

(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.

(2) The Board may provide for a facsimile seal and may authorise the signature of any director and secretary be produced by printing or other mechanical means.

(3) The common seal shall be used with the authority of the Board and every instrument to which the common seal is affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the Board, and all deeds, documents and other instruments purporting to be sealed with the common seal, authenticated as aforesaid, shall, until the contrary is proven, be deemed to have been validly executed.

(4) Every instrument to which the facsimile seal is affixed and signed by a director and secretary by printing or other mechanical means shall have the same force and validity as if the common seal had been affixed to such instrument and such instrument had been signed in accordance with subsection (3).

(5) All courts, judges and persons acting judicially shall take judicial notice of the common seal and facsimile seal.

(6) The common seal and the facsimile seal shall be kept in the custody of the secretary or such other person as may be authorised by the Board.

Execution of documents

6. Any document or instrument which, if executed by a person not being a body corporate, would not be required to be under seal may in like manner be executed by the Corporation, and any such document or instrument may be executed on behalf of the Corporation by any officer of the Corporation generally or specifically authorised by the Board in that behalf.

Establishment of committees

7. The Corporation may establish any committee as it considers necessary or expedient for the performance of its functions.

Office of Corporation

8. The Corporation may, in or outside Malaysia, establish any office as it considers necessary or expedient for the performance of its functions.

Power to appoint Attorney and agent

9. (1) The Corporation may, by instrument under its common seal, appoint a person whether in Malaysia or in a place outside Malaysia to be its Attorney, and the person so appointed may, subject to the instrument, do any act or execute any power or function which he is authorised by the instrument to do or execute.

(2) The Corporation may, in or outside Malaysia, appoint any agent as it considers necessary or expedient, to perform any act on behalf of the Corporation.

Establishment of subsidiaries

10. (1) For the purposes of carrying out its functions, powers and duties under this Act, the Corporation may establish such subsidiaries as it considers necessary or expedient.

(2) Any subsidiary of the Corporation prescribed by it shall have such powers and immunities of the Corporation, including powers and immunities provided in sections 25, 26, 27, 28, paragraph 71(1)(b), the Second, Third and Fourth Schedules as may be prescribed by the Corporation.

Chapter 2

Board of Directors

Duties and composition

11. (1) There shall be a board of directors who shall be responsible for the conduct of the business and affairs of the Corporation and shall exercise all powers and do all acts which may be exercised or done by the Corporation.

- (2) The Board shall consist of the following directors:
- (a) a Chairman appointed by the Minister who shall have relevant private sector experience;
 - (b) the Governor;
 - (c) the Secretary General of the Treasury;
 - (d) a director appointed by the Minister from the public sector; and
 - (e) not more than three other directors appointed by the Minister, who shall have relevant private sector experience and at least one of whom shall have relevant banking and financial sector experience.

(3) Without prejudice to subsection 18(2), none of the directors in paragraph (b), (c), (d) or (e) shall be eligible to be appointed Chairman by the Minister.

Board may make by-laws

12. (1) The Board may, from time to time, make such by-laws as are necessary or expedient in relation to the administration, management, control, business, assets and affairs of the Corporation including—

- (a) the functions, powers, duties, remuneration, benefits and terms and conditions of service, code of conduct or surcharge on officers, employees and agents of the Corporation;
- (b) the conflicts of interest in respect of serving directors, officers and employees of the Corporation and those directors, officers and employees who have left the service of the Corporation;
- (c) the appointment, terms of reference and activities of committees established by the Corporation;
- (d) the rules and procedures to be observed by the directors at Board meetings; or
- (e) such other matters as may be required to be provided for under by-laws in this Act.

(2) By-laws made under this section shall be binding on all persons to whom the by-laws apply.

(3) Any person who does not comply with the by-laws made under paragraph (1)(b) commits an offence under this Act.

Term of office of directors

13. (1) The directors appointed by the Minister under subsection 11(2) shall hold office for a term not exceeding three years and shall be eligible for reappointment.

(2) The Governor and the Secretary General of the Treasury shall be directors for the duration of their tenure as the Governor and the Secretary General of the Treasury, respectively.

Disqualifications and termination of directors of Board

14. (1) No person shall be appointed or shall remain, as a director of the Board who is—

- (a) a member of the Dewan Negara or Dewan Rakyat or any Legislative Assembly;
- (b) an officer of a member institution; or
- (c) a divisional head or any person who holds any similar office or position, in a political party.

(2) The Minister may terminate or suspend the appointment of any director if—

- (a) he becomes of unsound mind or otherwise becomes incapable of carrying out his duties;
- (b) there has been imposed on the director any form of restriction or supervision by bond or otherwise, under any law relating to prevention of crime, or to preventive detention for prevention of crime or drug trafficking, or to restricted residence, or to banishment or immigration;
- (c) he becomes a bankrupt, suspends payment or compounds with his creditors;

- (d) he has been charged for a criminal offence under any law punishable with imprisonment, whether by itself, or in lieu of, or in addition to, a fine, in any court in or outside Malaysia;
- (e) he is guilty of serious misconduct in relation to his duties under this Act; or
- (f) he is absent, except on leave granted, by the Minister in the case of the Chairman or by the Chairman in the case of all other directors, from two of the meetings of the Board in any period of twelve months.

(3) Notwithstanding subsection (2), any director appointed by the Minister under subsection 11(2) may at any time resign his office by giving a written notice not exceeding thirty days to the Minister.

Actions and proceedings of Board not affected by vacancy, etc.

15. The Board may act notwithstanding any vacancy and its proceedings shall not be invalidated by—

- (a) the absence of any director;
- (b) any defect afterwards discovered in the appointment or qualification of any director or the constitution of the Board;
- (c) any omission, defect or irregularity in the convening or conduct of a meeting; or
- (d) the presence or participation of a person who is not a director of the Board.

Remuneration and allowances for directors

16. Every director attending any meeting of the Board shall be paid by the Corporation such fees, other remuneration and allowances as may be determined by the Minister, on the recommendation of the Board.

Duties of directors

17. (1) A director of the Board shall, at all times, act honestly and in the best interest of the Corporation and use reasonable diligence in the discharge of the duties of his office.

(2) A director or any person who has been a director shall not—

(a) make improper use of any information acquired by virtue of his position as a director to gain, directly or indirectly, an advantage for himself or for any other person; or

(b) do, say or publish anything which may be detrimental to the interests of the Corporation.

Meetings

18. (1) The Board shall meet as often as may be required but not less than four times a year.

(2) The Chairman shall preside at all meetings of the Board and in his absence, the directors present shall elect a chairman among the directors in paragraph 11(2)(e) and the person so elected shall preside and have all the powers of the Chairman.

(3) The quorum for a meeting of the Board shall be not less than four directors, at least two of whom shall be directors referred to in paragraph 11(2)(b), (c) or (d).

(4) The decisions of the Board shall be adopted by a simple majority of the votes of the directors present and voting.

(5) In the case of an equality of votes, the Chairman shall have a casting vote.

(6) A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held and any such resolution may consist of several documents in like form, each signed by one or more directors.

(7) Nothing in this section shall prevent the Chairman from authorizing a director to use live video, television links or other appropriate communication or multimedia facilities to participate in any meeting of the Board where, prior to the meeting, the director, by notification to the Chairman, has requested for such authorisation.

Chapter 3

Chief Executive Officer

Appointment, functions and accountability

19. (1) The Chief Executive Officer shall be appointed by the Minister, on the recommendation of the Board.

(2) The Chief Executive Officer shall be responsible for the day-to-day administration of the business and affairs of the Corporation.

(3) The Chief Executive Officer shall be answerable and accountable to the Board for the exercise of his powers and the performance of his duties.

(4) In the absence or incapacity of the Chief Executive Officer, the Board may authorise an officer of the Corporation to perform the duties, functions and responsibilities of the Chief Executive Officer.

Terms and conditions of service

20. The Chief Executive Officer shall—

- (a) for the purposes of Chapter 4, be deemed to be an officer or employee of the Corporation and be subject to the terms and conditions of service; and
- (b) enjoy such compensation and such other amenities as approved by the Minister, upon recommendation of the Board.

Chapter 4

Officers and employees

Appointments, terms and conditions of service

21. (1) The Corporation may appoint such officers and employees as are necessary for carrying on the business and affairs of the Corporation and such officers and employees shall hold office for such periods, receive such salaries, allowances and benefits, and shall be subject to such terms and conditions of service as may be determined by the Board.

(2) An officer or employee of the Corporation shall, at all times, act in good faith and comply with such requirements, standards, duties and code of conduct including surcharge as may be provided in the by-laws made by the Board under paragraph 12(1)(a).

(3) The Corporation may, with the approval of the Board, establish and maintain a pension or provident fund for its officers and employees out of the monies of the Corporation.

Financial assistance to officers, employees and other persons

22. The Corporation may provide—

- (a) subsidies, grants, Islamic financing facility or conventional credit facility, with or without return or interest, for purposes of housing, vehicle, medical, and other compassionate financing or loans, to its officers and employees;
- (b) Islamic financing facility or conventional credit facility, with or without return or interest, for educational purposes or scholarships to its officers and employees or any other person; and
- (c) donations to any person,

on such terms and conditions as the Board may determine.

Chapter 5

*Duties and powers***Restriction on enquiring specifically into affairs of particular customer**

23. Without prejudice to the powers of inspection, examination, investigation, inquiry or resolution conferred on the Corporation, nothing in this Act shall—

- (a) authorise the Minister to direct the Corporation; or
- (b) authorise the Corporation,

to inquire specifically into the affairs of any customer of a member institution.

Secrecy

24. (1) No director, officer, employee or agent of the Corporation including a person appointed under subsection 25(3) or any person who for any reason, has by any means access to any record, book, register, correspondence or other document whatsoever, material or information relating to the business and affairs of the Corporation, Bank Negara Malaysia, a member institution or a customer of Bank Negara Malaysia which he has acquired in the performance of his duties or the exercise of his functions, shall give, divulge, reveal, publish, or otherwise disclose, to any person, such document, material or information unless the disclosure is required—

- (a) under any law;
- (b) for the performance of his duties or the exercise of his functions under this Act; or
- (c) when lawfully required to do so by any court.

(2) This section shall not apply to any document, material or information which at the time of the disclosure is, or has already been made, lawfully available to the public from any source.

(3) No person who has any document, material or information which to his knowledge has been disclosed in contravention of subsection (1) shall in any manner however disclose the same to any other person.

(4) Where the Corporation in the course of the exercise of any of its powers, or the discharge of any of its duties or functions, under this Act or under any law whatsoever, suspects any person to have committed any offence under this Act, or any other law whatsoever, it shall be lawful for the Corporation to give information of such commission to a police officer, or to convey any information in relation to such offence to any member institution or other person affected by such offence or to any other authority or person having power to investigate under or enforce the provision of the law under which the offence is suspected by the Corporation to have been committed.

(5) Subsection (4) shall have full force and effect, notwithstanding any inconsistency therewith or contrary thereto, in this Act or any other law.

(6) Any person who contravenes subsection (1) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both.

Powers of Corporation

25. (1) The Corporation shall have all such powers as may be necessary for or in connection with, or reasonably incidental to, the furtherance of its objects, the performance of its functions or the discharge of its duties.

(2) Without prejudice to the generality of subsection (1), for the purposes of this Act, the Corporation may do all such things necessary or incidental to the objects of the Corporation and, in particular, the Corporation may—

- (a) for the purpose of reducing or averting a risk to the financial system or a threatened loss to the Corporation—
 - (i) acquire assets from a member institution;
 - (ii) make loans or advances with or without security, or guarantee with or without security any loan or advance provided, to a member institution;
 - (iii) acquire, by way of security or otherwise, shares or capital instruments of a member institution and hold and dispose of such shares or capital instruments; or

- (iv) make or guarantee a deposit with a member institution;
- (b) hold, dispose of or otherwise deal with the assets acquired from a member institution;
- (c) borrow or raise funds in such manner as the Corporation shall think fit;
- (d) acquire and hold any movable or immovable property for its own use and dispose of or otherwise deal with such property;
- (e) guarantee, indemnify, or become liable for the payment of monies or the performance of any obligations;
- (f) mortgage, charge or create a lien to secure or guarantee the performance of its obligations or the obligation of any other person;
- (g) enter into any agreement with any person in furtherance of its objects or in relation to the performance of its functions including a strategic alliance agreement with Bank Negara Malaysia;
- (h) settle or compromise any claim by or against the Corporation; or
- (i) do all such other things as may be necessary for the exercising of any power of the Corporation.

(3) The Corporation may, either generally or in any particular case, appoint any person who is not a director, officer or employee of the Corporation, to render such assistance as it may specify in the exercise of its powers, the performance of its functions, or the discharge of its duties, under this Act, or to exercise, perform or discharge such powers, functions or duties as may be specified by the Corporation and subject to the supervision of the Board on behalf of and in the name of the Corporation.

Acquisition and disposal involving Corporation

26. (1) For the purposes of this Act, the Corporation may acquire or dispose of any asset—

- (a) pursuant to the statutory vesting provisions set out in the Second Schedule; or

(b) in accordance with general law.

(2) A vesting certificate issued in accordance with the Second Schedule shall have the effect set out in the Second Schedule and shall be binding on any person thereby affected.

Power to appoint conservator and additional conservators, etc.

27. (1) For the purposes of this Act, the Corporation may appoint a conservator to administer an affected person if it is satisfied that—

(a) the primary affected person—

- (i) is unable or likely to be unable to pay its debts; or
- (ii) is unable or likely to be unable to fulfil its obligations to its creditors;

(b) the survival of the primary affected person and the whole or any part of its assets as a going concern may be achieved;

(c) a more advantageous realisation of the assets of the primary affected person may be achieved than a winding-up; or

(d) the appointment may achieve a more advantageous realisation or a more expeditious settlement 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.

(2) The Corporation may appoint one or more conservators of the affected person.

(3) The Corporation may at any time after the appointment of any conservator under subsection (2) appoint additional conservators and may, at any time, terminate any existing conservator and appoint a new conservator to replace him.

(4) Nothing in subsection (3) shall be taken to terminate the administration of any affected person unless so terminated by the Corporation under the Third Schedule.

(5) Any decision of the Corporation relating to the appointment of a conservator, an additional conservator, termination of any existing conservator and the appointment of a new conservator in his stead, shall be final and binding.

(6) The appointment of a conservator shall have the effect set out in the Third Schedule.

(7) Any conservator including an additional conservator appointed under this section shall have the powers and duties set out in the Third Schedule.

(8) A conservator, in exercising its powers under the Third Schedule, shall not be required to notify or obtain the approval of shareholders or creditors of the affected person in a general meeting or otherwise notwithstanding any rule of law, contract or anything in any law including sections 132C, 132D, 132E and 132G of the Companies Act 1965 or anything in the constituent documents of the affected person.

(9) Any person who contravenes—

(a) paragraph 9, 11 or 15; or

(b) subparagraph 8(1), 12(1), 13(2), 14(1), 17(1) or 20(1),

of the Third Schedule commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment not exceeding a term of three years or to both.

Entitlement to dispose of and preserve value of property

28. (1) Notwithstanding any law and in addition to any other power the Corporation may have under any contract or law—

(a) the Corporation; and

(b) any person who acquires an asset from the Corporation,

as holder of security over any property, whether as chargee, mortgagee, assignee, lienholder or otherwise, shall be entitled—

(i) to dispose of such property or any part of such property by way of private treaty in accordance with the Fourth Schedule; and

- (ii) where such property consists of land, to take all steps as it deems fit to preserve the value of the land or to facilitate the disposal of the land by way of private treaty in accordance with the Fourth Schedule, including entering the land, whether by itself or by any person authorised by it, to inspect, protect, secure, maintain or repair the land.

(2) The acquisition or disposal of property in accordance with the Fourth Schedule shall have the effect set out in that Schedule.

PART III

FINANCE

Funds and sources of funds

29. (1) For the purposes of this Act, the Corporation shall maintain and administer two separate funds—

(a) an Islamic fund which shall comprise—

- (i) all premiums received by the Corporation under this Act; and
- (ii) all other monies or assets which may in any manner become lawfully payable to, received by or vested in the Corporation relating to any matter incidental to its powers, duties and functions,

in respect of Islamic deposits; and

(b) a conventional fund which shall comprise—

- (i) all premiums received by the Corporation under this Act; and
- (ii) all other monies or assets which may in any manner become lawfully payable to, received by or vested in the Corporation relating to any matter incidental to its powers, duties and functions,

in respect of conventional deposits.