



Perbadanan Insurans Deposit Malaysia
Protecting Your Insurance And Deposits In Malaysia

**RESPONSE TO THE CONSULTATION PAPER ON
MALAYSIA DEPOSIT INSURANCE CORPORATION
(TERMS AND CONDITIONS OF MEMBERSHIP)
REGULATIONS 2013**

ISSUE DATE : 30 OCTOBER 2013

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

TABLE OF CONTENTS

1.0	BACKGROUND.....	1
2.0	OVERVIEW OF COMMENTS RECEIVED.....	1
3.0	DETAILED COMMENTS RECEIVED AND PIDM’S RESPONSES	3
4.0	GOING FORWARD	24

<i>Appendix 1: Draft Malaysia Deposit Insurance Corporation (Terms And Conditions Of Membership) Regulations 2014</i>	<i>25</i>
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Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

1.0 BACKGROUND

- 1.1 On 6 June 2013, Perbadanan Insurans Deposit Malaysia (“PIDM”) issued a Consultation Paper on the Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013 (“CP”).
- 1.2 Written comments were received from the member institutions (“Members”), Bank Negara Malaysia (“BNM”) and industry associations. As part of the consultation process, PIDM is publicly disclosing its response to the comments received.
- 1.3 PIDM wishes to thank the respondents who have provided their written comments to the CP. PIDM has carefully considered these comments and our response to the detailed comments are set out in Section 3. Given that some of the comments are similar, we have grouped the comments under broad topics and provided our responses on that basis. Further, for ease of reference, we have arranged the comments in the same order as the paragraphs to the draft Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2014 (“draft Regulations”) that can be found in *Appendix 1* to this Response Paper.

2.0 OVERVIEW OF COMMENTS RECEIVED

- 2.1 Generally, the respondents agreed with the proposed refinements in the draft Regulations and appreciated the need for PIDM to enhance the draft Regulations. It was encouraging to note from the comments that some respondents were confident that they will be able to comply with the proposed terms and conditions.
- 2.2 A few respondents commented that the draft Regulations made reference to the repealed Banking and Financial Institutions Act 1989, Islamic Banking Act 1983, Insurance Act 1996 and Takaful Act 1984 and urged PIDM to update the reference to the Financial Services Act 2013 (“FSA”) and Islamic Financial Services Act 2013 (“IFSA”). PIDM wishes to highlight that the FSA and IFSA had not yet been gazetted at the time of the issuance of CP on 6 June 2013. Given that the FSA and IFSA came into effect on 30 June 2013, reference will be made to the FSA and IFSA in this Response Paper.
- 2.3 PIDM takes note that a number of the respondents were concerned with the duplicative regulatory requirements imposed by PIDM and BNM. These respondents were of the view that this would pose unproductive reporting burden on the

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

Members and lead to dual penalties by PIDM and BNM. In this regard, we wish to assure the Members that PIDM has given due consideration to the coordination arrangements with BNM. To the most extent possible, PIDM would leverage on the information and statistics submitted to BNM and has streamlined definitions with BNM's requirements to ease regulatory burden on Members. Specifically:

- (a) As stated under the Strategic Alliance Agreement between BNM and PIDM, PIDM will leverage on BNM where information and statistics on the Members are readily available. The requirements proposed in the draft Regulations are absolutely necessary to enable PIDM to carry out its mandated functions with speed and efficiency. Particularly, in the event that PIDM is required to undertake an intervention or resolution activity, the informational requirements proposed in the draft Regulations are necessary to facilitate early preparation by PIDM; and
- (b) PIDM took into account and aligned, to the extent possible, the proposed requirements in the draft Regulations to the standards or requirements issued or to be issued by BNM, including:
 - (i) harmonised its definition of key responsible persons and streamlined its expectations on the sound financial and business practices to mirror BNM's prudential requirements; and
 - (ii) allowed for Members to adopt or leverage on similar interpretations made in relation to their compliance with BNM's standards or requirements, for example, the definitions of "material".

PIDM also wishes to highlight that PIDM and BNM are independent agencies with different but complementary roles. BNM is the primary regulator of the financial system and PIDM complements BNM's roles in promoting the stability of the financial system. The mandate of PIDM includes the early intervention and resolution of troubled Members.

- 2.4 Most of the other comments received were in relation to operational issues, including the determination of events to be reported to PIDM, timing or timeframe of compliance and the form and content of the compliance procedures. PIDM has reviewed the comments in detail and adopted them, where appropriate. Detailed comments and responses are set out in Section 3.0.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

2.5 After assessing the views and feedback received, PIDM has incorporated the following key changes to the draft Regulations:

- (a) Regulation 5: To refine PIDM's expectations in relation to sound financial and business practices;
- (b) Paragraphs 7(1)(b) and 7(2)(b) and sub-regulation 7(3): To clarify the manner in which records should be kept by the Members and the retention period for registers of insurance policies, takaful certificates and claims;
- (c) Regulation 8: To clarify the Members' obligation in relation to the notification timeline of surrender or revocation of licence;
- (d) Paragraph 9(1)(d)¹: To remove the requirement for the Members to notify PIDM on the issuance of any demand or notice pursuant to paragraph 218(2)(a) of the Companies Act 1965 against the Members; and
- (e) Paragraph 9(1)(e): To revise the requirement for the Members to notify PIDM, if and only if, the liquidation proceedings of their subsidiaries materially affect or may materially affect their operations or financial condition.

3.0 DETAILED COMMENTS RECEIVED AND PIDM'S RESPONSES

3.1 APPLICABILITY
Proposal 1 of the CP provided that the terms and conditions of membership are equally applicable to all deposit-taking members ("DTMs") and insurer members. The terms and conditions, as far as practicable, would be extended to insurer members while insurance specific requirements, wherever applicable, would be incorporated in the draft Regulations.

Comments Received
The respondents took note of and agreed with the proposal.

¹ Notwithstanding the removal of paragraph 9(1)(d), the numbering of paragraphs to the draft Regulations (as referred to in PIDM's responses below) reflects those as in the Appendix to the CP for ease of reference.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

3.2 SOUND FINANCIAL AND BUSINESS PRACTICES (REGULATION 5)

Proposal 2 of the CP proposed that the Members shall follow sound financial and business practices with respect to their operations and activities, which encompass a wider range of areas including but not limited to board oversight, corporate governance, risk management, audit and control.

Comments Received

The respondents largely concurred with the inclusion of the new areas under the sound financial and business practices. However, several respondents requested that PIDM provide clarification on the definition and criteria that constitute sound financial and business practices. Two respondents raised queries on what “audit” and “control” would encompass and another respondent suggested replacing “control” with “compliance”. There was a proposal to use the phrase “shall have in place” instead of “follow” as it appears ambiguous with respect to what financial and business practices are to be followed.

There were proposals for the following areas to be included under the sound financial and business practices:

- (a) Shariah governance for Islamic banks and takaful operators;
- (b) Financial reporting as an important area of governance; and
- (c) Fair treatment of customers (including ethics and professionalism of sales personnel), compliance and actuarial functions for the insurer members.

Further, there were suggestions that PIDM should tie sound financial and business practices to the prudential standards issued by BNM.

A respondent was of the view that it would be confusing for the Members if PIDM duplicates some of BNM’s functions through the proposed Regulations. Clarification was sought from several respondents as to whether there is any framework, policy, procedure or standard that can be referred to or benchmarked by the Members or whether there is any specific committee structure to be established by the Members.

A respondent enquired regarding the impact of the new areas on the current scoring methodology of the Differential Premium Systems.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

PIDM's Response

Taking into account the comments from the respondents and to provide clarity on PIDM's expectations in relation to what constitute sound financial and business practices, regulation 5 is amended as follows:

"A member institution shall have in place appropriate, effective and prudent –

- (a) practices, processes, policies and procedures covering areas including corporate governance, Shariah governance where applicable, and risk management; and*
- (b) controls in respect of its operations,*

that support the sound management of its financial position, business, affairs and activities."

As a general guide, the following terms are explained below:

"appropriate" means that a knowledgeable individual in the financial institutions industry would conclude that it is suitable for its intended purpose, having regard to the nature, magnitude, complexity and implications of the matter in question;

"effective" means that a knowledgeable individual in the financial institutions industry would conclude that it is achieving, or can reasonably be expected to achieve, its intended purpose; and

"prudent" means that a knowledgeable individual in the financial institutions industry would conclude that it is the product of the exercise of careful and practical judgment, having regard to business objectives, risks, the business and economic environment and the sustainability of earnings and capital.

With regard to the enquiry on the area of "audit", the expectations in relation to internal and external audit functions that are part of the corporate governance structure have already been included in BNM's guidelines.² Hence, "audit" will not be a separate area and instead, will be an area subsumed under the area of "corporate governance". A similar rationale was adopted for the area of "board oversight" and the suggestion on the area of "financial reporting".

² Including Guidelines on Corporate Governance for Licensed Institutions, Guidelines on Corporate Governance for Licensed Islamic Banks and Prudential Framework of Corporate Governance for Insurers.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

PIDM wishes to reiterate that the areas included in regulation 5 are areas that are already covered under section 47 of the FSA and section 57 of the IFSA. For Shariah matters that are applicable to Islamic banks and takaful operators only, this is covered under section 29 of the IFSA. As pointed out in the CP, Members may be guided by the relevant standards or requirements issued or to be issued by BNM under the FSA and IFSA in complying with the sound financial and business practices. Nonetheless, PIDM takes note of the suggestions made and will explore with BNM on the need to develop detailed expectations on these areas.

As the Members are always expected to operate in a safe and sound manner as provided in the legislation and guidelines issued by BNM, the areas set out in regulation 5 are not new and are currently practised by most, if not all Members. Therefore, the inclusion of the new areas will not have any impact on the current scoring methodology of the Differential Premium Systems.

3.3 MAINTENANCE OF RECORDS (INSURER MEMBERS) [SUB-REGULATION 7(2)]

Proposal 3 of the CP proposed that the insurer members shall maintain and retain all policies and claims registers in Malaysia to facilitate unimpeded and timely access to the documents.

Comments Received

Whilst respondents were agreeable to the proposal to maintain registers of insurance policies, takaful certificates and claims in Malaysia, a respondent has pointed out that such requirement is redundant given that it is already stipulated in other legal requirements, including BNM's Guidelines on Takaful Operational Framework.

Several respondents recommended that the timeframe for record retention be specified in the draft Regulations and were of the view that the retention period should be in line with other statutory requirements. It was suggested that, at a minimum, the insurer members should retain the registers of all active policies, certificates and claims at all times but for those expired policies and certificates and closed claims, they should only be retained up to the end of the liability period.

A few respondents wanted clarification as to whether the records should be kept in hard or soft copy. A respondent was concerned about the high storage costs to retain such records in hard copy due to the long insurance coverage period and proposed to keep registers of insurance policies, takaful certificates and claims in soft copy.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

There was one view that the draft Regulations should emphasise the requirement for the insurer members to facilitate unimpeded and timely access to the information, instead of the location of the record keeping. There was also an enquiry on the arrangement with approved overseas data hosting.

PIDM's Response

PIDM will require Members to prepare and maintain accurate records to facilitate the assessment and implementation of appropriate resolution actions.

With regard to the retention period of the registers under normal circumstances, PIDM agrees with the suggestion regarding active and expired policies, certificates and claims and hence, clarification is provided in the draft Regulations for the registers to be retained up to the end of the liability period.

Further, for the retention period of other records and under normal circumstances, Members may be guided by other legislation that has imposed such record retention period requirements. For example, subsection 167(2) of the Companies Act 1965 provides for a retention time limit of seven years after the completion of the transactions or operations.

Nevertheless, if there is a transfer of certificates or policies among the Members, PIDM wishes to highlight that subsection 70(3) of the Malaysia Deposit Insurance Corporation Act 2011 ("PIDM Act") provides that a Member shall maintain such records as are required by PIDM for the purposes of continued separate protection where takaful certificates or insurance policies of, a Member are transferred to and assumed by another Member.

In relation to the prescribed storage form, PIDM takes note of the high storage costs associated with the retention of hard copy. Members are allowed to keep the records in any manner that Members consider most operationally efficient, whether in the form of hard or soft copy, on condition that Members are able to provide the information promptly when requested by PIDM.

PIDM would like to highlight that it is critical for PIDM to have unimpeded and prompt access to the information or data on insurance policies, takaful certificates and claims, in the event PIDM is required to undertake intervention or resolution actions. Hence, PIDM is of the view that the board of insurer members should take this into consideration and should ensure that such information, regardless of whether there are any outsourcing arrangements for data warehousing or hosting, are kept or retained in such a manner that would enable the insurer member to promptly provide or make available such information to PIDM, when required.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

Taking into account the comments from the respondents, paragraph 7(2)(b) and sub-regulation 7(3) are amended as follows:

“An insurer member shall retain or cause to be retained registers of insurance policies, takaful certificates and claims in such a manner that will enable the Corporation to have unimpeded and prompt access to the information or data on such insurance policies, takaful certificates and claims, when so required by the Corporation. Such registers shall be retained at all times and as long as the insurer member is under any liability in respect of any insurance policies, takaful certificates or claims registered.”

3.4 MAINTENANCE OF RECORDS (DEPOSIT-TAKING MEMBERS) [SUB-REGULATION 7(1)]

Proposal 4 of the CP proposed that the DTMs shall have in place a deposit liability system that is able to generate reliable and accurate deposit information when so required by PIDM and within such period as determined by PIDM.

Comments Received

Most of the respondents accepted the proposal for the DTMs to have in place a deposit liability system that is able to generate reliable and accurate deposit information. Some respondents mentioned that the DTMs should be given sufficient lead time to prepare the deposit information that is in compliance with the standard file format (“SFF”) requirements in view of the complexity of certain manual process (such as solicitor’s client accounts). A few respondents indicated that the required time period to generate such information ranges from five to 30 working days.

There was an enquiry regarding the phrase “when so required”.

PIDM’s Response

The ability of the DTMs to produce accurate information in SFF at short notice is critical to the ability of PIDM to resolve troubled DTMs including reimbursing depositors promptly, in the event PIDM is required to do so. In this regard, PIDM has been working with the industry since 2010 to ensure that the DTMs are able to submit accurate information in SFF to PIDM on an annual basis and as and when required. Going forward, PIDM plans to work with the DTMs to better understand the time required and challenges faced in being able to generate the SFF on an ad-hoc basis.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

With regard to the phrase “when so required”, other than the annual submission requirements stipulated in the PIDM’s Guidelines on Deposit Information Systems and Submission, it is envisaged that PIDM may request for a submission of deposit information in SFF to facilitate reimbursement of insured deposits to depositors in the event there is a troubled DTM. Hence, DTMs shall put in place and manage the operation of an effective and efficient deposit liability system in order to ensure the accuracy and speedy computation of insured depositors’ entitlements. Following from the explanation in section 3.3 above, further clarification is provided in the draft Regulations that the DTMs should ensure that all deposit records, regardless of whether there are any outsourcing arrangements for data warehousing or hosting, are kept or retained in such a manner that will enable PIDM to have unimpeded and prompt access to deposit information, when so required by PIDM.

Paragraph 7(1)(b) is amended as follows:

“A deposit-taking member shall retain or cause to be retained deposit records in such a manner that will enable the Corporation to have unimpeded and prompt access to deposit information, when so required by the Corporation.”

3.5 NOTIFICATION OF SURRENDER OR REVOCATION OF LICENCE (REGULATION 8)

Proposal 7 of the CP proposed that a Member shall notify PIDM immediately of a surrender or revocation of its licence issued by BNM.

Comments Received

The majority of the respondents agreed with the proposal to notify PIDM immediately upon the surrender or revocation of its licence but some respondents requested PIDM to provide a more specific notification timeline instead of “immediately” to prevent any ambiguity.

Several respondents appeared to have misunderstood that the notification to PIDM is to be made before the expiry of the appeal process granted under the FSA and IFSA. There were several suggestions in respect of the notification timeline, including: (a) a range of seven to 14 days of such surrender or revocation of licence; and (b) within one month from cessation of business. These timelines were proposed after considering the appeal process granted under the FSA and IFSA for the Members to make representations to BNM or the Minister of Finance (“Minister”). Respondents were of the view that notification to PIDM should be made after the outcome of the appeal is made known.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

On the other hand, several respondents were of the view that PIDM should work with BNM so that BNM will notify or copy PIDM on any surrender or revocation of licence to avoid duplication in reporting and to preserve confidentiality of sensitive information. There was another view that it is not necessary for the Members to notify PIDM as membership will be automatically cancelled under section 38 of the PIDM Act.

PIDM's Response

PIDM wishes to inform that there is an ongoing coordination arrangement between BNM and PIDM on the potential surrender or revocation of licence of a Member. Under the Strategic Alliance Agreement between the two agencies, BNM will inform PIDM of its intention to revoke the banking or insurance licence of a Member or when a Member has indicated to BNM its intention to surrender its banking or insurance licence. However, formal notification from such Member is required to give effect to a cancellation of the Member's membership under section 38 of the PIDM Act.

Revocation of licence

With regard to the notification timeline, PIDM recognises that BNM shall, under most circumstances, serve on a financial institution a written notice of proposed revocation of licence and the financial institution will be given an opportunity to submit a written representation to BNM within 14 days from the date of the notice of the proposed action. After the expiry of the period of 14 days and considering any written representation, the Minister shall give the financial institution a written notice of a revocation of a licence, if he decides to proceed with the proposed action.

Regulation 8 is not intended to require the Members to notify PIDM upon receipt of written notice of proposed revocation of licence from BNM. Rather, PIDM wishes to clarify that a Member is only required to notify PIDM once it has been served with the written notice of a revocation of a licence by the Minister, i.e. after the expiry of the representation period.

Hence, it would only be a matter of process and it should not be overly burdensome administratively for a Member to provide a copy of such notice to PIDM on the date of receipt by the Member of such notice from the Minister, in order to facilitate the issuance of written notice of cancellation of membership by PIDM.

Surrender of licence

Similarly, a Member shall provide written notice of its surrender of licence to PIDM on the same day the written notice is submitted by the Member to BNM, in order to facilitate the issuance of written notice of cancellation of membership by PIDM.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

PIDM takes note of the comments received and is pleased to inform Members that regulation 8 is amended below to clarify Members' obligations:

"Where a member institution surrenders its licence or its licence is revoked under the relevant legislation administered by Bank Negara Malaysia, it shall provide the Corporation with a copy of written notice of its surrender of licence or a notice of a revocation of a licence, as the case may be, on the date of such notice of surrender or on the date of receipt of such notice of revocation."

3.6 NOTIFICATION OF EVENTS – PROPOSED NOTIFICATION TIMELINE (REGULATION 9)

Proposal 5 of the CP proposed that the Members shall, as soon as they are aware of it, notify PIDM of the occurrence or upon the discovery of events that may undermine their safety and soundness.

Comments Received

The respondents generally recognised the need to notify PIDM on the occurrence of proposed events but a few respondents argued that the Members are already required to notify BNM of such events. Instead, these respondents urged PIDM to consider leveraging on BNM's information to avoid the duplication of reporting. Further, these respondents had concern on the confidentiality of sensitive information and suggested that PIDM establishes a formal communication arrangement for BNM to notify PIDM if there is a need for PIDM to be informed of the situation.

There was a suggestion for the timing of compliance and Members' responsibilities under the PIDM's draft Regulations to be aligned with the requirements issued by BNM, Bursa Malaysia, the Securities Commission and other regulatory agencies where such events are required to be reported to them. There was another suggestion for PIDM to follow the same reporting structure imposed by BNM to ensure consistency.

Some respondents requested clarification as to whether there is any standard form, prescribed format or online reporting system for the information to be reported to PIDM.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

Several respondents were of the view that the phrase “as soon as it is aware of the event” needs to be defined to provide clarity to the Members. The respondents highlighted that it would be useful if the trigger points for notification be standardised and the trigger points could include, upon awareness by the senior officers or upon the completion of internal investigation and proper confirmation of the events, to avoid inaccurate reporting or escalation of events that may be a false alarm. Several respondents gave suggestions in relation to the specified notification timeline, such as seven days and 14 days of the occurrence of such events.

PIDM’s Response

In determining the informational requirements to fulfil the mandate of PIDM, PIDM took into consideration the burden that the requirements may pose to the Members and attempted to strike a balance between not unduly overburdening the Members unproductively on the one hand and obtaining the necessary information promptly to manage the risks to PIDM and the financial system on the other hand. PIDM is mindful that certain information may, under normal circumstances, already be part of the submissions to other regulatory agencies, particularly BNM. PIDM wishes to emphasise that arrangements with BNM are in place whereby PIDM will leverage on BNM where information and statistics on the Members are readily available.

Under the Strategic Alliance Agreement, BNM will notify PIDM when and if they detect events that may have implications on the safety and soundness of the Members. Notwithstanding this, it is PIDM’s intention to impose an obligation on the Members to notify PIDM upon the occurrence of any events that may undermine their safety and soundness. The assessment of the implications of such events would have been carried out by the Members as part of their internal controls and board escalation process. As such, the Members should be in the best position to gauge the implications of the events on its business and affairs and notify PIDM accordingly.

PIDM has not prescribed any form or format or system for the information to be reported to PIDM. Members may notify PIDM via any mode of notification considered most operationally efficient.

With regard to “as soon as it is aware of the event”, as PIDM has adopted the *de minimis* rule as the materiality threshold in specifying the requirements for notification of events, an event should be reported to PIDM after the materiality of the event has been assessed and after the Members’ designated approving authority concludes that such an event warrants an immediate notification to PIDM.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

In relation to the specified notification timeline, PIDM takes cognisance of the significance and potential impact of the events and therefore, it is critical for PIDM to be informed at the preliminary stage, i.e. immediately or as soon as can be done practically by the Members, upon the occurrence or discovery of the events. Thereafter, it can be followed by the submission of a full report to PIDM upon completion of the investigation.

3.7 NOTIFICATION OF EVENTS - PROPOSED ADDITIONAL EVENTS (REGULATION 9)

Further, proposal 5 of the CP proposed that the Members shall notify PIDM of additional events, including the occurrence of large claims (specific requirement for insurer members), detection of material fraud and gross mismanagement and inability to meet maturing obligations or access to funding.

3.7.1 OCCURRENCE OF LARGE CLAIMS [PARAGRAPH 9(1)(a)]

Comments Received

A contrary view was that the requirement to report “large claims” should be dispensed with given that this is not required to be reported to BNM.

In relation to occurrence of large claims affecting the insurer members, there was a suggestion that the paragraph be rephrased to read *“there should be notification of any claim that could lead to problems with the liquidity position of the Member wherein it affects the ability to pay claims in the normal course of business”*.

Further, a respondent proposed that large claims should be reported net of reinsurance claims. On the other hand, some respondents suggested including additional events such as claims paid for high risk clients and large claims with a cap of RM1 million and above.

PIDM’s Response

PIDM wishes to clarify that only large claims that may threaten liquidity position or undermine the safety and soundness of Members are required to be reported to PIDM. In determining what constitutes “large claims”, the Members should be guided by their board approved risk appetites, in proportion to the nature, scale and complexity of Members’ operations.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

3.7.2 DETECTION OF MATERIAL FRAUD AND GROSS MISMANAGEMENT [PARAGRAPH 9(1)(b)]

Comments Received

Several respondents suggested that BNM's requirements on material fraud, including reporting timeline and types of required information, be adopted to ensure consistency.

A respondent raised a query on whether notification to PIDM should be made for both potential and confirmed fraud and gross mismanagement.

Clarification was sought on what constitutes "gross mismanagement", particularly from the aspect of materiality.

PIDM's Response

PIDM wishes to clarify that only material fraud (including attempted fraud case) that may lead to severe financial losses or exposure experienced by the Members is required to be reported to PIDM. PIDM acknowledges that all fraud information needs to be submitted to BNM no later than two days after the date of detection. Hence, it would be a matter of process for the Members to provide such written notification to PIDM, if it is assessed by the Members that it is or it may be a material fraud.

In relation to "gross mismanagement", PIDM would require the Members to report to PIDM if the Members suffer or may suffer severe financial losses resulting from the exercise of management responsibilities in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

3.7.3 INABILITY TO MEET MATURING OBLIGATIONS OR ACCESS TO FUNDING [PARAGRAPH 9(1)(c)]

Comments Received

A respondent stated that the provision of liquidity assistance by BNM may not necessarily be tantamount to a crisis as the Members may, under normal circumstances, access to BNM's standing facility due to failed settlements and/or liquidity gridlocks.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

PIDM's Response

PIDM recognises the comment received from the respondent. PIDM wishes to clarify that the intention is not for Members to notify PIDM on utilisation of BNM's monetary operation tools, e.g. standing facility, under usual circumstances. In fact, to facilitate the early preparation by PIDM in the event that PIDM is required to undertake an intervention or resolution activity, the obligation is placed on the Member to inform PIDM if the Member makes a request or plans to request for the provision of emergency liquidity assistance from BNM due to the Member's imminent liquidity stress or its impeded access to alternative sources of funding.

3.7.4 NOTIFICATION OF EVENTS – OTHER PROPOSED EVENTS (REGULATION 9)

Comments received from the respondents on other proposed events that were not specifically highlighted in the CP are discussed below.

3.7.4.1 LIQUIDITY ISSUES [SUB-REGULATION 9(1) & PARAGRAPH 9(1)(a)]

Comments Received

Sub-regulation 9(1)

One respondent was of the view that possible events that fall within the definition “any other emerging events that may undermine its safety and soundness” should be listed as guidance to the Members, to avoid subjectivity involved by the Members in making judgements.

Paragraph 9(1)(a)

One respondent cited that the definition of “any events that could lead to problems with liquidity position” was too wide and suggested for the proposed paragraph to be narrowed down or specific events to be provided. A respondent wanted clarification on whether there are any specific measurements for liquidity position or liquidity ratio.

Another respondent stated that there needs to be a clear definition of what is construed as “not usual in the courses of its business”.

PIDM's Response

These paragraphs are intended to address events that, because of their scale or nature, have the potential to adversely affect the safety and soundness of the Members. PIDM takes note that there may be many other events that can undermine the safety and soundness of Members.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

However, PIDM is of the view that it may not be practical for PIDM to develop an exhaustive list of events. Those events listed in paragraphs 9(1)(a) to (f) can serve as guidance for the Members. PIDM wishes to advise that each Member should exercise discretion based on the information available to gauge what is considered as not usual in the course of its business as well as the implications of the events and therefore, notify PIDM in writing accordingly.

With regard to specific measurements for liquidity position or liquidity ratio, Members may be guided by the relevant standards issued or imposed by BNM.

3.7.4.2 ISSUANCE OF DEMAND OR NOTICE [PARAGRAPH 9(1)(d)]

Comments Received

A respondent highlighted that it would be too onerous and burdensome for the Members to notify PIDM about such event, considering that a demand for a debt as low as RM500 can be issued against a Member under the Companies Act 1965. Hence, it was proposed that PIDM either revisit or remove the requirement. The argument in support of the assertion was that the risk associated with the issuance of demand notice would now be lower as a person seeking to wind up a Member has to obtain BNM's prior written approval pursuant to the FSA. Further, the requirement poses unnecessary administrative work on the Members.

PIDM's Response

PIDM takes notes of the feedback and concern of the Members. PIDM is of the view that the Members should inform PIDM about such an event, irrespective of the negligible threshold, as this may lead to the winding up of the Members by the High Court. PIDM needs to be updated early on the possibility of the occurrence of such an event in order to assess the risk and take the appropriate actions in a timely manner.

However, given the new requirements to obtain BNM's approval for the compulsory winding up of Member under the FSA and IFSA,³ PIDM agrees that it may be unnecessarily burdensome for the Members to notify PIDM on such event.

Accordingly, PIDM is agreeable to dispense with the proposal to require the Members to notify PIDM on issuance of any demand or notice pursuant to paragraph 218(2)(a) of the Companies Act 1965 against the Members.

³ Subsection 195(1) of the FSA and subsection 207(1) of the IFSA.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

3.7.4.3 COMMENCEMENT OF DISSOLUTION PROCESS OR LIQUIDATION PROCEEDINGS [PARAGRAPH 9(1)(e)]

Comments Received

A suggestion was put forward by a respondent that the requirement for the Members to notify PIDM, be limited to circumstances where only the liquidation proceedings of their subsidiaries, materially affect their operations or financial condition.

PIDM's Response

PIDM is agreeable to adopt the suggestion by the respondent and paragraph 9(1)(e) is changed accordingly as follows:

“commencement of any dissolution process or liquidation proceedings, whether voluntary or otherwise, in respect of the member institution including but not limited to a resolution to wind up the member institution, an appointment of any receiver or manager over the member institution, and a presentation of a winding up petition against the member institution;”

The requirement in relation to subsidiaries of Member is captured under paragraph 9(1)(f).

3.7.4.4 COMMENCEMENT OF DISSOLUTION PROCESS OR LIQUIDATION PROCEEDINGS IN RESPECT OF RELATED CORPORATION [PARAGRAPH 9(1)(f)]

Comments Received

Clarification was sought by a respondent about the “related corporation”, as to whether the definition under the Companies Act 1965 is to be applied under the PIDM Act. A respondent was concerned that the “financial holding company” introduced under the FSA may have implications on the consistency of definition of “related corporation” between various Acts.

A respondent was of the view that the dissolution process or liquidation proceedings at the related corporation level that has no impact on the functioning of the Members should not be reported to PIDM, given that this may send wrong message on the financial standing of the Members. Further, there were also concerns that the Members may not be able to keep track of each potential liquidation process or have access to confidential information at the related corporation level.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

PIDM's Response

"Related corporation" is defined in section 2 of the PIDM Act as "related within the meaning of section 6 of the Companies Act 1965". Similar definition is adopted in section 2 of the FSA and IFSA respectively. Section 6 of the Companies Act 1965 provides that where a corporation is the holding company of another corporation; is a subsidiary of another corporation; or is a subsidiary of the holding company of another corporation, the first-mentioned corporation and that other corporation shall be deemed to be related to each other.

Hence, related corporation of the Member include its holding company, subsidiary company and affiliated company. PIDM wishes to clarify that Member is required to notify PIDM if: (a) the Member has knowledge of these events that happened at the related corporation level; and (b) such event materially affects or may materially affect its operations or financial condition.

3.7.4.5 OTHER EVENTS

Comments Received

A respondent suggested including the activation of the Business Continuity Plan upon the occurrence of a disaster as an additional event, on the basis that the public may call PIDM if they were to be made aware of a Member's problems.

There was a query from a respondent whether the events include Malaysian Motor Insurance Pool ("MMIP") cash calls.

PIDM's Response

Regulation 9 relates to notification of events that may undermine the safety and soundness of the Members and may include activation of the Business Continuity Plan and downgrading, failure, eminent failure or inability of significant reinsurer to meet its obligation to the insurer member.

Further, PIDM wishes to inform that if MMIP cash calls were made and if, by honouring such cash call, the insurer member experiences liquidity problems, such an event has to be reported to PIDM accordingly.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

3.8 NOTIFICATION OF EVENTS – *DE MINIMIS RULE* (REGULATION 9)

The CP, under Feedback Required No. 1, requested comments on the adoption of a *de minimis* rule, by using the terms “material” and “substantial” as materiality thresholds, on the notification of events.

Comments Received

Many respondents wanted clarification on the definition of “material” fraud, “large” claims, and “severe” financial losses. A view that was advocated by some respondents was to set pre-defined materiality threshold to ensure consistency in understanding and interpretation across industry. Several suggestions were given by the Members on how the criteria could be further defined. For example, to adopt:

- (a) accounting definition that is measured based on specific quantifiable criteria such as a percentage of profit before zakat and taxation, contribution income, total fund, total assets, capital and total exposure;
- (b) definition given under BNM’s standards; and
- (c) financial statement amounts used by the auditors for determination of audit opinion.

There was another view in support of PIDM’s proposal that it would be more appropriate for the board of the Members to set the operational definition. Another respondent recommended that whether the depositors would be disadvantaged by the occurrence of the event be used as a criterion under the operational definition, and the board of the Members can decide on a case-by-case basis whether it is necessary to inform PIDM when the event takes place.

Notwithstanding the contrary view from the respondents, a respondent questioned whether the internally agreed materiality threshold needs to be communicated to PIDM.

PIDM’s Response

A common threshold for “material”, “severe” “substantial” may not be appropriate throughout the industry. Materiality of information in question varies vis-a-vis one Member to another, depending on a variety of factors such as the size of the Member, and the business and sector in which it operates. What may constitute material information to one Member may be immaterial to another. Therefore, it is not possible for PIDM to prescribe a materiality threshold for all circumstances.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

As mentioned in the CP, the operational definition may be guided by the threshold set for accounting or auditing purposes or to comply with any regulatory requirements (for example, BNM or Bursa Malaysia disclosure requirements⁴). PIDM wishes to highlight that the responsibility is placed on the board of the Members to define and ensure consistent application of the usage of the terms.

Under normal circumstances, it is not a requirement for PIDM to be informed of the materiality threshold. While PIDM's concurrence is not required, PIDM expects a Member to be able to demonstrate and justify its assessment when required.

Notwithstanding the above, as a general guide, an event is considered material if it has the potential to significantly impact a Member's business operations, reputation or profitability. Without limiting their scope, the criteria for assessing the materiality should have regard to the following factors:

- (a) significance of the fraud, losses, claims or any of the events from financial, reputational and operational aspect (e.g. in terms of impact on revenue, earnings, assets, capital or importance to overall achievement of strategic and business objectives); and
- (b) potential impact on the Member's continuing ability to meet its obligations to its customers and counter parties, including depositors and policy owners.

The assessment of materiality should consider all the relevant factors. Members are expected to reassess its materiality threshold when significant changes occur in the volume or nature of business, or in any of the factors used to determine materiality.

3.9 CONTACT DETAILS OF KEY RESPONSIBLE PERSONS (REGULATION 10)

Proposal 6 of the CP proposed that the Members shall provide contact details of key responsible persons (instead of directors and officers), when so required by PIDM, to facilitate prompt access to accountable and responsible officers.

Comments Received

None of the respondents raised any objections to the proposal to provide contact details of key responsible persons. There were, however, comments in relation to the definition of key responsible persons. Details of the comments are as follows:

⁴ Principles-based rules.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

- (a) The definition of PIDM's key responsible persons should be consistent with BNM's Guidelines on Fit and Proper for Key Responsible Persons;
- (b) Key responsible persons should be confined to EXCO members who are accountable for key decisions, such as Chief Executive Officer, Chief Financial Officer, Chief Risk Officer, Head of Compliance and Chief Internal Auditor; and
- (c) A respondent was concerned with whether the appointed or signing actuary is considered as a person involved in the Member's internal control since this is an external party.

Further, a respondent recommended that an updated list of key responsible persons be provided to PIDM on an annual basis.

Clarification was sought from a respondent on the specific roles and responsibilities of the key responsible persons in relation to PIDM. Another respondent preferred all queries from PIDM to be in writing and to be channelled through the appointed liaison officers to ensure timely response from the Members.

PIDM's Response

PIDM wishes to inform that key responsible persons is defined in regulation 2 of the draft Regulations and is aligned to BNM's Guidelines on Fit and Proper for Key Responsible Persons. The intention is to cover any persons who are mainly accountable or responsible for key functions of the Members including those that are performed outside the institution such as centralised group and outsourced key functions.

PIDM wishes to clarify that the liaison officer is appointed by the Members to handle matters related to PIDM on a day-to-day basis. The purpose of obtaining the key responsible persons' contact details is to facilitate prompt access by PIDM to such accountable and responsible officers in the event that intervention or resolution actions are required to be carried out by PIDM.

3.10 COMMENTS RECEIVED ON OTHER ASPECTS OF THE DRAFT REGULATIONS

PIDM has received comments on other aspects of the draft Regulations that do not form part of the proposals highlighted in the CP. PIDM has reviewed the comments received and provided our response to the comments as set out below.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

3.10.1 SUBMISSION OF FINANCIAL STATEMENTS AND OTHERS (REGULATION 10)

Comments Received

With regard to the phrase “within such period as deemed necessary or expedient by the Corporation”, a respondent requested PIDM to indicate its expectations on minimum turnover period on information submission.

A respondent was concerned on the confidentiality issue with the submission of business plan that involves the Members’ key business strategies.

PIDM’s Response

In view of the fact that most of the information requested under regulation 10 is already readily available from BNM, PIDM will, under normal circumstances, leverage on the information from BNM to minimise duplicative regulatory burden on the Members. However, PIDM may request for such information when PIDM exercises its statutory power to conduct a special examination for the purpose of conducting an early intervention, resolution or reimbursement. The expected turnover period will be communicated to the Members as and when such information is requested by PIDM, taking into account factors such as the urgency, extent of works involved and any other factors that PIDM considers appropriate.

PIDM wishes to highlight that subsection 202(1) of the PIDM Act empowers PIDM to request for information relating to the business or affairs of the Members or any of its related corporation, if it is for the purpose of the exercise of PIDM’s powers, the performance of PIDM’s functions or the discharge of PIDM’s duties under the PIDM Act, notwithstanding any of the provisions of the FSA or IFSA. Further, subsection 202(3) provides that information relating to the accounts, business or affairs of any customer of any Members or its related corporation obtained by PIDM shall be confidential as between PIDM and the Members or the related corporation supplying it.

3.10.2 OUTSTANDING PREMIUM, PREMIUM SURCHARGE AND OVERDUE CHARGES (REGULATION 11)

Comments Received

Several respondents had raised the following questions or comments:

- (a) A respondent requested further elaboration on the cancellation or termination clause and whether it refers to winding up of a financial institution; and

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

- (b) A respondent suggested that, instead of *“unless the outstanding amount has been paid to the Corporation by the next member institution holding such deposits, takaful certificates or insurance policies.”*, paragraph 11(b) should be reworded as *“unless the outstanding amount has been legally assigned to another member company”*.

PIDM's Response

- (a) Section 38 and subsection 39(1) of the PIDM Act set out the conditions for the cancellation and termination of membership, respectively, and that may include the winding up of a financial institution; and
- (b) In determining the payment of premiums in the event of a transfer of deposits in, takaful certificates or insurance policies of a Member, the guiding principle adopted by PIDM is that there shall be no double charging of premium in any assessment year. Hence, any outstanding premium must be paid by either the transferring or transferee member and this has been reflected in the draft Regulations accordingly.

3.10.3 MMIP

Comments Received

One respondent suggested that PIDM considers giving a rebate on MMIP business in the calculation of premium payment to PIDM or takes into consideration the financial strength of the Members by excluding the financial impact arising from MMIP in the premium calculation. It was commented that the losses from MMIP that are compulsory to be shared by the insurance companies equally are affecting the Members, particularly the smaller Members.

PIDM's Response

Regarding the request to exclude MMIP data or rebate, as rightly pointed out by the respondent, all general insurer members are exposed to MMIP and hence, PIDM is of the view that adjustments is not necessary at this juncture as it is an industry-wide practice.

3.10.4 FAILURE TO COMPLY

Comments Received

A respondent commented that the penalty imposed for non-compliance with any of the terms and conditions seems rather onerous as the Members may be subjected to criminal sanctions or premium surcharge as provided in the PIDM Act.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

Some respondents were concerned that the Members may be exposed to two sets of penalties under the FSA or IFSA and the PIDM Act in the event of any contravention in view of certain duplicative regulatory requirements imposed by PIDM and BNM.

PIDM's Response

PIDM has a variety of mechanisms for imposing liability on a Member for contravening any regulatory requirements set out in the draft Regulations, including premium surcharge and criminal sanctions. The selection of appropriate enforcement tool will be based on the severity of the circumstances and the nature of the non-compliance. The penalty for non-compliance with terms and conditions of membership is set out under subsection 37(3) of the PIDM Act.

Premium surcharge will be used as an enforcement tool against the identified Member to address serious non-compliance. Premium surcharge may also be used when there are repeated occurrences of a similar non-compliance, though the non-compliance may have less serious consequences. The governance process for the imposition of premium surcharge is guided by the provisions in the PIDM Act, whereby prior consultation with BNM will be carried out and Member will be given an opportunity to make representations. PIDM has issued the Guidelines on Premium Surcharge Framework on 30 October 2013.

4.0 GOING FORWARD

Draft Regulations will be submitted to the Minister for approval and will be gazetted. The Regulations will be published on PIDM's website once they come into force.

Perbadanan Insurans Deposit Malaysia
30 October 2013

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

Appendix 1

MALAYSIA DEPOSIT INSURANCE CORPORATION 2011

MALAYSIA DEPOSIT INSURANCE CORPORATION (TERMS AND CONDITIONS OF MEMBERSHIP) REGULATIONS 2014

IN exercise of the powers conferred by section 37 and paragraph 209(1)(a) of the Malaysia Deposit Insurance Corporation Act 2011 [Act 720], the Corporation, with the approval of the Minister, makes the following regulations:

Citation and commencement

1. (1) These regulations may be cited as the **Malaysia Deposit Insurance Corporation (Terms And Conditions Of Membership) Regulations 2014**.

(2) These Regulations come into operation on .

Interpretation

2. In these Regulations, unless the context otherwise requires–

“Key responsible person” means a key person that is accountable or responsible for the management and oversight of a member institution and shall include–

- (a) director;
- (b) member of Shariah Committee;
- (c) chief executive officer;

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

- (d) a person who has the authority, makes or has substantial influence in making decisions that affect the whole, or a substantial part of, the member institution's business;
- (e) a person who is principally accountable or responsible, whether solely or jointly with other persons, for implementing and enforcing policies and strategies approved by the board;
- (f) a person who is principally accountable or responsible, whether solely or jointly with other persons, for developing and implementing systems, internal controls and processes that identify, measure, monitor or control the member institution's risks; or
- (g) a person who is principally accountable or responsible, whether solely or jointly with other persons, for monitoring the appropriateness, adequacy and effectiveness of the member institution's internal controls, risk management and compliance systems and processes, and includes the chief internal auditor, head of risk management, head of compliance, chief financial officer, and appointed or signing actuaries,
- by whatever name called.

Compliance with regulations, rules and others

3. A member institution shall comply with and observe all regulations, rules, orders, by-laws, notifications, guidelines, circulars, notes, directions, specifications, requirements, notices, limits, standards, conditions, codes and restrictions made, issued, given, or imposed by Bank Negara Malaysia or the Corporation.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

Adequate capital and liquidity

4. A member institution shall maintain an adequate level of capital and liquidity in accordance with the standards specified by Bank Negara Malaysia.

Sound financial and business practices

5. A member institution shall have in place appropriate, effective and prudent-
- (a) practices, processes, policies and procedures covering areas including corporate governance, Shariah governance where applicable, and risk management; and
 - (b) controls in respect of its operations,

that support the sound management of its financial position, business, affairs and activities.

Compliance with undertaking and agreement

6. A member institution shall comply with and fulfil the terms of any undertaking given by it to the Corporation relating to the operations, safety or soundness of the member institution and any written commitment or agreement it has made with the Corporation relating to the operations, safety or soundness of the member institution.

Maintenance of records

7. (1) A deposit-taking member shall—
- (a) prepare and maintain records that correctly describe and disclose all its assets and liabilities, whether on or off balance sheet, including but not

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

limited to deposits, whether insured or uninsured by the Corporation, revenues, expenses and shareholders' equity;

(b) retain or cause to be retained all deposit records in such a manner that will enable the Corporation to have unimpeded and prompt access to deposit information, when so required by the Corporation; and

(c) have in place a deposit liability system that is able to generate reliable and accurate deposit information when so required by the Corporation and within such period as determined by the Corporation.

(2) An insurer member shall—

(a) prepare and maintain records that correctly describe and disclose all its assets and liabilities, whether on or off balance sheet, its revenues and expenses including but not limited to premiums or contributions liabilities, claims liabilities covering claims paid and outstanding, actuarial valuation liabilities, balances due to or from reinsurers or retakaful operators, and shareholders' equity; and

(b) retain or cause to be retained registers of insurance policies, takaful certificates and claims in such a manner that will enable the Corporation to have unimpeded and prompt access to the information or data on such insurance policies, takaful certificates and claims, when so required by the Corporation.

(3) For the avoidance of doubt, for the purposes of paragraph (2)(b), the registers shall be retained at all times and as long as the insurer member is under any liability in respect of any insurance policies, takaful certificates or claims registered.

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

Notification of surrender or revocation of licence

8. Where a member institution surrenders its licence or its licence is revoked under the relevant legislation administered by Bank Negara Malaysia, it shall provide the Corporation with a copy of a written notice of its surrender of licence or a notice of a revocation of a licence, as the case may be, on the date of such notice of surrender or on the date of receipt of such notice of revocation.

Notification of events

9. (1) A member institution shall, as soon as it is aware of it, notify the Corporation in writing of the occurrence of any emerging events that may undermine its safety and soundness, including any of the following events:

- (a) any events that could lead to problems with the liquidity position of the member institution which may be considered as not usual in the course of its business, including but not limited to substantial withdrawal of deposits from the deposit-taking member and occurrence of large claims affecting the insurer members;
- (b) detection of material fraud and gross mismanagement, which may lead to severe financial losses or exposure experienced by the member institution;
- (c) inability of the member institution to meet some of its maturing obligations or access to funding, which may lead to the provision of liquidity assistance by Bank Negara Malaysia;
- ~~(c)~~(d) commencement of any dissolution process or liquidation proceedings, whether voluntary or otherwise, in respect of the member institution including but not limited to a resolution to wind up the member

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

institution, an appointment of any receiver or manager over the member institution, and a presentation of a winding up petition against the member institution; or

~~(e)~~ commencement of any dissolution process or liquidation proceedings, whether voluntary or otherwise, in respect of any corporation related to the member institution including but not limited to a resolution to wind up such corporation, an appointment of any receiver or manager over such corporation, and a presentation of a winding up petition against such corporation, if such commencement materially affects or may materially affect the operations or financial condition of the member institution or any corporation of which the member institution is a subsidiary.

(2) A member institution shall notify the Corporation in writing, of any material change, to any of the event set out in sub-regulation (1) as soon as it is aware of such material change.

Submission of financial statements and others as determined by the Corporation

10. A member institution shall provide the Corporation with a copy of the following documents when so required by the Corporation and within such period as deemed necessary or expedient by the Corporation:

(a) financial statements of the member institution for any period determined by the Corporation, prepared on a consolidated or unconsolidated basis;

(b) financial statements of any of the related corporations of the member institution for any period determined by the Corporation, prepared on a consolidated or unconsolidated basis;

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

- (c) a list of the names, addresses, telephone numbers and offices or designations of the key responsible persons of the member institution or any of the related corporations of the member institution;
- (d) a list of the names, addresses and telephone numbers of the auditors of the member institution or any of the related corporations of the member institution;
- (e) a business plan of the member institution or any of its related corporations for any period determined by the Corporation; or
- (f) any other information of the member institution or any of the related corporations of the member institution as determined by the Corporation, including but not limited to information necessary to facilitate effective resolution by the Corporation.

Outstanding premium, premium surcharge and overdue charges

11. Where–

- (a) a member institution's membership is cancelled or terminated, and there are any outstanding amount of premiums, premium surcharges or overdue charges; or
- (b) any deposits in, takaful certificates or insurance policies of, a member institution are transferred to or acquired by any person, and there are any outstanding amount of premiums, premium surcharges or overdue charges in respect of such deposits, takaful certificates or insurance policies;

Ref No	GEN/CP18-R/2013	Issued on	30 October 2013
TITLE	Response to the Consultation Paper on Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2013		

such amount of premiums, premium surcharges or overdue charges shall remain due and payable to the Corporation by the member institution notwithstanding the member institution is no longer a member or such deposits, takaful certificates or insurance policies are no longer held by the member institution, until such amount of premiums, premium surcharges or overdue charges has been paid to the Corporation.

Revocation

12. The Malaysia Deposit Insurance Corporation (Terms and Conditions of Membership) Regulations 2008 is revoked.

Made 2014
[PIDM/PN/02/2014; PN(XX)]

TAN SRI DATUK DR. ABDUL SAMAD HAJI ALIAS
Chairman
Malaysia Deposit Insurance Corporation

Approved

DATO' SERI AHMAD HUSNI MOHAMAD HANADZLAH
Second Minister of Finance

[To be laid before the Dewan Rakyat pursuant to subsection 209(4) of the Malaysia Deposit Insurance Corporation Act 2011]