

FAQs on Fair Treatment of Financial Consumers

Bank Negara Malaysia has updated the list of FAQs below. For ease of reference, all recently added questions are indicated as ‘New’.

Paragraph and requirement	No.	Question	Answer
2.1 This policy document is applicable to a FSP as defined in paragraph 5.2.	1	Does the policy document apply to permitted capital activities (i.e. dealing with securities)?	The policy document is not applicable to any capital market services or products as defined in subsection 2(1) of the Capital Markets and Services Act 2007 (incorporating latest amendment up to 2018).
5.2 “Conduct risk” refers to risk arising from a FSP’s business conduct and practices that could result in poor financial consumer outcomes and have a negative reputational and/or financial impact on the FSP.	2	What does “poor financial consumer outcomes” mean?	Examples of poor financial consumer outcomes include the recommendation and sale of financial products: (i) which are not suited to the financial circumstances of financial consumers; (ii) that do not deliver what financial consumers were led to believe or expect; or (iii) which leads to financial consumers making bad financial decisions or choices due to poor disclosure of the financial product risks, charges, features and/or exemptions.
5.2 “Financial consumer” refers to any person- (a) who uses, has used or may be intending to use, any financial service or product- (i) for personal, domestic or household purposes; or (ii) in connection with a micro or small business as defined in	3	Does the policy document cover sophisticated and high net worth individuals?	Yes, the policy document is applicable to all financial consumers as defined in paragraph 5.2, which would include sophisticated and high net worth individuals.
	4	New: Does the policy document cover clients with the following profile, i.e. small enterprises with minimum annual revenue of RM40 million and a board of directors that exercises governance on the firm, and have bargaining power and	The policy document is applicable to customers that meet the definition of small enterprises as stipulated in the notification on Definition of Small and Medium Enterprises (SMEs) issued by Bank Negara Malaysia (BNM) on 27 December 2017. With regard to terms and conditions, the requirements on fair terms under Principle 2 do not apply to the terms of a contract which have been individually negotiated.

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the notification on Definition of Small and Medium Enterprises (SMEs) issued by the Bank on 27 December 2017 (BNM/RH/NT 028-51);	5	<p>understanding of financial services?</p> <p>New: Are large corporations/entity customers such as Business Banking, Global Banking, etc. considered as “financial consumer” and protected under the policy document on FTFC?</p>	Any entity that does not meet the definition of a micro or small business as defined in the notification on Definition of Small and Medium Enterprises (SMEs) issued by BNM on 27 December 2017 will not be covered under the FTFC PD.
<p>10.3 Senior management is primarily responsible for driving the FTFC agenda and embedding FTFC into the FSP’s corporate culture and core values. This includes-</p> <p>(a)</p> <p>(b) integrating FTFC into the business model, business strategy and business practices;</p> <p>(c) ensuring that decision making processes give adequate consideration to financial consumer interests;</p>	6	How can a FSP demonstrate compliance with this requirement?	FSPs should record and retain relevant assessments, reports or documentations to demonstrate that the senior management has integrated FTFC into business processes, which include both quantitative and qualitative information. These may include training materials to raise staff awareness and knowledge on FTFC, staff surveys to gauge understanding on internal policies, procedures and controls on FTFC, product development procedures that require analysis and identification of appropriate target markets, marketing and distribution procedures to ensure that financial products are sold to the identified target market, pre-sales testing of new financial products with focus groups, minutes of management meetings on FTFC matters (such as discussion on customer feedback and effectiveness in addressing sales-related complaints) and internal audit reports on effectiveness of implementation of FTFC policies, procedures and controls.

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10.5 A FSP shall ensure its staff, representatives and agents are trained on the core values and desired behaviour to deliver fair outcomes to financial consumers.	7	Does the requirement apply to staff undertaking functions that are not directly related to financial consumers, e.g. internal audit?	The requirement would apply to all staff with roles and responsibilities that may directly or indirectly have an impact on financial consumers' interests or experiences in dealing with the FSP, regardless whether the staff has direct contact with financial consumers. For example, staff involved in the design, development and testing of new financial products and promotional materials as well as internal auditors, in view of their role in providing independent assurance to the FSP on effectiveness of FTFC requirements. The objective is to ensure that relevant staff understand their respective roles and accountabilities in delivering fair outcomes to financial consumers.
10.10 Where the remuneration policy allows for variable remuneration, a FSP shall ensure that- (a) (b) the ratio between fixed and variable components are appropriately balanced;	8	What would be a balanced ratio between the fixed and variable components?	FSPs are given the flexibility to determine the appropriate ratio between the fixed and variable components of remuneration. The variable component must not be excessively high or tied solely to the achievement of sales volumes, revenue or targets. Sufficient weight should be placed on qualitative factors to serve as effective incentives for staff to deliver fair outcomes to financial consumers.
Paragraph 11 - Fair terms	9	New: Does paragraph 11 apply to micro or small businesses if these companies enter into industry standard contracts, for example, an ISDA Master Agreement for purposes of foreign exchange transactions or contracts with	Unless specified otherwise, generally, paragraph 11 will not apply if a FSP is required to adopt standard terms prescribed by international bodies such as the International Swaps and Derivatives Association (ISDA) for the purposes of carrying out specific transactions. Likewise, this applies to standard terms prescribed by PayNet for the use of payment-related services, unless FSPs are able to influence the contract terms in any way.

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		standard terms prescribed by payment systems such as PayNet?	
11.4 A FSP must ensure that terms in its standard contracts are fair to financial consumers.	10	Does the requirement apply to: (a) Contracts with SME customers? (b) Terms for products campaign? (c) Distributed products such as bancassurance and unit trust?	The requirement is applicable to all financial services and products developed by FSPs for financial consumers as defined under paragraph 5.2 of the policy document.
11.4 ...A term is regarded as unfair if it has a tendency to create a significant imbalance, whereby it shifts the rights and obligations significantly in favour of the FSP to the detriment of financial consumers.	11	How will the assessment be carried out in determining whether the FSP has caused detriment to financial consumers or the term is detrimental to financial consumers?	In assessing whether a term is unfair, FSPs should consider whether the term imposed is adversely biased in favour of the FSP or disproportionately disadvantageous to financial consumers. An unfair term accords the FSP with sole discretion or power to improve benefits to the FSP or to impose disadvantageous obligations on financial consumers. FSPs should always consider the potential detriment to financial consumers if the term were to be applied or relied on. Detriment to financial consumers includes non-financial detriment such as undue delay or distress likely to be suffered by financial consumers as a result of the unfair term.
	12	If certain actions can be taken against financial consumers due to default or breach of contract terms by the financial consumers,	This would depend on how the term is drafted, presented and effected by the FSP. A term that allows a FSP to take specific action against financial consumers due to breach of terms by the financial consumers is not unfair, provided that the term is

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		is it deemed as causing detriment to financial consumers?	set out in a clear and comprehensible way and is properly explained and disclosed to allow financial consumers to understand its implications prior to entering into the contract. Further, the actions that can be taken by the FSP must not be excessive, oppressive or unconscionable.
11.6(a) Terms are expressed in plain language.	13	Certain insurance jargon is required in the policy contract. How to ensure they are drafted in plain language?	Plain language should be used as much as possible. The use of technical jargon (if necessary) should be accompanied with explanations in layman terms. For example, a simple explanation on the meaning of a technical or legal term should be provided in the glossary.
11.6(c) Terms that impose obligations on financial consumers are given appropriate prominence.	14	Contracts would have obligations on the financial consumer throughout the contract. How can prominence be achieved?	Contracts should be organised and written in a manner that helps financial consumers to clearly identify and understand their obligations. FSPs are also expected to enhance their product disclosure sheets to include key contract terms relating to financial consumers' rights and obligations, and these should be highlighted and explained prior to financial consumers entering into the contract.
11.7 A FSP must not have contract terms that impose barriers which make it difficult for financial consumers to switch to another financial product or another FSP before the end of the contract tenure. Financial consumers must be	15	New: All contracts are entered at the customers' choice and discretion. Will the FSP be penalised for imposing a barrier on customers who wish to switch to another product as the FSP incurs cost when customers switch products?	<p>The objective of paragraph 11.7 is to ensure that consumers are not charged excessive or disproportionate costs that would act as a barrier to prevent them from switching to another product or to another FSP.</p> <p>While a FSP may recover its cost by imposing a charge on consumers for terminating a contract early, the charge must reflect the actual costs which would be incurred by the FSP as a</p>

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<p>able to switch financial products or FSPs without incurring disproportionate costs.</p>			<p>direct result of early termination of the contract. Such charges related to early termination or switching costs must be clearly disclosed to consumers at the point of entering into the contract.</p> <p>For the purposes of paragraph 11.7, 'disproportionate costs' refer to any additional charges imposed on consumers which exceed the actual costs to be incurred by the FSP as a direct result of the customer terminating the contract early. FSPs are advised to refer to the Guidelines on the Imposition of Fees and Charges on Financial Products and Services for guidance on BNM's expectations in relation to fees and charges.</p>
<p>11.8 A FSP shall include a clear and prominent statement to remind financial consumers to read and understand contract terms, and to discuss further with the FSP's staff, representative or agent if there are any terms that the financial consumers do not understand before signing a contract. A FSP must provide within a pre-contractual document, for financial consumers to acknowledge that the key contract terms affecting the obligations of the financial consumers have been</p>	<p>16</p>	<p>New: How does a FSP comply with this requirement for products or services offered over the phone (telemarketing) as it may not be feasible for consumers to read the terms, or to discuss further with the FSP's staff, representative or agent? Additionally for telemarketing sales, the pre-contractual document may only be sent to consumers after the phone call.</p>	<p>In line with paragraph 10.17 of the policy document on Responsible Financing, for products or services offered over the phone, a FSP's telemarketing staff, representative or agent must be able to explain the key terms affecting consumers' obligations during the call. Consumers should acknowledge that they understood the key terms prior to entering into a contract with the FSP during the call.</p> <p>Consumers must be reminded to read and understand the contract terms which will be sent to them after the call and to contact the FSP's staff, representative or agent if they have any queries on the terms before signing the contract.</p> <p>In addition, in line with the Guidelines on Product Transparency and Disclosure, a FSP must send the contract or agreement together with a product disclosure sheet to the consumers after concluding the sale over the phone once he/she has decided to</p>

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adequately explained to them.			purchase the financial product or service. This is to allow the consumer sufficient time to read and understand the contract terms prior to signing the contract or agreement. The contract should take effect after the consumer has read the terms and signed the contract.
12.8 The same expectations of transparency and disclosure shall apply to financial services or products which are offered digitally. If disclosure to and communications with financial consumers will only be undertaken through digital means, a FSP must ensure that this is made clear and acceptable to the financial consumers. A FSP must consider the profile of affected	17	New: For non-face-to-face online platforms where products or services are offered in real-time, would it meet the requirement if FSPs include a prominent statement to remind the customers to read, understand and reach out to the FSP if they need any assistance to understand the contract terms?	For financial products offered through electronic channels, apart from including a prominent statement to remind the customers to read and reach out to the FSP if they need assistance to understand the contract terms, the FSP must provide a pre-contractual document containing key contract terms affecting the obligations of customers. The customers should acknowledge that they have read and understood the key terms prior to entering into a contract with the FSP.
	18	New: On the requirement that a FSP must consider the profile of affected financial consumers in implementing fully digital disclosures, what if the products or services are offered to new customers, which means the FSP will not be able to consider the customer's profile at the point of the product offering but only after receipt of the relevant information from the new customer and conducting an assessment? In	The aim of transparency and disclosure is to ensure consumers receive timely and relevant information to make informed financial decisions (not just at the point of sale) that are appropriate to their needs. While a predominately paper-based disclosure may not meet today's consumer information needs, fully digital disclosure may also not be suitable for certain consumer segments. As such, a FSP must consider the profile of its consumers in implementing fully digital disclosure and communications. The requirement also applies to new customers. The technology and online solutions that enable digital on-boarding of new customers would facilitate the FSP in assessing the profiles of new customers.

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<p>consumers in implementing fully digital disclosures and communications and ensure that reasonable measures are taken to help financial consumers adjust to the change in the way the FSP interacts with its financial consumers.</p>		<p>addition, online channels have sufficient disclosures of the products or services features and terms, and FSPs carry out on-going communications with customers.</p>	<p>The FSP must recognise the importance of communicating effectively with consumers. For new customers, the FSP must ensure that at the point of signing up for a product or service, the customers are clearly informed of the mode of disclosure and on-going communication from the FSP. If communication with new customers will only be done through digital means, the FSP must ensure that this is acceptable to the customers. While BNM recognises that disclosure of product features and terms are available online, it is important for the FSP to clearly inform new customers if communication will only be done through digital means. This ensures that customers who are not in favour of this mode of communication has the option not to sign-on for the product or service.</p>
<p>13.2 A FSP shall establish policies which require staff, representatives and agents to carry out their duties and responsibilities with due care, skill and diligence in accordance with professional ethical standards.</p>	<p>19</p>	<p>What is meant by professional ethical standards?</p>	<p>Professional ethical standards are minimum levels of quality, moral, personal and/or work values and conduct expected of FSPs' staff, representatives and agents. These may include the professional code for the financial services industry published by the Financial Services Professional Board and code of ethics established by the FSP's board and senior management.</p>

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13.5 Before appointing representatives and agents to market or sell financial services or products or to recover payment from financial consumers, a FSP shall conduct proper due diligence on the representatives and agents.	20	What would be an acceptable scope of “proper due diligence”?	Due diligence checks on prospective representatives or agents should include assessing the individual or firm’s reputation, competence, performance track record, financial standing and fitness and propriety of the individual or the firm’s senior management.
13.8 A FSP shall not impose conditions that are unfairly prejudicial to a particular financial consumer or group of financial consumers to obtain a financial service or product from the FSP. In particular, a FSP shall not treat a financial consumer or group of financial consumers less favourably solely on the basis of arbitrary factors such as marital status, race or religion.	21	New: Are FSPs permitted to carry out segment marketing, which target specific segments of financial consumers?	Paragraph 13.8 does not restrict a FSP from targeting a defined segment such as high net-worth or investment-savvy customers for certain products or services. Neither would the requirement prevent a FSP from conducting product campaigns to promote a product or service which reflect the needs and preferences of the targeted segments. It is also recognised that there are situations where certain consumers are not on-boarded due to the need to meet regulatory requirements. The intent of paragraph 13.8 is to prohibit discriminatory practices against a consumer or a group of consumers primarily due to arbitrary factors which are <u>not</u> related to the FSP’s underwriting standards or compliance with regulatory requirements.
14.3 Staff, representatives and agents must ensure that any advice or recommendation on a financial service or product provided to financial consumers have a reasonable basis and are provided in the best	22	Would the requirement be applicable to products other than investment related products?	The requirement applies to any financial service or product which involve the provision of advice or recommendations to financial consumers. FSPs must observe the requirements under paragraph 14 to the extent they are relevant to the type of financial service or product offered.

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interests of financial consumers.			
14.5 A FSP shall have controls in place to ensure that its staff, representatives and agents preserve the confidentiality of the information disclosed by financial consumers. The information shall only be used for purposes of providing advice on or recommending a financial service or product to the financial consumers.	23	Is the information obtained from financial consumers restricted to recommending one financial product? Could FSPs reuse the information for other financial products?	Information collected from financial consumers can be used for recommending more than one financial service or product which the FSP offers. However, the FSP must take reasonable steps to ensure that the information remains relevant and up-to-date.
14.8 In determining the suitability of a financial service or product for a financial consumer, where relevant, staff, representatives and agents, shall assess whether- (a) the financial service or product is suitable to the financial consumer's financial objectives, needs, personal circumstances, financial situation, risk appetite and investment	24	Would this requirement be limited to financial products which are of high risk (e.g. non-capital protected) or apply to plain vanilla financial products?	The requirement applies to any financial service or product which involve the provision of advice or recommendations to financial consumers. FSPs must apply the requirements in the subparagraphs to the extent such are relevant to the nature of the financial service or product.

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horizon;			
14.12 A FSP shall disclose to financial consumers the quantum of any commission, prior to providing any advice or recommendation on the financial service or product.	25	Commission or other benefits are part of a FSP's business arrangement and the information is confidential. What is the intention of this requirement?	The disclosure of commission is important for financial consumers to make informed decisions when a financial service or product is marketed by the staff of the FSP and to facilitate comparison-shopping, which in turn promotes healthy competition. The FSP should refer to paragraph 14.13 for further elaboration on the quantum of commission.
15.8 A FSP must establish effective monitoring and evaluation mechanisms for all complaints and claims received. This shall include analysing the nature and trends of complaints and claims received and undertaking effective root cause analysis. A FSP shall take adequate measures to rectify the weakness identified and establish a mechanism for appropriate escalation of significant complaints and claims to senior management.	26	What is BNM's expectation on the analysis to be performed (i.e. what areas to be included and the measures involved)?	FSPs are given the flexibility to determine how such analysis should be conducted, so long as it is conducted in accordance with the requirement, whereby areas of weaknesses or lapses can be identified and appropriate measures can be taken to address such weaknesses effectively.
Appendix 2, Principle 2 Good Practices - The FSP gives	27	New: If the FSP notifies customers of changes to the	In cases where a customer has provided written consent to changes in the terms of a facility, the revised terms of the facility

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financial consumers reasonable notice in advance with valid reasons prior to making any alterations to contract terms and financial consumers are free to terminate the contract within a reasonable timeframe.		terms of a product via a letter and the customer signs off indicating his acceptance of such changes, can the changes take effect immediately upon the date of acceptance?	may take effect immediately.
Appendix 2, Principle 2 Poor Practices - The FSP includes terms that allow the FSP to unilaterally vary a contract without any valid reason or with ambiguous reasons such as “for any reason the bank sees fit” or “for any reason the bank considers reasonable at the time of the change”.	28	New: Are FSPs permitted to determine the contents of communication in relation to the change in contract terms?	<p>This example aims to illustrate that it is a poor practice to include unilateral variation clauses without any valid reasons as this would cause an imbalance in the rights and obligations of the parties to the contract. The example does not restrict the contents of communication by a FSP regarding the changes in contract terms. The FSP also has the flexibility to provide further information or explanation related to the revised terms.</p> <p>A variation clause is acceptable only if it permits the FSP to vary the terms for legitimate reasons described in the contract which are specific enough to ensure the power to vary cannot be used by the FSP at will to suit its interest, or in a manner that will be detrimental to financial consumers. Vague statements such as ‘for any reason the firm sees fit’ or ‘for any reason a firm considers reasonable at the time of the change’ are not acceptable due to their ambiguity and lack of specificity.</p>
Appendix 4 - Illustration of Qualitative Criteria in Performance Measures.	29	New: Some of the components in the Qualitative Criteria 1 and 2 are not applicable for all products and services offered by the FSP,	Appendix 4 is intended as an illustration of qualitative criteria in performance measures. Some of the examples may not be relevant to certain functions or products. A FSP must determine the appropriate qualitative criteria and weightage to apply which

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		e.g. investment horizon, which would be relevant only for wealth products. How does a FSP meet the requirement?	reflect the delivery of FTFC outcomes to its customers.
Appendix 5 - Contract terms which may be regarded as unfair.	30	Is the list of unfair contract terms applicable to insurers and takaful operators?	Yes, the list of terms that may be regarded as unfair is applicable to insurance contracts and takaful certificates.
Clause 1 - A term which requires the financial consumer to pay a disproportionately high sum in compensation or permit the FSP to retain entire sums paid by the financial consumer where the financial consumer terminates the contract before its maturity.	31	Can insurers impose surrender charge for certain investment-linked products? Such surrender charge is determined in line with the Investment-linked Product Guidelines.	Yes, insurers/takaful operators may levy surrender charge for the cancellation of a policy/certificate provided that the surrender charge is reasonable and reflects the expected expenses to be incurred by the FSP. The onus lies with the FSP to demonstrate that the charge is reasonable and reflective of expenses incurred. Insurers/takaful operators must not seek to profit from the surrender charge.
	32	Structured investments will incur unwinding fees if the financial consumer terminates the contract early. Does the clause apply to structured investment products?	<p>Clause 1 is relevant to all financial services and products. The term is unfair if it allows the FSP excessive discretion to decide the level of compensation or penalty and the manner in which the penalty is determined is unclear to financial consumers. Any penalty on the early termination of a contract must be clearly communicated to the financial consumers at the point of entering into the contract.</p> <p>If the unwinding fee allows the FSP to recover more than the costs the FSP is likely to incur as a result of early termination by financial consumers, the term is likely to be deemed as unfair.</p>

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	33	Does this clause apply to life policies and family certificates where there is minimal or no returns given should the client terminate the policy/certificate within the first 3 years of policy/certificate inception?	No, this clause does not apply to the query raised. The determination of surrender value would depend on the product features of a life policy or family certificate. However, FSPs must clearly disclose to financial consumers the consequences of terminating the life policy or family certificate in the early years, e.g. customers will receive less than the amount paid, with clear reasons on why this is the case.
Clause 2 - A term which requires the financial consumer to pay a disproportionately high sum in penalty as a consequence of a breach of contract by the financial consumer.	34	What would be the relevant factors that FSPs can take into account to ascertain whether the penalty is proportionate to the consequences of a breach of contract by the financial consumer?	A requirement for financial consumers to pay penalties for a breach which exceeds reasonable estimates of the costs to be incurred by the FSP as a result of the breach will be considered as disproportionate or excessive. A penalty for breach of contract must reasonably commensurate with the costs or loss likely to be suffered by the FSP as a result of the breach of contract by financial consumers. In other words, the penalty must not be arbitrarily determined.
Clause 3 - A term which makes the financial consumer fully liable for matters or losses incurred by the FSP that are not caused by the financial consumer.	35	FSPs should be entitled to be indemnified by the financial consumer for loss that is incurred as a result of the FSPs executing the financial consumer's instruction, or acting as an agent of the financial consumer.	As a rule of thumb, a term will not be deemed unfair if financial consumers are charged or held accountable for losses or damages (e.g. to the financial consumer's property) caused by the financial consumers' own actions, inactions or instructions. However, financial consumers should not be required to compensate the FSP for losses which are not due to the financial consumers' actions, inactions or instructions.
	36	Is this intended to include situations where a financial consumer remains fully liable for	No, the financial consumers remain liable for the debt owed to the FSP.

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		a debt when the collateral is destroyed by events outside of the financial consumer's control?	
	37	Does investment risk fall under clause 3 because it is outside of the financial consumer's control?	This clause is not applicable to investment products where financial losses are due to market fluctuations even though the losses are beyond the financial consumer's control.
	38	New: Does clause 3 apply to terms which accept liability for some types of loss or damage but exclude or restrict liability for other types of loss or damage? E.g. a FSP may accept liability for direct losses but not indirect losses.	<p>The rights and obligations under a contract cannot be considered balanced if the allocation of the parties' liabilities is significantly in the favour of the FSP. A term that transfers liability to financial consumers for all losses including due to circumstances where the FSP caused or contributed to the losses, will create a significant imbalance between the parties' rights and obligations under the contract. While a FSP may exclude liability for indirect losses with valid justification, the FSP must not require consumers to indemnify the FSP for any direct and indirect losses which are not due to the consumers' actions, inactions or instructions.</p> <p>A term that limits the FSP's liability may not necessarily be unfair, unless the term imposes disproportionate liability for losses on the consumers which creates a significant imbalance between the parties' rights and obligations under the contract.</p>

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	39	New: Does clause 3 apply if a FSP excludes its liability for events beyond the FSP's control, e.g. payment system failure, correspondent bank's acts or omission given that FSPs are required to use the services of correspondent banks in carrying out transactions on the customers' behalf?	Clause 3 aims to prevent a FSP from having contract terms which require financial consumers to absorb losses or be accountable for damages which are not due to the consumers' actions, inactions or instructions. While it is recognised that certain events (e.g. natural disasters) are beyond the FSP's control, FSPs generally have insurance coverage in such circumstances. It is therefore unreasonable for a FSP to seek indemnity from financial consumers for losses which are not due to the consumers' actions, inactions or instructions.
	40	New: Does clause 3 apply if a FSP excludes liability for any losses due to insolvency or bankruptcy? The recovery of the funds is subject to insolvency or bankruptcy proceedings governed by the Insolvency Act.	Paragraph 11.2(b) clearly states that the requirements under fair terms are not applicable to terms of contract which reflect statutory or regulatory provisions and requirements. Nevertheless, in unavoidable circumstances where customers may be liable for losses incurred by the FSP such as insolvency or bankruptcy proceedings, those circumstances must be clearly communicated to the customers at the point of entering into the contract.
Clause 6 - A term which excludes or limits the FSP's liability for breach of contract or non-performance of obligations by the FSP.	41	New: FSPs are subject to PayNet's terms for participating in the payment systems networks. FSPs are not able to negotiate such terms including the liability clause. In addition, the services of correspondent banks are used to facilitate customers' transactions.	The rights and obligations under a contract cannot be considered evenly balanced unless both the FSP and financial consumers are equally bound by their obligations under the contract. The intent of clause 6 is to prevent a FSP from having a term that gives the FSP the right to absolve itself from the duty to perform its obligations or allows the FSP to exclude or limit its liability for breach of contract or non-performance of its obligations. This is to ensure that financial consumers are not

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		<p>Hence, FSPs generally exclude liability for indirect losses and events beyond their control such as payment system failure, or a correspondence bank's acts or omissions. Would this be acceptable?</p>	<p>held liable for all losses arising from breach of contract or non-performance of obligations by the FSP, without adequate justification.</p> <p>It is recognised that in a commercial situation there could be unforeseeable events beyond the control of the contracting parties, which render the performance of obligations impossible. BNM also acknowledges that FSPs are obliged to participate in payment systems networks and be governed by their terms. Unless specified otherwise, a term that excludes or limits a FSP's liability due to unforeseeable events beyond the FSP's control, for example, payment systems failure is less likely to be deemed as unfair. Hence, if a FSP has legitimate grounds to limit or exclude its liability, the contract must clearly set out the types of liability that will be excluded or limited. The exclusion or limitation of liability must be fair, reasonable and must not be broad, vague or sweeping in scope.</p> <p>The FSP should also ensure that it does not preclude all liability for losses as a result of non-performance of obligations by the FSP's service providers. The FSP has chosen to enter into agreements with them and the financial consumers have no contractual rights against them. Some losses could be mitigated by including in the service level agreements with the FSP's service providers to recoup losses arising from the service provider's breach of obligations under the agreement.</p> <p>A term that transfers liability to financial consumers for all losses including due to circumstances where the FSP contributed to the loss, will create a significant imbalance between the rights</p>

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			and obligations of the parties. As such, the application of a term that excludes or limits the FSP's liability must be restricted to the specific circumstances as set out in the contract. In addition, such term must be brought to the attention of financial consumers at the point of entering into the contract.
Clause 8 - A term which excludes or limits the financial consumer's rights to take legal action or access to legal remedy in the event of total or partial non-performance of the FSP's contractual obligations.	42	New: Are FSPs permitted to seek indemnity from its financial consumers?	While a FSP may exclude or limit its liability for losses caused by events which are not reasonably foreseeable, the FSP must not require consumers to indemnify the FSP for the losses given that such events are also outside the consumers' control.
	43	If the insurance contract states that parties can only bring disputes to court for resolution because the proceedings in an arbitration setting are costly to both the insurer and policyholder. Is such a clause regarded as unfair?	Clause 8 applies to a term which has the object or effect of preventing or hindering financial consumers from enforcing their rights against the FSP in the event the FSP fails to perform its contractual obligations. Such term may have the effect of allowing the FSP to act unreasonably towards the financial consumers without any legal recourse, and this upsets the balance of the contractual rights to the financial consumers' disadvantage.
	44	New: FSPs should be able to exclude or limit the consumer's right to take legal action if the FSPs are obligated to comply with court orders, e.g. where the customer's account is garnished or a court order has been served on the FSP.	Clause 8 aims to prevent a FSP from depriving financial consumers of their rights to have access to legal remedy should the FSP fail to perform its contractual obligations. This expectation would not apply to circumstances where non-performance of the FSP's contractual obligations is due to the requirement for the FSP to comply with an order made by a court.

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<p>Clause 9 - A term which provides the FSP a right to vary the terms of the contract at its discretion without a valid reason and reasonable notice to the financial consumer.</p>	45	<p>What would be considered as a valid reason? FSPs may have good basis for not disclosing the reason for variation to the terms, e.g. relating to business confidentiality, risk of financial crime.</p>	<p>A unilateral variation clause may cause a significant imbalance in the rights and obligations of the parties to the contract. A variation clause is acceptable only if it permits the FSP to vary the terms for legitimate reasons described in the contract which are specific enough to ensure the power to vary cannot be used by the FSP at will to suit its interest, or in a manner that will be detrimental to financial consumers. Valid reason refers to a cause that is no wider than is reasonably necessary to protect the legitimate interests of the FSP, without resulting in detriment to financial consumers. Examples of valid reasons include changes in legislations, regulatory requirements or technology. Vague or sweeping statements such as 'for any reason the firm sees fit' or 'for any reason a firm considers reasonable' are not acceptable due to their ambiguity and lack of specificity.</p>
	46	<p>Will the requirements under fair contract terms affect variation clauses? Such variation clauses would be useful in the event there is a need to correct any operational error in the contract.</p>	<p>It is recognised that FSPs may have a legitimate need to be able to vary their contract terms. A variation clause intended solely to facilitate minor corrections to the contract is less likely to be unfair, provided it is supported by a valid reason and reasonable notice to financial consumers. A variation clause should be narrowly and clearly described, and set out the specific circumstances in which a variation may occur. Financial consumers should be given reasonable notice to consider the changes before it is effected and be accorded the right to terminate the contract without penalty.</p>

Paragraph and requirement	No.	Question	Answer
<p>Clause 10 - A term which provides the FSP a right to notify on variations to contract terms in any manner the FSP deems appropriate and the financial consumer is deemed to have agreed to the variation.</p>	47	<p>New: Would clause 10 depend on whether the term is reasonable based on the facts of the case and the nature of variation? Seek BNM's clarification on the effective means of communication in order for FSPs to notify the customer on the change of terms, especially considering the large number and where FSPs are highly encouraged to resort to digital options.</p>	<p>Clause 10 aims to prevent a FSP from notifying its customers of changes to contract terms in a manner that is less likely to reach the customers, yet they are deemed to have agreed to the revised terms. For example, notification via a notice posted on the FSP's website is less effective in ensuring timely disclosure in view that not all customers visit the FSP's website on a regular basis. A FSP has the flexibility to determine the most cost-effective means of notification. Nevertheless, in notifying variations to terms which have an impact on customers' rights or obligations, the FSP must ensure that the means of notification allows the information to reach the customers in a timely manner. Thus, it is important for the FSP to notify the customers directly, for example, through email. Publication of a notice on the FSP's website would be more effective if it is complemented with a notification to customers via SMS or email to check the FSP's website.</p>
<p>Clause 11 - A term which permits the FSP to unilaterally terminate the contract without reasonable notice except where there is a valid reason for doing so.</p>	48	<p>For insurance and takaful, unilateral termination of contract can be due to non-payment of premiums or for anti-money laundering reasons. Does this clause apply to these scenarios?</p>	<p>No. Clause 11 applies to terms which allow the FSP to cancel a contract at will, without having any valid reason or without it being reasonably necessary to protect the FSP's legitimate interest. A right for the FSP to cancel a contract without notice may be fair if its use is effectively restricted to situations in which there are serious grounds for immediate termination of the contract. There may be circumstances in which there is a real risk of loss or harm to the FSP, e.g. where there is a reasonable suspicion of criminality or due to non-payment of premiums or interests that are due. The grounds for cancellation of the contract without notice must be clearly indicated in the contract.</p>

Paragraph and requirement	No.	Question	Answer
	49	<p>New: Does clause 11 apply to product features which anticipate unilateral termination? E.g. where the facilities granted are available on an uncommitted basis such as overdraft, unconditionally cancellable or repayable on demand, and such clauses were made clear to financial consumers.</p>	<p>A term that gives the right for a FSP to cancel a contract without notice may be fair if its use is restricted to situations in which there are serious grounds for immediate cancellation of the contract or due to specific features of certain products. However, the FSP must clearly disclose to financial consumers the basis for unilateral termination of the contract prior to the consumers signing up for the product.</p>
	50	<p>New: Does clause 11 apply to terms which allow a FSP to suspend or terminate an account without notice or reason given, for example, due to suspected illegal activities?</p>	<p>Clause 11 applies to terms which allow the FSP to cancel a contract at will, without having any valid reason or without it being necessary to protect the FSP's legitimate interest. A right for the FSP to cancel a contract without notice may be fair if its use is effectively restricted to situations in which there are valid grounds for immediate termination of the contract. E.g. to deter money laundering or terrorist-related financing. The grounds for cancellation of the contract without notice must be clearly indicated in the contract.</p>

Paragraph and requirement	No.	Question	Answer
Clause 12 - A term which gives the FSP the discretion to refuse the financial consumer's request to terminate the contract without any valid reason.	51	There are certain products which the FSP cannot allow the financial consumer to terminate the contract as this may result in the FSP committing a breach on its agreement with a third party, which is entered as a result of the contract between the FSP and the financial consumer.	Generally, a term which states that financial consumers are not allowed to cancel the contract 'under any circumstances' or 'only with the FSP's agreement' is likely to be considered unfair as it undermines the financial consumers' right to end the contract. However, if there are circumstances which make it impossible or impractical to end the contract prematurely, those circumstances must be specifically described and clearly communicated to the financial consumer at the point of entering into the contract.
Clause 14 - A term which allows the FSP to assign or transfer the FSP's rights and obligations under the contract to the detriment of the financial consumer.	52	Is there a specific test to determine if assignment of the FSP's rights and obligations would be detrimental to the financial consumer?	Generally, an assignment clause is less likely to be unfair if it allows the FSP to assign or transfer its rights and obligations only in circumstances which ensure that financial consumers' rights under the contract will not be detrimentally affected by the assignment or transfer. There is no specific test to determine whether the assignment would be detrimental to the financial consumer as such would depend on the nature of the assignment or transfer of rights and obligations.
Clause 15 - A term which allows the FSP to set a minimum prescribed rate for a retail loan or financing product, unless required under Shariah requirements.	53	New: If the interest rate of the housing loan is based on Base Lending Rate or the FSP's ceiling rate (whichever is lower), should it be considered as minimum prescribed rate?	A financing rate based on the FSP's Base Rate or Base Lending Rate will not be deemed as setting a minimum prescribed rate. However, a financing rate which is subject to a minimum limit would be considered as the FSP setting a minimum prescribed rate, unless the limit is based on Shariah requirements.