Response to feedback received

Prohibited Business Conduct

Introduction

Bank Negara Malaysia (the Bank) has issued today the policy document on Prohibited Business Conduct, taking into account comments and feedback from the industry following issuance of the concept paper on 4 March 2014.

The Bank considered all comments and proposals received. The Bank’s responses to the main issues raised are set out in this document.

Bank Negara Malaysia
17 November 2014

1. Responsibility over third party service providers

1.1. Several financial service providers (FSPs) sought clarification whether the FSP will be held responsible for breaches by outsourced service providers (service providers) if the FSP has taken all possible actions to prevent such breaches.

1.2. When an FSP uses service providers, the FSP, as the principal, is generally held accountable for their conduct. FSPs are therefore responsible to ensure that service providers comply with the requirements of the law. When there is a breach of requirements by service providers, the Bank will consider the adequacy of controls instituted by the FSP and the extent to which an FSP has taken reasonable steps to ensure the effective implementation of controls designed to prevent and detect breaches by service providers. This includes the effectiveness of due diligence conducted by the FSP over potential service providers, mechanisms to review the performance of service providers on an ongoing basis and whether the FSP has taken due care in structuring incentive schemes for service providers to promote their proper conduct. These considerations will be taken into account in determining the corrective actions or penalties that will be imposed on the FSP, if any.

2. Usage of 'limited supply' (paragraph 8)

2.1. Several FSPs sought further clarification on the example of 'false use of limited supply', which is deemed as misleading or deceptive.

2.2. FSPs should not advertise or market their financial services or products (including any promotional gifts) as though they will be available for a limited period of time, or supply is limited, when this is not the case. The intention is to ensure that FSPs do not mislead consumers in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.

2.3. Any representations made relating to limited stocks or quotas must be based on actual limitations. In this regard, the use of the term “while stocks last”, or “first-come-first-serve basis” would not be misleading if the offer is truly limited to a specified restricted quantity. Further, advertisements that clearly indicate the actual quantity of gifts or products that are available will not be regarded as misleading to financial consumers.

3. Definition of undue pressure or influence (paragraph 9)

3.1. Several FSPs sought further clarification on the definition of exerting undue pressure or influence, including the definition of “excessive contact or communication” and “persistent solicitations”. A few FSPs also requested for clarification on debt collection practices that may be considered as exerting undue pressure or influence. Text has been added in the document to provide greater clarity in these areas.

4. Consumer’s acceptance for renewal of policies and increase of sum insured (paragraph 10)

4.1. A few FSPs have requested for clarification on the applicability of paragraph 10 to the renewal of insurance policies and takaful certificates. This is addressed in paragraph 10.4 of the document.

5. Product bundling practices (paragraph 11)

<u>Pricing of bundled products</u>

5.1. The document prohibits FSPs from creating a barrier to the purchase of unbundled products, for example by pricing the unbundled products at a level that is prohibitively expensive in comparison to the bundled product. Several FSPs sought clarification on the pricing of unbundled products that is considered as prohibitively expensive and factors that the Bank will consider in making such assessment. The factors for the Bank’s consideration are added in paragraph 11.2 of the document.

Compulsory bundling of insurance or takaful with credit facilities

5.2. The document allows FSPs to require financial consumers to purchase mortgage reducing term assurance/takaful (MRTA/MRTT) in the case of home financing. Several FSPs wanted to understand the rationale for not allowing the same flexibility for other types of credit facilities.

5.3. The Bank views the requirement by some FSPs for borrowers to purchase MRTA or MRTT with home financing as serving primarily to provide a social safety net for the family members of borrowers against the risk of losing their home in the event of the death of the borrower.

5.4. The Bank notes that consumer choice continues to be preserved under the existing environment as borrowers may obtain financing from other banks that do not require the bundling of MRTA or MRTT with home financing. The Bank may review this guidance if it is found that consumer choice appears to be unduly restricted at the industry level, such that borrowers are unreasonably deprived of access to home financing facilities due to the added costs associated with MRTA or MRTT.

5.5. For other types of credit facilities, FSPs are allowed to require financial consumers to acquire another financial service or product only if it is specifically required or permitted in the standards issued by the Bank. For example, under the policy document on credit cards, an applicant who is unable to prove his annual income shall be required by the credit card issuer to place a fixed deposit of an amount equivalent to the credit limit granted. As the Bank expects FSPs to base financing decisions on robust affordability assessments, this is mainly intended for consumers who can afford such facilities but due to their nature of occupation (e.g. self-employed or retirees) are not able to provide income documentation.

Applicability for insurance riders

5.6. A few FSPs requested for clarification on whether the practice of requiring consumers to purchase a basic insurance plan before purchasing a rider is considered a prohibited conduct. This is addressed in paragraph 11.1(d) of the document.

6. Collusion to impose premium or contribution loading (paragraph 12)

6.1. Several FSPs sought clarification on whether the practice of imposing a minimum motor premium or contribution loading for the purchase of motor insurance or takaful policy is considered a prohibited conduct.

6.2. FSPs are free to determine their own premium or contribution rates, subject to existing tariff requirement, as long as there is no collusion between the FSPs or with any other person.