Client Alert

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Bank Negara Malaysia's Guidelines on Transfers of Business

On 5 August 2016, Malaysia's central bank, Bank Negara Malaysia ("**BNM**") issued a much-anticipated policy document in relation to the transfers of business by a licensed person in Malaysia ("**Policy Document**"). The Policy Document clarifies the scope of Section 100 of the Financial Services Act 2013 ("**FSA**") and Section 112 of the Islamic Financial Services Act ("**IFSA**") by outlining the types of transfers that require the specific approval of BNM.

Section 100 of the Financial Services Act 2013 ("**FSA**") and Section 112 of the Islamic Financial Services Act ("**IFSA**") states that the prior written approval of BNM is required for a transfer of the whole or any part of the business of a licensed person. Due to the wide scope of the FSA and IFSA, there have been discussion amongst financial institutions as to whether a sell-down of their performing loan portfolios e.g. in a syndicated loan, constitute a business transfer, regardless of the value of such loan sales.

This Alert highlights the key points of the Policy Document.

Applicability

The Policy Document is applicable to transferors and transferees (including non-licensed persons) intending to enter into a business transfer scheme under Section 100 of the FSA or Section 112 of the IFSA, as the case may be.

If a licensed person is a foreign insurer or foreign takaful operator, the requirements in the Policy Document shall apply to the transfers of its:

a) Malaysian policies or Malaysian takaful certificates; and

b) foreign policies or foreign takaful certificates issued in Malaysia.

Approval for transfers of business

Pursuant to the Policy Document, BNM grants a general approval to any person to enter into an agreement or arrangement for a scheme to transfer the whole or any part of the business of a licensed person pursuant to Section 100(1) of the FSA and Section 112(1) of the IFSA.

However, the following types of business transfers would require a specific approval from BNM:

a) a business segment or unit, which includes the transfer of a mortgage loan book or a portfolio of insurance/takaful contracts in the context of an exit strategy;

b) impaired loans or financing that are subject to the Guidelines on the Disposal/Purchase of Non-Performing Loans by Banking Institutions issued by BNM on 28 December 2005 and the Guidelines on the Disposal/Purchase of Non-Performing Financing by Islamic Banks issued by BNM on 29 June 2007;

c) loans, financing or other assets that are linked to projects of strategic importance to the nation, including by way of collaterisation;

d) financial consumer services or products proposed to be transferred to a non-licensed person, including transfers where the reference assets are used for the settlement of credit derivative transactions;

e) securitisation transactions where the underlying loans or financing are not serviced by a licensed person; or

f) assets and liabilities, where the nominal or book value is at least MYR1billion.

Loan sales by financial institutions

In Malaysia, it is not uncommon for banks and financial institutions to sell all or part of their non-strategic performing loan portfolios. Loan sales are increasingly prevalent in times of economic slowdown and where cost of capital has become increasingly higher, banks are keen to ensure liquidity and minimise their credit risk whenever necessary.

Prior to the issuance of the Policy Document, there have been conflicting interpretations as to whether loan sell-downs by financial institutions in Malaysia falls within the scope of the statutory provisions above which require the prior approval of BNM. Although application to BNM is essentially a routine procedure, this can cause delays in the timeline of transactions and it is not prudent in the interests of efficiency for every loan sell-down to engage the approval process of BNM especially when such transactions by financial institutions in Malaysia is a common occurrence in the secondary loan markets.

With the Policy Document now in force, it is clear that BNM will not require licensed persons to apply for its prior approval for any sell-down of performing loans with a nominal or book value of less than MYR1billion.

Conclusion

The Policy Document is designed to facilitate business expediency in light of the broad provisions of Sections 100 of the FSA and Section 112 of the IFSA. In view of the previous lack of clarity to the definition of business transfers, the publication of this Policy Document is timely and is to be applauded as it facilitates business expediency while also ensuring that business transfer schemes do not adversely affect the safety and soundness of a licensed person. Most importantly, the Policy Document allows BNM to safeguard, where necessary, the rights and interests of any person who is likely to be affected by the schemes.

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