

PART IV

DEPOSIT INSURANCE

Chapter 1

*Membership, cancellation and termination***Definitions****36.** For the purposes of this Part—

(a) “deposit” means the unpaid balance of the aggregate of deposits as defined in subsection 2(1) received or held by a member institution from or on behalf of a person in the usual course of the business of deposit taking of the member institution and shall include—

(i) a bank draft, certified cheque or other similar instrument or payment instruction, drawn or made against a deposit account for which the member institution shall be primarily liable;

(ii) a cheque entered into a payment system designated under subsection 6(1) of the Payment Systems Act 2003 [Act 627] notwithstanding any delay or failure by the member institution in crediting the account; or

(iii) any other liability or financial instrument as may be specified by the Corporation,

but excludes—

(A) a deposit that is not payable in Malaysia;

(B) foreign currency deposits;

(C) money market deposits;

(D) negotiable instruments of deposit and other bearer deposits;

(E) repurchase agreements; and

(F) any other liability or financial instrument as may be specified by the Corporation; and

(b) “trust accounts” includes monies held on account for the purpose of a trust.

Deemed membership

37. (1) Every financial institution is deemed to be a member institution from the commencement of this Act.

(2) Any financial institution licensed after the commencement of this Act shall be deemed to be a member institution from the date it was granted the licence under the Banking and Financial Institutions Act 1989 or the Islamic Banking Act 1983, as the case may be.

Terms and conditions of membership

38. (1) The terms and conditions of membership of a member institution shall be prescribed by regulations made under section 100.

(2) A member institution shall comply with the terms and conditions as may be prescribed pursuant to subsection (1).

(3) Any person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both and shall, in addition, be liable to a daily fine not exceeding fifty thousand ringgit for every day the offence continues after conviction.

Cancellation of membership

39. The Corporation shall cancel the membership of a member institution by informing the member institution in writing if the licence of the member institution has been surrendered or revoked under the Banking and Financial Institutions Act 1989 or, in the case of member institution which is an Islamic bank, revoked under the Islamic Banking Act 1983.

Termination of membership

40. (1) The Board may, at any time after the Corporation has received a notification under section 70 and whether or not the Corporation has exercised any of its powers under section 71,

convene a meeting to determine whether the membership of the member institution should be terminated.

(2) Where the Board proposes to terminate the membership of the member institution, the Corporation shall give written notice of its proposal to the member institution and shall afford the member institution an opportunity to make representations within five days from the date of the notice in respect of the proposal.

(3) Where representations are received by the Corporation from the member institution, the Board shall consider the representations and shall make a determination to confirm or not to confirm the proposal to terminate the membership of the member institution.

(4) Where the Board has confirmed its proposal to terminate the membership of the member institution, it shall inform the Minister of its determination in writing.

(5) Where the Minister disagrees with the determination of the Board, the Minister shall within fifteen days from the date of receipt of the notice inform the Board in writing of his decision relating to such determination, and such directive shall become binding on the Board.

(6) Where the Minister has not informed the Board of his decision within the period stipulated under subsection (5), the Minister shall be deemed to have approved the proposal of the Board to terminate the membership and the Corporation shall—

(a) immediately inform Bank Negara Malaysia accordingly;
and

(b) issue a written notice of termination of membership to the member institution and its membership shall terminate on the expiration of the period specified in the notice.

(7) Where, at any time after a notice of termination has been given to a member institution under subsection (6), the Corporation is satisfied that as the result of any action by the member institution, or any other person, the risks to depositors or to the Corporation has been averted or substantially reduced, the Corporation may revoke its notice of termination and inform the Minister accordingly.

(8) The termination of a membership by the Corporation shall be final.

Effects of cancellation or termination

41. (1) Where the membership of a member institution has been cancelled under section 39 or terminated under section 40—

- (a) the institution shall not assume or use the words “deposit insurance” or any derivative of these words in any language or any other words in any language capable of being construed that the institution is a member institution;
- (b) the institution shall inform its depositors in writing that the outstanding deposits with the institution shall continue to be insured for a period of two years from the effective date of cancellation or termination, unless the deposit is fully withdrawn or has reached its maturity, whichever is earlier;
- (c) in the case of a cancellation due to a member institution surrendering its licence, such institution shall be required to notify its depositors of the cancellation of its membership in a manner to be prescribed by the Corporation;
- (d) the institution shall not be considered to be a member institution by reason only that its deposits continue to be insured under paragraph (b), section 50 or 51; and
- (e) the institution shall not be relieved from its obligations or liabilities to the Corporation that have accrued before the cancellation or termination of its membership.

(2) For the purposes of paragraph (1)(b), the cancellation or termination of the membership shall not affect the obligation, right and the ability of the Corporation to make a payment under Chapter 4 of this Part.

(3) For the purposes of paragraph (1)(c), the member institution shall indemnify the Corporation in the event of any payment made by the Corporation to depositors, in respect of such of its deposits as have been transferred or acquired by another member institution or such other person as approved by the Minister.

(4) The Corporation may, in such manner and through such media as it deems expedient, give public notice of the cancellation or termination of any membership of a member institution if in the opinion of the Corporation, the public interest requires that such notice be given.

(5) Where a member institution is obligated to repay to a person any monies that are received or held by the member institution, such monies shall be deemed not to constitute part of a deposit for the purposes of deposit insurance with the Corporation if the date on which the person acquires his interest in the monies is a date subsequent to the date on which the membership of the member institution is cancelled or terminated by the Corporation.

(6) Any member institution which contravenes paragraph (1)(a), (b) or (c) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit and shall, in addition, be liable to a daily fine not exceeding fifty thousand ringgit for every day the offence continues after conviction.

Chapter 2

Premiums

First premium

42. (1) The Corporation shall assess and collect the premium payable by a member institution for the assessment year in which it becomes a member institution (hereinafter referred to as “the first premium”) as follows:

- (a) two hundred and fifty thousand ringgit; or
- (b) a rate to be prescribed by the Corporation with the prior written approval of the Minister,

whichever is higher.

(2) No first premium shall be required to be paid in relation to any deposit transferred from a member institution to another member institution within a business group upon which premium has been paid for the assessment year in which the member institution becomes a member.

(3) A member institution shall pay the first premium to the Corporation at the latter's head office within thirty days from the date it becomes a member.

Annual premium

43. (1) Every member institution shall, for each assessment year following the assessment year in which it becomes a member institution, pay annual premiums separately for Islamic and conventional deposits placed with it.

(2) The maximum annual premium rate under this Act shall be as follows:

(a) 0.5 per centum of the Islamic insured deposits; and

(b) 0.5 per centum of the conventional insured deposits,

or such lower rate or rates as may be prescribed by the Corporation, with the approval of the Minister.

(3) The quantum of such annual premiums paid under paragraphs (2)(a) and (b), in aggregate, shall not be lower than two hundred and fifty thousand ringgit.

(4) Any member institution which contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit and shall, in addition, be liable to a daily fine not exceeding thirty thousand ringgit for every day the offence continues after conviction.

Calculation of annual premium

44. (1) The annual premiums shall be calculated as follows:

(a) premium rates to be applied to a member institution shall be based on the total insured deposits held by the member institution as at 31 December of the preceding assessment year;

(b) the annual premiums of Islamic and conventional deposits shall be calculated separately; and

- (c) the applicable premium rates for each member institution shall be based on such criteria as may be prescribed in the regulations.

(2) The premium payable by a member institution shall be based on returns to be certified by the chief executive of the member institution to be submitted in such form and within such period as the Corporation may require.

No set-off on premium payment

45. Unless the Corporation otherwise agrees in any particular case, no premium payment shall be made to the Corporation by a member institution that has been reduced or otherwise adjusted on the basis of any claim by a member institution against the Corporation.

Premium surcharge

46. (1) Notwithstanding the payment of first premium in respect of the first assessment year or the annual premium in respect of any particular assessment year, the Corporation may assess and collect from the member institution a premium surcharge on the total insured deposits of a member institution in respect of that assessment year or any part thereof.

(2) The aggregate of the premium already paid and the premium surcharge under subsection (1) in any particular assessment year shall not exceed 0.5 per centum per annum of the total insured deposits of the member institution.

(3) Where in the opinion of the Corporation that a member institution has failed or fails to—

- (a) adhere to any regulations, rules, orders, by-laws, notifications, guidelines, circulars or notes relating to sound financial and business practices issued by Bank Negara Malaysia;
- (b) adhere to the terms and conditions of the membership, and any regulations, rules, orders, by-laws, notifications, guidelines, circulars or notes of the Corporation in respect of deposit insurance;

- (c) comply with the request for information or restricts the right of access of information by the Corporation, Bank Negara Malaysia or any person acting on behalf of the Corporation, under this Act; or
- (d) maintain proper deposit records or it misrepresents, whether with act or omission, any information, including information on insured deposits, used as a basis for premium assessments,

the Corporation shall—

- (i) consult Bank Negara Malaysia on the amount of premium surcharge and the reasons for imposing such premium surcharge; and
- (ii) give the member institution an opportunity to be heard on the proposed premium surcharge.

(4) The Corporation shall obtain written approval of the Minister before imposing the premium surcharge to the member institution which has failed or fails to comply or adhere to the requirements under subsection (3).

Overdue charges

47. Where any premium or premium surcharge due and payable under section 42, 43 or 46 has not been paid by the member institution on the due date, the unpaid premium shall, without further notice being served on the member institution, be increased by a sum as may be prescribed in the regulations of the premium so unpaid.

Premium regulations

48. The Corporation may make any regulations in respect of the determination of first premium and annual premiums including—

- (a) the establishment of a system of classifying member institutions in different categories;
- (b) the criteria or factors to be taken into account, the procedures to be followed by the Corporation in determining the category in which a member institution is classified; and

(c) any other matters related thereto.

Chapter 3

Scope of coverage

Scope of coverage

49. (1) The Corporation shall separately insure the following categories of deposits placed with a member institution:

- (a) Islamic deposits; and
- (b) conventional deposits.

(2) For the purpose of subsection (1), where a depositor owns more than one deposit with a member institution, the aggregate of those deposits shall be insured—

- (a) in respect of the principal and return on Islamic deposits, to a maximum amount of sixty thousand ringgit; and
- (b) in respect of the principal and interest on conventional deposits, to a maximum amount of sixty thousand ringgit.

(3) Subject to regulations made under section 100—

- (a) where a member institution is obligated to repay monies to a depositor who is acting as a trustee for another or as joint owner with another, and the trusteeship or joint ownership is disclosed on the records of the member institution—
 - (i) the deposit of the depositor as trustee or as a joint owner, shall be deemed to be a deposit separate from any deposit of that depositor acting on his own behalf or acting in another trust or joint capacity with the member institution;
 - (ii) where a trustee is acting for two or more beneficiaries, the deposit held in trust by him for each beneficiary, shall each be deemed to be a separate deposit; and
 - (iii) the deposit held in trust by a trustee for a beneficiary in a member institution shall be deemed to be a deposit separate from a deposit of that beneficiary

with the member institution on his own behalf and shall also be deemed to be separate from any deposit held in trust by another trustee for the beneficiary in the member institution;

(b) for the avoidance of doubt, where a depositor is a joint owner of a deposit in a member institution with another person, all the deposits of such depositor with such person shall be aggregated and be deemed to be one deposit and shall be insured to a maximum amount of sixty thousand ringgit; or

(c) for the purposes of paragraphs (3)(a) and (b)—

(i) the member institution shall indicate on its records—

(A) for a trust account, that the account is held by the trustee for the named beneficiaries; or

(B) for a joint account, the names of the individual joint owners;

(ii) the trustee shall—

(A) maintain detailed records as may be prescribed by the Corporation on the trust accounts;

(B) submit to the member institution such records as may be required by the member institution from time to time under this Act; and

(C) file a statutory declaration certifying the accuracy of the records submitted under subparagraph (B) when required by the member institution;

(iii) the trustee in maintaining and submitting any record on the trust accounts required under subparagraph (3)(c)(ii) shall ensure that the information given shall be true, correct and complete and shall not contain false or deceptive information and the member institution shall rely on such records for the purposes of subparagraph (3)(c)(i) and the trustee shall indemnify the member institution in the event of any legal proceedings relating to such records.

(4) Notwithstanding anything in paragraph (3)(a), the Corporation shall not separately insure the deposits held in trust for any beneficiary if, in the opinion of the Corporation, the trust exists primarily for the purpose of obtaining or increasing deposit insurance.

(5) For the purpose of subparagraph (3)(a)(iii), any deposit held in trust by the same trustee for the same beneficiary shall be aggregated and be deemed to be one deposit.

(6) Subject to regulations made under section 100 and the disclosure made by the trustee under subparagraph (3)(c)(ii), where a depositor—

(a) operates a business as a sole proprietor or a partner of a partnership; or

(b) carries on any professional practice,

that has been disclosed as such on the records of the member institution, a deposit of such business or professional practice shall be deemed to be separate from the deposits of the depositor on his own behalf or as trustee or joint owner.

Deposits with amalgamating institutions, etc.

50. (1) Where a person has deposits with two or more member institutions that amalgamate and continue in operation as one member institution (in this Chapter referred to as the “amalgamated institution”), a deposit of that person with an amalgamating institution on the day on which the amalgamated institution is formed, less any withdrawal from the deposit, shall be deemed to be and continue to be separately insured by the Corporation for a period of two years, or upon maturity or until withdrawal, whichever is earlier, after the amalgamating institution becomes part of the amalgamated institution.

(2) A deposit made by a person referred to in subsection (1) with an amalgamated institution after the day on which the amalgamated institution is formed shall be insured by the Corporation only to the extent that the aggregate of that person’s deposits with the amalgamated institution is less than sixty thousand ringgit.

(3) Where a member institution acquires the deposits of another member institution or amalgamating institution, those deposits, less any withdrawal from the deposits, shall continue to be insured separately from any deposit up to the coverage limit of sixty thousand ringgit for a period of two years, or upon maturity or until withdrawal, whichever is earlier, after the date of acquisition.

(4) A member institution shall maintain such records as necessary for the purposes of subsections (1) and (2).

Deposits of member institution acquired by non-member institution

51. (1) Where deposits with a member institution are to be acquired by a person who is not a member institution, such deposits shall be deemed to be and continue to be insured by the Corporation up to the limit of sixty thousand ringgit for the remainder of the assessment year, or upon maturity or until withdrawal, whichever is earlier, after the acquisition of the deposits by the acquiring non-member institution.

(2) For purposes of subsection (1), and in accordance with such rules as may be made by the Corporation—

(a) in relation to depositors, the member institution shall—

- (i) obtain written consent of at least seventy five per cent of all the depositors or their personal representatives to transfer deposits;
- (ii) obtain written acknowledgement of each depositor that the depositor is aware that deposits transferred to the non-member institution will be insured for the remainder of the assessment year, or upon maturity or until withdrawal, whichever is earlier, the deposits placed with the amalgamated non-member institution shall no longer be insured in whole or in part by the Corporation;
- (iii) upon a request in writing, pay to a depositor, the principal amount of the deposit and return or interest, calculated to the date of withdrawal and no charge or penalty shall be imposed in respect of the payment; and

(iv) provide a statement that the acquired member institution's obligation to repay deposits will be assumed by the non-member institution; and

(b) in relation to the acquiring non-member institution, enter into an agreement in writing to assume the acquired member institution's liability in relation to the deposits on the same terms and conditions.

(3) For the purpose of paragraph (2)(b), the member institution shall indemnify the Corporation in the event of any payment made by the Corporation to depositors, in respect of such of its deposits as have been transferred or acquired by the acquiring non-member institution.

Deemed deposits

52. Where a member institution assumes the deposits of another member institution under section 50, the deposits are for the purposes of sections 42 and 43, deemed to be placed with the member institution that assumes them as of the day on which they are assumed.

Not part of deposit

53. Where monies are or were received by a member institution for which the institution has issued or is obligated to issue an instrument evidencing a deposit, other than a bank draft, certified cheque, traveller's cheque, prepaid letter of credit or money order—

(a) the monies do not constitute a deposit unless the instrument and records of the institution specify the person entitled, at the date of issue of the instrument, to the repayment of the monies evidenced thereby;

(b) the person referred to in paragraph (a) shall be deemed to be the depositor in respect of the monies unless particulars of a transfer of the instrument are entered on the records of the institution, in which case the most recent transferee shown on the records shall be deemed to be the depositor; and

- (c) the entry of a transfer on the records of a member institution is ineffective for the purpose of paragraph (b), if the entry is made subsequent to the cancellation or termination of the membership of the member institution.

Chapter 4

Payments

Payments

- 54.** (1) All payments made by the Corporation in respect of—
- (a) Islamic deposits and all associated costs thereon shall be made from the Islamic fund; and
 - (b) conventional deposits and all associated costs thereon shall be made from the conventional fund.

(2) All payments made by the Corporation shall be based on the deposit records of the member institution as in the opinion of the Corporation appears to be entitled to it.

Obligatory payment

55. (1) The Corporation shall, in the manner described in subsection (2), make payment in respect of any deposit insured with the Corporation where a winding-up order has been made in respect of—

- (a) a member institution that holds the deposit; or
- (b) any person to whom that deposit has been transferred—
 - (i) under paragraph 41(1)(c) from a member institution which has surrendered its licence; or
 - (ii) under subsection 51(1) from a member institution amalgamating with such person.

(2) Where the Corporation is obliged to make payment under subsection (1) in respect of any deposit, the Corporation shall as soon as possible and in any case not later than three months from the date of the winding-up order make payment to such person based on the record of a member institution as in the opinion of the Corporation appears to be entitled to it in such manner deemed appropriate by the Corporation.

Discretionary payment

56. The Corporation may, with the prior written approval of the Minister, make payment in respect of any deposit insured by the Corporation where—

- (a) the member institution that holds the deposit or any person to whom that deposit has been transferred under paragraph 41(1)(c) from a member institution which has surrendered its licence or under subsection 51(1) from a member institution amalgamating with such person, is unable to make any payment in respect of the deposit, by reason of—
 - (i) an order of a court;
 - (ii) any action taken by a regulatory body or the Corporation; or
 - (iii) any action taken by the receiver, manager or receiver and manager during the period when a member institution is in receivership;
- (b) a petition for winding-up has been presented to the court against the member institution that holds the deposit or any person to whom that deposit has been transferred under paragraph 41(1)(c) from a member institution which has surrendered its licence or under subsection 51(1) from a member institution amalgamating with such person; and
- (c) the membership of the member institution that holds the deposit is cancelled or terminated.

Advance payment

57. The Corporation may exercise its discretion in respect of sections 55 and 56 to make advance payment to the depositor.

Date of computing liability

58. (1) The date for computing liability for obligatory payment by the Corporation shall be the date of the commencement of winding-up.

(2) The date for computing liability for the discretionary payment in respect of an event under section 56 shall be the date when the event first occurs.

How return or interest on deposit to be calculated for obligatory payment

59. For the purpose of calculating the obligatory payment of the Corporation in respect of any deposit insured by the Corporation where a winding-up order has been made in respect of a member institution that holds the deposit, the principal, including return or interest accrued, as the case may be, in relation to the deposit shall be included only to the date of the commencement of the winding-up.

Corporation may pay return or interest on obligatory payment

60. Where the Corporation makes an obligatory payment under section 55, the Corporation may at its sole discretion pay, in addition to the amount the Corporation is obliged to pay, return or interest, as the case may be, on that amount at a rate determined by the Corporation for the period commencing on the date of the commencement of the winding-up in respect of a member institution that holds the deposit and ending on the date of the making of the payment in respect of the deposit, but the aggregate of the payments made under this section and section 55 in relation to the deposit shall in no case exceed sixty thousand ringgit.

How return or interest on deposit to be calculated for discretionary payment

61. For the purpose of calculating the payment of the Corporation in respect of any deposit insured by the Corporation where the Corporation makes a discretionary payment—

- (a) subject to paragraph (b), the return or interest accrued, as the case may be, in relation to the deposit shall be included only to the date of the payment by the Corporation;
- or

- (b) if a proceeding for the winding-up of a member institution that holds the deposit has been commenced before the date of the payment by the Corporation but a winding-up order has not yet been made, the return or interest accrued, as the case may be, in relation to the deposit shall be included only to the date of the commencement of the winding-up.

Return or interest on index-linked deposits

62. Any return or interest, as the case may be, referred to in section 59 or 61 in relation to a deposit held by a member institution shall be determined in accordance with rules prescribed by the Corporation if a payment to be made by the member institution in respect of the deposit is to be determined, in whole or in part, by reference in any way to—

- (a) the market price of a security, commodity or financial instrument;
- (b) the exchange rate between any two currencies;
- (c) a reference rate determined by reference to any one or more of those prices or rates;
- (d) a reference rate determined by reference to any one or more non-financial events; or
- (e) any other kind of variable index or reference point as may be specified by the Corporation.

Discharge of liability

63. Payment under this Chapter by the Corporation in respect of any deposit insured by the Corporation discharges the Corporation from all liabilities to the extent of the amount of the payment made in respect of that deposit, and in no case is the Corporation under any obligation to see to the proper application in any way of the payment so made.

Subrogation

64. Where the Corporation makes a payment under this Chapter in respect of any deposit, the Corporation is subrogated, to the extent of the amount of the payment made, to all the rights and interests of the depositor and may maintain an action in respect of those rights and interests in the name of the depositor or in the name of the Corporation.

Assignment

65. Where the Corporation deems it advisable, the Corporation may withhold payment in respect of any deposit with a member institution until it has received an assignment in writing of all the rights and interests of the depositor in relation to the deposit.

Time limitation for claims

66. No action may be taken against the Corporation in respect of the obligation of the Corporation to make payment in relation to a deposit held by a member institution that is being wound up unless the action is commenced within ten years after the date of the commencement of the winding-up.

PART V

EXAMINATION OF MEMBER INSTITUTIONS

Bank Negara Malaysia to provide information

67. Bank Negara Malaysia may, within an appropriate time, provide to the Corporation—

- (a) written reports following the examinations conducted under section 69 of the Banking and Financial Institutions Act 1989 or section 31 of the Islamic Banking Act 1983 or any other relevant law to which a member institution is subject;
- (b) a rating or by any other means, an assessment of the safety and soundness of the member institution, including its financial condition;