporate Governance for finance companies as well as any other notices, directives or guidelines which the Authority may issue from time to time.
- 1.4. Unless expressly stated herein below, this Notice shall take effect from 1<sup>st</sup> January 2020.



## 2. DEFINITIONS

2.1. For the purposes of this Notice –

2.1.1. “Authority” means Autoriti Monetari Brunei Darussalam as defined by the Autoriti Monetari Brunei Darussalam Order, 2010;

2.1.2. “Board” means the Board of Directors of the finance company;

2.1.3. “independent director” in relation to a finance company in Brunei Darussalam means a director who -

- a) is independent from any management and business relationships with the finance company or of any related corporation, as the case may be;
- b) is independent from any substantial shareholder of the finance company or of any related corporation, as the case may be; and
- c) has not served on the board of the finance company or of any related corporation, as the case may be, for a continuous period of 9 years or longer.

2.1.4. “affiliate”, “associate”, “control functions”, “immediate family”, “related corporation”, “risk appetite”, “risk appetite framework” (RAF), “risk appetite statement” (RAS), “Senior Management”, “substantial shareholder”, “voting shares” shall have the meaning assigned to it under ANNEX I of the Guidelines on Corporate Governance for Finance Companies.

## 3. BOARD MATTERS

3.1. The Finance Company’s Board and Senior Management are ultimately accountable for the company’s safety and soundness and its compliance with governing legislation, including its corporate governance. In exercising their duties, **the Board’s roles and responsibilities shall include but are not limited to –**



3.1.1. Approve and oversee –

- a) Short-term and long-term business plans and strategy including significant strategic initiatives (e.g. mergers and acquisitions);
- b) Risk appetite framework;
- c) Annual financial statements of the finance company and requiring a periodic independent review of critical areas;
- d) Appointment, performance review and compensation of Senior Management including the heads of control functions within the finance company;
- e) Succession plans with respect to the Board, Senior Management and, where appropriate, other heads of the control functions.

3.1.2. Provide challenge, advice and guidance to the Senior Management, as appropriate, on business performance, effectiveness of risk management as well as operational and business policies.

3.2. For the Board of finance companies which are guided by principles of Hukum Syara', the additional responsibility of the Board includes the responsibility to promote Syariah compliance in accordance with expectations set out in the Syariah Governance Framework issued by the Authority. In this respect, **the Board shall clearly define its relationship with the finance company's Syariah Advisory Body**. While the Syariah Advisory Body has distinct responsibilities in relation to Syariah matters, the Board remains responsible for the direction and control of the finance company's business and risk strategies.

#### 4. **BOARD COMPOSITION**

- 4.1. Notwithstanding that the scale and complexity of each finance company's activities will dictate the appropriate size and composition of the Board, a strong independent element will ensure that no individual or small group of individuals will be allowed to dominate the Board's decision making.
- 4.2. In promoting the above objective, the **Board shall be composed of a majority of independent directors**.
- 4.3. **The chairman and/or deputy chairman of the Board shall not be the same person as the chief executive officer.**



- 4.4. **All directors shall submit themselves for re-nomination and reappointment at least once every three years.**

## **5. BOARD MEETINGS**

- 5.1. **The Board shall establish a minimum number of Board Meetings** that would be appropriate to fulfil its responsibilities effectively and prudently, reflective of the nature, scale and complexity of the finance company's business.
- 5.2. While individual directors should attend at least 75% of the Board meetings held in each financial year, **appointment of another person to attend or participate in a Board meeting on the director's behalf shall not be accounted to the director's attendance.**
- 5.3. **Finance companies shall keep full minutes of all meetings of the Board and Board committees, and shall be made available to the Authority upon request. The minutes shall clearly record the following, but not limited to –**
- 5.3.1. the decisions of the Board,
  - 5.3.2. rationale for decisions, including any significant concerns or dissenting views and any deliberations on matters prior to reaching final decisions.
  - 5.3.3. indication whether any director abstained from voting or excused himself from deliberating on a particular matter.
- 5.4. **The Board shall establish a documented 'conflict of interest' policy for its members and where conflicts of interest arise, the Board shall ensure that they are noted in the minutes.**

## **6. BOARD COMMITTEES**

- 6.1. Every finance company **shall establish an Audit Committee.**
- 6.2. In discharging the Board's responsibilities **to Audit Committee and any other Board Committees such as Nominating Committee, Remuneration Committee, Risk Management Committee, the following shall apply:-**



- 6.2.1. The Chair of the Board shall not chair the board committee;
  - 6.2.2. Each board committee shall have at least three directors;
  - 6.2.3. Each board committee shall have a majority of independent directors;
  - 6.2.4. Each board committee shall be chaired by an independent director; and
  - 6.2.5. For finance companies which has limited number of independent directors to meet the independent director membership requirement, non-executive directors shall be appointed in such cases. This paragraph shall not apply where the finance company is a public company.
- 6.3. A finance company may rely on the board committees of its parent or holding company, so long as the Board can dedicate sufficient time and resources to carrying out its responsibilities in the relevant specific area(s). Those wishing to adopt such or similar practices shall seek approval from the Authority and be prepared to justify the merits of their proposed approach in their circumstances.

## **7. INDEPENDENT DIRECTORS**

- 7.1. A director shall be considered to be **independent from management and business relationships** with a finance company if —
- 7.1.1. the director has no management relationship with the finance company or any of its related corporation; and
  - 7.1.2. the director has no business relationship with the finance company or any of its related corporation, or with any officer of the finance company,
- that could interfere, or be reasonably regarded as interfering, with the exercise of the director's independent business judgment with regard to the interests of the finance company.
- 7.2. Without prejudice to paragraph 7.1.1 above, a director shall not be considered to be **independent from management relationships** with a finance company or any of its related corporation if —
- 7.2.1. he is employed by the finance company or any of its related corporation, or has been so employed at any time during the current financial year or any of the



preceding 3 financial years of the finance company or any of its related corporation;

- 7.2.2. any member of his immediate family —
- (i) is employed by the finance company or any of its related corporation as an executive officer whose compensation is determined by the finance company or any of its related corporation; or
  - (ii) has been so employed at any time during the current financial year or any of the preceding 3 financial years of the finance company or any of its related corporation; or
- 7.2.3. he is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the management of the finance company or any of its related corporation.
- 7.3. Without prejudice to paragraph 7.1.2 above, a director shall not be considered to be **independent from business relationships** with a finance company or any of its related corporation if —
- 7.3.1. he is a director, a substantial shareholder or an executive officer of **any corporation**, or a partner of a firm or a limited liability partnership or a sole proprietor, where such corporation, firm, limited liability partnership or sole proprietor carries on business for purposes of profit to which the finance company or any of its related corporation has made, or from which the finance company or any of its related corporation has received, payments in the current or immediately preceding financial year; or
  - 7.3.2. he is receiving or has received any compensation from the finance company or from any of the finance company's related corporation, other than compensation received for his services as a director or as an employee, at any time during the current or immediately preceding financial year of the finance company.
- 7.4. A director shall be considered to be **independent from a substantial shareholder** of the finance company or of any other company, as the case may be, if he is not that substantial shareholder and is not connected to that substantial shareholder.



7.4.1. Notwithstanding paragraph 7.4, a director of a finance company which is the immediate subsidiary of another company (referred to in this paragraph as the parent company) shall, if he is not a substantial shareholder of the finance company or the parent company, as the case may be, and is not connected to —

- (i) a substantial shareholder of the finance company (other than the parent company); or
- (ii) a substantial shareholder of the parent company,

be treated as if he were independent from the substantial shareholder of the finance company for the purposes of paragraphs 4.2 and 6.2.3.

7.5. For the purposes of paragraph 7.4, a person is considered to be **connected to a substantial shareholder** if he is —

7.5.1. in the case where the substantial shareholder is an **individual** —

- (i) a member of the immediate family of the substantial shareholder;
- (ii) employed by the substantial shareholder;
- (iii) employed by an affiliate of the substantial shareholder;
- (iv) an executive director of an affiliate of the substantial shareholder;
- (v) a non-executive director of an affiliate of the substantial shareholder;
- (vi) a partner of a firm or a limited liability partnership of which the substantial shareholder is also a partner; or
- (vii) accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the substantial shareholder; or

7.5.2. in the case where the substantial shareholder is a **corporation** —

- (i) employed by the substantial shareholder;
- (ii) employed by an affiliate of the substantial shareholder;
- (iii) a director of the substantial shareholder;
- (iv) an executive director of an affiliate of the substantial shareholder;
- (v) a non-executive director of an affiliate of the substantial shareholder;
- (vi) a partner of a firm or a limited liability partnership of which the substantial shareholder is also a partner; or



- (vii) accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the substantial shareholder.

## **8. TRANSPARENCY AND DISCLOSURE**

- 8.1. Finance companies shall publicly disclose the minimum information on its corporate governance framework as set out in Appendix 1.
- 8.2. Such information in paragraph 8.1 above shall be disclosed in the following: -
- 8.2.1. finance companies' audited financial statements; and
- 8.2.2. finance companies' official website.

## **9. APPLICATION AND TRANSITIONAL PERIOD**

- 9.1. The transitional period in this paragraph does not apply to those Finance Companies which are subjected to and are already in compliance with the Companies (Corporate Governance) (Public companies) Rules 2016 specifically in regards to matters ascribed to in paragraph 4.2 above. Notwithstanding that a Finance Company may be exempted from complying with all or any part the Companies (Corporate Governance) (Public companies) Rules 2016, such Finance Company shall nevertheless comply with this Notice and unless otherwise specified herein below, compliance with the Notice shall take immediate effect from 1<sup>st</sup> January 2020.
- 9.2. Finance companies have until the following dates to comply with the specific requirements as set out below:

<b>Requirement</b>	<b>Effective Date</b>
Paragraph 4.2 of the Notice: <ul style="list-style-type: none"> <li>Independent directors to make up at least a third of the board membership</li> </ul>	1 year from the effective date of this Notice
<ul style="list-style-type: none"> <li>Independent directors to make up a majority of the board membership</li> </ul>	3 years from the effective date of this Notice
Paragraph 8 of the Notice: <ul style="list-style-type: none"> <li>Disclosure requirements</li> </ul>	commencing from the financial year ending 31st December 2020 onwards





- 9.3. The Authority may impose stringent requirements to finance companies individually or collectively. In exercising this discretion, the Authority may take into account the overall risk profile of the finance company and any other factors as the Authority may determine.

**MANAGING DIRECTOR  
AUTORITI MONETARI BRUNEI DARUSSALAM**

Date: 30 Rabiulawal 1440H / 27 November 2019M



## APPENDIX 1

### CORPORATE GOVERNANCE DISCLOSURES

#### 1. Board of directors

<p><i>a) Composition</i></p>	<ul style="list-style-type: none"> <li>• Name and designation (i.e. independent, non-independent non-executive, executive, chairman) of each director</li> <li>• Key personal details and background of each director including relevant experience, any shareholding in the finance company and external professional commitments</li> <li>• Delegation of authority, by the Board to any Board committee and its members</li> <li>• Appointments, resignations and removals of directors during the financial year</li> <li>• Description of trainings and education provided to the Board</li> <li>• Number of meetings convened by the Board and each Board committee</li> </ul>
<p><i>b) Function and conduct</i></p>	<ul style="list-style-type: none"> <li>• Roles and responsibilities of the Board and the Board committees</li> <li>• Attendance of each director at Board and Board committee meetings during the financial year</li> </ul>

#### 2. Internal control framework

<p><i>a) Overview</i></p>	<ul style="list-style-type: none"> <li>• Main features of the internal control framework, and the nature and frequency of any review and assessment conducted on the internal control framework</li> <li>• Key policies and procedures of the internal control framework, including any changes made to these policies and procedures during the financial year</li> </ul>
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### 3. Remuneration

<p><i>a) Qualitative disclosure</i></p>	<ul style="list-style-type: none"> <li>• An overview of the key features and objectives of the remuneration policy</li> <li>• A description of the types of officers considered as senior officers and as other material risk takers, including the number of officers in each group</li> <li>• An overview of the findings, recommendations and actions taken with respect to any review and assessment conducted on the remuneration system during the financial year</li> <li>• A discussion of measures taken to ensure that officers in control functions are compensated independently of the businesses they oversee</li> </ul>
<p><i>b) Quantitative disclosure</i></p>	<ul style="list-style-type: none"> <li>• The total amount of remuneration awards for the CEO and directors for the financial year</li> <li>• Remuneration information in respect of Senior Management and management in control functions to show the breakdown of the total amount of remuneration awards in terms of fixed and variable remuneration.</li> </ul>