ABDULLAH CHAN
ADVOCATES & SOLICITORS

The Financial Services Act 2012

(Part 1 of 4)

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This series of articles are written to introduce and explain significant features of the Financial Services Act 2012 which was recently passed by Dewan Rakyat and Dewan Negara of the Malaysian Parliament. The Royal Assent to the Bill has not been announced yet. Neither has the new Act been gazetted. The Bill provides that the Act will come into force on a day determined by the Minister of Finance.

The Financial Institutions Act 2012 (FSA) which was recently passed by the Malaysian Parliament is expected to have a major impact upon on financial institutions in Malaysia. The FSA is the most fundamental revamp to the supervisory regime for prudential regulation since the Banking and Financial Institutions Act 1989 (BAFIA). With the coming into force of the FSA, the BAFIA, the Insurance Act 1996, the Exchange Control Act 1953 and the Payment Systems Act 2003 would be repealed.

The experience of the Asian Financial Crisis of the late 90s and the recent Global Financial Crisis have tried and tested the efficacy and ability of prudential regulation to pre-emptively deal with impending disruptions to financial stability. The crises have also surfaced the importance of linkages between monetary stability and financial stability and the need for prudential regulators to be conversant with the risks and implications of macro-economic developments for individual financial institutions and also the financial system as whole. Some of the lessons learnt by Malaysian regulators from the two crises were reflected in the Central Bank of Malaysia Act 2009 and the Malaysia Deposit Insurance Corporation Act 2011. The FSA and the Islamic Financial Stability Act 2012 complete the overhaul of the legislative framework and the supervisory regime for financial institutions in Malaysia and set in place a comprehensive financial safety net.

The FSA is an omnibus legislation which covers banking business, insurance business, investment banking business, the business of operating specified payment systems, the business of issuance of designated payment instruments, insurance broking business, money-broking business, financial advisory business, business of merchant acquiring services, adjusting business and representative offices of foreign institutions carrying on business outside Malaysia which corresponds, or is similar, to the business of any authorised person or registered person.

The term "authorised person" refers to a person who is licensed under the FSA to carry on banking business, insurance business or investment banking business or a person who is approved under the FSA to carry on the business of operating specified payment systems, the business of issuance of designated payment instruments, insurance broking business, money-broking business and financial advisory business. The term "registered person" refers to a person who carries on the business of merchant acquiring services or adjusting business and is considered in the FSA to be registered person.

An important development which began in the 80s, is the global convergence of capital requirements, followed by supervisory standards, payment system standards, anti-money laundering and counter terrorist financing standards, accounting standards, and lately Basel III on liquidity management standards. The proliferation of international soft legislation has necessitated a legislative framework which would enable a convenient means of reception and application of such international standards in

Malaysia. The FSA enables a continuing reception and application of global prudential requirements by empowering Bank Negara Malaysia to specify standards relating, inter alia, to capital adequacy, liquidity, corporate governance, risk management, related party transactions, maintenance of reserve funds, insurance funds and the prevention of financial institutions from being used for criminal activities. Bank Negara Malaysia is also empowered under the FSA to specify standards for payment systems, standards on business conduct and standards or codes for the purposes of developing or maintaining orderly conditions or the integrity of, the money market or foreign exchange market.

A major innovation to the regulatory regime under the FSA, is the formal recognition of financial groups for the purposes of regulation and supervision. The FSA empowers Bank Negara Malaysia to exercise oversight over financial groups for promoting the safety of any member of the group who is an authorised person licensed to carry on banking, insurance or investment banking business. A financial group would be required to identify a member of the group who has de facto or de jure control to apply to be the financial holding company of the group. Notwithstanding the application by a financial group, Bank Negara Malaysia may require another member of the group who has de facto control of the group to submit an application to be the financial holding company of the group. The prudential standards under the FSA shall apply to a financial holding company. Bank Negara Malaysia may also specify prudential standards for subsidiaries of financial holding companies. Extensive powers are also given to Bank Negara Malaysia to issue directions to the financial holding company, its subsidiaries and officers. Powers are also given to Bank Negara Malaysia to remove directors and chief executive officers who are no longer fulfill the fit or proper requirements or has failed to comply with the FSA, a direction of Bank Negara Malaysia or an enforceable undertaking accepted by Bank Negara Malaysia.

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Gopal began his highly distinguished career in Bank Negara Malaysia (BNM) in 1982, pursuant to graduating from University of Malaya on a Bank Negara scholarship. He was appointed as Assistant Governor in 2006. As Assistant Governor he was responsible for the Legal Department, Finance Department and the IT Services (Computer) Department as well the Money Museum and the Art Gallery. During his tenure, he was a member of various committees chaired by the Governor, inter alia, the Management Committee, the Monetary Policy Committee, the Financial Stability Committee, the Budget Committee, the Risk Management/ Committee and in attendance at the Malaysia International Islamic Financial Centre Executive Committee (MIFC), a multi-agency committee appointed by the Prime Minister.

Upon his retirement in 2011, he was appointed as Project Advisor to BNM to advise and supervise the drafting of an omnibus legislation for banking, insurance, payments systems and exchange control as well as an omnibus Islamic legislation for Islamic banking, takaful, payment systems and exchange control proposed to be tabled in Parliament later this year.

Gopal is the only member of the International Monetary Law Committee of the International Law Association (MOCOMILA) from Malaysia. He is also in the Executive Committee of the Malaysian Chapter of ASIL (Asian Society for International Law). Gopal sits on the Board of Directors of Kuwait Finance House (Malaysia) Berhad, the Board of Management of Methodist College Kuala Lumpur, the Council of Education, Methodist Church in Malaysia and the Judicial Council, Methodist Church in Malaysia.

He is a leading adviser on the new Financial Services Act (FSA) and Islamic Financial Services Act (IFSA).
