

G25: Bank Negara can act on 1MDB, independent of AG
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If Bank Negara Malaysia wants to take action against 1MDB under Section 239 of the Financial Services Act for failure to comply with the direction to repatriate to Malaysia US\$1.83 billion, it can do so on its own, independently of the attorney-general, said the Group of Eminent Malays (G25).

"True, the power to prosecute, under the law, will always belong to the AG.

"But when Bank Negara acts under Section 239, the central bank does not prosecute. So the question of Bank Negara exercising the powers of the AG does not arise.

"When Bank Negara takes action under Section 239, it is taking a civil action, as opposed to taking criminal action against 1MDB. A decision on criminal action can only be made by the AG," G25 said in a statement today.

Section 239 of the Financial Services Act 2013 stipulates that Bank Negara may institute civil proceedings in court seeking any order specified under Section 240(1) of the same law, regardless of whether the person accused had been charged with an offence in respect to the said contravention or breach.

Among the orders provided for under Section 240(1) include getting the court to order the payment of up to three times the money involved in a breach, a civil penalty in such amounts deemed appropriate by the courts, restraining against certain conduct or compelling those involved in the contravention to mitigate or remedy the breach.

Bank Negara can institute contempt action

"Once the court makes an order against 1MDB under Section 240(1), and should 1MDB fail to comply with such an order, then Bank Negara can institute contempt proceedings against 1MDB.

"Legal experts have verified that this need for civil action is appropriate and has only arisen because the attorney-general has decided there are no grounds to prosecute and denied Bank Negara's request that the case be reviewed and re-examined," it said.

On Oct 9, Bank Negara ordered 1MDB to repatriate US\$1.83 billion of its investment abroad under the Exchange Control Act 1953, on grounds that 1MDB obtained approval for the investment through inaccurate information and without full disclosure.

1MDB had said it cannot repatriate the sum because the funds have been utilised.

However, G25 said there was no reason why 1MDB could not submit its plan for repatriation to Bank Negara.

Bank Negara issued the order after the Attorney-General's Chambers rejected Bank Negara's recommendations to initiate criminal action against 1MDB.

"In the interest of the country and in exercising its powers fairly, Bank Negara Malaysia must indeed follow-up with the necessary actions under the law.

"Since the bank's action to date is within its powers to take up the civil suit, Bank Negara can therefore proceed to take actions independently, without consultation or any manner of involvement of the attorney-general," the G25 statement said.

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