



LAWS OF MALAYSIA

Act A1364

**MALAYSIA DEPOSIT INSURANCE CORPORATION
(AMENDMENT) ACT 2010**

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LAWS OF MALAYSIA**Act A1364****MALAYSIA DEPOSIT INSURANCE CORPORATION
(AMENDMENT) ACT 2010**

An Act to amend the Malaysia Deposit Insurance Corporation Act 2005.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Malaysia Deposit Insurance Corporation (Amendment) Act 2010.

(2) This Act is deemed to have come into operation on 16 October 2008.

New Part IVA

2. The Malaysia Deposit Insurance Corporation Act 2005 [*Act 642*], which is referred to as the “principal Act” in this Act, is amended by inserting after Part IV the following Part:

“PART IVA

STABILISATION INSURANCE

Interpretation for the purposes of Part IVA

66A. In this Part—

(a) “period of the stabilisation insurance” means the duration of the stabilisation insurance order including any variation of such duration as may be prescribed by the Minister under subsection 66B(5);

- (b) “prescribed corporation” means a corporation, which is not deemed to be a member institution under section 37, prescribed in the stabilisation insurance order;
- (c) “special provisions” means the provisions of sections 66D to 66L;
- (d) “stabilisation insurance” means any insurance provided for the purposes specified in section 66B and subject to a stabilisation insurance order; and
- (e) “stabilisation insurance order” means the order as prescribed in the Fifth Schedule or an order made under subsection 66B(6), as the case may be.

Stabilisation insurance order

66B. (1) For the purpose of protecting and promoting or maintaining the stability of the financial system and promoting or maintaining public confidence, the Corporation is authorized to provide a stabilisation insurance.

(2) A stabilisation insurance shall be subject to the stabilisation insurance order prescribed in the Fifth Schedule or any order prescribed by the Minister under subsection (6), as the case may be.

(3) Notwithstanding anything to the contrary contained in this Act, the stabilisation insurance order may provide for one or more of the following:

- (a) the insurance of a deposit to a greater maximum amount than otherwise applies in section 49;
- (b) the insurance, in whole or in part, of any liability or financial instrument that is otherwise not insured in consequence of the application of subparagraphs 36(a)(A) to (F) or the provisions of paragraph 53(a) of a member institution; and
- (c) the insurance, in whole or in part, of any liability or financial instrument that is of the same or similar nature as any liability or financial instrument, whether included or excluded in the definition of “deposit” in section 36 or the provisions of paragraph 53(a) of a prescribed corporation.

(4) A stabilisation insurance order shall be temporary in nature and shall have effect for the duration of the period as may be prescribed in such order.

(5) For the purposes set out in subsection (1), the Minister may, upon consultation with the Corporation and Bank Negara Malaysia, by order published in the *Gazette*, amend the stabilisation insurance order including to vary the duration of the stabilisation insurance order.

(6) For the purposes set out in subsection (1), upon the expiry of the period of the stabilisation insurance order, the Minister may, upon consultation with the Corporation and Bank Negara Malaysia, provide for any other stabilisation insurance, by order published in the *Gazette*.

Application of special provisions

66c. (1) The special provisions shall apply when a stabilisation insurance order is in force.

(2) Subject to section 66M, the special provisions shall cease to apply when the period of the stabilisation insurance expires.

Stabilisation insurance

66d. (1) The Corporation shall provide stabilisation insurance in the same manner as it provides deposit insurance in Chapter 3 of Part IV.

(2) Any liability or financial instrument which is the subject of a stabilisation insurance order is deemed to be a deposit, and a person to whom such obligations are owed is deemed to be a depositor, for all purposes of this Act.

Fee or premium for stabilisation insurance

66e. (1) Where a stabilisation insurance is provided, a member institution or a prescribed corporation shall pay to the Corporation such fee or premium as may be determined by the Minister.

(2) Notwithstanding sections 44 and 48, the member institution or the prescribed corporation shall pay the fee or premium under subsection (1) within such period and in such manner as the Corporation considers appropriate.

Application of provisions in respect of member institution

66F. (1) Where a stabilisation insurance is provided, all provisions applicable to a member institution in this Act shall apply to a prescribed corporation.

(2) Notwithstanding subsection (1)—

- (a) paragraph 14(1)(b) shall not apply to an officer of a prescribed corporation;
- (b) Chapter 2 of Part IV shall not apply to a prescribed corporation; and
- (c) a prescribed corporation shall not hold itself out to be a member institution and section 84 shall apply to such corporation.

Fee or premium deemed earned

66G. Any fee or premium in respect of stabilisation insurance shall be deemed to be fully earned when payable and shall not be refundable.

Extended application of section 46

66H. Where a stabilisation insurance is provided to a member institution, section 46 may be applied by the Corporation if in the opinion of the Corporation, the member institution has failed or fails to maintain proper deposit records or it misrepresents, through any act or omission, any information used as a basis for the assessment of any fee or premium.

Surcharge

66I. (1) Notwithstanding the payment of any fee or premium in respect of stabilisation insurance, the Corporation may

assess and collect a surcharge under this Part from a prescribed corporation for any act or omission as specified under subsection (3).

(2) The aggregate of the fee or premium paid by the prescribed corporation and the surcharge under subsection (1) in any particular year shall not exceed 0.5 per centum per annum of the total liabilities or financial instruments of the prescribed corporation insured by the Corporation under the stabilisation insurance.

(3) Where in the opinion of the Corporation, the prescribed corporation 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, or any regulations, rules, orders, by-laws, notifications, guidelines, circulars or notes of the Corporation in respect of stabilisation 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, through any act or omission, any information used as a basis for the assessment of any fee or premium in respect of the stabilisation insurance,

the Corporation shall—

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

(4) The Corporation shall obtain written approval of the Minister before imposing the surcharge to the prescribed corporation which has failed or fails to comply with any requirement under paragraph 66i(3)(a), (b), (c) or (d).

Overdue charges

66j. Where any fee, premium or surcharge due and payable under this Part has not been paid by a member institution or a prescribed corporation, on the due date, the unpaid amount shall, without further notice being served on the member institution or the prescribed corporation, be increased by a sum as may be determined by the Minister.

No set-off on payment

66k. Unless the Corporation otherwise agrees in any particular case, no payment shall be made to the Corporation by a member institution or a prescribed corporation that has been reduced or otherwise adjusted on the basis of any claim by the member institution or the prescribed corporation, as the case may be, against the Corporation.

Funding and losses

66L. (1) The Minister shall—

- (a) provide to the Corporation such funds as the Corporation may require in order to administer and implement a stabilisation insurance; or
- (b) reimburse the Corporation for any loss incurred by the Corporation as a result of providing stabilisation insurance.

(2) Any provision of funds made pursuant to paragraph 66L(1)(a) or reimbursement made pursuant to paragraph 66L(1)(b) shall be charged on the Consolidated Fund and where such provision or reimbursement is made, the Minister shall cause a statement on such provision of funds or reimbursement to be laid before the Dewan Rakyat at the earliest possible opportunity.

(3) The Corporation shall pay such fee or premium or other amount in respect of the stabilisation insurance, as may be agreed by the Minister and the Corporation into the Consolidated Fund.

(4) For the purposes of paragraph 66L(1)(b), the factors to be taken into account in determining whether the Corporation has incurred a loss in consequence of providing stabilisation insurance shall be as follows:

- (a) fees or premiums received by the Corporation as a result of providing the stabilisation insurance;
- (b) cost to the Corporation of any liquidity loans or other borrowings incurred by it in order to make any payments on account of the stabilisation insurance;
- (c) fees or premiums or other amount liable to be paid in respect of the stabilisation insurance to the Consolidated Fund;
- (d) net recoveries obtained by the Corporation on account of any stabilisation insurance payments;
- (e) loss of the investment value of any funds of the Corporation used to make any stabilisation insurance payments;
- (f) any other cost including out of pocket or overhead expenses, income tax or other taxes that the Corporation has reasonably incurred as a result of the stabilisation insurance and as agreed to by the Minister; and
- (g) any other factor that the Minister and the Corporation agree is appropriate.

Continuing application of special provisions

66M. (1) Where a stabilisation insurance is provided by the Corporation to a member institution under section 66B and the period of the stabilisation insurance order has expired—

- (a) if, before the period of the stabilisation insurance order expires, the Corporation had exercised any of its powers under section 25, section 27 or Part VI in respect of the member institution, the special provisions shall continue to apply to and in respect of the member institution as if the period of the stabilisation insurance order has not expired; or

(b) if, before the period of the stabilisation insurance order expires, the Corporation is obligated or authorized to make a stabilisation insurance payment in respect of the member institution, the special provisions shall continue to apply to and in respect of the member institution as if the period of the stabilisation insurance order has not expired.

(2) Where a stabilisation insurance is provided by the Corporation to a prescribed corporation and the period of the stabilisation insurance order has expired—

- (a) the prescribed corporation shall remain liable for all liabilities to the Corporation incurred during the period when the prescribed corporation was subject to the provisions applicable to a member institution by virtue of section 66F;
- (b) sections 85 to 93 shall apply in respect of any act done by the prescribed corporation during the period when the prescribed corporation was subject to the provisions applicable to a member institution by virtue of section 66F;
- (c) sections 94 and 95 shall apply as if the prescribed corporation was still subject to the provisions applicable to a member institution by virtue of section 66F;
- (d) if, before the period of the stabilisation insurance order expires, the Corporation had exercised any of its powers under section 25, section 27 or Part VI in respect of the prescribed corporation, the special provisions shall continue to apply to and in respect of the prescribed corporation as if the period of the stabilisation insurance order has not expired; or
- (e) if, before the period of the stabilisation insurance order expires, the Corporation is obligated or authorized to make a stabilisation insurance payment in respect of the prescribed corporation, the special provisions shall continue to apply to and in respect of the prescribed corporation as if the period of the stabilisation insurance order has not expired.”.

New Fifth Schedule

3. The principal Act is amended by inserting after the Fourth Schedule the following Schedule:

“FIFTH SCHEDULE

[*Subsection 66B(2)*]

MALAYSIA DEPOSIT INSURANCE CORPORATION (STABILISATION
INSURANCE) ORDER 2009

Citation and duration

1. (1) This order may be cited as the Malaysia Deposit Insurance Corporation (Stabilisation Insurance) Order 2009.

(2) This Order shall have effect for the period from 16 October 2008 to 31 December 2010.

Stabilisation insurance

2. For the purposes of Part IVA, the Corporation shall insure to the full amount the deposits, liabilities and financial instruments as specified in paragraph 3 of this Order, received or held by a member institution and a corporation as specified in paragraph 4 of this Order.

Deposits, liabilities and financial instruments

3. The deposits, liabilities and financial instruments referred to in paragraph 2 shall be as follows:

- (a) savings accounts, current accounts and fixed deposits;
- (b) principal-guaranteed conventional structured deposits;
- (c) Islamic deposits;
- (d) foreign currency deposits; and
- (e) negotiable instruments of deposits held by any person other than an institution licensed under the Banking and Financial Institutions Act 1989, the Development Financial Institutions Act 2002 [*Act 618*] or the Islamic Banking Act 1983 which Bank Negara Malaysia has approved as an interbank money market institution.

Prescribed corporation

4. The corporation referred to in paragraph 2 shall be as follows:

- (a) a development financial institution defined as a “prescribed institution” under section 3 of the Development Financial Institutions Act 2002;

- (b) an international Islamic bank as defined under section 2 of the Islamic Banking Act 1983; and
- (c) a licensed merchant bank as defined under section 2 of the Banking and Financial Institutions Act 1989.”.

Validation

4. (1) All acts or things done or purported to be done by the Minister or the Corporation in anticipation of the enactment of this Act shall be deemed to have been validly and lawfully done and accordingly all rights and obligations acquired or incurred as a result of doing those acts or things shall be deemed to be the rights and obligations of the Minister or the Corporation.

(2) It shall be lawful for the purposes of sections 66E, 66G, 66H, 66I and 66J of the principal Act, as introduced in this Act, for the Corporation to take into account the period beginning from 16 October 2008.