

A BILL

i n t i t u l e d

An Act to amend the Central Bank of Malaysia Act 2009.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Central Bank of Malaysia (Amendment) Act 2012.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 2

2. The Central Bank of Malaysia Act 2009 [*Act 701*], which is referred to as the “principal Act” in this Act, is amended in subsection 2(1)—

(a) by substituting for the definition of “derivatives” the following definition:

‘ “derivative” means any agreement, including an option, a swap, futures or forward contract, whose market price, value, delivery or payment obligations is derived from, referenced to or based on, but not limited to, securities, commodities, assets, rates (including interest rates, profit rates or exchange rates) or indices;’

(b) by inserting after the definition of “director” the following definition:

‘ “financial collateral” means any of the following that is subject to an interest or a right that secures payment or performance of an obligation in respect of a qualified financial agreement or that is subject to a title transfer credit support agreement:

(a) cash or cash equivalents, including negotiable instruments and demand deposits;

(b) security, a securities account or a right to acquire securities; or

(c) futures agreement or futures account;’;

(c) by inserting after the definition of “prescribed” the following definitions:

‘ “qualified financial agreement” means—

(a) a master agreement in respect of one or more qualified financial transactions under which if certain events specified by the parties to the agreement occur—

(i) the transactions referred to in the agreement terminate or may be terminated;

(ii) the termination values of the transactions under paragraph (a) are calculated or may be calculated; and

(iii) the termination values of the transactions under paragraph (a) are netted or may be netted, so that a net amount is payable,

and where an agreement is also in respect of one or more transactions that are not qualified financial transactions, the agreement shall be deemed to be a qualified financial agreement

only with respect to the transactions that are qualified financial transactions and any permitted enforcement by the parties of their rights under such agreement;

- (b) an agreement relating to financial collateral, including a title transfer credit support agreement, with respect to one or more qualified financial transactions under a master agreement referred to in paragraph (a); or
- (c) any other agreement in respect of a financial transaction that may be entered into by parties in the financial markets that is prescribed as a qualified financial agreement by the Bank, other than a standardized derivative or an agreement in respect of securities transactions entered into under the rules of a stock exchange and approved clearing house as defined in subsection 2(1) of the Capital Markets and Services Act 2007 [Act 671];

“qualified financial transaction” means—

- (a) a derivative, whether to be settled by payment or delivery; or
 - (b) a repurchase, reverse repurchase or buy-sell back agreement with respect to securities;’;
- (d) by substituting for the full stop appearing at the end of the definition of “supervisory authority” a semi-colon; and
- (e) by inserting after the definition of “supervisory authority” the following definition:
- ‘ “title transfer credit support agreement” means an agreement under which title to property has been provided for the purpose of securing the payment or performance of an obligation in respect of a qualified financial agreement;’.

Amendment of section 15

3. Subsection 15(6) of the principal Act is amended by substituting for the words “such written law” the words “any written law”.

Substitution of section 31

4. The principal Act is amended by substituting for section 31 the following section:

“Measures for financial stability

31. (1) Where the Bank considers it necessary in the interest of financial stability, the Bank may—

(a) specify measures, which in the opinion of the Bank would contribute to the resilience of the financial system or limit the accumulation of any risk to financial stability, to a class, category or description of persons engaging in financial intermediation; or

(b) issue an order in writing requiring any person within a class, category or description of persons, including a class, category or description of persons engaging in financial intermediation, to take such measures as the Bank may consider necessary or appropriate to avert or reduce any risk to financial stability.

(2) Before issuing an order under paragraph (1)(b), the Bank shall give the person an opportunity to make representation.

(3) Notwithstanding subsection (2), an order under paragraph (1)(b) may be issued first and the opportunity to make representations shall be given immediately after the order has been issued if any delay would aggravate the risk to financial stability.

(4) An order issued under paragraph (1)(b) may be amended or modified where the representation is made after the order is issued.

(5) The person referred to in subsection (1) shall comply with such measure or order from the date as the Bank may specify notwithstanding the provisions of any other written law or of any obligations under any contract, agreement or arrangement to the contrary.

(6) The Bank may conduct due diligence or require such person to submit any document or information or appoint an auditor or any other person approved by the Bank to carry out an assessment, to determine whether the person has complied with such measure or order under subsection (1).

(7) The remuneration of the auditor or such other person as approved by the Bank under subsection (6) and other expenses relating to such assessment shall be paid by the person referred to in subsection (1).

(8) Notwithstanding subsection (5), any measure or order issued under subsection (1) shall not affect the enforcement by the parties of their rights under a qualified financial agreement.

(9) Any person who fails to comply with subsection (5) or any requirements imposed by the Bank under subsection (6) commits an offence and shall, on conviction be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.”.

Amendment of section 32

5. Section 32 of the principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) The enforcement by the parties of their rights under a qualified financial agreement shall not be affected by the making of an order for the vesting of, the whole or part of the business, assets or liabilities of, or all or any of the shares or other capital instruments issued by, a financial institution pursuant to subparagraph (1)(c)(iii).”.

Amendment of section 37

6. Section 37 of the principal Act is amended by substituting for subsection (4) the following subsection:

“(4) The Secretary General to the Treasury shall be informed of and be invited to all meetings of the Financial Stability Executive Committee.”.

Amendment of section 38

7. Section 38 of the principal Act is amended by substituting for subparagraph (1)(a)(i) the following subparagraph:

“(i) under paragraph 31(1)(a) for a measure to be specified to a class, category or description of persons engaging in financial intermediation or under paragraph 31(1)(b) for an order to be issued to such person within a class, category or description of persons; or”.

Amendment of section 48

8. Section 48 of the principal Act is amended—

(a) by deleting the word “and” appearing at the end of paragraph (1)(d);

(b) by inserting after paragraph (1)(d) the following paragraph:

“(da) establish a body corporate or acquire or hold shares of a body corporate, wholly or partly, for the purposes of carrying out the functions of a bridge institution under any written law enforced by the Bank; and”; and

(c) in subsection (5), by substituting for the words “paragraph (1)(d)” the words “paragraphs 1(d) and (da).”.

Amendment of section 77

9. Section 77 of the principal Act is amended by substituting for subsection (1) the following subsection:

“(1) Notwithstanding the provisions of this Act, the Board may, for the purpose of giving effect to the objects of the Bank or safeguarding the balance of payments position, by notice in writing give directions to, or impose requirements on, any person including financial institutions in respect of or relating to—

(a) transactions between residents, non-residents or residents and non-residents, in ringgit or foreign

currency, or involving gold, other precious metals, securities or other financial instruments including derivatives; or

(b) the receipt, surrender or retention of foreign currency, gold or other precious metals:

Provided that any direction given or requirement imposed shall not affect the enforcement by the parties of their rights under a qualified financial agreement.”.

Amendment of section 82

10. Subsection 82(1) of the principal Act is amended in the national language text by inserting after the words “membuat peraturan-peraturan” the word “atau”.

Amendment of Third Schedule

11. The Third Schedule to the principal Act is amended in paragraph 2—

(a) in subparagraph (5), by substituting for the words “A vesting order” the words “Subject to subsection 32(1A), a vesting order”; and

(b) by inserting after subparagraph (5) the following subparagraphs:

“(5A) Where a vesting order is made and a qualified financial agreement is transferred pursuant to such order, the transferee shall assume all rights and obligations under any qualified financial agreement of the transferor from whom such agreement was transferred.

(5B) Where the qualified financial agreement is transferred to a transferee, the enforcement by the parties of their rights under such qualified financial agreement shall be in accordance with the terms of such agreement as if the transferee had always been a party to such agreement.

- (5c) Where the qualified financial agreement of the transferor is transferred to a transferee and where a person is a counterparty to two or more qualified financial transactions under a qualified financial agreement with the transferor, all or none of such qualified financial transactions shall be transferred to the transferee.
- (5d) Where a qualified financial agreement relating to financial collateral that applies to any property of the transferor is transferred, that property shall be transferred to the transferee.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Central Bank of Malaysia Act 2009 (“Act 701”).

2. *Clause 1* contains the short title and the power of the Minister to appoint the commencement date of the proposed Act.
3. *Clause 2* seeks to amend section 2 of Act 701 by inserting definitions for several new terms, namely “financial collateral”, “qualified financial agreement”, “qualified financial transaction” and “title transfer credit support agreement”, and amending the definition of “derivatives”.
4. *Clause 3* seeks to amend subsection 15(6) of Act 701 by substituting for the words “such written law” the words “any written law” to clarify that the Governor shall manage the Bank and may exercise powers under any written law.
5. *Clause 4* seeks to amend section 31 of Act 701 by providing the power for the Bank to specify measures to a class, category or description of persons engaging in financial intermediation which would contribute to the resilience of the financial system or limit the accumulation of risks to financial stability and also providing the Bank with enforcement powers for compliance of this section.
6. *Clause 5* seeks to amend section 32 of Act 701 by inserting subsection (1A) for purposes of clarifying that the vesting order under subparagraph (1)(c)(iii) shall not affect any netting arrangement of the parties.
7. *Clause 6* seeks to substitute subsection 37(4) of Act 701 to provide that the Secretary General be invited to all the meetings of the Financial Stability Executive Committee.
8. *Clause 7* seeks to amend subparagraph 38(1)(a)(i) of Act 701 to provide for the Financial Stability Executive Committee to consider proposals under subsection 31(1) to specify measures or issue orders.

9. *Clause 8* seeks to amend section 48 of Act 701 by inserting a paragraph to enable the Bank to establish or acquire a body corporate for purposes of carrying out the functions of a bridge institution under any written law enforced by the Bank.

10. *Clause 9* seeks to substitute subsection 77(1) of Act 701 for purposes of clarifying that any direction given or requirement imposed under this section does not affect any netting arrangement of the parties.

11. *Clause 10* seeks to amend subsection 82(1) of Act 701 in the national language text by inserting the word “atau” for the purpose of clarifying the measures that can be taken by way of regulations or directives.

12. *Clause 11* seeks to amend paragraph 2 of the Third Schedule of Act 701 by inserting four new subparagraphs to ensure that a vesting order shall not affect any netting arrangement of the parties whereby a transferee is to assume all rights and obligations under any qualified financial agreement of the transferee and to ensure that all or none of the qualified financial transactions are transferred out.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

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