



Prohibited Business Conduct

Applicable to:

1. Licensed banks
2. Licensed investment banks
3. Licensed Islamic banks
4. Licensed international Islamic banks
5. Prescribed development financial institutions
6. Licensed insurers
7. Licensed reinsurers
8. Licensed takaful operators
9. Licensed retakaful operators
10. Licensed international takaful operators
11. Approved operators of payment system
12. Approved issuers of designated payment instrument
13. Approved issuers of designated Islamic payment instrument
14. Approved insurance brokers
15. Approved takaful brokers
16. Approved financial advisers
17. Approved Islamic financial advisers
18. Registered operators of payment system
19. Registered adjusters

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PART A OVERVIEW

1. Introduction

- 1.1 The Financial Services Act 2013 (FSA), Islamic Financial Services Act 2013 (IFSA) and the Development Financial Institutions Act 2002 (DFIA) prohibit financial service providers (FSPs) from engaging in conduct which is deemed to be inherently unfair to financial consumers. Such prohibited business conduct is set out in Schedule 7 of the FSA and IFSA and the Second Schedule of the DFIA.
- 1.2 The list of prohibited business conduct under the Acts complements and reinforces existing standards on business conduct and consumer protection issued by Bank Negara Malaysia (the Bank), and serves to:
 - (a) ensure that financial consumers are not provided with misleading or deceptive information in connection with a financial service or product;
 - (b) prevent unreasonable business practices that intimidate or exploit financial consumers;
 - (c) prevent business practices that restrict the freedom of financial consumers to choose between financial services or products available to them; and
 - (d) prevent collusive business practices that may result in unfavourable outcomes to financial consumers.
- 1.3 Guidance relating to prohibited business conduct set out in paragraphs 5 and 6 of Schedule 7 of the FSA and IFSA, and paragraphs 5 and 6 of the Second Schedule of the DFIA are issued in consultation with the Malaysia Competition Commission.
- 1.4 The policy document is issued to provide guidance on descriptions of prohibited business conduct as set out in Schedule 7 of the FSA and IFSA and the Second Schedule of the DFIA, and the factors that the Bank will consider in determining whether an FSP has engaged in prohibited business conduct.
- 1.5 The document does not aim to provide a definitive response to any particular conduct, but serves as a guide on when a conduct may be regarded as a prohibited business conduct as set out in Schedule 7 of the FSA or IFSA or the Second Schedule of the DFIA. The final determination of whether any particular conduct is prohibited will require consideration of the specific facts of each case.

2. Applicability

- 2.1 This document is applicable to FSPs as defined in paragraph 5.2.
- 2.2 In the course of doing business, FSPs may appoint other persons such as agents, representatives and outsourced service providers (service providers) to act on their behalf in dealing with financial consumers. FSPs are

responsible for ensuring that the service providers comply with provisions on prohibited business conduct under the FSA, IFSA and DFIA, as informed by the guidance in this document.

3. Legal Provisions

- 3.1 The document is issued pursuant to:
- (a) sections 123(3) and 124(2) of the FSA;
 - (b) sections 135(3) and 136(2) of the IFSA; and
 - (c) sections 42C(3) and 42D(2) of the DFIA.

4. Effective date

- 4.1 This document comes into effect on 15 July 2016.

5. Interpretation

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

- 5.2 For the purpose of this document:

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

“**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;

“**Financial Service Provider**” or “**FSP**” means:

- (a) a bank, an investment bank and an insurance company (including a reinsurer) licensed under the FSA;
- (b) an Islamic banks, an international Islamic bank, a takaful operator (including a retakaful operator) and an international takaful operator licensed under the IFSA;
- (c) a development financial institution prescribed under the DFIA;
- (d) a payment systems operator, an issuer of a designated payment instrument, an insurance broker and a financial adviser approved under the FSA;
- (e) a payment systems operator, an issuer of a designated Islamic payment instrument, a takaful broker and an Islamic financial adviser approved under the IFSA; and
- (f) a payment system operator that provide merchant acquiring services and adjusters registered under the FSA.

6. Policy document superseded

- 6.1 This policy document supersedes the policy document on *Prohibited Business Conduct* issued on 17 November 2014.

PART B FINANCIAL CONSUMERS

7. Definition of financial consumers

- 7.1 **Financial consumers** are any persons who use, have used or may be intending to use any financial service or product offered by FSPs;
- (a) for personal, domestic or household purposes; or
 - (b) in connection with a small business as specified in paragraph 7.2.
- S** 7.2 For the purposes of sections 123(3) of the FSA, 135(3) of the IFSA and 42C(3) of the DFIA, the Bank specifies that a small business means a micro business or a small business as defined in the Circular on New Definition of Small and Medium Enterprises (SMEs) issued by the Bank on 6 November 2013.

PART C GUIDANCE ON PROHIBITED BUSINESS CONDUCT

8. Engaging in misleading or deceptive conduct

1. *Engaging in conduct that is misleading or deceptive, or is likely to mislead or deceive in relation to the nature, features, terms or price of any financial service or product.*
2. *Inducing or attempting to induce a financial consumer to do an act or omit to do an act in relation to any financial service or product by —*
 - (a) *making a statement, illustration, promise, forecast or comparison which is misleading, false or deceptive;*
 - (b) *dishonestly concealing, omitting or providing material facts in a manner which is ambiguous; or*
 - (c) *recklessly making any statement, illustration, promise, forecast or comparison which is misleading, false or deceptive.*¹

- G** 8.1 The prohibitions under paragraphs 1 and 2 of Schedule 7 of the FSA and IFSA and paragraphs 1 and 2 of the Second Schedule of the DFIA collectively cover all misleading and deceptive business conduct.
- G** 8.2 A conduct is any action or statement (including inactions or omissions) related to the promotion, sale or supply of financial services or products to financial consumers, including any reference to the features or price of a financial service or product, the FSP itself or other FSPs. An action or statement for this purpose includes an action or statement carried in an advertisement, product illustration, statement of comparison, promotional or marketing material and written or oral sales presentations.
- G** 8.3 The Bank considers a business conduct to be misleading or deceptive where such conduct has the tendency or capacity to mislead or deceive financial consumers in relation to a financial service or product.
- G** 8.4 In determining whether an FSP is engaging in misleading or deceptive conduct the Bank will consider, among others, the following factors:
- (a) whether the FSP has met standards issued by the Bank on product transparency and disclosure, and proper advice practices; or
 - (b) the circumstances in which the alleged misconduct occurred, for example the manner in which information was communicated to financial consumers, and whether it was appropriate to the level of financial knowledge and understanding of the person receiving the information.
- G** 8.5 For additional clarity, the following are **non-exhaustive examples** of misleading or deceptive conduct by an FSP in relation to financial services:

¹ Paragraphs 1 and 2 of Schedule 7 of the FSA and IFSA and paragraphs 1 and 2 of the Second Schedule of the DFIA

- (a) Falsely claiming that the financial service or product has been authorised or endorsed by a certain body;
- (b) Falsely stating that financial services or products (including any promotional gifts) are only available for a limited time or is in limited supply, to elicit an immediate decision, when supply is in fact readily available or unrestricted;
- (c) Falsely presenting a financial consumer's rightful entitlement, e.g. the right to redress, as the FSP's exclusive offer to the financial consumer;
- (d) Claiming that a non-principal protected product is a deposit product;
- (e) Misrepresenting the benefits, advantages, conditions or terms of any financial service or product, including another FSP's financial service or product;
- (f) Giving prominence to the returns on a financial service or product without giving adequate or equal prominence to significant terms and conditions, risk warnings, or making such terms or conditions obscure, as this may mislead financial consumers to form unrealistic expectations on the returns that will be earned;
- (g) Describing a financial service or product as 'free' or 'at no cost' when there are charges or conditions imposed during the term of the account or contract;
- (h) Comparing returns on non-principal protected investment products with principal-protected deposit products, without adequately explaining the risk that a financial consumer may lose all or part of the principal amount invested in the investment products;
- (i) Omitting material facts that are relevant for the financial consumer to make an informed decision, including using small print to obscure such facts;
- (j) Luring financial consumers with attractive promises, for example promotions or gifts, when the FSP is aware that it is not able to reasonably fulfill such promises;
- (k) Accepting payments or consideration for financial services or products without intending to or being able to supply the services or products;
- (l) Misrepresenting conventional insurance products linked to Shariah-compliant funds as takaful products;
- (m) Inducing a person intending to enter into an insurance or takaful contract to misrepresent or omit material facts to an insurer or takaful operator; and
- (n) Using the term "zero entry cost" or "zero moving cost" in property financing if the costs are ultimately passed on to the financial consumer during the tenure of the loan.

9. Exerting undue pressure or influence

3. *Exerting undue pressure, influence or using or threatening to use harassment, coercion, or physical force in relation to the provision of any financial service or product to a financial consumer, or the payment for any financial service or product by a financial consumer.*²

- G** 9.1 An FSP is regarded to be exerting undue pressure or influence on a financial consumer if it is involved in the following:
- (a) Exploiting a position of power or control over a financial consumer to exert pressure that unreasonably limits the financial consumer's ability to make an informed choice;
 - (b) Harassing a financial consumer by making unnecessary or excessive contact to the point where the financial consumer feels intimidated, tired, confused or demoralised; or
 - (c) Using, or threatening to use any physical or forceful actions that restrict the financial consumers' choice or freedom to act.
- G** 9.2 The prohibition covers any business practices relating to the sale or provision of financial services or products, as well as in the collection of payments from financial consumers. Such practices include the promotion of financial services or products by sales and marketing representatives, whether through door-to-door, telemarketing, or other channels, and the collection of debt payments by an FSP or their authorised debt collectors.
- G** 9.3 FSPs are not prohibited from taking actions to collect debt or advising consumers on the consequences of not repaying debt. However, FSPs must not threaten to take actions that are not legally possible in order to coerce the financial consumer to repay their debt. In this regard, FSPs should be guided by the Bank's expectations as set out in the Fair Debt Collection Practices.
- G** 9.4 The Bank will consider among others, the following factors in determining whether an FSP is exerting undue pressure or influence on a financial consumer:
- (a) The timing, location, nature or persistence of the conduct;
 - (b) Any use of threatening/abusive language or behaviour;
 - (c) Whether the FSP exploited a specific misfortune or circumstance of the financial consumer that may impair the financial consumer's judgment to the FSP's advantage; or
 - (d) Any threat made to take actions that legally cannot be taken.
- G** 9.5 The following are **non-exhaustive examples** of exerting undue pressure or influence:
- (a) Making repeated solicitations to promote financial services or products to financial consumers who have communicated his or her disinterest in the financial service or product;

² Paragraph 3 of Schedule 7 of the FSA and IFSA and paragraph 3 of the Second Schedule of the DFIA

- (b) Creating impediments to deter or prevent the financial consumer from leaving the FSP's premises until a contract is signed;
- (c) Conducting personal visits to the financial consumer's home or workplace and ignoring the financial consumer's request to leave or not to return;
- (d) Exploiting a consumer's obvious emotional state, for example a grieving consumer, to sell financial services or products which are unnecessary or unsuitable to the needs and circumstances of the consumer; and
- (e) In relation to debt collection, examples of exerting undue pressure or influence, harassment or coercion are provided in the document on Fair Debt Collection Practices.

10. Demanding payments for unsolicited financial services or products

4. Demanding payments from a financial consumer in any manner for unsolicited financial services or products including threatening to bring legal proceedings unless the financial consumer has communicated his acceptance of the offer for such financial services or products either orally or in writing.³

- G** 10.1 For the purpose of paragraph 4 of Schedule 7, financial services or products are deemed unsolicited if such services or products are provided to a financial consumer without any request made by the financial consumer.
- G** 10.2 The prohibition covers various ways of demanding payments for unsolicited financial services or products, which may include the following practices:
 - (a) Charging the cost of unsolicited financial service or product to the financial consumers' account or credit card;
 - (b) Threatening to bring any legal proceedings with a view to obtaining payment for the unsolicited financial service or product;
 - (c) Placing or causing the name of the financial consumer to be placed on a list of defaulters or debtors, or threatening to do so; or
 - (d) Sending any document that states the amount of the payment or the price of the unsolicited financial service or product which appears to establish an obligation on the part of the financial consumer to pay.
- G** 10.3 In determining whether a financial service or product is unsolicited, the Bank will consider the manner in which an agreement to purchase a financial service or product is obtained from a financial consumer, notwithstanding any purported acceptance by the financial consumer.
- G** 10.4 For yearly renewable insurance/takaful policy whereby financial consumers have given their consent to their FSPs to have the payments automatically deducted from their bank account or charged to their card, the actions of deducting payment on a yearly basis would not be considered a prohibited

³ Paragraph 4 of Schedule 7 of the FSA and IFSA and paragraph 4 of the Second Schedule of the DFIA

conduct. However, where there are changes to terms and conditions of the insurance policy (including sum insured), the FSPs are expected to obtain the consumer's consent for the modified terms and the specific amount that will be charged to the consumer's account for the policy renewal, regardless of whether the consumer's consent had already been obtained for the automatic payment mode. Where such consent has been granted, a financial consumer may be taken to have communicated his acceptance of the insurance cover and the FSP is not prohibited from accepting payment.

- G** 10.5 The following are **non-exhaustive examples** of demanding payments for unsolicited financial services or products:
- (a) Demanding payments for financial services or products provided under automatic enrolment schemes whereby financial consumers are automatically signed-on to receive new or additional financial services or products without their consent, and are deemed to have accepted unless they expressly decline the offer;
 - (b) Confusing a financial consumer during a sales presentation into closing a deal and subsequently demanding for payment without clearly obtaining financial consumer's acceptance to purchase the financial service or product; and
 - (c) Demanding premium payments for insurance or takaful riders without the policyholder's or participant's express agreement to purchase such riders.

11. Coercing financial consumers to acquire a financial service as condition to acquiring another financial service

5. *Exerting undue pressure on, or coercing, a financial consumer to acquire any financial service or product as a condition for acquiring another financial service or product.*⁴

- G** 11.1 For greater clarity, an FSP is **not** regarded as engaging in prohibited business conduct under paragraph 5 of Schedule 7 when it:
- (a) Offers a combination of financial services or products where:
 - the financial consumer has an option to purchase them separately; or
 - the financial consumer recognises the utility of purchasing the combined product, for example due to better terms or pricing that is conditional upon the financial consumer purchasing a combined product. However, such preferential terms or pricing should not have the effect of 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;

⁴ Paragraph 5 of Schedule 7 of the FSA and IFSA and paragraph 5 of the Second Schedule of the DFIA

- (b) Requires financial consumers to purchase fire insurance/takaful or mortgage reducing term assurance/takaful in the case of home financing⁵;
 - (c) Requires financial consumers to acquire another financial service or product to mitigate credit risks to the FSP if it is specifically permitted under standards issued by the Bank; or
 - (d) Requires financial consumers to purchase a basic insurance or takaful plan before purchasing a rider that expands the policy's benefits and cannot be sold on a standalone basis.
- G** 11.2 The Bank will consider, among others, the following factors in assessing whether the FSP's pricing of financial services and products have the effect of indirectly coercing financial consumers to purchase a bundled product:
- (a) The price of individual unbundled financial services or products;
 - (b) Whether consumers consistently choose the bundle over the individual financial services or products, even for consumers who only indicate interest in an individual financial service or product which can be separately purchased;
 - (c) The price of comparable individual financial services or products sold by other FSPs; or
 - (d) The cost structure or components of the individual financial services or products.
- G** 11.3 The following are **non-exhaustive examples** of coercing consumers to acquire financial services or products as a condition to acquiring another financial service or product:
- (a) Requiring vehicle owners to purchase non-motor insurance or takaful products (e.g. personal accident) as a condition to obtaining a motor insurance or takaful cover;
 - (b) Requiring financial consumers to purchase credit shield insurance or takaful as a condition for approving a new credit card facility; and
 - (c) Requiring financial consumers to purchase insurance or takaful as a condition for approving a new personal financing facility.

⁵ As provided under the Product Transparency and Disclosure Guidelines, while the FSP may provide quotations for the insurance or takaful offered by the FSP's panel, the financial consumer must be allowed to use the service of non-panel insurers or takaful operators if they choose to do so.

12. Colluding to fix features or terms to the detriment of financial consumers

6. *Colluding with any other person to fix or control the features or terms of any financial service or product to the detriment of any financial consumer, except for any tariff or premium/takaful contribution rates or policy/takaful certificate terms which have been approved by the Bank.*^{6,7}

- G** 12.1 An FSP will be regarded to be engaging in prohibited business conduct if it colludes in a way that impacts financial consumers negatively, whether financially or non-financially. For the purpose of paragraph 6 of Schedule 7, collusion is a contract, arrangement or understanding, whether or not legally enforceable, between an FSP and any other person, including any association, another FSP, or any individual. The features or terms of any financial service or product include, among others, interest/financing rates or premium/contribution rates.
- G** 12.2 In determining⁸ whether an FSP is engaging in collusive practices that are detrimental to financial consumers, consideration will be given to the net benefits of the arrangement to financial consumers. An arrangement that results in significant benefits to financial consumers that could not be achieved otherwise may not be considered as prohibited business conduct. For example, the standardisation of common terms and definitions used in contracts or agreements that helps financial consumers compare similar products across different providers or which improves processing efficiency without impinging on the ability of an FSP to determine its own rates, features or terms of a financial service or product would not be considered a prohibited business conduct. Similarly, the pooling of industry resources to provide a specific financial service or product to financial consumers which could not be reasonably provided by individual FSPs is not regarded as prohibited business conduct.
- G** 12.3 Collusion that results in detriment to financial consumers without proportionate benefits is a prohibited business conduct, as demonstrated by the following **non-exhaustive examples**:
- (a) Agreement between FSPs to restrict the payment of interest on current accounts for individual financial consumers; and
 - (b) Collusion among FSPs to discriminate against drivers of older vehicles by imposing a minimum premium or contribution loading for the purchase of motor insurance or takaful.

⁶ Paragraph 6 of Schedule 7 of the FSA and IFSA.

⁷ Paragraph 6 of the Second Schedule of the DFIA is as follows:

“6. Colluding with any other person to fix or control the features or terms of any financial service or product to the detriment of any financial consumer.”

⁸ The determination will be made in accordance with the cooperation and coordination arrangements outlined in a Memorandum of Understanding between the Bank and the Malaysia Competition Commission.

PART D NON-COMPLIANCE

13. Action against FSP

- 13.1 Action may be taken against an FSP that has engaged in a prohibited business conduct even if the financial consumer concerned has not suffered any financial losses.