



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Insurance Act 1996 and the Insurance Regulations 1996

The Insurance Act 1996 (Act) and its subsidiary legislation, the Insurance Regulations 1996, which provide for the licensing and regulation of insurers, insurance brokers and adjusters, came into force on 1 January 1997. The Act was passed by Parliament in July 1996 and received Royal Assent on 13 September 1996. The Act was gazetted as Act 553 on 26 September 1996. Bank Negara Malaysia (BNM) in a press statement, following the gazetting of the Insurance Regulations, said that with the coming into force of the Act and the Regulations, the Insurance Act 1963 (1963 Act) and the Life Assurance Companies (Compulsory Liquidation) Act 1962 (1962 Act), The Life Assurance Companies (Compulsory Winding-up) Rules 1963 prescribed pursuant to the 1962 Act and all the subsidiary legislation made under the 1963 Act [with the exception of the Insurance Guarantee Scheme (General Insurance Business) Fund Regulations 1990 and its amendment regulations of 1994, Insurance Guarantee Scheme (General Insurance Business) (Restriction on Payment) Regulations 1994, Insurance (Assumption of Control and (Winding Up) (Mercantile Insurance Sdn. Bhd.) Order 1991 and Insurance (Winding up) (Mercantile Insurance Sdn. Bhd.) Order 1994] were repealed on the same date. The Act seeks to improve the legislative framework governing the supervision and regulation of the insurance industry to ensure better accountability on the part of insurers, strengthen the financial standards of insurers, accord greater protection to policy holders and members of the public, ensure that the operations of insurers are conducted according to sound insurance principles, and enable the insurance industry to grow in tandem with other financial institutions and fulfil its role in the national economy. The Act vested the authority to administer the provisions under it to BNM. Under the Act, an insurer has to be a public company, a broker or adjuster to be a company and a professional reinsurer a body corporate. The requirement that all insurers are to be public companies is intended to ensure greater transparency and public accountability of insurers as well as for administrative convenience. In this respect, the Act makes it mandatory for all branches of foreign insurers other than professional reinsurers

operating in the country to be incorporated locally by 30 June 1998. This requirement has also been incorporated into the Schedule of Commitments under the General Agreement on Trade in Services and reflects the Government's intention that branches of foreign insurers operating in the country should demonstrate a more direct and permanent financial commitment to the development of the nation. The Act empowers BNM to prescribe by way of regulations the minimum amount of capital to be maintained by an insurer and in the case of a foreign insurer operating as a branch, a surplus of assets over liabilities in Malaysia. The imposition of a minimum capital requirement is intended to build up the financial strength of insurers to enable them to take a proactive approach to service the insurance needs of the country effectively and eventually to compete with regional and international players. The greater financial commitment on the part of shareholders is also expected to drive the insurers to perform better so as to improve or at least maintain the rate of return to their shareholders. The prescribed minimum capital requirement for an insurer ranges from RM20 million to RM100 million depending on the type of insurance business the insurer transacts. An insurance broker and loss adjuster is also required to maintain a minimum paid-up share capital unimpaired by losses of RM500,000 and RM150,000 respectively. The increase in minimum capital requirements will be implemented in stages to give licensees time to comply. BNM is also empowered under the Act to prescribe the amount and manner in which the solvency margin of an insurer will have to be maintained. In line with the increase in minimum capital requirement, the minimum solvency margin as prescribed has been increased from RM5 million in the 1963 Act to RM50 million for each class of business. At the same time, additional criteria have been introduced, linked to claims in the case of general insurance business, and net liabilities and sums at risks, in the case of life insurance business. The assets backing the solvency margin are also required to be in the form of assets specified by BNM. BNM seeks to prevent the dishonest, the incompetent and the inexperienced from occupying positions of power and influence in the licensee. In this respect, the Act makes it necessary for a person to secure the approval of the Minister of Finance (in the case of an insurer) or BNM (in the case of an insurance broker or adjuster) if he wishes to enter into an agreement or arrangement to acquire or dispose of any interest in the shares of the respective licensees or their controllers if the acquisition or disposal in aggregate exceeds five per cent of the

shares of the licensee or of its controller. Previously this requirement was imposed administratively. The 1963 Act prohibits a person from insuring its property located in Malaysia or ship or aircraft registered in Malaysia with a person other than with an insurer registered under the 1963 Act. Under the Act, this requirement has been extended to insurance of liability of a person resident in Malaysia to a third party. The aim of this provision is to prevent an unnecessary outflow of premiums from Malaysia and, at the same time, build up local expertise for such type of business. There are several provisions in the Act aimed at facilitating a policy owner in his dealings with a life insurer. Section 148 allows a policy owner to return a policy within 15 days after its delivery to him without having to give any reason and the life insurer has to refund the premium subject only to the deduction of expenses incurred for a medical examination. Previously, to return a policy, the policy owner has to object in writing to any of the terms and conditions of the policy. A person who solicits or negotiates a contract of insurance is deemed under the Act to be an agent of the insurer for the purpose of the formation of the contract and his knowledge or action is deemed to be the knowledge or action of the insurer unless there is collusion between the insurance agent and the proposer. As such, any statement made or act done by an agent is deemed a statement or act done by the insurer. The Act also provides that a policy owner who surrenders a single premium life policy at any time after its inception or in the case of any other life policy after it has been in force for three years or more is entitled to receive the surrender value for that policy. Previously, the payment of a surrender value for a single premium life policy is at the discretion of the life insurer. Provisions to promote expeditious claims settlements by insurers in respect of policy moneys under a life policy or death claims under a personal accident policy have also been incorporated into the Act. The new law empowers a policy owner to nominate a person to receive the policy money upon death of the policy owner and allows the insurer to pay the full amount of the policy moneys to the nominees without him (the nominee) having to produce a Grant of Probate or Letters of Administration or Distribution Order. Section 161 of the Act also requires an insurer to pay a compound interest of not less than four per cent per annum on the amount of life insurance or personal accident death benefit not paid upon the expiry of 60 days from the date of receipt of the claim intimation until the date of payment of the claim. Since the *raison d'etre* for insurance supervision is the

protection of policyholders' interests, most of the provisions in the Act contain the protection element. Towards this end, the Act provides that an insurance contract entered into based on a misleading statement or fraudulent concealment of a material fact by an insurer or its agent or by the use of unauthorised sales illustration by an insurance agent is voidable on the part of the policy owner. The Act also prohibits any person including an insurance broker licensed under the Act to act on behalf of an insurer not licensed under the Act except with the approval of BNM. In addition, the use of the word "insurance", "assurance", "underwriter" or any of its derivatives is restricted to a licensee and to a person who had obtained the prior written approval of BNM. This is to avoid the possibility of any member of the public being misled by a person (using such terms) that he is carrying on a licensed business under the Act. This prohibition does not apply to a person who appends to his name an insurance qualification conferred on him by a prescribed body, an insurance agent registered with the Life Insurance Association of Malaysia or General Insurance Association of Malaysia and an association of licensees or association of employees of licensees. The Act also stipulates certain requirements to be fulfilled on the part of a proposer for insurance for his policy to be enforceable. This include among others provisions requiring a proposer to fully disclose to the licensed insurer relevant information pertaining to the risk being insured as well as ensuring that insurable interest exists in the life of a person on whom the insurance is effected and that the amounts under the life policy does not exceed the insurable interest. The subsidiary legislation made and all executive acts done under the repealed 1963 Act will be deemed to have been made in accordance with the corresponding provisions of the Act as provided under section 214 of the Act. Such subsidiary legislation and executive acts, therefore, will remain in full force and effect until amended, repealed or replaced. Similarly, every guideline, circular or notice issued by BNM before the coming into force of the Act are deemed to have been issued under section 201 of the Act and will therefore remain in full force and effect until amended or replaced under the Act. In addition, any policy issued, transaction or dealing lawfully executed or entered into and business lawfully done under the repealed Act by a person who was a registered insurer, or who was a licensed insurance broker or licensed adjuster with a policy owner or customer, creditor, debtor or other person is deemed to have been lawfully and validly executed or done under the Act.

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