



NOTICE TO FINANCE COMPANIES

NOTICE NO. BU/N-8/2017/43

APPOINTMENT OF KEY RESPONSIBLE PERSONS

1. INTRODUCTION

- 1.1. Senior management of finance companies provide strategic leadership that influences the financial position and future direction of the finance company. As such, persons in these positions must have the necessary qualities, competencies and experience that will allow them to perform the duties and carry out the responsibilities required of the position in the most effective manner. The Autoriti Monetari Brunei Darussalam (“the Authority”) therefore places great emphasis on the “fit and proper” requirements for directors and senior management of the finance company.
- 1.2. This Notice provides guidance on the assessment of fit and proper criteria for the appointment of Key Responsible Persons by finance companies and for the Authority to assess whether the Key Responsible Person is fit and proper under Sections 6, 8 and 33 of the Finance Companies Act, Chapter 89.
- 1.3. This Notice is issued pursuant to section 54 of the Autoriti Monetari Brunei Darussalam (AMBD) Order, 2010 and shall apply to the following:
 - 1.3.1. All finance companies in Brunei Darussalam; and
 - 1.3.2. Key Responsible Persons appointed by finance companies duly approved by the Authority.
- 1.4. This Notice shall take immediate effect.

2. DEFINITION

For the purpose of this Notice:

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



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

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



3. APPLICATION

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



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

4. FIT AND PROPER CRITERIA

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



5. **HONESTY, INTEGRITY AND REPUTATION**

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



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



6. COMPETENCE AND CAPABILITY

- 6.1. The Key Responsible Person appointed or proposed to be appointed must be able to demonstrate that he possesses necessary skills, experience, ability and commitment to carry out the role.
- 6.2. In assessing the competence and capability of a Key Responsible Person, the Authority shall consider matters including but not limited to the following, which the finance company should also consider when the application is being made;
 - 6.2.1. Whether the person has the appropriate qualification, training, skills, practical experience and commitment to effectively fulfil the role and responsibilities of the position and in the case of directors, having regard to their other commitments;
 - 6.2.2. Whether the person has satisfactory past performance or expertise in the nature of business or duties being conducted, as the case may be, whether in Brunei Darussalam or elsewhere; and
 - 6.2.3. Where the relevant person is an individual who is assuming concurrent responsibilities, whether such responsibilities would give rise to a conflict of interest or otherwise impair his ability to discharge his duties in relation to any activity regulated by the Authority under the relevant legislation.

7. FINANCIAL SOUNDNESS

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



- 7.2.3. Whether the person has been the subject of a judgement debt which is unsatisfied, either in whole or in part, whether in Brunei Darussalam or elsewhere.

**MANAGING DIRECTOR
AUTORITI MONETARI BRUNEI DARUSSALAM**

Date: 13 Ramadhan 1438 / 8 June 2017



FIT AND PROPER APPLICATION FORM FOR THE APPOINTMENT OF KEY RESPONSIBLE PERSONS

Explanatory Notes

1. Please read the explanatory notes and questions carefully before completing the application form.
2. All questions must be answered. If a question is not applicable, please mark "N.A." in the space provided. Should there be insufficient space for your answers, please attach annex(es) which should be identified as such and signed by the signatory to this application.
 - 2.1. Where there is an asterisk (*), please delete whichever is inapplicable.
 - 2.2. Please tick (√) in the relevant boxes where appropriate.
3. If there are any changes in the information furnished in the application prior to the approval of the application, Autoriti Monetari Brunei Darussalam (the "Authority") should be notified immediately.
4. This application form shall be duly completed and signed by the person whose appointment is sought ("appointee").

APPLICATION IS HEREBY MADE FOR

(Full name of appointee as in IC/Passport*
Please underline surname)

TO BE APPOINTED AS _____
(Full title of intended position)

(Full name of corporation)

1. PERSONAL PARTICULARS OF APPOINTEE

Residential Address	
Contact Numbers	Home: _____ Office: _____
Sex	Male / Female*
Date of Birth (dd/mm/yy)	
Place of Birth	
Nationality	
IC/Passport No.*	
Percentage Shareholding in the Company (if applicable)	

2. DETAILS OF CONTROLLED FUNCTION¹

1. Controlled function(s) for which application is sought:

- Director
- A Chief Executive Officer or Managing Director or a person who is responsible for the conduct and management of the licensee on a day to day basis
- Deputy Chief Executive Officer
- Chief Financial Officer
- Chief Operating Officer
- Chief Risk Officer
- Chief Technical Officer or Head of Operations
- Head of Internal Audit
- Head of Compliance
- Head of Treasury
- Other Senior Officers identified by AMBD²
(Please specify: _____)

2. Specify role and responsibilities of the proposed controlled function:

3. Will you be handling /assuming other responsibilities from Brunei Darussalam?

- Yes
- No

Please Specify:

¹ A Key Responsible Person may be fit and proper for one controlled function but not fit and proper for another controlled function involving different responsibilities and duties.

² Please refer to paragraph 2.2 of Notice on Appointment of Key Responsible Persons.

3. QUALIFICATIONS AND EXPERIENCE

1. Please provide details and certified copies of academic and professional qualifications and the year and place in which these were obtained (with originals or certified copies of certificates and translations)

Original or Certified Copies Attached

- Yes
 No

Professional Qualification

Name of Professional Institute	Qualification	Class Membership	Year Obtained

Academic Qualification

Name of Institute	Country	Qualification	Year of Graduation

2. Please provide details of your employment history since the age of 25:

Name of company & principal activity	Country of Incorporation	Position held in the company	Year (from/to)

4. SHAREHOLDINGS AND DIRECTORSHIPS / POSITIONS HELD IN OTHER COMPANIES

1. Do you have equity interest of 5% or more in any other firms or companies? If so, please provide the following details:

Name of company & principal activity	Country of incorporation	Percentage held in the company

2. Are you also currently a director, partner, proprietor or employee in any other firms or companies? If so, please provide the following details:

Name of company & principal activity	Country of incorporation	Position held in the company

5. FIT AND PROPER CRITERIA

If the answer to any of the following questions is in the affirmative, attach annexes and supporting documents, where appropriate, to provide all relevant particulars. If there is any doubt with respect to any part of this section, please provide all relevant information to demonstrate that you are considered to be a fit and proper person.

Honesty, Integrity and Reputation

QUESTION	YES	NO
1. Have you at any time been convicted of any felony or crime by any court or competent jurisdiction, including civil or military (excluding any minor traffic offence) that relates to your honesty and/or integrity unless you subsequently have been restored to good standing?		
If yes, please give full particulars of the court by which you were convicted, the offence and the penalty imposed and the date of conviction as well as evidence of having been restored to good standing.		
2. Have you been licensed, registered or approved under any law in any jurisdiction which requires licensing, registration or approval in relation to any regulated activity?		
If yes, please list all applications showing whether they have been successful or unsuccessful.		
3. Have you ever been refused the right or restricted in your right to carry on any trade, business or profession for which a specific licence, registration or other authorisation is required by law in any jurisdiction?		
If yes, please give full particulars of the action taken, where and when it took place and the identity of the party having taken this action.		

4. Have you contravened any financial services legislation or been the subject of any disciplinary proceedings, investigations and/or fines by a governmental, professional or other regulatory body or association?		
If yes, please give full particulars of the action taken, where and when it took place and identity of the party having taken this action.		
5. Have you been the subject of any adverse finding in a civil action by any court or competent jurisdiction, relating to fraud?		
If yes, please give full particulars of the court by which you were convicted, the offence and the penalty imposed and the date of conviction.		
6. Have you been the subject of any adverse finding in a civil action by any court or competent jurisdiction, relating to misfeasance or other misconduct in connection with the formation or management of a corporation or partnership?		
If yes, please give full particulars of the court by which you were convicted, the offence and the penalty imposed and the date of conviction.		
7. Has any body corporate, partnership or unincorporated institution to which you have been associated with as a director, controller, manager or company secretary contravened any financial services legislation or been the subject of any disciplinary proceedings, investigations and/or fines by a governmental, professional or other regulatory body or association?		
If yes, please give full particulars of the action taken, where and when it took place and the identity of the party having taken this action.		

8. Have you been a director, partner, substantial shareholder or concerned in the management of a business that has gone into insolvency, liquidation or administration during the period when, or within a period of one year after, you were a director, partner, substantial shareholder or concerned in the management of the business, whether in Brunei Darussalam or elsewhere?		
If yes, please give full particulars of the business, position, where and when it took place.		
9. Have you been disqualified from acting as a director or disqualified from acting in any managerial capacity, whether in Brunei Darussalam or elsewhere?		
If yes, please give full particulars of the action taken, where and when it took place.		

Financial Soundness

QUESTION	YES	NO
1. Have you been adjudged bankrupt by a court?		
If yes, please give full particulars of the action taken, where and when it took place and provide evidence that you have met your obligations in the last 10 years and have achieved economic accomplishments.		
2. Have you been or are you unable to fulfill any of your financial obligations, whether in Brunei Darussalam or elsewhere?		
If yes, please give full particulars of the action taken, where and when it took place and provide evidence that you have met all your obligations in the last 10 years and have achieved economic accomplishments.		
3. Have you been or are you subject to any judgment debt which is unsatisfied, either in whole or in part, whether in Brunei Darussalam or elsewhere?		
If yes, please give full particulars of the action taken, where and when it took place.		
4. Provide the name and address of one or more bankers as a reference for the Authority to obtain information on the conduct of your financial affairs over the past 5 years:		

DECLARATION

1. I have read the Notice on Appointment of Key Responsible Persons issued by the Authority and in submitting this form, I am satisfied that I am a fit and proper person based on the criteria stated in the Notice.
2. I certify that the information in this Form is accurate and complete to the best of my knowledge and belief and that there are no other facts relevant to this application of which the Authority should be aware.
3. I authorise the Authority to make such enquiries and seek further information it deems necessary in considering this application for the appointment of Key Responsible Persons.
4. I am aware that it is an offence under Section 106 of the Banking Order, 2006; Section 107 of the Islamic Banking Order, 2008; Section 33 of the Finance Companies Act, Chapter 89 and any regulations issued thereunder to provide to the Authority any information which is false or misleading.
5. I also confirm that I will not assume the responsibilities of the Key Responsible Persons for which this application is being submitted prior to obtaining such approval.
6. Should my application be approved by the Authority, I undertake to comply with all relevant provisions of the Banking Order, 2006, Islamic Banking Order, 2008, Finance Companies Act, Chapter 89 and Regulations and Rules issued by the Authority.
7. I undertake to inform the Authority and the licensee of any changes material to the application which arise while the Authority is considering this Form. I further undertake that, in the event that the Key Responsible Person status being sought is granted, I will notify the Authority and the licensee of any material changes to or affecting the completeness or accuracy of, the information provided in this Form as soon as possible, but in any event no later than 21 days from the day that the changes come to my attention.

Name of applicant (please print name)

Signature of applicant
(Please use blue ink)

Date

Note: The use of the term “applicant” throughout this form refers to the individual seeking the Key Responsible Person Status.