

MALAYSIA



AZMI & ASSOCIATES
A member of Tarrax International **advocates & solicitors**

Highlights of new *Central Bank of Malaysia Act 2009*



By Ahmad Syahir Yahya

The Parliament of Malaysia passed the new *Central Bank of Malaysia Act 2009* (the Act) in July 2009. The Act received royal assent on 19 August 2009 and was later gazetted on 3 September 2009. Officially, the Act came into force on 25 November 2009.

As highlighted in a press release issued by Bank Negara Malaysia (BNM) – Malaysia’s Central Bank – on 25 November 2009 with regard to the enforcement of the Act, the legislation provides greater clarity on BNM’s mandate and vests it with the necessary powers and instruments to achieve this mandate. In addition, the Act offers a more robust governance framework that provides for a high degree of accountability and transparency. Furthermore, the Act institutionalises the good practices that have been put in place over the recent decade which have proven to be important in enhancing the function and effectiveness of BNM.

Recognition of a dual financial system in Malaysia

It is interesting to note that the Act also explicitly acknowledges the dual financial system in Malaysia, which was not mentioned anywhere in the *Central Bank of Malaysia Ordinance 1958* (Act 519). Section 27 of the Act clearly states that the “financial system in Malaysia shall consist of the conventional financial system and the Islamic financial system.”

This is seen as a clear recognition by the Government of Malaysia of the rapid development of Islamic banking and finance in Malaysia alongside conventional banking. This is also consistent with the goal by the Government to promote Malaysia as an international centre for Islamic finance globally.

Enhancement of the roles and functions of the Shariah Advisory Council

The roles and functions of the Shariah Advisory Council of the Central Bank of Malaysia (SAC) have been enhanced and re-

defined in this Act. Part VII of the Act, entitled *Islamic Financial Business*, is divided into two chapters.

Chapter 1 governs the establishment and functions of the SAC, the effect of the SAC’s ruling and the appointment of its members. On the other hand, Chapter 2 provides the power of BNM to issue circulars, guidelines etc on Shariah matters relating to Islamic financial business.

On the establishment of the SAC, Section 51(1) of the Act provides that BNM may establish a SAC which shall be the authority for the ascertainment of Islamic law for the purposes of Islamic financial business.

According to the Act, the appointment of the members of the SAC shall be made by the Yang di-Pertuan Agong on the advice of the Ministry of Finance after consultation with BNM. The Act also sets out the criteria of members to be appointed to the SAC whereby the candidates must be “amongst persons who are qualified in the Shariah or who have knowledge or experience in the Shariah and in banking, finance, law or such other related disciplines”. This is provided under Section 53(1) of the Act.

Binding effect of the SAC’s rulings under the Act

It is interesting to note that the Act has put to rest the issue of the binding effect of the rulings made by the SAC, which have been disputed in several judicial decisions previously. Section 16B(9) of Act 519 merely provides that the SAC rulings issued by the SAC were only binding upon arbitrators.

Due to the limited binding effect of the SAC’s rulings as enunciated in the above provisions, the courts in several decided cases had refused to refer to the SAC’s rulings since such rulings were not binding upon the court.

Azmi & Associates

Global Financial Services & Islamic Banking Practice Group
14th Floor, Menara Keck Seng, 203 Jalan Bukit Bintang,
55100 Kuala Lumpur, Malaysia.

Phone: (603) 2118 5000 ext :5063

Fax: (603) 2118 5111

E-mail: syahir@azmilaw.com

www.azmilaw.com