



Effective date: 08 June 2017

NOTICE FOR FINANCE COMPANIES
NOTICE NO. BU/N-8/2017/43

NOTICE ON APPOINTMENT OF KEY RESPONSIBLE PERSONS



1. INTRODUCTION

- 1.1. Senior Management of finance companies provide strategic leadership that influences the financial position and future direction of the finance company. As such, persons in these positions must 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 Brunei Darussalam Central Bank [**“the Authority”**] **therefore places great emphasis on the “fit and proper” requirements for directors and senior management of the finance company.**
- 1.2. This Notice provides guidance on the assessment of fit and proper criteria for the appointment of Key Responsible Persons by finance companies and for the Authority to assess whether the Key Responsible Person is fit and proper under Sections 6, 8 and 33 of the Finance Companies Act, Chapter 89.
- 1.3. This Notice is issued pursuant to section 54 of the Brunei Darussalam Central Bank (BDCB) Order, 2010 and shall apply to the following:
 - 1.3.1. All finance companies in Brunei Darussalam; and
 - 1.3.2. Key Responsible Persons appointed by finance companies duly approved by the Authority.
- 1.4. This Notice shall take immediate effect.

2. DEFINITIONS

For the purpose of this Notice:

- 2.1. **“Key Responsible Persons”** refers to senior persons that are accountable or responsible for the management and oversight of the finance companies of which they may hold controlled functions in executive positions which include:
 - 2.1.1. Director (for finance companies locally incorporated finance companies only);
 - 2.1.2. Chief Executive Officer or Managing Director or a person who is responsible for the conduct and management of the finance company on a day to day basis;
 - 2.1.3. Deputy Chief Executive Officer;
 - 2.1.4. Chief Financial Officer;
 - 2.1.5. Chief Operating Officer;



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- 2.1.6. Chief Risk Officer;
 - 2.1.7. Chief Technical Officer;
 - 2.1.8. Head of Internal Audit;
 - 2.1.9. Head of Compliance;
 - 2.1.10. Head of Human Resources;
 - 2.1.11. Head of Treasury;
 - 2.1.12. Other Senior Officers identified by the Authority.
- 2.2. **“Other Senior Officers identified by the Authority”** refers to any person performing a senior management function whose primary or significant responsibility is for the management and performance of significant business activities of the finance companies, including a person who:
- 2.2.1. Has the authority over, makes or has substantial influence in making, decisions that affect the whole or a substantial part of the finance company’s **business**;
 - 2.2.2. Is principally accountable or responsible, whether solely or jointly with other persons, for implementing and enforcing policies and strategies approved by the board; or
 - 2.2.3. 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 **finance company’s** risks.

Whether a person classifies as **“Other Senior Officers”** will depend on the facts in each case and is not determined by the presence or absence of the word in their job title. Examples of **“Other Senior Officers”** might include, depending on the scale, nature and complexity of the business, a Deputy Chief Executive Officer and heads of departments such as Risk Management or Internal Audit.



3. APPLICATION

- 3.1. Finance companies must obtain approval from the Authority before a Key Responsible Person is formally appointed by submitting documents which include but are not limited to the following:
 - 3.1.1. A notice in writing stating that the person it proposes to appoint fulfills the minimum criteria of a 'fit and proper person' as may be determined;
 - 3.1.2. A duly completed Fit and Proper Form (**ANNEX 1**); and
 - 3.1.3. Where necessary, the Authority may interview the applicant.
- 3.2. If it appears to the Authority that the person appointed or proposed to be appointed is not "a fit and proper person", the Authority shall serve on the finance company and on such person a preliminary notice in writing stating:
 - 3.2.1. That the Authority is considering the service on the finance company of objection on the ground that it appears to the Authority that such person is not "a fit and proper person"; and
 - 3.2.2. That the finance company within one month from the date of service of the preliminary notice, make representations to the Authority.
- 3.3. The onus is on the applicant to establish that he or she is a fit and proper person rather than for the Authority to show otherwise.
- 3.4. When assessing an application for the appointment of a Key Responsible Person, the Authority may, in addition to the fit and proper criteria set out in this Notice, consider other factors that may be relevant, such as whether the Key Responsible Person has a good standing in the profession in respect of which the application is submitted.
- 3.5. In the case where the Key Responsible Person has been deemed fit and proper by another institution besides the Authority, the finance company must still obtain approval from the Authority for the appointment of the Key Responsible Person.
- 3.6. Finance companies shall notify the Authority should a Key Responsible Person be transferred to another function within the finance company, or else resign, be suspended or dismissed. Should the Key Responsible Person wish to undertake another function, whether within the same finance company or in another finance company, a new application shall be resubmitted.



- 3.7. In the case case of short-term attachments and international secondments, approval from the Authority set out in paragraph 3.1 is required for Key Responsible Persons as listed in paragraph 2.1 only.
- 3.8. Apart from the requirements set above, finance companies should also have in place appropriate recruitment policies, adequate internal control systems and procedures that would reasonably ensure that the persons employed meet the fit and proper criteria.
- 3.9. Finance companies shall give the Authority a reasonable amount of notice in order for an application to be reviewed. The Authority shall respond within 15 business days from the date of meeting all required conditions and regulatory requirements, including but not limited to, receiving the application complete with all the required information and documents, as well as verifying references and interviewing the applicant if necessary.

4. FIT AND PROPER CRITERIA

- 4.1. Key Responsible Persons appointed by finance companies shall meet the fit and proper criteria set out in this Notice, both prior to and during their employment. For this purpose, all finance companies are expected to obtain, independently verify through reasonable means, and review, relevant information necessary to support their assessment of the Key Responsible Persons' compliance with the fit and proper criteria set out below.
- 4.2. The criteria for considering whether a Key Responsible Person is fit and proper include but are not limited to the following:
 - 4.2.1. Honesty, integrity and reputation;
 - 4.2.2. Competence and capability; and
 - 4.2.3. Financial soundness.
- 4.3. The Key Responsible Person appointed or proposed to be appointed is required to carry out his duties efficiently, honestly, fairly and to act in the best interests of the finance **company's** stakeholders and customers.
- 4.4. In determining whether a Key Responsible Person meets the fit and proper criteria, the considerations set out under this Notice should be assessed individually as well as on a cumulative basis. Failure to meet one indicator may not, on its own, necessarily mean failure to meet the fit and proper criteria.



5. HONESTY, INTEGRITY AND REPUTATION

- 5.1. The Key Responsible Person appointed or proposed to be appointed must be able to demonstrate that he possesses qualities such as honesty, integrity, diligence, independence of mind and fairness.
- 5.2. In assessing the honesty, integrity and reputation of a Key Responsible Person, the Authority shall consider matters including but not limited to the following, which the finance company should also consider when the application is being made; In assessing the honesty, integrity and reputation of a Key Responsible Person, the Authority shall consider matters including but not limited to the following, which the finance company should also consider when the application is being made;
 - 5.2.1. Whether under any law in any jurisdiction, 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;
 - 5.2.2. Whether the person has contravened any provisions or has been compounded or convicted of any offence under any legislation administered by the Authority, any regulatory body, professional body, government or its agencies whether in Brunei Darussalam or elsewhere;
 - 5.2.3. Whether the person has been a director of, or directly concerned in the management of, any company which is being or has been convicted of an offence under any written law in any jurisdiction during his tenure of office in that company (unless the person can prove that such offence was committed without his knowledge or consent and he was not in a position to prevent the offence);
 - 5.2.4. Whether the person has had any judgment relating to the finding of fraud, misrepresentation or dishonesty entered against him in any civil proceedings in Brunei Darussalam or elsewhere, or is a party to any pending proceedings that may lead to such a judgment;
 - 5.2.5. 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 method of conducting business;
 - 5.2.6. Whether the person has been a party to any action or decision of the board or management of a business which is detrimental to the interests of the business and its consumers;
 - 5.2.7. Whether the person has acted in a manner which may cast doubt on his fitness to hold the position, or acted in blatant disregard for proper professional conduct;



- 5.2.8. Whether the person is available for full-time employment, and does not carry on any other business or vocation, except as a non-executive director, shareholder of another company;
- 5.2.9. Whether the person is engaged actively in any political activity;
- 5.2.10. 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;
- 5.2.11. Whether the person has been censured, disciplined, suspended or refused membership, license or registration by the Authority, or any regulatory authority of any business or profession under any written law;
- 5.2.12. Whether the person has been dismissed or asked to resign or has resigned from employment or from a position of trust, fiduciary appointment or similar position because of questions of honesty and integrity;
- 5.2.13. Whether, in the past, the person has acted unfairly or dishonestly in his dealings with his customers, employers, auditors and regulatory authorities in any jurisdiction;
- 5.2.14. Whether the person has at any time shown a strong objection or lack of willingness to cooperate with regulatory authorities in any jurisdiction resulting in a failure or potential failure to comply with legal, regulatory and professional requirements and standards;
- 5.2.15. Whether the person has held a position of responsibility in the management of a business that has gone into receivership, insolvency, or involuntary liquidation during his tenure of office in that business; and
- 5.2.16. Whether the person has been a director of, or directly concerned in the management of, any company which is being or has been wound up by a court or other authority competent to do so within or outside Brunei Darussalam, or has been a director of, or directly concerned in the management of, any finance company where its licence has been revoked under any written law.

6. COMPETENCE AND CAPABILITY

- 6.1. The Key Responsible Person appointed or proposed to be appointed must be able to demonstrate that he possesses necessary skills, experience, ability and commitment to carry out the role.



- 6.2. In assessing the competence and capability of a Key Responsible Person, the Authority shall consider matters including but not limited to the following, which the finance company should also consider when the application is being made:
- 6.2.1. 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;
 - 6.2.2. Whether the person has satisfactory past performance or expertise in the nature of business or duties being conducted, as the case may be, whether in Brunei Darussalam or elsewhere; and
 - 6.2.3. Where the relevant person is an individual who is assuming concurrent responsibilities, whether such responsibilities would give rise to a conflict of interest or otherwise impair his ability to discharge his duties in relation to any activity regulated by the Authority under the relevant legislation.

7. FINANCIAL SOUNDNESS

- 7.1. The Key Responsible Person appointed or proposed to be appointed must be able to demonstrate that he is able to manage his own debts or financial affairs prudently such that there are no loan defaults or court judgements related to debt or credit facilities in his name.
- 7.2. In assessing the financial soundness of a Key Responsible Person, the Authority shall consider matters including but not limited to the following, which the finance company should also consider when the application is being made:
- 7.2.1. Whether the person has been declared an undischarged bankrupt or a person in respect of whom a bankruptcy proceeding is pending in Court in Brunei Darussalam or elsewhere;
 - 7.2.2. Whether the person is or has been unable to fulfil any of his financial obligations, whether in Brunei Darussalam or elsewhere;
 - 7.2.3. Whether the person has been the subject of a judgement debt which is unsatisfied, either in whole or in part, whether in Brunei Darussalam or elsewhere.

MANAGING DIRECTOR
BRUNEI DARUSSALAM CENTRAL BANK