



LAWS OF MALAYSIA

Act 642

**MALAYSIA DEPOSIT INSURANCE CORPORATION
ACT 2005**

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LAWS OF MALAYSIA

Act 642

MALAYSIA DEPOSIT INSURANCE CORPORATION ACT 2005

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LAWS OF MALAYSIA**Act 642****MALAYSIA DEPOSIT INSURANCE CORPORATION
ACT 2005**

An Act to provide for the establishment of the Malaysia Deposit Insurance Corporation to administer a deposit insurance system under this Act and for matters incidental thereto or connected therewith.

[]

WHEREAS the stability of the financial system is a key determinant of the economic growth and prosperity of Malaysia:

AND WHEREAS the deposit insurance system is an important component of the financial safety net since it promotes and contributes to the stability of the financial system:

AND WHEREAS the purpose of the deposit insurance system is to protect depositors from the loss of part or all of their deposits in the event of the failure of a member institution and the Malaysia Deposit Insurance Corporation to be established under this Act is to carry out its mandated functions with speed and efficiency and promote sound risk management in the financial system:

AND WHEREAS special provisions are required in the public interest to empower the Corporation to implement promptly the resolution actions set out in this Act at minimum cost to the financial system:

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Malaysia Deposit Insurance Corporation Act 2005.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“asset” includes any Islamic financing facility, conventional credit facility, property, business and enterprise of any kind;

“Islamic asset” means an asset managed or owned through an Islamic banking business or Islamic financial business;

“conventional asset” means an asset other than an Islamic asset;

“Bank Negara Malaysia” means the Central Bank of Malaysia established under the Central Bank of Malaysia Act 1958 [*Act 519*];

“related”, in relation to a corporation, means related within the meaning of section 6 of the Companies Act 1965 [*Act 125*];

“associated” means a corporation where not less than twenty per centum and not more than fifty per centum of that corporation’s shares are held by another corporation, the first-mentioned corporation thereby being an associate corporation of the other corporation;

“security” includes a mortgage or charge, whether legal or equitable, debenture, bill of exchange, promissory note, guarantee, lien or pledge, whether actual or constructive, letter of hypothecation,

indemnity, undertaking and other means of securing payment or discharge of debt or liability, whether present or future, or whether vested or contingent;

“deposit” means—

- (a) a conventional deposit; or
- (b) an Islamic deposit;

“insured deposits” means those deposits separately insured as Islamic deposits or conventional deposits pursuant to section 49;

“Islamic deposit” means a sum of money or money’s worth received or paid on terms by any person, under which the receipt and repayment shall be in accordance with the terms of any agreement consistent with the Shariah on any basis including of custody or profit sharing;

“conventional deposit” means the deposit as defined under section 2 of the Banking and Financial Institutions Act 1989 [*Act 372*] and does not include an Islamic deposit;

“central depository” has the same meaning as defined under section 2 of the Securities Industry (Central Depositories) Act 1991 [*Act 453*];

“specified”, where no mode is mentioned, means specified from time to time in writing;

“prescribed”, where no mode is mentioned, means prescribed from time to time by order published in the *Gazette*;

“document” has the same meaning as defined under section 3 of the Evidence Act 1950 [*Act 56*];

“constituent documents”, in relation to a body, corporate or unincorporate, means the statute, charter, memorandum of association, articles of association, rules, by-laws, partnership agreement, or other instrument, under or by which the body is incorporated or established, or its governing and administrative structure, the scope of its functions, business, powers or duties are set out, whether contained in one or more documents;

“authorised depository agent” has the same meaning as defined under section 2 of the Securities Industry (Central Depositories) Act 1991;

“business group” means a group of companies where a member institution is related or associated with other companies of the same group;

“Governor” means the Governor of Bank Negara Malaysia;

“property” means any movable or immovable property and includes—

- (a) any right, interest, title, claim, chose in action, power or privilege, whether present or future, or whether vested or contingent, in relation to any property, or which is otherwise of value;
- (b) any conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of property where the person executing the conveyance is the proprietor or possessor, or wherein he is entitled to a contingent right, either for the whole or part of the interest;
- (c) any security, including any stock, share, debenture, bonds, loan stocks, transferable subscription rights or warrants;
- (d) any negotiable instrument, including any bank note, bearer note, Treasury bill, dividend warrant, bill of exchange, promissory note, cheque and negotiable certificate of deposit;
- (e) any mortgage or charge, whether legal or equitable, guarantee, lien or pledge, whether actual or constructive, letter of hypothecation or trust receipt, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present or future, or whether vested or contingent; and
- (f) any other tangible or intangible property;

“financial institution” means a licensed bank or a licensed finance company as defined under section 2 of the Banking and Financial Institutions Act 1989 or an Islamic bank as defined under section 2 of the Islamic Banking Act 1983 [*Act 276*];

“member institution” means any financial institution deemed to be a member institution under section 37 whose membership has not been cancelled under section 39 or terminated under section 40;

“Assessor Committee” means the committee established under section 73;

“conventional credit facility” means—

- (a) the giving of any advance, loan, trade credit or other facility in whatever form or by whatever name called whereby the person to whom the advance, loan, trade credit or other facility is given has access, directly or indirectly, to the funds or property of the person giving the same;
- (b) the giving of a guarantee or any security in relation to the obligations of any person; or
- (c) any other like dealing or transaction as may be prescribed by the Corporation;

“chief executive”, in relation to a corporation, means a natural person, by whatever name called, who, either individually or jointly with one or more persons, is responsible, subject to the authority of the directors, for the conduct of the business and the administration of that corporation;

“Chief Executive Officer” means the chief executive of the Corporation;

“Consolidated Fund” means the Federal Consolidated Fund established by the Federal Constitution;

“Board” means the board of directors of the Corporation;

“Minister” means the Minister charged with the responsibility for finance;

“facsimile seal” means the duplicate of the common seal of the Corporation;

“affected person” means—

- (a) any company owing a duty or liability under an Islamic financing facility or a conventional credit facility to the Corporation or any subsidiary of the Corporation, whether present or future, or whether vested or contingent;
- (b) any subsidiary of the company referred to in paragraph (a);
- (c) any company which has provided security for the performance of or discharge of a duty or liability owed by any person to the Corporation or any subsidiary of the Corporation, whether present or future, or whether vested or contingent; or
- (d) any company where at least five percent of its share capital has been charged, pledged or mortgaged by any person to secure the performance of or discharge of a duty or liability owed by any person to the Corporation or any subsidiary of the Corporation, whether present or future, or whether vested or contingent;

“primary affected person” means any company referred to in paragraph (a) of the definition of “affected person”;

“officer”, in relation to a member institution or an affected person, means the officer as defined under section 4 of the Companies Act 1965 and, in addition thereto, includes a person appointed under paragraph 71(1)(c) to assume control of a member institution or a receiver, manager, receiver and manager or court-appointed liquidator;

“office” includes the head office, principal place of business, a branch, an agency, a mobile place of business, a place of business set up and maintained for a limited period only and any other place of business;

“Islamic financing facility” means—

- (a) the giving of any advance, loan, trade credit or other facility in whatever form or by whatever name called whereby the person to whom the advance, loan, trade credit or other facility is given has access, directly or indirectly, to the funds or property of the person giving it and shall include, without limitation, any sale and buy

back arrangement, joint venture arrangement, deferred payment sale, return sharing arrangement and any other financing arrangements made in accordance with Shariah;

- (b) hire purchase, hire and purchase, leasing, factoring, debt trading and such similar dealings or transaction;
- (c) the giving of a guarantee or any security in relation to the obligations of any person; or
- (d) any other like dealing or transaction as may be prescribed by the Corporation;

“registrar of Malaysian ships” means the registrar of Malaysian ships appointed under subsection 14(1) of the Merchant Shipping Ordinance 1952 [*Ord.70/1952*] and includes the Registrar General of Ships as appointed under subsection 14(1) of the Ordinance;

“Registrar of Companies” means the Registrar of Companies as designated under subsection 7(1) of the Companies Act 1965;

“registrar of courts” means any Registrar, Deputy Registrar, Senior Assistant Registrar or Assistant Registrar of the High Court appointed under section 10 of the Courts of Judicature Act 1964 [*Act 91*];

“Registrar of land” means the Registrar as defined under section 5 of the National Land Code [*Act 56/1965*], the Registrar as defined under section 4 of the Land Ordinance of Sabah [*Sabah Cap. 68*] or the Registrar under the Land Code of Sarawak [*Sarawak Cap. 81*], as the case may be;

“depositor” means a person—

- (a) whose account has been or is to be credited in respect of monies constituting an Islamic deposit or conventional deposit or part of such deposit; or
- (b) to whom a member institution is liable in respect of an instrument issued for monies constituting an Islamic deposit or conventional deposit or part of such deposit;

“Chairman” means the chairman of the Board;

“Corporation” means the Malaysia Deposit Insurance Corporation established under section 3;

“corporation” has the same meaning as defined under section 4 of the Companies Act 1965;

“Islamic financial business” means any financial business, the aims and operations of which do not involve any element which is not approved by the religion of Islam;

“Islamic banking business” has the same meaning as defined under section 2 of the Islamic Banking Act 1983;

“return” includes any form of rental, profit and dividend or benefit, including any fee and gift, payable or to be given in relation to any Islamic deposit, or to any document, agreement, arrangement and instrument relating to an Islamic financing facility;

“securities” has the same meaning as defined under section 2 of the Securities Commission Act 1993 [*Act 498*];

“capital instruments” means preference shares, loan stocks, subordinated term debts or other instruments approved by Bank Negara Malaysia as being eligible to be capital funds for the purposes of the Banking and Financial Institutions Act 1989 and the Islamic Banking Act 1983;

“company” has the same meaning as defined under section 4 of the Companies Act 1965;

“share” has the same meaning as defined under section 4 of the Companies Act 1965;

“subsidiary” has the same meaning as defined under section 5 of the Companies Act 1965;

“assessment year”, in relation to the calculation and payment of premiums under this Act, means the period beginning on the first day of January and ending on the thirty-first day of December of each year or such other period as may be approved by the Minister;

“liabilities” includes debts, duties and obligations of every kind, whether present or future, or whether vested or contingent.

(2) Any reference in this Act to “this Act” shall, unless the context otherwise requires, be deemed to include a reference to any rules, regulations, by-laws, orders, notifications, guidelines, circulars, notes or any other subsidiary legislation made or issued under this Act.

PART II

MALAYSIA DEPOSIT INSURANCE CORPORATION

Chapter 1

Establishment

Establishment of Corporation

3. There is hereby established a body corporate by the name of “Malaysia Deposit Insurance Corporation” with perpetual succession and a common seal, and which may sue and be sued in its corporate name.

Objects of Corporation

4. (1) The objects of the Corporation are to—

- (a) administer a deposit insurance system under this Act;
- (b) provide insurance against the loss of part or all deposits of a member institution;
- (c) provide incentives for sound risk management in the financial system; and
- (d) promote or contribute to the stability of the financial system.

(2) In achieving its objects under paragraphs (1)(b) and (d), the Corporation shall act in such manner as to minimise costs to the financial system.

Common seal and facsimile seal

5. (1) The common seal and facsimile seal of the Corporation may from time to time be broken, changed, altered and made anew as the Corporation may think fit.