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## 1. OVERVIEW AND LEGAL AUTHORITY

- 1.1 Perbadanan Insurans Deposit Malaysia (“PIDM”) is mandated under subsection 4(1) of the Malaysia Deposit Insurance Corporation Act 2005 (“Act”), among other things, to provide insurance against the loss of part or all deposits of a member institution (“Member”) and to provide incentives for sound risk management in the financial system.
- 1.2 This Consultation Paper sets out PIDM’s proposed terms and conditions of membership and rationale for their specific requirements. The draft *Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2007* (the “draft Regulations”) are set out in Appendix 1.
- 1.3 Under subsection 38(1) of the Act, the terms and conditions of membership of member institutions may be prescribed by regulations under section 100 of the Act.

## 2. CONSULTATION PROCESS AND EFFECTIVE DATE OF REGULATIONS

- 2.1 PIDM invites written comments from interested parties on the scope of the draft Regulations, or compliance issues, if any, that may be faced by Members. Written comments should be directed, no later than 11 June 2007, to:

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- 2.2 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 10 September 2007. 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 draft Regulations are subject to the approval of the Minister of Finance and the public will be informed through PIDM’s website once the Regulations come into force.

### 3. OBJECTIVES

- 3.1 All Members must be a financial institution granted a licence by Bank Negara Malaysia (“BNM”) under the Banking and Financial Institutions Act 1989 (“BAFIA”) or under the Islamic Banking Act 1983 (“IBA”). While membership is automatic upon licensing, it may be terminated (*section 40 of the Act*) when PIDM has been notified that a Member has ceased, or, is likely to cease, to be viable and the necessary procedures are complied with. Membership shall be cancelled (*section 39 of the Act*) when a Member surrenders its licence or the licence is revoked by BNM.
- 3.2 By providing deposit insurance coverage for deposits held in Members, PIDM and PIDM’s deposit insurance funds (both Islamic and conventional) are exposed to the risks of its Members. In order to mitigate these risks, regulations on the terms and conditions of membership may be made.
- 3.3 The draft Regulations aim to:
- (i) Promote safety and soundness of banks by enhancing sound risk management practices among Members;
  - (ii) Clarify certain provisions of the Act relating to Members; and
  - (iii) Reinforce and support BNM’s supervision of banks by providing an incentive, through a premiums surcharge, for Members to comply with capital requirements and sound risk management practices issued by BNM. PIDM also reinforces compliance of any undertaking given by a Member to BNM to correct a deficiency detrimental to its continued safety and soundness.

### 4. SCOPE OF DRAFT REGULATIONS AND RATIONALE

- 4.1 The draft Regulations set out obligations and responsibilities of Members in the following areas:

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#### **a. Safety and soundness**

- Capital and liquidity (*paragraphs 3 and 4*)  
The stronger the capital base, the higher the capacity for Members to withstand unexpected shocks in their business operations. Liquidity is also pertinent to the safety and soundness of Members. PIDM requires that Members notify PIDM of any problems in liquidity sourcing or funding, bank run in any of a Member’s branches or offices, and significant withdrawals other than in the ordinary course of business. The draft Regulations in this regard, provide that Members must comply with the capital (paragraph 3) and liquidity (paragraph 4) requirements specified by BNM.

- Sound risk management practices (*paragraphs 5 and 6*)  
PIDM proposes to strengthen risk management practices in Members by requiring the Board of Directors to implement effective risk management policies and procedures in their business and affairs (*paragraph 5*). The Board of Directors are directly responsible for the sound management of a bank. Since the soundness of a bank is intrinsically tied to the quality of management, the draft Regulations provide for the Board of Directors to be satisfied that they have put in place adequate Board and management oversight. The draft Regulations also require the Board of Directors to be satisfied that they have employed qualified and experienced senior officers who are capable of operating the Member in a safe and sound manner, in line with BNM's requirements (*paragraph 6*).
- Ongoing soundness (*paragraphs 8 to 10, 16 to 24*)  
As part of its insurance risk assessment framework, PIDM monitors and assesses ongoing developments in Members including potential and emerging problems in individual Members and the industry as a whole.

To facilitate ongoing assessment, Members are required to notify PIDM of material changes in their financial position and shareholding structures, including any proposed restructuring, amalgamation, merger, transfer of all or a significant portion of the assets or liabilities or dissolution (*paragraphs 16 and 17*).

PIDM requires Members to authorise PIDM access to information residing with other authorities (*paragraph 21*). Members are also required to submit information and documents regarding any matter relating to the business or affairs of the Member (*paragraph 22*), that are true, correct and complete (*paragraph 10*). Other information required are set out in *paragraphs 23 and 24* relating to, among others, annual report, audited financial statements and business plans.

A Member will normally be required to give an undertaking or agreement to BNM to rectify or correct a deficiency that is detrimental to its continued safety and soundness (*paragraph 8*). A Member is required to provide PIDM with a copy of any undertaking given to BNM, the action plan to correct the deficiency, as well as the progress of such action plan, for PIDM to monitor the seriousness of the deficiency and the outcome of the Member's corrective plans (*paragraphs 18 to 20*).

*Paragraph 9* requires Members to prepare and maintain accurate records, in Malaysia, of all its assets and liabilities, including deposits, revenues, expenses and shareholders' equity.

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## **b. Deposits**

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PIDM requires information on the aggregation process used for assessing premiums to ensure Members are computing premiums accurately (*paragraph 11*). Information on deposit profiles (insured and non-insured) will be used to:

- monitor shifts in deposit trends;
- assess whether such movements affect significantly the number of depositors covered by the deposit insurance system; and
- review the adequacy of the legislated deposit insurance limit of RM60,000 and coverage provided.

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## **c. Premiums and other charges**

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- Payment of premiums (*paragraphs 9, 12, 25 and 28*)  
The Act provides for Members to pay first premiums (*section 42 of the Act*) and annual premiums (*section 43 of the Act*) to PIDM. *Paragraph 25* clarifies that such premiums are to be paid within such time or in such manner, as may be specified by PIDM.

Paragraph 12 requires that a Member submits to PIDM an amended and certified return in the event an error in the return of the Member is discovered and paragraph 27 provides for Members to pay additional premiums or receive a refund on the difference in premiums paid to PIDM.

To facilitate the accurate assessment of premiums, Members are required to maintain in Malaysia accurate and updated deposit records at all times (*paragraph 9*).

- Payment of outstanding premiums or overdue charges (*paragraph 28*)  
This paragraph provides clearly that outstanding premiums, premium surcharges or overdue charges remain due and payable to PIDM and such premiums, premium surcharges or overdue charges are payable by the Member holding the deposits upon which the premiums were assessed or by the next Member holding the deposits on which the premiums were assessed.
- Other charges (*paragraph 26*)  
PIDM may conduct an examination, investigation, inspection or inquiry on Members for early intervention and to mitigate PIDM's exposure to loss. The costs relating to such examination, investigation, inspection or inquiry may be recovered from the Member.

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**d. Communication with depositors**

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*Paragraph 13* clarifies the responsibilities of a Member to communicate with depositors in the event of a merger or amalgamation or a transfer of deposits. In the event of a merger or amalgamation, the Member that originally held the affected deposits is required to inform depositors in writing of the period of continuing separate coverage of such deposits following the merger. In the event of a transfer of deposits to another person who may be another Member or a non-Member, the Member that originally held the affected deposits is required to inform depositors in writing of the period of continuing separate coverage of such deposits.

Where membership has been cancelled or terminated, the Member that has its membership cancelled or terminated is required to inform depositors of the coverage period for their deposits arising from such cancellation or termination (paragraph 14).

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**e. Surrender or revocation of licence**

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A Member is required to inform PIDM of a surrender or revocation of its licence issued by BNM under BAFIA or IBA (paragraph 15).

**5. FAILURE TO COMPLY**

- 5.1 Failure to comply with the Regulations may result in a premium surcharge being imposed by PIDM pursuant to section 46 of the Act. PIDM shall consult BNM and obtain the written approval of the Minister before imposing any premium surcharge.
- 5.2 Subsection 38(3) of the Act provides that a contravention of any provision of the Regulations is an offence punishable with a fine of up to RM5 million or imprisonment of up to 5 years, or both, and in addition, a daily fine of RM50,000 for each day the offence continues after conviction.

## MALAYSIA DEPOSIT INSURANCE CORPORATION ACT 2005

### MALAYSIA DEPOSIT INSURANCE CORPORATION (TERMS AND CONDITIONS OF MEMBERSHIP) REGULATIONS 2007

IN exercise of the powers conferred by section 38 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 (Terms And Conditions Of Membership) Regulations 2007**.
- (2) These Regulations come into operation on [date] 2007.

#### **Interpretation**

2. In these Regulations, “senior officer” means a person occupying or acting in the position of chief executive officer, chief financial officer, chief operating officer, chief credit officer, chief risk officer or chief internal auditor of a member institution, by whatever name called.

#### **Terms and conditions of membership**

3. The member institution shall maintain an adequate level of capital funds unimpaired by losses, appropriate for its business and affairs and in accordance with the requirements of Bank Negara Malaysia.
4. The member institution shall maintain an adequate level of liquid assets in accordance with the requirements of Bank Negara Malaysia.
5. The member institution shall have in place appropriate, effective and prudent risk management policies, procedures and controls with respect to its business and affairs.
6. The member institution shall employ senior officers who each possess relevant qualifications or experience commensurate with his or her office, duties and responsibilities at the member institution.

7. The member institution shall comply with and observe all regulations, rules, orders, by-laws, notifications, guidelines, circulars, notes, directives, specifications, requirements, directions, notices, instructions and restrictions made, issued, given, or imposed by Bank Negara Malaysia or the Corporation.

8. The member institution shall comply with and fulfill the terms of any undertaking given by it to Bank Negara Malaysia or the Corporation and any agreement it has made with Bank Negara Malaysia or the Corporation.

9. The member institution shall prepare and maintain records that correctly describe and disclose all its assets and liabilities (whether on or off balance sheet) including deposits, and its revenues, expenses and shareholders' equity. It shall retain all deposit records in Malaysia.

10. Any information provided or submitted to Bank Negara Malaysia or the Corporation pursuant to any regulation, rule, order, by-law, notification, guideline, circular, note or directive made or issued by Bank Negara Malaysia or the Corporation shall be true, correct and complete.

***[Submission to the Corporation and others]***

11. The member institution shall submit to the Corporation the following information when so required by the Corporation:

- (a) a profile of insured deposits and uninsured deposits;
- (b) a detailed description of the method used by the member institution to compile information on insured deposits and uninsured deposits; and
- (c) any other details of the accounts of depositors as may be specified by the Corporation including but not limited to depositors' names, addresses and identity card numbers or business registration numbers, the balances outstanding (including all interest or return due and payable) in their respective accounts at any specified period, and, where applicable, the dates of maturity of the deposits.

12. Where any person authorised to make an examination, investigation or inspection of the member institution or the Corporation or the member institution discovers any error in the return of the member institution, the member institution shall promptly submit to the Corporation a duly amended and certified return.

13. Where –

- (a) there is a merger or amalgamation involving the member institution; or

- (b) any deposit in the member institution is transferred to or acquired by another person;

the member institution shall notify the depositors in writing regarding the period of insurance coverage for the deposits held by it.

14. Where the membership of the member institution is cancelled or terminated, the member institution shall notify the depositors in writing of such cancellation or termination and the period of insurance coverage for the outstanding deposits held by it.

15. The member institution shall notify the Corporation in writing when it surrenders its licence or its licence is revoked under the Banking And Financial Institutions Act 1989 or Islamic Banking Act 1983, whichever is the case, within 7 days of such surrender or revocation.

16. The member institution shall inform the Corporation in writing of any of the following approvals within 7 days thereof:

- (a) approval for a change in control of the member institution or any of its subsidiaries;
- (b) approval for a change in control of any corporation related to the member institution if it materially affects or may materially affect the operations or financial condition of the member institution or any corporation of which the member institution is a subsidiary;
- (c) approval for a restructuring, amalgamation, merger, arrangement or other reorganisation which involves the member institution or any of its subsidiaries or a significant portion of the assets or liabilities of the member institution or any of its subsidiaries;
- (d) approval for a restructuring, amalgamation, merger, arrangement or other reorganisation which involves any corporation related to the member institution if it materially affects or may materially affect the operations or financial condition of the member institution or any corporation of which the member institution is a subsidiary;
- (e) approval for a transfer of all or a substantial portion of the assets or liabilities of the member institution or any of its subsidiaries;
- (f) approval for a transfer of all or a substantial portion of the assets or liabilities of any corporation related to the member institution if it materially affects or may materially affect the operations or financial condition of the member institution or any corporation of which the member institution is a subsidiary;

- (g) approval for a substantial acquisition of assets or liabilities by the member institution or any of its subsidiaries; or
- (h) approval for a substantial acquisition of assets or liabilities by any corporation related to the member institution if it materially affects or may materially affect the operations or financial condition of the member institution or any corporation of which the member institution is a subsidiary.

17. The member institution shall notify the Corporation in writing of any of the following events within 7 days thereof:

- (a) a change in control of the member institution or any of its subsidiaries;
- (b) a change in control of any corporation related to the member institution if it materially affects or may materially affect the operations or financial condition of the member institution or any corporation of which the member institution is a subsidiary;
- (c) a restructuring, amalgamation, merger, arrangement or other reorganisation which involves the member institution or any of its subsidiaries or a significant portion of the assets or liabilities of the member institution or any of its subsidiaries;
- (d) a restructuring, amalgamation, merger, arrangement or other reorganisation which involves any corporation related to the member institution if it materially affects or may materially affect the operations or financial condition of the member institution or any corporation of which the member institution is a subsidiary;
- (e) a transfer of all or a substantial portion of the assets or liabilities of the member institution or any of its subsidiaries;
- (f) a transfer of all or a substantial portion of the assets or liabilities of any corporation related to the member institution if it materially affects or may materially affect the operations or financial condition of the member institution or any corporation of which the member institution is a subsidiary;
- (g) a substantial acquisition of assets or liabilities by the member institution or any of its subsidiaries;
- (h) a substantial acquisition of assets or liabilities by any corporation related to the member institution if it materially affects or may materially affect the operations or financial condition of the member institution or any corporation of which the member institution is a subsidiary;

- (i) a substantial withdrawal of deposits from the member institution or a problem with the liquidity funding of the member institution, either of which may be considered as not usual in the course of its business;
- (j) issuance of any demand or notice pursuant to section 218(2)(a) of the Companies Act 1965 against the member institution;
- (k) commencement of any dissolution process or liquidation proceedings (whether voluntary or otherwise) in respect of the member institution or any of its subsidiaries including but not limited to a resolution to wind up the member institution or such subsidiary, an appointment of any receiver or manager over the member institution or such subsidiary, and a presentation of a winding up petition against the member institution or such subsidiary; or
- (l) commencement of any dissolution process or liquidation proceedings (whether voluntary or otherwise) in respect of any corporation related to the member institution including but not limited to a resolution to wind up such related corporation, an appointment of any receiver or manager over such related corporation, and a presentation of a winding up petition against such related corporation, if such commencement materially affects or may materially affect the operations or financial condition of the member institution or any corporation of which the member institution is a subsidiary.

18. (1) The member institution shall provide the Corporation with a copy of any undertaking given by it to any regulatory or other authority, whether in or outside Malaysia, within 7 days of it making such undertaking.

(2) Where such undertaking relates to any deficiency or non-compliance in respect of the member institution, the member institution shall, in addition, provide the Corporation with a copy of its corrective or action plan to address the deficiency or non-compliance and its progress report on the implementation of such corrective or action plan –

- (a) in respect of an undertaking given to Bank Negara Malaysia, within 7 days of it submitting to Bank Negara Malaysia the corrective or action plan, or the progress report, whichever is the case; and
- (b) in respect of any other undertaking, within such time and in such manner as may be specified by the Corporation.

19. The member institution shall provide the Corporation with a copy of any order, directive, ruling, direction, notice, instruction or restriction issued, made, given, or imposed by any regulatory or other authority or court, whether in or outside Malaysia, relating to any deficiency or non-compliance in respect of the member institution within 7 days of it receiving the same.

20. The member institution shall notify the Corporation in writing of any material change to any information or document provided pursuant to paragraph 16, paragraph 17, subparagraph 18(1) or paragraph 19, within 7 days of such material change.

21. (1) The member institution shall authorise the Corporation to have access to any information and documents regarding any matter relating to the business or affairs of the member institution which are in the possession of any regulatory or other authority and shall authorise the release of such information and documents by such authority or regulatory agency to the Corporation.

(2) Such authorisation shall be deemed granted by the member institution to the Corporation under these Regulations.

22. The member institution shall cause its directors, officers, employees, auditors and former auditors to provide the Corporation with any information or document regarding any matter relating to the business or affairs of the member institution as may be required by the Corporation.

23. The member institution shall provide the Corporation with a copy of the following documents, not later than 90 days after the end of each financial year of the member institution:

- (a) its annual report and audited financial statements approved by the board of directors of the member institution, together with a copy of its auditor's report;
- (b) a list of the related corporations of the member institution as at the date of submission to the Corporation;
- (c) a list of the names, addresses, telephone numbers and offices or designations of the directors and officers of the member institution as at the date of submission to the Corporation; and
- (d) a list of the names, addresses and telephone numbers of the auditors of the member institution as at the date of submission to the Corporation.

24. The member institution shall provide the Corporation with a copy of the following documents when so required by the Corporation:

- (a) financial statements of the member institution or any of its related corporations for any specified period, prepared on a consolidated or unconsolidated basis;
- (b) a list of the names, addresses, telephone numbers and offices or designations of the directors and officers of its related corporations as at the date of submission to the Corporation;

- (c) a list of the names, addresses and telephone numbers of the auditors of its related corporations as at the date of submission to the Corporation; or
- (d) a business plan of the member institution or any of its related corporations for any specified period.

***[Payment to the Corporation]***

25. The member institution shall pay any premium surcharges or overdue charges imposed by the Corporation within such time and in such manner as may be specified by the Corporation.

26. When so required by the Corporation, the member institution shall pay to the Corporation the costs of any examination, investigation, inspection or resolution involving or in connection with the member institution, incurred by the Corporation, within such time and in such manner as may be specified by the Corporation.

27. Where, based on an amended certified return, the Corporation assesses that there is a difference in the amount of premium, premium surcharge or overdue charges –

- (a) the member institution shall pay to the Corporation or the Corporation shall refund or otherwise credit to the account of the member institution such difference, whichever is the case; and
- (b) in respect of any additional amount of premium or premium surcharge which should have been payable or is payable, the member institution shall pay to the Corporation any overdue charges on such additional amount where so determined by the Corporation.

28. Where –

- (a) the member institution's membership is cancelled or terminated; or
- (b) any deposits in the member institution are involved in a merger or amalgamation, or are transferred to or acquired by another person; and
- (c) any premiums, premium surcharges or overdue charges in relation to such deposits are due;

such premiums, premium surcharges or overdue charges shall remain due and payable to the Corporation by the member institution notwithstanding the member institution is no longer a member or such deposits are no longer held by the member institution, unless such premiums, premium surcharges or overdue charges shall be paid to the Corporation by the next member institution holding such deposits.

Made [date] 2007  
[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]*