

Memorandum
to
Bank Negara Malaysia

on the Bank Negara's Proposed
Scheme for Third Party Bodily Injury
and Death Claims

Date: 14 May 2010

Proposed by:
Central Bureau on Human Rights & Law, Parti Gerakan Rakyat
Malaysia (PGRM)

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Memorandum to Bank Negara Malaysia (BNM)
On the Bank Negara's Proposed Scheme for Third Party Bodily
Injury and Death Claims

Proposed by
Parti Gerakan Rakyat Malaysia and
(PGRM Central Bureau on Human Rights & Law)

Dear Director,

Financial Sector Development Department, Bank Negara Malaysia (BNM)

(A) INTRODUCTION

We welcome the Bank Negara Malaysia's move from greater transparency in engaging various stakeholders. This is consistent with the The Right Honourable Prime Minister's wish and direction that the public must be consulted.

Bank Negara has published in the media the skeleton of the proposed scheme. However we urge Bank Negara to provide detailed information of the mechanics, funding and operation of the proposed scheme to enable the various groups and public to give effective feedback. What has been provided in the media so far is very brief and skeleton in nature.

(B) LIMITING HEADS OF DAMAGES & CAPPING IS DETRIMENTAL TO PUBLIC

We are concern in the issue of limited heads of damages available to the public in the proposed scheme. The public who has/have been victimized by a tort feasor without her/his own fault must be adequately compensated to every loss she/he

suffered. Limited heads of damages will stand in direct contrast to the above principle.

We have received various feedbacks in the damages claimable at present since the amendment to Civil Law Act 1984, wherein many damages claimable in common law were restricted and/or abolished.

These include:-

- 1) Limiting the age limit at 55 of the deceased in claiming for either loss of earning or loss of dependency. In this aspect we suggest that the age limit to be increased to 60.
- 2) Another example is, where a victim is unjustly deprive of his/her claim, a final year undergraduate who is about to graduate in a day or 2 and going to be employed, the parents will not be able to claim anything except for funeral expenses. We suggest:
 - a) loss of earning prospect to be reintroduced.
 - b) funeral expenses to be fixed at RM 10 000.00
- 3) Bereavement is to be given to the parents as long as the deceased is not married and the amount to be increased to RM 20 000.00. Bereavement should not be subjected to liability .All Muslim spouses (wife's) should be allowed to claim bereavement separately.

We understand that in the proposed scheme, besides limiting the head of damages, a further 'cap' will be imposed on the respective heads.

Limiting and capping damages is inconsistent with the purpose of which damages are sought i.e. as far as possible to put the claimant to status quo, had he not was injured by the tort feasor's act.

(C) PROTECTION MUST BE EQUAL FOR EVERYBODY AND NOT LIMITED TO CERTAIN SEGMENT OF SOCIETY

Our concern is whether public/victims rights will be seriously affected and any introduction of new scheme will further erode their basic rights. Protection must be available to every road user. We urge Bank Negara Malaysia to provide further details in this aspect to enable various groups representing the public to digest and give feedback.

Bank Negara has announced that the road user can insure with basic coverage as per the scheme and they are given option to top-up their own third party risk coverage or to top-up their own personal accident policy.

Thus, if A knocks down B and suffer losses, B can only claim against the A's insurer/Newco subject to coverage with basic scheme i.e., subject to limited heads of damages or capping of damages. If the losses are not permissible to claim or exceeds the capping, than B has to either get compensation from his own Personal Accident Policy or against A's TOP UP policy.

Question 1] Would all road users have TOP UP third party coverage policy?
Obviously not. Since 90% of road users are below average group.

Question 2] Then, should B foresee his own losses/injuries which will be caused by a tort feisor in future and insure himself.
Obviously – either way the victim/his family will suffer and the tort feisor will get away with minimum basic third party coverage or
Any further claim against A will result in him being declared bankrupt if he/she is man of straw.

The above is inconsistent with basic rights that everybody is equal by the law and entitles to equal protection before the law.

(D) ISSUE OF GROSSLY MISALIGNED MOTOR PREMIUM

- 1) We are of the view the profit in comprehensive policy should cover any losses in third party risk [if any]. It is reported that profit from comprehensive policy is 1.6 billion whereas the losses for third party risk is 940 million.
[Star – 12/5/2010]
Cross-subsidisation of the above sector should be explored
- 2) Further details should be made public on how the premium collected for comprehensive cover is divided between act cover (third party cover) and non-act cover (motor vehicle theft, fire, own damage claims) so that we can see/calculate the actual profit/loss as per ratio of premium allocated for each of the categories.
- 3) Public should be educated with ratio of premium and its possible increase gradually in future.

(E) SETTING UP OF THE NEW CO MUST BE AVOIDED AS IT INVOLVES HUGE PUBLIC FUNDS

We urge the current courts system of adjudication to be improved further. In this respect, the CJ is doing a very good job and we were informed matters pending in Court are disposed of speedily. This has resulted in many cases to be concluded in a short period of time. As such it is only natural that the insurance company would have to pay out more for this short period of time. We expect that the backlog of cases to be cleared by the end of the year. Therefore the insurance companies claim that they are making a loss is only temporary as they have been making profit all this while. If the insurance company is not making a profit they would not give a 10% commission to their agents to sell third party cover note.

Any proposed revamp can also be done within the existing system whereby various weaknesses can be improved or resolved. In this respect funding a new company to manage the scheme, to replace the current system must be avoided as it involves huge public fund. Funding and absolving the losses in the new scheme [which eventually means public fund is used] is a serious concern and may affect the credibility of the Government.

The following questions arise with this New Co:

- 1) Funded by Government [mainly] and Insurers [partly]
Government funding is inevitable public funding ie. Taxpayers money. This will reflect badly on Government.
- 2) Funding of these involves two issues
 - (i) funding the possible claims
 - (ii) funding the set up and administration
This is a waste of funds as there is already an existing system to handle and deliver the claims.
- 3) Is the New Co formed to bail out existing insurers which have run into trouble?
- 4) It will create an extra layer of bureaucracy.

Further we are concern with the present industry providing for the third party insurance protection, whereby only one or two companies have monopolized the business. Their engagements initially in the area of business have shown that it was commercially viable; however now, it is argued that it has led to losses [even here a comprehensive data must be shown to public]. The Bank Negara Malaysia must provide the reasons why these one or two companies were not monitored in their operation for the past 10 – 20 years. Otherwise the public would have the perception that it was mismanaged and leakage in their own industries that had led to the present situation. The Bank Negara Malaysia's supervisory role will be questioned. The Bank Malaysia must make public its report together with the Auditor General and or the companies' own auditors' report in the management of these companies.

We call the Bank Negara Malaysia to review the public feedback and come up with a holistic solution with public interest as the paramount consideration.

(F) Conclusion

Based on Parti Gerakan's strong and concrete reasons to oppose the proposed new scheme as follows:

- A) Limiting heads of damages and capping is detrimental to the public,
- B) Protection must be equal for everybody and not limited to a certain segment of society,
- C) The issue of grossly misaligned motor premium,
- D) Setting up of the New Co must be avoided as it involves huge public funds,

Parti Gerakan crucially stressed that:

- 1) The current system of third party bodily injury and death claim should be maintained and perhaps should be fine-tuned.
- 2) Introducing a new scheme with the weaknesses shown above would not only be waste of time and money, but detrimental to the public at large.
- 3) It must always be "**RAKYAT DIDAHULUKAN**" and not the insurance industry.

Thank you.

DATO' CHANG KO YOUN
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CENTRAL BUREAU CHIEF ON HUMAN RIGHTS AND LAW