



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Transfers of business

Applicable to:

1. Licensed banks
2. Licensed investment banks
3. Licensed Islamic banks
4. Licensed insurers
5. Licensed takaful operators
6. Transferee of business transfer schemes

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PART A OVERVIEW

1 Introduction

- 1.1 Section 100 of the Financial Services Act (FSA) and section 112 of the Islamic Financial Services Act (IFSA) require the prior written approval of the Bank for transfers of the whole or any part of the business of a licensed person.
- 1.2 The objective of this policy document is to facilitate business expediency while ensuring that business transfer schemes do not adversely affect the safety and soundness of a licensed person. The policy document also enables the Bank to safeguard, where necessary, the rights and interests of any person who is likely to be affected by the schemes.
- 1.3 This policy document outlines–
- (a) the types of transfers that require the prior written approval of the Bank¹; and
 - (b) in cases where approval is required, the documents or information to be submitted to the Bank² together with the application for an approval.

2 Applicability

- 2.1 This policy document is applicable to transferors and transferees (including non-licensed persons) intending to enter into a business transfer scheme under section 100 of the FSA or section 112 of the IFSA, as the case may be.
- 2.2 For a licensed person that is a foreign insurer or foreign takaful operator, the requirements in this policy document shall apply to the transfers of its–
- (a) Malaysian policies or Malaysian takaful certificates; and
 - (b) foreign policies or foreign takaful certificates issued in Malaysia.

3 Legal provisions

- 3.1 This policy document is issued pursuant to–
- (a) sections 47(1), 100, 143 and 266 of the FSA; and
 - (b) sections 57(1), 112, 155 and 277 of the IFSA.

¹ Pursuant to section 100(1) of the FSA or section 112(1) of the IFSA

² Pursuant to section 100(3) of the FSA or section 112(3) of the IFSA

4 Effective date

4.1 This policy document comes into effect on 5 August 2016.

5 Interpretation

5.1 The terms and expressions used in this policy document shall have the same meanings assigned to them in the FSA or IFSA, as the case may be, unless otherwise defined in this policy document.

5.2 For the purpose of this policy document–

“**S**” denotes a standard, an obligation, a requirement, specification, direction, condition and any interpretative, supplemental and transitional provisions that must be complied with. Non-compliance may result in enforcement action;

“**G**” denotes guidance which may consist of statements or information intended to promote common understanding and advice or recommendations that are encouraged to be adopted;

“**foreign takaful operator**” refers to a licensed international takaful operator or professional retakaful operator which is established as a branch in Malaysia and whose head office is incorporated outside Malaysia.

PART B REGULATORY PROCESS

6 Approval for transfers of business

- S** 6.1 Pursuant to section 100(1) of the FSA and section 112(1) of the IFSA, approval³ is hereby granted to any person to enter into an agreement or arrangement for a scheme to transfer the whole or any part of the business of a licensed person, **except** for transfers involving the following:
- (a) a business segment or unit⁴;
 - (b) impaired loans or financing⁵;
 - (c) loans, financing or other assets that are linked to projects of strategic importance to the nation, including by way of collateralisation;
 - (d) financial consumer services or products proposed to be transferred to a non-licensed person⁶;
 - (e) securitisation transactions where the underlying loans or financing are not serviced by a licensed person; or
 - (f) assets and liabilities, where the nominal or book value is at least RM 1 billion.
- S** 6.2 Any scheme to transfer the whole or any part of a licensed person's business covered under sub-paragraphs 6.1(a) to (f) shall be subject to the specific approval of the Bank under section 100 of the FSA and section 112 of the IFSA. The Bank may specify conditions on the approval granted, including the approval granted under paragraph 6.1. The transferor and transferee, as the case may be, must comply with such conditions as and when they are imposed.
- G** 6.3 The Bank may from time to time revise the list in sub-paragraphs 6.1(a) to (f).
- S** 6.4 An application under section 100 of the FSA and section 112 of the IFSA must be directed to Jabatan Penyeliaan Konglomerat Kewangan, Jabatan Penyeliaan Perbankan or Jabatan Penyeliaan Insurans dan Takaful, as the case may be.
- G** 6.5 Before making an application, the transferor and transferee should discuss the scheme with the Bank as soon as is reasonably practical. This is to enable the Bank to consider issues that are likely to arise in its assessment of the scheme.

³ For the avoidance of doubt, the Bank's approval in paragraph 6.1 includes approval for a securitisation transaction which falls under paragraph 6.1(d) or 6.1(f) where the underlying loans or financing are serviced by a licensed person.

⁴ These include the transfer of a mortgage loan book or a portfolio of insurance/takaful contracts in the context of an exit strategy.

⁵ These refer to loans and financing that are subject to the *Guidelines on the Disposal/Purchase of Non-Performing Loans by Banking Institutions* issued on 28 December 2005 and *Guidelines on the Disposal/Purchase of Non-Performing Financing by Islamic Banks* issued on 29 June 2007.

⁶ These include transfers where the reference assets are used for the settlement of credit derivative transactions.

7 Submission requirements

- S** 7.1 Pursuant to section 100(3) of the FSA and section 112(3) of the IFSA, an application for an approval must be supplemented with the following:
- (a) by the transferor
 - (i) approval from the transferor's board for the proposed business transfer scheme;
 - (ii) details of the proposed business transfer scheme, including a description of the purpose of the scheme, the assets and liabilities to be transferred, their values and the purchase consideration;
 - (iii) a report on the assessment made, and relevant mitigation measures proposed, by the transferor on the effect of the proposed business transfer scheme on the interests of any person likely to be affected by the scheme;
 - (iv) where applicable, a valuation report on the liabilities to be transferred, prepared by the appointed actuary of the licensed insurer or licensed takaful operator;
 - (v) where applicable, the assessment by the Islamic financial institution's Shariah Committee that the business transfer scheme is undertaken in accordance with Shariah requirements; and
 - (vi) any other information as may be required by the Bank.
 - (b) by the transferee
 - (i) approval from the transferee's board for the proposed business transfer scheme;
 - (ii) where the transferee is a licensed person, a report on the assessment made by the transferee on the—
 - (A) risks associated with the business to be acquired and potential impact to the transferee's financial condition; and
 - (B) readiness of its existing infrastructure and resources to manage the business to be acquired;
 - (iii) where the transferee is not a licensed person, details of its shareholding structure depicting legal and beneficial ownership, source of funding for the scheme and information on the board and senior management;
 - (iv) for transfers of insurance policies or takaful certificates, an acknowledgement that the transferee will assume liability for claims which have been incurred but not yet reported; and
 - (v) any other information as may be required by the Bank.