

Malaysia

Banking Regulation 2017



Chapter content - **Free access**

- 1 Introduction
- 2 Regulatory architecture: overview of banking regulators and key regulations
- 3 Recent regulatory themes and key regulatory developments in Malaysia
- 4 Bank governance and internal controls
- 5 Bank capital requirements
- 6 Rules governing banks' relationships with their customers and other third parties

1 Introduction

[Back to top](#)

Over the years, Malaysia has committed to a gradual and progressive liberalisation of the financial sector and this has enhanced Malaysia's international linkages with the global economy, facilitated international trade and investment flows and overall contributed to the growth and diversified nature of the Malaysian financial system. The Central Bank of Malaysia ("**BNM**") has been proactive in the development of strong domestic and regional framework to enhance the Malaysian financial sector and this has been accompanied by appropriate prudential safeguards to ensure that the nation's best interest and financial stability are preserved. As a

leading centre for Islamic equity, Islamic fund management, Islamic banking and *takaful*, Malaysia is also home to most of the key international financial groups that offer Islamic financial products and services. Malaysia promotes partnerships between domestic and regional financial institutions and this is expected to increase the presence of regional and international financial institutions in our domestic financial system.

2 Regulatory architecture: overview of banking regulators and key regulations

[Back to top](#)

BNM is the authority responsible, amongst others, to: (a) act as financial adviser, banker and financial agent of the Malaysian government; (b) regulate the banking and financial services industry and ensure stability of the country's financial system; (c) ensure prudent conduct of monetary policy; and (d) manage domestic liquidity and exchange rates. BNM is the key regulator for most if not all financial institutions in Malaysia and wields a wide range of powers, from issuing general guidelines to all financial institutions to specific directions to a specific entity, to maintain the stability of the financial system. It reports to the Minister of Finance, Malaysia ("**Minister**") and keeps the Minister informed of matters pertaining to monetary and financial sector policies and issues.

Malaysia operates a dual banking system (conventional and Islamic banking) consisting of commercial banks, investment banks and Islamic banks. Islamic banks are conducted through Islamic banking windows or via Islamic bank subsidiaries set up by conventional banks. Islamic finance in Malaysia has developed into a comprehensive and sophisticated Islamic finance marketplace which is characterised by a robust regulatory, supervisory, *Shariah* and legal framework, a deep primary market and active secondary *sukuk* market, diverse players and talent base with global capabilities and connectivity for business deals anywhere in the world, product innovation, breadth and depth and an efficient system for multi-currency clearing and settlement. As such, Malaysia's financial sector regulators and relevant government agencies initiated the establishment of the Malaysia International Islamic Financial Centre with a wide range of offerings such as *sukuk*, equities, international banking and *retakaful* business, and Islamic funds and wealth management.

In order to promote Labuan as an international centre for business and financial services, the Labuan Financial Services Authority ("**Labuan FSA**") was established as the statutory body responsible for the development and administration of the Labuan International Business and Financial Centre ("**Labuan IBFC**"). Banks operating in the Labuan IBFC are subject to the *Labuan Financial Services and*

Securities Act 2010 ("**LFSSA**") and the *Labuan Islamic Financial Services and Securities Act 2010* ("**LIFSSA**").

The rest of the banks in Malaysia are governed by the *Financial Services Act 2013* ("**FSA**") and the *Islamic Financial Services Act 2013* ("**IFSA**"). BNM is empowered under the FSA and IFSA to issue guidelines, standards, and notices on a wide range of matters relating to banks and the banking and financial services industry, which includes but is not limited to prudential limits, liquidity framework, financial reporting and credit risk management. The guidelines, standards and notices contain guidance which banks are encouraged to adopt or contain requirements which must be complied with. The *Capital Markets and Services Act 2007* ("**CMSA**") also governs capital markets services provided by banks. The banks are required to comply with the requirements under the CMSA, notwithstanding that the banks may be exempted from certain licensing requirements thereunder.

The Association of Banks in Malaysia ("**ABM**") has a membership of 27 commercial banks, which is actively involved in various initiatives to promote and strengthen the commercial banking industry. ABM's role, amongst others, is to promote a sound banking system for commercial banks in Malaysia by cooperating with BNM and other relevant authorised bodies, formulate and review banking rules and policies and improve consumer awareness and knowledge of banking products and services. Besides ABM, the Association of Islamic Banking Institutions Malaysia ("**AIBIM**") represents the interest of its 25 member banks for the purposes of promoting a sound Islamic banking system and practice in Malaysia and providing advice and assistance to members pertinent to the development of Islamic banking at the local, regional and global level.

BNM engages in key initiatives that reinforce regional cooperation and integration. BNM is committed to deepening regional financial integration through the establishment of the ASEAN Banking Integration Framework ("**ABIF**") whereby the bilateral agreement with Otoritas Jasa Keuangan, Banko Sentral ng Pilipinas and the Bank of Thailand, for example, allows greater presence of ABIF Qualified ASEAN Banks. As part of Malaysia's commitment under ASEAN's financial integration, BNM has also focused on financial inclusion capacity building, whereby BNM collaborates with the Alliance for Financial Inclusion and the World Bank. In addition, Malaysia has participated actively in the formation of international institutions, namely the Islamic Financial Services Board and the International Islamic Liquidity Management Corporation as part of the international collaborative efforts to promote financial stability in the Islamic financial system.

Banks in Malaysia are licensed under different legislation such as FSA for commercial banks and investment banks, IFSA for Islamic banks and LFSSA or LIFSSA for Labuan banks. Under the FSA, a bank carrying out banking and investment banking business would require a banking licence. "Banking business" means the business of

accepting deposits, paying or collecting cheques drawn by or paid, provision of finance, and such other business as prescribed under the FSA. "Investment banking business" means the business of accepting deposits on deposit account, provision of finance, any regulated activity carried on pursuant to a Capital Markets Services licence under the CMSA, and such other business as prescribed under the FSA.

Under the IFSA, an Islamic bank carrying on an Islamic banking business or an international Islamic banking business requires a banking licence. "Islamic banking business" means the business of accepting Islamic deposits, accepting money under an investment account, provision of finance, and such other business as prescribed under the IFSA. "International Islamic banking business" means the Islamic banking business in currencies other than Ringgit Malaysia and such other business prescribed under the IFSA.

Under the LFSSA, "Labuan banking business" means the business of receiving deposits, Labuan investment banking business, Labuan financial business, Labuan Islamic banking business and such other business as prescribed under the LFSSA subject to the applicable exchange control restrictions under the FSA. "Labuan investment banking business" means the business of providing credit facilities, the business of providing consultancy and advisory services relating to corporate and investment matters, including dealing in securities, or making and managing investments on behalf of any person, the business of undertaking foreign exchange transactions, interest rate swaps, dealings in derivative instruments or derivative financial instruments or any other similar risk management activities, Labuan Islamic investment banking business, Labuan financial business, or such other business as prescribed under the LFSSA subject to the applicable exchange control restrictions under the FSA. The carrying on of Labuan Islamic banking business and Labuan Islamic investment banking business under the LFSSA is similar to LFSSA but must be conducted in compliance with the relevant *Shariah* principles.

The Government of Malaysia has also established several Development Financial Institutions ("**DFIs**") which are specialised financial institutions with specific mandates to develop and promote key sectors that are considered of strategic importance to the overall socio-economic development objectives of the country. These strategic sectors include agriculture, small and medium enterprises, infrastructure, maritime, export-oriented sectors as well as capital-intensive and high-technology industries. These DFIs are regulated under the *Development Financial Institutions Act 2002* to ensure that the DFIs perform their mandated roles prudently, efficiently and effectively.

3 Recent regulatory themes and key regulatory developments in Malaysia

[Back to top](#)

BNM recently issued the policy document on the *Code of Conduct for Malaysia Wholesale Financial Markets* ("**Code**") to update and set out principles and standards to be observed by market participants in the wholesale financial markets which refer to the money market, foreign exchange market and over-the-counter derivatives market for interest rates or exchange rates. The key points of the Code are as follows:

- Setting out the eligibility requirements for dealers and brokers and the execution of deals based on the "best execution" principle, i.e. on terms that are most favourable to the client.
- Setting out the parameters in respect of prohibited conduct under the FSA, IFSA and in other markets such as market manipulation, misinformation and rumour, and insider trading.
- Adoption of the best market practices of "The Model Code", ensuring clarity and transparency in the treatment of reference or fixing rates and dealing with personal accounts.
- The handling of confidential information, the identification of actual and potential conflicts of interest and advice to clients.
- Having in place internal policies and procedures for communications which allow for traceability, auditing, record-keeping and access control in accordance with the market participants' internal standards of information security.
- Establishment of a clear segregation of duties among front, middle and back offices whereby authorisations and responsibilities are reflected by separate reporting lines, procedures in respect of confirmation of dealings, security measures to safeguard dealing rooms, compliance with money laundering, terrorist financing and fraud.
- Instituting robust internal risk management controls, procedures for compliance, the conduct of internal audit and a system for trade surveillance.
- Putting in place internal procedures for using electronic trading or brokering systems and setting out the responsibilities of platform providers.

Following the 2008 global financial crisis, Malaysia enacted the FSA and IFSA to enhance financial sector regulation and supervision. Although Malaysia does not currently have a formal recovery and resolution framework, BNM together with the Malaysia Deposit Insurance Corporation ("**PIDM**") do have a broad range of powers to intervene and undertake recovery and resolution measures. Under the FSA and IFSA, in order to avert or reduce risk of financial failure, BNM has the capacity to remove senior officers, directors and chief executive officers, as well as wind up

banks and assume control over these companies. PIDM provides protection to bank deposits and insurance and *takaful* benefits in the event of failure of a licensed member bank, insurer or *takaful* operator. PIDM, as the resolution authority in Malaysia, can assume control of the member institution once it is deemed to be no longer viable by BNM.

The CMSA was also amended in 2011 to provide for the regulation of over the counter ("**OTC**") derivatives whereby the definition of "derivatives" was amended to include OTC derivatives. A "trade repository" has been introduced in the CMSA whereby its purpose is to provide a centralised record-keeping facility for OTC derivatives. The Securities Commission Malaysia ("**SC**") also has the power to give directions to such trade repository whether of a general or specific nature if the SC thinks it necessary for the effective administration of the trade repository, for ensuring compliance with any conditions or restrictions on the trade repository, or in the interest of the public or for the protection of the investors.

Malaysia launched the Financial Sector Blueprint ("**Blueprint**") on 21 December 2011 which sets out a 10-year strategic plan to increase the resilience, efficiency and competitiveness of Malaysia's financial sector. With four years remaining to accomplish the aspirations of the Blueprint, the priorities of BNM moving forward under the Blueprint are as follows:

- effective financial intermediation – evolve a vibrant FinTech ecosystem to enhance access and strengthen the role and impact of DFIs;
- deep and dynamic financial markets – improve liquidity in the foreign exchange and secondary bond markets, develop deep and liquid derivatives markets, and further expand the usage of local currency settlement for trade within the region;
- financial inclusion – further improve the responsible usage, take-up and quality of financial services;
- regional and international financial integration – deepen Malaysia's trade and investment linkages through new bilateral and regional arrangements;
- Islamic finance – increase adoption of value-based intermediation by Islamic banks, encourage growth of Islamic professional ancillary services, and strengthen Malaysia's position as the centre of Islamic financial innovation;
- regulatory and supervisory regime – develop a Recovery and Resolution Framework for financial institutions, ensure effective implementation of regulatory reforms in the banking and insurance/*takaful* sectors, and ensure forward-looking and dynamic supervisory framework and measurement methodologies;
- electronic payments – foster an open and vibrant payment ecosystem as a catalyst for FinTech innovation;

- consumer empowerment – strengthen the legislative framework for consumer credit, implement and coordinate national financial education strategy, and promote a more responsible credit culture; and
- talent development – accelerate the professionalisation of the financial sector workforce, complete the transformation of key learning and professional institutions, and attract regional and international talent in strategic areas.

4 Bank governance and internal controls

[Back to top](#)

Banks in Malaysia must comply with the corporate governance framework and internal controls provided under the FSA. As members of the board and senior management of the bank provide strategic leadership that influence the financial position and future direction of a bank, persons in these positions must have the necessary qualities, competencies and experience that will allow them to perform the duties and carry out the responsibilities required of the position in the most effective manner.

Under the FSA, the prior written approval of BNM is required before a person may be appointed as a chairman, director or chief operating officer (“**CEO**”) of a bank. BNM is also empowered under the FSA to specify fit and proper requirements which must be complied with by the chairman, directors, CEO or other senior officer of the banks. The “Fit and Proper Criteria” issued by BNM sets out the minimum assessment factors relating to: (a) probity, personal integrity and reputation; (b) competency and capability; and (c) financial integrity in respect of any person to be appointed as a key responsible person of the bank.

The *Corporate Governance* policy document (“**CG**”) issued by BNM states that the chairman of the board must not be an executive, and must not have served as a CEO of the bank in the past five years. The board of a bank must not have more than one executive director, unless otherwise approved by BNM in writing. If the chairman is an independent director and BNM is satisfied that additional appointment will not compromise board effectiveness, BNM may allow more than one executive director on the board of a bank.

Executive directors bring to the board technical expertise and useful insights about the bank’s operations. However, their representation on the board should not reduce the board’s ability to objectively scrutinise the proposals and performance of senior management.

The board must have a majority of independent directors at all times. An independent director must not have been an executive in the last two years, be a substantial shareholder of the bank or any of its affiliates or have had a significant

business or other contractual relationship with the bank or any of its affiliates within the last two years.

Additionally, banks are required under the CG to establish: a Board Nominations Committee; a Board Remuneration Committee; a Board Risk Management Committee; and a Board Audit Committee. A bank may combine its Board Nominations Committee and Board Remuneration Committee. All these committees must comply with the composition requirements prescribed in the CG.

The role of the Board Nominations Committee is to support the board in carrying out its functions concerning the board, senior management and company secretary in respect of appointments and removals, composition, performance evaluation and development and fit and proper assessments.

Board Remuneration Committee's responsibility is to oversee the design and operation of the bank's remuneration system and periodically review the remuneration of directors on the board, particularly on whether remuneration remains appropriate to each director's contribution, taking into account the level of expertise, commitment and responsibilities undertaken.

The Board Risk Management committee's role is to meet the expectations on risk management as set out in the policy document on *Risk Governance* and assist in the implementation of a sound remuneration system, examine whether incentives provided by the remuneration system take into consideration risks, capital, liquidity and the likelihood and timing of earnings, without prejudice to the tasks of the Board Remuneration Committee.

The responsibility of the Board Audit Committee is to ensure that there is a reliable and transparent financial reporting process within the bank, oversee the effectiveness of the internal audit function of the bank, review and update the board on all related party transactions and monitor compliance with the board's conflicts of interest policy.

Remuneration systems form a key component of the governance and incentive structure through which the board and senior management drive performance and reinforce the bank's corporate and risk culture. The remuneration for each director, member of senior management and other material risk taker must be approved by the board annually. The overall remuneration system for each bank must be subject to the board's oversight to ensure that the system operates as intended, is in line with the business and risk strategies, corporate values and long-term interests of the bank and is designed and implemented with input from the control functions and the Board Risk Management Committee to ensure that risk exposures and risk outcomes are adequately considered. Remuneration for individuals within the bank must be aligned with prudent risk-taking. Hence, remuneration outcomes must be symmetric

with risk outcomes. For members of senior management and other material risk takers, a portion of the remuneration consisting of variable remuneration is to be paid on the basis of individual, business-unit and institution-wide measures that adequately assess performance and the variable portion of remuneration increases along with the individual's level of accountability. A bank must adopt a multi-year framework to measure the performance of members of senior management and other material risk takers.

BNM has issued several policy documents such as *Credit Risk-Exposure Draft ("CR")* and *Risk Governance ("RG")* to govern the banks' internal control environment. The CR seeks to ensure that credit risk management practices of the banks remain effective amid the increased size and diversity of product offerings by the banks as well as the growing role of domestic capital markets. Banks are required under the CR to take a comprehensive approach to credit risk assessment, credit risk measurement, credit risk monitoring and credit risk reporting.

The CR complements the RG, which focuses on applying the principles of sound corporate governance to the assessment and management of risk. The RG sets out the framework of principles on risk governance to guide the board and senior management of the banks, such as ensuring a sound risk strategy and an effective risk management framework which must, amongst others, enable the identification, measurement and continuous monitoring of all relevant and material risks on a group-wide basis and must be well-integrated throughout the organisation.

The RG also provides that board members who are tasked to review the design and operation of the remuneration system must be independent and non-executive members. The board should ensure that persons performing control functions provide input in setting remuneration policies for other business areas to promote the alignment of risks and rewards across the organisation. Remuneration for employees in control functions must be structured in a way that is principally based on the achievement of their control objectives and should not compromise their independence. Due care should be exercised to preserve a clear distinction between performance measures of staff responsible for control functions and the performance of any business unit.

Pursuant to the Code, the CEO and senior officers of market participants ("**Management**") must establish a clear segregation of duties among front, middle and back offices whereby authorisations and responsibilities are reflected by separate reporting lines. Dealers in wholesale financial markets must not take part in the processing or settlement of dealings or have any influence over the back office staff. The process of confirming dealings is only to be done by the back office staff who must be independent and separated from those that agreed and executed the dealings.

The Management must put in place (i) correct processes and appropriate resources in the back office for dealings confirmation, and (ii) clear procedures to allow the back office to confirm dealings during normal and unexpected situations within the stipulated timeline. The back office staff must only send settlement confirmations to the back office staff of the counterparty.

Pursuant to the *Guidelines on Credit Transactions and Exposures with Connected Parties*, all credit transactions must be extended on an arm's-length basis. Banks are required to establish a mechanism to monitor credit exposures to connected parties, whether individuals or companies and take the appropriate steps to control, mitigate or reduce risks of connected transactions.

Banks can outsource hosting of IT infrastructure, which shall be subject to the *"Guidelines on Outsourcing of Banking Operations"*. Under the FSA, a bank may disclose any document or information relating to the affairs or account of its customer to any person engaged by the bank to perform the outsourced function. Banks are also required to comply with the *Personal Data Protection Act 2010 ("PDPA")* when dealing with personal data of individuals. The Banks must ensure that when disclosing or transferring the personal data of its customers or personnel outside Malaysia, the place where the recipient receives the personal data provides an adequate level of protection in relation to the processing of personal data which is at least equivalent to the level of protection afforded by the PDPA.

5 Bank capital requirements

[Back to top](#)

Capital Adequacy Framework

The Basel Accord issued by the Basel Committee on Banking Supervision ("**BCBS**") and subsequently the Basel II framework, which includes the Pillar 2 and Pillar 3 components were adopted by BNM in phases through the issuance of various guidelines. Malaysia, although not a member of BCBS or G20, continues to support the initiatives of BCBS to promote a more resilient banking system with higher quality capital through the introduction of Basel III. The increased presence of Malaysian banks in the global market are compelling reasons for Malaysia to comply with international standards as the country continues to develop the financial system and its economy. BNM has committed to implementing the reform measures in respect of capital requirements proposed under Basel III by bringing the existing capital and liquidity standards for banks in Malaysia in line with the agreed timeline by BCBS, which provides for a gradual phase-in of the standards beginning 2013 until 2019.

BNM revised and introduced the *Capital Adequacy Framework (Capital Components)* and *Capital Adequacy Framework for Islamic Banks (Capital Components)* which are to be read together with the *Capital Adequacy Framework (Basel II – Risk Weighted Assets)* and *Capital Adequacy Framework for Islamic Banks (Risk Weighted Assets)* in line with the agreed standard on the minimum capital adequacy ratios promulgated by BCBS. Under these requirements, all banks are required to hold and maintain at all times the minimum Common Equity Tier 1 Capital Ratio of 4.5%, minimum Tier 1 Capital Ratio of 6% and the minimum Total Capital Ratio of 8%. As at February 2017, the banking system in Malaysia maintained strong capitalisation at 13.1%, 13.9% and 16.9% respectively.

The transitional arrangements for banks in respect of the capital conservation buffer will be phased-in as follows:

Calendar Year	Capital Conservation Buffer
2016	0.625%
2017	1.25%
2018	1.875%
2019 onwards	2.5%

The *Capital Adequacy Framework (Basel II – Risk Weighted Assets)* and *Capital Adequacy Framework for Islamic Banks (Risk Weighted Assets)* specifies the approach for quantifying the Risk-Weighted Assets for credit risk, market risk and operational risk, as follows:

	Risk Type	Available Approach
1.	Credit	Standardised Approach Internal Ratings Based Approach
2.	Market	Standardised Approach Internal Models Approach
3.	Operational	Basic Indicator Approach Standardised Approach Alternative Standardised Approach

The *Risk Weighted Capital Adequacy Framework (Basel II) – Disclosure Requirements (Pillar 3)* and the *Capital Adequacy Framework for Islamic Banks (CAFIB) – Disclosure Requirements (Pillar 3)* issued by BNM also seek to improve transparency in the financial markets which will enhance market discipline, market efficiency and confidence. In this respect, the Pillar 3 disclosure requirements set the minimum

requirements for market disclosures of information on the risk management practices and capital adequacy of banks to enable market participants to obtain key information on risk exposures, risk assessment processes, the capital structure and capital adequacy of the banks.

BNM, under its *Capital Funds* framework, has put in place minimum capital funds requirements that are required to be maintained by commercial banks and investment banks, such as RM300 million for a locally incorporated foreign bank, RM2 billion for a bank which is not a locally incorporated foreign bank by itself or in aggregation with its related corporation that is a licensed investment bank, and RM500 million for an investment bank which is not related to any commercial bank.

Liquidity Framework

Under the Statutory Reserve Requirement (“**SRR**”), banks in Malaysia are required to maintain balances in their statutory reserve accounts equivalent to a certain proportion of their eligible liabilities, this proportion being the SRR rate. SRR is available to BNM in order to manage liquidity and the credit creation in the banking system. When BNM perceives the excess or lack of liquidity in the banking system to be large and long-term in nature, this monetary policy instrument will be used to withdraw or inject liquidity. The SRR rate is set at 3.5% of total eligible liabilities, effective from 1 February 2016.

BNM implements and adopts the Basel III Liquidity Coverage Ratio in Malaysia through the issuance of the *Liquidity Coverage Ratio* (“**LCR**”) framework as the standard for ensuring that banks hold sufficient high-quality liquid assets to withstand an acute liquidity stress over a 30-day horizon at both entity and consolidated level.

The LCR framework prescribes the following minimum LCR levels that must be maintained by a bank at all times:

With effect from	1 June 2015	1 January 2016	1 January 2017	1 January 2018	1 January 2019 and thereafter
Minimum LCR	60%	70%	80%	90%	100%

According to RAM Rating Services Bhd, since the implementation of the Basel III LCR framework, the Malaysian banking system’s LCR had averaged at 125% and stood at 128% as at the end of January 2017, exceeding the minimum requirement of 100%.

The liquidity parameters under the LCR framework set out for the computation of the LCR assume a scenario which entails a combined institution-specific and market-wide shock that would result in the run-off of a proportion of retail deposits and investment accounts, a partial loss of unsecured wholesale funding capacity and/or

secured short-term financing with certain collateral and counterparties, increases in market volatilities and others.

A bank must comply with any requirement to hold additional liquidity buffers as may be specified by BNM after having regard to the liquidity risk profile of the bank and the adequacy of the risk mitigation measures put in place by the bank. Each bank is required to submit the requisite liquidity reports based on end-of-month positions according to the specified parameters in the LCR framework.

BNM issued a *Stress Testing-Concept Paper* policy document which comes into effect on 1 June 2017. This document sets out BNM's supervisory expectations and requirements with regards to the governance, coverage of risks, design and implementation of banks' stress testing programme as well as the reporting requirements on stress testing results to BNM. Stress testing forms an integral part of a bank's internal capital adequacy assessment and risk management process which would cover major risk categories such as credit risk, market risk and liquidity risk.

6 Rules governing banks' relationships with their customers and other third parties

Back to top

Banks may accept deposits regardless of whether the transaction is described as a loan, an advance, an investment, a savings, a sale and repurchase or by another name. Under the FSA, only a licensed bank or licensed investment bank shall issue an advertisement which (a) contains any offer or invitation to make a deposit or to enter into any agreement to make any deposit, or (b) is intended to induce the making of any deposit. Similarly, under the IFSA, only a licensed Islamic bank shall be able to advertise for Islamic deposits.

BNM is empowered under the FSA to safeguard the balance of payments position and the value of currency of Malaysia. The FSA prohibits certain international and domestic transactions such as the borrowing or lending of foreign currency and the borrowing or lending of ringgit between non-residents or between a resident and a non-resident except with the written approval of BNM. These restrictions are specified in the *Foreign Exchange Administration Notices (2013)* issued by BNM.

The FSA provides that any document or information relating to the affairs or account of any customer of the bank shall not be disclosed by the bank or any person who is or has been a director, officer or agent of the bank to another person unless expressly permitted under the FSA. Under the PDPA, banks would also be required to collect, use and disclose personal data of its customers in accordance with the

provision of the PDPA and the customers shall have the right of access to their personal data to correct the same, if requested.

BNM has issued the *Prohibited Business Conduct* policy document which prohibits banks and other financial service providers from engaging in conduct which is deemed to be inherently unfair to financial consumers. This document provides guidance on prohibited business conduct, such as engaging in misleading or deceptive conduct, exerting undue pressure or influence, demanding payments for unsolicited financial services or products, coercing financial consumers to acquire financial service as a condition for acquiring another financial service and colluding to fix features or terms to the detriment of financial consumers.

For the purposes of ensuring effective and fair handling of complaints and for the resolution of disputes in connection with financial services or products, the FSA and IFSA provide for the approval of a financial ombudsman scheme. Where a dispute has been referred to a financial ombudsman scheme by an eligible complainant, the eligible complainant is not entitled to lodge a claim on such dispute with the Tribunal for Consumer Claims established under the *Consumer Protection Act 1999*.

The *Financial Services (Financial Ombudsman Scheme) Regulations 2015* and the *Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015* (collectively the "**Regulations**") came into force on 14 September 2015. The Regulations paved the way for the establishment of a financial ombudsman scheme as part of BNM's efforts to enhance financial dispute resolution arrangements for consumers and to strengthen consumer protection.

The Ombudsman for Financial Services ("**OFS**") commenced operations as the operator of the financial ombudsman scheme on 1 October 2016. The OFS serves as an independent redress mechanism with minimum formality for financial consumers to resolve disputes with financial service providers. Its services are an alternative to, and not a replacement for, legal actions taken in a court of law. The services of the OFS are offered free of charge to financial consumers. OFS operates based on the principles of independence, fairness and impartiality, accessibility, accountability, transparency and effectiveness. The OFS seeks to strengthen the financial consumer protection framework in an environment of increasing diversity with competitive offerings of financial products and services. In operating the scheme, the OFS incorporates enhanced governance and operational arrangements which is in line with international best practices to promote fair, effective and independent dispute resolution.

As mentioned above, **PIDM** is a government agency established under the *Malaysia Deposit Insurance Corporation Act 2011* ("**MDICA**") to (i) administer a deposit insurance system and a *takaful* and insurance benefits protection system, (ii) provide insurance against the loss of part or all of deposits for which a deposit-taking

member is liable and provide protection against the loss of part or all of *takaful* or insurance benefits for which an insurer member is liable, (iii) provide incentives for sound risk management in the financial system, and (iv) promote or contribute to the stability of the financial system. Banks licensed under the FSA and IFSA are member institutions of MIDC (together with insurance companies and *takaful* operators). PIDM has a wide range of legislative powers to intervene early in distressed members to mitigate the possibility of a member institution failure. Once a member institution is deemed no longer viable by BNM, PIDM can exercise its powers under the MDICA and assume control over the institution, for example, in a manner that minimises costs to the financial system.

Banks in Malaysia are required to comply with the *Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001* ("**AMLA**") which makes money laundering and terrorism financing, offences, and stipulates the measures to be undertaken for the prevention of the offences of money laundering and terrorism financing. The AMLA provides wide-ranging investigative powers including powers for law enforcement agencies and Public Prosecutor to freeze and seize properties that are involved or suspected to be involved in money laundering or terrorism financing, and the power of the court to forfeit properties derived from the proceeds of serious crimes.

Banks, as reporting institutions under AMLA, are required to take measures to prevent their institutions from being used as a conduit for money laundering and terrorism financing activities, such as conducting risk assessment, conducting customer due diligence, submitting suspicious transaction reports and cash threshold reports, maintaining and retaining records of transactions and implementing anti-money laundering and counter financing of terrorism ("**AML/CFT**") compliance programmes in line with the *AML/CFT – Banking and Deposit-Taking Institutions (Sector 1)* policy document issued by BNM.

Contributing firm

CHRISTOPHER & LEE ONG

Chapter authors



Evelyn Ch'ng

Christopher & Lee Ong



Fiona Sequerah

Christopher & Lee Ong

