



# LAWS OF MALAYSIA

## Act 623

### ISLAMIC FINANCIAL SERVICES BOARD ACT 2002

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An Act to enable Bank Negara Malaysia to become a member of the Islamic Financial Services Board by signing and accepting the Agreement establishing the Board and to confer certain powers, immunities and privileges upon the Board and its constituent organs and for matters connected to it.

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**ENACTED** by the Parliament of Malaysia as follows:

Short title and commencement.

**1.** (1) This Act may be cited as the Islamic Financial Services Board Act 2002.

(2) This Act comes into operation on the date the Agreement comes into effect being the date when at least five of the full members of the Board have duly ascribed their signatures to the Agreement.

Interpretation.

**2.** In this Act, unless the context otherwise requires—

"Member" includes a full member and such other categories of members as may be set out in the Agreement;

"member of a Technical Committee" means a person nominated by a Member to represent the Member to the Technical Committee;

"member of Council" means a person nominated by a Member to represent the Member at the Council;

"full member" means—

(a) the lead banking or financial supervisory authority of a nation;

(b) an intergovernmental international organization responsible for the promotion of Islamic finance or market; or

(c) such other person,

admitted as a full member by the Council;

"member of Secretariat" means any officer or employee of the Board;

"Bank" means the Bank Negara Malaysia established by the Central Bank of Malaysia Act 1958 [*Act 519*];

"Technical Committee" means a Technical Committee of the Board;

"national interest" means any matter which would be beneficial or of critical importance to Malaysia including security, economic, social and political interests;

"Board" means the Islamic Financial Services Board established by the Agreement;

"Council" means the Council of the Board;

"Minister" means the Minister charged with the responsibility for finance;

"constituent organs" means the General Assembly, the Council, the Technical Committee and the Secretariat;

"General Assembly" means the General Assembly of the Board;

"Agreement" means the agreement for the establishment of the Board which the Bank is authorised under section 6 of this Act to sign and accept to become a full member of the Board and includes any amendment, addition, modification, or alteration made from time to time;

"Secretariat" means the Secretariat of the Board;

"Secretary-General" means the Secretary-General of the Board and includes any person appointed by the Council to act on his behalf during his absence, and any person appointed by the Council to act as the Secretary-General during the period of any vacancy in the office of the Secretary-General.

Juridical  
personality and  
common seal of  
the Board.

**3.** (1) The Board shall have juridical personality and such legal capacities as are necessary for the exercise of its powers and the performance of its functions in accordance with the Agreement.

(2) Without prejudice to the generality of subsection (1), the Board shall have the capacity to—

(a) contract;

(b) acquire, hold and dispose of movable and

immovable property; and

(c) institute legal proceedings.

(3) The Board may have a common seal and may use it for the purposes set out in subsection (2) or for such other matters as may be agreed by the Council.

Secretariat of the Board.

**4.** The Secretariat of the Board shall be in Kuala Lumpur.

Constituent organs of the Board.

**5.** The Board shall consist of the General Assembly, the Council, the Secretariat and the Technical Committees with such powers, duties and functions as are set out in the Agreement.

Authorisation to sign the Agreement and to become a member of the Board.

**6.** (1) The Bank is authorized to sign and accept the Agreement and to become a full member of the Board and to exercise rights or perform duties or functions in respect of its membership.

(2) Without prejudice to the generality of subsection (1), the Bank may—

- (a) pay such membership fee to the Board as may be determined from time to time under the Agreement;
- (b) grant, donate, loan or advance any sum of money or make such other payments to the Board under any Islamic principle as may be necessary for the establishment of the Board;
- (c) lease to the Board or lawfully permit the Board to occupy and use the immovable property of the Bank with or without charge for the purposes of the Board or for the provision of residences for the Secretary-General or other members of the Secretariat;
- (d) accept any payment made to it by the Board; and
- (e) exercise such powers or functions conferred, or such duties imposed, on it by or under the

Agreement.

(3) The powers of the Bank under this Act shall be in addition to the powers of the Bank under the Central Bank of Malaysia Act 1958 [*Act 519*].

Power of the Minister to confer privileges and immunities.

**7.** (1) The Minister may by regulations, either with or without restrictions or to the extent or subject to the conditions prescribed in such regulations, confer upon the Board, the members of its constituent organs or any persons attending any international conference organised by the Board all or any privileges or immunities listed in the Schedule.

(2) Without prejudice to the generality of subsection ( 1 ) , the Minister may by regulations—

- (a) confer upon the Board all or any of the privileges or immunities specified in Part I of the Schedule;
- (b) confer upon a person who is, or has ceased to be, a member of the General Assembly or the Council or a person accredited to, or is in attendance at, or has attended, an international conference convened by the Board as a representative of a Member all or any of the privileges or immunities specified in Part II of the Schedule;
- (c) confer upon a person who is, or was, or is performing, or has performed, the duties of, a Secretary-General or any member of the Secretariat all or any of the privileges or immunities specified in Part III of the Schedule; and
- (d) confer upon a person who is, or was, or is performing, or has performed, the duties of, a member of a Technical Committee all or any of the privileges or immunities specified in Part IV of the Schedule.

(3) Notwithstanding the provisions of subsection (2) , regulations conferring any privileges or immunities shall be made upon consultation with the Minister charged with the responsibilities for foreign affairs except regulations conferring any privileges or immunities with respect to matters for which the Minister is for the time being responsible.

(4) The Minister may make regulations as he deems

appropriate for the purpose of this section which may be of general application or may relate to—

- (a) particular Members or classes of Members;
- (b) particular members or classes of members of its constituent organs; or
- (c) particular persons or classes of persons.

(5) Where by the regulations any privileges or immunities are conferred upon a person under paragraph (2)(b), that person is entitled to the same privileges and immunities while travelling to a place for the purpose of presenting his credentials or of attending the conference or while returning from a place after ceasing to be so accredited or after attending the conference

(6) Where by the regulations any privileges or immunities are conferred upon a person under paragraph (2)(d), that person is entitled to the same privileges and immunities while travelling to a place for the purpose of serving on such committee or while returning from a place after serving on the committee.

(7) Subject to subsection (8) , where, by the regulations or by subsection (5) , any privileges or immunities are conferred upon a person who is, or has been, a member of the General Assembly or the Council, or a person accredited to, or in attendance at, an international conference convened by the Board as a representative of a Member, a person who is, or has been during any period, a member of the official staff of the first-mentioned person is entitled, in respect of that period, to the same privileges and immunities as the first mentioned person.

(8) A person who is or has been a representative of a Member or a member of the official staff of such a representative during the period when he is or was a Malaysian citizen is not entitled under this section or the regulations to any privileges or immunities, except in respect of acts and things done in his capacity as such a representative or member, as the case may be.

No immunity in certain circumstances.

**8.** This Act shall not confer on any person referred to in section 7 any immunity—

- (a) in respect of a civil action by a third party for damage arising from an accident caused by a motor

vehicle or other means of transport belonging to or driven by such a person;

- (b) in respect of a traffic offence involving such a person and committed by such a person; and
- (c) in respect of matters affecting the national interest of Malaysia.

Waiver.

**9.** (1) The Council shall have the power to waive the immunities conferred on any person referred to in section 7 where the immunities would impede the course of justice and where the immunities can be waived without prejudicing the purposes for which they were conferred.

(2) The Secretary-General, with the concurrence of the Council, shall have the power to waive the immunities conferred on the Board for the purpose of any commercial transactions entered into by the Board.

(3) The Secretary-General shall have the power to waive the immunities conferred on the members of the Secretariat (other than his own) in section 7 when he considers such immunities are preventing the carrying out of justice and when it is possible to dispense with such immunities without prejudicing the interest of the Board.

Power to appoint attorney.

**10.** The Council may, by instrument under the common seal of the Board, appoint any person whether in Malaysia or in a place outside Malaysia to be the attorney of the Board, and the person so appointed may, subject to such instrument, do any act or execute any power or function which he is authorised by the instrument to do or execute.

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## SCHEDULE

(Section 7)

### PRIVILEGES AND IMMUNITIES OF THE BOARD, ITS CONSTITUENT ORGANS AND RELATED PERSONS

*Part I—Privileges and immunities of the Board*

1. Immunity of the Board, and of the property and assets of, or in the custody of, or administered by, the Board, from suit and from other legal process.
2. Inviolability of property and assets of, or in the custody of, or administered by, the Board and of premises of, or occupied by, the Board.
3. Inviolability of archives.
4. Subject to section 4 of the Exchange Control Act 1953 [Act 17] , exemption from currency and exchange restrictions.
5. Subject to compliance with such conditions as the Minister may prescribe for the protection of revenue, exemption from all duties and taxes on—
  - (a) goods imported or exported by the Board for its official use;
  - (b) locally manufactured goods procured by the Board for its official use; and
  - (c) official publications of the Board imported or exported by it.
6. Exemption from income tax and supplementary income taxes on the income of the Board or real property gain taxes on the gains from the disposal of the properties of the Board, as the case may be, in so far as they are derived from or transacted within the scope of its official activities.
7. Exemption from stamp duties that ordinarily would be payable by the Board.
8. Exemption from prohibitions and restrictions on the importation or exportation of—
  - (a) goods imported or exported by the Board for its official use; and
  - (b) publications of the Board imported or exported by it.
9. Absence of censorship for official correspondence and other official communications.

10. The right to use codes and to send and receive correspondence and other papers and documents by couriers or in sealed bags and to have any such couriers or bags treated as diplomatic couriers or diplomatic bags, as the case may be.

*Part II—Privileges and immunities of the members of the General Assembly, the Council, or any person who is a representative of a Member*

1. Immunity from personal arrest or detention.
2. Immunity from suit and from other legal process in respect of acts and things done in his capacity as such a representative.
3. Inviolability of papers and documents.
4. The right to use codes and to send and receive correspondence and other papers and documents by couriers or in sealed bags.
5. Exemption (including exemption of the spouse of the representative) from the application of laws relating to immigration, the registration of aliens and the obligation to perform national service.
6. Exemption from currency or exchange restrictions to such extent as is accorded to a representative of a foreign government on a temporary mission on behalf of that government.

*Part III—Privileges and immunities of the Secretary-General and members of the Secretariat*

1. Immunity from suit and from other legal process in respect of acts and things done in official capacity.
2. Exemption from income tax on official salaries and emoluments received from the Board.
3. Exemption (including exemption of spouse and children under the age of twenty-one years) from the application of laws relating to immigration and the registration of aliens.
4. Exemption from the obligation to perform national service.
5. Exemption from currency or exchange restrictions to

such extent as is accorded to an official of comparable rank forming part of a diplomatic mission.

6. Repatriation facilities (including repatriation facilities for spouse and any dependent relatives) in time of international crisis.
7. The right to import furniture and personal effects, including one motor vehicle, free of duties and taxes when first taking up a post in Malaysia and to export furniture and personal effects free of duties and taxes when leaving Malaysia on termination of his functions.

*Part IV—Privileges and immunities of a person serving on the Technical Committee*

1. Immunity from personal arrest or detention.
2. Immunity from suit or from other legal process in respect of acts and things done in serving on the committee.
3. Inviolability of papers and documents.
4. The right, for the purpose of communicating with the Board, to use codes and to send and receive correspondence and other papers and documents by couriers or in sealed bags.
5. Exemption from currency or exchange restrictions to such extent as is accorded to a representative of a foreign government on a temporary mission on behalf of that government.