BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Disposal and Purchase of Impaired Loans/Financing

Exposure Draft

Applicable to:
1. Licensed banks
2. Licensed investment banks
3. Licensed Islamic banks
4. Non-bank buyers

Issued on: 19 June 2023

BNM/RH/ED 029-32

This exposure draft sets out Bank Negara Malaysia's (Bank) proposed requirements and guidance with respect to the disposal and purchase of impaired loans/financing by banking and non-banking institutions. The exposure draft aims to ensure that the interests of affected borrowers continue to be protected under such arrangements.

The Bank invites written feedback on the policy proposals in this exposure draft**.** The feedback can include suggestions on alternative proposals which the Bank should consider and should be supported with clear rationale, evidence or illustrations, to facilitate the Bank's assessment.

Feedback must be submitted electronically to the Bank by 19 July 2023 to conductpolicy@bnm.gov.my. Specific queries can be directed to the following officers:

(a) Sariah Md. Senan (sariah@bnm.gov.my)
(b) Nadrah Md. Nadzir (nadrah@bnm.gov.my)
(c) Christie Anne Maran (anne.maran@bnm.gov.my)

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PART A OVERVIEW

1. Introduction

1.1 The disposal of impaired loans/financing by banking institutions is allowed to enable banking institutions to effectively manage their balance sheet, which includes allowing the disposal of impaired loans/financing to specialised entities to leverage on their recovery expertise.

1.2 This policy document aims to enhance the requirements pertaining to the disposal and purchase of impaired loans/financing to ensure the process involved is conducted efficiently without compromising on the rights and interests of the affected borrowers.

1.3 Pursuant to section 100 of the Financial Services Act 2013 (FSA) and section 112 of the Islamic Financial Services Act 2013 (IFSA)[1], parties intending to enter into any agreement or arrangement to transfer the whole or any part of the business of a licensed person including a disposal or purchase of impaired loans/financing by a banking institution to another banking institutions or impaired loan/financing buyer are required to obtain the Bank's approval prior to effecting such agreement or arrangement. In the event the proposed disposal or purchase of impaired loans/financing constitutes a transfer of the whole or a material[2] part of the banking institution's business, the Bank will seek the Minister's concurrence pursuant to section 100(4) of the FSA and section 112(4) of the IFSA[3].

1.4 This policy document sets out the requirements prior to and post the disposal and purchase of impaired loans/financing.

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[1] Read together with paragraph 6.1(b) of the policy document on Transfers of Business issued by the Bank on 5 August 2016.

[2] "Material" refers to impaired loans/financing with nominal or book value exceeding RM 1 billion.

[3] In addition, the Bank shall, prior to giving approval for the transfer of the whole or a material part of the business of a licensed person, be satisfied that the proposed agreement or arrangement for such transfer is not prejudicial to –

(a) the interests of any person likely to be affected by the transfer; and
(b) the safety and soundness of such licensed person.

2. Applicability

2.1 Part B and Part D of this policy document are applicable to:

(a) a banking institution who is a seller of impaired loans/financing as defined in paragraph 5.2; and

(b) a buyer of impaired loans/financing as defined in paragraph 5.2.

2.2 Part C of this policy document is applicable to a non-bank buyer as defined in paragraph 5.2.

2.3 For the avoidance of doubt, this policy document is only applicable to a disposal and purchase of impaired loans/financing which is on a non-recourse basis. Any disposal and purchase of impaired loans/financing through other arrangements such as asset securitisation transactions[4], or disposal and purchase of loans/ financing which are not impaired, do not fall within the scope of this policy document.

2.4 Section 100(3) of the FSA and section 112(3) of the IFSA impose a requirement for an application for a disposal and purchase of impaired loans/financing to be submitted jointly by the seller and buyer to the Bank for an approval, together with documents or information under Part D as well as any other information as may be specified by the Bank.

Question 1

The exposure draft has excluded the disposal and purchase of impaired loans/financing through other arrangements such as asset securitisation transactions from the scope of this document. In your view, are there any other types of transactions that should be excluded from the scope? Please support your views with clear rationale and data.

[4] Where the disposal involves asset securitisation scheme, banking institutions are required to adhere to the requirements stipulated in the "Prudential Standards on Securitisation Transactions by Licensed Institutions" issued by BNM on 23 October 2009 and Guidelines on the Offering of Asset-Backed Debt Securities" issued by the Securities Commission on 26 July 2004 or any relevant requirements applicable.

3. Legal provisions

3.1 The requirements in Parts B and D of this policy document are specified pursuant to:

(a) sections 47(1), 100, 101, 105, 123(1) and 143 of the FSA; and

(b) sections 29(2), 57(1), 112, 113, 117, 135(1) and 155 of the IFSA.

3.2 The requirements under Part C of this policy document are specified pursuant to:

(a) sections 100 and 143 of the FSA; and

(b) sections 112 and 155 of the IFSA.

3.3 The guidance in this policy document is issued pursuant to:

(a) section 266 of the FSA; and

(b) section 277 of the IFSA.

4. Effective date

4.1 The policy document shall come into effect on [the date of issuance of the policy document].

Question 2

What are the anticipated issues or challenges in implementing the proposals outlined in this exposure draft within the proposed timeframe? Please elaborate on the specific operational measures that may pose implementation challenges should the policy document be effected immediately upon issuance.

5. Interpretation

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

5.2 For the purposes of this policy document –

"S" denotes a standard, an obligation, a requirement, specification, direction, condition and any interpretative, supplemental and transitional provisions that must be complied with. Non-compliance may result in enforcement action;

"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;

"AKPK" refers to Agensi Kaunseling dan Pengurusan Kredit (Company No. 729811-P);

"banking institution" refers to-

(a) a licensed bank;

(b) a licensed investment bank; and

(c) a licensed Islamic bank[5], but shall exclude a licensed international Islamic bank;

"board" refers to the board of directors of a seller or buyer, including a committee of the board where the responsibilities of the board set out in this policy document have been delegated to such a committee. However, the board remains fully accountable for any authority and responsibilities delegated to such committee;

"borrower" refers to-

(a) as defined in section 121 of the FSA or section 133 of the IFSA; and

(b) ~~a~~ny person including a corporation who uses or has used, any financial service or product of a banking institution;

"buyer" refers to the transferee who is a locally-incorporated company that purchases or intends to purchase impaired loans /financing from a seller. This includes both a buyer who is a banking institution or a non-bank buyer;

"non-bank buyer" is a buyer that is not a banking institution, which includes a subsidiary of a banking institution or a special purpose vehicle established to purchase impaired loans/financing from the banking institution;

[5] For avoidance of doubt, reference to a licensed Islamic bank in paragraph 9.3 includes a licensed bank and licensed investment bank approved under section 15(1)(a) of the FSA to carry on Islamic banking business.

"debt collector" refers to-

(a) the internal unit or department established by a buyer to collect payments due from a borrower; and

(b) outsourced debt collectors of the buyer;

"impaired loans", **"impaired financing"** or **"impaired loans/financing"** means any loan or financing (excluding financing which is funded by an investment account[6]) originating in Malaysia granted to borrowers that falls within the classification set out in paragraph 10 of the policy document on "Financial Reporting"[7] or "Financial Reporting for Islamic Banking Institutions"[8], as the case may be.

"non-recourse" refers to a disposal and purchase of impaired loans/financing where the liability and risk for such loans/financing are completely transferred to the buyer;

"OFS" refers to the Ombudsman for Financial Services (Company No. 664393P);

"seller" refers to the transferor who is a banking institution that disposes or intends to dispose of its impaired loans/financing to a buyer;

"senior management" refers to the chief executive officer and senior officers of a seller or buyer who are involved in the decision-making of any disposal or purchase of impaired loans/ financing;

"staff" refers to persons employed by a seller or buyer, including temporary or contract staff, and officers on attachment from an affiliate.

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[6] Refer to the policy document on "Investment Account" issued on 17 January 2018.
[7] Refer to the policy document on "Financial Reporting" Issued on 29 April 2022.
[8] Refer to the policy document on "Financial Reporting for Islamic Banking Institutions" issued on 29 April 2022.

6. Related legal instruments and policy documents

6.1 This policy document must be read together with other relevant legal instruments and policy documents that have been issued by the Bank, in particular:

(a) Policy Document on Fair Treatment of Financial Consumers dated 6 November 2019;

(b) Guidelines on Complaints Handling dated 17 December 2009;

(c) Circular on Fair Debt Collection Practices dated 11 September 2007;

(d) Policy Document on Financial Reporting dated 29 April 2022;

(e) Policy Document on Financial Reporting for Islamic Banking dated 29 April 2022;

(f) Guidelines on Late Payment Charges for Islamic Financial Institutions dated 31 January 2013;

(g) Guidelines on Ibra' (Rebate) for Sale-based Financing dated 31 January 2013;

(h) Guidelines on Imposition of Fees and Charges on Financial Products and Services dated 10 May 2012;

(i) Policy Document on Investment Account dated 17 January 2018;

(j) Policy Document on Outsourcing dated 23 October 2019;

(k) Policy Document on Transfers of Business dated 5 August 2016; and

(l) Policy Document on Central Credit Reference Information System (CCRIS): Requirements on the Submission, Usage and Protection of Credit Information dated 15 December 2022.

7. Policy documents superseded

7.1 This policy document supersedes the following:

(a) Guidelines on Disposal/Purchase of Non-Performing Loans by Banking Institutions dated 29 June 2007; and

(b) Guidelines on the Disposal/Purchase of Non-Performing Financing by Islamic Banks dated 29 June 2007.

PART B GENERAL REQUIREMENTS

8. Specification of financial consumer falling within the definition of "borrowers"

S 8.1 For the purposes of sections 121(c)(ii) of the FSA and 133(c)(ii) of the IFSA, the Bank specifies that a financial consumer means any person including a corporation who uses, has used or may be intending to use, any financial service or product of a banking institution, whether or not for the purposes set out in paragraph 121(a) or (b) of the FSA, or paragraph 133(a) or (b) of the IFSA.

9. Eligibility criteria

Loans/financing eligibility

S 9.1 Prior to submitting the joint application referred to in paragraph 2.4, the seller shall ensure that the following criteria are satisfied:

(a) whichever of the following criteria occurs earlier –

(i) the impaired loans/financing remain classified as impaired for a minimum period of 12 months from the date in which such loans/financing were first classified as impaired; or

(ii) all reasonable efforts to recover the impaired loans/financing[9] have been exhausted by the seller. For example, reasonable efforts include the need for the seller to verify that they have the most recent contact details of the borrower, or to ensure that any notices or reminders sent to the borrower have actually been received by the intended recipient; and

(b) the impaired loans/financing must not be loans/ financing that was granted for or linked to projects of strategic importance[10].

Buyer of impaired loans/financing eligibility

S 9.2 Where a seller intends to sell its impaired loans/financing, the seller shall only sell such impaired loans/financing to the following parties subject to obtaining the

[9] This refers to recovery efforts which are within the FSP's control e.g. calls, reminders and notices, serving of legal action, and exclude processes such as auction and foreclosures, bankruptcy proceedings.

[10] This includes loans/financing granted for or related to national infrastructure projects such as in the area of transportation and telecommunications, as well as those identified by the Government as strategic through its various developmental plans.

relevant prior written approval under section 100(6) of the FSA or section 112(6) of the IFSA:

(a) domestic banking institutions or locally incorporated foreign banking institutions in Malaysia; or

(b) non-banking institutions that are locally incorporated in Malaysia and are a resident for tax purposes.

S 9.3 For purposes of submitting the joint application referred to in paragraph 2.4, the buyer shall ensure that the following criteria are satisfied:

(a) the buyer has a proven track record in debt management and recovery, and there are minimal adverse complaints, written or otherwise, against its debt management and recovery practices;

(b) the buyer has adopted satisfactory recovery approaches, including having a dedicated unit with competent personnel to effectively manage debt collection and any complaints from borrowers;

(c) the buyer has adequate and competent staff with recognised qualifications from reputable institutions of higher learning, or adequate knowledge and training, including, if applicable, in Islamic banking and finance or Shariah law; and

(d) where a buyer intends to outsource the collection or recovery of the impaired loans/financing to a service provider, the buyer must ensure that the service provider meets the criteria specified in paragraphs 9.3 (a) to (c).

S 9.4 Upon receiving approval from the Bank under section 100(6) of the FSA or section 112(6) of the IFSA, the buyer must comply with paragraph 9.3 on a continuous basis.

10. Responsibilities of the Board and Senior Management

Board

S 10.1 The board shall be responsible for setting the tone from the top to ensure reasonable standards of fair dealing, without compromising on the rights and interests of the affected borrowers, including ensuring effective policies,

procedures and controls have been established and provide adequate oversight on its implementation.

S 10.2 The board must ensure that all risks and implications arising from the disposal or purchase of impaired loans/financing, including financial, legal, reputational and if applicable, Shariah, risks at both entity and group levels are appropriately managed. This includes overseeing and approving the design of policies and mechanisms to ensure:

(a) satisfaction of the criteria for the disposal or purchase of impaired loans/financing as specified in paragraph 9; and

(b) compliance with the business conduct requirements as specified in paragraph 11 and Part C, as well as any other such requirements in the policy documents set out in paragraph 6.1, including other relevant policy documents as may be specified by the Bank from time to time.

Senior Management

S 10.3 The senior management shall be responsible for ensuring effective implementation of the policies, procedures and controls on the disposal or purchase of impaired loans/financing, as approved by its board. This includes ensuring that:

(a) policies relating to disposal and purchase of impaired loans/financing including debt recovery practices are properly documented and implemented;

(b) adequate internal systems and risk management controls are in place to manage the risks that may emanate from these arrangements; and

(c) an independent review is carried out at least once in every two years on the effectiveness of policies, procedures and control measures, particularly in protecting borrower's information.

S 10.4 For the disposal and purchase of impaired financing-

(a) the seller's senior management must ensure that the implementation of policies and transactions carried out in respect of the disposal of impaired

financing comply with Shariah requirements and approved by its Shariah Committee;

(b) where the buyer is a licensed Islamic bank, its senior management must ensure that the implementation of policies and transactions carried out in respect of the purchase of impaired financing comply with Shariah requirements and is approved by its Shariah Committee; and

(c) where the buyer is not a licensed Islamic bank, its senior management must ensure that the implementation of policies and transactions carried out in respect of the purchase of impaired financing are in compliance with Shariah requirements. For this purpose, the buyer may enter into an arrangement with the seller of the impaired financing to leverage on the seller's Shariah Committee.

S 10.5 In the event the seller is appointed as an outsourced service provider for the buyer –

(a) the board and senior management of the seller must ensure that proper internal systems and controls are in place to ensure segregation of records on impaired loans/financing recovery activities; and

(b) the seller must inform the borrowers in writing that it is only acting as a service provider for the buyer within seven (7) calendar days from the completion date of the purchase of the impaired loans/financing where the buyer assumes the rights and titles to such impaired loans/financing. For avoidance of doubt, where the disposal and purchase of the impaired loans/ financing involve obtaining a court's order under section 102 of the FSA or section 114 of the IFSA, "completion date" refers to the date fixed by the court as the date on which the business transfer scheme shall take effect.

11. Business conduct requirements

Seller of impaired loans/financing

S 11.1 Pursuant to section 123 of the FSA and section 135 of the IFSA, the seller must notify the affected borrowers in writing of its intention to dispose of its impaired loans/financing to a buyer no later than ninety (90) calendar days prior to [entering

into an agreement or arrangement for the disposal of the impaired loans/financing to the buyer/ completion date where the buyer assumes the rights and titles to such impaired loans/financing].

S 11.2 The seller must allow a period of ninety (90) calendar days from the date of the notice provided in paragraph 11.1 for the affected borrowers to regularise or settle their outstanding loans/financing, before entering into an agreement or arrangement for the disposal of the impaired loans/financing to the buyer/ completion date where the buyer assumes the rights and titles to such impaired loans/financing.

S 11.3 Upon completion of the disposal of impaired loans/financing, where the buyer assumes the rights and titles to such impaired loans/financing, the seller must notify the affected borrowers in writing of the following within seven (7) calendar days:

(a) the fact that the disposal is completed, including the name and contact number of the buyer; and

(b) that all complaints or any matters related to such impaired loans/financing prior to the completion of the disposal of impaired loans/ financing where the buyer assumes the rights and titles to such impaired loans/ financing shall be promptly directed to the seller.

S 11.4 When the impaired loans/financing are sold off to a non-bank buyer who does not have access to the Central Credit Reference and Information System (CCRIS), and the seller receives a written request from the non-bank buyer pursuant to paragraph 13.3(a) or a written notification by the borrower pursuant to paragraph 13.3(b) that the borrower has fully settled the impaired loans/financing with the non-bank buyer:

(a) the seller shall update the status of the borrower to ‘Settled’ within seven (7) calendar days from the date the seller receives the request from the non-bank buyer or notification by the borrower; and

(b) the seller shall notify the borrower within seven (7) calendar days from updating the borrower's status in the CCRIS, that such status has been duly updated.

Question 3

What challenges do you anticipate your institution may face in meeting the requirement to update CCRIS record for the borrower that have been sold off? Please supplement your feedback with relevant rationale and data, as well as any suggestions on alternative proposals to address these challenges.

Buyer of impaired loans/financing

S 11.5 Within seven (7) calendar days from the completion date of the purchase of the impaired loans/financing where the buyer assumes the rights and titles to such impaired loans/financing, the buyer must inform the affected borrowers in writing that –

(a) any complaints or queries on matters pertaining to the purchase, management and recovery procedures of the impaired loans/financing must first be directed to the buyer, unless the complaint or query relates to matters prior to the completion date of the purchase where the buyer assumes the rights and titles to such impaired loans/ financing; and

(b) if the affected borrowers are not satisfied with the decision of the buyer on the complaints or queries raised with the buyer under paragraph (a), the buyer must inform the affected borrowers on the availability of alternative redress avenues as follows:

(i) for complaints or enquiries:

BNMLINK (Laman Informasi Nasihat dan Khidmat)
4th Floor, Podium Bangunan AICB,
No. 10, Jalan Dato' Onn,
50480 Kuala Lumpur.

Tel: 1-300-88-5465 (BNMTELELINK) or +603 21741717 (for overseas calls)
Live chat: http://bnm.gov.my/livechat

(ii) for disputes:

Ombudsman for Financial Services,
Level 14, Menara Takaful Malaysia,
No 4, Jalan Sultan Sulaiman,
50000 Kuala Lumpur.

Tel: 03-2272 2811
E-mail: enquiry@ofs.org.my

S 11.6 Upon the completion date of the purchase of the impaired loans/financing where the buyer assumes the rights and titles to such impaired loans/ financing, the buyer shall:

(a) for impaired loans/financing that are under the AKPK's debt management programme (DMP), comply with the debt repayment plan and the terms and conditions set by AKPK; and

(b) for impaired loans/financing that are not yet under AKPK's DMP –

(i) allow borrowers that are facing financial distress to seek AKPK's services;

(ii) negotiate and work out a debt repayment plan with AKPK for borrowers who have debts with multiple creditors; and

(iii) comply with the DMP and terms and conditions set by AKPK where the buyer and the borrowers have agreed to reschedule or restructure such impaired loans/ financing.

12. Other requirements

Accounting treatment

S 12.1 A seller must recognise any losses that may arise at the point of the completion of the disposal of the impaired loans/financing to a buyer.

S 12.2 A buyer that is a banking institution must–

(a) classify the purchased impaired loans/financing as impaired for financial reporting purposes;

(b) ensure that the total impairment provisions remain adequate to absorb any potential credit losses that may arise from these impaired loans/financing; and

(c) comply with paragraph 10 of the Policy Document on "Financial Reporting" or "Financial Reporting for Islamic Banking Institutions", as the case may be, at all times.

Disposal of impaired loans/financing to entities within the same group

S 12.3 A seller and buyer of the same impaired loans/financing where such seller and buyer are banking institutions within the same group shall ensure that for purposes of accounting, the impaired loans/financing are consolidated at the group level.

PART C ADDITIONAL REQUIREMENTS FOR NON-BANK BUYERS

13. Business conduct requirements

S 13.1 Upon completion of the disposal and purchase of impaired loans/ financing where a non-buyer assumes the rights and titles to such impaired loans/ financing, a non-bank buyer must disclose its commitment to recover debts in a prominent and transparent manner, as well as how it intends to implement such commitments which shall, at a minimum, include:

(a) the contact details for queries and complaints;

(b) the time taken to respond to queries and resolve complaints;

(c) information on other avenues to lodge complaints and disputes resolution as specified in paragraph 11.5(ii); and

(d) if applicable, assurances that its business and conduct comply with Shariah requirements at all times.

G 13.2 For purposes of paragraph 13.1, the commitments may be disclosed to the affected borrowers through the publication of a notice or Charter in its website or prominently displayed at its business premises, or by sending a notice directly to affected borrowers.

S 13.3 Within seven (7) calendar days from the full settlement of an impaired loans/financing by a borrower, the non-bank buyer shall-

(a) provide documentary evidence to the borrower that the non-bank buyer has requested the seller to update the borrower's status in the CCRIS; or

(b) provide the necessary documents to the borrower for the borrower to notify the seller to update the borrower's status in the CCRIS.

Complaints Handling

G 13.4 Fair, transparent and efficient complaints handling is key in ensuring the best interests of borrowers are preserved and reduces the need for regulatory intervention or recourse to external dispute mechanisms that may be costly and time-consuming.

S 13.5 A non-bank buyer must establish a centralised platform for affected borrowers to lodge complaints including a dedicated single point of contact such as a complaint or borrower service unit to ensure prompt and proper handling of complaints from affected borrowers. The non-bank buyer's policies and procedures for complaint resolution must be clear, easily understood and readily accessible by affected borrowers.

S 13.6 Each complaint must be addressed in an equitable, objective and timely manner, including establishing timelines for handling complaints.

S 13.7 Prompt acknowledgement must be provided to the complainant upon receipt of the complaint, along with details of the dedicated contact point or person and clearly inform when the complainant can expect to receive a response.

S 13.8 In relation to paragraph 13.6, a non-bank buyer must inform a borrower of its decision no later than fourteen (14) calendar days from the date of receipt of the complaint. However, if the case is complicated or involves complex issues that require further investigation, a non-bank buyer must inform the complainant in writing on reasons for the delay and the need for additional time to resolve the complaint. In total, a decision on the complaint must be conveyed to the

complainant no later than thirty (30) calendar days from the date the complaint was first lodged.

S 13.9 Where a decision cannot be made within thirty (30) calendar days due to the need to obtain material information or documents from a third party (e.g., medical, forensic or police investigation reports), a non-bank buyer must follow up with the third party on the information or documents required and provide updates on the progress of the case to the complainant at least on a monthly basis. The non-bank buyer must finalise its investigation within fourteen (14) calendar days upon receipt of complete information or documents.

13.10 A non-bank buyer must communicate its decision to the complainant by the next working day after the completion of its investigation into the complaint.

S 13.11 All engagements between the non-bank buyer with the borrower when handling complaints must be clear and constructive. This may include calling the complainant upon receiving a complaint to check on the nature of the complaint and to obtain more details, or conduct of face-to-face discussions with the complainant, where necessary.

S 13.12 A non-bank buyer must maintain records on the type and details of complaints received, including the actions taken and decisions made. These records must be made available to the Bank upon request.

Fair Debt Collection Practices

Authorisation of Debt Collectors

S 13.13 A non-bank buyer is required to issue an authorisation card to each of its debt collectors. This document must clearly indicate that the debt collectors have been appointed and authorised by the non-bank buyer to collect debts on its behalf. The authorisation card shall at least contain the following information:

(a) non-bank buyer’s name and contact details;

(b) external debt collection agency’s name and contact details;

(c) name and identification card number of the debt collector;

(d) photo identification of the debt collector; and

(e) validity period of the appointment.

When collecting any debt, every debt collector must show the authorisation card to identify himself.

Borrower's Information

S 13.14 A non-bank buyer must ensure that borrower's information provided to debt collectors is up to-date and accurate including but not limited to, the name and address of the borrower, as well as the outstanding amount to be recovered from the borrower.

S 13.15 When contacting any borrower either by telephone, face-to-face contact or any other forms of communication, a debt collector must confirm that the person they are dealing with is the borrower before divulging the details of the debt. Upon confirmation that the person they are dealing with is the borrower, the debt collector makes clear the purpose of the contact. The restrictions on disclosing information to third parties apply to the borrower's spouse and family members unless written authorisation that is explicit and deliberate has been given by the borrower for such disclosures.

S 13.16 When collecting information on any borrower from a third party, the debt collectors shall not collect more information than is necessary to recover the debt. At minimum, information which are not necessary in this circumstance include the borrower's deposit account number, account balance and number of dependants.

Cease Recovery Activities

S 13.17 A non-bank buyer must communicate to its debt collectors by the next working day, if the recovery action is to be called off, for instance, when a borrower has regularised his account, fully settled any outstanding amount, or when a borrower has been accepted by AKPK under its DMP.

Collection of payments

S 13.18 A non-bank buyer must ensure that its debt collectors advice borrowers to make debt repayments at any of the non-bank buyer's offices, electronic transfer to the non-bank buyer or any other accepted payment methods. If payments are made to the debt collectors, such payment shall be deemed as payment to the non-bank buyer and the borrower must be provided with an official receipt from the non-bank buyer to acknowledge that payment has been received. Cheque payments must be made payable to the non-bank buyer concerned.

S 13.19 A non-bank buyer must establish adequate internal controls to ensure accurate record keeping of payments received by its debt collectors. This includes ensuring that -

(a) only receipts approved by the non-bank buyer are issued for payments received; and

(b) receipt books are in the custody of authorised personnel of the non-bank buyer, secured against loss and unauthorised use.

Conduct of Debt Collectors

S 13.20 Debt collectors must not resort to intimidation or violence, either verbal or physical, against any borrower or person known to a borrower. In particular, debt collectors must not:

(a) use threatening, foul or intimidating language or remarks;

(b) cause bodily injury to any borrower or third parties known to a borrower;

(c) enter into a property uninvited or force their way into the property or not leaving when asked to;

(d) destruct or forcibly remove any personal property belonging to any borrower;

(e) threaten to publish any borrower's failure to pay or disclose any borrower's debt details to any third party; and

(f) publicly humiliate the borrower by putting up posters or writing at borrower's residence or in any other platform, physical or virtual (e.g. social media).

Intrusion of Privacy

S 13.21 In the course of collecting debts from a borrower, a debt collector must not:

(a) communicate with the borrower or any party authorised by the borrower either by telephone, face-to-face contact or any other forms of communication at unreasonable hours. The appropriate contact times is between 8.00 a.m. and 9.00 p.m., which must be observed by the non-bank buyer or its appointed debt collector, unless the borrower specifically asks to be contacted outside of these hours, or if the borrower is not contactable during such hours;

(b) contact the borrower repeatedly or continuously with intent to harass or intimidate the borrower or which will cause undue harassment or intimidation to the borrower. The frequency of contacts with a borrower shall be reasonable and to the extent necessary based on earlier communications with the borrower. It is recommended that a debt collector refrains from contacting the borrower by telephone more than three (3) times per week if the borrower has responded to earlier telephone contacts;

(c) visit the borrower's workplace unless:

(i) the borrower has failed to respond to other means of communication, for example, by telephone or written letters/notices;

(ii) the borrower is not contactable at his place of residence;

(iii) the borrower has specifically requested or agreed to the visit either orally or in writing; or

(iv) the non-bank buyer or debt collector does not have the borrower's latest residential address;

(d) stay in the borrower's place of residence or workplace for longer than necessary and must leave such place of residence or workplace when asked to do so by the borrower; or

(e) harass the borrower's family, relatives, neighbours, friends or employer, either by telephone or any other forms of communication, for information about the borrower's whereabouts.

S 13.22 A non-bank buyer must provide appropriate oversight over the conduct of its appointed debt collectors to maintain a careful balance between the necessity to contact the borrowers and a reasonable expectation for the borrowers to be free from excessive communications from debt collectors.

Misleading Borrower

S 13.23 When contacting any borrower or any party authorised by the borrower whether through telephone, written notice or face-to-face contact, a debt collector must not mislead the borrower or any party authorised by the borrower in terms of:

(a) amount owed by borrower – A borrower must be provided with accurate information about the amount owing. A debt collector is not allowed to collect or attempt to collect monies that exceed the overdue amount stated on the statement provided by the non-bank buyer. It is the responsibility of the non-bank buyer to provide the correct amount repayable by the borrower; and

(b) authority of debt collector – A debt collector must not falsely imply that they represent a legal authority or claim that they are collecting the debt based on the court's instruction, with the intention to deceive or falsely induce the borrower into making payments.

Recovery of Debt from Third Parties

S 13.24 A debt collector must not attempt to recover debts, directly or indirectly, from third parties including family members, friends, relatives or the employer of the borrower.

Monitoring Mechanisms

S 13.25 A non-bank buyer must establish monitoring mechanisms, including the conduct of regular reviews, to ensure that their debt collectors adhere to the debt collection practices specified in Part C of this policy document.

Complaints against Debt Collectors

S 13.26 A non-bank buyer remains accountable to borrowers for any complaints against its debt collectors and must not disclaim responsibility for their misconduct.

Transparency and disclosure requirements

S 13.27 A non-bank buyer must pay due regard to the information needs of the borrower by adopting the following disclosure principles:

(a) timely;

(b) clear and concise;

(c) accurate and relevant; and

(d) highlights important information prominently.

S 13.28 A non-bank buyer must adopt continuous disclosure during the term of the contract including:

(a) provide notice of change including but not limited to the terms and conditions and the borrower's rights and obligations;

(b) disclosure on statements, which include electronic statements, issued at regular intervals to communicate important information to the borrower during the term of the contract. In this respect, periodic statements must be given as soon as practicable without any charge to the borrower. For financial products for which periodic statements are issued only upon request, the non-bank buyer must ensure that the borrower has timely access to the information through other channels without any cost; and

(c) disclosure following a specific request. Where a fee may be levied on the borrower, the non-bank buyer must inform the borrower of the charges and the basis for such charges at the time the borrower requests for the information.

Management of Borrower's information

S 13.29 A non-bank buyer must preserve borrower's information against theft, loss, misuse or unauthorised access, modification or disclosure by whatsoever means, including disclosure made in verbal or written form.

S 13.30 A non-bank buyer must deploy preventive and detective information and communication technology controls to prevent theft, loss, misuse or unauthorised access, modification or disclosure of borrower's information and to detect errors and irregularities when they occur.

S 13.31 A non-bank buyer must ensure that the role profile for its staff across various job functions includes a specific description on the level of access to borrower's information to enable its staff perform their jobs effectively without compromising the preservation of secrecy of borrower's information.

S 13.32 A non-bank buyer must implement adequate controls to ensure borrower's information stored either in paper and electronic forms are properly protected against theft, loss, misuse or unauthorised access, modification or disclosure by whatsoever means.

S 13.33 In relation to paragraph 13.31, a non-bank buyer must provide relevant training and regularly remind its staff who have access to borrower's information on their obligations to handle borrower's information with due care.

S 13.34 A non-bank buyer must ensure that its employment contract contains a provision requiring its staff to sign a confidentiality undertaking that clearly specifies the obligation to safeguard borrower's information, as well as the consequences for failure to comply with such obligations.

S 13.35 A non-bank buyer must put in place a mechanism to identify borrower's information breaches and establish breach handling and response plan in the event of theft, loss, misuse or unauthorised access, modification or disclosure by whatsoever means of borrower's information.

Appointment of Outsourced Service Provider (OSP) for collection and servicing

G 13.36 Whilst outsourcing can be used as a means of improving operational efficiency and reducing costs to the non-bank buyer, the arrangement ought not to create

undue risks to the borrowers. A non-bank buyer is expected to maintain appropriate oversight over the outsourcing arrangement and ensure that borrowers are not left worse-off.

S 13.37 A non-bank buyer must conduct effective due diligence of the OSP at the point of considering all new arrangements and when renewing or renegotiating existing arrangements. The scope and depth of the due diligence process must be commensurate with the materiality of the outsourced activity. The outcomes of the due diligence process must be well-documented and escalated to the board for approval, where relevant.

S 13.38 The outsourcing arrangement must be governed by a written agreement that is legally enforceable.

S 13.39 A non-bank buyer must ensure that appropriate controls are in place and are effective in safeguarding the security, confidentiality and integrity of any information shared with the OSP. A non-bank buyer must also ensure that the OSP complies with the requirements on management of borrower's information under paragraph 13.29 to paragraph 13.35.

S 13.40 A non-bank buyer must ensure that the OSP implements satisfactory debt collection practices as required under paragraph 13.13 to paragraph 13.26. In this regard, the Bank reserves the right to direct the termination of the OSP by the non-bank buyer in the event of abusive practices or serious misconduct pursuant to section 234 of FSA / section 243 of IFSA, to ensure that the rights and interests of the affected borrowers are not compromised.

S 13.41 A non-bank buyer must ensure that its business continuity planning (BCP) includes all its outsourcing arrangements. The depth and comprehensiveness of the BCP must be commensurate with the materiality of the outsourcing arrangements. At a minimum, the non-bank buyer must ensure that the BCP includes probable or adverse scenarios together with specific action plans to handle such scenarios effectively.

S 13.42 A non-bank buyer must ensure that it has full access to all its records and information at the OSP with respect to the outsourced activity which would be necessary for the non-bank buyer to operate and meet its legal and regulatory obligations at all times. This includes scenarios where the OSP becomes insolvent or a dispute resolution process is ongoing.

S 13.43 A non-bank buyer must periodically test its own BCP and proactively seek assurance on the state of BCP preparedness of the OSP and where relevant, alternative OSP.

Appointment of independent party

S 13.44 Where required by the Bank in writing, the non-bank buyer shall –

(a) appoint an independent party as may be specified by the Bank to conduct an assessment on the buyer's compliance with the conditions imposed by the Bank; and

(b) ensure that the terms of the appointment of the independent party complies with the terms as may be specified by the Bank.

Prohibition on onward disposal of impaired loans/financing

S 13.45 A buyer must not onward sell any impaired loans/financing purchased from a seller.

Question 4

For non-bank buyer, what challenges do you anticipate your institution may face in meeting the requirements under (i) paragraph 10.1, 10.2 and 10.3, (ii) paragraphs 11.5 and 11.6 and (iii) Part C? Please supplement your feedback or suggestions on alternative proposals to ensure fair treatment of financial consumers with relevant rationale and data.

PART D SUBMISSION OF APPLICATION

14. Submission of application

S 14.1 In relation to paragraph 2.4, the following documents or information must be submitted to the Bank:

(a) name of the seller;

(b) name of the buyer and where the buyer is a non-bank buyer, its company registration number, management, shareholders and date of establishment;

(c) details of the impaired loans/financing to be disposed and purchased including:

(i) the total number, size and general profile;

(ii) whether the impaired loans/financing are given to corporations that are involved in projects of strategic importance to the nation; and

(iii) impact of the disposal or purchase of impaired loans/financing, as case may be, on the impaired loans/financing ratio and total capital ratio (TCR) of the seller and buyer (if the buyer is a banking institution);

(d) purchase consideration for the impaired loans/financing;

(e) source of funding for the purchase of impaired loans/financing; and

(f) confirmation that the relevant requirements in this policy document have been satisfied by both the seller and buyer.

S 14.2 A joint application under paragraph 2.4 together with the documents and information set out in paragraph 14.1 must be submitted to -

Pengarah
Jabatan Konsumer dan Amalan Pasaran
Bank Negara Malaysia
Jalan Dato' Onn
50480 Kuala Lumpur.