Summary Table - Consultation Document

The Proposed Amendments to the Development Financial Institutions Act 2002

The enhanced regulatory framework for development financial institutions (DFIs) shall continue to preserve its unique characteristics in meeting its socio-economic mandates whilst maintaining its operational safety and soundness. In addition, the changes made also keep abreast with the changes in other regulatory laws governing financial institutions.

The draft bill amongst others emphasises greater accountability and expectations, compliance with prudential requirements as well as enhanced regulatory enforcement areas. The highlights of the changes made to the Act are as follows:

PART A: Three (3) enhanced areas

Strengthened corporate governance and enhanced role of the Board and Senior Management			
No	**Purpose**	**Proposed Amendments**	**Section of DFIA**
1.	Strengthened 'fit and proper' criteria to ensure Chairmen, CEOs, Directors and Senior Officers of DFIs can exercise responsibilities in a sound manner and with diligence, does not threaten the interest of the stakeholders and the general public and demonstrates financial integrity	• Strengthened 'fit and proper' criteria are incorporated in the main parts of corporate governance and the corresponding Schedule • DFIs' Chairmen/CEOs/Directors/Senior Officers are required to meet the 'fit and proper' criteria at all times	Section 6A and First Schedule Section 6A

2.	Boards and directors of the DFIs are given greater accountability in safeguarding the interest of DFIs' depositors and stakeholders	• To legislate the functions and duties of the Board of DFIs • To legislate the duties of directors in DFIs	Section 5 Section 5A
3.	Legislate the approval process in the appointment of DFIs' CEOs/ Directors	• To incorporate in the Act the power of the Minister to approve the appointment of CEOs/ Directors • Only 'fit and proper' candidates verified by Bank Negara Malaysia (BNM) and approved by the Minister can be appointed by the DFIs	Section 6 Section 6
Business activity of DFIs			
1.	To ensure that the DFIs' business activities remain focused within their mandate	• To expand the requirements which require DFIs to seek BNM's approval for any acquisition or holding of material interest in corporation • To ensure that investments made by the DFIs in non-financial related subsidiaries or corporations are in line with its mandate	Section 25 Section 26
2.	Flexibility for DFIs to grant credit facilities channelled to its mandated sector (Subject to safeguards instituted by BNM)	• To allow DFIs to enter into related party transactions subject to conditions specified by BNM. This is to ensure that necessary controls and measures are in place to safeguard the DFIs' financial condition	Section 28

3.	Definition of credit exposure to a single party to reflect the actual risk exposure assumed by the DFIs in its business activities	• Change of the term from ‘credit to single person’ to ‘single counterparty exposure’. This is aimed to capture the interconnectedness arising from the broader scope of credit extended by DFIs and to safeguard DFIs against exposures, which may potentially threaten their financial condition	Section 29
4	Clear accountability on the financial and operational affairs of the DFIs	• Specify the role of the DFIs’ Board in ensuring that the business strategies are consistent with its mandate, capacity and capability • Removal of the current operational procedures on the submission of statement of corporate intent and annual funding requirements	Section 5 Section 34 & 35
Regulatory Oversight			
1.	Promote the safety and soundness of DFIs through mandatory compliance of BNM’s requirements	• To incorporate the requirements for DFIs to comply with the standards issued by BNM and to align to these standards with its internal policies and procedures • Specific requirement on DFIs’ directors and officers responsibility to ensure compliance with the internal policies and procedures	Section 41 Section 41
2.	Enhanced transparency on DFIs’ financial reporting and internal controls	• To incorporate the requirements on compliance of approved accounting standards including specifications made by BNM in the absence of comparable Shariah accounting standards • To incorporate the external auditors’ duty to report to BNM in the event there is weakness in internal controls or occurrences of events that could potentially pose significant or material impact on DFIs’ financial position	Section 75 Section 71

3.	Allow BNM to undertake pre-emptive measures in ensuring the safety and soundness of DFIs	• To incorporate pre-emptive triggers that would allow BNM to take actions to prevent any threat to the viability or the solvency of a DFI. The pre-emptive triggers include: – Any action that may jeopardise the DFIs' safety and soundness – Where the DFI is not managing its business in accordance with sound risk governance principles – Conduct of business activities which is not consistent with the purpose of its establishment/mandate	Section 54
4.	Additional areas allowed under examination and investigation by BNM	• To incorporate enhanced provisions on examination which include amongst others: – Expanding the forms of evidence (other than documents) to be admissible in court – To provide outright power to examine DFIs' subsidiaries – Prohibit DFIs from disclosing information produced by BNM – Expanding the application of non-liability of person for breach of contract in providing information to the examiner. • To incorporate enhanced provisions on investigation which include amongst others: – Expanding the form of evidence (other than documents) to be admissible in court – To provide outright power to examine DFIs' subsidiaries – Flexibility for Investigating officer (IO) in undertaking search – Clear governance to deliver an order or notice – Protection for agent provocateur	Part VIII: Section 82-106

PART B: Three (3) new areas

Shariah requirements		
Purpose	**Proposed DFIA Act 2002**	**Section of DFIA**
To ensure that the Islamic business activities of the DFIs comply with the same Shariah requirements as imposed on Islamic banks under the Islamic Financial Services Act 2013	• To prescribe the Shariah requirements on areas which include Shariah compliance and Shariah governance as well as audit on Shariah matters • To incorporate the requirement for BNM's approval for the setting up of Islamic window or establishment of full-fledged Islamic business activities • To specify expectations to maintain separate capital funds for Islamic business activities	Part IIIA: Section 33A-33N Section 33A Section 33B
Business conduct and consumer protection		
To ensure DFIs observe similar regime of consumer protection as imposed on other financial services providers regulated by BNM, which covers business conduct, disclosure, privacy and dispute resolution	• To prohibit DFIs from engaging in any prescribed business conduct which may harm financial consumers • To incorporate the enabling power for BNM to prescribe and specify business conduct and consumer protection • To align secrecy requirements and permitted disclosure to that imposed on the other financial services providers regulated by BNM	Part IVA: Section 42A-42E Section 42C Section 42D and Fourth Schedule

Regulatory enforcement framework		
Provide a wider range of enforcement actions with the ability to respond effectively to non-compliance. This is to ensure that there is consistency in the financial services regulatory enforcement framework.	• To incorporate broad and enabling provisions on penalty framework which encompass: – Administrative penalties – Civil penalties – Criminal penalties	Part VIIIA & Part VIIIB: Section 106A-106L

Bank Negara Malaysia
15 October 2014