



Perbadanan Insurans Deposit Malaysia
Protecting Your Insurance And Deposits In Malaysia

**CONSULTATION PAPER ON
MALAYSIA DEPOSIT INSURANCE CORPORATION
(TERMS AND CONDITIONS OF MEMBERSHIP)
REGULATIONS 2013**

ISSUE DATE : 06 JUNE 2013
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1.0 INTRODUCTION

- 1.1 Under subsection 37(1) of the Malaysia Deposit Insurance Corporation Act 2011 (“PIDM Act 2011”), the terms and conditions of membership of a member institution (“Member”) shall be prescribed by regulations.
- 1.2 Perbadanan Insurans Deposit Malaysia (“PIDM”) had, on 15 September 2008, issued the Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2008 (“2008 Regulations”). The 2008 Regulations govern the relationship of Members and PIDM.
- 1.3 After five (5) years of implementation, it is timely for the 2008 Regulations to be reviewed. The objectives of the review are:
 - (a) to ensure that the terms and conditions remain current and relevant;
 - (b) to address feedback received and issues encountered since the implementation of the 2008 Regulations; and
 - (c) to streamline requirements and ensure alignment with the revisions in the other relevant legislation issued by PIDM and Bank Negara Malaysia (“BNM”).

2.0 OBJECTIVE

- 2.1 The purpose of this Consultation Paper is to seek views and comments on the proposed refinements to the 2008 Regulations, as set out in the draft Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013 (“draft Regulations”) found in *Appendix 1* to this Consultation Paper.
- 2.2 Key proposed refinements to the 2008 Regulations are discussed in the paper. In addition, salient terms and conditions of membership are explained in section 5.0 for ease of reference, particularly for new Members of PIDM.



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3.0 THE CONSULTATION PROCESS

3.1 PIDM welcomes written comments from interested parties on any aspect of the Consultation Paper. Comments should be sent, no later than **6 July 2013**, to:

Ms. Hoh Li Yun / Ms. Ratha Rengganathan
Policy and International Division
Perbadanan Insurans Deposit Malaysia
Level 12, Quill 7
No. 9, Jalan Stesen Sentral 5
Kuala Lumpur Sentral
50470 Kuala Lumpur.

Enquiries: 03 2173 7561 / 2173 7562
Fax: 03 2173 7533
Email: policy_membership@pidm.gov.my

3.2 All comments received will be treated in strictest confidence. PIDM will collate the comments and, where appropriate, make modifications to the draft Regulations.

3.3 The draft Regulations are scheduled to be effective in 2014.

4.0 APPLICABILITY

4.1 At the point of issuance of the 2008 Regulations, Members of PIDM are commercial banks and Islamic banks licensed by BNM.

4.2 Following the expansion of PIDM's mandate to administer the Takaful and Insurance Benefits Protection System since 31 December 2010, Members of PIDM now include deposit-taking members and insurer members.

Proposal 1:

4.3 The terms and conditions of membership are equally applicable to all Members to ensure consistent regulatory approach. The terms and conditions in the 2008 Regulations, as far as practicable, are extended to insurer members while insurance specific requirements, wherever applicable, are incorporated in the draft Regulations to reflect the unique characteristics of the industry.

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4.4 The draft Regulations will be applicable to the following institutions:

- (a) licensed banks as defined under section 2 of the Banking and Financial Institutions Act 1989;
- (b) Islamic banks as defined under section 2 of the Islamic Banking Act 1983;
- (c) insurance companies that are locally incorporated and licensed to carry on insurance business under section 16 of the Insurance Act 1996, except reinsurance companies and Danajamin Nasional Berhad; and
- (d) takaful operators that carry on takaful business and registered under section 8 of the Takaful Act 1984, except retakaful operators and international takaful operators.

(a) and (b) are known as deposit-taking members while (c) and (d) are known as insurer members.

5.0 SCOPE OF DRAFT REGULATIONS

5.1 The primary objective of the draft Regulations is to set standards of behaviour or membership rules that will promote safety and soundness and facilitate a prompt intervention and failure resolution of any Members by PIDM. Both objectives are critical to promote the stability of the financial system, which is in accordance with PIDM's mandate.

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

Compliance with PIDM's legislation, undertaking and agreement (paragraphs 3 and 6)

5.3 Broadly, Members are required to comply with all legislation or requirements issued or imposed by PIDM (paragraph 3) and undertaking given to or written commitment or agreement made with PIDM (paragraph 6).

Adequate capital and liquidity (paragraphs 3 and 4)

5.4 PIDM complements and reinforces the regulatory and supervisory requirements set by BNM. Members are required to comply with all legislation or requirements issued

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or imposed by BNM (*paragraph 3*). In particular, Members are required to comply with capital and liquidity standards as specified by BNM (*paragraph 4*), given that these are the two (2) key indicators of safety and soundness of Members.

Sound financial and business practices (*paragraph 5*)

- 5.5 In promoting safety and soundness of Members, PIDM focuses on the institution's financial position as well as on integrity, professionalism and expertise in the conduct of business and affairs of Members.

Proposal 2:

The draft Regulations provide that Members shall follow sound financial and business practices with respect to their operations and activities, which encompass a wider range of areas including but not limited to board oversight, corporate governance, risk management, audit and control.

PIDM seeks your comments on the appropriateness of the new areas included under the sound financial and business practices. Are there any other areas that could be included? Please provide reasons for deletion and/or inclusion.

- 5.6 In complying with the sound financial and business practices, Members may be guided by the relevant standards or requirements issued or imposed by BNM.

Maintenance of records (*paragraph 7*)

- 5.7 Members shall prepare and maintain accurate records of assets, liabilities, shareholders' equity, revenues and expenses. This is to facilitate the computation and verification of premium as well as the assessment and selection of appropriate resolution actions by PIDM in the event of Member's failure.

Proposal 3:

Insurer members are required to maintain and retain all policies and claims registers in Malaysia to facilitate unimpeded and timely access to the documents. Similar requirement was incorporated in the 2008 Regulations for a deposit-taking member to retain deposit records in Malaysia.

PIDM seeks your comments on the feasibility of the proposed requirement as set out above. Do you foresee significant impediments in complying with the requirement? If yes, please elaborate and provide alternative mechanism(s) to achieve the intended outcome.

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Proposal 4:

The draft Regulations provide that a deposit-taking member shall have in place a deposit liability system that is able to generate reliable and accurate deposit information when so required by PIDM and within such period as determined by PIDM. The readiness and capability of deposit-taking members in providing accurate deposit liability records or information in a timely manner facilitates reimbursement of insured deposits to depositors in the event of a deposit-taking member failure.

Informational requirements (paragraphs 9 and 10)

- 5.8 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.
- 5.9 For this purpose, Members are required to provide to PIDM information or events, particularly those that could have material impact on their financial condition or undermine their safety and soundness. PIDM needs to assess the impact of such event and takes appropriate action plans to manage PIDM's exposure in a timely manner.
- 5.10 In determining the informational requirements, PIDM aims to strike a balance of obtaining the necessary information promptly; to manage the risks to PIDM and the financial system; while minimising the unproductive burdens on Members.
- 5.11 Key informational requirements are listed below:
- (a) Notification of events (paragraph 9)
Presently, Members are required to notify PIDM in writing, within seven (7) days, of substantial withdrawals of deposits, issuance of demand or notice by creditors or commencement of dissolution process or liquidation proceedings on the Members or its related corporation.

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Proposal 5:

It is proposed that Members notify PIDM on additional events, including detection of material fraud and gross mismanagement, inability to meet maturing obligations or access to funding or occurrence of large claims¹ (specific requirement for insurer members). PIDM needs to assess such occurrences in order for PIDM to fulfil its mandate effectively.

PIDM takes cognisance of the significance and potential impact of the events listed in paragraph 9, and therefore, proposes for Members to notify PIDM, as soon as they are aware of it, on the occurrence or upon the discovery of such events.

PIDM seeks your comments on the proposed additional events and the notification timeline. Do you foresee significant impediments in complying with the requirement? If yes, please elaborate.

(b) Submission of financial statements and others (paragraph 10)

The draft Regulations set out documents to be submitted by Members to PIDM when so required by PIDM. Presently, this document includes financial statements, contact details of the directors, officers and auditors as well as business plan.

Proposal 6:

It is proposed that Members provide contact details of key responsible persons (instead of directors and officers) to facilitate prompt access to accountable and responsible officers. For further clarification, key responsible person refers to any persons that are mainly accountable or responsible for key functions of the Members including those that are performed outside the institution such as under centralised group and outsourced key functions. For instance, these persons include chief executive officers, chief financial officers, chief operating officers, chief risk officers, chief internal auditors, heads of departments and appointed actuaries.

Notification of surrender or revocation of licence (paragraph 8)

- 5.12 Membership in PIDM is automatic upon licensing by BNM. Under section 38 of the PIDM Act 2011, membership shall be cancelled when the licence of the Members has been surrendered or revoked under the relevant legislation administered by BNM.

¹ If this event could lead to problems with the liquidity position that may be considered unusual in the course of business of an insurer member.

Proposal 7:

It is proposed for a Member to notify PIDM immediately of a surrender or revocation of its licence issued by BNM.

PIDM seeks your comments on the proposed notification timeline. Do you foresee significant impediments in complying with the requirement? If yes, please elaborate.

Payment of premiums (paragraph 11)

- 5.13 The draft Regulations provide that outstanding premiums, premium surcharges and overdue charges remain due and payable to PIDM by the Member holding the deposits or takaful certificates or insurance policies upon which the premiums were assessed or by the next Member holding the deposits or takaful certificates or insurance policies on which the premiums were assessed.

Feedback Required No. 1:

- 5.14 In specifying the requirements for the notification of events, PIDM has adopted a *de minimis* rule by using the terms 'material' and 'substantial' as materiality thresholds. The Board of Members are expected to set the operational definition and ensure the consistent use of such terms. The operational definition set for accounting purposes or a definition to comply with any other regulatory requirements can be similarly adopted for this purpose. Do you agree with the proposed approach as detailed out above? Please provide reason(s) for your answer(s).

Feedback Required No. 2:

- 5.15 Are there any other terms and conditions that should be included? Please provide reason(s) for your suggestion(s).

6.0 FAILURE TO COMPLY

- 6.1 Non-compliance with any of the terms and conditions may result in a fine not exceeding RM5 million or imprisonment for a term not exceeding five (5) years, or both, and in addition, a daily fine not exceeding RM50,000 for every day the offence continues after conviction.
- 6.2 Non-compliance with any of the terms and conditions may also be penalised under the framework for premium surcharge. PIDM is currently developing a framework for premium surcharge.

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- (e) a person who is principally accountable or responsible, whether solely or jointly with other persons, for implementing and enforcing policies and strategies approved by the board;
- (f) a person who is principally accountable or responsible, whether solely or jointly with other persons, for developing and implementing systems, internal controls and processes that identify, measure, monitor or control the member institution's risks; or
- (g) a person who is principally accountable or responsible, whether solely or jointly with other persons, for monitoring the appropriateness, adequacy and effectiveness of the member institution's internal controls, risk management and compliance systems and processes, and includes the chief internal auditor, head of risk management, head of compliance, chief financial officer, and appointed or signing actuaries,

by whatever name called.

Compliance with regulations, rules and others

3. A member institution shall comply with and observe all regulations, rules, orders, by-laws, notifications, guidelines, circulars, notes, directions, specifications, requirements, notices, limits, standards, conditions, codes and restrictions made, issued, given, or imposed by Bank Negara Malaysia or the Corporation.

Adequate capital and liquidity

4. A member institution shall maintain an adequate level of capital and liquidity in accordance with the standards specified by Bank Negara Malaysia.

Sound financial and business practices

5. A member institution shall follow sound financial and business practices covering areas including but not limited to board oversight, corporate governance, risk management, audit and control.

Compliance with undertaking and agreement

6. A member institution shall comply with and fulfill the terms of any undertaking given by it to the Corporation relating to the operations, safety or soundness of the member institution and any written commitment or agreement it has made with the Corporation relating to the operations, safety or soundness of the member institution.

Maintenance of records

7. (1) A deposit-taking member shall—

(a) prepare and maintain records that correctly describe and disclose all its assets and liabilities (whether on or off balance sheet) including but not limited to deposits (whether insured or uninsured by the Corporation), revenues, expenses and shareholders' equity;

(b) retain all deposit records in Malaysia; and

(c) have in place a deposit liability system that is able to generate reliable and accurate deposit information when so required by the Corporation and within such period as determined by the Corporation.

(2) An insurer member shall—

(a) prepare and maintain records that correctly describe and disclose all its assets and liabilities (whether on or off balance sheet), its revenues and

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expenses including but not limited to premiums liabilities, claims liabilities covering claims paid and outstanding, actuarial valuation liabilities, balances due to or from reinsurers, and shareholders' equity; and

(b) retain all policies and claims registers in Malaysia.

Notification of surrender or revocation of licence

8. A member institution shall notify the Corporation in writing when it surrenders its licence or its licence is revoked under the relevant legislation administered by Bank Negara Malaysia, as the case may be, immediately of such surrender or revocation.

Notification of events

9. (1) A member institution shall, as soon as it is aware of it, notify the Corporation in writing of the occurrence of any of the following events and any other emerging events that may undermine its safety and soundness:

(a) any events that could lead to problems with the liquidity position of the member institution which may be considered as not usual in the course of its business, including but not limited to substantial withdrawal of deposits from the deposit-taking member and occurrence of large claims affecting the insurer members;

(b) detection of material fraud and gross mismanagement, which may lead to severe financial losses or exposure experienced by the member institution;

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- (c) inability of the member institution to meet some of its maturing obligations or access to funding, which may lead to the provision of liquidity assistance by Bank Negara Malaysia;
- (d) issuance of any demand or notice pursuant to paragraph 218(2)(a) of the Companies Act 1965 against the member institution;
- (e) 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
- (f) 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 corporation, an appointment of any receiver or manager over such corporation, and a presentation of a winding up petition against such 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.

(2) A member institution shall notify the Corporation in writing, of any material change, to any of the event set out in sub-regulation (1) as soon as it is aware of such material change.

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Submission of financial statements and others as determined by the Corporation

10. A member institution shall provide the Corporation with a copy of the following documents when so required by the Corporation and within such period as deemed necessary or expedient by the Corporation:

- (a)* financial statements of the member institution for any period determined by the Corporation, prepared on a consolidated or unconsolidated basis;
- (b)* financial statements of any of the related corporations of the member institution for any period determined by the Corporation, prepared on a consolidated or unconsolidated basis;
- (c)* a list of the names, addresses, telephone numbers and offices or designations of the key responsible persons of the member institution or any of the related corporations of the member institution;
- (d)* a list of the names, addresses and telephone numbers of the auditors of the member institution or any of the related corporations of the member institution;
- (e)* a business plan of the member institution or any of its related corporations for any period determined by the Corporation; or
- (f)* any other information of the member institution or any of the related corporations of the member institution as determined by the Corporation, including but not limited to information necessary to facilitate effective resolution by the Corporation.



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Outstanding premium, premium surcharge and overdue charges

11. Where–

- (a)* a member institution's membership is cancelled or terminated, and there are any outstanding amount of premiums, premium surcharges or overdue charges; or
- (b)* any deposits in, takaful certificates or insurance policies of a member institution are transferred to or acquired by any person, and there are any outstanding amount of premiums, premium surcharges or overdue charges in respect of such deposits, takaful certificates or insurance policies;

such amount of 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, takaful certificates or insurance policies are no longer held by the member institution, unless such amount of premiums, premium surcharges or overdue charges has been paid to the Corporation by the next member institution holding such deposits, takaful certificates or insurance policies.

Revocation

12. The Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2008 is revoked.

Made XX XX 20XX

[PIDM/PN/xx/2012; PN(XX)XXX]



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TAN SRI DATUK DR. ABDUL SAMAD HAJI ALIAS

*Chairman
Malaysia Deposit Insurance Corporation*

Approved

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Second Minister of Finance

[To be laid before the Dewan Rakyat pursuant to subsection 209(4) of the Malaysia Deposit Insurance Corporation Act 2011]

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