# Financial Services Act 2013 signals the dawn of a new era

LEGALLY SPEAKING

**THE** Financial Services Act 2013 (FSA), which came into force on June 30, 2013, is a consolidation of the now repealed Banking and Financial Institutions Act 1989, Payment Systems Act 2003, Insurance Act 1996 (IA) and Exchange Control Act 1953 (ECA). It also introduced a number of new concepts, with the intention of integrating the regulation of institutions which provide financial services, and promoting financial stability. This article summarises a few key provisions of the FSA.

## Licensing & Regulation

The licensing structures under the previous legislations have largely been retained but are consolidated into two parts. Entities that wish to operate as a bank, insurer or investment bank must apply for a licence from the finance minister, while those intending to carry on business as an insurer or in money-broking or financial advisory must apply to Bank Negara Malaysia (BNM) for approval. Applications will be assessed on factors such as character and integrity, feasibility of plans and sufficiency of financial resources.

The FSA also addresses the setting up of an Islamic window for commercial banks, investment banks and insurers, to operate certain Islamic-oriented businesses.

Under the FSA, licensed insurers (excluding reinsurers), will not be allowed to carry on both life business and general business under a single entity. Insurers doing so will be given a grace period of five years to split those businesses into separate entities.

Previously, businesses such as factoring and leasing came under the oversight of BNM. They are now classified, together with several other businesses, as "financial intermediation activities" and do not automatically fall under BNM's watch unless they pose a risk to the country's financial stability.

## Financial Holding Company & Financial Groups

The FSA now empowers BNM to exercise oversight over financial groups for the purposes of promoting the safety and soundness of licensed entities. Any company intending to hold over 50% in a licensed entity must get BNM's approval.

This gives BNM the power to regulate the shareholders of a licensed entity who ultimately dictates the way the business and operations are conducted. Certain prudential requirements that apply to licensed institutions now also apply to their financial holding companies, and BNM may impose prudential standards on holding companies and their subsidiaries.

## Money Market & Foreign Exchange Market

BNM has withdrawn all previous exchange control notices, and has replaced them with new notices. The new provisions relating to the money market and foreign exchange market are similar in substance to the now repealed ECA.

BNM is empowered to safeguard the balance of payments position and the ringgit's value. The FSA provides a list of prohibited conduct in the money and foreign exchange markets.

## Enhanced Scope of Powers

BNM's powers have been extended by the FSA. It now has the power to issue directions to institutions (including financial holding companies) to do certain acts, including vary or terminate any agreement or to prohibit the institution from entering into any transaction.

The FSA also grants wide-ranging powers to BNM to carry out intervention and remedial action to avert or reduce any risk to the country's financial stability. It also enables BNM to assume control of the business, affairs or property of an institution and manage them or have them transferred to another entity to act as a bridge institution.

## Business Conduct & Consumer Protection

The FSA places much emphasis on ethical business conduct and consumer protection by giving BNM the power to specify standards of business conduct to ensure that the financial institution is fair and responsible when dealing with consumers. The FSA also envisages the setting up of a financial ombudsman scheme for ensuring effective and fair handling of complaints and resolution of disputes.

Additionally, no entity is allowed to accept deposits of any precious metal or precious stone unless it is licensed. It appears that gold trading companies will now not be allowed to operate their businesses unless they are granted a licence by BNM to do so.

## Conclusion

The FSA represents one of the most significant revisions made to Malaysian banking laws in recent times and will have a profound impact on the regulation and operation of the financial industry. The FSA imposes severe penalties for non-compliance in certain instances, such as fines of up to RM50 million and/or imprisonment for up to 10 years.

The aim of the FSA is noble and, with these heavy penalties, it is hoped that it will successfully rationalise the regulation of the financial sector to bring it in line with international best practices and to avert the risk of financial instability already experienced in many other countries.

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