



Perbadanan Insurans Deposit Malaysia
Protecting Your Insurance And Deposits In Malaysia

**CONSULTATION PAPER ON
PROPOSED GUIDELINES ON
THE CRITERIA FOR DETERMINING INSURED DEPOSITS**

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1.0 BACKGROUND AND LEGAL POWERS

- 1.1 Perbadanan Insurans Deposit Malaysia (“PIDM”) is mandated under subsection 4(1) of the Malaysia Deposit Insurance Corporation Act 2005 (the “Act”), among other things, to provide insurance against the loss of part or all deposits of a member institution (MI) and to provide incentives for sound risk management in the financial system.
- 1.2 This Consultation Paper sets out PIDM’s proposed Guidelines (see Appendix) on the criteria for determining insured deposits.
- 1.3 These Guidelines are made pursuant to the powers conferred by, inter alia, section 100 of the Act.

2.0 CONSULTATION PROCESS

- 2.1 The purpose of this Consultation Paper is to seek comments from interested persons on PIDM’s proposed Guidelines that will be used to determine which conventional and Islamic deposit products are to be insured for deposit insurance purpose.
- 2.2 PIDM invites written comments from interested persons on this Consultation Paper. Comments should be submitted to PIDM not later than **31st July 2007**.

Please send all written comments to:

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Email: policy_criteria@pidm.gov.my

- 2.3 PIDM will consider all feedback to this Consultation Paper before making responses available for public information on PIDM’s website by **the end of September 2007**. All comments will be treated with strictest confidentiality.

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3.0 WHY ARE CRITERIA REQUIRED?

- 3.1 Section 36 of the Malaysia Deposit Insurance Corporation Act 2005 (“Act”) defines the deposit products insured by PIDM. Nevertheless, PIDM has to ascertain which deposit products meet the definition of “deposits” under the Act.
- 3.2 There may be circumstances when it may not be clear, from the definition of “deposits” in the Act, whether a deposit product is insured as a “deposit” for deposit insurance purposes. It is therefore necessary to have clear criteria that can be consistently and transparently applied to determine which deposit products are insured. PIDM also has the ability, under section 36(a)(iii) to specify any liability or financial instrument to be a “deposit” for these purposes.
- 3.3 Depositors should also be informed on which deposit products are covered by deposit insurance, resulting in greater public awareness of product risks and investments that are in line with their risk expectations.
- 3.4 From PIDM’s perspective, if a deposit product is insured under the Act, then the deposit will be subject to assessments for premiums to be paid by an MI with which the deposit is held. Thus, for premium calculation purposes, it is to an MI’s benefit to know, without doubt, which deposits are insured, and which are not.
- 3.5 In summary, the proposed Guidelines aim to:
- (i) Provide a set of clear criteria that can be consistently and transparently applied to determine which deposit products are insured;
 - (ii) Enable PIDM to ascertain its obligations should it need to make insurance payments to depositors; and
 - (iii) Reduce uncertainty to the public and MIs about which deposit products are or are not insured by PIDM.

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4.0 PRINCIPLES

4.1 We have developed our proposed criteria based on the following principles:

- (i) That the general concept of a “deposit” (in the case of a conventional deposit) involves a placement of money for “safekeeping” with an MI, with the institution’s agreement to repay such amount as the parties may agree to;
- (ii) For the Islamic deposit products, a “deposit” would involve a placement of money pursuant to a Shariah contract. In other words, the receipt and repayment shall be in accordance with the terms of any agreement consistent with the Shariah on any basis including of custody or profit sharing;
- (iii) That the receipt of a “deposit” is in the usual course of the business of deposit-taking of an MI, as required under section 36(a) of the Act;
- (iv) The list of criteria will be robust enough to cover comprehensively the range of deposit products. This would be compatible with PIDM’s general duties to administer the deposit insurance system to promote public confidence and contribute to the stability of the financial system; and
- (v) As far as possible, a common set of criteria would be applied to both conventional and Islamic deposit products.

4.2 In drawing up the above, PIDM notes that it is not always possible to draw direct comparisons between conventional and Islamic deposit products, and in view of the unique characteristics of Islamic products and features of Islamic banking, certain criteria that would apply only to conventional or Islamic deposits are necessary.

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5.0 PROPOSED CRITERIA

5.1 In determining whether a product offered for sale by an MI is an insured deposit under the Act, PIDM will apply the following criteria:

- (i) Monies received by an MI constitute a conventional deposit or an Islamic deposit, whichever is the case, as defined in section 2(1) of the Act:
 - For conventional deposits, subsection 2(1) of BAFIA defines this to mean *“a sum of money received or paid on terms under which it will be repaid, with or without interest or at a premium or discount or under which it is repayable, either wholly or in part, with any consideration in money or money’s worth;”*
 - For Islamic deposits, subsection 2(1) of the Act requires that deposits be *“a sum of money or money’s worth received or paid on terms by any person, under which the receipt and repayment shall be in accordance with the terms of any agreement consistent with the Shariah”*.
- (ii) Monies received by an MI do not constitute eligible deposits if they are payable outside Malaysia or foreign currency deposits or money market deposits or bearer deposits or pursuant to a negotiable instrument of deposit or repurchase agreement;
- (iii) Monies are received by an MI in the usual course of its business of deposit-taking. This criterion would exclude monies received from the money market, the central bank, and monies provided to the MI strictly for payment transaction purposes (e.g. payment through GIRO¹);
- (iv) Repayment of the principal amount is not made in money’s worth and includes repayment by way of cash or cheque payment or crediting into a deposit account with an MI. This would exclude equity-linked deposits that require the delivery of shares. Interest or return, if any, may be repayable in money’s worth;

¹ A system that facilitates cashless transactions e.g. electronic bill payment.

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- (v) The liability of an MI in respect of monies received by it constitutes or is treated as a “deposit liability” in the records of an MI including in its accounting records and the contract between an MI and the depositor;²
- (vi) The person entitled to a repayment by an MI is identifiable at the point of contracting between an MI and the depositor of the product;
- (vii) In the case of a conventional product only, the contract between an MI and the depositor includes a term that the MI shall repay in full the monies received by it from the depositor at such time or in such circumstances as provided by the contract; and
- (viii) In the case of an Islamic product only, all monies deposited shall be used for one or more of the banking business purposes as specified by Bank Negara Malaysia (BNM) in its Framework of the Rate of Return namely, provision of finance, investment in securities, interbank placements, or such other business prescribed by BNM that complies with Shariah.

5.2 For clarity, structured deposit products would be eligible for deposit insurance coverage provided they meet all the above criteria. However, deposit products linked to credit derivatives, which are instruments designed for the trading/hedging of credit risk by corporations, are excluded.

6.0 CERTIFICATION PROCESS

6.1 PIDM’s proposed process for assessing whether a product is an insured deposit is as follows:

- (i) Before an MI offers a deposit product to depositors, the MI is required to submit to PIDM the following documents:
 - (A) The product brochures, pamphlets and application forms³;
 - (B) The contract to be entered into between the MI and the depositor.

² Notwithstanding such monies also being provided to the MI as security as defined in section 2(1) of the Act.

³ Regulation 11 of the proposed Malaysia Deposit Insurance Corporation (Provision of Information on Deposit Insurance) Regulations 2007 provides for an MI to submit information on deposit products in accordance with guidelines from time to time issued by PIDM.

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(The contract contains the terms and conditions of the agreement made between the MI and the depositor including each party's rights or liabilities in relation to the product or the deposited monies.);

- (C) In the case of an Islamic product only, a written declaration by the MI, signed by the MI's designated senior officer, certifying:
- (a) the Shariah principle(s) under which the contract is made and that its Shariah Committee has duly approved the contract pursuant to the Shariah principle(s);
 - (b) that the product is a deposit product in compliance with the criteria set by PIDM;⁴
 - (c) that all monies deposited shall be used for the MI's banking business⁵ only; and
 - (d) that the MI shall require the depositor to open a deposit account with it and the MI shall provide the depositor with regular statements or any document or confirmation in electronic form showing the account balance.
- (D) In the case of a conventional product only, a written declaration by the MI, signed by the designated senior officer of such MI, certifying:
- (a) that the product is a deposit product in compliance with the criteria set by PIDM; and
 - (b) that the MI shall require the depositor to open a deposit account with it and the MI shall provide the depositor with regular statements or any document or confirmation in electronic form showing the account balance.
- (E) Where applicable⁶, a written opinion by an MI's solicitors or an MI's

⁴ The criteria for a conventional or Islamic insured deposit, whichever is the case.

⁵ Such use being for one or more of the banking business purposes as specified by BNM in its Framework of the Rate of Return namely, provision of finance, investment in securities, interbank placements, or such other business prescribed by BNM that complies with Shariah.

⁶ See paragraph 7.3 of this process.



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Shariah Committee on how the product satisfies the criteria set by PIDM; and

- (F) A checklist duly completed by an MI. (The form of such checklist will be specified by PIDM. The MI is to check against each document required under item 6.1(i). The MI must also check against the criteria and expressly indicate which provision in the contract applies or corresponds to each criterion).

7.0 TRANSITION TIMELINE

7.1 The Corporation will begin the certification process based on the following:

- (i) For existing products⁷, MIs are required to submit to the Corporation documents listed under paragraphs 6.1(i)A and 6.1(i)B⁸ by 1 July 2007; and
- (ii) For new products that will be offered to depositors in 2007 or are being so considered, MIs are required to submit to the Corporation documents listed under paragraphs 6.1(i)A and 6.1(i)B⁹ by a date to be specified by the Corporation in writing.

7.2 The above process is expected to be completed by end 2007. Thereafter, MIs will be required to submit documentation for the certification of new products as and when such products are developed.

7.3 In relation to such new products offered from 2008 onwards, the product will be certified or endorsed by the Corporation within 14 business days from the date of a submission duly made (with complete documents). If an MI needs the Corporation to revert earlier, the MI must include the written opinion specified under paragraph 6.1(i)E above.

⁷ Products currently being offered to depositors and products no longer being sold but are still maintained in the books of the MI.

⁸ However, during the review, the Corporation may request for other relevant documents, if necessary.

⁹ However, during the review, the Corporation may request for other relevant documents, if necessary.



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8.0 ASSESSMENT OF PREMIUMS

- 8.1 For conventional and Islamic deposits, the assessment of premiums is based on total insured conventional or Islamic deposits held by an MI as at 31 December of the preceding assessment year.
- 8.2 The computation of total insured Islamic deposits for premium purposes will, however, be based on the outstanding balance in the deposit accounts, including returns that are due and payable, if any, as at 31 December of the preceding assessment year.
- 8.3 It is to be noted that the computation of premiums can be segregated from the actual eligibility of deposits since the premiums are based on a specific date namely, 31 December of the preceding assessment year. This is to reduce the administrative burden on MIs.

9.0 PIDM'S OBLIGATIONS

- 9.1 In the unlikely event of a bank failure, for conventional and Islamic deposits, PIDM is required to make deposit insurance payments to depositors of up to RM60,000 (inclusive of principal and interest or in the case of Islamic deposits, principal and return) for monies that are specified as deposits by PIDM, on an aggregated basis for each depositor and based on the separate coverage provided under the Act (e.g. trust, joint or partnership deposits). Additionally, deposit insurance payments will be subjected to the priority ranking of Shariah products. Islamic deposits based on custody (e.g. Wadiah yad Damanah) will rank ahead of other Islamic deposits.
- 9.2 For Islamic deposits, PIDM's legal obligations in respect of deposit insurance payments will be subjected to the terms of the respective Shariah contracts. Therefore, for contracts where the depositors bear the risk of losing part or all of their deposits (capital), PIDM will make insurance payments subject to such losses. For example, if a depositor invests RM60,000 in a Mudarabah deposit, and at the time of the bank failure, the current value of the investment totals RM50,000 only, PIDM will make an insurance payment of up to RM50,000 accordingly.
- 9.3 PIDM is not bound to make insurance payments for any indicative payment or rate of return represented to depositors before or during the contract period.



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Appendix

MALAYSIA DEPOSIT INSURANCE CORPORATION

GUIDELINES ON THE CRITERIA FOR DETERMINING INSURED DEPOSITS

These guidelines are made pursuant to the powers conferred by section 36(a)(iii) and section 100 of the Malaysia Deposit Insurance Corporation Act 2005 (the “Act”).

CRITERIA

In determining whether a product offered by a member institution is a deposit eligible for deposit insurance under the Act (the “insured deposit”), the Corporation will apply the following criteria:

1. Monies received by the member institution constitute an Islamic deposit or a conventional deposit, whichever is the case, as defined in section 2(1) of the Act;
2. Monies received by the member institution are not deposits payable outside Malaysia or foreign currency deposits or money market deposits or bearer deposits or pursuant to a negotiable instrument of deposit or repurchase agreement;
3. Monies are received by the member institution in the usual course of its business of deposit-taking;
4. Repayment of the principal amount is not made in money’s worth and includes by way of cash or cheque payment or crediting into an account with the member institution;
5. The liability of the member institution in respect of monies received by it constitutes or is treated as a “deposit liability” in the records of the member institution including in its accounting records and the contract between the member institution and the depositor;¹⁰
6. The person entitled to a repayment by the member institution is identifiable at the point of contracting between the member institution and the depositor or issuance of the product;

¹⁰Notwithstanding such monies also being provided to the member institution as security as defined in section 2(1) of the Act.



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7. In the case of an Islamic product only, all monies deposited shall be used for one or more of the banking business purposes as specified by Bank Negara Malaysia in its Framework of Rate of Return namely, provision of finance, investment in securities, interbank placements, or such other business prescribed by Bank Negara Malaysia that complies with Shariah; and
8. In the case of a conventional product only, the contract between the member institution and the depositor includes a term that the member institution shall repay in full the monies received by it from the depositor at such time or in such circumstances as provided by the contract.

EFFECTIVE DATE

The Guidelines are expected to come into operation by the end of September 2007.

Perbadanan Insurans Deposit Malaysia
12 June 2007