



Perbadanan Insurans Deposit Malaysia
Protecting Your Insurance And Deposits In Malaysia

**RESPONSE TO THE CONSULTATION PAPER ON
THE PROPOSED TERMS AND CONDITIONS OF
MEMBERSHIP REGULATIONS 2007**

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On 3 May 2007, Perbadanan Insurans Deposit Malaysia (“PIDM”) issued a Consultation Paper on the Proposed Terms and Conditions of Membership Regulations 2007 (“draft Regulations”) to member institutions and the public. Written comments were invited on the scope of the draft Regulations or any compliance issues in relation to them. The closing date for written comments was 15 June 2007.

PIDM wishes to thank member institutions who provided their written comments to the Consultation Paper. It is noted that no comments were received from the public. Member institutions expressed concerns mainly with regard to the apparent duplication of the regulatory requirements of Bank Negara Malaysia (“BNM”), the extent of the information required to be submitted and certain operational issues.

The written comments on the Consultation Paper have been considered and PIDM’s responses are as follows:

Note: Notwithstanding the removal of paragraph 14, the numbering of paragraphs to the draft Regulations (as referred to in PIDM’s responses below) reflects those as in the Appendix to the Consultation Paper for ease of reference.

A. REGULATORY DUPLICATION

Paragraphs 3, 4, 7 and 8

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.

7. The member institution shall comply with and observe all regulations, rules, orders, by-laws, notifications, guidelines, circulars, notes, directives, specifications, requirements, notices, instructions, limits 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.

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Comments received: The duplicative regulatory requirements set out under paragraphs 3 and 4 are unnecessary and may lead to dual penalties by PIDM and BNM. There may also be conflicting decisions by PIDM and BNM whereby discretionary leniency is exercised by one regulatory authority but not the other. In addition, BNM has its own enforcement powers and therefore, it is unnecessary to replicate these under paragraphs 7 and 8 of the draft Regulations.

PIDM's response: PIDM and BNM are independent agencies with different but complementary roles. BNM is the primary regulator of the financial system and PIDM complements BNM's role in promoting the stability of the financial system.

BNM determines and ensures compliance with the minimum level of liquidity and capital regulatory requirements for financial institutions. Both PIDM and BNM work closely towards achieving our common objective of stability in the financial system. Therefore, paragraphs 3 and 4 of the draft Regulations complement and reinforce the role of BNM given that capital strength and liquidity are key indicators of safety and soundness of member institutions.

For PIDM, such compliance is critical given the financial implications and potential exposure to the Islamic and conventional deposit insurance funds. The resolution of a troubled member institution is the responsibility of PIDM when BNM notifies it that a member institution has ceased, or is likely to cease, to be viable.

In the event of non-compliance and as set out in paragraph 5 of the Consultation Paper, PIDM may penalise a member institution under subsection 38(3) and/or subsection 46(3) of the Malaysia Deposit Insurance Corporation Act 2005 (MDIC Act). This penalty for non-compliance aims to serve as a financial incentive to ensure the affected member institution takes the appropriate remedial measures. PIDM would not hesitate to take necessary actions to address any situation that may entail exposure of the deposit insurance funds for the purposes of resolving troubled member institutions.

With regard to the penalty under subsection 46(3), any imposition of premium surcharge would require that PIDM first consult with BNM on the amount of premium surcharge and the reason(s) for imposing such premium surcharge and the member institution concerned will be given an opportunity to be heard with regard to the proposed surcharge.

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B. INFORMATION REQUIREMENTS

Paragraph 11

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.*

Comments received: The submission of depositors' details to PIDM would infringe on sections 97 and 99 of the Banking and Financial Institutions Act 1989 (BAFIA). In addition, the written consent of customers and written authorisation from BNM are required.

It was also requested that all member institutions be consulted on any changes to the deposit insurance limit of RM60,000, as any increase in the limit would lead to additional costs to member institutions.

PIDM's response: Section 98A of the BAFIA exempts PIDM from the provisions of section 97 and allows member institutions to submit depositors' details. Section 98A of the BAFIA states as follows:

"98A. Disclosure for facilitating performance of functions by Malaysia Deposit Insurance Corporation

The provisions of section 97 shall not apply to the disclosure of any information or document to any director, officer, employee or agent of the Malaysia Deposit Insurance Corporation (hereinafter in this section referred to as "the Corporation") established under the Malaysia Deposit Insurance Corporation Act 2005 where the disclosure is for

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the purposes of the exercise of powers, the performance of functions or the discharge of duties of the Corporation or of the directors, officers, employees or agents of the Corporation under that Act.”

As indicated in the Consultation Paper, PIDM requires information on deposit profiles (insured and uninsured) to *review the adequacy* of the deposit insurance limit of RM60,000 and coverage provided. The deposit insurance limit is legislated under the MDIC Act and any proposed amendment would require approval from Parliament. It is nonetheless PIDM’s policy to conduct consultation prior to recommending any legislative changes. PIDM will also specify the parameters and details to be submitted for purposes of paragraph 11(a).

Paragraphs 21 and 22

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.*

22. *The member institution shall cause its directors, officers, employees and 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.*

Comments received: The release of the information by the regulatory or other authority to the Corporation is at the prerogative of such regulatory authority and is beyond the control of the member institution. In addition, PIDM should give prior written notice to member institutions with regard to the information required in order for any information to be generated. It would also be useful if PIDM could indicate if such reports are ad-hoc or are required on defined interval basis. Another suggestion was for PIDM to change “cause” to “request” as a member institution may only have certain level of authority in obtaining information.

PIDM’s response: Paragraph 21 is not intended to require member institutions to provide information already residing with the relevant regulatory authorities as PIDM will deal directly with such regulatory authorities.

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With regard to paragraph 22, PIDM wishes to highlight that subsection 94(2) of the MDIC Act compels any officer or agent of the member institution or related corporation or any other person having access or holding or in possession of the books, records, accounts or other documents of a member institution or related corporation, if at any time called upon in writing by PIDM to do so, to produce the same to PIDM as required. In this regard, there is no need to change “cause” to “request” as the legislative provision of subsection 94(2) grants PIDM the necessary authority.

C. PREMIUMS AND OTHER CHARGES

Paragraphs 25 and 28

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.*

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.

Comments received: The Shariah authority should agree with the concept and payment of premium surcharge and overdue charges, so as to ensure Shariah compliance. There was also a question as to whether it is still valid to charge a financial institution any outstanding premium, premium surcharge or overdue charges, subsequent to the cancellation or termination of membership. There was also a query on the criteria and circumstances that may cause membership to be cancelled or terminated.

PIDM’s response: Sections 46 and 47 of the Act provides PIDM the power to impose premium surcharge and overdue charges, respectively.

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Subsection 41(1) of the MDIC Act provides that the financial institution (that has its membership has been terminated or cancelled) shall not be relieved from its obligations or liabilities to PIDM that have accrued before the cancellation or termination of its membership.

Section 39 and subsection 40(1) of the MDIC Act set out the conditions for cancellation and termination of membership, respectively.

Paragraph 26

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.

Comments received: Costs of any examination, investigation, inspection or resolution involving or in connection with a member institution should be borne by PIDM which currently receives annual premiums from member institutions. Furthermore, if PIDM deems that an examination needs to be done, then PIDM should conduct a cost-benefit analysis at its own expense. It was also suggested that all member institutions be notified in writing and agreement in writing obtained with regard to the specific type of exercises that PIDM will carry out, the intervals and the objective of such examinations prior to additional charges to be paid by member institutions.

PIDM's response: Sections 68 and 69 of the MDIC Act set out the scope for such examinations and PIDM's power to recover the costs from member institutions. PIDM does not require the agreement of a member institution to undertake such examinations.

D. OPERATIONAL ISSUES

Paragraph 13

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;*

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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.*

Comments received: It would be too onerous and costly for member institutions to notify depositors in writing due to the large customer base, in particular, individual customers. It was suggested that it would be sufficient for member institutions to make a public announcement through major newspapers and also through their respective official websites. Furthermore, it was also suggested that it might be more appropriate if such announcement comes from PIDM.

PIDM's response: PIDM takes note of the practical problems that member institutions may face in notifying depositors in writing. Therefore, paragraph 13 is amended as follows to reflect the requirement to newspaper announcement following a merger or amalgamation:

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 publish in not less than two daily newspapers published in Malaysia, one of which shall be in the national language and the other in English, regarding the period of insurance coverage for the deposits held by the member institution.

In relation to the original draft Regulations, the requirement for member institutions to inform depositors in writing of the period of insurance coverage¹ following a cancellation or termination is set out in subsection 41(1)(b) of the MDIC Act. In the interest of speed, it is envisaged that PIDM would accelerate the dissemination of information to depositors on the period of insurance coverage through such media (including newspaper announcements) as it deems expedient, as provided for under subsection 41(4). Therefore, paragraph 14 of the draft Regulations will be removed.

¹ Period of insurance coverage of two years from the effective date of cancellation or termination, unless the deposit is fully withdrawn or reached maturity, whichever is earlier.

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Paragraphs 16 and 17

16. (1) *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 substantial 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.*

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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 substantial 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 not be considered as 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*

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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.*

Comments received: It was suggested that the member institutions should notify PIDM of the events listed under paragraph 16 only if it has been assessed by a member institution (i.e. in the opinion of the member institution), to materially affect or may affect its operations or financial conditions or that of any corporation of which the member institution is a subsidiary. There was also concern that a member institution may not have the knowledge of every event that happens at the holding company level or in its affiliate companies.

It was suggested that PIDM should liaise directly with BNM as BNM would have been informed prior to undertaking any of the exercises described.

Paragraph 16 is a replica of paragraph 17 in terms of notification except that the former is pegged to the approvals and such approvals may be required from several parties including shareholders and regulators.

With regard to paragraph 17(g to i), there should be specific threshold for “substantial, material and not usual”. In particular, the substantial withdrawal of deposits could be due to many reasons including but not limited to maturity of deposits.

As to the timeframe of 7 days for notification in writing, it was suggested that it should be lengthened to 14 days.

PIDM’s response: It is PIDM’s intention that member institutions should assess the impact of any of the events on its business and affairs given that each member institution should be in the best position to gauge such implications and notify PIDM accordingly. It follows, then, that it would not be BNM assessing the implications and informing PIDM of such events. In the event a member institution is unaware of certain events at related companies, therefore, it would not be in a position to notify PIDM.

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There is no replication as paragraph 16 would allow PIDM to track the implementation of approvals obtained with regard to events listed under paragraph 16. In some circumstances, there may be an interim period before an approved event is implemented and paragraph 17 serves to keep PIDM informed of such implementation.

Approval under paragraph 16 is that referred to under Part VIII (“Ownership, control and management of licensed institutions”) of the BAFIA and Part IV (“Ownership, control and management of licensed institutions”) of the Islamic Banking Act 1983.

A common threshold for substantial or material may not be appropriate throughout the industry. However, member institutions may be guided by similar guidelines issued by BNM. PIDM wishes to highlight that each member institution should be in the best position to gauge what is considered as not usual in the course of its business and therefore, notify PIDM in writing accordingly.

PIDM takes cognisance of the importance and implication of the approvals or events as listed and therefore, the required notification in a timely manner is critical. It would only be a matter of process for member institutions to provide such written notification to PIDM and 7 days should not be overly burdensome administratively.

Paragraphs 18 and 19

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 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) *if the undertaking is 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) *if the undertaking is given to any other authority, within such time and in such manner as may be specified by the Corporation.*

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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.*

Comments received: It was suggested that PIDM provide more specific scope that relates to any order, directive, ruling, direction, notice, instruction or restriction issued, made, given or imposed that requires notification to PIDM. It was also queried whether normal legal suits on customers and vendors are included.

In addition, PIDM should elaborate on “any deficiency or non-compliance in respect of the member institution” as it is rather vague.

PIDM’s response: The scoping is envisaged to be wide and such order, directive, ruling, direction, notice, instruction or restriction issued may be related to any aspect of a member institution’s business and affairs. The intention is to alert PIDM to any of such events so as to assess the potential implications on the member institution concerned.

As to deficiency or non-compliance, these would be specific to the letter of undertaking issued by a specific member institution and the member institution concerned shall be in the best position as to know exactly the deficiency or non-compliance referred to. For instance, if a member institution’s capital level falls below the regulatory level, then there may be a requirement to issue a letter of undertaking to rectify such a deficiency.

Paragraph 23(a)

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;*

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Comments received: It was suggested that the audited financial statements be approved by BNM first before submission to PIDM under paragraph 23(a). In addition, the timeframe of 90 days from the end of each financial year should be removed as the final BNM-approved audited financial statements may reach member institutions beyond the 90-day period. It was also suggested that PIDM obtain the audited financial statements from BNM directly.

PIDM's response: Given that timeliness of receipt of audited financial statements from member institutions is critical to PIDM's ongoing assessment of member institutions, the 90-day period stands. The 90-day timeline is also in line with prevailing regulatory requirements on submission of audited financial statements.

Failure to comply

Paragraph 5.2 of the Consultation Paper: *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.*

Comments received: The amount of penalty is too high. As a parallel comparison, under Schedule 4 of the BAFIA, daily fines for similar offences range only from RM1,000 to RM5,000.

PIDM's response: The penalty for non-compliance with terms and conditions of membership is set out under subsection 38(3) of the MDIC Act.

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