



PARLIMEN MALAYSIA



**RANG UNDANG-UNDANG
Bank Negara Malaysia (Pindaan) 1987
DR.26/1987**

RANG UNDANG-UNDANG

b e r n a m a

Suatu Akta untuk meminda Ordinan Bank Negara Malaysia 1958.

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MAKA INILAH DIPERBUAT UNDANG-UNDANG oleh Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong dengan nasihat dan persetujuan Dewan Negara dan Dewan Rakyat yang bersidang dalam Parlimen, dan dengan kuasa daripadanya, seperti berikut:

1. Akta ini bolehlah dinamakan Akta Bank Negara Malaysia (Pindaan) 1987. Tajuk ringkas.
2. Seksyen 31A Ordinan Bank Negara Malaysia 1958, yang dalam Akta ini disebut “Akta ibu”, adalah dipinda dengan—
 - (a) menggantikan subseksyen (2) dengan yang berikut:

“(2) For the purposes of this section, section 31B, section 33A of the Finance Companies Act 1969 and section 39A of the Banking Act 1973, there shall be established an Advisory Panel to advise the Minister on matters falling within the purview of those provisions for which the concurrence or consent of the Minister is required.”; dan

(b) menggantikan subseksyen (4) dengan yang berikut:

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“(4) For the purposes of this section, section 31B and section 31C, “licensed finance company” means a licensed finance company under the Finance Companies Act 1969.”.

Seksyen
baru 31B dan
31C.

3. Akta ibu adalah dipinda dengan memasukkan, selepas sahaja seksyen 31A, seksyen-seksyen baru 31B dan 31C yang berikut:

“Power to implement scheme for the protection of depositors.

31B. (1) Notwithstanding anything in any written law but subject to subsection (3), the Bank may, if it is satisfied that a deposit-taker is—

(a) likely to become unable to meet its obligations; or

(b) about to suspend payment, and that it would be necessary for the purpose of securing or maintaining the financial stability of the Federation and the protection of the depositors of the deposit-taker, by order published in the *Gazette*, implement on its own behalf or on behalf of the deposit-taker, as the case may be, a scheme whereby—

(aa) the Bank—

(i) purchases any shares of a licensed finance company;

(ii) makes an advance of any funds to a licensed finance company repayable with or without interest for the purpose of assisting the licensed finance company to acquire the property and liabilities of the deposit-taker and the property of the depositors in the deposit-taker; or

- (iii) makes an advance of any funds to a bank incorporated in the Federation repayable with or without interest to enable the bank to acquire a licensed finance company which thereafter shall acquire the property and liabilities of the deposit-taker and the property of the depositors in the deposit-taker; and
- (bb) the depositors, in exchange for their property in the deposit-taker, be given shares in the licensed finance company referred to in subparagraph (i), (ii) or (iii) of paragraph (aa), as the case may be.

(2) Where, pursuant to subsection (1), the Bank purchases a licensed finance company, it shall dispose of any shares it may continue to hold after the scheme for which the licensed finance company was purchased has been implemented where the Bank is satisfied that the circumstances described in paragraph (a) or (b) of subsection (1), as the case may be, no longer exist.

(3) Where, pursuant to a court order authorising a deposit-taker to implement any scheme for its depositors, the deposit-taker proposes to implement a scheme which is substantially in the nature of the scheme referred to in subsection (1), the Bank may implement such scheme on behalf of the deposit-taker and for this purpose subsection (1) shall apply accordingly.

(4) Nothing herein shall authorise the Bank to implement any scheme under subsection (1) unless—

- (a) the consent of the Minister has been obtained;

- (b) the net asset backing of the deposit-taker is insufficient to meet its deposit liabilities; and
- (c) the consents of the deposit-taker and the depositors have been obtained except where it is ordered by the court that the scheme be implemented without the consent of the deposit-taker or the depositors.

(5) Where the Bank implements a scheme pursuant to its powers under subsection (1), it shall for that purpose have all the powers to do all or any of the things specified under subparagraphs (i), (ii) and (iii) of paragraph (aa) of subsection (1).

(6) Where the Bank exercises its powers under subsection (1), it may, notwithstanding anything in any written law and for the purpose only of implementing a scheme under that subsection, authorise the licensed finance company referred to in subparagraph (i), (ii) or (iii) of paragraph (aa) of that subsection, as the case may be, to—

- (a) undertake a reconstruction exercise;
- (b) purchase and acquire the property and liabilities of the deposit-taker and the property of the depositors in the deposit-taker; or
- (c) enter into any arrangement, agreement or transaction with the deposit-taker or its depositors where necessary.

(7) An order made under subsection (1) may provide for the date on and from which the scheme shall take effect, and, to the extent that it is not inconsistent with the scheme, for all or any of the following:

- (a) any property vested in or held by the transferor, either alone or jointly with any other person, or any liabilities

suffered by the transferor, either alone or jointly with any other person, shall, on and from the effective date, be vested in or held by or be suffered by the transferee either alone or jointly with such other person, as the case may be;

- (b) any existing instrument, whether in the form of a deed, will or otherwise, or order of any court under or by virtue of which any property became vested in or any liabilities be suffered by the transferor, shall be construed and have effect, on and from the effective date, so far as the context permits, as if for any reference therein to the transferor there were substituted a reference to the transferee;
- (c) any existing contract to which the transferor was a party, whether in writing or not, shall have effect, on and from the effective date, as if the transferee had been a party thereto instead of the transferor;
- (d) where the transferor is the deposit-taker, any account between the transferor and its depositor shall, on and from the effective date, become an account between the transferee and the depositor, and such account shall be deemed for all purposes to be a single continuing account;
- (e) any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent, whether or not expressed in writing and whether or not in relation to an account, given to the transferor either alone or jointly with another person, shall have effect, in respect of anything

due to be done on or after the effective date, as if given to the transferee either alone or, as the case may be, jointly with such other person;

- (f) in the case where the transferor and the transferee are respectively the deposit-taker and the licensed finance company, any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed by the transferor or payable at the place of business of the transferor in respect of any property or liabilities of the transferor which is purchased by the transferee under a scheme referred to in subsection (1), whether so drawn, given, accepted or endorsed before, on or after the effective date, shall have the same effect, on and from the effective date, as if it had been drawn on, or given to, or accepted or endorsed by, the transferee or were payable at the place of business of the transferee;
- (g) the custody of any document, goods or thing held by the transferor as bailee immediately before the effective date shall, on and from the effective date, pass to the transferee and the rights and obligations of the transferor under any contract of bailment relating to any such document, goods or thing shall, on and from the effective date, be transferred to the transferee;
- (h) any security held immediately before the effective date by the transferor, or by a nominee of, or trustee for, the transferor as security for the payment or discharge of any liability of any person shall, on and from the effective date, be held by the transferee or, as the case may be, by that nominee of, or

trustee for, the transferee, and to the extent of those liabilities, be available to the transferee as security for the payment or discharge of those liabilities; and where any such security extends to future advances or future liabilities it shall, on and from the effective date, be held by, and be available as aforesaid to, the transferee as security for future advances by, and future liabilities to, the transferee in the same manner in all respects as future advances by, or future liabilities to, the transferor were secured thereby immediately before the effective date;

(i) where any right or liability of the transferor is transferred to the transferee, the transferee shall, on and from the effective date, have the same rights, powers and remedies (and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority) for ascertaining, perfecting or enforcing that right or liability as if it had at all times been a right or liability of the transferee, including those rights or liabilities in respect of any legal proceedings or applications to any authority pending immediately before the effective date by or against the transferor.

(8) Where the order made under subsection (1) provides for the transfer of any property vested in or held by or any liabilities suffered by the transferor, either alone or jointly with any other person, then, by virtue of the order, that property and those liabilities shall, on and from the effective date, become

vested in or held by or be suffered by the transferee, either alone or jointly with such other person, as the case may be.

(9) The Bank shall, within thirty days of the making of an order under subsection (1), lodge a copy of the order with—

- (a) the Registrar of Companies;
- (b) the Registrar General of Co-operative Societies, where the deposit-taker to which the order relates is a co-operative society;
- (c) the appropriate authority concerned with the registration or recording of dealings in that land or the interest in that land so transferred pursuant to the order; and
- (d) the appropriate authority concerned with the registration or recording of dealings in that movable property or interest in that movable property so transferred pursuant to the order.

(10) Subject to paragraph (c) of subsection (4), an order made under subsection (1) shall be binding on all persons to whom the order is directed and who are affected thereby.

(11) For the purposes of this section—

“business of deposit taking” means the acceptance of any money on deposit or loan by a person (in this definition referred to as “the borrower”) from more than ten persons wherein the borrower is under a liability (whether or not such liability is present or future) to repay the money to those persons—

- (a) where the borrower is not a licensed finance company and (without prejudice to paragraphs

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(b) and (c) of this definition) is not exempted from the provisions of the Finance Companies Act 1969;

(b) where the borrower is a co-operative society; or

(c) where the borrower is a pawnbroker;

“deposit liability” means the liability of a deposit-taker to repay any money accepted by the deposit-taker on deposit or loan from any person;

“depositor” means a person who deposits with or lends money to any person carrying on the business of deposit taking;

“deposit-taker” means a person who carries on the business of deposit taking;

“effective date” means the date on and from which a scheme referred to under subsection (1) shall take effect;

“liabilities” includes debts, duties and obligations of every kind, whether present or future, actual or contingent;

“property” includes movable and immovable property, any interest therein, whether legal or equitable, benefits from shares and investments, choses in action, claims, rights, franchises, licences, privileges, securities and powers of every description;

“security” includes a mortgage or charge, whether legal or equitable, debenture, bill of exchange, promissory note, guarantee, lien, pledge, whether actual or constructive, hypothecation, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present or future, actual or contingent.

Power to
reduce
share
capital
and to
cancel
shares of
financial
institu-
tion.

31c. (1) Notwithstanding anything in any written law or the articles of association of a financial institution, where the Bank has pursuant to—

Act 102. (a) paragraph (e) of subsection (2) of section 39 of the Banking Act 1973; or

Act 6. (b) paragraph (iii) of section 33 of the Finance Companies Act 1969,

assumed control of and carries on the business of the financial institution and the paid up capital of such financial institution is lost or unrepresented by available assets, the Bank may apply to the High Court for an order to reduce the share capital of such financial institution by cancelling any portion of its paid up capital which is lost or unrepresented by available assets.

(2) Where the High Court makes an order referred to in subsection (1) to reduce the share capital of a financial institution, the Court may—

(a) on the application by the Bank; and

(b) if, on the expiry of thirty days from the date of any call made by the financial institution on its shareholders to pay on their respective shares, payment on any such shares has not been made,

direct that such shares for which payment has not been made be cancelled accordingly.

(3) Where the share capital of a financial institution is reduced pursuant to subsection (1), or any of its shares has been cancelled pursuant to subsection (2), the Bank may cause the memorandum of association of such financial institution to be altered accordingly.

(4) For the purposes of this section—

Act 125. (a) section 64 of the Companies Act 1965 shall, subject to subsection (1) and if the High Court so directs, apply accordingly; and

(b) “financial institution” means a bank incorporated in the Federation or a licensed finance company.”.

HURAIAN

Rang Undang-Undang ini bertujuan meminda Ordinan Bank Negara Malaysia 1958 di atas alasan-alasan yang dinyatakan di bawah ini:

2. *Fasal 2* bertujuan meminda seksyen 31A Ordinan itu. Ini adalah pindaan berbangkit yang hanya diperlukan dengan kemasukan seksyen-seksyen baru 31B dan 31C.

3. *Fasal 3* bertujuan memasukkan dua seksyen baru iaitu seksyen 31B dan 31C.

Seksyen baru 31B akan memberi kuasa kepada Bank untuk melaksanakan suatu skim penyelamatan sekiranya pengambil deposit mungkin tidak dapat menunaikan obligasi-obligasinya atau hampir hendak menggantung pembayaran dan adalah perlu bagi skim tersebut dilaksanakan supaya mengukuhkan atau menjaminkan kestabilan kewangan Persekutuan dan perlindungan kepada pendeposit-pendeposit. Di bawah skim itu Bank tersebut boleh sama ada membeli syer-syer sesuatu syarikat kewangan berlesen atau membuat pendahuluan wang kepada syarikat kewangan berlesen untuk membolehkannya memperolehi harta dan tanggungan pengambil deposit itu dan harta pendeposit-pendeposit dalam pengambil deposit atau membuat pendahuluan wang kepada bank untuk membolehkannya memperolehi syarikat kewangan berlesen yang, seterusnya, akan memperolehi harta dan tanggungan pengambil deposit dan harta pendeposit-pendeposit dalam pengambil deposit. Sebagai balasan, pendeposit-pendeposit itu akan diberikan syer-syer dalam syarikat kewangan berlesen. Seksyen ini juga menyatakan syarat-syarat yang mesti dipatuhi sebelum skim itu boleh dilaksanakan.

Seksyen baru 31c memberi kuasa kepada Bank memohon kepada Mahkamah Tinggi untuk mengurangkan amaun modal syer sesuatu bank atau sesuatu syarikat kewangan berlesen yang mana modal institusi itu telah hilang atau tidak dilambangkan dengan aset-aset yang ada. Ini akan menghalang pemegang-pemegang syer yang berkelakuan curang daripada memegang simpan dan mendapat faedah daripada pertaruhan ekuiti selepas bank atau syarikat kewangan itu telah diselamatkan oleh Bank.

IMPLIKASI KEWANGAN

Rang Undang-Undang ini tidak akan melibatkan Kerajaan dalam apa-apa perbelanjaan wang tambahan. [PN. (U²) 1454.]