

The Central Bank of Malaysia Act 2009

Introduction

The Central Bank of Malaysia Act 2009 (“the Act”) which came into force on 25 November 2009 heralds a new era for central banking in Malaysia. The Act is a completely new piece of legislation which replaces the Central Bank of Malaysia Act 1958. The Act modernises the central banking law of the country and brings greater clarity and focus to the mandates of the Bank and provides the Bank with the necessary powers and autonomy to continue to undertake its mandates effectively. Commensurate with these powers and autonomy of the Bank, the governance framework has been strengthened with the accountability and transparency of the Bank significantly enhanced. Bank Negara Malaysia, the body corporate which was established under the Central Bank of Malaysia Act 1958, continues as the central bank for Malaysia under the new Act notwithstanding the repeal of the 1958 Act.

Mandates

The Act states the principal objects of the Bank are to promote monetary stability and financial stability conducive to the sustainable growth of the Malaysian economy. The Act also provides that the primary functions of the Bank are to:

- (a) formulate and conduct monetary policy in Malaysia;
- (b) issue currency in Malaysia;
- (c) regulate and supervise financial institutions which are subject to the laws enforced by the Bank;
- (d) provide oversight over the money and foreign exchange markets;
- (e) exercise oversight over payments systems;
- (f) promote a sound, progressive and inclusive financial system;
- (g) hold and manage the foreign reserves of Malaysia;
- (h) promote an exchange rate regime consistent with the fundamentals of the economy; and
- (i) act as financial adviser, banker and financial agent of the Government.

In giving effect to the above objects and functions, the Bank is required to have regard to the national interest.

Monetary stability

The Act institutionalises the existing practices of the Bank for the formulation and implementation of monetary policy with the establishment of the Monetary Policy Committee (“MPC”). Monetary independence, which has been enjoyed by the Bank in the 50 years of its existence and which is key to the effective formulation and implementation of monetary policy, has now been legislated for in the Act. In promoting monetary stability, the Act requires the Bank to pursue a monetary policy which serves the interests of the country with the primary objective of maintaining price stability while giving due regard to the developments in the economy. To ensure the soundness of monetary policy decisions, the Act incorporates extensive safeguards that include setting the criteria for the appointment of MPC members, the requirement for the publication of a monetary policy statement following every MPC meeting and the processes for the decision-making by the MPC. To implement the decisions of the MPC, the Bank is accorded flexibility to conduct monetary operations through a broad range of instruments (see box article “Monetary Policy Process under the Central Bank of Malaysia Act 2009”).

The exchange rate regime will continue to be determined by the Minister of Finance on the recommendation of the Bank. The Bank will autonomously conduct the foreign exchange operations to promote the efficient and effective functioning of the exchange rate regime and the foreign exchange market.

Financial stability

The duties and powers vested with the Bank under the Act establish the Bank as the financial stability authority for Malaysia. The Act gives the Bank the necessary powers to minimise the likelihood and impact of adverse developments that may affect financial stability including the financial intermediation process, the orderly functioning of the foreign exchange and money markets or public confidence in the financial system. The Bank continues to act as lender of last resort and may now additionally extend liquidity assistance to entities not regulated by the Bank but that are regarded as systemically important.

Expanded powers have been given to the Bank to promote financial stability including the power to obtain information for the purpose of identifying and monitoring risks to financial stability and undertake pre-emptive actions. The Act also empowers the Bank to facilitate the resolution of financial institutions which are in financial stress to ensure swift and orderly resolution, thereby minimising the impact and costs of the failure of a financial institution to the domestic economy and to preserve public confidence. Actions that may be taken by the Bank include purchasing capital instruments, financing the purchase of the business or capital instruments of such institutions, and transferring to and vesting the business or capital instruments of these institutions in the Bank, another financial institution or person. The Act further sets out a clear accountability framework for such actions and where such actions involve the transfer of business or capital instruments, the Act has put in place an independent valuation process.

Given the increased interconnectedness between the domestic financial system and the global financial system, the Bank has also been empowered to coordinate with other financial regulatory authorities on joint efforts in crisis prevention, management and resolution (see box article in Financial Stability and Payment Systems Report 2009 "Safeguarding Financial Stability under the Central Bank of Malaysia Act 2009").

Money and foreign exchange markets

The Act empowers the Bank to have oversight of the money and foreign exchange markets and the market for derivatives related to currency, securities and other financial instruments that are traded in these markets, to develop and maintain the orderly conditions and the integrity of these markets. These markets are core components of the financial system and have significant implications for the resilience of the financial system. The Bank is empowered to issue rules, codes, standards, principles or guidelines for these markets. The Bank may also appoint a self-regulatory organisation for the foreign exchange market and the market for derivatives related to currency, securities and other financial instruments that are traded in this market.

Financial inclusion

The Act makes an explicit provision for financial inclusion to be incorporated as one of the primary functions of the Bank. Financial inclusion is vital for creating balanced sustainable economic growth and provides the opportunity for all segments of the economy to benefit from economic progress. For this purpose, the Act empowers the Bank to establish funds to provide financing in exigent circumstances or to any segment of the economy to promote financial inclusion.

Islamic finance

Building on the existing legislative infrastructure for Islamic finance including the Islamic Banking Act 1983, the Takaful Act 1984 and the Government Funding Act 1983, the Act sets out a legal framework for the further development of the Islamic financial system in Malaysia. The Act gives due recognition to the Islamic financial system which operates in parallel with the conventional financial system and also mandates the Bank together with other agencies in Government to promote Malaysia as an international Islamic financial centre.

Under the Act, the Shariah Advisory Council which was established under the Central Bank of Malaysia Act 1958 continues to exist with its current members appointed by the Minister of Finance. The Act provides that new members to the Shariah Advisory Council will henceforth be appointed by the Yang di-Pertuan Agong in view of the enhanced role of the Shariah Advisory Council. Where a question concerning a Shariah matter arises in any court proceedings or arbitration relating to Islamic financial business, the court or arbitrator is required to refer such question to the Shariah Advisory Council for a ruling. The ruling made by the Shariah Advisory Council is binding.

Management of foreign reserves

The Bank will continue to manage the foreign reserves of Malaysia. The range of assets which the Bank can hold has been enlarged to include securities and financial instruments including derivatives that are approved by the Board of Directors. The Bank is required to manage the foreign reserves in accordance with the policies and guidelines issued by the Board of Directors.

Financial adviser, banker and financial agent to the Government

As in the Central Bank of Malaysia Act 1958, the Bank will continue to act as the financial adviser, banker and financial agent to the Government. In addition, the Act also provides for the Bank to advise the Government generally on economic matters that are within the competence and expertise of the Bank.

International co-operation

The Act empowers the Bank to engage in international co-operation by participating or providing financial resources in any arrangement or initiative with other central banks, monetary authorities or international financial institutions to promote monetary, financial or economic co-operation at the bilateral, regional or international level. The Bank shall also continue under the Act to exercise the rights and perform the obligations arising from Malaysia's or the Bank's membership, as the case may be, in the International Monetary Fund, Islamic Financial Services Board, Bank for International Settlements and any other international organisation as provided under federal law.

The Bank, with the approval of the Minister of Finance, is also empowered to issue regulations or directions to financial institutions to discharge the Government's international obligations under the resolutions passed by the United Nations Security Council.

Governance

The Act strengthens the general governance framework of the Bank, in particular, the oversight powers of the Board of Directors. The Board of Directors is responsible for the general administration of the affairs and business of the Bank and the approval of the budget and operating plan of the Bank. For the purposes of carrying out its oversight function under the Act, the Board is empowered to issue by-laws.

The Board in its oversight role is assisted by the Board Governance Committee, Board Audit Committee and the Board Risk Committee, whose members are non-executive directors.

The Board Governance Committee is responsible for examining and recommending the budget and operating plan of the Bank to the Board for approval. The Committee will also recommend the persons to be appointed to the MPC and other Committees of the Bank.

The Board Audit Committee is responsible for assisting the Board in its oversight of the integrity of the accounts and financial statements of the Bank, the effectiveness of the internal control system, the performance of the internal audit function and compliance with legal and regulatory requirements.

The Board Risk Committee is responsible for assisting the Board in the oversight on the management of the enterprise risks of the Bank.

Under the Act, the Governor and Deputy Governors are answerable to the Board for their actions and decisions. This is consistent with the Board's duty to keep under constant review the performance of the Bank in giving effect to its objects and functions and the use of the resources of the Bank (for a more detailed discussion of the governance aspect of monetary stability and financial stability functions of the Bank, see box article "Monetary Policy Process under the Central Bank of Malaysia Act 2009" and box article in Financial Stability and Payment Systems Report 2009 "Safeguarding Financial Stability under the Central Bank of Malaysia Act 2009").

Accountability

The Act provides for the accountability of the Bank to the Parliament, the Minister of Finance and the public in general.

The Bank continues to be accountable to the Parliament and the Public Accounts Committee under the Houses of Parliament (Privileges and Powers) Act 1952 and the respective Standing Orders of the Houses of Parliament. The Act also requires for the annual financial statements and report of the Bank to be laid in the Houses of Parliament within three months from the close of the financial year of the Bank. If the Houses of Parliament are not in session at that time, the annual financial statements and report of the Bank have to be laid at the next session of the Houses of Parliament.

The Bank is required to submit to the Minister, the Bank's statement of assets and liabilities on a fortnightly basis and its annual financial statements and report within three months from the close of the financial year.

The Bank is also required to keep the Minister informed of the policies relating to the principal objects of the Bank. In this respect, a mechanism has been put in place in the Act to resolve differences between the Minister and the Bank on such policies. In the event the differences are not resolved, the mechanism provides for the matter to be tabled to the Cabinet for a determination of the policy to be adopted by the Bank. In the event the differences remain, the matter is to be laid before the House of Representatives.

The Bank is required to keep the public informed of the monetary policy decisions of the Bank after every meeting of the MPC by publishing a monetary policy statement which shall include the rationale for the decision. Additionally, while the Bank is required to publish the statement of assets and liabilities of the Bank on a fortnightly basis, the annual financial statements and report have to be published within three months from the close of the financial year.

Conclusion

The Act provides a comprehensive legal foundation for the Bank to ensure monetary stability and financial stability and to foster a progressive, resilient and inclusive financial system to meet the challenges of the rapidly changing financial and economic landscape of the 21st century.