

**ALLIANZ MALAYSIA BERHAD GROUP OF COMPANIES**  
**BOARD OF DIRECTORS' CHARTER**

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## 1. INTRODUCTION

- 1.1 The Board of Directors' Charter ("**Board Charter**") encompasses, among others, the Board's role, duties, responsibilities, powers, code of conduct, division of responsibilities and powers between the Board and Management and between the Chairman and the Chief Executive Officer, the performance evaluation process for the Directors and Board Committees to serve as a guide or key reference points for the Directors and the stakeholders.
- 1.2 In the context of this Board Charter:-
- (a) the words "Company" shall refer to either Allianz Malaysia Berhad ("**AMB**") or Allianz General Insurance Company (Malaysia) Berhad ("**AGIC**") or Allianz Life Insurance Malaysia Berhad ("**ALIM**") or any other subsidiaries of AMB. AMB and its subsidiaries shall collectively referred to as "**Group**".
  - (b) AGIC and ALIM shall collectively referred to as "**insurance subsidiaries**" and individually as "**insurance subsidiary**".
  - (c) words importing the singular shall, where applicable, include the plural and vice versa, and words importing the masculine gender shall, where applicable, include the feminine and neuter genders.
- 1.3 All the relevant sections of the Financial Services Act 2013, the Companies Act 2016 and Capital Markets and Services Act 2007 and the definition of Independent Non-Executive Directors as prescribed by Bursa Malaysia Securities Berhad ("**Bursa Securities**") and Bank Negara Malaysia ("**BNM**") are set out in the Glossary annexed to this Board Charter.
- 1.4 The Board Charter will be reviewed periodically by the Board and made available on the Group's website.

## 2. BOARD OF DIRECTORS ("**BOARD**")

### 2.1 SIZE AND COMPOSITION

- 2.1.1 The size and composition of the Board shall be appropriate and well balanced to cater for the interest of the majority and minority shareholders as well as the business of the Company. Membership of the Board should be drawn from various fields as may be determined by the Board from time to time with a balance of skills and experiences appropriate to the business of the Group.
- 2.1.2 Until otherwise determined by general meeting, the number of Directors shall not be less than two and not more than ten.
- 2.1.3 In determining the number of Directors on the Board, the Board should inter-alia, take into consideration the following:-
- (a) the evolving circumstances and needs of the Company in terms of its size, scope or geography;
  - (b) the need to achieve an appropriate balance of Executive, Non-Independent Non-Executive Directors and Independent Non-Executive Directors. A Board with a balanced composition will ensure that no individual or small group of individuals dominates in decision-making;

- (c) the need to ensure that the requisite/industry specific skills are represented on the Board;
- (d) there is sufficient diversity to avert “group-think”;
- (e) the establishment of Board Committees becomes impracticable;
- (f) the quorum requirements for Board Meetings; and
- (g) the BNM’s requirements on common directors.

2.1.4 Independent Non-Executive Directors shall form a majority of the Boards of AMB and its insurance subsidiaries.

2.1.5 In the event of any vacancy in the Board of Directors of AMB, resulting in non-compliance with subparagraph 2.1.4 above, AMB must fill the vacancy within 3 months.

2.1.6 The positions of Chairman and Chief Executive Officer shall be held by different individuals to ensure a balance of responsibilities, authority and accountability for an effective Board.

2.1.7 The Board shall be chaired by a Non-Executive Director. The Chairman of the Board of insurance subsidiary must not be an executive, and must not have served as a Chief Executive Officer of the insurance subsidiary in the past five years.

2.1.8 The Board of the insurance subsidiaries shall not have more than one Executive Director, unless BNM approves otherwise in writing.

2.1.9 Appointment of alternate Directors is not permitted in the Group.

2.1.10 On an annual basis, the Board via the Nomination and Remuneration Committee shall review the composition of the Board in terms of the appropriate size and mix of skills, balance between Executive, Non-Executive and Independent Non-Executive Directors as well as diversity including gender diversity and other core competencies required to ensure the composition mix is appropriate and relevant to the business of the Company.

2.1.11 On an annual basis, the Board via the Nomination and Remuneration Committee shall also review the composition of the Board Committees of AMB, to ensure compliance with the corporate governance requirements of BNM, the Main Market Listing Requirements (“MMLR”) of Bursa Securities and the Malaysian Code on Corporate Governance (“Code”).

## **2.2 BOARD DIVERSITY**

2.2.1 The Group recognises the important of a diverse workforce and abides by the principle of non-discrimination at the workplace based on age, disability, gender, race, religion, political preference and support diversity by recruiting according to skills, knowledge, experience, talents and ability rather than based on gender, race and ethnicity.

2.2.2 The Board recognises the importance of having a diverse Board in terms of experience, skills, competence, ethnicity, gender, culture and age. A diverse Board facilitates optimal decision making by harnessing different insights, perspectives, experience and exposure.

- 2.2.3 The Board's commitment to diversity permeates throughout all levels of the organisation including the appointment of candidate to the Board.
- 2.2.4 The Board through the Nomination and Remuneration Committee will evaluate suitable woman candidate and vernal talent for appointment to the Board at the appropriate time. The appointment of new Board members will not be guided solely by gender and age, but also the skill set, experience and knowledge required.

### **2.3 QUALIFICATION, VACATION OF OFFICE AND REMOVAL OF DIRECTOR**

2.3.1 All Directors shall not be disqualified under section 59 (1) of the Financial Services Act 2013, section 198 of the Companies Act 2016 and shall meet the minimum qualification standards for Directors prescribed by BNM. The Directors of AMB shall not also be disqualified under paragraph 15.05 of the MMLR of Bursa Securities.

2.3.2 An active politician shall not be appointed as a Director/Chief Executive Officer. An active politician refers to an individual who is a member of any national or state legislative body, or who is an officer bearer of, or holds any similar office or position in a political party.

2.3.3 Where a firm has been appointed as the external auditor of the Company, any of its officers directly involved in the engagement and any partner of the firm must not serve or be appointed as a director of the Company until at least two years after:-

- (a) he ceases to be an officer or partner of that firm; or
- (b) the firm last served as an auditor of the Company.

A former key audit partner of the Group shall not be appointed as a member of the Audit Committee unless a cooling-off period of three years has been observed prior to his appointment.

2.3.5 All Directors of AMB must comply with the MMLR of Bursa Securities and give to Bursa Securities, an undertaking letter as prescribed by Bursa Securities within fourteen days after his appointment.

2.3.6 Subject to Applicable Laws and the Constitution of the respective companies, the office of Directors shall be vacated on the happening of, among others, any of the following, if he:-

- (a) resigns his office by notice in writing to the Company and the notice is deposited at the registered office of the Company;
- (b) has retired in accordance with the Companies Act 2016 or under the Constitution of the Company and is not re-elected;
- (c) is removed from his office as Director in accordance with the Companies Act 2016 or the Constitution of the Company;
- (d) becomes disqualified from being a Director under the Applicable Laws;
- (e) becomes of unsound mind or a person, whose person or estate is liable to be dealt with in any way under the Mental Health Act 2001; or
- (f) dies.

2.3.7 Where a Director is removed from office, a copy of any written representations made by the Director in question shall be sent to members of the Company under section 207 (3) of the Companies Act 2016, unless copies of such representations need not be sent out by reason of the circumstances specified in section 207 (5) of the Companies Act 2016. For AMB, a copy of such representations must be forwarded to Bursa Securities at the same time.

2.3.8 The written approval of BNM must be obtained before:-

- (a) any of the insurance subsidiaries removes an Independent Director; and
- (b) an Independent Director of the insurance subsidiaries resigns from his position.

## **2.4 BOARD PROFESSIONALISM**

### **2.4.1 CODE OF CONDUCT**

The Board has adopted the Allianz Group Code of Conduct. The Allianz Group Code of Conduct sets the minimum standards for the conduct of all employees, managers and Directors, which covers the areas such as, among others, fairness and respect, transparency and truthfulness, ownership and responsibility, and integrity.

### **2.4.2 DIRECTORSHIPS**

- (a) A director must devote sufficient time to prepare for and attend board meetings, and maintain a sound understanding of the business of the financial institution as well as relevant market and regulatory developments. This must include a commitment to on-going education.
- (b) Prior to the acceptance of any new directorship (other than entities within the Allianz SE Group), Directors shall obtain clearance from the Chairman of the Board of the respective companies, the Chairman of the Holding Company and the Chairman of the Nomination and Remuneration Committee, and give assurance that the new appointment shall not result in conflict of interest or adversely impair their time commitment in the Company, and notify the CEO of the respective companies, the Nomination and Remuneration Committee and the Board of the respective companies thereafter.
- (c) Directors are required to disclose any changes in their interest including their directorships ("**New Changes**") to the Company Secretary within fourteen days from the New Changes. However, for any change in respect of the particular relating to the shares, debentures, participatory interest, rights, options and contracts as are necessary for the purposes of compliance with Section 59 of the Companies Act 2016, by the Directors of AMB, the notice period shall be five days. In addition, Directors are required to disclose their directorships and shareholdings in other companies on a half yearly basis.

Upon receipt of the disclosure on New Changes, it will be circulated to the Board within seven days from the date of receipt. The aforementioned disclosure will be circulated or tabled to the Audit Committee and Board for information. Such changes will also be immediately updated in the related party listing of the Group.

- (d) Pursuant to the MMLR of Bursa Securities, each member of the AMB Board must not hold more than five directorships in public listed companies.
- (e) The computation of number of directorships of a Director shall be complied with the method of calculation of number of directorships as prescribed by BNM and Bursa Securities.

### 2.4.3 INSIDER TRADING

- (a) In accordance with the MMLR of Bursa Securities and the relevant provisions of the Capital Markets and Services Act 2007, Directors and principal officers of the Group ("**Affected Parties**") are prohibited from trading in securities or any kind of property based on price sensitive information and knowledge which have not been publicly announced. Price sensitive information means information that "on becoming generally available would or would tend to have a material effect on the price or value of the securities" as referred to in section 185 of the Capital Markets and Services Act, 2007.
- (b) Affected Parties are prohibited from dealing in the securities of AMB during closed period commencing thirty calendar days before the targeted date of announcement (AMB's quarterly results) up to the date of the announcement.
- (c) In ensuring that the Affected Parties comply with the above trading requirements, notices with regard to the closed period for trading in AMB's securities will be issued by the Company Secretary to the Affected Parties at least seven days prior to the commencement of the closed periods.
- (d) Nevertheless, the Affected Parties who are not in possession of price-sensitive information relating to AMB shares may engage in dealing in AMB securities during the closed period provided he complies with the following conditions:-
  - (i) before the proposed dealing, the Affected Parties must give notice of intention to deal in writing to the Company Secretary;
  - (ii) upon receipt of such notice, the Company Secretary must immediately announce to Bursa Securities, among others, the following information:-
    - The Affected Parties' current holdings of AMB securities; and
    - The Affected Parties' intention to deal in AMB securities during the closed period;
  - (iii) the proposed dealing can only be effected after one full market day from the date of the announcement as referred to in (ii) above;

- (iv) the Affected Parties must give notice of dealing in writing to the Company Secretary within one full market day after the dealing has occurred and the Company Secretary must immediately announce such notice to Bursa Securities. The notice and the announcement must include the following information:-
- the date on which the dealing occurred;
  - the consideration for the dealing; and
  - the number of securities involved in the dealing, both in absolute terms and as a percentage of all issued securities of that class.
- (e) The Affected Parties who wish to deal in the securities of AMB outside closed period must give a notice of dealing to the Company Secretary within three market days after the dealing has occurred and the Company Secretary must immediately announce such notice to Bursa Securities.
- (f) The Company Secretary must, at each Board Meeting, table a summary of dealings notified to AMB since the last Board Meeting.

#### **2.4.4 CONFLICT OF INTEREST**

- (a) In ensuring that the decision making process is transparent and to the best interest of the Company, Directors are required to declare in writing their interest in other entities on a half yearly basis. In addition, they are also required to make disclosure in writing to the Company, any circumstances that may give rise to a conflict of interest situation during the course of carrying out their duties.
- (b) The Directors are required to make a declaration at the Board Meeting in the event that they have interests in the proposals or subject matters being considered by the Board, including where such interest arises through close family members, in line with various statutory requirements on the disclosure of Director's interest. A Director who has a direct or deemed interest in a proposal or subject matter presented at the Board/Board Committees Meeting shall abstain from deliberation and voting on the said proposal or subject matter.

#### **2.4.5 FIT AND PROPER REQUIREMENTS**

- (a) All Directors must not be disqualified and have been assessed to have met the criteria of "a fit and proper person" for their appointment as Directors as prescribed under the Group's Fit and Proper Policy and Procedure for Key Responsible Persons ("**Fit and Proper Policy**").
- (b) All Directors are required to make an annual declaration that they fulfilled the minimum criteria of "a fit and proper person" as prescribed in the Fit and Proper Policy.
- (c) The Nomination and Remuneration Committee carries out an annual review on the Directors' compliance with the fit and proper requirements. Upon completion of the annual review, the Nomination and Remuneration



Committee will submit its observation to the respective Boards for deliberation.

The Fit and Proper Policy sets out the criteria and assessment process for the fitness and propriety of the Group's key responsible persons.

## **2.5 BOARD RESPONSIBILITIES**

2.5.1 Directors are accountable to the shareholders and should use their best efforts to ensure that the Company is properly managed and constantly improved so as to protect and enhance shareholder value, and to meet the Company's obligations to all parties with which the Company interacts. The Board should assume, amongst others, the following responsibilities:-

- (a) reviewing and approving a strategic plan for the Company;
- (b) formalising the Company's strategy to support long-term value creation and includes strategies on economic, environmental and social considerations underpinning sustainability;
- (c) overseeing the conduct of the Company's business to ensure that the business is properly managed towards achieving the Company's corporate objectives;
- (d) identifying key business risks, determining the risk appetite of the Company, and ensuring the implementation of appropriate systems to manage risks within established risk-tolerance limits;
- (e) approving corporate policies on critical areas of operations and business continuity plans;
- (f) succession planning, including the appointment, training, remuneration and performance review of Senior Management;
- (g) ensuring the adequacy and integrity of the Company's governance framework, internal control and management information systems, including systems for monitoring compliance with applicable laws, regulations, rules, directives and guidelines;
- (h) to select and appoint senior executive officers who are qualified and competent to administer the business effectively and soundly. The management team must be professional at all times in carrying out its duties, and the Board must be alert to the effectiveness and competence of their staff. The performance of the senior officers will, to a large extent, determine the health of the Company;
- (i) safeguarding the integrity and credibility of the Company. Directors must ensure that the management team and all employees conduct business with the highest level of moral behaviour and in a manner that instills public confidence;

- (j) promoting together with Senior Management, a sound corporate culture within the Group which reinforces ethical, prudent and professional behaviour;
- (k) to effectively supervise the affairs of the Company to ensure sound management. Directors must also ensure, at all times, that the assets of the Company are properly managed to meet its liabilities and in compliance with the relevant legal and regulatory requirements. Directors should be well informed of the affairs of the Company by devoting sufficient time to monitoring and supervising the affairs of the Company. Although Directors may delegate certain authority to senior management officers, ultimate responsibility for the sound management and business operations of the Company rests with the Board. Apart from retaining a record of the minutes of Board Meetings, a record of actions by Directors in connection with their oversight functions should also be kept;
- (l) adopting and following sound policies and objectives which have been fully deliberated. Directors must provide a clear framework of objectives and policies within which senior executive officers are to operate. These should cover all areas, including but not limited to solvency management, underwriting, claims management, reinsurance, investment, loans, risk management, financial planning and budgeting, and human resource management (where applicable to the respective companies);
- (m) acting honestly for the benefit of the Company and to avoid self-serving practices and conflicts of interest. Once their appointment takes effect, Directors are fiduciaries and must display the utmost good faith towards the Company in dealings with it or on its behalf. The Companies Act 2016 and the Financial Services 2013 subject Directors to disclosure requirements in respect of outside business interests and prohibits lending to Directors or Director-interested firms and corporations;
- (n) to be regularly informed of the financial condition, business performance and management policies of the Company. Directors should ensure that they have adequate information to provide effective strategic direction to the Company, and to apply immediate remedial measures should the need arise;
- (o) observing all laws, rules and regulations as part of their statutory duties. Directors must be familiar with relevant laws, related regulations, interpretative rulings and notices, and must exercise care to see that these are not violated. This includes laws pertaining to certain restrictions, prohibitions and liabilities of Directors. Directors may be penalised for any non-compliance with legal requirements (in particular, the requirement for the insurance subsidiaries to maintain the minimum required margin of solvency at all times and ensure that its assets are in safe custody) and be removed from office if found to have acted against the interest of policyholders and/or the insurance subsidiaries concerned;
- (p) the duty of Directors to secure compliance with relevant legal requirements may involve a personal financial responsibility for losses arising out of illegal actions; and

- (q) overseeing the development and implementation of a shareholder communications policy for the Company. The responsibility of the Board is to ensure that the Group has in place a policy to enable effective communication with its shareholders and other stakeholders.

The following additional responsibilities are applicable to the Directors of insurance subsidiaries:-

- (a) that the Company's dealings with its policy owners, claimants and creditors are conducted in a fair and equitable manner;
- (b) Directors and officers of the Company, should not retain a commission on policies sold; and
- (c) to ensure that the Company has a beneficial influence on the national economy. Insurance subsidiaries provide risk and insurance management services for members of the public and therefore, play an important role in the national economy. Directors have a continuing responsibility to provide insurance services and facilities which are conducive for well-balanced economic growth and which are consistent with national objectives.

## **2.6 CHAIRMAN, INDEPENDENT NON-EXECUTIVE DIRECTOR, EXECUTIVE AND NON-EXECUTIVE DIRECTOR AND COMPANY SECRETARY**

### **2.6.1 CHAIRMAN**

- (a) The Chairman plays a crucial leadership and pivotal role in ensuring that the Board works effectively.
- (b) The Chairman's role:-
- (i) As a leader for the Board and chairs all Board Meetings.
- (ii) Managing Board Meetings to ensure robust decision-making by:-
- Setting the agenda for each Board Meeting together with the Company Secretary and the Chief Executive Officer and other key members of management, when required.
  - Obtaining suggestions and comments from other Directors.
  - Ensuring accurate, clear and timely information is provided to the Directors.
  - Leads discussion and promotes constructive deliberation leading to effective contribution by each member of the Board during Board Meetings.
  - Managing boardroom dynamics by promoting a culture of openness and debate.
  - Ensuring that decisions are taken on a sound and well-informed basis, including by ensuring that all strategic and critical issues are considered by the Board.
- (iii) Building a high performance Board by:-
- Promoting the highest standards of integrity, probity and corporate governance in the Company and taking a leading role in

creating an effective corporate governance system.

- Ensuring performance evaluation is performed on the Board, individual Directors and Board Committees and identification of training and development needs of the Directors.
- Ensuring that prior to new Board and Chief Executive Officer appointments, a full assessment is undertaken, which may include a competency and behavioural analysis of the candidates.
- Ensuring that Board and senior executive succession planning is considered on an ongoing basis.
- Leading the Board in oversight of Management.
- Managing personal conflict that may arise between Directors and/or Management.
- Leading efforts to address the Board's developmental needs.

(iv) Managing Board/Management interface by:-

- Acting as the main conduit between the Management and the Board.
- Developing a positive relationship with the Management (including but not limited to Chief Executive Officer), acting as a confidant and advisor.
- Facilitating the selection and appointment of a successor to the current Chief Executive Officer.

(v) Being the public face by:-

- Acting as a spokesperson for the Board.
- Representing the Company at shareholders' meetings and on other occasions both domestically and/or abroad.
- Ensuring effective communication with the Company's shareholders and other stakeholders.

## **2.6.2 INDEPENDENT NON-EXECUTIVE DIRECTOR**

(a) An Independent Non-Executive Director means a Director who is independent of management and free from any business or other relationship which could interfere with the exercise of independent judgement or the ability to act in the best interests of the Company.

The Independent Non-Executive Directors of the Group shall satisfy the definition of "independent director" as prescribed by Bursa Securities and BNM. Both definitions of "independent director" are set out in Glossary.

(b) The primary responsibility of Independent Non-Executive Directors is to protect the interest of minority shareholders and other stakeholders. The effective participation of Independent Non-Executive Directors serves to promote greater accountability and balance in the Board's decision-making process.

(c) The Independent Non-Executive Directors play a significant role in bringing impartiality and scrutiny to Board deliberations and decision-making, so that no single party can dominate such decision-making in the Company.

- (d) The responsibilities of an Independent Non-Executive Director should, amongst others, include the following:-
- (i) to enhance the independence and objectivity of the Board's deliberations from the executive arm of the Company;
  - (ii) to mitigate any possible conflict of interests between the policy-making process and the day-to-day management of the Company;
  - (iii) to constructively challenge and contribute to the development of strategies for the Company;
  - (iv) to ensure that the Board uses adequate systems and controls to safeguard the interests of the Company;
  - (v) to provide the 'check and balance' function to the Board; and
  - (vi) to monitor and provide an objective view on the performance of Executive Directors and management in meeting the agreed goals and objectives.
- (e) An Independent Non-Executive Director must immediately disclose to the Board on any change in his circumstances that may affect his status as an independent director. In such a case, the Boards of insurance subsidiaries must review his designation as an Independent Director and notify BNM in writing of its decision to affirm or change his designation.
- (f) The review of independence of Independent Non-Executive Director shall be conducted annually, upon admission of Independent Non-Executive Director and more frequently when a change in position or relationship warrants it or when any new interest or relationship develops. The observation of the Nomination and Remuneration Committee will be presented to the respective Boards for deliberation.
- (g) The independence evaluation process for Independent Non-Executive Directors are as follows:-
- (i) The Company Secretary will distribute the independence declaration form as approved by the Board to all Independent Non-Executive Directors for completion.
  - (ii) Each Independent Non-Executive Director will perform a self review on his independence by completing the declaration form with questions drawn from the requirements imposed by the various authorities.
  - (iii) Responses will be collated by the Company Secretary and submit to the Nomination and Remuneration Committee for evaluation.
  - (iv) During the Nomination and Remuneration Committee Meeting, each Independent Non-Executive Director's response will be presented to the Nomination and Remuneration Committee for deliberation. The Nomination and Remuneration Committee will be guided by the assessment criteria approved by the Board when assessing the independence of the Independent Non-Executive Director.
  - (v) Each Independent Non-Executive Director shall excuse himself from meeting room during the discussion of his independence.
  - (vi) Findings from the Nomination and Remuneration Committee will be presented to the respective Boards for deliberation.

- (h) The Board, through the Nomination and Remuneration Committee, evaluated the independence of the Independent Non-Executive Directors using the assessment criteria as approved by the Board taking into account, among others, the Independent Non-Executive Directors' contribution, ability to display independent judgment in the boardroom, family relationship, contractual relationship and financial links with other Directors or shareholders of the Group and equity interest in the Group.
- (i) The tenure limit of an Independent Non-Executive Director should not exceed a consecutive service of nine years. Computation of the service tenure will commence from the date of the Independent Non-Executive Director's first appointment in any company within the Group. Upon completion of the nine years' tenure, the Independent Non-Executive Director may, in the interest of the Company, continue to serve on the Board but in the capacity of a Non-Independent Non-Executive Director.

### **2.6.3 EXECUTIVE DIRECTOR AND NON-INDEPENDENT NON-EXECUTIVE DIRECTOR**

- (a) Executive Director is an employee of the Company and nominee of the Company's Holding Company and represent the Management of the Company. In the context of the insurance subsidiaries, the Executive Director has management responsibilities in the said subsidiaries or any of their affiliates. Executive Directors provide business insights to the Board and formulate business strategies and plan and accountable for business performance of the Group. They add value to a Board's decision making process through their technical expertise and knowledge of the business and its industry. The presence of Executive Directors can be beneficial as they are in a position to share their experiences on the internal workings of the Company or its Holding Company with Non-Executive Directors. Executive Directors can bring an intimate view of the strategic plan in action and hence are primed to participate in the decision-making process.
- (b) Non-Independent Non-Executive Director is not an employee of the Company and is normally a nominee of a substantial shareholder or Holding Company of the Company.
- (c) Non-Independent Non-Executive Director acts as a bridge between Management and stakeholders, particularly shareholders. He could provide the relevant checks and balances, focusing on shareholders' and other stakeholders' interests and ensuring that high standards of corporate governance are applied. The Non-Executive Director also provide business guidance to the Management and contributing positively to the Board through their strong technical knowledge, exposure in various markets and sharing of knowledge and best practices.
- (d) The Non-Independent Non-Executive Directors' main responsibilities are to:-
  - (i) advise and direct Management in the development and evaluation of strategy;
  - (ii) monitor Management's strategy implementation and operational performance;
  - (iii) satisfy themselves that financial information is accurate; and

- (iv) review to ensure that the risk management and internal control systems are robust and defensible.

#### **2.6.4 The Company Secretary**

- (a) The Board should appoint a suitably qualified and competent Company Secretary who can support the Board in carrying out its roles and responsibilities.
- (b) The Company Secretary should not be disqualified under Section 238 (1) of the Companies Act 2016.
- (c) The responsibilities of Company Secretary should be in accordance with the requirements as prescribed by the relevant regulators, inter-alia, the following function:-
  - (i) Responsible for advising the Directors of their duties and responsibilities and obligations to disclose their interest in securities, prohibition on dealing of securities during the closed period, restriction on disclosure of price sensitive information, disclosure of any conflict of interest and related party transaction as well as disclosure of necessary information as required under the relevant legislations;
  - (ii) Preparing the agenda with the Chairman and Chief Executive Officer and notifying all Directors of Board Meetings;
  - (iii) Attends all Board and Board Committee Meetings and ensures that all Meetings are properly convened and proceedings of the Board and Board Committee Meetings and decisions thereof are properly recorded, communicating decisions of the Board and Board Committees to the relevant management for necessary action, follow-up on proposals or matters tabled at the Board or Board Committee Meetings;
  - (iv) Providing full access and services to the Board;
  - (v) Assisting the Board with interpreting legal and regulatory acts related to the Code, MMLR of Bursa Securities and other related regulations and developments;
  - (vi) Advising the Board on its obligatory requirements to disclose material information to the shareholders and financial markets on a timely basis;
  - (vii) Handling Company share transactions and other duties as prescribed under the relevant legislations;
  - (viii) Notifying the Chairman of any possible violations of legal and regulatory acts;
  - (ix) Ensuring the appointment of new Directors, re-appointment and resignation of Directors are in accordance with the relevant legislations;
  - (x) Ensuring execution of assessment for Directors and the Board/Board Committees;
  - (xi) Briefing new Directors on organisational structure of the Company and procedures that regulate the operations of the Board;
  - (xii) Ensuring availability of information required by new Directors for the proper discharge of their duties;
  - (xiii) Assisting the Board and Chairman on the implementation of the Code;
  - (xiv) Monitoring compliance with the principles and recommendations of

- the Code and informing the Board of any breaches;
- (xv) Ensuring high standard of governance by keeping abreast of the latest enhancement in corporate governance and changes in the legal and regulatory framework;
- (xvi) Facilitating the orientation of new directors and compliance with company and securities regulations and listing requirements;
- (xvii) Managing processes pertaining to the annual shareholder meeting; and
- (xviii) Serving as a focal point for stakeholders' communication and engagement on corporate governance issues.

(d) The appointment and removal of the company secretary must be approved by the Board.

## **2.7 APPOINTMENT TO THE BOARD**

2.7.1 The Directors shall have power at any time, and from time to time, to appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, however the total number of Director shall not exceed the number fixed in accordance with the Company's Constitution.

2.7.2 The appointment of Directors for the insurance subsidiaries required the prior written approval of the BNM pursuant to section 54(2) of Financial Services Act 2013. All appointment of Directors are subject to the evaluation by the Nomination and Remuneration Committee and approved by the Board of the Company before the applications are submitted to BNM for approval.

2.7.3 The evaluation process and procedures for appointment of Directors practised within the Group prior to the submission to BNM for approval, are as follows:-

(a) Nomination of candidate for appointment as Director will be evaluated by the Nomination and Remuneration Committee by taking into consideration the fit and proper criteria prescribed by BNM, the Fit and Proper Policy and the following criteria:-

- (i) skill, knowledge, competencies, expertise and experience;
- (ii) professionalism;
- (iii) commitment, contribution and performance; and
- (iv) in the case of candidate for the position of Independent Non-Executive Directors, the Nomination and Remuneration Committee should also evaluate the candidates' ability to discharge such responsibilities/functions as expected from Independent Non-Executive Directors.

(b) The findings and recommendation from the Nomination and Remuneration Committee will be submitted to the Board for consideration.

2.7.4 Letters of appointments should be provided to Non-Executive Directors covering inter-alia, their responsibilities, code of conduct, remuneration and liability insurance.



2.7.5 All AMB Directors are required to submit the letter of undertaking on compliance with the MMLR and the Independent Non-Executive Directors of AMB are required to submit the letter in relation to their independency as prescribed by Bursa Securities not later than fourteen days from the date of appointment.

## **2.8 RE-ELECTION AND RE-APPOINTMENT OF DIRECTOR**

2.8.1 In accordance with the Constitution of the Company, one third of the Directors shall retire by rotation at each Annual General Meeting and that a Director who is appointed during the year shall be retired at the next following Annual General Meeting. The Constitution further provides that all Directors shall retire from office at least once in every 3 years ("**Re-Election**").

2.8.2 The Nomination and Remuneration Committee will review and assess the performance of the Directors who are subject to Re-Election at the Annual General Meeting and submit its recommendation to the Board for consideration prior to the proposed Re-Election being presented to the shareholders for approval.

2.8.3 The evaluation process and procedures for Re-Election practised within the Group are as follows:-

(a) Evaluation is performed by the members of the Nomination and Remuneration Committee on the Directors who are subject to Re-Election based on the following criteria as approved by the Board:-

- (i) Compliance with prescriptive requirements by regulators;
- (ii) Participation in Board and Board Committees' Meetings;
- (iii) Contribution to interaction;
- (iv) Quality of input; and
- (v) Understanding of role.

(b) The evaluation results of the said Directors by each member of the Nomination and Remuneration Committee will be submitted to the Nomination and Remuneration Committee for review.

(c) Thereafter, the findings and recommendation of the Nomination and Remuneration Committee together with the evaluation results will be submitted to the Board for decision.

2.8.4 The re-appointment of a Director in the insurance subsidiaries, upon expiry of his current term of office as approved by BNM is subject to the prior approval of BNM. The evaluation process and procedures for Director who is subject to renewal of his term shall be the same as detailed in paragraph 2.8.3 above.

## **2.9 BOARD AND DIRECTOR PERFORMANCE EVALUATION**

### **2.9.1 EVALUATION PROCESS AND PROCEDURES**

(a) A performance evaluation process of the Board, individual Directors, Board Committees and their members with clear evaluation criteria was established and communicated to all Directors.

(b) The evaluation process and procedures practised within the Group are as follows:-

<b>Type of Evaluation</b>	<b>Evaluated By</b>	<b>Evaluation Criteria</b>	<b>Evaluation Process and Procedures</b>
Annual Performance Evaluation on the Board and Board Committees	Peers	Covers the areas, among others:- <ul style="list-style-type: none"> <li>• Roles and responsibilities</li> <li>• Conformance and compliance</li> <li>• Stakeholder relationships</li> <li>• Performance management</li> </ul>	(a) The evaluation forms approved by the Board will be circulated to the Directors for completion.  (b) The responses will be collated by the Company Secretary and the summary of the evaluation results on the Board and individual Directors will be submitted to the Nomination and Remuneration Committee for review.
Annual Performance Evaluation on Individual Directors of the Board and Board Committee Members	Peers	Covers the areas, among others:- <ul style="list-style-type: none"> <li>• Directors' compliance with prescriptive requirements imposed by regulators</li> <li>• Participation in Board and Board Committees</li> <li>• Contribution to interaction</li> </ul>	
Annual Performance Evaluation on Board Committees	Board members	Covers the areas, among others:- <ul style="list-style-type: none"> <li>• Composition</li> <li>• Quality of inputs</li> <li>• Level of experience</li> <li>• Contribution and performance</li> <li>• Timely reporting</li> </ul>	(a) The evaluation forms approved by the Board will be circulated to the Nomination and Remuneration Committee members for completion.  (b) The responses will be collated by the Company Secretary and the summary of the evaluation results on the Board Committees and their members will be submitted to the Nomination and Remuneration Committee for

			<p>review.</p> <p>(c) Thereafter, the findings and recommendation of the Nomination and Remuneration Committee together with the summary of the evaluation results will be submitted to the Board for deliberation.</p>
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## 2.9.2 POST-EVALUATION PROCESS

The Nomination and Remuneration Committee shall propose for the Board's approval the development plan for Directors, if required, as part of a continual improvement process in the boardroom.

## 2.10 MEETING, QUORUM AND VOTING

### 2.10.1 MEETING

- (a) Board Meetings for each year are scheduled in advance prior to the end of the year and circulated to Directors and Senior Management before the beginning of each year. The Board meets at least four times in a year. Additional Board Meetings are held as and when required.
- (b) Each Director must meet the Board Meeting attendance requirements imposed by the relevant authorities (AMB – at least 50% in each financial year, insurance subsidiaries – at least 75% in each financial year). If a Director is appointed after the commencement of a financial year, only the Board Meetings held after his appointment will be taken into account.
- (c) The Board Meetings shall be conducted in accordance with a structured agenda approved by the Chairman. All Directors are given sufficient time to review the meeting papers prior to Board Meetings. The agenda together with the minutes of the Board Meeting and meeting papers shall be circulated to the Board at least one week prior to each Board Meeting to accord sufficient time for the Directors to review and consider issues to be discussed at the Board Meetings. Urgent matters may be tabled for the Board's deliberation under a supplemental agenda.
- (d) The meeting papers should be prepared in accordance with a prescribed format aims to provide clear, comprehensive and concise information to the Board to facilitate their deliberation and decision making.
- (e) A Director who has a direct or deemed interest in a subject matter presented at the Board Meeting shall abstain from deliberation and voting on the said subject matter.

- (f) Key matters reserved for Board's approval or recommendation for the shareholders' approval are detailed in the authority limit guidelines ("**Authority Limit Guidelines**") of the Group which include, among others, the quarterly financial results, audited financial statements, annual business plan, strategies and budget, declaration of dividend, significant transactions or expenditures, related party transactions, restructuring, appointment of Director and Chairman/member of Board Committees, appointment and remuneration of Chief Executive Officer and key responsible persons, remuneration for Directors, Chief Executive Officer and key responsible persons, and remuneration for Directors.
- (g) The Board should consistently be informed and updated on the following matters in relation to:-
  - (i) business operations;
  - (ii) financial and business reviews and development;
  - (iii) Group strategy; and
  - (iv) information on business proposition including market share, industry development, corporate proposals, risk management review, regulation updates, compliance and other operational efficiency projects.
- (h) The Board should be informed of the decision and significant issues deliberated by the Board Committees via the reporting of the Chairman of the respective Board Committees and the minutes of the Board Committees tabled at the Board Meetings.
- (i) In the absence of the Chairman at the Board Meeting, the members present at the Meeting shall elect one among themselves to be the Chairman of the Board Meeting.
- (j) Any Director may participate in a Meeting of the Directors by means of a conference telephone or other method of audio or audio visual communication or similar means of communications equipment whereby all persons participating in the Meeting can hear each other and participation in this manner shall be deemed to constitute presence in person at such Meeting. However, the attendance at a board meeting, by way other than physical presence, remains the exception rather than the norm.
- (k) In order to ensure the efficient flow of information between the Board and Management, the decisions made at the Board Meetings are circulated to the Directors, Chief Executive Officer and the relevant project owners no later than two working days after the conclusion of the Board Meetings.
- (l) Board resolutions passed by way of circular resolution should be practised sparingly although it is permitted under the Company's Constitution that a resolution in writing signed by a majority of the Directors shall be as valid and effectual as if it had been passed at Board Meeting.
- (m) Circular Resolution should not be used to approve complex matters which require rigorous discussion and consideration of the Board.

- (n) Circular resolutions passed by the Board shall be tabled at the next Board Meeting for information of the Board.

### **2.10.2 QUORUM**

The quorum of the Board Meeting shall be in accordance with the Constitution of the respective companies.

### **2.10.3 VOTING**

- (a) Every Board Member shall have a right to speak and vote on any matter tabled at the Meeting. The Company Secretary and any person present by invitation shall be entitled to speak but shall not have any voting right.
- (b) All matters that are to be decided upon and approved by the Board shall be put to vote and passed by a majority of vote and in case of any equality of votes, the Chairman of the Meeting shall have a casting vote.
- (c) Member who has a direct or deemed interest in the subject matter presented at the Meeting shall abstain from deliberation and voting on the said subject matter.

## **2.11 ACCESSIBILITY OF INFORMATION AND ADVICE**

### **2.11.1 ACCESS TO MANAGEMENT AND INFORMATION**

- (a) Board members must have complete unimpeded access to the Group's Management. Board members have unrestricted access to all information and documents relevant to the business and affairs of the Group including the Group's auditors and consultants.
- (b) The Board should be informed or updated on important issues and/or major development of matters discussed in the Board Meetings, by the Management and/or the Company Secretary in between the Board Meetings. Briefing will be arranged to discuss on important issues.
- (c) The Board may invite any employees to be in attendance of Board Meetings to assist it in its deliberations.

### **2.11.2 ACCESS TO THE COMPANY SECRETARY**

- (a) All Directors have direct access to the advice and services of the Secretary for the purposes of the Board's affairs.
- (b) The Company Secretary works closely with the Management to ensure that there are timely and appropriate information flows within and to the Board and Board Committees, and between the Non-Executive Directors and the Management.

### **2.11.3 ACCESS TO INDEPENDENT PROFESSIONAL ADVICE**

- (a) In discharging their duties, each member of the Board is entitled to obtain independent professional advice at the cost of the Company.
- (b) If a Director considers the professional independent advice is necessary, the Director shall first discuss the intention with the Chairman and with the permission of the Chairman, bring the request to seek professional independent advice for the Board's consideration. The reason for seeking independent professional advice and the proposed cost involved should be presented to the Board for approval and the Director may proceed once Board's approval is obtained.
- (c) The above restriction shall not apply to Executive Directors acting in the furtherance of their executive responsibilities and within their delegated powers.
- (d) Independent professional advice shall include but not limited to legal, finance, accounting, governance or other professional advice. Independent professional advice shall exclude any advice concerning the personal interests of the Directors (such as with respect to their contracts or disputes with the Company), unless these are matters affecting the Board as a whole and unanimous agreement obtained from the Board.

### **2.12 DIRECTORS' INDUCTION AND CONTINUING EDUCATION**

- 2.12.1 The Nomination and Remuneration Committee oversees the training needs of the Directors. All newly appointed Directors are required to attend the orientation programme within three months from his date of appointment to familiarise them with the Group's organisation structure, business and the insurance industry.
- 2.12.2 A formalised orientation programme should be developed and provided to new members of the Board to ensure that they understand, among others:-
  - (a) their roles and responsibilities;
  - (b) the nature of the Group's business and its corporate strategy;
  - (c) overview of risks on the Group's business and the risk management strategy;
  - (d) legal requirements and compliance controls; and
  - (e) overview of financial health of the Group.
- 2.12.3 All Directors appointed to the Board of AMB are required to complete the Mandatory Accreditation Programme as prescribed under the MMLR of Bursa Securities within four months from the date of appointment.
- 2.12.4 Newly appointed Director to the Board of the insurance subsidiaries is required to attend the high level Financial Institutions Directors' Education ("FIDE") Programme developed by BNM and Perbadanan Insurans Deposit Malaysia in collaboration with the International Centre for Leadership in Finance within one year from his appointment. Nevertheless, the Directors of AMB are encouraged to attend the FIDE Programme.

- 2.12.5 In order to keep the Directors abreast with the dynamic and complex business environment as well as new statutory and regulatory requirements, the Nomination and Remuneration Committee reviews the training needs of the Directors on an annual basis and proposes the relevant areas of training for the Board's approval.
- 2.12.6 On an on-going basis, the Board of Directors will be updated with material information, including matters relating to legal and regulatory obligations issued by the regulators pertaining to the business of the Company.

## **2.13 SUCCESSION PLANNING**

- 2.13.1 The Board is responsible to ensure that candidates appointed to Senior Management positions are of sufficient calibre. The Board should be satisfied that there are programmes in place to provide for the orderly succession of Senior Management.
- 2.13.2 The Nomination and Remuneration Committee is assigned with the responsibility to oversee the succession planning for the Senior Management.
- 2.13.3 The Nomination and Remuneration Committee through its annual review of the composition of the Board in terms of the appropriate size and mix of skills, the balance between Executive, Non-Executive and Independent Non-Executive Directors, as well as diversity including gender diversity and other core competencies required by the Company, recommends the Board succession planning for the Board's consideration.
- 2.13.4 The Board leverages on the Directors' network, shareholders' recommendation and industry database and independent sources to identify potential candidates for appointment to the Board.

## **2.14 DIRECTORS' REMUNERATION**

- 2.14.1 The directors' remuneration shall be determined based on the following criteria:-
- (a) overall performance of the Group (only applicable to Executive Director);
  - (b) level of responsibility;
  - (c) expertise;
  - (d) complexity of the company's activities; and
  - (e) attendance at Meetings.
- 2.14.2 Individual Directors shall abstain from discussion of their own remuneration.
- 2.14.3 The Nomination and Remuneration Committee recommends to the Board the remuneration to be paid to each Director based on the remuneration policy as approved by the respective Boards. It is, nevertheless the ultimate responsibility of the entire Board to decide the quantum for each Director.
- 2.14.4 The structure of Board fees for the Independent Non-Executive Directors who are not representing the interest of the major shareholder:-

Comprising of 3 components:-

- fixed annual fee for acting as Director;
- fixed annual Board Committee fee for assuming additional responsibilities; and
- meeting allowance.

2.14.5 The Directors are also conferred benefits in kind in the form of telecommunication equipment, Group Hospitalisation and Surgical, outpatient benefit and Group Personal Accident.

2.14.6 The Executive Directors received only remuneration paid to them for their respective designated position held in the Group.

2.14.7 The Directors' remuneration shall be reviewed from time to time in order to attract and retain Directors.

## **2.15 INDEMNIFICATION AND DIRECTORS AND OFFICERS INSURANCE**

2.15.1 The Company may not indemnify a Director against liability arising from:-

- (a) willful misconduct or breach of trust by the Director;
- (b) the Director acting without the necessary authority;
- (c) reckless trading; or
- (d) fraudulent acts of the Director.

2.15.2 Other than the specific instances above, the Company may purchase insurance to protect a Director or the Company against any liability in respect of which the Company is permitted to indemnify a Director under the permitted circumstances of the law and Constitution of the Company.

## **3. DELEGATION OF AUTHORITY**

(a) The Board is responsible for overseeing the overall affairs of the Company. To ensure effective discharge of its functions and responsibilities, distinctions must be maintained between management's functions and the overall responsibility of the Board.

(b) The Board has established Authority Limit Guidelines detailing matters specifically reserved for its decision and those delegated to the Management and the Board Committees and the parameters in relation thereto. The Authority Limit Guidelines set out the responsibility and the approval limits for each party and is made available to all Directors and accessible by staff via the Group's staff e-portal.

### **3.1 MANAGEMENT AUTHORITY LIMIT**

3.1.1 There should be a clear division of responsibilities between the top management positions which will ensure a balance of power and authority, such that no one individual has unfettered decision making powers.



- 3.1.2 The Board's approving authority is delegated to the Management through formal and defined operational authority limits that governs business procedures and decision making process in the Group. The operational authority limits incorporate segregation of duties and check and balance in delegation of authority.
- 3.1.3 Such authority limits are documented in the Authority Limit Guidelines and are regularly review to ensure the said guidelines remain relevant to the changing environment.
- 3.1.4 Senior Management Committees comprising Senior Management is set up at insurance subsidiaries level and chaired by the Chief Executive Officers of the respective insurance subsidiaries. Various Management Committees are established by the respective Senior Management Committees with specific terms of reference, to assist in managing the day-to-day operations of the Company and ensure its effectiveness. The Management Committees formulate tactical plans and business strategies, monitor the performance of the Company and ensure that activities are carried out in accordance with corporate objectives, strategies, business plans and policies as approved by the respective Boards of the Group.

## **3.2 BOARD COMMITTEES**

- 3.2.1 The Board in the course of carrying out its duties, may set up Board Committees delegated with specific authority and operating on the terms of reference as approved by the Board, to assist the Board in the execution of its responsibilities. These Board Committees shall have the authority to examine particular issues and report back to the Board with their recommendations. The ultimate responsibility for the final decision on all matters, however, lies with the entire Board.
- 3.2.2 The Board Committees set up to assist the Board on specific areas of responsibilities as described in the respective Board Committees' terms of reference. The insurance subsidiaries have formally used the services of the Board Committees of AMB since 1 January 2008.
- 3.2.3 The present Board Committees are Audit Committee, Risk Management Committee, Nomination and Remuneration Committee.

## **GLOSSARY**

Except where the context otherwise requires, the following definitions shall apply throughout this Glossary.

- Applicable Laws : all laws, by-laws, regulations, rules, orders and/or official directions for the time being in force affecting the Company and its subsidiaries, including but not limited to the Companies Act 2016 (“**CA**”), Main Market Listing Requirements (“**MMLR**”) of Bursa Malaysia Securities Berhad and every other law for the time being in force concerning companies and affecting the Company and any other directives or requirements imposed on the Group by Bank Negara Malaysia and/or other relevant regulatory bodies and/or authorities.
- approved person : a person approved under section 11 of the Financial Services Act 2013 (“**FSA**”) to carry on an approved business.

### Section 11 of FSA – Approval by Bank

- (1) In assessing an application duly made under section 9 to carry on any approved business, the Bank shall have regard to all the factors set out in Part 1 of Schedule 5 and such other matters that the Bank considers relevant.
- (2) The Bank may—
  - (a) approve an application to carry on any approved business, with or without conditions, or for such period as stated in the approval; or
  - (b) reject the application.
- (3) A person approved under paragraph (2)(a) to carry on insurance broking business or financial advisory business shall at all times have in force a professional indemnity insurance or takaful of such amount as may be specified by the Bank.
- (4) The Bank shall notify the applicant in writing of its decision under subsection (2).
- (5) Where the Bank approves an application under paragraph (2) (a), an approved person shall commence its approved business within a period or such further period as may be specified by the Bank.
- (6) Any person who contravenes subsection (3) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million ringgit or to both.

### Section 9 of FSA – Application for authorization

An applicant for a licence under section 10 or an approval under section 11 to carry on an authorized business shall submit the application in writing to the Bank together with such documents or information as may be specified by the Bank.

- approved business : 1. Operation of a payment system which:-
- (a) enables the transfer of funds from one banking account to another, which includes any debit transfer, credit transfer or standing instructions but does not include the operation of a remittance system approved under section 40 of the Money Services Business Act 2011 (“MSBA”); or
  - (b) provides payment instrument network operation which enables payments to be made through the use of a payment instrument.
2. Issuance of a designated payment instrument.
3. Insurance broking business.
4. Money-broking business.
5. Financial advisory business.

Section 40 of MSBA - Use of remittance system by a licensee who carries on remittance business

No licensee who carries on remittance business shall utilise a remittance system, whether its own system or a system of a third party, without the prior written approval of the Bank.

- (1) The remittance system under subsection (1) shall meet the minimum requirements as Bank may prescribe.
- (2) Bank, in granting its approval under subsection (1), may impose such conditions as it thinks fit and such conditions shall be complied with by the licensee.

A licensee who contravenes subsection (1) or (3) commits an offence.

Licensee means a person licensed under MSBA.

- Bank : Bank Negara Malaysia or in English, the “Central Bank of Malaysia”
- financial adviser’s representative : an individual, however styled, in the direct employment of, acting for or by arrangement with an approved financial adviser, who performs for the financial adviser any services relating to financial advisory business
- financial year : the period in respect of which any profit and loss account of the institution laid before it in general meeting is made up, whether that period is a year or not
- licensed person : a person licensed under section 10 of the FSA to carry on a banking business, insurance business or investment banking business

Section 10 of FSA - Grant of Licence by Minister

- (1) In assessing an application duly made under section 9 to carry on any licensed business, the Bank shall have regard to all the factors set out in Part 1 and Part 2 of Schedule 5 and such other matters that the Bank considers relevant.

- (2) Upon making an assessment under subsection (1) and where the Bank is satisfied that such applicant may be granted a licence, the Bank shall make a recommendation to the Minister to grant a licence under subsection (4) with or without conditions.
- (3) The Bank shall notify the applicant in writing if the Bank does not make a recommendation to the Minister under subsection (2).
- (4) Where the Bank makes a recommendation pursuant to subsection (2), the Minister may grant a licence to the applicant to carry on banking business, insurance business or investment banking business, with or without conditions.
- (5) The Bank shall notify the applicant in writing of the decision of the Minister under subsection (4).

Where the Minister grants a licence under subsection (4), a licensed person shall commence its licensed business within a period or such further period as may be specified by the Minister, on the recommendation of the Bank.

**(A) FSA**

**Section 47 - Power of bank to specify standards on prudential matters**

(1) The Bank may specify standards on prudential matters to promote:-

- (a) the sound financial position of an institution; or
- (b) integrity, professionalism and expertise in the conduct of the business, affairs and activities of an institution.

(2) Without limiting the generality of subsection (1), standards specified under that subsection may include standards relating to:-

- (a) capital adequacy;
- (b) liquidity;
- (c) corporate governance;
- (d) risk management;
- (e) related party transactions;
- (f) maintenance of reserve funds;
- (g) insurance funds; and
- (h) prevention of an institution from being used, intentionally or unintentionally, for criminal activities.

(3) For purposes of paragraph (2)(e), "related party transactions" means transactions with an institution involving:-

- (a) a director, officer or shareholder of the institution;
- (b) any person in a position to influence or control the institution or affect the decisions of the institution;
- (c) a relative or dependent of any person referred to in paragraph (a) or (b); or
- (d) any other person as may be specified by the Bank, which in the opinion of the Bank may cause the institution to be in a conflict of interest situation.

**Section 54(2) - Chairman, directors and chief executive officer of institution**

Except with the prior written approval of the Bank:-

- (a) no licensed person shall appoint or elect, or re-appoint or re-elect any person as its chairman, director or chief executive officer; and
- (b) no person shall accept any appointment or election, or re-appointment or re-election as a chairman, director or chief executive officer, of a licensed person.

**Section 55 - Requirements to be chairman, director, chief executive officer or senior officer**

(1) An institution shall not appoint or elect, re-appoint or re-elect any person as a chairman, director, chief executive officer or senior officer of the institution, unless such person:-

- (a) is an individual;
  - (b) is not disqualified under subsection 59(1); and
  - (c) has complied with the fit and proper requirements as may be specified by the Bank under section 60.
- (2) No person shall accept any appointment or election, reappointment or re-election as a chairman, director, chief executive officer or senior officer of an institution, unless such person:-
- (a) is not disqualified under subsection 59(1); and
  - (b) has complied with the fit and proper requirements as may be specified by the Bank under section 60.

### **Section 59 - Disqualifications**

- (1) A person is disqualified from being appointed or elected, re-appointed or re-elected, accepting any appointment or election, or holding office, as a chairman, director, chief executive officer or senior officer of an institution if:-
- (a) he is an undischarged bankrupt, has suspended payments or has compounded with his creditors whether in or outside Malaysia;
  - (b) a charge for a criminal offence relating to dishonesty or fraud under any written law or the law of any country, territory or place outside Malaysia, has been proven against him;
  - (c) he is prohibited from being a director of a company or in any way, whether directly or indirectly, be concerned or take part in the management of a company in Malaysia pursuant to a court order made under section 199 of CA and has not obtained any leave of the court under the same section; or
  - (d) under any law relating to prevention of crime, drug trafficking or immigration:-
    - (i) an order of detention, supervision, or deportation has been made against that person; or
    - (ii) any form of restriction or supervision by bond or otherwise, has been imposed on him.
- (2) Where any criminal proceeding is pending in any court for any offence referred to in paragraph (1)(b) against a chairman, director, chief executive officer or senior officer of an institution, such person shall not-
- (a) act in such capacity, hold any other office or act in any other capacity, in that institution; or
  - (b) be concerned with, take part or engage in any manner, whether directly or indirectly, in any activity, affairs or business of, or in relation to, that institution, except as may be permitted by the board of directors of the institution subject to such conditions as may be specified by the Bank.
- (3) For the purposes of subsection (2), "criminal proceedings" shall be deemed to be pending from the date that the accused person is first charged in court for the offence until the date of the final conclusion of the proceedings, whether in the court of original jurisdiction or, in the event of any appeal by any party, in the court of final appellate jurisdiction.

## **Section 60 - Fit and proper requirements**

- (1) Without limiting the generality of section 47 and for the purposes of paragraphs 55(1)(c) and 55(2)(b), the Bank may specify fit and proper requirements to be complied with by a chairman, director, chief executive officer or senior officer of an institution or a financial adviser's representative, which may include minimum criteria relating to:-
  - (a) probity, personal integrity and reputation;
  - (b) competency and capability; and
  - (c) financial integrity.
- (2) Where an issue arises as to whether a chairman, director, chief executive officer, senior officer or financial adviser's representative has complied with the fit and proper requirements as specified under subsection (1), the Bank shall have full discretion to determine the issue.

## **(B) CA**

### **Section 2 - Interpretation**

- (1) In CA, unless the context otherwise requires:-

"officer" in relation to a corporation includes:-

- (a) any director, secretary or employee of the corporation;
- (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and
- (c) any liquidator of a company appointed in a voluntary winding up,

but does not include:-

- (i) any receiver who is not also a manager;
- (ii) any receiver and manager appointed by the Court; or
- (iii) any liquidator appointed by the Court or by the creditors.

### **Section 197 - Persons connected with director**

- (1) A person shall be deemed to be connected with a director if the person is:-
  - (a) a member of the director's family;
  - (b) a body corporate which is associated with that director;
  - (c) a trustee of a trust, other than a trustee for an employee share scheme or pension scheme, under which that director or a member of the director's family is a beneficiary; or
  - (d) a partner of that director or a partner of a person connected with that director.

- (2) For the purposes of this section:-
- (a) "a member of the director's family" means that director's spouse, parent, child, including adopted child and stepchild, brother, sister and the spouse of the director's child, brother or sister;
  - (b) a body corporate is associated with a director if:-
    - (i) The body corporate is accustomed or is under an obligation, whether formal or informal, or the majority of directors of the body corporate is accustomed, to act in accordance with the directions, instructions or wishes of that director;
    - (ii) That director has a controlling interest in the body corporate; or
    - (iii) That director, or persons connected with that director, or that director and persons connected with him, are entitled to exercise, or control the exercise of, not less than twenty per centum of the votes attached to voting shares in the body corporate.

**Section 198 - Persons disqualified from being a director**

- (1) A person shall not hold office as a director of a company or whether directly or indirectly be concerned with or takes part in the management of a company, if the person:-
- (a) is an undischarged bankrupt;
  - (b) has been convicted of an offence relating to the promotion, formation or management of a corporation;
  - (c) has been convicted of an offence involving bribery, fraud or dishonesty;
  - (d) has been convicted of an offence under sections 213, 217, 218, 228 and 539; or
  - (e) has been disqualified by the Court under section 199.
- (2) The circumstances referred to in paragraphs (1)(a), (b), (c) and (d) shall be applicable to circumstances in or outside Malaysia.
- (3) Notwithstanding subsection (1), a person who has been disqualified under paragraph (1)(a) may be appointed or hold office as a director with the leave of:-
- (a) the Official Receiver; or
  - (b) the Court provided that a notice of intention to apply for leave has been served on the Official Receiver and the Official Receiver is heard on the application.
- (4) Notwithstanding subsection (1), a person who has been disqualified under paragraph (1)(b), (c), (d) or (e) may be re-appointed or hold office as a director with the leave of the Court.
- (5) A person intending to apply for a leave of the Court under paragraph (3)(b) or subsection (4), shall:-
- (a) give the Registrar a notice of not less than fourteen days of the person's intention to do so; and
  - (b) make the Registrar a party to the proceedings under subsection (3).



- (6) For the purposes of subsection (5), any person referred to in paragraph (1)(b), (c), (d) or (e) shall not be required to obtain a leave from Court after the expiry of five years calculated from the date he is convicted or if he is sentenced to imprisonment, from the date of his release from prison.
- (7) Any person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million ringgit or to both.

### **Section 199 - Power of Court to disqualify persons from acting as director or promoter**

- (1) The Court may, on an application by the Registrar, make an order to disqualify any person from acting or holding office as a director or promoter of a company, or be concerned with or taking part in the management of a company whether directly or indirectly, if:-
  - (a) within the last five years, the person has been a director of two or more companies which went into liquidation resulting from the company being insolvent due to his conduct as a director which contributed wholly or partly to the liquidation;
  - (b) due to his contravention of the duties of a director; or
  - (c) due to his habitual contravention of the CA.
- (2) An application arising from the circumstances referred to in paragraph (1)(a) may be made by the Official Receiver and the Registrar shall be made a party to the proceedings.
- (3) Before making an order under subsection (1), the Court may require any person:-
  - (a) to furnish the Court with such information with respect to the company's affairs; and
  - (b) to produce and permit inspection of such books or documents relevant to the company.
- (4) After considering the application and the additional information and documents received under subsection (3), if any, the Court may make an order to disqualify the person from acting or holding office as a director or promoter of a company, or be concerned with or taking part in the management of a company whether directly or indirectly for such period not exceeding five years commencing from the date of the order.
- (5) The Registrar or the Official Receiver shall give notice of not less than fourteen days to the person referred to in subsection (1) notifying his intention to apply for an order under this section.

### **Section 206 - Removal of directors**

- (1) A director may be removed before the expiration of the director's period of office as follows:-
  - (a) subject to the constitution, in the case of a private company, by ordinary resolution; or
  - (b) in the case of a public company, in accordance with this section.

- (2) Notwithstanding anything in the constitution or any agreement between a public company and a director, the company may by ordinary resolution at a meeting remove the director before the expiration of the director's tenure of office.
- (3) Special notice is required of a resolution to remove a director under this section or to appoint another person instead of the director at the same meeting.
- (4) Notwithstanding paragraph (1)(b), if a director of a public company was appointed to represent the interests of any particular class of shareholders or debenture holders, the resolution to remove the director shall not take effect until the director's successor has been appointed.
- (5) A person appointed as director in place of a person removed under this shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become a director on the day on which the person in whose place he is appointed was last appointed a director.

### **Section 207 - Right to be heard for directors of public company against removal**

- (1) On receipt of special notice for a resolution to remove a director under subsection 206(3), the company shall forthwith send to the director a copy of the special notice.
- (2) The director shall be given the right to make oral representation or written representation not exceeding a reasonable length on the resolution to remove him.
- (3) Where the director makes written representation and requests the written representation be notified to the members, the company shall, unless the representation is received too late for the company to do so:-
  - (a) state the fact of the representation having been made in the notice of the resolution given to members of the company; and
  - (b) send a copy of the representation to every member of the company to whom the notice of the meeting is sent.
- (4) If a copy of the representation is not sent as required under subsection (3) due to the representations received too late by the company or due to the default of the company, the director may, without prejudice to his right to be heard orally, require that the representations shall be read out at the meeting.
- (5) Copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused.
- (6) The Court may order the company's costs on an application under subsection (5) to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.
- (7) The constitution of a private company may provide the rights accorded under this section to its directors.

### **Section 210 - Interpretation**

For the purposes of the Subdivision 3 (Directors' Duties and Responsibilities) of the CA, in sections 213, 214, 215, 216, 217, 218, 223 and 228, in addition to the definition of "director" in section 2, "director" includes chief executive officer, chief financial officer, chief operating officer or any other person primarily responsible for the management of the company.

### **Section 213 - Duties and responsibilities of directors**

- (1) A director of a company shall at all times exercise his powers in accordance with the CA, for a proper purpose and in good faith in the best interest of the company.
- (2) A director of a company shall exercise reasonable care, skill and diligence with:-
  - (a) the knowledge, skill and experience which may reasonably be expected of a director having the same responsibilities; and
  - (b) any additional knowledge, skill and experience which the director in fact has.
- (3) A director who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.

### **Section 214 - Business judgment rule**

- (1) A director who makes a business judgment is deemed to meet the requirements of the duty under subsection 231(2) and the equivalent duties under the common law and in equity if the director:-
  - (a) makes the business judgment for a proper purpose and in good faith;
  - (b) does not have a material personal interest in the subject matter of the business judgment;
  - (c) is informed about the subject matter of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and
  - (d) reasonably believes that the business judgment is in the best interest of the company.
- (2) For the purposes of this section, "business judgment" means any decision on whether or not to take action in respect of a matter relevant to the business of the company.

### **Section 215 - Reliance on information provided by others**

- (1) A director in exercising his duties as a director may rely on information, professional or expert advice, opinions, reports or statements including financial statements and other financial data, prepared, presented or made by:-
  - (a) any officer of the company whom the director believes on reasonable grounds to be reliable and competent in relation to matters concerned;
  - (b) as to matters involving skills or expertise, any other person retained by the company in relation to matters that the director believes on reasonable grounds to be within the

- person's professional or expert competence;
- (c) another director in relation to matters within the director's authority; or
- (d) any committee to the board of directors on which the director did not serve in relation to matters within the committee's authority.

(2) The director's reliance made under subsection (1) is deemed to be made on reasonable grounds if it was made:-

- (a) in good faith; and
- (b) after making an independent assessment of the information or advice, opinions, reports or statements, including financial statements and other financial data, having regard to the director's knowledge of the company and the complexity of the structure and operation of the company.

### **Section 216 - Responsibility for actions of delegate**

(1) Except as is otherwise provided by the CA, the constitution of the company or any resolution of the board of directors or members of the company, the directors may delegate any power of the board of directors to any committee to the board, director, officer, employee, expert or any other person.

(2) Where the directors have delegated any power, the directors are responsible for the exercise of power by the delegatee as if the power had been exercised by the directors themselves.

(3) The directors are not responsible under subsection (2) if:-

- (a) the directors believed on reasonable grounds at all times that the delegatee would exercise the power in conformity with the duties imposed on the directors under the CA and the constitution of the company, if any; and
- (b) the directors believed on reasonable grounds, in good faith and after making a proper inquiry, if the circumstances indicated the need for the injury, that the delegate was reliable and competent in relation to the power delegated.

### **Section 217 - Responsibility of a nominee director**

(1) A director, who was appointed by virtue of his position as an employee of a company, or who was appointed by or as a representative of a shareholder, employer or debenture holder, shall act in the best interest of the company and in the event of any conflict between his duty to act in the best interest of the company and his duty to his nominator, he shall not subordinate his duty to act in the best interest of the company to his duty to his nominator.

(2) A director who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or a fine not exceeding three million ringgit or to both.

**Section 218 - Prohibition against improper use of company's property, position, etc**

(1) A director or officer of a company shall not, without the consent or ratification of a general meeting:-

- (a) use the property of the company;
- (b) use any information acquired by virtue of his position as a director or officer of the company;
- (c) use his position as such director or officer;
- (d) use any opportunity of the company which he became aware of, in the performance of his functions as the director or officer of the company; or
- (e) engage in business which is in competition with the company,

to gain directly or indirectly, a benefit for himself or any other person, or cause detriment to the company.

(2) Any person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or a fine not exceeding three million ringgit or to both.

**Section 228 – Transactions with directors, substantial shareholders or connected persons**

(1) Subject to subsection (2) and section 229, a company shall not enter or carry into effect any arrangement or transaction where a director or a substantial shareholder of the company or its holding company, or its subsidiary, or a person connected with a director or substantial shareholder:-

- (a) acquires or is to acquire shares or non-cash assets of the requisite value, from the company; or
- (b) disposes of or is to dispose of shares or non-cash assets of the requisite value, to the company,

unless:-

- (A) the entering into the arrangement or transaction is made subject the approval of shareholders at a general meeting; or
- (B) the carrying into effect of the arrangement or transaction has been approved by shareholders at a general meeting.

(2) An arrangement or transaction which is carried into effect in contravention of subsection (1) shall be void unless there is prior approval of the arrangement or transaction:-

- (a) By a resolution of the company; or
- (b) By a resolution of the holding company, if the arrangement or transaction is in favour of a director or substantial shareholder of its holding company or person connected with such director or such substantial shareholder.

- (3) For the purposes of subsection (1), in the case of an unlisted subsidiary whose holding company is a listed company, the director of such holding company shall procure the shareholders' approval of the holding company in a general meeting for the arrangement or transaction by the unlisted subsidiary in addition to the shareholders' approval of the unlisted subsidiary in a general meeting procured by the directors of the unlisted subsidiary.
- (4) In the case of a public company or its holding company or its subsidiary, the director or substantial shareholder or person connected with the director or substantial shareholder who is interested in the arrangement or transaction referred to in paragraph (1)(a) or (b) shall abstain from voting on the resolution at the general meeting to consider the arrangement or transaction referred to in subsection (2).
- (5) Where an arrangement or transaction is entered or carried into effect by a company in contravention of subsections (1) and (2), the director, substantial shareholder or person connected with a director or substantial shareholder and any director who knowingly authorised the arrangement or transaction shall, in addition to any other liability be liable:-
  - (a) To account to the company for any gain which he has made directly or indirectly by the arrangement or transaction; and
  - (b) Jointly and severally with any person liable under this subsection, to indemnify the company for any loss or damage resulting from the arrangement or transaction.
- (6) The Court may, on the application of any member or director of the company, restrain the company from entering or carrying into effect an arrangement or transaction in contravention of subsection (1).
- (7) A director or substantial shareholder of a company or its holding company, or its subsidiary or a person connected with such director or substantial shareholder, in whose favour the company carries into effect an arrangement or transaction and who knows that such arrangement or transaction is carried into effect by a company in contravention of this section, or a director who knowingly authorised the company to carry into effect such arrangement or transaction, in contravention of this section, commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.
- (8) For the purposes of subsection (1):-
  - (a) "person connected with a substantial shareholder" has the same meaning assigned to a "person connected with a director" in section 197 save that all references therein to a director shall be read as a reference to a substantial shareholder;
  - (b) "requisite value", in the case of a company where all or any of its shares are quoted on the stock exchange or its subsidiary, shall be the same value as the value prescribed in the listing requirements of the stock exchange where approval of the shareholders at a general meeting is required;
  - (c) In the case of any company other than a company to which paragraph (b) applies, non-cash asset is of the requisite value if, at the time of the transaction, its value exceeds two hundred and fifty thousand ringgit but does not exceed ten per centum of the company's net asset value

provided it is not less than fifty thousand ringgit, where:-

- (i) the value of the company's assets is determined by reference to the accounts prepared under section 245 in respect of the last financial year prior to the arrangement or transaction; or
- (ii) no accounts have been so prepared and laid before that time, the amount of the company's called up share capital.

(9) In this section:-

- (a) a reference to the acquisition or disposal of a non-cash asset includes the creation or extinction of an estate or interests in, or a right over, an property and also the discharge of any person's liability, other than liability for a liquidated sum;
- (b) "cash" includes foreign currency; and
- (c) "non-cash asset" means any property or interest in property other than cash.

### **Section 229 – Exception to section 228**

Section 228 shall not apply to an arrangement or transaction for the acquisition or disposal of a non-cash asset entered into:-

- (a) by a company:-
  - (i) and any of its wholly-owned subsidiaries;
  - (ii) and its holding company which holds all the issued shares of the company; or
  - (iii) which is a wholly-owned subsidiary of a holding company and another wholly-owned subsidiary company of that same holding company;
- (b) by a company which is being wound up, unless the winding up is a members' voluntary winding up;
- (c) by a company which is an acquisition or disposal of an asset in the ordinary course of business of the company and is on terms not more favourable than those generally available to the public or employees of the company;
- (d) by a company if such arrangement or transaction does not involve transfer of cash or property and which shall have no effect unless approved at a general meeting or by a relevant authority;
- (e) by a company made in accordance with a scheme of arrangement approved by the Court under section 366; or
- (f) by a company in connection with a takeover offer made in accordance with the relevant law applicable to such offers.

### **Section 231 – Directors' service contracts**

- (1) For the purposes of this Division, a director's "service contract" in relation to a public company means a contract under which:-
  - (a) a director of the company undertakes personally to perform services, as a director or otherwise for the public company or for a subsidiary of the public company; or
  - (b) services that a director of the public company undertakes personally to perform as director or otherwise are made available by a third party to the public company, or to a subsidiary of the public company.

(2) The provisions of this Division relating to directors' service contracts shall:-

- (a) be applicable to the terms of a person's appointment as a directors of a public company; or
- (b) not be restricted to contracts for the performance of services outside the scope of the ordinary duties of a director.

**Section 235 - Requirement for a secretary**

(1) A company shall have at least one secretary who shall be:-

- (a) a natural person;
- (b) eighteen years of age and above; and
- (c) a citizen or permanent resident of Malaysia,

who shall ordinarily reside in Malaysia by having a principal place of residence in Malaysia.

(2) A secretary shall be:-

- (a) a member of a body as set out in the Fourth Schedule; or
- (b) a person licensed by the Companies Commission of Malaysia under section 20G of the Companies Commission of Malaysia Act 2001.

(3) For the purposes of paragraph (2)(a), the Minister may prescribe any professional body or any other body by notification in the *Gazette* and may impose any terms and conditions as he thinks fit.

(4) The company and every director who contravene this section commit an offence.

**Section 238 – Disqualification to act as a secretary**

(1) A person shall be disqualified to act as a secretary if:-

- (a) he is an undischarged bankrupt;
- (b) he is convicted whether in or outside Malaysia of any offence referred to in section 198; or
- (c) he ceases to be a holder of a practicing certificate issued by the Registrar under section 241.

(2) Notwithstanding subsection (1), the Registrar is of the opinion that a person has failed to act honestly or use reasonable diligence in the discharge of his duties as a secretary, the Registrar may require the person to show cause why his practicing certificate should not be revoked or why he should not be disqualified from acting as a secretary of a company.

(3) If a person continues to act as a secretary for a company after the person is disqualified under this section without leave of the Court, the secretary and every director who knowingly permits the person to act in that capacity commit an offence.



### **Section 241 – Requirement to register with Registrar**

- (1) Any person who is qualified to act as a secretary and who desires to act as a secretary shall be registered under this section before he can act as a secretary.
- (2) The Registrar shall cause a register of secretaries to be kept and shall cause to be entered in the register in relation to a secretary:-
  - (a) the name of the secretary;
  - (b) the residential address and business address of the secretary;
  - (c) the details of the qualifications referred to in subsection 235(2); and
  - (d) such other information as the Registrar may require.
- (3) The Registrar, before registering such person, may:-
  - (a) require him to produce any evidence to his satisfaction of the qualification as stated under subsection 235(2); or
  - (b) impose any other conditions that he deems fit.
- (4) If the requirements under subsection (3) are satisfied, the Registrar shall:-
  - (a) enter the particulars in the register of secretaries; and
  - (b) issue a practicing certificate in such form as the Registrar may determine.
- (5) On or after the commencement of the CA, a person who is a secretary of a company and who is not registered under subsection (1) may continue to act as a secretary to the company for a period of not more than twelve months or any longer period as the Registrar may allow.
- (6) After the expiry of the period referred to in subsection (5), a person who fails to comply with the requirement to register shall be deemed to have not been registered under this section.
- (7) The Minister shall have the power to make regulations or any matters relating to any practicing certificate issued under this section.
- (8) Any person who contravenes subsection (2) commits an offence.

### **Section 245 – Accounts to be kept**

- (1) A company, the directors and managers of a company shall:-
  - (a) cause to be kept the accounting and other records to sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared; and
  - (b) cause the accounting and other records to be kept in a manner as to enable the accounting and other records to be conveniently and properly audited.

- (2) A company, the directors and managers of a company shall cause appropriate entries to be made in the accounting and other records within sixty days of the completion of the transactions to which the entries relate.
- (3) The company shall retain the records referred to in subsection (1) for seven years after the completion of the transactions or operations to which the entries relate.
- (4) The records referred to in subsection (1) shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open for inspection by the directors.
- (5) Notwithstanding subsection (4), the accounting and other records of operations outside Malaysia may be kept by the company at a place other Malaysia provided that such accounting and other records shall be sent to and kept at a place in Malaysia and be made available for inspection by the directors at all times.
- (6) The accounting and other records referred to in subsection (5) shall include such statements and returns with respect to the business dealt with in the records so kept as to enable the preparation of true and fair financial statements and any documents required to be attached to the financial statements.
- (7) If any accounting and other records are kept at a place outside Malaysia under subsection (4) or (5), the Registrar may require the company to produce those records at a place in Malaysia or determine the type and manner of the records to be kept in Malaysia.
- (8) The Court may, in any particular case, order that the accounting and other records of a company be open to inspection by an approved company auditor acting for a director, subject to a written undertaking given to the Court that information acquired by the auditor during his inspection shall not be disclosed by him except to that director.
- (9) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

**Section 539 – Liability where proper accounts not kept**

- (1) If, on an investigation under any other Part or where a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the investigation or the winding up or the period between the incorporation of the company and the commencement of the investigation or winding up, whichever is the lesser, every officer, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding five hundred thousand ringgit or to both.
- (2) For the purposes of this section, proper books or accounts shall be deemed not to have been kept in the case of any company if:-

- (a) the books or accounts have not been kept as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stock takings and, except in the case of goods sold by way of ordinary retail trade, of all goods sold and purchased, showing the goods and the buyers and sellers of the goods in sufficient detail to enable those goods and those buyers and sellers to be identified; or
  - (b) the books or accounts have not been kept in such manner as to enable the books or accounts to be conveniently and properly audited, whether or not the company has appointed an auditor.
- (3) If in the course of winding up of a company or in any proceedings against a company, an officer of the company who knowingly was a party to the contracting of a debt had, at the time the debt was contracted, no reasonable or probable ground of expectation, after taking into consideration the other liabilities, if any, of the company at the time, of the company being able to pay the debt, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred thousand ringgit or to both.

#### **(C) CAPITAL MARKETS AND SERVICES ACT 2007**

##### **Section 185 - Material effect on price or value of securities**

For the purposes of Subdivision 2 (insider trading), an information that on becoming generally available would or would tend to have a material effect on the price or value of securities, refers to such information which would or would tend to, on becoming generally available, influence reasonable persons who invest in securities in deciding whether or not to acquire or dispose of such securities, or enter into an agreement with a view to acquire or dispose of such securities.

#### **(D) BANK NEGARA MALAYSIA'S POLICY DOCUMENT ON CORPORATE GOVERNANCE**

##### **Paragraph 11.7 – Independent Director**

The board must determine whether an individual to be appointed as an independent director is independent in character and judgement, and free from associations or circumstances that may impair the exercise of his independent judgement. An individual must not be considered to be an independent director if he or any person linked to him:-

- (a) has been an executive in the last two years;
- (b) is a substantial shareholder of the financial institution or any of its affiliates; or
- (c) has had a significant business or other contractual relationship with the financial institution or any of its affiliates within the last two years.

### **Paragraph 11.8**

For the purpose of paragraph 11.7, the board must clearly define what constitutes a “significant business or other contractual relationship”, taking into account the nature, size and complexity of the financial institution’s operations.

“significant business or other contractual relationship” shall adopt the same meaning as provided in the definition of “independent director” under Practice Note 13 of MMLR.

## **(E) MMLR**

### **Chapter 1 - Definitions and Interpretation (Part A - Definition)**

#### **Paragraph 1.01 - Definitions**

Independent director means a director who is independent of management and free from any business or other relationship which could interfere with the exercise of independent judgement or the ability to act in the best interests of an applicant or a listed issuer. Without limiting the generality of the foregoing, an independent director is one who:-

- (a) is not an executive director of the applicant, listed issuer or any related corporation of such applicant or listed issuer (each corporation is referred to as “**said Corporation**”);
- (b) is not, and has not been within the last 3 years, an officer (except as an independent director) of the said Corporation. For this purpose, “officer” has the meaning given in section 2 of CA;
- (c) is not a major shareholder the said Corporation;
- (d) is not a family member of any executive director, officer or major shareholder of the said Corporation;
- (e) is not acting as a nominee or representative of any executive director or major shareholder of the said Corporation;
- (f) has not been engaged as an adviser by the said Corporation under such circumstances as prescribed by the Exchange, or is not presently a partner, director (except as an independent director) or major shareholder, as the case may be, of a firm or corporation which provides professional advisory services to the said Corporation under such circumstances as prescribed by the Exchange; or
- (g) has not engaged in any transaction with the said Corporation under such circumstances as prescribed by the Exchange, or is not presently a partner, director or major shareholder, as the case may be, of a firm or corporation (other than subsidiaries of the applicant or listed issuer) which has engaged in any transaction with the said Corporation under such circumstances as prescribed by the Exchange.

*[Cross reference: Practice Note 13]*

### **Practice Note 13 of MMLR**

## **I. INDEPENDENCE OF DIRECTORS**

### **2.0 General**

2.1 Directors must give effect to the spirit, intention and purpose of the said definition. If a person does not fall within any of paragraphs (a) to (g) of the said definition, it does not mean that the person will automatically qualify to be an independent director. The director concerned as well as the board of directors of the applicant or listed issuer must still apply the test of whether the said director is able to exercise independent judgment and act in the best interests of the applicant or listed issuer as set out in the said definition.

2.2 Paragraphs 3.0 to 5.0 of this Practice Note must be read in conjunction with the said definition.

### **3.0 Paragraph (e)**

3.1 “**Nominee**” as used in paragraph (e) means a person who has been designated to act for another in his or her place. It denotes a person who is accustomed, or is under an obligation, whether formal or informal to act in accordance with the directions, instructions or wishes of another person.

3.2 A nominee or representative of major shareholders who fulfils all requirements of the definition of “independent director” except for the said paragraph (e), may nevertheless be considered as an “independent director” if –

- (a) the major shareholder’s aggregate shareholding in the said Corporation, directly or indirectly, is not more than 15% of the total number of issued shares (excluding treasury shares) of the said Corporation;
- (b) the major shareholder is not deemed to be a specified shareholder of the said Corporation; and
- (c) the major shareholder is either –
  - (i) a statutory institution who is managing funds belonging to the general public; or
  - (ii) an entity established as a collective investment scheme, such as closed-end funds, unit trusts or investment funds (but excluding investment holding companies).

### **4.0 Paragraph (f)**

4.1 In relation to paragraph (f), a person who is proposed to be or is an independent director (“**said Director**”) is disqualified from being an independent director if he –

- (a) had personally provided professional advisory services to the said Corporation within the last 3 years; or
- (b) is presently a partner, director (except as an independent director) or major shareholder, of a firm or corporation (“**Entity**”) which has provided professional advisory services to the said Corporation within the last 3 years,

and the consideration in aggregate is more than 5% of the gross revenue on a consolidated basis (where applicable) of the said Director or the Entity or RM1 million, whichever is the higher.

4.2 For the purposes of paragraph 4.1 above, the following applies:

- (a) where the Entity is a corporation, the computation of the gross revenue of the Entity must be based on its annual audited financial statements for the last 3 financial years; and
- (b) where the service is rendered by the said Director personally or by an Entity other than a corporation, the computation of the gross revenue must be based on the income tax returns of the said Director or the Entity, as the case may be, submitted to the Inland Revenue Board for the last 3 years.

## 5.0 Paragraph (g)

5.1 In relation to paragraph (g), the said Director is disqualified from being an independent director if he –

- (a) had engaged personally in transactions with the said Corporation (other than for board service as an independent director) within the last 3 years; or
- (b) is presently a partner, director, a major shareholder, of an Entity (other than subsidiaries of the applicant or listed issuer) which has engaged in transactions with the said Corporation within the last 3 years,

and the consideration in aggregate exceeds 5% of the gross revenue on a consolidated basis (where applicable) of the said Director or the Entity or RM1 million, whichever is the higher.

5.2 However, “**transactions**” in paragraph 5.1 above excludes transactions –

- (a) on normal commercial terms entered into between the said Corporation and the said Director or between the said Corporation and an Entity where the said Director is also a director, major shareholder or partner –
  - (i) for personal use of the said Director; or
  - (ii) for personal investment of the said Director but not for the purpose of carrying on a trade or business;
- (b) on normal commercial terms entered into between the said Corporation and an Entity where the said Director is also a director (and not a major shareholder) but is not involved in the said transactions;
- (c) for the following goods and services, provided that they are sold or rendered based on a non-negotiable fixed price or rate, which is published or publicly quoted and the material terms including the prices or charges are applied consistently to all customers or classes of customers:
  - (i) provision or usage of public utility services such as water, electricity and telecommunications and data, postal or courier services, services by licensed institutions as defined under the FSA (other than professional advisory services which are subject to paragraph 4.1 above), insurance, unit trusts, stockbroking services, public transport, education, medical services, provision or usage of tolled highways, hotel facilities and recreational services, provision or consumption of fuel on retail or food and beverage at

eateries, provision or purchase of goods at retail outlets such as supermarkets, hypermarkets or departmental stores; and

- (ii) such other types of goods or services that may be prescribed by the Exchange from time to time.

5.3 For the purposes of paragraph 5.1 above, the following applies:

- (a) where the Entity is a corporation, the computation of the gross revenue of the Entity must be based on its annual audited financial statements for the last 3 financial years; and
- (b) where the transaction is entered into by the said Director personally or by an Entity other than a corporation, the computation of the gross revenue must be based on the income tax returns of the said Director or the Entity, as the case may be, submitted to the Inland Revenue Board for the last 3 years.