



Perbadanan Insurans Deposit Malaysia
Malaysia Deposit Insurance Corporation

**PERBADANAN INSURANS DEPOSIT MALAYSIA
(MALAYSIA DEPOSIT INSURANCE CORPORATION)**

CONSULTATION PAPER

MALAYSIA DEPOSIT INSURANCE CORPORATION
(DISCLOSURE REQUIREMENTS FOR TRUST ACCOUNTS AND JOINT ACCOUNTS)
REGULATIONS 2006

ISSUE DATE: 19 JUNE 2006

CLOSING DATE: 31 JULY 2006

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Appendix: Draft Malaysia Deposit Insurance Corporation (Disclosure Requirements For Trust Accounts and Joint Accounts) Regulations 2006

1. Introduction

- 1.1 Perbadanan Insurans Deposit Malaysia (“PIDM”) was established on 15 August 2005 pursuant to the Akta Perbadanan Insurans Deposit Malaysia 2005 (“the Act”) or the Malaysia Deposit Insurance Corporation Act 2005. The primary function of PIDM is to protect depositors and promote confidence in the financial system. The deposit insurance system was officially launched on 1 September 2005.

2. Objective of Consultation Paper

- 2.1 The purpose of this Consultation Paper is to seek views and comments on the proposed disclosure requirements for trust accounts and joint accounts, as set out in the draft *Malaysia Deposit Insurance Corporation (Disclosure Requirements For Trust Accounts And Joint Accounts) Regulations 2006* (the “draft Regulations”) found in the *Appendix* to this Paper.
- 2.2 PIDM invites comments on the scope of the draft Regulations, the key principles used for determining the compliance requirements and compliance issues, if any, that may be faced by depositors and member institutions (defined as licensed commercial banks and Islamic banks).
- 2.3 This paper is divided into three parts:
- Part A: Background and legal basis;
 Part B: Scope of the draft Regulations and deposits affected; and
 Part C: Compliance requirements and rationale.

3. Consultation process and effective date of Regulations

- 3.1 PIDM welcomes written comments from interested parties on any aspect of the Consultation Paper no later than 31 July 2006. Comments should be directed to:

*Ms. See Wai Lin
 Policy and International Division
 Perbadanan Insurans Deposit Malaysia
 Level 22, Dataran Kewangan Darul Takaful
 No 4, Jalan Sultan Sulaiman
 50000 Kuala Lumpur
 Malaysia*

(Please mark “CP T+J” on the top left hand corner of the envelope for written comments posted to PIDM)

*Enquiries: 03 22607436
 Fax: 03 22607431
 Email: policy_trust@pidm.gov.my*

- 3.2 All comments will be treated in strictest confidence. PIDM will collate comments to this Consultation Paper and publish its response, including any amendments to the draft

Regulations on PIDM's website, by 30 September 2006. Thereafter, the draft Regulations will be forwarded to the Treasury Solicitor and the Attorney General's Chambers as part of the legislative process. Hence, there may be amendments or refinements to the draft Regulations. The Regulations are subject to the approval of the Minister of Finance, and the public will be informed of the expected date on which the Regulations will come into force through PIDM's website.

Part A: Background and legal basis

4. Background

- 4.1 PIDM had, on 27 March 2006, issued to the industry and interested parties "*Guidelines on Disclosure Requirements For Trust Accounts and Joint Accounts*" (the "Guidelines"). The Guidelines were issued to clarify information disclosure requirements in relation to depositors who act as trustees of trust accounts or who are joint owners of an account.
- 4.2 Following the issuance of the Guidelines, PIDM held briefing sessions to explain the operations of the Guidelines in relation to PIDM's year of assessment 2006. It is now timely for PIDM to issue formal regulations in this area. All the key elements of the Guidelines have been embodied in the draft Regulations after taking into consideration relevant feedback received. The Regulations, once gazetted, will supersede the Guidelines.
- 4.3 This Consultation Paper deals with "separate coverage" for the purposes of subsection 49 (3) of the Act. Subsection 49 (3) provides for the deposit of a depositor who is a trustee or a joint owner, to be separately insured from any deposit of the trustee acting on his own behalf or acting for another trust or in a joint capacity held with the member institution. That subsection also provides separate coverage for trust accounts where the trustee is acting for two or more beneficiaries. This means that the deposit of each beneficiary of that trust account will be entitled to separate coverage up to the limit of RM60,000 (principal plus interest, or in the case of Islamic deposits, principal plus return). In the case of a deposit in a joint account, such deposit will be separately insured by PIDM from the deposit of each of the joint owners who act on their own behalf or act as a trustee in a trust account or in a joint capacity with another person.

5. Statutory Objectives

- 5.1 The statutory objectives of PIDM are set out in section 4 of the Act. These are to: (i) administer a deposit insurance system under the Act; (ii) provide insurance against the loss of part or all deposits of a member institution; (iii) provide incentives for sound risk management in the financial system; and (iv) promote or contribute to the stability of the financial system.
- 5.2 In discharging its functions under the second and fourth objectives, PIDM must act in such manner as to minimise costs to the financial system. The draft Regulations are consistent with these objectives as they enable PIDM to administer the deposit insurance system in an effective manner by providing insurance coverage for depositors who elect to claim such coverage.

6. **Legal authority**

- 6.1 The provisions which empower PIDM to provide insurance coverage for deposits in general and separate deposit insurance coverage for deposits held in a trust account or joint account are set out in subsections 49 (1) and 49 (3) of the Act respectively. In addition, PIDM is empowered under section 100 of the Act to issue regulations to give full effect to any provision of the Act.

7. **Key principles**

- 7.1 The draft Regulations have been formulated based on the following four principles:

7.1.1 **Minimise information required**

To ensure that depositors are able to enjoy separate coverage, PIDM would require minimum information to be submitted to the branch of the member institution where the account is held.

7.1.2 **Minimise administration**

Depending on the size and purpose of the trust account, the number of beneficiaries and their interests in the trust account could vary frequently. In order to minimise administration for trustees, updated information will be required to be submitted generally once a year.

7.1.3 **Use of available information**

The information required should be readily available in the existing records of the trustees. There will not be a regulated format of submission as depositors should be allowed to submit their information in any format to minimise time needed to repackage information.

7.1.4 **Preserve depositor secrecy or confidentiality**

For deposit insurance purposes, a trustee will be given the flexibility to provide information regarding the interest of each beneficiary in the trust account through the use of an identifier code for each beneficiary.

Part B: Scope of draft Regulations and deposits affected

8. **Scope of draft Regulations** (paragraph 2 of the draft Regulations)

- 8.1 The draft Regulations set out what information and when such information should be submitted to member institutions for purposes of determining separate insurance coverage for trust accounts and joint accounts.

9. **Deposits affected** (paragraphs 2 and 3 of the draft Regulations)

- 9.1 Two types of deposits are affected. These are: (a) deposits held in a trust account; and (b) deposits held in a joint account.

- 9.2 Subsection 49 (3) of the Act provides for:

- the deposits held jointly by joint owners to be separately insured from any deposit of each joint owner held individually;
- the deposits held by a trustee on behalf of beneficiary or beneficiaries to be separately insured from any deposit of the trustee held for the trustee's own personal use;
- the interest of each beneficiary in a trust account to be separately covered; and
- the interest of a beneficiary in a trust account to be separately covered from the interest of the same beneficiary in another trust account so long as the trustee is not the same.

9.3 However, subsection 49 (5) of the Act provides that any deposits held in trust by the same trustee for the same beneficiary will be aggregated and insured up to Ringgit Malaysia Sixty Thousand (RM60,000).

10. (a) Trust accounts affected

10.1 The Act defines “*trust accounts to include monies held on account for the purpose of a trust*”. The draft Regulations clarify that separate coverage only applies to trust accounts held in a member institution where the trustee is able to identify each beneficiary and the interest of each beneficiary in the trust account.

10.2 Examples of trust accounts include client accounts required to be opened or maintained by professionals pursuant to legislative requirements or pursuant to trust arrangements. Such accounts include client accounts operated by lawyers and stockbrokers (*Illustration 1*). Another example is an account where an adult holds and operates the account on behalf of a minor or minors.

Illustration 1

Accountholder	Names of Beneficiaries	Interest of Beneficiaries RM (% share)	Amount Insured (RM)
XYZ & Co (Trustee for clients' account)	Chan Sin Nee	100,000 (25%)	60,000
	Ahmad Zaki	200,000 (50%)	60,000
	Chan Ma Lee	100,000 (25%)	60,000
	Total	400,000 (100%)	

10.3 However, where a trustee chooses not to disclose the individual beneficiaries, such trust accounts would not be covered for separate insurance (*Illustration 2*).

Illustration 2

Accountholder	Names of Beneficiaries	Interest of Beneficiaries	Amount Insured
		RM (% share)	(RM)
<i>Law Partners & Co. (Trustee for clients' account)</i>	<i>Not disclosed</i>	<i>200,000 (100%)</i>	<i>60,000</i>

- 10.4 In the case of unit trusts, a trustee generally holds deposits on behalf of the unit trust fund. Any deposits held by the trustee for the unit trust fund are usually pooled and therefore the interest of each beneficiary cannot be determined.
- 10.5 However, where a trustee can identify the beneficiaries and their respective interests in a trust deposit and makes the relevant disclosures, separate coverage for each beneficiary is provided under the draft Regulations (*Illustration 3*).

Illustration 3

Accountholder	Name of Beneficiaries	Interest of Beneficiaries		Amount Insured
		(RM million)	% share	(RM)
<i>Custody Services Sdn. Bhd.¹</i>	<i>Gamma Fund Manager</i>	<i>5</i>	<i>50</i>	<i>60,000</i>
	<i>Theta Fund Manager² of which:</i> <i>- Client A</i> <i>- Client B</i> <i>- Client C</i>	<i>5 of which:</i> <i>- 3</i> <i>- 1</i> <i>- 1</i>	<i>50 of which:</i> <i>- 30</i> <i>- 10</i> <i>- 10</i>	<i>60,000 each for Client A, B and C.</i>
	Total	10	100	

¹ Holds funds as trustee for 2 fund managers (Gamma Fund Manager and Theta Fund Manager)

² Beneficiaries are identified and disclosed to the member institution where the account is held.

11. (b) Joint accounts affected

11.1 Under the Act:

- (i) All deposits held by the same joint owners in the same member institution are aggregated and treated as one deposit. The aggregated deposit will be insured up to Ringgit Malaysia Sixty Thousand (RM60,000) only (principal plus interest, or in the case of Islamic deposits, principal and return). The maximum limit of Ringgit Malaysia Sixty Thousand (RM60,000) applies to the joint owners collectively, and not for each joint owner of a deposit.

- (ii) A deposit that a person owns jointly with someone else is insured separately from other deposits such person holds for his or her personal use in the same member institution and the coverage is up to Ringgit Malaysia Sixty Thousand (RM60,000) only (principal plus interest, or in the case of Islamic deposits, principal plus return).
- (iii) A deposit that a person owns jointly with someone else is also insured separately from other joint deposits that such person holds with any other person in the same institution and the coverage is up to Ringgit Malaysia Sixty Thousand (RM60,000) only (principal plus interest, or in the case of Islamic deposits, principal plus return).

Part C: Compliance requirements and rationale

12. Information requirements

- 12.1 The draft Regulations specify that the following information should be submitted for the purposes of ensuring separate coverage –

By a trustee (paragraphs 4 and 5 of the draft Regulations):

- (i) *A statement that the deposit is held in trust by the trustee;*
- (ii) *The trustee's name, address and identity card number or passport number or any other equivalent identification acceptable to the member institution;*
- (iii) *The name and address of each beneficiary or the alphanumeric code or any other code or identifier for such beneficiary; and*
- (iv) *The amount or percentage of each beneficiary's interest in the deposit.*

By joint account owners (paragraph 7 of the draft Regulations):

Each joint owner's name, address and identity card number or passport number or any other equivalent identification acceptable to the member institution.

Rationale

- 12.2 The above information requirements are in line with the key principles set out in paragraph 7, and relate to information that should be compiled and maintained by a trustee. The information requirements are simple, and part of the information that must normally be supplied on opening of a deposit account held at any member institution in any event, and hence should impose minimal administrative burdens. Besides the Act, certain trustees are governed by other laws which impose an obligation on trustees to maintain up-to-date records of the interest of each beneficiary at all times. Trustees would therefore be able to fulfill their obligations under the Regulations as proposed with minimal effort and resources.
- 12.3 The draft Regulations would also require information to be submitted on or before 31 March in respect of beneficiaries' interests in the deposit as at 31 December of the preceding year. In proposing this cut-off date of 31 March, PIDM is mindful that many

member institutions have their year-end on 31 December and therefore would have the latest audited information for this date. Furthermore, members are assessed premium amounts based on the insured deposits held as at that date. It is contemplated that most businesses would also have audited information for this date. Trustees should therefore be able to fulfill their obligations with regard to submissions with minimal administrative burdens.

- 12.4 If a trustee is prohibited by law or the terms of the trust from disclosing details of beneficiaries, the draft Regulations provide flexibility for trustees to submit the required information by way of a separate alphanumeric code or other identifier which corresponds to a code or identifier for each beneficiary on the records of the trustee. For the avoidance of doubt, there should be only one code or identifier in respect of each beneficiary for whom the deposit is being held on trust. Subsection 49 (5) of the Act requires that deposits in a member institution having the same trustee and same beneficiaries should be aggregated. As such, trustees must ensure that there is only one code or identifier in respect of each beneficiary.
- 12.5 Where a depositor initially holds an account in his own name and subsequently discloses to the member institution that the deposit is a trust account, this would be dealt with as an opening of a completely new account. This is because it is common for most member institutions to view that such a disclosure results in a change in the nature of the relationship between the member institution and the depositor. Under such circumstances, it is envisaged that, for the purposes of obtaining separate coverage, the trustee would need to submit the information set out in paragraph 4 of the draft Regulations and thereafter under paragraph 5 of the draft Regulations.
- 12.6 The draft Regulations do not prescribe the manner or format in which information is to be submitted, and it is sufficient that the statement identifies all the beneficiaries to the account and the interest of each beneficiary.

13. Time for submission of information

13.1 Under the draft Regulations, the information must be submitted at the following times–

(i) By a trustee (paragraphs 4 and 5 of the draft Regulations):

On the opening of a trust account and thereafter, annually to the member institution on or before 31 March of every assessment year (defined under the Act to mean the period beginning on 1 January and ending on 31 December of each year).

(ii) By joint account owners (paragraph 7 of the draft Regulations):

At the time of opening of a joint account.

(iii) By a trustee or joint account owners (paragraph 9 of the draft Regulations):

At any time as may be deemed necessary or expedient by PIDM.

Rationale

- 13.2 It is expected that the names and number of beneficiaries under a trust may change frequently during the year. To facilitate administration, apart from account opening, trustees are generally only required to submit detailed information to the member institution once a year, on or before 31 March.
- 13.3 Based on feedback to the Guidelines, a period of 3 months for submission of the specified information is sufficient for trustees to update and reconcile their records with the records of the member institution. This period also ties in with the deadline for payment of premiums by member institutions to PIDM which is on or before 31 May of each assessment year.
- 13.4 Trustees would therefore have up to 31 March of each assessment year to elect for separate coverage and to submit the specified information as in paragraph 5 of the draft Regulations. In this regard, should a trustee submit the specified information after 31 March of an assessment year, there will be separate coverage for each beneficiary but only from the date of submission of the specified information to the member institution.
- 13.5 PIDM would not generally expect trustees to certify the accuracy of the information submitted to member institutions.
- 13.6 It is envisaged that information would normally only need to be submitted in instances described above. The only other times such information would have to be supplied is in the unlikely event of a failure of a member institution, where PIDM makes payment to depositors.
14. **Person responsible for submission and disclosure** (paragraphs 3, 4, 5 and 7 of the draft Regulations)
- 14.1 If a trustee intends to ensure that beneficiaries under a trust have separate coverage, it is the trustee's responsibility to disclose the trusteeship to the branch of the member institution where the trust deposits are held. As explained earlier, failure to submit all specified information would mean that beneficiaries of the trust account would not be separately insured.
- 14.2 Beneficiaries are not required to disclose information to member institutions. However, to protect their interest, beneficiaries may wish to ensure that their trustee has made the relevant disclosures to the member institution.
- 14.3 In the case of a joint account, all member institutions require a disclosure of the names of all the joint owners as part of their account opening procedures. A member institution would therefore be able to distinguish joint accounts from the individual accounts of the respective joint account holders holding deposits for his or her own account.
- 14.4 As to whether a depositor is acting as a trustee, PIDM is of the view that it is the responsibility of a depositor to ascertain if he holds deposits as a trustee. In the unlikely event of a failure of a member institution, PIDM would rely on the records of the member institution to make payments to depositors. PIDM will recognise separate coverage for trust accounts which have been disclosed in the records of the member institution. PIDM

is not obliged to separately insure the deposits held in trust for any beneficiary, if in its opinion, the trust exists primarily for the purpose of obtaining or increasing deposit insurance. In such cases, PIDM may request the trustee to validate the trustee's position.

15. Person to receive information (paragraphs 4 and 5 of the draft Regulations)

- 15.1 The member institution is the person to whom information referred to under paragraphs 4 and 5 of the draft Regulations must be submitted. Such information should be submitted to the branch of the member institution where the account is maintained. No information is to be submitted to PIDM.

Rationale

- 15.2 Information regarding beneficiaries and their interests will be utilised by member institutions to make the assessment on premiums payable by member institutions to PIDM annually. Premiums will be calculated based on the total insured deposits of the member institutions as at 31 December of the preceding year. Accordingly, the specified information should be submitted to the branch of the member institution in which the account is opened or maintained.
- 15.3 In exceptional circumstances, trustees may be asked to submit information regarding beneficiaries to PIDM directly. For example, this may be required in the event that a member institution fails, so that PIDM may determine the interest of beneficiaries and their entitlement to deposit insurance coverage and payments.

16. Failure to submit information

- 16.1 Where a trustee or any joint account owners fails to fully comply with the disclosure requirements in the draft Regulations, the deposits in the trust or joint account will not be deemed to be a separate deposit.
- 16.2 Where the trustee has failed to fully comply with the deadlines in the draft Regulations, but subsequently submits the necessary information, the trustee will be deemed to have opened an account at the time of submission of the information. Provided that all the relevant information by reference to the time of submission is disclosed, the deposits in the trust account will be deemed to be a separate deposit, but only from the date of submission.

Rationale

- 16.3 If a trustee elects not to disclose or fails to fully comply with the disclosure requirements, the beneficiaries' interests under the trustee's account will not be separately covered by deposit insurance for so long as no disclosure is made. Hence, such a trust account will be aggregated with the trustee's relevant deposits in the name of the trustee and the limit of Ringgit Malaysia Sixty Thousand (RM60,000) will apply to the aggregated deposits.

- 16.4 Non-disclosure by a trustee of the specified information to a member institution in a specific assessment year will not have implications on trustees obtaining separate coverage for beneficiaries in respect of which specified information is subsequently submitted and properly disclosed to the member institutions.

19 June 2006
Perbadanan Insurans Deposit Malaysia

DRAFT

MALAYSIA DEPOSIT INSURANCE CORPORATION ACT 2005

MALAYSIA DEPOSIT INSURANCE CORPORATION
(DISCLOSURE REQUIREMENTS FOR TRUST ACCOUNTS
AND JOINT ACCOUNTS) REGULATIONS 2006

IN exercise of the powers conferred by section 49 and section 100 of the Malaysia Deposit Insurance Corporation Act 2005 [Act 642], the Corporation, with the approval of the Minister, makes the following regulations:

Citation and commencement

1. (1) These regulations may be cited as the **Malaysia Deposit Insurance Corporation (Disclosure Requirements For Trust Accounts And Joint Accounts) Regulations 2006**.
- (2) These Regulations come into operation on [date] 2006.

Purpose

2. (1) The purpose of these Regulations is to clarify information disclosure requirements for trust accounts and joint accounts.
- (2) The disclosure requirements under these Regulations shall apply in order to qualify for separate coverage of a deposit under subsection 49(3) of the Act.

Trust account and joint account

3. (1) These Regulations apply to the following persons:
 - (a) A depositor acting as trustee of a trust account opened or maintained in a member institution and in respect of which:
 - (i) each beneficiary to the trust account can be identified; and
 - (ii) each beneficiary's interest in the trust account can be identified.

- (b) A depositor acting as joint owner with any other person in respect of a joint account opened or maintained in a member institution.
- (2) In these Regulations –
- (a) a trustee refers to a depositor acting as trustee of the trust account described under paragraph 3(1)(a); and
 - (b) a joint owner refers to a depositor acting as joint owner of the joint account described under paragraph 3(1)(b).

Disclosure on opening trust account

4. On opening a trust account, in order to have the deposit therein separately insured, a trustee shall submit to the member institution the following information:
- (a) A statement that the deposit is held in trust by the trustee;
 - (b) The trustee's name, address and identity card number or passport number or any other equivalent identification acceptable to the member institution;
 - (c) The name and address of each beneficiary or the alphanumeric code or any other code or identifier for such beneficiary, at the time of opening the trust account; and
 - (d) The amount or percentage of each beneficiary's interest in the deposit at the time of opening the trust account.

Annual disclosure in respect of trust account

5. On or before 31 March of every assessment year, in order to have the deposit therein separately insured, a trustee shall submit to the member institution the following information:
- (a) A statement that the deposit is held in trust by the trustee;
 - (b) The trustee's name, address and identity card number or passport number or any other equivalent identification acceptable to the member institution;
 - (c) The name and address of each beneficiary or the alphanumeric code or any other code or identifier for such beneficiary, as at 31 December of the preceding assessment year; and
 - (d) The amount or percentage of each beneficiary's interest in the deposit as at 31 December of the preceding assessment year.

Trustee's failure to comply

6. (1) If a trustee fails to fully comply with the requirements under paragraph 4 or paragraph 5, each beneficiary's interest in the trust account shall not be deemed to be a separate deposit and accordingly, shall not be separately insured.
- (2) A trustee who fails to comply with the requirements under paragraph 4 or paragraph 5 but who subsequently submits the required information to the member institution, shall, for the purpose of these Regulations, be deemed as at the date of submission of the information to be opening a new trust account under paragraph 4.

Disclosure on opening joint account

7. On opening a joint account, all its joint owners shall submit to the member institution their respective names, addresses and identity card numbers or passport numbers or any other equivalent identification acceptable to the member institution.

Joint owner's failure to comply

8. If a joint owner fails to fully comply with the requirements under paragraph 7, the deposit in the joint account shall not be deemed to be a separate deposit and accordingly, shall not be separately insured.

Submission at other times

9. The Corporation may require, at any time, a trustee or a joint owner to submit to the Corporation or to the member institution in which the respective trust account or joint account has been or is held, any documents or other information as may be deemed necessary or expedient by the Corporation.

Made [date] 2006
[PIDM/PN/X/XXXX; PN(PUX)XXX]

TAN SRI DATO' ABDUL AZIZ BIN HAJI TAHA
Chairman
Malaysia Deposit Insurance Corporation

[To be laid before the Dewan Rakyat pursuant to subsection 100(4) of the Malaysia Deposit Insurance Corporation Act 2005]