

Banking and Financial Institutions Act 1989 (BAFIA)



LAWS OF MALAYSIA

Act 372

Banking and Financial Institutions Act 1989

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An Act to provide new laws for the licensing and regulation of institutions carrying on banking, finance company, merchant banking, discount house and money-broking businesses, for the regulation of institutions carrying on certain other financial businesses, and for matters incidental thereto or connected therewith.

[1st October 1989 (except in respect of scheduled institutions); PU(B) 490/1989
1st January 1990 (in respect of scheduled institutions).]

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PART I

PRELIMINARY

Short title and commencement. 1. This Act may be cited as the Banking and Financial Institutions Act 1989, and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint, and the Minister may appoint different dates for the coming into force of—

- (a) different provisions of this Act; or
- (b) all or different provisions of this Act in respect of different classes or categories of institutions.

Interpretation. 2. (1) In this Act, unless the context otherwise requires—

“advertisement” means the disseminating or conveying of information, invitation or solicitation by any means or in any form, including by means of—

- (a) publication in a newspaper, magazine, journal or other periodical;
- (b) display of posters or notices;
- (c) circulars, handbills, brochures, pamphlets, books or other documents;
- (d) letters addressed to individuals or bodies;
- (e) photographs or cinematograph films; and
- (f) sound broadcasting, television or other electronic media;

Act 519. “Advisory Panel” means the Advisory Panel established under section 31A (2) of the Central Bank of Malaysia Act 1958;

“agreement” means an agreement whether formal or informal, oral or written, express or implied;

Act 125. “approved company auditor” has the meaning assigned thereto by the Companies Act 1965;

“arrangement” means an arrangement whether formal or informal, oral or written, express or implied;

“associate corporation” means a corporation where not less than twenty per centum and not more than fifty per centum of that corporation’s shares are held by another corporation, the first-mentioned corporation thereby being an associate corporation of the other corporation;

Act 519. “Bank” means the Central Bank of Malaysia established by the Central Bank of Malaysia Act 1958;

“bank” means a person which carries on banking business;

“banking and finance company” means a person holding both a licence to carry on a banking business and a licence to carry on a finance company business, granted under section 6(4);

Act A 1211.

“banking business” means—

- (a) the business of—

- (i) receiving deposits on current account, deposit account, savings account or other similar account;
- (ii) paying or collecting cheques drawn by or paid in by customers; and
- (iii) provision of finance; or
- (b) such other business as the Bank, with the approval of the Minister, may prescribe;

“building credit business” means—

- (a) the business of providing any credit facilities to any person for the express purpose of—
 - (i) the purchase of immovable property; or
 - (ii) the construction, reconstruction or renovation of any building or other structure,
 for residential, commercial or industrial purposes; or
- (b) such other business as the Bank, with the approval of the Minister, may prescribe;

“business associate” of a person includes—

- (a) a banker, accountant, auditor, advocate, nominee or other person employed or appointed by such person at any time before or after the effective date;
- (b) any institution of which such person is a director, and any other director of such institution;
- (c) if such person is a corporation—
 - (i) any director of such corporation;
 - (ii) any associate or related corporation of such corporation; and
 - (iii) any business associate of such associate or related corporation as is referred to in subparagraph (ii);
- (d) any person having possession of any property belonging to such person;
- (e) any person indebted to such person;
- (f) any person having any knowledge or information relating to the business, dealings, affairs or property of such person; and
- (g) any person acting in concert with such person;

“capital funds” means paid-up capital and reserves, and includes, for the purposes of sections 37 and 61, the whole or any proportion of any other class, category or description of capital as may be specified by the Bank;

“chief executive”, in relation to an institution, means a person, by whatever name called, who, either individually or jointly with one or more other persons, is responsible, subject to the authority of the directors, for the conduct of the business and the administration of the institution;

“child” includes a step-child and a person adopted as a child under any written law of Malaysia or of any country, territory or place outside Malaysia, or under any custom recognised by any class or category of persons in Malaysia or in any country, territory

or place outside Malaysia;

“company” has the meaning assigned thereto by the Companies Act 1965;

“constituent documents”, in relation to an institution, means the statute, charter, memorandum of association and articles of association, rules and by-laws, partnership agreement, or other instrument, under or by which the institution is established and its governing and administrative structure and the scope of its functions, business, powers and duties are set out, whether contained in one or more documents;

“controller”, in relation to an institution, means a person who—

- (a) has an interest in more than fifty per centum of the shares of the institution;
- (b) has the power to appoint or cause to be appointed a majority of the directors of the institution; or
- (c) has the power to make or cause to be made, decisions in respect of the business or administration of the institution, and to give effect to such decisions or cause them to be given effect to,

and the word “control” shall be construed accordingly;

Act 287. “co-operative society” means a co-operative society registered or
Sabah Ord. 3/58. deemed to be registered under the Co-operative Societies Act
Swk. Cap. 66. 1948, or the Co-operative Societies Ordinance of Sabah, or the Co-
Act 109. operative Societies Ordinance of Sarawak, a farmers’ organization
Act 44. registered under the Farmers’ Organization Act 1973 or a
fishermen’s association registered under the Fishermen’s
Association Act 1971;

“corporation” has the meaning assigned thereto by the Companies Act 1965;

“credit facility” means—

- (a) the giving of any advance, loan or other facility in whatever form or by whatever name called whereby the person to whom the same is given has access, directly or indirectly, to the funds of the person giving the same;
- (b) the giving of a guarantee in relation to the obligations of any person; or
- (c) any other dealing or transaction as may be prescribed by the Bank;

“deposit” means a sum of money received or paid on terms—

- (a) under which it will be repaid, with or without interest or at a premium or discount; or
- (b) under which it is repayable, either wholly or in part, with any consideration in money or money’s worth,

and such repayment being either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it, regardless whether the transaction is described as a loan, an advance, an investment, a saving, a sale or a sale and repurchase, but does not include money paid *bona fide*—

- (A) by way of an advance or a part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the

property or services is not or are not in fact sold, hired or otherwise provided;

- (B) by way of security for the performance of a contract or by way of security in respect of any loss which may result from the non-performance of a contract;
- (C) without prejudice to paragraph (B), by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise; and
- (D) in such other circumstances, or to or by such other person, as specified in the First Schedule;

“depositor” means a person entitled to repayment of a deposit, whether made by him or any other person;

“derivative instrument” has the meaning assigned thereto under subsection (7);

“development finance business” means—

- (a) the business of providing capital or other credit facility on terms which would require the same to be utilised for industrial, agricultural, commercial or other economic development; and for the purposes of this definition, “development” includes the commencement of any new industrial, agricultural, commercial or other economic venture or the expansion or improvement of any such existing venture; or
- (b) such other business as the Bank, with the approval of the Minister, may prescribe;

“director” includes any person who occupies the position of a director, by whatever name called and, in particular, without prejudice to the foregoing, in the case of—

- (a) a corporation, has the meaning assigned thereto by the Companies Act 1965;
- (b) a co-operative society, means a member of the board, or other governing body howsoever called, of the co-operative society;
- (c) a statutory body, means a member of the board, committee, council or other governing body, howsoever called, of the statutory body;
- (d) a partnership, means a partner;
- (e) a sole proprietorship, means the sole proprietor; and
- (f) any other body, association or group of persons, whether corporate or unincorporate, means any person having the direction and control of the management of its affairs or business;

“discount house” means a person which carries on discount house business;

“discount house business” means—

- (a) the business of—
 - (i) receiving deposits on deposit account; and
 - (ii) the investment of such deposits and other funds of the institution in Malaysian Government securities, Treasury bills or such other investments as may be

prescribed by the Bank; or

- (b) such other business as the Bank, with the approval of the Minister, may prescribe;

“document” includes—

- (a) any letters, figures, marks, symbols, signals, inscriptions, writing, sign, caricature, picture, drawing, or other representation whatsoever in any form; and
- (b) any visual recording (whether of still or moving images), any sound recording, or any electronic, magnetic, mechanical or other recording whatsoever, and howsoever made,

on any substance, material, thing or article;

“effective date” means the relevant date or dates, as the case may be, notified by the Minister under section 1;

“electronic terminal” means an electronic device, other than a telephone operated by any person, through which a person may initiate an electronic fund transfer, and includes point-of-sale terminals, automated teller machines, and cash dispensing machines;

“established”, in relation to—

- (a) a corporation, means incorporated;
- (b) a statutory body, means its coming into existence under the law establishing, appointing or constituting it;
- (c) a co-operative society, means registered;
- (d) a partnership, means its formation;
- (e) a sole-proprietorship, means the commencement of its business; or
- (f) any other individual, body, association or group of persons, whether corporate or unincorporate, which requires registration or other form of recording or recognition under any written law before it can lawfully commence its activities, means its registration, recording or recognition thereunder;

“factoring business” means—

- (a) the business of acquiring debts due to any person; or
- (b) such other business as the Bank, with the approval of the Minister, may prescribe;

“finance company” means a person which carries on finance company business;

“finance company business” means—

- (a) the business of receiving deposits on deposit account, savings account or other similar account; and
- (b) (i) giving of credit facilities;
- (ii) leasing business;
- (iii) business of hire-purchase, including that which is subject to the Hire-Purchase Act 1967; or
- (iv) business of acquiring rights and interests in a hire-purchase, leasing or other similar transaction.

- (c) such other business as the Bank, with the approval of the Minister, may prescribe;

“foreign company” has the meaning assigned thereto by the Companies Act 1965;

“foreign currency” means any currency other than Malaysian currency;

“foreign government” means the government of any country, territory or place outside Malaysia;

“foreign institution” means a person, not being a licensed institution or a scheduled institution, which carries on any business outside Malaysia which corresponds, or is similar, to the business of any licensed or scheduled institution whether or not such person has a representative office;

“Governor” means the Governor of the Bank, and includes the Deputy Governor of the Bank;

“holding company” has the meaning assigned to it under section 5 of the Companies Act 1965;

“individual” means a natural person;

“interest in a share” shall be construed as provided under section 6A (2) to (10), inclusive, of the Companies Act 1965 read with the following modifications thereto—

- (a) the substitution of the word “including” for the words “otherwise than” in paragraph (d) of subsection (6) of that section; and
- (b) the deletion of paragraph (b) of subsection (9) of that section,

and, for the avoidance of doubt, it is hereby declared that “interest in a share” includes the legal ownership of a share;

“investment company” has the meaning assigned thereto under section 319 of the Companies Act 1965;

Act 276. “Islamic bank” means a bank licensed under the Islamic Banking Act 1983;

“leasing business” means—

- (a) the business of letting or sub-letting movable property on hire for the purpose of the use of such property by the hirer or any other person in any business, trade, profession or occupation or in any commercial, industrial, agricultural or other economic enterprise whatsoever and, where the lessor is the owner of the property, regardless whether the letting is with or without an option to purchase the property, but does not include the business of hire-purchase which is subject to the Hire-Purchase Act 1967; and for the purpose of this definition, “movable property” includes any plant, machinery, equipment or other chattel attached or to be attached to the earth or fastened or to be fastened, permanently or otherwise, to any thing attached to the earth; or
- (b) such other business as the Bank, with the approval of the Minister, may prescribe;

“liabilities” includes debts, duties and obligations of every kind, whether present or future, or whether vested or contingent;

“licence” means a licence granted or deemed to be granted under section 6 (4);

“licensed bank” means a bank, including a banking and finance company, licensed or deemed to be licensed under section 6 (4);

Act A1211.

“licensed business” means a business licensed or deemed to be licensed under section 6 (4);

“licensed discount house” means a discount house licensed under section 6 (4);

“licensed finance company” means a finance company, including a banking and finance company, licensed or deemed to be licensed under section 6 (4);

Act A1211.

“licensed institution” means any institution licensed or deemed to be licensed under section 6 (4);

“licensed merchant bank” means a merchant bank licensed or deemed to be licensed under section 6 (4);

“licensed money-broker” means a money-broker licensed under section 6 (4);

“manager”, in relation to an institution, means an officer of the institution by whatever name called, responsible for an office of the institution, or for a department or a division of such institution or of its office;

“member”, in relation to an institution which is—

- (a) a corporation, means a shareholder; and
- (b) a partnership, means a partner;

“merchant bank” means a person which carries on merchant banking business;

“merchant banking business” means—

- (a) the business of—
 - (i) receiving deposits on deposit account; and
 - (ii) provision of finance; and
- (b) the business of—
 - (i) providing consultancy and advisory services relating to corporate and investment matters; or
 - (ii) making or managing investments on behalf of any person; or
- (c) such other business as the Bank, with the approval of the Minister, may prescribe;

“Minister” means the Minister for the time being charged with the responsibility for finance;

“money-broker” means a person which carries on money-broking business;

“money-broking business” means the business of arranging transactions between buyers and sellers in the money or foreign exchange markets as an intermediary in consideration of brokerage fees paid or to be paid, but does not include the buying or selling of Malaysian currency or foreign currencies as a principal in such markets;

“non-scheduled institution” means—

- (a) any statutory body; or
- (b) any person, being an individual, or a body or organization, not being a statutory body, whether corporate or unincorporate, whether or not licensed, registered or authorised under any written law, who or which is neither liable to be licensed under this Act, nor subject to the provisions of Part III;

“office” includes the principal place of business, a branch, an agency, a mobile place of business, a place of business set up and maintained for a limited period only, an electronic terminal and any other place of business;

“officer”, in relation to an institution, includes any employee and the chief executive of the institution;

“person” includes an individual, any corporation, statutory body, local authority, society, trade union, co-operative society, partnership and any other body, organization, association or group of persons, whether corporate or unincorporate;

“premises” includes any land, building, structure or place;

“prescribe”, where no mode is mentioned, means prescribe from time to time by order published in the *Gazette*, and a power to prescribe includes the power to make different provisions in the order, or in other mode of prescribing, for different persons, classes, categories or descriptions of persons;

“property” means any movable or immovable property and includes—

- (a) any right, interest, title, claim, chose in action, power or privilege, whether present or future, or whether vested or contingent, in relation to any property, or which is otherwise of value;
- (b) any conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of immovable property whereof the person executing the conveyance is proprietor or possessed or wherein he is entitled to a contingent right, either for the whole interest or for any less interest;
- (c) any security, including any stock, share, debenture and fund;
- (d) any negotiable instrument, including any bank note, bearer note, Treasury bill, dividend warrant, bill of exchange, promissory note, cheque and negotiable certificate of deposit;
- (e) any mortgage or charge, whether legal or equitable, guarantee, lien or pledge, whether actual or constructive, letter of hypothecation or trust receipt, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present or future, or whether vested or contingent; and
- (f) any other tangible or intangible property;

“provision of finance” includes—

- (a) the lending of money;
- (b) leasing business;
- (c) factoring business;

- (d) the purchase of bills of exchange, promissory notes, certificates of deposit, debentures or other negotiable instruments; and
- (e) the acceptance or guarantee of any liability, obligation or duty of any person;

“public company” has the meaning assigned thereto by the Companies Act 1965;

“related”, in relation to a corporation, means related within the meaning of section 6 of the Companies Act 1965;

“relative”, in relation to a person, means—

- (a) the spouse of the person;
- (b) the brother or sister of the person;
- (c) the brother or sister of the spouse of the person;
- (d) any lineal ascendant or descendant of the person;
- (e) any lineal ascendant or descendant of the spouse of the person;
- (f) the spouse of any person referred to in paragraph (b), (c), (d) or (e);
- (g) any lineal descendant of a person referred to in paragraph (b), (c) or (f);
- (h) any uncle, aunt or cousin of the person, or of the spouse of the person; or
- (i) any spouse, or any lineal ascendant or descendant, of a person referred to in paragraph (h);

“repealed Acts” means the Acts repealed under section 128 (1);

“representative office” means an office in Malaysia of a foreign institution;

“scheduled business” means any business specified in the Third Schedule;

“scheduled institution” means a person which carries on a scheduled business but does not include a co-operative society, a statutory body, a local authority, a licensed bank, a licensed finance company, or a licensed merchant bank, carrying on a scheduled business;

Act 280. “securities” has the meaning assigned thereto under section 2(1) of the Securities Industry Act 1983

“share”, in relation to a corporation, means an issued share of the corporation and includes stock except where a distinction between stock and share is expressed or implied;

“specify”, where no mode is mentioned, means specify from time to time in writing, and a power to specify includes the power to specify differently for different persons or different classes, categories or descriptions of persons;

“statutory body” means any authority or body, whether corporate or unincorporate, established, appointed or constituted by any written law, but does not include any local authority;

“subsidiary” has the meaning assigned thereto under section 5 of the Companies Act 1965.

(2) For the purpose of the definition of “relative” in subsection (1)—

- (a) the adoption of any person. by another under any written law of Malaysia or any country, territory or place outside Malaysia, or under any custom recognised by any class of persons in Malaysia or in any country, territory or place outside Malaysia, shall be treated as creating between the adopter and the adopted person the same natural relationship as the adoptive relationship, and other relationships in relation thereto shall be determined accordingly; and
- (b) references therein to a relationship include, where relevant, a relationship by the half-blood.

(3) For the purposes of this Act—

- (a) “persons acting in concert” means persons who have entered into an agreement or arrangement to—
 - (i) acquire jointly or severally interests in shares of a corporation for the purpose of obtaining or consolidating control of that corporation; or
 - (ii) act jointly for the purpose of exercising control over a corporation by means of interests in shares of that corporation already held by them jointly or severally; and
- (b) without prejudice to the generality of paragraph (a), the following persons shall be presumed to be persons acting in concert, unless the contrary is established:
 - (i) a corporation and its related and associate corporations;
 - (ii) a corporation and any of its directors, or the parent, child, brother or sister of any of its directors, or the spouse of any such director or of any such relative, or any related trusts;
 - (iii) a corporation and any pension fund established by it;
 - (iv) a person and any investment company, unit trust or other fund whose investments such person manages on a discretionary basis; or
 - (v) a financial adviser and its client which is a corporation, where the financial adviser manages on a discretionary basis the client’s funds and has ten per centum or more interest in the shares of the client.

(4) Where under any provision of this Act, power is given to the Bank to require any person, or where any person is required under any provision of this Act, to submit, produce or provide to the Bank any information, statement, statistics, return or document—

- (a) the Bank may specify that the same shall be submitted, produced or provided within such period, at such intervals, in such manner, in such form, and in writing or by means of any visual recording (whether of still or moving images) or any sound recording, or any electronic, magnetic, mechanical or other recording whatsoever, on any substance, material, thing or article, as the Bank may set out in the specification; and

- (b) such person shall not submit, produce or provide any information, statement, statistics, return or document which he knows, or has reason to believe, to be false or misleading.

Act 519. (5) Any reference in this Act to “this Act” or “the Central Bank of Malaysia Act 1958” shall, unless otherwise expressly stated, be deemed to include a reference to any regulations, rules, orders, notifications or other subsidiary legislation made under this Act or the Central Bank of Malaysia Act 1958, as the case may be.

(6) The Minister, on the recommendation of the Bank, may from time to time by order published in the *Gazette*, vary, delete, add to, substitute for, or otherwise amend the definition of—

- (a) “deposit” in subsection (1) and the First Schedule; or
- (b) “derivative instrument” in subsection (7),

and upon such publication, the definition of “deposit” or “derivative instrument”, as the case may be, as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication, or from such later date as may be specified in the order.

(7) For the purposes of this Act—

- (a) “derivative instrument” means an instrument the value of which depends upon the value of underlying indices or assets such as currencies, securities, commodities or other derivative instruments and includes a derivative financial instrument and a commodity derivative instrument;
- (b) “derivative financial instrument” means futures, forward, swap, or option contract, or other financial instrument with similar characteristics but shall not include—
 - (i) all on-balance-sheet receivables and payables, including those that derive their values or contractually require cash flows from the price of some other security or index, such as mortgage-backed securities, interest-only and principal-only obligations, and indexed debt instruments; and
 - (ii) option features that are embedded within an on-balance-sheet receivable or payable, such as the conversion feature and call provisions embedded in convertible bonds; and
- (c) “commodity derivative instrument” includes, to the extent such instrument is not a derivative financial instrument, commodity futures, commodity forward, commodity swap, commodity option or other commodity instruments with similar characteristics, that are reasonably possible to be settled in cash or with securities or other derivative instruments.

Functions, powers and duties of Bank.
Act 519.

3. (1) The Bank shall have all the functions and powers conferred, and the duties imposed, on it by this Act, and the same shall be in addition to those conferred and imposed under the Central Bank of Malaysia Act 1958.

Act A954.

(2) The Bank may authorise or instruct any officer or employee of the Bank to perform any of the functions, exercise any of the powers, or discharge any of the duties, of the Bank under this Act.

(3) The Bank may, either generally or in any particular case, appoint any person who is not an officer or employee of the Bank, to render such assistance as it may specify in the exercise of its powers, the performance of its functions, or the discharge of its duties, under this Act, or to exercise, perform or discharge the same on behalf of and in the name of the Bank.

PART II

LICENSING OF BANKING, FINANCE COMPANY, MERCHANT BANKING, DISCOUNT HOUSE AND MONEY-BROKING BUSINESSES

Banking, finance company, merchant banking, discount house and money-broking businesses to be carried on only under licence.

4. (1) No person shall carry on— *Act A1256.*

(a) banking, finance company, merchant banking, or discount house business, unless it is a public company; or

(b) money-broking business, unless it is a corporation,

and holds a valid licence granted under section 6 (4) to carry on such business.

Act 642. (2) A bank or a finance company licensed under subsection 6(4) shall be deemed to be a member institution under the Malaysia Deposit Insurance Corporation Act 2005 [*Act 642*]. *Act A1256.*

Submission of application for licence to the Bank.

5. (1) An application for a licence to carry on any of the businesses referred to in section 4 shall be made in writing to the Minister by submitting the application to the Bank together with the following:

(a) a copy of the memorandum and articles of association or other constituent documents under which the applicant is established, duly verified by a statutory declaration made by a director of the applicant;

(b) a copy of the latest audited balance sheet of the applicant;

(c) a statement on the following:

(i) the name, place and date of the establishment of the applicant;

(ii) the names, places and dates of the establishment of its related corporations;

(iii) the sources of the applicant's funds, and the purposes for which and the manner in which they are utilised;

(iv) the principal business and field of operations of the

applicant and of its related corporations; and

- (v) the names and addresses of the directors of the applicant and its related corporations, and of the substantial shareholders within the meaning of section 69D of the Companies Act 1965, of the applicant and its related corporations; and
- (d) such other information or documents as may be specified by the Bank for the purposes of determining the application and the suitability of the applicant for the licence.

(2) At any time after receiving an application and before it is determined by the Minister, the Bank may by written notice require the applicant or any person who is or is to be a director, controller or manager of the applicant to provide additional information or documents.

(3) The matters specified under subsection (1) (d) or the requirements under subsection (2) may differ as between different applicants, or different classes, categories or descriptions of applicants.

(4) An application under this section may be withdrawn at any time before it is granted or refused.

(5) Where any additional information or document required under subsection (2) is not provided by the applicant or its director, controller or manager, as the case may be, within the time specified in the requirement or any extension thereof granted by the Bank, the application shall be deemed to be withdrawn and shall not be further proceeded with, without prejudice to a fresh application being made by the applicant.

Grant or refusal of
application by
Minister.

6. (1) The Bank shall, on an application having been duly made in accordance with section 5 and after being provided with all such information and documents as it may require under that section, consider the application, and where it is satisfied that the criteria set out in the Second Schedule are fulfilled with respect to the applicant, make a recommendation to the Minister whether the licence should be granted or refused and the conditions, if any, to be imposed on the licence.

(2) In making a recommendation whether the Minister should grant or refuse a licence, the Bank may take into account any matters relating—

- (a) to any person who is or will be employed by, or associated with, the applicant for the purpose of the applicant's business; and
- (b) to any related or associate corporation or to any director or controller of any such corporation.

(3) A recommendation to grant a licence shall not be made if the Bank is satisfied that it would be contrary to any other provision of this Act to grant the licence, or that it would be detrimental to the soundness of the financial structure of Malaysia to do so.

(4) Upon receiving an application and the recommendation of the Bank under this section, the Minister may grant the licence, with or without conditions, or refuse the licence.

(5) Where the Minister refuses an application, the Bank shall notify the applicant in writing of his refusal.

Revocation of licence. 7. (1) The Minister may, on the recommendation of the Bank, revoke a licence granted to an institution under section 6 (4) if it appears to the Minister that—

- Act 519.*
- (a) any of the criteria specified in the Second Schedule are not or have not been fulfilled, or may not be or may not have been fulfilled, in respect of the institution;
 - (b) the institution has failed to comply with any obligation imposed upon it by or under this Act;
 - (c) the institution has contravened any condition imposed under the licence, or any other provision of the licence, or any provision of this Act, or any provision of the Central Bank of Malaysia Act 1958, regardless that there has been no prosecution for an offence in respect of such contravention;
 - (d) the Bank has, either in connection with the application for the licence, or at any time after the grant of the licence, been provided with false, misleading or inaccurate information by or on behalf of the institution, or by or on behalf of any person who is or is to be a director, controller, or manager of the institution;
 - (e) the interests of persons dealing with the institution or likely to deal with the institution, as depositors, or as its customers in any other respect, or as its creditors, or otherwise howsoever, are in any way threatened, whether by the manner in which the institution is conducting or proposes to conduct its affairs or for any other reason;
 - (f) the institution has not transacted within Malaysia any business in respect of which it is licensed for any continuous period of six months, or for any periods aggregating nine months during a continuous period of twelve months;
 - (g) the institution has ceased to carry on any one or more of the fields of business for which it is licensed;
 - (h) a composition or arrangement with creditors has been made in respect of the institution;
 - (i) a receiver or manager of the institution's undertaking has been appointed;
 - (j) possession has been taken, by or on behalf of the holders of any debenture secured by a charge, of any property of the institution comprised in or subject to the charge;
 - (k) the institution has insufficient assets to meet its liabilities; or
 - (l) the licensed bank or licensed finance company has ceased to be a member institution under the Malaysia Deposit Insurance Corporation Act 2005.

Act A1256.

(2) The Minister shall revoke a licence granted to an institution under section 6 (4) if it appears to the Minister that—

- (a) a winding-up order has been made against it; or
- (b) a resolution for its voluntary winding-up has been passed.

(3) Any institution dissatisfied with any decision of the Minister to revoke its licence under this section may—

- (a) within fourteen days of the decision being served on it under section 10(3); or
- (b) within fourteen days of the confirmation of the revocation of its licence under section 11(5) being communicated to it,

appeal against such decision to the High Court which may—

- (aa) uphold the decision of the Minister;
- (bb) quash the decision of the Minister; or
- (cc) substitute for the decision of the Minister, an order to restrict the licence under section 8 in the same manner and to the same extent as the Minister may restrict a licence under that section.

(4) The Bank shall be entitled to be heard on an appeal under subsection (3).

Imposition of restrictions in lieu of revocation of licence.

8. (1) Where it appears to the Minister, on the recommendation of the Bank—

- (a) that there are grounds on which the Minister's power to revoke a licence are exerciseable under section 7 (1); but
- (b) that the circumstances are not such as to justify revocation,

the Minister may, on the recommendation of the Bank, restrict the licence by—

- (A) imposing such limits on its duration as the Minister thinks fit;
- (B) imposing such conditions as the Minister thinks desirable for the protection of the institution's depositors and other customers, or potential depositors and other customers, or its creditors or other persons dealing with it, or likely to become its creditors or deal with it; or
- (C) the imposition of both such limits and conditions.

(2) A limit on the duration of a licence shall not be such as to allow the licence to continue in force for more than three years from the date on which it is imposed; and such a limit may in particular be imposed in a case where the Bank considers that the institution should be allowed to repay its depositors, other customers, or creditors in an orderly manner.

(3) The conditions imposed under this section may, in particular—

- (a) require the institution to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
- (b) impose limitations on the acceptance of deposits, the giving of credit facilities, or the making of investments;

- (c) prohibit the institution from soliciting deposits, either generally or from persons who are not already depositors;
- (d) prohibit it from entering into any other transaction or class of transactions, or to enter into it subject to such restrictions or conditions as may be specified;
- (e) require the removal of any director, controller or manager;
- (f) specify the requirements to be fulfilled otherwise than by action taken by the institution; or
- (g) specify any other condition, whether similar or not to the conditions mentioned in the foregoing paragraphs, which the Minister considers desirable or expedient to impose.

(4) Any conditions imposed under this section may be varied or revoked by the Minister on the recommendation of the Bank, and any limit imposed under this section on the duration of the licence may be varied but not so as to allow the licence to continue in force for longer than the period mentioned in subsection (2) from the date on which the limit was first imposed.

(5) Failure to comply with any condition imposed under this section shall be a ground for the revocation of the licence but shall not invalidate any transaction.

(6) An institution whose licence is restricted by the imposition of a limit on its duration may apply for a new licence under section 5, and if a new licence is granted under section 6 (4), the restricted licence shall cease to have effect.

Power to impose new conditions and to vary or revoke conditions imposed on licence under section 6 (4) or this section.

9. The Minister may, at any time, on the recommendation of the Bank, impose new conditions on a licence granted under section 6 (4), or vary or revoke any condition imposed on such licence under section 6 (4) or under this section, or already varied under this section.

Notice of revocation of licence, imposition of restrictions, or variation or revocation of conditions, or imposition of new conditions.

10. (1) Subject to section 11, where the Minister proposes—

- (a) to revoke a licence under section 7;
- (b) to restrict a licence under section 8 or vary any such restriction or condition thereunder; or
- (c) to vary or revoke any condition, or impose any new condition, under section 9,

otherwise than with the consent in writing of the institution, the

Minister shall give the institution written notice of his intention to do so, specifying the nature of the proposed action, and the grounds on which he proposes to do so, and give the institution an opportunity to make written representations thereon to the Minister by submitting them to the Bank within fourteen days of service of the notice.

(2) After the expiry of the period of fourteen days mentioned in subsection (1) and considering any representations made by the institution under subsection (1), the Minister shall, on the recommendation of the Bank, decide—

- (a) whether to proceed with the proposed action;
- (b) whether to take no further action;
- (c) if the proposed action was to revoke the institution's licence, whether to restrict the licence instead under section 8; or
- (d) if the proposed action was to restrict the licence under section 8, or to vary any restriction under section 8, or to vary or revoke a condition, or impose a new condition, under section 9, whether to restrict or vary the restriction under section 8, or to vary or revoke a condition, or impose a new condition, under section 9, in a different manner.

(3) The Minister shall give the institution written notice of his decision under subsection (2), and the decision shall take effect from the date on which the said written notice is served on the institution.

(4) A revocation of a licence under section 7 shall be published in the *Gazette* as soon as practicable, but delay in such publication or failure to make such publication shall not in any manner affect the validity of such revocation.

Mandatory
revocation of
licence and
restriction of
licence in cases of
emergency.

11. (1) No notice need be given under section 10 (1) in respect of—

- (a) the revocation of an institution's licence under section 7 (2); or
- (b) the revocation of an institution's licence under section 7 (1), or the imposition or variation of a restriction on an institution under section 8, in any case in which the Minister considers, on the recommendation of the Bank, that the licence should be revoked, or the restriction should be imposed or varied, as a matter of urgency.

(2) In any such case the Minister may, by written notice to the institution, revoke the licence, or impose or vary the restriction, and the revocation, imposition or variation, as the case may be, shall have effect from the date on which such notice is served on the institution.

(3) A notice under subsection (2) shall state the reasons for which the Minister has acted.

(4) The institution to which a notice is given under subsection (2) may, within fourteen days from the date on which the notice is

served on it, make representations in respect of it to the Minister by submitting them to the Bank.

(5) Where representations have been made by an institution under subsection (4), the Minister may, on the recommendation of the Bank, confirm or rescind the action taken by him under subsection (2), or make a variation of the action taken as provided under section 10 (2) (c) and (d) in respect of a proposed action, and where he confirms the revocation of an institution's licence under subsection (2), the provisions of section 10 (4) shall apply *mutatis mutandis*.

Surrender of licence. 12. (1) A licensed institution may surrender its licence by forwarding it to the Bank with a written notice of its surrender.

(2) The surrender shall take effect on the date the Bank receives the licence and the notice under subsection (1), or where a later date is specified in the notice, on that date.

(3) The surrender of a licence shall be irrevocable unless it is expressed to take effect on a later date and before that date the Bank by notice in writing to the institution allows the surrender to be withdrawn.

(4) The Bank shall publish in the *Gazette* as soon as practicable a notice of every surrender of a licence under this section, but delay in publishing such notice or failure to publish it shall not affect the validity of the surrender.

Prohibition on carrying on of licensed business upon revocation, expiry of duration, or surrender, of licence. 13. Where the revocation of a licence granted under section 6 (4) has taken effect, or a restriction on its duration under section 8 has expired, or its surrender under section 12 has taken effect, the institution to which the licence was granted shall immediately thereupon cease to carry on any business in respect of which the licence was granted:

Provided that where the institution continues to exist as a corporation after the revocation has taken effect the Minister may, on the recommendation of the Bank, authorise the institution in writing to carry on such activity for such duration as the Minister may specify in the authorisation for the purpose of winding-up its affairs or for purposes which are beneficial to its depositors, other customers or creditors.

Requirements for grant and continuance of licence. 14. (1) No institution shall be granted a licence under section 6(4) nor shall such institution so licensed carry on its licensed business without the written consent of the Minister if its capital funds unimpaired by losses or otherwise are less than the minimum amount of capital funds to be maintained by licensed institutions as may be prescribed by the Minister on the recommendation of the Bank.

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(2) Every licensed institution shall maintain a minimum amount of capital funds, and if such minimum amount is at any time increased, the licensed institution shall maintain the increased amount within such period as may be stated in the order making the increase, and the period so stated shall not be less than three months.

Restriction on use of word "bank", etc. **15. (1)** Except with the written consent of the Minister—

- (a) no person, not being a licensed institution, shall assume or use the words "bank", "banking and finance company", "deposit-taking company", "finance company", "merchant bank", "discount house", "money-broker", or "foreign exchange broker", as the case may be, or any derivatives of these words in any language, or any other words in any language capable of being construed as indicating the carrying on of such business, in relation to the business or any part of the business carried on by the person, or make any representation to such effect in any bill head, letter paper, notice, advertisement, or in any other manner whatsoever; *Act A1211.*
- (b) no institution shall hereafter be granted a licence under section 6 (4) to carry on business under a name which includes—
- (i) the word "Central", "Commonwealth", "Federal", "Federation", "Malaysia", "Malaysian", "National", "Reserve" or "State", or any other word or words in any language capable of being construed as, or indicating a meaning similar to that of, any of the above words; or
- (ii) the word "Islamic" or "Muslim", or any other word or words in any language capable of being construed as indicating that the institution is carrying on Islamic banking business.

(2) This section shall not apply to any association of any licensed institutions or to any association of any employees of any such institution or institutions.

Names to be affixed outside office. **16.** Every licensed institution shall at all times affix or paint, and keep affixed or painted, on the outside of each of its offices in a prominent position and easily legible in the national language, in such manner as may be approved by the Bank, its name and the words "licensed bank", "licensed finance company", "licensed merchant bank", "licensed discount house", "licensed money-broker" or "licensed foreign exchange broker", as the case may be, or such other words as clearly indicate the business for which it is licensed.

Amendment or alteration or constituent documents of licensed institution. **17. (1)** Every licensed institution shall, prior to the making of any amendment or alteration to any of its constituent documents, furnish to the Bank particulars in writing of such proposed amendment or alteration for the approval of the Bank. *Act A954.*

(2) Every licensed institution shall, within three months after the making of any amendment or alteration to any of its constituent documents, furnish to the Bank particulars in writing duly verified by a statutory declaration made by a director of the licensed institution, of such amendment or alteration.

Publication of list of licensed institutions. **18.** (1) The Bank shall cause to be published in the *Gazette* not later than the 31st March in each year a list, in such form as may be determined by the Bank, of all institutions which hold licences under section 6 (4). *Act A954.*

(2) If any licence is issued at any time during the interval between one publication and the next following publication under subsection (1), the Bank shall cause to be published in the *Gazette* a notice thereof in such form as the Bank may determine.

PART III

SCHEDULED BUSINESSES AND REPRESENTATIVE OFFICES

Requirements for commencing or carrying on scheduled business. **19.** (1) No person shall after the effective date commence to carry on a scheduled business unless—

(a) it is a company; and

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(b) *(Deleted).*

Act A1211.

(c) it has complied with the requirements of section 21(1) and has obtained a written acknowledgement from the Bank in respect of such compliance.

(2) Subsection (1) shall not apply to a co-operative society, a statutory body, a local authority, a licensed bank, a licensed finance company or a licensed merchant bank.

Requirements for setting up or maintaining a representative office. **20.** (1) No foreign institution shall—

(a) after the effective date, set up a representative office in Malaysia unless it has first—

(i) obtained the written approval of the Bank to set up such representative office; and

(ii) complied with the requirements of section 21 (1); or

(b) where such representative office was set up in Malaysia before the effective date, continue to maintain such representative office, unless within ninety days after the effective date it has complied with the requirements of section 21 (1),

and has obtained a written acknowledgement from the Bank in respect of such compliance.

(2) No foreign institution shall, through its representative office, or otherwise howsoever, carry on within Malaysia any of the businesses referred to in section 4 or any scheduled business.

(3) Subject to the prohibition under subsection (2), a foreign institution may carry on, through its representative office or otherwise howsoever, only such activities or business as may be

specified by the Bank.

Submission of documents, statements, etc. **21.** (1) A person or a foreign institution referred to in sections 19 (1) and 20 (1) respectively, shall submit to the Bank such documents, statements and information relating to such person or institution as are specified in paragraphs (a) to (c) of section 5 (1) together with such fees as may be prescribed by the Minister on the recommendation of the Bank.

(2) The Bank may at any time, whether before or after a person or a foreign institution mentioned in subsection (1) has complied with subsection (1), require such person or institution to submit such information relating to the person or institution, its business or affairs, and such periodical returns as the Bank may specify.

Amendment or alteration of constituent documents of scheduled or foreign institution. **22.** Every scheduled institution, and every foreign institution which is subject to section 20 (1) shall within three months after the making of any amendment or alteration to any of its constituent documents, submit to the Bank particulars in writing of such amendment or alteration duly verified by a statutory declaration made by a director of the institution.

Restriction on use of words "building credit", etc. **23.** No person, not being a person referred to in section 19 (2), shall assume or use the words "building credit", "building society", "development finance", "factoring" or "leasing", or any derivatives of these words in any language, or any other words in any language capable of being construed as indicating the carrying on of such business in relation to the business or any part of the business carried on by such person, or make any representation to such effect in any bill head, letter paper, notice, advertisement, or in any other manner whatsoever, unless it is a scheduled institution which, or in the case of a person carrying on a scheduled business immediately before the effective date, within ninety days after the effective date, has complied with the requirements of section 21 (1) and has obtained a written acknowledgement from the Bank in respect thereof.

Act A1211.

Regulation of scheduled institutions and representative offices under Parts V, VI, VII, VIII, IX, X and XIII. **24.** (1) Notwithstanding the provisions of any other written law, the Minister may, if he is satisfied that it is necessary to regulate any particular scheduled institution or representative office, or any class, category or description of scheduled institutions or representative offices generally, to—

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- (a) promote monetary stability and a sound financial structure;
- (b) influence the credit situation to the advantage of Malaysia; or
- (c) protect the interest of the public in respect of the business or activities carried on by such particular scheduled institution or representative office, or such scheduled institutions or representative offices,

on the recommendation of the Bank, by order published in the *Gazette*, declare that any or all the provisions of Parts V, VI, VII, VIII, IX, X and XIII shall apply to such particular scheduled

Act A954.

institution or representative office, or to such class, category or description of scheduled institutions or representative offices generally, from such date, and with such modifications, variations, adaptations, alterations, amendments, additions, deletions or substitutions, as may be specified in the order.

(2) Where an order under subsection (1) is published in the *Gazette*, the provisions of this Act which are thereby made applicable to such particular scheduled institution or representative office, or such class, category or description of scheduled institutions or representative offices, shall apply as if the references therein to a licensed institution were references to such particular scheduled institution or representative office, or to a scheduled institution or representative office belonging to such class, category or description of scheduled institutions or representative offices.

(3) The powers exercisable under this section against a representative office shall also be exercisable against the foreign institution of which it is a representative office where the Minister, on the recommendation of the Bank, considers it necessary to exercise such powers against the foreign institution in order to regulate the representative office.

PART IV

RESTRICTIONS RELATING TO ACCEPTANCE AND SOLICITATION OF, ADVERTISEMENT FOR, AND INDUCEMENT TO MAKE, DEPOSITS

Receiving, taking or acceptance of deposits prohibited, except under and in accordance with a valid licence granted under section 6 (4).

25. (1) No person shall receive, take, or accept deposits except under and in accordance with a valid licence granted under section 6 (4) to carry on banking, finance company, merchant banking or discount house business.

Act 125. (2) The provisions of subsection (1) shall have full force and effect notwithstanding anything contained in any other written law, and, in particular, notwithstanding anything contained in the Companies Act 1965 in respect of borrowing corporations as defined in section 4 of that Act.

(3) For the purposes of this section, the definition of “deposit” in section 2 is modified by—

- (a) substituting for the words “received or paid”, the words “or any precious metal, or any precious stone, or any article which is comprised, in part or in whole, of any precious metal or precious stone, and any other article or thing as may be prescribed by the Minister, on the recommendation of the Bank, received, paid or delivered”;
- (b) by inserting after the words “repaid”, “repayable”, “repayment” and “payment” the words “or returned”, “or returnable”, “or return”, and “or delivery”, respectively.

Unsolicited calls. **26.** (1) No person shall, without the written consent of the Bank,

make an unsolicited call to—

- (a) solicit or procure the making of a deposit; or
- (b) enter into or offer to enter into any agreement with a view to the acceptance of a deposit,

from any person in Malaysia or outside Malaysia.

(2) The Bank's consent under subsection (1) may be given to such person, or such classes, categories or descriptions of persons, and be made subject to such terms and conditions, including a condition requiring the disclosure of such information to the persons on whom unsolicited calls are made, as may be set out in the consent.

(3) In this section, "unsolicited call" means a personal visit or oral communication made without express invitation.

Advertisements for deposits. **27.** No person, other than a licensed bank, a licensed finance company, a licensed merchant bank or a licensed discount house, shall issue or publish, or otherwise facilitate any person to issue or publish, an advertisement containing—

- (a) an invitation to make a deposit or enter into or offer to enter into any agreement to make a deposit; or
- (b) information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of a deposit:

Provided that the above prohibition shall not apply to the publication by any person of any such advertisement for or on behalf of a licensed institution as mentioned above.

Fraudulent inducement in relation to deposits. **28.** No person shall—

- (a) make, publish, or facilitate the making or publication of, a statement, promise or forecast which he knows to be misleading, false or deceptive;
- (b) dishonestly conceal any material fact; or
- (c) recklessly make or publish (dishonestly or otherwise), or recklessly facilitate the making or publication (dishonestly or otherwise) of a statement, promise or forecast which is misleading, false or deceptive,

if he makes, publishes, or facilitates the making or publication of, such statement, promise or forecast, or conceals such material fact, for the purpose of inducing, or is reckless as to whether the same may induce, another person (whether or not it is the person to whom the statement, promise or forecast is made or from whom such material fact is concealed) to—

- (A) make, or refrain from making, a deposit; or
- (B) enter, or refrain from entering, into an agreement for the purpose of making a deposit, with him or any other person.

PART V

SUBSIDIARIES AND OFFICES OF LICENSED INSTITUTIONS

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| Control of establishment or acquisition of subsidiaries. | 29. No licensed institution shall establish or acquire any subsidiary in or outside Malaysia without the prior written consent of the Bank. | <i>Act A954.</i> |
| Restriction on establishment of offices of licensed institution. | 30. No licensed institution shall open any office in or outside Malaysia without the prior written consent of the Bank. | <i>Act A954.</i> |
| Establishment of correspondent banking relationship. | 31. (1) Subject to subsection (2), a licensed bank or a licensed merchant bank may establish a correspondent banking relationship with any bank outside Malaysia.

(2) The Bank may prescribe by order that such licensed bank or licensed merchant bank as may be set out in the order shall not, except with the prior written approval of the Minister given on the recommendation of the Bank, establish a correspondent banking relationship with any bank established in any country, territory or place outside Malaysia, which may be set out in the order, or with any bank owned or controlled, directly or indirectly, by the government, or an agency of the government, of such country, territory or place. | |

PART VI

RESTRICTIONS ON DEALINGS OF LICENSED INSTITUTIONS

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| Restriction on carrying on of trade by licensed institution. | 32. (1) Unless the Minister on the recommendation of the Bank otherwise prescribes, no licensed institution shall engage, whether on its own account or on a commission basis, and whether alone or with others, in wholesale or retail trade, including import and export trade, except in connection with the realisation of security given to or held by it for the purpose of carrying on its licensed business.

(2) The provisions of subsection (1) shall not apply to the purchasing or selling of gold or foreign currency by any licensed bank. | |
| Restriction on trading by licensed finance company, etc. | 33. (1) Unless the Minister, on the recommendation of the Bank, otherwise prescribes—

(a) a licensed finance company, licensed merchant bank or licensed discount house shall not—

(i) accept money on deposit which is repayable on demand by cheques, drafts, orders or any other instrument drawn by the depositor on the institution; | <i>Act A1211.</i> |

or

(ii) deal in foreign currency; and

(b) a licensed finance company, a licensed merchant bank, a licensed discount house or a licensed money-broker shall not engage in any business other than its licensed business.

(2) Subsection (1) shall not apply to a banking and finance company.

Act A1211.

Deposits to be subject to specified minimum or maximum period, minimum or maximum amount, and other specified terms and conditions.

34. (1) Where a licensed institution which is authorised under its licence to receive deposits, receives any deposit, the deposit shall be repayable on the expiration of such minimum or maximum period as may be specified by the Bank.

(2) The Bank may specify the minimum amount of a single deposit, or the maximum aggregate amount of all deposits which such licensed institution may accept on deposit from a single depositor, and also other terms and conditions on which deposits may be accepted by it.

(3) A specification under subsection (1) or (2) shall not affect any agreement between a depositor and the institution made before such specification comes into force.

Control of advertisements issued by licensed institutions.

35. (1) If the Bank is of the opinion that any statement made in an advertisement issued by a licensed institution is false, deceptive, offensive or misleading, the Bank may by notice in writing direct the institution to do all or any of the following:

- (a) cease the continued issue of the advertisement;
- (b) modify the advertisement in such manner as may be specified by the Bank;
- (c) cease the issue of any advertisement which is, wholly or substantially, a repetition of such advertisement;
- (d) take all practical steps to withdraw the advertisement from every and all publication or display of it; or
- (e) publish a statement in like manner as the advertisement issued earlier to retract or modify such advertisement.

(2) The Bank may vary, add to, revoke or otherwise amend any directions issued under subsection (1) by a notice in writing to the institution concerned.

PART VII

FINANCIAL REQUIREMENTS AND DUTIES OF LICENSED INSTITUTIONS

Maintenance of 36. (1) Every licensed institution shall—
reserve fund.

Act A954.

- (a) maintain a reserve fund; and
- (b) before declaring any dividend from its net profits of each year (after due provision made for taxation), transfer to its reserve fund out of the net profits of each year—
 - (i) a sum equal to not less than fifty per centum of the net profits of that year, so long as the amount of the reserve fund is less than fifty per centum of its paid-up capital; or
 - (ii) a sum equal to not less than twenty-five per centum of the net profits of that year, so long as the amount of the reserve fund is fifty per centum but less than one hundred per centum of its paid-up capital.

(2) Notwithstanding subsection (1), the Bank may from time to time specify a different portion of the net profits of each year, being either lesser or greater than the portions specified in subsection (1), to be transferred to the reserve fund of a licensed local institution for the purpose of ensuring that the amount of the reserve fund of such institution is sufficient for the purpose of its business and adequate in relation to its liabilities.

(3) Notwithstanding subsection (1), the reserve fund may, with the approval of the Bank and subject to such terms and conditions as the Bank may impose, be applied in paying up unissued shares to be issued to members of the licensed institution as fully paid bonus shares.

Act A954.

(4) Nothing in this section shall authorise a licensed institution to pay dividends out of the reserve fund.

Act A954.

Maintenance of 37. (1) The Bank may specify that a licensed institution shall
capital funds. maintain, at all times, capital funds unimpaired by losses, in such ratio to all or any assets or to all or any liabilities, or to both such assets or liabilities, of the institution and all its offices in and outside Malaysia as may be set out in the specification.

Act A954.

(2) Where any licensed institution referred to in subsection (1) is a corporation within a group of corporations which are related, the accounts of the licensed institution shall not for the purpose of this section be on a consolidated basis unless the Bank otherwise specifies.

Maintenance of 38. (1) The Bank may specify that a licensed institution shall
liquid assets. hold such minimum, or minimum average, amount of liquid assets in Malaysia at all times or over such period of time as may be set out in the specification.

(2) The minimum, or minimum average, amount of liquid assets specified under subsection (1) shall be expressed as a percentage of all or such of its liabilities incurred by its offices in Malaysia as may be set out in the specification.

(3) In a specification under subsection (1), the Bank may specify—

- (a) different minimum, or different minimum average, amounts of liquid assets for different classes or categories of licensed institutions;

- (b) different types of assets to be classified as liquid assets for different classes or categories of licensed institutions; or
- (c) different types of liabilities as mentioned in subsection (2) to be classified as liabilities for different classes or categories of licensed institutions.

(4) In a specification under subsection (1) the Bank shall specify the period, being in any case not less than seven days, within which a licensed institution shall comply with the specification, and it may specify different periods for different classes or categories of licensed institutions:

Provided that such period is a uniform period for all licensed institutions in the class or category concerned.

(5) The Bank may prohibit any licensed institution from giving any credit facilities to any person during the period in which the institution has failed to comply with any requirement of a specification under this section.

Act A954.

Maintenance of assets in Malaysia.

39. (1) The Bank may specify that such licensed institutions, or such class or category of licensed institutions, as may be set out in the specification, shall hold at all times in Malaysia such minimum amount of assets as may be set out in the specification.

(2) The minimum amount of assets to be held in Malaysia specified under subsection (1) shall be expressed as a percentage of all or such of the liabilities of the institution in Malaysia as may be set out in the specification.

(3) In a specification under subsection (1), the Bank may specify—

- (a) different minimum amounts of assets to be held in Malaysia by different classes or categories of licensed institutions;
- (b) different types of assets to be classified as assets to be held in Malaysia for different classes or categories of licensed institutions;
- (c) different types of liabilities to be classified as liabilities for different classes or categories of licensed institutions; or
- (d) different provisions for different classes or categories of licensed institutions in relation to any matter provided under the specification, other than as provided under subsection (4).

(4) The provisions of section 38 (4) shall apply *mutatis mutandis* in relation to a specification under subsection (1).

Appointment and duties of auditor.

40. (1) Notwithstanding anything in any other written law, a licensed institution shall appoint each year before a date to be specified by the Bank an auditor approved by the Minister on the recommendation of the Bank.

(2) Where a licensed institution fails to appoint an auditor under subsection (1) before the date specified thereunder, the Minister may appoint for the institution an auditor recommended by the Bank, and specify his remuneration and expenses, and the same shall be paid to such auditor by the institution.

(3) If the Minister at any time, on the recommendation of the Bank, considers it desirable that another auditor should act with the auditor appointed under subsection (1) or (2), he may appoint another auditor recommended by the Bank and specify his remuneration and expenses, and the same shall be paid to such auditor by the institution.

(4) No licensed institution shall knowingly appoint as its auditor any person, and no person shall knowingly consent to be appointed as an auditor of a licensed institution by the institution or by the Minister, if such person—

- (a) is not an approved company auditor;
- (b) has any interest whatsoever in any form or of any description in that institution, including an interest in the shares of the institution;
- (c) is a director, controller or officer of that institution;
- (d) is indebted to that institution or to any related corporation of that institution;
- (e) is a partner, employer or employee of a director, controller, or officer, of that institution;
- (f) is a partner or employee of an employee of a director, controller, or officer, of that institution;
- (g) is a shareholder, or his spouse is a shareholder, of a corporation whose employee is an officer of that institution;
- (h) is responsible, or is the partner, employer, or employee of a person responsible, for the keeping of the register of members or the register of holders of debentures of that institution; or
- (i) has been convicted of any offence under this Act or the Companies Act 1965, or of any offence under any other written law involving fraud or dishonesty:

Act 125.

Provided that the Minister may, on the recommendation of the Bank, remove the disqualification under this paragraph which any auditor is subject to if the Minister is satisfied that it would not be contrary to the public interest to do so.

(5) For the purposes of subsection (4), a person shall be deemed to be an officer of an institution—

- (a) if he is an officer of a related corporation of such institution; or
- (b) except where the Minister, on the recommendation of the Bank, in the circumstances of the case, otherwise directs, if he has, at any time within the preceding period of twelve months, been an officer or promoter of such institution or such related corporation.

(6) A firm shall not knowingly consent to be appointed, and shall not knowingly act, as auditor for any licensed institution and shall not prepare, for or on behalf of a licensed institution, any report required by this Act to be prepared by an auditor unless—

- (a) all the partners of the firm resident in Malaysia are approved company auditors and, where the firm is not registered as a firm under any law for the time being in force, a return showing the full names and addresses of

all the partners of the firm has been lodged with the Bank; and

(b) no partner is disqualified under subsection (4) (b) to (i), inclusive, from acting as the auditor of the institution.

(7) No person shall be appointed as auditor under this section unless he has prior to his appointment consented in writing to act as such auditor, and no firm shall be appointed as auditor under this section unless the firm has prior to the appointment consented in writing under the hand of at least one partner of the firm to act as such auditor.

(8) The appointment of a firm in the name of the firm as auditor under this section shall take effect and operate as an appointment as auditor of the licensed institution concerned of the persons who are members of that firm at the time of the appointment.

(9) For the purposes of this section, a person shall not be deemed to be an officer of an institution or its related corporation by reason only of his having been appointed an auditor of the institution or its related corporation.

(10) Any person appointed as auditor for a licensed institution who, at any time after such appointment, becomes subject to any of the disqualifications mentioned in this section or in section 9 of the Companies Act 1965, shall immediately thereupon cease to be the auditor of that institution and shall not thereafter act as its auditor or be required or permitted by the institution to act as such.

(11) The duties of an auditor appointed under subsection (1) or (2) shall be—

- (a) to carry out, in the case of a licensed local institution, an audit of the accounts of the institution;
- (b) to carry out, in the case of a licensed foreign bank, an audit of the accounts of that bank in respect of its operations in Malaysia; and
- (c) subject to section 41 (4), to submit a report of such audit to the members of the licensed institution.

(12) The report of the auditor referred to under subsection (11) (c) shall—

- (a) in the case of a licensed institution which is a company, be made in accordance with section 174 of the Companies Act 1965; and
- (b) in the case of a licensed institution, other than a company, certify the following:
 - (i) whether or not all the information and explanations which are in the opinion of the auditor necessary for the purposes of the audit have been obtained;
 - (ii) whether or not, according to the best of the information and explanations given to him; the balance sheet and profit and loss account referred to in the report give, in his opinion, a true and fair view of the state of the affairs of the licensed institution at the date of the balance sheet, and of the profit and loss account for the financial year concerned, regard being had, *inter alia*, to the provisions of this Act;
 - (iii) whether or not in his opinion proper books of account have been properly kept by the licensed

institution so far as it appears from the audit of the accounts; and

- (iv) whether or not in his opinion proper returns, adequate for the purposes of the audit, have been received by him from offices of the licensed institution not visited.

(13) The Bank may, at any time, require an auditor appointed under this section to—

- (a) submit such additional information in relation to his audit as the Bank may specify;
- (b) enlarge or extend the scope of his audit of the business and affairs of the institution in such manner or to such extent as the Bank may specify;
- (c) carry out any specific examination or establish any procedure in any particular case; or
- (d) submit a report on any of the matters referred to in the foregoing paragraphs,

and the Bank may specify the time within which any of the aforesaid requirements shall be complied with by the auditor and specify the remuneration which the institution shall pay to the auditor in respect thereof.

(14) The auditor shall comply with any requirement of the Bank under subsection (13) and the institution shall pay to the auditor the remuneration of the auditor referred to therein.

(15) If an auditor appointed under this section, in the course of his duties as an auditor of an institution, is satisfied that—

- (a) there has been a contravention of any provision of this Act or that any offence which relates to dishonesty or fraud under any other law has been committed by the institution or by any other person; *Act A954.*
- (b) losses have been incurred by the institution which reduce its capital funds to an extent that the institution is no longer able to comply with the specifications of the Bank under section 37(1); *Act A954.*
- (c) any irregularity which jeopardises the interests of depositors or creditors of the institution, or any other serious irregularity, has occurred; or
- (d) he is unable to confirm that the claims of depositors or creditors are covered by the assets of the institution,

he shall immediately report the matter to the Bank.

(16) A licensed institution, and any director, controller or officer of that institution, shall—

- (a) furnish to an auditor appointed under this section—
 - (i) all information within its or his knowledge or capable of being obtained by it or by him; or
 - (ii) any information which the auditor requires, to enable him to carry out his duties; and
- (b) ensure that all information which is furnished to the auditor, including information furnished under paragraph (a), is not false or misleading in any material particular.

(17) The Bank may at any time examine the books, other documents, accounts and transactions of any person which was at any time, or is, an auditor of a licensed institution and for the purposes of such examination, the Bank shall have and may exercise all such powers as it has or may exercise in relation to an examination of a licensed institution under this Act.

Financial statements to be submitted to Bank.

41. (1) Within three months after the close of each financial year of a licensed institution, or such further period as the Bank may approve, the licensed institution shall submit to the Bank in respect of its entire operations in Malaysia two copies each of the following documents:- *Act A954.*

- (a) its latest audited annual balance sheet, profit and loss account and statement setting out the sources of its funds, the purposes for which, and the manner in which, such funds have been utilised; and
- (b) the report of—
 - (i) the auditor under section 40 (11) (c); and
 - (ii) in the case of a licensed institution, the directors under section 169 (5) of the Companies Act 1965.

(2) Within the time stipulated in subsection (1), a licensed institution shall, in addition to the requirements under subsection (1), submit to the Bank where it is a licensed institution with offices or subsidiaries outside Malaysia, all the documents referred to under subsection (1) in respect of—

- (i) its operations in each country outside Malaysia; and
- (ii) its entire operations both in and outside Malaysia on a consolidated basis.

(3) The Bank may, either before or after a licensed institution has complied with the requirements of subsection (1) or (2), require the licensed institution referred to in subsection (1) or (2) to submit further or additional information as it may deem necessary either by way of explanation, amplification or otherwise with regard to any documents submitted under subsection (1) or (2), as the case may be, or to amend or modify the documents as to form or content as the Bank may deem appropriate.

(4) Unless and until the Bank has informed the licensed institution in writing that—

- (a) the Bank is satisfied that the licensed institution has complied with the provisions of subsections (1) and (3); and
- (b) the documents and information supplied thereunder are in such form and contain such information as is acceptable to the Bank,

the licensed institution shall not—

- (A) lay its accounts before its general meeting;
- (B) publish the same under section 42; or
- (C) take such other action in relation thereto as the Bank may specify,

except where the Bank otherwise approves in writing, and any such approval may be made subject to such terms and conditions as may be set out therein.

(5) Subject to subsection (4), a licensed institution shall within six months after the close of its financial year, or such further period as the Bank may approve, submit to the Bank four copies each of the documents mentioned in subsection (1) together with the approval or other decision of the annual general meeting of the licensed institution in respect thereof.

Publication and
exhibition of
audited balance
sheet, etc.

42. Every licensed institution shall within fourteen days of the laying of its accounts at its annual general meeting, or within such further period as the Bank may approve, publish in not less than two daily newspapers published in Malaysia and approved by the Bank, one of which shall be in the national language and the other in English, and exhibit thereafter throughout the year in a conspicuous position at every office in Malaysia of the institution, a copy each of its balance sheet and such other documents as the Bank may specify; and the Bank may specify differently in respect of the documents to be published in the newspapers and the documents to be exhibited.

Statistics and
information to be
submitted.

43. (1) Every licensed institution shall submit to the Bank—

- (a) a statement showing the assets and liabilities of the institution at its principal place of business and at each other office of the institution in Malaysia respectively; and
- (b) such further information, documents, statistics or returns as the Bank may specify.

(2) Notwithstanding the provisions of sections 96 and 97, the Bank may require—

Act 519.

- (a) any class or category of licensed institutions, other than a licensed discount house or a licensed money-broker, to submit a statement showing such credit information relating to their customers as is required for the purposes of the credit bureau established under section 30 (1) (*mmm*) of the Central Bank of Malaysia Act 1958; and
- (b) (*Deleted*).

Act A1144.

(3) Every licensed institution which operates any office outside Malaysia shall submit to the Bank such information relating to the operations of such office as may be specified by the Bank.

(4) Except for the purposes of subsection (2), any information received from a licensed institution under this section shall be regarded as secret between that institution and the Bank.

(5) Notwithstanding anything in this Act, the Bank may publish consolidated statements in respect of each class or category of licensed institutions as the Bank deems appropriate aggregating the figures in all or any of the returns submitted under subsection (1), and no provision in any written law relating to secrecy shall apply to such consolidated statements.

Licence fees. **44.** (1) Every licensed institution shall pay—

- (a) a licence fee upon being licensed;

- (b) a fee upon obtaining the consent of the Bank under section 30 (a) for opening any office in Malaysia other than the office at the principal place of business; and
- (c) an annual fee on the licence so issued and in respect of each office, including the office at the principal place of business, each of such fee to be paid not less than one month before the anniversary date of the issue of the licence,

of such amount, or calculated at such rate or in such manner as the Minister may prescribe on the recommendation of the Bank.

(2) The Minister may prescribe under subsection (1) different fees for licences issued for the different businesses specified in section 4, or for different classes or categories of licensed institutions determined according to the size or location of the institutions, or on the basis of any other criteria deemed appropriate by the Bank in making its recommendations to the Minister.

(3) For the purposes of this section, the size of a licensed institution shall be determined in relation to the number of offices it has in and outside Malaysia, or to the value of its assets or of any category of its assets, or to the amount of its liabilities or of any category of its liabilities, or to any combination thereof.

PART VIII

OWNERSHIP, CONTROL AND MANAGEMENT OF LICENSED INSTITUTIONS

Acquisition or disposal of aggregate of five per centum holding. **45.** (1) Without prejudice to sections 49 and 50, and subject to section 46, no person shall enter into an agreement or arrangement to acquire or dispose any interest in the shares of a licensed institution by which, if the agreement or arrangement is carried out, he would—

- (a) acquire, together with any interests in the shares of that institution which were then already held by him, or by him and by persons acting in concert with him; or
- (b) dispose, together with the interests in shares previously disposed by him to any single person or any persons acting in concert, to such single person or such persons acting in concert,

an aggregate interest in shares of not less than five per centum of the shares of that institution, without obtaining the prior written approval of the Minister to enter into such agreement or arrangement:

Provided that no such approval shall be granted in respect of any acquisition or disposal which would result in a contravention of section 46.

(2) An application for approval under subsection (1) shall be made by the person intending to acquire or dispose any interest in shares referred to therein and shall be sent to the Bank, whereupon the Bank shall submit such application, together with its recommendation thereon, to the Minister.

(3) No person who has obtained an approval of the Minister under subsection (1) for entering into an agreement or arrangement—

- (a) for the acquisition of any interest in shares of a licensed institution, shall enter into any subsequent agreement or arrangement to acquire any interest in the shares of such licensed institution; or
- (b) for the disposal of any interest in shares of a licensed institution to a single person or to persons acting in concert, shall enter into any subsequent agreement or arrangement with such single person or with one or more of such persons acting in concert, to dispose to him or to them, any interest in the shares of such licensed institution,

regardless of the per centum of the shares of the institution which such interest in shares represents, without obtaining the prior written approval of the Minister to enter into such subsequent agreement or arrangement, and the provisions of subsection (2) shall apply to an application for approval under this subsection.

(4) This section shall not apply to any acquisition or disposal by any person under the Malaysia Deposit Insurance Corporation Act 2005.

Act A1256.

Maximum permissible holdings.

46. (1) No person shall hold more than the following percentages of interests in shares of a licensed institution:

- (a) in the case of an individual, ten per centum; and
- (b) in the case of a person other than an individual, twenty per centum,

except where the Minister, on the recommendation of the Bank and on being satisfied that it would not be—

- (A) prejudicial to the promotion of a sound financial structure in Malaysia; and
- (B) contrary to the public interest to do so,

otherwise approves.

(1A) Subsection (1) shall not apply to any person who holds interests in shares of a licensed bank or licensed finance company pursuant to the provisions of the Malaysia Deposit Insurance Corporation Act 2005.

Act A1256.

(2) For the purpose of subsection (1) (a), where the person holding interests in shares of a licensed institution is a corporation in which—

- (a) an individual;
- (b) that individual's spouse; or
- (c) that individual's child,

holds, or any two or more of the persons mentioned in paragraphs (a), (b) and (c) hold, severally or jointly, interests in shares of not less than seventy-five per centum of the shares of that corporation, such corporation shall be deemed to be an individual.

(3) For the purposes of this section, in computing the holding of a person the following shall be deemed to be the holding of such person and added on to his own holding:

- (a) where a person is an individual, the holding of his or her

spouse, child or family corporation;

(b) where a person is a corporation, the holding of its related or associate corporations;

Act 287.

(c) where a person is a co-operative society, the holding of its subsidiaries as defined in section 2 of the Co-operatives Societies Act 1948, and of related or associate corporations of such subsidiaries; and

(d) the holding of persons acting in concert with such person.

(4) For the purposes of subsection (3) (a), "family corporation" means a corporation in which—

(a) the individual;

(b) that individual's spouse; or

(c) that individual's child,

holds, or any two or more of the persons mentioned in paragraphs (a), (b) and (c) hold, severally or jointly, interests in shares of more than fifty per centum of the shares of the corporation.

(5) Any individual who holds ten or more than ten per centum interest in the shares of a licensed institution, or any person other than an individual who holds twenty or more than twenty per centum interest in the shares of a licensed institution, shall, prior to disposing of any interest in the shares of such institution, notify the Bank in writing of such intended disposal and shall continue to notify the Bank of any further intended disposal so long as the individual or other person holds not less than five per centum interest in the shares of the institution.

(6) The Bank may, at any time by notice in writing, require any person to submit—

(a) any information or particulars of any share acquired or held directly or indirectly either for his own benefit or for any other person; or

(b) a statement of his current holding of interest in the shares of a licensed institution.

(7) Any person who has been served with a notice under subsection (6) shall, within seven days of the receipt of such notice or such longer period as may be allowed by the Bank in any particular case, submit to the Bank all the necessary information and particulars or the statement, as the case may be, as may be required by the Bank and duly verified by a statutory declaration.

Prohibited holding
by licensed
institution.

47. A licensed institution shall not hold any interest in the shares—

(a) where it is a licensed bank, of another licensed bank established in Malaysia, or of a subsidiary of another licensed institution which is not related to it;

(b) where it is a licensed finance company, a licensed discount house or a licensed money-broker, of another licensed institution, or of a subsidiary of another licensed institution which is not related to it; or

(c) where it is a licensed merchant bank, of another licensed bank or licensed merchant bank established in

Malaysia, or of a subsidiary of another licensed institution which is not related to it,

except where the Minister, on the recommendation of the Bank, otherwise approves.

Saving in respect of acquisitions, disposals and holdings before effective date.

48. (1) Subject to subsection (2), nothing contained in sections 45, 46 and 47 shall render invalid any acquisition or disposal of any interest in the shares of a licensed institution by any person where the same had been completed, or any holding of any such interest in shares which existed, at any time before the effective date and was lawful and valid immediately before such date.

(2) An acquisition, holding or disposal of any interest in shares to which subsection (1) applies shall be taken into account in determining the validity under section 45, 46 or 47, as the case may be, of any acquisition or disposal of an interest in the shares of a licensed institution effected after the effective date.

Sanction required for reconstruction, etc. of licensed institutions.

49. (1) No person shall enter into an agreement or arrangement—

- (a) which will result in a change in the control of a licensed institution or its holding company;
- (b) for the sale, disposal, or transfer howsoever, of the whole or any part of the business of a licensed institution;
- (c) for the amalgamation or merger of a licensed institution with any other person; or
- (d) for the reconstruction of a licensed institution,

unless—

- (A) the proposed agreement or arrangement is in writing; and
- (B) all the parties thereto have first made an application in writing to the Minister for his approval of such agreement or arrangement and have obtained the Minister's approval thereto.

(2) An application under subsection (1) shall be made by submitting it to the Bank together with a copy of the proposed agreement or arrangement and all other information and documents as may be related, directly or indirectly, to the agreement or arrangement or relevant to its consideration.

(3) At any time after receiving an application and before it is determined by the Minister, the Bank may, by written notice, require the applicants or any of them, or any person who is a director, controller or manager of any of the applicants, to provide any additional information or documents.

(4) Where any additional information or document required under subsection (3) is not provided by any person from whom it is required within the time specified in the requirement or any extension thereof granted by the Bank, the application shall be deemed to be withdrawn and shall not be further proceeded with, without prejudice to a fresh application being made by the applicants.

(5) The Bank shall, on an application having been duly made in accordance with the foregoing provisions of this section and after being provided with all such information and documents as it may require, consider the application, and make a recommendation to the Minister whether the application shall be approved or refused and as to the modifications, variations or conditions, if any, subject to which it may be approved.

(6) A recommendation to approve an application shall not be made if the Bank is satisfied that it would be detrimental to the soundness of the financial structure of Malaysia to do so.

(7) Upon receiving an application and the recommendation of the Bank under this section, the Minister may approve the application with or without any modifications, variations or conditions, or refuse the application.

(8) Where the Minister refuses an application, the Bank shall notify the applicants in writing of the refusal.

(9) An application under—

- (a) subsection (1) (b) shall not be recommended by the Bank for approval and shall not be approved by the Minister where the agreement or arrangement would result in the sale, disposal, or transfer howsoever, of any part of the business of the licensed institution to any person which is not a licensed institution, except in relation to a part of the business, being a part which does not require to be licensed under this Act; and
- (b) subsection (1) (c) shall not be recommended by the Bank for approval and shall not be approved by the Minister except in the case of an amalgamation or merger with another licensed institution.

(9A) Subsection (9) shall not apply to any agreement or arrangement carried out by any person pursuant to the Malaysia Deposit Insurance Corporation Act 2005.

Act A 1256.

(10) In this section, “business” has the meaning assigned to it in section 50 (8).

Application to High Court to facilitate agreement or arrangement for transfer of whole or part of business of licensed institution being given effect to.

50. (1) Where the Minister has granted his approval under section 49 (7) to an application in respect of an agreement or arrangement under section 49 (1) (b) or (c), the licensed institution whose business is to be transferred (hereinafter referred to as “the transferor”) and the licensed institution or other person to whom the transfer is to be made (hereinafter referred to as “the transferee”) may make a joint application to the High Court by way of an *ex parte* originating summons for such order of the Court as may be required by them to facilitate or enable the agreement or arrangement being given effect to, and in such application there may be sought all or any of the following orders:

- (a) the date on and from which the agreement or arrangement shall take effect, being a date earlier or later than the date of the application (hereinafter in this section referred to as “the transfer date”);
- (b) the vesting of any property held by the transferor, either alone or jointly with any other person, in the transferee either alone or, as the case may be, jointly with such other person, on and from the transfer date, in the same capacity, upon the trusts, and with and subject to the powers, provisions and liabilities applicable thereto

respectively;

- (c) for any existing instrument, whether in the form of a deed, will or otherwise, or order of any court, under or by virtue of which any property became vested in the transferor, to be construed and to have effect as if for any reference therein to the transferor there were substituted a reference to the transferee;
- (d) for any existing agreement to which the transferor was a party to have effect as if the transferee had been a party thereto instead of the transferor;
- (e) for any account between the transferor and its customer to become an account between the transferee and the customer, subject to the conditions and incidents as theretofore, and such account to be deemed for all purposes to be a single continuing account;
- (f) for any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent, whether or not in relation to an account, given to the transferor, either alone or jointly with another person, to have effect, in respect of anything due to be done as if given to the transferee either alone or, as the case may be, jointly with the other person;
- (g) for any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed by, the transferor or payable at the place of business of the transferor, whether so drawn, given, accepted or endorsed before, on, or after, the transfer date, to have the same effect on and from the transfer date, as if it had been drawn on, or given to, or accepted or endorsed by, the transferee or were payable at the place of business of the transferee;
- (h) for the custody of any document, goods or thing held by the transferor as bailee immediately before the transfer date to pass to the transferee and the rights and obligations of the transferor under any contract of bailment relating to any such document, goods or thing to be transferred to the transferee;
- (i) for any security held immediately before the transfer date by the transferor, or by a nominee of, or trustee for, the transferor, as security for the payment or discharge of any liability of any person, to be held by the transferee or, as the case may be, to be held by that nominee or trustee as the nominee of, or trustee for, the transferee, and to the extent of those liabilities, be available to the transferee as security for the payment or discharge of those liabilities; and where any such security extends to future advances or future liabilities, to be held by, and to be available as aforesaid to, the transferee as security for future advances by, and future liabilities to, the transferee in the same manner in all respects as future advances by, or future liabilities to, the transferor were secured thereby immediately before the transfer date;
- (j) where any right or liability of the transferor is transferred to the transferee, for the transferee to have the same rights, powers and remedies (and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority) for ascertaining, protecting or enforcing that

right or resisting that liability as if it had at all times been a right or liability of the transferee, including those rights or liabilities in respect of any legal proceedings or applications to any authority pending immediately before the transfer date by or against the transferor;

- (k) any judgment or award obtained by or against the transferor and not fully satisfied before the transfer date to be enforceable by or, as the case may be, against the transferee; and
- (l) for all such incidental, consequential and supplemental orders as are necessary to secure that the agreement or arrangement shall be fully and effectively carried out.

(2) On the hearing of an application under subsection (1), the High Court may grant an order in the terms applied for, or with such modifications or variations as the Court deems just or proper in the circumstances of the case.

(3) Where the order of the High Court under subsection (1) provides for the transfer of any property or business vested in or held by the transferor, either alone or jointly with any other person, then, by virtue of the order, that property or business shall, on and from the transfer date, become vested in or held by the transferee either alone or, as the case may be, jointly with such other person, and the order shall have effect according to its terms notwithstanding anything in any law or in any rule of law, and shall be binding on any person thereby affected, regardless that the person so affected is not a party to the proceedings under this section or any other related proceedings, or had no notice of the proceedings under this section or of other related proceedings.

(4) The order of the High Court made under subsection (1) shall, subject to the directions of the High Court, be published by the transferee in not less than two daily newspapers published in Malaysia and approved by the Bank, one of which shall be in the national language and the other in English.

(5) The transferor shall lodge, within thirty days of the making of the order of the High Court under subsection (1), an authenticated copy of such order together with an authenticated copy of the agreement or arrangement approved by the Minister under section 49 (7), and an authenticated copy of the Minister's approval, with—

- (a) the Registrar of Companies; and
- (b) the appropriate authority, if any, concerned with the registration or recording of dealings in any movable property, or any interest in movable property transferred pursuant to the order.

(6) Where an order of the High Court under subsection (1) vests any alienated land, or any share or interest in any alienated land, in the transferee—

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- (a) the High Court shall, where such alienated land is in West Malaysia, pursuant to section 420 (2) of the National Land Code, cause a copy of the order to be served on the Registrar of Titles or the Land Administrator, as the case may be, immediately after the making of the order so that the Registrar of Titles or the Land Administrator, as the case may be, gives effect to the provisions of the said section 420 (2), (3) and (4);

Sabah Cap. 68.

- (b) where such alienated land is in Sabah, the transferee shall, as soon as practicable after the order has been

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made, present an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land as provided under the Land Ordinance of Sabah; or

Swk. Cap. 81.

(c) where such alienated land is in Sarawak, the transferee shall, as soon as practicable after the order has been made, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land, in the transferee, as provided under section 171 of the Land Code of Sarawak.

(7) An order of the High Court under subsection (1) may relate to any property or business of the transferor outside Malaysia and, if it so relates, effect may be given to it either in accordance with any reciprocal arrangements relating to enforcement of judgments that may exist between Malaysia and the country, territory or place outside Malaysia in which such property or business is, or where there are no such arrangements, in accordance with the law applicable in such country, territory or place.

(8) For the purposes of this section—

“business” means any activity carried on for the purpose of gain or profit and includes all property derived from, or used in or for the purpose of, carrying on such activity and all rights and liabilities arising from such activity; and

“security” includes a mortgage or charge, whether legal or equitable, debenture, bill of exchange, promissory note, guarantee, lien or pledge, whether actual or constructive, hypothecation, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present or future, or whether vested or contingent.

Licensed institution to report acquisition or disposal of aggregate of five per centum holding to Bank.

51. Where it comes to the knowledge of a licensed institution that any agreement or arrangement as is referred to in section 45 has been effected or is about to be effected in respect of itself, the institution shall immediately thereupon report the same to the Bank setting out in its report all relevant particulars and details which are then within its knowledge.

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Credit facilities on security of licensed institution's property to be reported to Bank.

52. (1) Where any person proposes to give any credit facility to any person on the security of any property of any licensed institution, he shall, before giving such credit facility, submit a report on the proposed credit facility to the Bank if the property to be provided as security for the proposed credit facility, by itself, or together with any other property of such licensed institution already held as security for any other credit facilities given by him, would constitute five per centum or more of the properties of such licensed institution.

(2) Where a licensed institution proposes to provide its property as security in respect of a credit facility to be given by any person to the licensed institution or to any other person, it shall, before doing so, submit a report on the matter to the Bank.

(3) The report required to be submitted under subsection (1) or (2) shall contain all relevant details and particulars of the transaction and shall, in any case, include the following:

- (i) the names and addresses of the persons to whom the credit facility is proposed to be given;
- (ii) the name and address of the licensed institution whose property is to be provided as security for the proposed credit facility;
- (iii) details of the property to be provided as security for the proposed credit facility; and
- (iv) the amount of the proposed credit facility.

Defence relating to contravention of provisions of this Part.

53. It shall be a defence to a charge for an offence relating to a contravention of section 45, 46, 47, 49 or 52 for the accused to prove that he had no knowledge of the acts, omissions, facts or circumstances constituting the contravention, provided he had reported the contravention to the Bank within seven days of becoming aware of the aforesaid acts, omissions, facts or circumstances which constituted such contravention.

Prohibitions and restrictions in the event of contravention.

54. (1) Where the Bank is satisfied that any person has contravened the provisions of section 45, 46, 47, 49 or 52 (in this section referred to as "the defaulting person"), it may make a preliminary order in writing imposing one or more of the following prohibitions or restrictions as may be applicable or appropriate in the circumstances of the contravention:

- (a) in respect of any shares which are the subject of the contravention—
 - (i) prohibit the transfer of, or the carrying out of the agreement to transfer, such shares, or, in the case of unissued shares, prohibit the transfer of, or the carrying out of the agreement to transfer, the right to be issued with them;
 - (ii) prohibit the exercise of any voting rights in respect of such shares;
 - (iii) prohibit the issue of any further shares in right of such shares or in pursuance of any offer made to their holder; or
 - (iv) except in a liquidation, prohibit the payment of any sums due from the licensed institution on such shares, whether in respect of capital or otherwise; or
- (b) in respect of a contravention of section 52, prohibit the exercise of any right under any security, or right to transfer any property constituting such security.

(2) A preliminary order under subsection (1) shall be served on the defaulting person as soon as is practicable, and may be publicised in such manner as the Bank deems fit, if, in the opinion of the Bank, it needs to be publicised.

(3) A preliminary order shall be binding on the defaulting person, on any person for the time being holding any shares to which such order applies, and on any other person specified in the order or to whom the order is directed.

(4) Any person holding any shares to which a preliminary order applies shall within seven days after its service on the defaulting person, or such longer period as the Bank may allow, surrender

such shares to the Bank.

(5) No person shall be given an opportunity of being heard before the Bank makes a preliminary order under subsection (1) against him or which affects him in any manner.

(6) Any defaulting person against whom a preliminary order has been made, or any other person prejudicially affected by such order, may, within fourteen days of the service of the order on the defaulting person, make representations in writing to the Bank applying for a revocation of the order on the ground that he had not contravened the provisions in relation to which the order has been made, or for a modification of the order on the ground that it would be just and proper to modify it for reasons to be specified in the representations.

(7) The Bank may, after considering the representations made under subsection (6), either confirm the preliminary order, or revoke it, or vary it in such manner as it deems fit.

(8) Where the Bank confirms a preliminary order, it may dispose of the shares surrendered to it under subsection (4) to such persons and to such extent as shall be consistent with the same being held lawfully by the purchaser under this Act.

(9) The proceeds of the disposal of the shares under subsection (8) shall be paid into the High Court, and any person claiming to be beneficially entitled to the whole or any part of such proceeds may, within thirty days of such payment into the High Court, apply to a judge of the High Court in chambers for payment out of the same to him.

(10) The Bank may give any instructions or directions to the directors or officers of the institution as may be necessary or requisite to give effect to any order of the Bank under this section, or as may be incidental, ancillary or consequential to such order.

(11) Any transaction, including any agreement or arrangement in relation to any shares, or interest in shares, or security, which is in contravention of any preliminary order, or of any order confirmed under subsection (7), or of any instructions or directions given by the Bank under subsection (10), shall be void and of no effect.

(12) The satisfaction of the Bank under subsection (1) that any of the provisions of this Act referred to therein have been contravened by any person may be arrived at regardless as to whether or not there is any prosecution of any person for such contravention.

Bank's consent
required to be
director of
licensed
institution.

55. (1) No person shall accept appointment or election as a director of a licensed institution unless he has, prior to such acceptance, obtained the written consent of the Bank to accept the same.

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(2) Where the Bank refuses to give its consent under subsection (1), it shall notify the applicant in writing of its refusal.

Disqualifications
of director or
officer of licensed
institution.

56. (1) No person shall be appointed or elected, or accept appointment or election, as a director, manager, secretary, or other officer concerned in the management, of a licensed institution—

(a) if he is a bankrupt, has suspended payments, or has

compounded with his creditors, whether within or outside Malaysia;

- (b) without prejudice to paragraph (c), if a charge for a criminal offence relating to dishonesty, fraud or violence under any written law punishable with imprisonment for one year or more, whether by itself, or in lieu of, or in addition to, a fine, has been proved against him in any court within or outside Malaysia; *Act A954.*
- (c) if a charge for any offence under this Act has been proved against him;
- (d) if there has been made against him any order of detention, supervision, restricted residence, banishment or deportation, or if there has been imposed on him any form of restriction or supervision by bond or otherwise, under any law relating to prevention of crime, or to preventive detention for prevention of crime or drug trafficking, or to restricted residence, or to banishment or immigration; or
- (e) if he has been a director of, or directly concerned in the management of, any corporation which is being or has been wound up by a court or other authority competent to do so within or outside Malaysia, or of any licensed institution, the licence of which has been revoked under this Act.

(2) Where a person is subject to the disqualification under subsection (1)(e), he may— *Act A954.*

- (a) be appointed or elected, or accept appointment or election; or
- (b) notwithstanding anything in subsection (3), continue in his office,

as a director, manager, secretary, or other officer concerned in the management of any licensed institution if the Minister is satisfied, on the recommendation of the Bank, that the criteria set out in paragraph (1) of the Second Schedule are fulfilled with respect to him.

(3) Where a person who is a director, manager, secretary, or the officer concerned in the management, of a licensed institution becomes subject to any of the disqualifications mentioned in subsection (1), he shall immediately thereupon cease to hold office and act as such, and the institution concerned shall immediately thereupon terminate his appointment in such capacity.

(4) During the pendency of any criminal proceedings in any court for any offence as is referred to in subsection (1) (b) or (c) against any person who is a director, manager, secretary, or other officer concerned in the management of a licensed institution, such person shall not act in such capacity, or hold any other office, or act in any other capacity, in that licensed institution, or in any manner, whether directly or indirectly, be concerned with, or take part or engage in, any activity, affairs or business whatsoever of or in relation to that licensed institution, except as may be authorised by the Bank, subject to such conditions as the Bank may impose.

(5) For the purpose of subsection (4), criminal proceedings referred to therein shall be deemed to be pending from the date that the accused person is first charged in court for the offence until the date of the final conclusion of the proceedings, whether in the court of original jurisdiction or, in the event of any appeal by any party, in the court of final appellate jurisdiction.

Appointment of chief executive. **57.** (1) Subject to subsection (2), every licensed institution shall appoint a chief executive of the institution who shall be—

- (a) an individual; and
- (b) resident in Malaysia during the period of his appointment.

(2) Without prejudice to any appointment made before the effective date, a licensed institution shall, before appointing a chief executive pursuant to subsection (1), seek and obtain the Bank's written approval for the proposed appointment.

PART IX

RESTRICTIONS ON BUSINESS OF LICENSED INSTITUTIONS

Restrictions on payments of dividends. **58.** (1) A licensed institution shall not pay any dividend on its shares until all its capitalised expenditure (including preliminary expenses, organisation expenses, shares selling commission, brokerage, amount of losses incurred, and any other item of expenditure not represented by tangible assets) has been completely written off. *Act A954.*

(2) Before a licensed institution declares any dividend, it shall apply in writing for the approval of the Bank in respect of the amount proposed to be declared, and the Bank may approve the same, or a reduced amount, or prohibit payment of any dividend, having regard to the financial condition of the institution.

Advance against security of own shares or shares of holding company. **59.** A licensed institution shall not give any credit facility, or enter into any other transaction, against the security of its own shares or the shares of its holding company.

Grant of secured and unsecured credit facilities. **60.** (1) Subject to an order made by the Bank under subsection (2), no licensed institution shall give to any person any credit facility without security.

(2) The Bank may by order published in the *Gazette* permit any particular licensed institution, or any class, category or description of licensed institutions, to give to any person any credit facility without security which, together with any other credit facility without security earlier given to him, does not exceed an aggregate amount set out in the order.

(3) Subsection (1) shall not apply to any credit facility given—

- (a) to another licensed institution;
- (b) to any other person engaged in the provision of finance who is approved in writing by the Bank; or
- (c) by any licensed bank or licensed merchant bank, except where the credit facility is given by such bank or merchant bank to its related corporation which is not an institution or other person referred to in paragraphs (a) *Act A954.*

and (b) respectively.

(4) A security in respect of a credit facility given to any person by a licensed institution shall consist of property of a value which is not less than the amount of the credit facility given to such person.

(5) Where a security provided in respect of a credit facility given by a licensed institution is, during the currency of the credit facility, by agreement between the licensed institution and the person providing the security, substituted by a different security, the new security shall be of a value which is not less than the amount of the credit facility which is outstanding at the time of said substitution.

(6) Where at any time during the currency of a credit facility, any security provided under subsection (4) or substituted under subsection (5) in respect of such credit facility decreases in value to a value which is lesser than the amount of the credit facility then outstanding, the licensed institution shall require the person to whom such credit facility is given to provide additional security so as to increase the value of the security to an amount which is not lesser than the amount of the credit facility then outstanding within a period not exceeding fourteen days, and if such additional security is not provided within such period, the person liable for the credit facility shall immediately thereupon be deemed to be in breach of the terms of the contract relating to the credit facility, and the institution shall be entitled to enforce its rights under the contract in respect of a breach thereof.

(7) Nothing contained in this section shall affect the right of the parties to the contract relating to the credit facility from including in such contract at the time at which it is entered into, or at any time thereafter, any provision relating to the security to be provided for the credit facility which is intended to ensure the sufficiency of the security throughout the currency of the credit facility.

(8) For the purposes of this section, the value of any property which is provided as security shall be—

- (a) the market value thereof; or
- (b) where for any reason it is not possible to determine the market value thereof, the value approved by the Bank on an application by the person taking the security which should set out the value arrived at by the applicant and the basis for it;

(9) For the purposes of this section, the Bank may prescribe—

- (a) any limitations, restrictions and conditions subject to which any particular property, or any class, category or description of properties, may be provided or accepted as security; or
- (b) for any particular property, or any class, category or description of properties, to be prohibited from being provided or accepted as security.

Restriction of
credit to single
customer.

61. (1) No licensed bank, licensed merchant bank or licensed finance company shall give to any single person any credit facility, or incur any liability whatsoever on behalf of any single person, which, together with any credit facility given earlier to such single person, and any liability incurred earlier on his behalf, by such institution, exceeds an amount which is in excess of such percentage as may be prescribed for licensed banks, licensed merchant banks or licensed finance companies as a class or category, by the Bank in relation to such institution's capital funds

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unimpaired by losses or otherwise.

(2) The provisions of subsection (1) shall not apply—

- (a) where the single person referred to therein is another licensed institution or any person specified by the Bank which is engaged in the provision of finance;
- (b) to any credit facility given to, or liability incurred on behalf of, any person by a licensed institution in respect of imports into or exports from Malaysia or trade within Malaysia against letters of credit or bills of exchange; or
- (c) to any transactions specified by the Bank which are entered into with any particular person, or any class, category or description of persons, as may be specified by the Bank.

(3) Nothing in subsection (1) shall authorise a licensed discount house or a licensed money-broker to give to any person any credit facility or incur any liability on his behalf, without the prior written approval of the Bank, which approval may specify conditions subject to which such credit facility may be given or such liability incurred, as the case may be.

(4) For the purposes of this section, in computing the amount of any credit facility given to a single person, or any liability incurred on behalf of a single person, any credit facility given to, or any liability incurred on behalf of, the following persons, shall be deemed to be a credit facility given to, or a liability incurred on behalf of, such single person:

- (a) where such single person is an individual, his or her spouse, child or family corporation;
- (b) where such single person is a corporation, its related or associate corporations.
- (c) where such single person is a society registered under any written law relating to co-operative societies, its subsidiaries as defined in section 2 of the Co-operatives Societies Act 1948, and the related or associate corporations of such subsidiaries; or
- (d) persons acting in concert with such single person:

Act 287.

Provided that the Bank may specify that all or any of the persons, or any particular person, or any class, category or description of persons, mentioned in the foregoing paragraphs shall be excluded in the application of this subsection in relation to any particular single person, or any class, category or description of single persons, to which a credit facility is to be given, and at the same time specify the criteria or the basis on which the said person or persons are to be so excluded.

(5) For the purposes of subsection (4) (a), "family corporation" has the meaning assigned to it in section 46 (4).

Prohibition of credit facilities to director and officer.

62. (1) Unless exempted by the Bank in writing with or without conditions, or except as provided under subsection (2) or (3), no licensed institution shall give any credit facility to—

- (a) any of its directors or officers or any other person receiving remuneration from it (other than any accountant, advocate, architect, estate agent, doctor and any other person receiving remuneration from it in

respect of his professional services);

- (b) any body corporate or unincorporate, or a sole proprietorship, in which any of its directors or officers is a director or manager, or for which any of its directors or officers is a guarantor or an agent;
- (c) any corporation in which any of its directors or officers has any interest in the shares of that corporation; and
- (d) any person for whom any of its directors or officers has given any guarantee or other undertaking whatsoever involving financial liability.

(2) A licensed institution may give to any of its officers or its executive director—

- (a) any credit facility which is provided for under his scheme of service; or *Act A954.*
- (b) where there is no such provision and the institution is satisfied that special or compassionate circumstances exist, a loan not exceeding at any one time—
 - (i) six months' remuneration of that officer or executive director; or
 - (ii) his remuneration for such longer period as may be approved by the Bank,

and subject to such other terms and conditions as the institution thinks fit.

(3) The provisions of—

- (a) subsection (1) (a) shall not apply to the giving of any credit facility to the spouse, child or parent of an officer, including an executive director, of that licensed institution for the purchase of a house; and
- (b) subsection (1) (c) shall not apply to the giving of any credit facility by a licensed institution to a corporation in which none of the directors or officers of that licensed institution has any material interest in the shares of that corporation. *Act A954.*

(4) For the purposes of this section— *Act A954.*

- (a) "director" or "officer" includes a spouse, child or parent of a director or officer; and
- (b) the Bank shall from time to time specify what constitutes a material interest in the shares of a corporation.

Restriction on giving of credit facilities.

63. No licensed institution shall give any credit facility under any exemption by the Bank referred to in section 62 (1), or give any credit facility under section 62 (3), unless the following conditions are satisfied:

- (a) the person to whom the credit facility is given has creditworthiness which is not less than that normally required by the institution of other persons to whom credit facilities are given;
- (b) the terms of the credit facility are not less favourable to the licensed institution than those normally offered to other persons;

- (c) the giving of the credit facility will be in the interests of the licensed institution; and
- (d) the credit facility is approved by all other directors of the licensed institution at a duly constituted meeting of the directors where not less than three quarters of all the directors of the licensed institution are present and such approval has been recorded in the minutes of that meeting.

Disclosure of
interest by
director.

64. (1) Every director of a licensed institution who has in any manner whatsoever, whether directly or indirectly, any interest in a proposed credit facility to be given to any person by such licensed institution shall as soon as practicable declare in writing the nature of his interest, to a duly constituted meeting of directors, and the secretary of the licensed institution, or other officer appointed by the licensed institution for the purpose, shall cause a copy of such declaration to be circulated immediately to every director regardless whether he was present or not at such meeting.

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(2) For the purposes of subsection (1), a general notice in writing served on each of the directors of a licensed institution referred to in that subsection by a director to the effect that he is a director, officer or member of the body corporate or unincorporate, or a director or officer of the sole proprietorship, to which the credit facility is proposed to be given shall be deemed to be sufficient declaration of interest in relation to such proposed credit facility if the provisions of subsection (3) are also complied with.

(3) A notice under subsection (2) shall—

- (a) specify the nature and extent of the director's interest in the body or sole proprietorship referred to in that subsection; and
- (b) be brought up and read at the meeting of the directors of such institution at which it is served or, if it is not served at a meeting of directors, at the next meeting of directors after it has been served on each of the directors.

(4) Every director of a licensed institution who holds any office, or possesses any property, whereby, directly or indirectly, duties or interests might be created in conflict with his duties or interests as a director of such licensed institution, shall declare at a meeting of the directors of such licensed institution the fact of his holding such office or possessing such property and the nature, character and extent of the conflict.

(5) The declaration referred to in subsection (4) shall be made at the first meeting of the directors held—

- (a) after he becomes a director of the licensed institution;
- (b) if already a director, after he commences to hold the office or to possess the property; or
- (c) after the effective date, if already a director, immediately before the effective date, of a licensed discount house or a licensed money-broker,

as the case may be.

(6) The secretary of the licensed institution or its other officer referred to in subsection (1) shall record any declaration made under this section in the minutes of the meeting at which it was made or at which it was brought up and read.

Control of credit limit. **65.** (1) A director or officer of a licensed institution shall not give any credit facility in excess of the limit, or outside the scope of any terms and conditions, imposed on him by the licensed institution, or in contravention of any directions given to him, or any agreement made with him, by the licensed institution.

(2) The Bank may by written notice direct a licensed institution to—

- (a) submit any information relating to its policy and procedure for the giving of any credit facility;
- (b) submit a report on the limit or the terms and conditions imposed, the directions given, and the agreements made, in relation to the authority of every director or officer of the institution authorised to give credit facilities or exercise any power in respect thereof; or
- (c) make such amendments to the policies or procedures referred to in paragraph (a), or to make such variations in the matters mentioned in paragraph (b), as the Bank deems to be fit and proper, either generally, or in relation to any class of directors or officers, or in relation to any particular director or officer, and such amendments and variations shall be binding on the institution and its directors and officers. *Act A954.*

Restrictions on investments. **66.** (1) Except as may be provided in any regulations made under section 116 (2), no licensed institution shall acquire or hold—

- (a) any shares of, or otherwise have an interest in shares in, any corporation; or
 - (b) any immovable property or any right or interest therein, except such as may be reasonably necessary for the purpose of conducting its business, or of providing housing or other amenities for its staff, and as may in either case be approved by the Bank.
- (2) Subsection (1) shall not apply in respect of—
- (a) any share or interest in shares, or any immovable property or any right or interest in immovable property, acquired by a licensed institution—
 - (i) by way of security for giving any credit facility to any person or for incurring any liability on behalf of any person;
 - (ii) in the course of the realisation of any security given to or held by the licensed institution; or
 - (iii) before the effective date, where the holding of the same was lawful immediately before such date; *Act A954.*
 - (b) any shares or interest in shares acquired by a licensed institution under an agreement entered into by the licensed institution, with the approval of the Bank, with any corporation to which any credit facility was given, or on whose behalf any liability was incurred, by the licensed institution, whereby shares of such corporation are issued to the licensed institution in partial or full satisfaction of the credit facility given, or the liability incurred;

- (c) any shares acquired or held by a licensed institution consequent upon its establishment or acquisition of a subsidiary with the prior written consent of the Bank under section 29; *Act A954.*
 - (d) any shares or interest in shares acquired or held by a licensed discount house; or
 - Act 280.* (e) any shares or interest in shares acquired or held by a licensed institution in connection with its business as an exempt dealer under the Securities Industry Act 1983.
- (3) Any share or interest in shares, or any immovable property or any right or interest in any immovable property, acquired pursuant to subsection (2) (a) (ii), (b) or (e) by a licensed institution shall be disposed of as soon as practicable but not later than twelve months, or such longer period as the Bank may allow in any particular case, commencing on the date on which the same was acquired. *Act A954.*
- Act 280.* (4) Any acquisition, holding or disposal of shares or interest in shares for the purposes or in the circumstances referred to in paragraph (2)(a), (b), (c) or (d) or in subsection (3) shall not be regarded as "dealing in securities" for the purposes of the Securities Industry Act 1983. *Act A954.*

Limitations, terms and conditions in respect of giving of credit facility, including credit facility for the purpose of financing the acquisitions of shares or immovable property.

67. Subject to anything prescribed under section 60 (9), the Bank may specify limitations, terms and conditions in respect of the giving of any class, category or description of credit facilities to be given by any licensed institution, including the giving of any credit facilities to any person—

- (a) for the purpose of financing—
 - (i) the purchase of securities or the making of any payment that may be due on securities already purchased; *Act A954.*
 - (ii) the purchase or development of immovable property;
 - (iii) the purchase or holding of any interest in the shares of any corporation; *Act A954.*
 - (iv) the purchase or holding of any derivative instrument; or *Act A954.*
 - (v) the purchase or holding of any other property as may be prescribed by the Bank; or *Act A954.*
- (b) on the security of any securities, immovable property, interest in shares, derivative instrument or any other property. *Act A954.*

Proof of compliance.

68. (1) Any licensed institution shall, if at any time called upon in writing by the Bank to do so, produce to the Bank all such evidence and provide all such information as the institution may have relating

to its compliance with any of the provisions of this Part, as the Bank may generally, or in relation to any particular case, require.

(2) The provisions of subsection (1) shall be without prejudice to, and shall not in any manner derogate from, any other power conferred on the Bank or an investigating officer under this Act.

PART X

POWERS OF SUPERVISION AND CONTROL OVER LICENSED INSTITUTIONS

Examination of licensed institution.	69. The Bank shall, whether under this Act or the Malaysia Deposit Insurance Corporation Act 2005, from time to time, examine, without any prior notice, the books or other documents, accounts and transactions of each licensed institution and its offices inside and outside Malaysia.	<i>Act A1256.</i>
Power of Minister to direct investigation to be made. <i>Act 519.</i>	70. The Minister may at any time direct the Bank to make an examination of the books or other documents, accounts and transactions of any licensed institution and its offices inside and outside Malaysia, if he suspects that such licensed institution is carrying on its business in a manner which is, or which is likely to be, detrimental to the interests of its depositors or creditors, or has insufficient assets to cover its liabilities to the public, or is contravening any provision of this Act or the Central Bank of Malaysia Act 1958.	<i>Act A954.</i> <i>Act A954.</i>
Production of licensed institution's books, etc.	71. (1) For the purposes of an examination under section 69 or 70, the licensed institution under examination and its directors and officers shall afford any person carrying out the examination access to all its books or other documents and accounts, including documents of title to its assets, all securities held by it in respect of its customers' transactions, all its cash, and to all such documents, information and facilities as may be required by that person for the purpose of the examination, and shall produce to that person all such books or other documents, accounts, titles, securities or cash, and give all such information, as he may require: Provided that, so far as is consistent with the conduct of the examination, such books or documents, accounts, titles, securities and cash shall not be required to be produced at such times or at such places as may interfere with the proper conduct of the normal daily business of that institution or office. (2) Notwithstanding anything in subsection (1), any person authorised by the Bank in writing for this purpose may take possession of any books or other documents, accounts, titles, securities or cash to which he has access under subsection (1) where in his opinion— (a) the inspection of them, the copying of them, or the making of extracts from them, cannot reasonably be undertaken without taking possession of them; (b) they may be interfered with or destroyed unless he takes possession of them; or (c) they may be needed as evidence in any legal proceedings, whether civil or criminal, which may be	<i>Act A954.</i>
	<i>Act 519.</i>	<i>Act A954.</i>

instituted under or in connection with this Act, the Central Bank of Malaysia Act 1958 or any other written law.

(3) No licensed institution, and no director or officer of the licensed institution, shall—

(a) fail to—

(i) allow access to;

(ii) give possession of; or

(iii) produce,

its books or other documents, accounts, titles, securities or cash; or

(b) fail to give information or facilities,

in accordance with subsections (1) and (2).

Licensed institution unable to meet obligations to inform Bank. **72.** Any licensed institution which considers that it is insolvent, or is likely to become unable to meet all or any of its obligations, or, that it is about to suspend payment to any extent, shall immediately inform the Bank of that fact.

Action by Bank in respect of licensed institution in certain circumstances. **73.** (1) Where—

(a) a licensed institution informs the Bank—

(i) that it is insolvent;

(ii) that it is likely to become unable to meet all or any of its obligations; or

(iii) that it is about to suspend payment to any extent; or

(b) whether after an examination under section 69 or 70, or otherwise howsoever, the Bank is satisfied that a licensed institution—

(i) is carrying on its business in a manner detrimental to the interests of its depositors, or its creditors, or the public generally;

(ii) is insolvent, or has become or is likely to become unable to meet all or any of its obligations, or is about to suspend payment to any extent; or

Act 519.

(iii) has contravened any provision of this Act or the Central Bank of Malaysia Act 1958, or any condition of its licence, or any provision of any written law, regardless that there has been no criminal prosecution in respect thereof,

Act A954.

the Bank may, by order in writing, exercise any one or more of the following powers, as it deems necessary:

(A) require the licensed institution to take any steps, or any action, or to do or not to do any act or thing,

whatsoever, in relation to the institution, or its business, or its directors or officers, which the Bank may consider necessary and which it sets out in the order, within such time as may be set out therein;

- (B) prohibit a licensed institution from extending any further credit facility for such period as may be set out in the order, and make the prohibition subject to such exceptions, and impose such conditions in relation to the exceptions, as may be set out in the order, and, from time to time, by further order similarly made, extend the aforesaid period;
- (C) notwithstanding anything in any written law, or any limitations contained in the constituent documents of the licensed institution, for reasons to be recorded by it in writing, remove from office, with effect from such date as may be set out in the order, any officer of the licensed institution;
- (D) notwithstanding anything in any written law, or any limitations contained in the constituent documents of the licensed institution, and, in particular, notwithstanding any limitation therein as to the minimum or maximum number of directors, for reasons to be recorded by it in writing—
 - (i) remove from office, with effect from such date as may be set out in the order, any director of the licensed institution; or
 - (ii) appoint any person or persons as a director or directors of the licensed institution, and provide in the order for the person or persons so appointed to be paid by the institution such remuneration as may be set out in the order; or
- (E) appoint a person to advise the licensed institution in relation to the proper conduct of its business, and provide in the order for the person so appointed to be paid by the institution such remuneration as may be set out in the order:

Provided that the powers of the Bank under paragraphs (B), (C), (D) and (E) shall be exercised only with the prior concurrence of the Minister.

(2) Where any of the circumstances set out in paragraphs (a) and (b) of subsection (1) exist in respect of a licensed local institution, the Bank may, whether or not it had exercised any of its powers under paragraphs (A), (B), (C), (D) or (E) of subsection (1), recommend to the Minister to provide, and the Minister may on such recommendation accordingly provide, by order published in the *Gazette*—

- (a) for the Bank to assume control of the whole of the property, business and affairs of the licensed institution, and carry on the whole of its business and affairs, or to assume control of such part of its property, business and affairs, and carry on such part of its business and affairs, as may be set out in the order, or for the Bank to appoint any person to do so on behalf of the Bank, and for the costs and expenses of the Bank, or the remuneration of the person so appointed, as the case may be, to be payable out of the funds and properties of the institution as a first charge thereon;
- (b) whether or not an order has been made under

paragraph (a), to authorise an application to be made by the Bank to the High Court to appoint a receiver or manager to manage the whole of the business, affairs and property of the licensed institution, or such part thereof as may be set out in the order, and for all such incidental, ancillary or consequential orders or directions of the High Court in relation to such appointment as may, in the opinion of the Bank, be necessary or expedient; or

- (c) whether or not an order has been made under paragraph (a) or (b), to authorise the Bank to present a petition to the High Court for the winding up of the institution.

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(3) An order of the Bank under subsection (1), or an order of the Minister under subsection (2), may, from time to time, be modified, amended, altered, varied or replaced either prospectively, or where it is not impracticable or unjust to do so, retrospectively, by a further order under subsection (1) or (2), as the case may be.

(4) No order under subsection (1) or (2), or by virtue of subsection (3), shall be made unless the licensed institution in respect of which the order is to be made, and in the case of an order under subsection (1) (C) or (D) (i), also the officer or director who is to be removed from office, has been given a reasonable opportunity of making representations against, or otherwise in respect of, the proposed order:

Provided that if in the opinion of the Bank, in the case of an order to be made by the Bank under subsection (1), or by virtue of subsection (3), or in the opinion of the Minister formed on the recommendation of the Bank, in the case of an order to be made by the Minister under subsection (2), or by virtue of subsection (3), any delay would be detrimental to the interests of the licensed institution, or its depositors or creditors, or the public generally, the order may be made first and the opportunity to make representations against or otherwise in relation to the order shall, in such case, be given immediately after the order has been made, and the order may, in consequence of such representations either be confirmed, or be modified, amended, altered, varied or replaced under subsection (3), or be revoked under subsection (5), subject to such conditions, if any, as the Bank, with the concurrence of the Minister, or the Minister, on the recommendation of the Bank, as the case may be, thinks fit to impose.

(5) An order of the Bank made under subsection (1), or by virtue of subsection (3), or an order of the Minister made under subsection (2), or by virtue of subsection (3), may at any time be revoked by an order similarly made by the Bank, or by the Minister, as the case may be, and any such order may contain all such orders, directions or provisions of an incidental, ancillary, or consequential nature, as may be deemed necessary or expedient by the Bank or the Minister, as the case may be.

Provisions in relation to appointment under section 73.

74. (1) A person appointed by the Bank under section 73 (1) (D) (ii), (E), or (2) (a) shall be appointed for such period as may be determined by the Bank, not exceeding, in any case, two years, but may be reappointed for three further consecutive periods not exceeding one year each, and shall, during such period of appointment or reappointment, hold his appointment at the pleasure of the Bank.

(2) The terms and conditions of an appointment referred to in subsection (1) shall, subject to the order under which the

appointment is made, and to subsection (1), be determined by the Bank and shall be binding on the licensed institution concerned.

(3) The appointment of a director or directors under section 73 (1) (D) (ii) shall not affect any provision of the constituent documents enabling the licensed institution to have further directors where the maximum number of directors allowed under the constituent documents has not already been reached or exceeded by the appointment or appointments under section 73 (1) (D) (ii).

(4) A person holding any appointment as is referred to in subsection (1) shall not incur any obligation or liability solely by reason of his holding such appointment.

(5) Where a receiver or manager has been appointed in respect of a licensed institution by the High Court under section 73 (2) (b), all proper costs, charges and expenses, including the remuneration, of such receiver or manager shall be payable out of the assets of the licensed institution in priority to all other claims.

Provisions in relation to removal from office under section 73 (1) (C) or (D) (i).

75. (1) Any officer or director removed from office in a licensed institution under section 73 (1) (C) or (D) (i) shall cease to hold the office from which he is removed with effect from the date set out in the order, and shall not thereafter hold any other office whatsoever in that licensed institution or, in any manner, whether directly or indirectly, be concerned with, or take part, or engage in, any activity, affairs or business whatsoever of or in relation to that licensed institution.

(2) The removal of an officer or director under section 73 (1) (C) or (D) (i) shall be lawful and valid notwithstanding anything contained in any contract of service or other contract or agreement, whether express or implied, whether individual or collective, and whether or not made or provided for under any written law, and a person so removed from office shall not be entitled to claim any compensation for the loss or termination of office.

Provisions relating to assumption of control under section 73 (2) (a).

76. (1) Where control of a licensed institution has been assumed in pursuance of an order under section 73 (2) (a), the institution and its directors and officers shall submit its property, business and affairs to such control, and shall provide the Bank and, if the control is assumed by a person appointed by the Bank (hereinafter in this Part referred to as "the appointed person"), also to such appointed person, all such facilities as may be required to carry on the business and affairs of the licensed institution.

(2) Where control of a licensed institution has been assumed in pursuance of an order under section 73 (2) (a), the Bank, or the appointed person, as the case may be, shall remain in control of the property, business and affairs of the licensed institution concerned, and carry on the business and affairs of that institution in the name and on behalf of that institution, as provided in the said order, until such time as the said order is revoked under section 73 (5).

(3) Throughout the period of control of a licensed institution in pursuance of an order under section 73 (2) (a), there shall be vested in the Bank, or in the appointed person, as the case may be, all the powers of the institution, and of its directors, under the constituent documents of the institution, or exercisable by the institution or its directors under any written law, or otherwise howsoever, regardless whether such powers are exercisable by resolution, special resolution, or in any other manner whatsoever, and any difficulty whatsoever arising in relation thereto may be

resolved by the Minister by a direction in writing.

(4) During the period that an order under section 73 (2) (a) is in force, no director of the licensed institution to which the order relates shall, either directly or indirectly, engage in any activity in relation to the institution, except as may be required or authorised by the Bank, or the appointed person, as the case may be, and no remuneration of whatever nature shall accrue or be payable to any director of the institution, except such as may be approved in writing by the Bank, or the appointed person, as the case may be, in relation to any activity required or authorised as aforesaid by the Bank, or the appointed person, as the case may be.

(5) For the avoidance of doubt, it is hereby declared that an order under section 73 (2) (a) shall not have the effect of conferring on, or vesting in, the Bank, or the appointed person, as the case may be, any title to, or any beneficial interest in, any property of the licensed institution to which the order relates.

Power to reduce share capital and to cancel shares of licensed institution which is subject to an order under section 73 (2) (a).

77. (1) Notwithstanding anything in any written law or the constituent documents of a licensed institution, where the Bank, or an appointed person, has, pursuant to an order under section 73 (2) (a), assumed control of the licensed institution and the paid-up capital of such institution is lost or unrepresented by available assets, the Bank or the appointed person, as the case may be, may apply to the High Court for an order to reduce the share capital of such licensed institution by cancelling any portion of its paid-up capital which is lost or unrepresented by available assets.

(2) Where the High Court makes an order under subsection (1) to reduce the share capital of a licensed institution, the Court may—

- (a) on an application by the Bank, or the appointed person, as the case may be; and
- (b) if, on the expiry of thirty days from the date of any call made by the licensed institution on its members to pay on their respective shares, payment on any such shares has not been made,

also order that such shares for which payment has not been made be cancelled accordingly.

(3) Where the share capital of a licensed institution is reduced pursuant to subsection (1), or any of its shares is cancelled pursuant to subsection (2), the Bank, or the appointed person, as the case may be, may cause the constituent documents of the institution to be altered accordingly.

Act 125. (4) The powers conferred on the Bank and the appointed person under the foregoing provisions of this section shall be in addition to any powers exercisable under section 64 (1) of the Companies Act 1965, and where an application is made to the High Court under subsection (1)—

- (a) the High Court may exercise any of the powers conferred on it under section 64 of the Companies Act 1965 in relation to an application for confirmation referred to therein; and
- (b) subsections (9) and (10) of the said section 64 shall apply in relation thereto.

Loans to licensed **78.** (1) Where the Bank considers that a licensed institution—

institution and
acquisition of its
shares.

- (a) is likely to become unable to meet all or any of its obligations; or
- (b) is about to suspend payment to any extent,

Act 519. the Bank, with the concurrence of the Minister, may, notwithstanding section 31 of, but without prejudice to section 42 of, the Central Bank of Malaysia Act 1958—

Act A954.

- (A) grant loans to that licensed institution against the security of that institution's own shares, or any other shares, or any other sufficient security;
- (B) purchase any shares of that licensed institution for the purpose of controlling the business of that institution; or
- (C) grant loans to another licensed institution to purchase any shares, or the whole or any part of the properties and liabilities, of the licensed institution referred to in paragraph (a) or (b).

(2) The Bank, or the licensed institution to which the Bank has granted loans under subsection (1) (C), shall dispose of any shares purchased by it in pursuance of subsection (1) at such time when the Bank is satisfied that the reasons for which such shares were purchased have ceased to exist.

(3) In exercising any power conferred on the Bank under this section, the Bank shall consult the Advisory Panel.

Extension of
jurisdiction under
this Part to related
corporations of
licensed institution
and to director-
controlled
institutions.

79. Any reference in this Part to a licensed institution shall be read as including a reference to—

- (a) a related corporation of such licensed institution; and
- (b) a person controlled by a director or directors of the licensed institution, or by persons acting in concert with a director or directors of the licensed institution.

Act A954.

Moratorium. 80. (1) The Minister may, on the recommendation of the Bank, if he considers it to be in the interest of the depositors of a licensed institution receiving, taking or accepting deposits, by order published in the *Gazette*—

- (a) prohibit the institution from carrying on all its licensed business, or such part of it as may be set out in the order;
- (b) prohibit the institution from doing or performing any act or function connected with all its licensed business or any part of it as may be set out in the order;
- (c) authorise the Bank to apply to the High Court for an order staying for a period not exceeding six months the

commencement or continuance of all, or any class, category or description of, actions and proceedings of a civil nature by or against the institution with respect to all business, or any class, category or description of business, of the institution;

- (d) suspend the licence granted to the institution under this Act to such extent and for such period as may be necessary to give effect to the prohibitions under paragraph (a) or (b); or *Act A954.*
- (e) provide for all such matters of an incidental, ancillary or consequential nature, or for which it may be otherwise necessary or expedient to provide, in order to give effect to the matters under the foregoing paragraphs, including provisions for the taking into the custody or control of the Bank of property, books, documents or effects of the institution.

(2) An order under subsection (1) may, from time to time, be modified, amended, altered, varied or replaced either prospectively, or where it is not impracticable or unjust to do so, retrospectively, by a further order under subsection (1).

(3) An order under subsection (1) shall not be made unless the institution has been given a reasonable opportunity of making representations against, or in relation to, the proposed order, provided that where any delay would be detrimental to the interests of the depositors, the order may be made first, and the opportunity to make representations shall be given immediately after the order has been made, and in consequence of such representations, the order may, on the recommendation of the Bank, either be confirmed, or be modified, amended, varied, altered, or replaced under subsection (2), or be revoked under subsection (4), by the Minister.

(4) An order made under subsection (1), or by virtue of subsection (2), may at any time be revoked by the Minister by an order made on the recommendation of the Bank, and any such order may contain all such orders, directions or provisions of an incidental, ancillary or consequential nature as may be deemed necessary by the Minister.

Priority of
payments in the
event of
insolvency of
licensed
institution.
Act 359.

81. (1) Subject to section 10 of the Government Proceedings Act 1956 [Act 359] and subsection 74(5), where a licensed institution becomes unable to meet all or any of its obligations, suspends payment to any extent or is wound-up under paragraph 73(2)(c), the properties of the institution in Malaysia shall be available to meet all liabilities of that institution in respect of all deposits in Malaysia in priority over all other unsecured liabilities of that institution in Malaysia.

Act A1256.

(2) In determining the total liabilities of a licensed institution to a person under subsection (1), no account shall be taken in respect of a deposit if it was made with the institution, or received by the institution, in contravention of this Act after the effective date, or if it was otherwise unlawfully made or received whether before or after the effective date.

(3) In determining the total liabilities of an institution to a person under subsection (1), there shall be deducted any right of set-off which existed immediately before the provisions of subsection (1) became applicable to it.

(4) The provisions of this section shall have effect notwithstanding anything inconsistent therewith or contrary thereto

in any written law other than this Act, or in any rule of law.

PART XI

INVESTIGATION, SEARCH AND SEIZURE

Appointment of
investigating
officers, their
powers, functions
and duties.

82. (1) For the purposes of this Part, the Bank may appoint any officer or employee of the Bank or any person appointed under section 3 (3) to be an investigating officer.

(2) Subject to subsection (3), an investigating officer appointed under subsection (1) shall have all the powers, functions, and duties conferred on an investigating officer under this Act, and where such investigating officer is not an officer or employee of the Bank, he shall, in relation to such powers, functions and duties—

(a) be subject to; and

(b) enjoy such rights, privileges, protections, immunities and indemnities as may be specified in,

Act 519. the provisions of this Act, the Central Bank of Malaysia Act 1958 or *Act A954.* other written law applicable to an officer or employee of the Bank as if he were an officer or employee of the Bank.

(3) An investigating officer shall be subject to the direction and control of the Governor, or of such other officer of the Bank as may be authorised by the Governor to act on behalf of him, and of any other investigating officer or officers superior to him in rank, and shall exercise his powers, perform his functions, and discharge his duties referred to in subsection (2) in compliance with such directions, instructions, conditions, restrictions or limitations as the Governor, or an officer of the Bank authorised to act on behalf of him, or an investigating officer superior in rank, may specify orally or in writing, either generally, or in any particular case or circumstance.

(4) The Governor, or any officer of the Bank authorised by the Governor to act on behalf of him, shall have all the powers, functions and duties of an investigating officer.

(5) An investigating officer conducting any examination of any person under this Part shall have the power to administer an oath or affirmation to the person who is being examined.

Powers of entry,
search and
seizure.

83. (1) Where an investigating officer is satisfied, or has any reason to believe, that any person has committed an offence under this Act, he may, if in his opinion it is reasonably necessary to do so for the purpose of investigating into such offence—

(a) enter any premises and there search for, seize and detain any property, book or other document;

(b) inspect, make copies of, or take extracts from, any book or other document so seized and detained;

(c) take possession of, and remove from the premises, any property, book or other document so seized and detained;

(d) search any person who is in, or on, such premises, and

for the purpose of such search detain such person and remove him to such place as may be necessary to facilitate such search, and seize and detain any property, book or other document found on such person;

- (e) break open, examine, and search, any article, container or receptacle; or
- (f) stop, detain or search any conveyance.

(2) An investigating officer may if it is necessary so to do—

- (a) break open any outer or inner door of such premises and enter thereinto;
- (b) forcibly enter such premises and every part thereof;
- (c) remove by force any obstruction to such entry, search, seizure, detention or removal as he is empowered to effect; or
- (d) detain all or any persons found on any premises, or in any conveyance, searched under subsection (1) until such premises or conveyance have been searched.

(3) A list of all things seized in the course of a search made under this section and of the premises in which they are respectively found shall be prepared by the investigating officer conducting the search and signed by him. *Act A954.*

(4) The occupant of the premises entered under subsection (1), or some person on his behalf, shall in every instance be permitted to attend during the search, and a copy of the list prepared and signed under this section shall be delivered to such occupant or person at his request. *Act A954.*

(5) An investigating officer shall, unless otherwise ordered by any court— *Act A954.*

- (a) on the close of investigations or any proceedings arising therefrom; or
- (b) with the prior written consent of any officer of the Bank authorised by the Governor to act on his behalf for this purpose, or of any investigating officer superior to him in rank, at any time before the close of investigations, release any property, book or other document seized, detained or removed by him or any other investigating officer, to such person as he determines to be lawfully entitled to the property, book or other document if he is satisfied that it is not required for the purpose of any prosecution or proceedings under this Act, or for the purpose of any prosecution under any other written law.

(6) A record in writing shall be made by the officer effecting any release of any property, book or other document under subsection (5) in respect of such release specifying therein in detail the circumstances of, and the reason for, such release. *Act A954.*

F.M.S. Cap. 6. (7) Where the investigating officer is unable to determine the person who is lawfully entitled to the property, book or other document or where there is more than one claimant to such property, book or other document, the investigating officer shall report the matter to a Magistrate who shall then deal with the property, book or other document as provided for in sections 413(2), (3) and (4), 414, 415 and 416 of the Criminal Procedure Code. *Act A954.*

Search of person. **84.** (1) An investigating officer may search any person whom he has reason to believe has on his person any property, book or other document, or other article whatsoever, necessary, in his opinion, for the purpose of investigation into any offence under this Act, and for the purpose of such search may detain such person for such period as may be necessary to have the search carried out, which shall not in any case exceed twenty-four hours without the authorization of a Magistrate, and may remove him in custody to such place as may be necessary to facilitate such search.

(2) An investigating officer making a search of a person under subsection (1) may seize, detain, or take possession of any property, book or other document, or article, found upon such person for the purpose of the investigation being carried out by him.

(3) No female person shall be searched under this section or under section 83 except by another female.

Obstruction to
exercise of
powers by an
investigating
officer.

85. No person shall—

- (a) refuse any investigating officer exercising his powers under section 83 or 84, access to any premises or part thereof, or fail to submit to the search of his person;
- (b) assault, obstruct, hinder or delay such investigating officer in effecting any entrance which he is entitled to effect;
- (c) fail to comply with any lawful demands of any investigating officer in the execution of his duties under section 83 or 84;
- (d) refuse to give to an investigating officer any information which may reasonably be required of him and which he has it in his power to give;
- (e) fail to produce to, or conceal or attempt to conceal from, an investigating officer, any property, book, other document, or article in relation to which the investigating officer has reasonable grounds for suspecting that an offence has been or is being committed under this Act;
- (f) rescue or endeavour to rescue any thing which has been duly seized;
- (g) furnish to an investigating officer as true, information which he knows or has reason to believe to be false; or
- (h) before or after any seizure, break or otherwise destroy any thing to prevent the seizure thereof, or the securing of the same.

Requirement to
provide
translation.

86. (1) Where an investigating officer finds, seizes, detains, or takes possession of, any book or other document in the exercise of any power under this Part, and such book or other document or any part thereof is in a language other than the national language or the English language, or in any sign or code, the investigating officer may orally or in writing require the person who had the possession, custody or control of such book or other document, to furnish to the

investigating officer a translation in the national language of such book or other document within such period as, in the opinion of the investigating officer, would be reasonable having regard to the length of the book or other document, or other circumstances relating to it.

(2) No person shall knowingly furnish a translation under subsection (1) which is not an accurate, faithful and true translation, or knowingly make a translation under that subsection which is not accurate, faithful and true.

(3) Where the person required to furnish a translation under subsection (1) is not the person who is suspected to have committed the offence under investigation, the Bank shall pay to him reasonable fees for the translation.

Power to examine persons. **87.** (1) Where an investigating officer suspects any person to have committed an offence under this Act, he may, if in his opinion it is reasonably necessary to do so for the purposes of investigation into such offence—

- (a) order any person orally or in writing to attend before him for the purpose of being examined orally by the investigating officer in relation to any matter which may, in the opinion of the investigating officer, assist in the investigation into the offence;
- (b) order any person orally or in writing to produce before the investigating officer books, other documents, property, articles, or things which may, in the opinion of the investigating officer, assist in the investigation into the offence; or
- (c) by written notice require any person to furnish a statement in writing made on oath or affirmation setting out therein all such information which may be required under the notice, being information which, in the opinion of the investigating officer, would be of assistance in the investigation into the offence.

(2) A person to whom an order under subsection (1) (a) or (b), or a written notice under subsection (1) (c), has been given shall comply with the terms of such order or written notice, as the case may be, and, in particular—

- (a) a person to whom an order under subsection (1) (a) has been given shall attend in accordance with the terms of the order to be examined, and shall continue to so attend from day to day as directed by the investigating officer until the examination is completed, and shall during such examination disclose all information which is within his knowledge, or which is available to him, or which is capable of being obtained by him, in respect of the matter in relation to which he is being examined, whether or not any question is put to him with regard thereto, and where any question is put to him he shall answer the same truthfully and to the best of his knowledge and belief, and shall not refuse to answer any question on the ground that it tends to incriminate him or his spouse;
- (b) a person to whom an order has been given under subsection (1) (b) shall not conceal, hide, destroy, alter, remove from or send out of Malaysia, or deal with, expend, or dispose of, any book, other document, property, article, or thing specified in the order, or alter

or deface any entry in any such book or other document, or cause the same to be done, or assist or conspire to do the same; and

- (c) a person to whom a written notice has been given under subsection (1) (c) shall, in his statement made on oath or affirmation, furnish and disclose truthfully all information required under the notice which is within his knowledge, or which is available to him, or which is capable of being obtained by him, and shall not fail to furnish or disclose the same on the ground that it tends to incriminate him or his spouse.

(3) A person to whom an order or a notice is given under subsection (1) shall comply with such notice or order and with the provisions of subsection (2) in relation thereto, notwithstanding the provisions of any written law, whether enacted before or after the commencement of this Act, or of any oath, undertaking or requirement of secrecy, to the contrary, or of any obligation under any contract, agreement or arrangement, whether express or implied, to the contrary.

(4) Where any person discloses any information or produces any property, book, other document, article, or thing, pursuant to subsections (1) and (2), neither the first mentioned person, nor any other person on whose behalf or direction or as whose agent or employee, the first mentioned person may be acting, shall, on account of such disclosure or production, be liable to any prosecution for any offence under or by virtue of any law, or to any proceeding or claim in any form or of any description by any person under or by virtue of any agreement or arrangement, or otherwise howsoever.

(5) An investigating officer may seize, take possession of and retain for such duration as he deems necessary, any property, book, other document, article or thing produced before him in the course of an investigation under subsection (1), or search the person who is being examined by him under subsection (1) (a), or who is producing anything to him under subsection (1) (b), for ascertaining whether anything relevant to the investigation is concealed, or is otherwise, upon such person.

(6) An examination under subsection (1) (a) shall be reduced into writing by the investigating officer and shall be read to and signed by the person being examined, and where such person refuses to sign the record, the investigating officer shall endorse thereon under his hand the fact of such refusal and the reasons therefor, if any, stated by the person examined.

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(7) The record of an examination under subsection (1) (a), or a written statement on oath or affirmation made pursuant to subsection (1) (c), or any property, book, other document, article or thing produced under subsection (1) (b) or otherwise in the course of an examination under subsection (1) (a) or under a written statement on oath or affirmation made pursuant to subsection (1) (c), shall, notwithstanding any written law or rule of law to the contrary, be admissible in evidence in any proceedings in any court—

- (a) for, or in relation to, an offence under this Act;
- (b) for, or in relation to, any other matter under this Act; or
- (c) for, or in relation to, any offence under any other written law,

regardless whether such proceedings are against the person who was examined, or who produced the property, book, other

document, article or thing, or who made the written statement on oath or affirmation, or against any other person.

Specific persons
in respect of
whom powers of
investigation may
be exercised.

88. Without prejudice to the generality of other powers of investigation conferred on an investigating officer under this Part, such powers may be exercised by him against—

- (a) (i) any past or present business associate;
- (ii) any person who is or was a relative;
- (iii) any person who has or had made a deposit with, or who is or was a creditor;
- (iv) any past or present controller;
- (v) any person who is or was concerned with the control or management, in whole or in part of the affairs; or
- (vi) any person who has or had an interest in the shares, or otherwise has or had an interest in the property,

of the person suspected to have committed an offence under this Act;
- (b) any business associate or relative of a person referred to in paragraph (a); or
- (c) any body corporate or unincorporate in which any person referred to in paragraph (a) is a director or officer or, where such body is a corporation, has an interest in the shares of the corporation.

Assistance to
police or other
public officer.

89. The Bank may at its own initiative, or on the request of a public officer—

- (a) supply to a police officer or any other public officer a copy of any book or other document seized, detained or taken possession of under section 83 or 84, or of any record of examination under section 87 (1) (a), or of any written statement on oath or affirmation made under section 87 (1) (c), or of any book or other document produced under section 87 (1) (b), or otherwise in the course of any examination under section 87 (1) (a), or under any written statement on oath or affirmation made pursuant to section 87 (1) (c), and such police officer or other public officer may make such use of such copy of such record, statement, book or other document as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person; or
- (b) allow a police officer or any other public officer to have access to and inspect any property, book, other document, article or thing which had been produced before, or seized, detained or taken possession of, by an investigating officer under this Part, and such police or other public officer may make such use of any knowledge gained by such access or inspection as may

be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person.

Investigator deemed to be public servant and public officer. *F.M.S. Cap. 45.*
F.M.S. Cap. 6.

90. An investigating officer shall be deemed to be a public servant for the purposes of the Penal Code, and to be a public officer for the purposes of the Criminal Procedure Code or any other written law which the Minister may, on the recommendation of the Bank, prescribe.

PART XII

APPLICATION OF PARTS X AND XI TO NON-SCHEDULED INSTITUTIONS ENGAGED IN PROVISION OF FINANCE

Report to Minister in respect of non-scheduled institution.

91. Where—

- (a) the Minister charged with the responsibility for a non-scheduled institution which is a statutory body;
- (b) in the case of a non-scheduled institution which is not a statutory body, the Minister charged with the responsibility for non-scheduled institutions of the class, category, or description to which the non-scheduled institution belongs, or with the responsibility for the subject or matter relating to any of the businesses or activities carried on by the non-scheduled institution; or
- (c) the State Authority in the case of—
 - (i) a non-scheduled institution which is a statutory body established by State law or by any subsidiary legislation made under any State law; or
 - (ii) any other non-scheduled institution which falls under the responsibility, powers, control or jurisdiction of the State Authority,

is satisfied, after making such inquiries as such Minister, or the State Authority, as the case may be, deems necessary, that the non-scheduled institution is engaged in the provision of finance or the business of hire-purchase, whether lawfully or unlawfully, and that—

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- (aa) the interests of the existing or potential depositors, creditors, or customers of the non-scheduled institution are in any way threatened, whether by the manner in which the institution is conducting or proposes to conduct its business or affairs, or for any other reason;
- (bb) it is unable, or is likely to become unable, to meet all or any of its obligations; or
- (cc) it has suspended, or is about to suspend, payment to any extent to all or any class or category of its depositors, creditors or customers,

such Minister or such State Authority, as the case may be, may

submit a report on the matter to the Minister with a recommendation to investigate into the affairs of the non-scheduled institution.

Powers of Minister in relation to report under section 91.

92. (1) Where the Minister receives a report and recommendation under section 91, he may, after considering the same and making such inquiries in relation thereto as he deems necessary or expedient, decide, on the recommendation of the Bank—

- (a) not to take any action in the matter, and inform the Minister or the State Authority which submitted the report accordingly; or
- (b) that it is necessary to investigate and control the business and affairs of the non-scheduled institution concerned for the protection of the interests of the depositors, creditors, customers or members, or of any class or category of them, respectively.

(2) For the avoidance of doubt it is hereby declared that—

- (a) before the Minister makes a decision under subsection (1) (b); or
- (b) before the Minister referred to in section 91 (a) or (b), or the State Authority, submits the report and recommendation under section 91, to the Minister,

it shall not be necessary for the Minister, or the Minister referred to in section 91 (a) or (b), or the State Authority, to give an opportunity to the non-scheduled institution concerned to make any representation whatsoever to the Minister, or to the Minister referred to in section 91 (a) or (b), or to the State Authority, as the case may.

Minister's power to apply provisions of Part X to non-scheduled institutions.

93. (1) Where the Minister decides that it is necessary to investigate and control the business and affairs of a non-scheduled institution under section 92 (1) (b), there may be applied to that non-scheduled institution the provisions of Part X as if it were a licensed institution in such manner, to such extent, and with all such modifications, variations, adaptations, alterations, amendments, additions, deletions or substitutions as the Minister may provide by order made by him on the recommendation of the Bank and published in the *Gazette*:

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Provided that such order shall not apply to the non-scheduled institution the provisions of section 73 (2) (b) or (c) except with the written consent of the Minister, or the State Authority, submitting the report and recommendation under section 91.

(2) An order of the Minister under subsection (1) shall be deemed to be an integral part of this Act and be read as one with this Act, and shall have full force and effect notwithstanding anything inconsistent therewith, or contrary thereto, contained in this Act.

Power of Minister to revoke licence, etc. of non-scheduled institution.

94. (1) Where an order has been made under section 93 (1) in respect of a non-scheduled institution referred to in paragraph (b) of the definition of "non-scheduled institution" in section 2 (1), the Minister may, on the recommendation of the Bank, where he deems it necessary to do so in the interests of the depositors, creditors, customers, or members of the non-scheduled institution,

or in the interests of any class or category thereof, respectively, revoke or restrict, subject to such terms and conditions as he may deem fit and proper, any licence, registration, certificate, or other authorisation whatsoever by or under which it is established, appointed or constituted, or is carrying on the business of the provision of finance.

(2) For the purposes of taking action under subsection (1) the Minister may, where practicable to do so apply *mutatis mutandis* the provisions of this Act relating to the revocation or restriction of the licence of a licensed institution, with all such modifications, variations, adaptations, alterations, amendments, additions, deletions or substitutions, as he may consider necessary or expedient.

(3) Where any revocation or restriction has been effected under subsection (1) in respect of any non-scheduled institution, such institution and any other person affected by the revocation or restriction shall comply with such revocation or restriction and with any terms or conditions to which it has been made subject.

Provisions of this Part to prevail. **95.** The provisions of this Part shall have full force and effect notwithstanding—

- (a) anything inconsistent therewith or contrary thereto contained in any other provision of this Act;
- (b) anything contained in the written law by or under which the non-scheduled institution is established, appointed or constituted, or is carrying on the business of the provision of finance; and
- (c) anything contained in any other written law.

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PART XIII

INFORMATION AND SECRECY

Restriction on inquiring specifically into affairs of particular customer. **96.** Except as provided in section 43 (2), and without prejudice to the powers of inspection, examination, investigation or inquiry conferred on the Bank or on an investigating officer under this Act, nothing in this Act shall—

- (a) authorise the Minister to direct the Bank; or
- (b) authorise the Bank,

to inquire specifically into the affairs of any individual customer of any licensed institution.

Secrecy. **97.** (1) No director or officer of any licensed institution or of any external bureau established, or any agent appointed, by the licensed institution to undertake any part of its business, whether during his tenure of office, or during his employment, or thereafter, and no person who for any reason, has by any means access to any record, book, register, correspondence, or other document whatsoever, or material, relating to the affairs or, in particular, the account, of any particular customer of the institution, shall give, produce, divulge, reveal, publish or otherwise disclose, to any

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person, or make a record for any person, of any information or document whatsoever relating to the affairs or account of such customer.

(2) This section shall not apply to any information or document which at the time of the disclosure is, or has already been made, lawfully available to the public from any source other than the licensed institution, or to any information which is in the form of a summary or collection of information set out in such manner as does not enable information relating to any particular licensed institution or any particular customer of the licensed institution to be ascertained from it.

(3) No person who has any information or document which to his knowledge has been disclosed in contravention of subsection (1) shall in any manner howsoever disclose the same to any other person.

Disclosure for
facilitating
performance of
functions by Bank.

98. (1) The provisions of section 97 shall not apply to the disclosure of any information or document—

- (a) to the Bank, or to any director, officer or employee of the Bank, or to any person appointed by the Bank under section 3 (3), or to the Advisory Panel, where the disclosure is for the purpose of the exercise of powers, the performance of functions or the discharge of duties of the Bank, or of the director, officer or employee of the Bank, or of the person appointed under section 3 (3), or of the Advisory Panel; or
- (b) to any person rendering professional services to the Bank in relation to any matter of law, accountancy, valuation, or any other matter requiring professional knowledge, where he is authorised in writing by the Bank to obtain the information from the licensed institution for the purpose of his services to the Bank.

Disclosure for
facilitating
performance of
functions by
Malaysia Deposit
Insurance
Corporation

98A. The provisions of section 97 shall not apply to the disclosure of any information or document to any director, officer, employee or agent of the Malaysia Deposit Insurance Corporation (hereinafter in this section referred to as “the Corporation”) established under the Malaysia Deposit Insurance Corporation Act 2005 where the disclosure is for the purposes of the exercise of powers, the performance of functions or the discharge of duties of the Corporation or of the directors, officers, employees or agents of the Corporation under that Act.

Act A1256.

Other permitted
disclosures.

99. (1) The provisions of section 97 shall not apply to the disclosure of any information or document—

- (a) which the customer, or his personal representative, has given permission in writing to disclose;
- (b) in a case where the customer is declared bankrupt, or, if the customer is a corporation, the corporation is being or has been wound up, in Malaysia or in any country, territory or place outside Malaysia;
- (c) where the information is required by a party to a *bona fide* commercial transaction, or to a prospective *bona*

fide commercial transaction, to which the customer is also a party, to assess the creditworthiness of the customer relating to such transaction, provided that the information required is of a general nature and does not enable the details of the customer's account or affairs to be ascertained;

- (d) for the purposes of any criminal proceedings or in respect of any civil proceedings— *Act A954.*
 - (i) between a licensed institution and its customer or his guarantor relating to the customer's transaction with the institution; or
 - (ii) between the licensed institution and two or more parties making adverse claims to money in a customer's account where the licensed institution seeks relief by way of interpleader;
- (e) where the licensed institution has been served a garnishee order attaching monies in the account of the customer;
- (f) to an external bureau established, or to an agent appointed, by the licensed institution with the prior written consent of the Bank; *Act A954.*
- (g) where such disclosure is required or authorised under any other provision of this Act;
- (h) where such disclosure is authorised under any Federal law to be made to a police officer investigating into any offence under such law and such disclosure to the police officer being, in any case, limited to the accounts and affairs of the person suspected of the offence; or *Act A954.*
- (i) where such disclosure is authorised in writing by the Bank. *Act A954.*

(2) In any civil proceedings under subsection (1) (b) or (d) where any information or document is likely to be disclosed in relation to a customer's account, such proceedings may, if the court, of its own motion, or on the application of a party to the proceedings, so orders, be held *in camera* and in such case, the information or document shall be secret as between the court and the parties thereto, and no such party shall disclose such information or document to any other person.

(3) Unless the court otherwise orders, no person shall publish the name, address or photograph of any parties to such civil proceedings as are referred to in subsection (2), or any information likely to lead to the identification of the parties thereto, either during the currency of the proceedings or at any time after they have been concluded.

Disclosure under
Banker's Books
(Evidence) Act
1949.
Act 33.

100. Nothing in this Part shall limit any powers conferred upon the High Court or a judge thereof by the Banker's Books (Evidence) Act 1949 or to prohibit obedience to an order made under that Act.

Examination by
relevant overseas
supervisory

101. (1) The relevant supervisory authority of a country, territory or place outside Malaysia may, with the approval of the Bank, examine the books, accounts and transactions of—

authority.

(a) *[Deleted]*

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(b) a representative office in Malaysia of a foreign institution;

(c) a licensed institution which is a subsidiary of a foreign institution; or

(d) a licensed institution which is an associate of a foreign institution,

established in that country, territory or place.

(2) In granting an approval under subsection (1), the Bank may impose such terms, restrictions and conditions as it deems fit.

(3) Where the Bank has granted its approval under subsection (1), the provisions of section 97 shall not apply in relation to the examination to be carried out under such approval, to the extent specified in the approval.

(4) A copy of the report of an examination under subsection (1) shall, unless otherwise allowed by the Bank, be lodged with the Bank upon the conclusion of such examination.

(5) For the purposes of this section and section 102, "relevant supervisory authority" means an authority which exercises functions corresponding to those of the Bank under this Act, or any person exercising such regulatory functions as may be deemed appropriate by the Bank after taking into account the representations made by the person as to the desirability of or the necessity for the examination.

Disclosure by
Bank of
information to
relevant overseas
supervisory
authority.

102. Notwithstanding anything to the contrary contained in this Act, the Bank may upon request by the relevant supervisory authority of a country, territory or place outside Malaysia, provide to it information on matters relating to the affairs of any office, representative office or licensed institution referred to under section 101 (1), or of any office in that country, territory or place of any licensed institution, or information relating to the proposed establishment by any licensed institution of any office in that country, territory or place:

Provided that the Bank shall not provide any information relating to the account or affairs of any particular customer of such office, representative office, or institution.

PART XIV

OFFENCES

Scheduled
offences and
penalties for them.

103. (1) Any person who contravenes—

(a) any provision of this Act set out in the second column of the Fourth Schedule; or

(b) any specification or requirement made, or any order in writing, direction, instruction, or notice, given, or any limit, term, condition or restriction imposed, or any other

thing howsoever done, in the exercise of any power conferred under, pursuant to, or by virtue of, any provision of this Act set out in the third column of the Fourth Schedule,

shall be guilty of an offence under such provision and shall on conviction be liable to be punished with imprisonment not exceeding the term set out in the fourth column of the Fourth Schedule or with a fine not exceeding the amount set out in the fifth column of the Fourth Schedule, or with both such imprisonment and fine, and in the case of a continuing offence, shall, in addition, be liable to be punished with a daily fine not exceeding the amount set out in the sixth column of the Fourth Schedule for every day during which the offence continues:

Provided that where the person found guilty of such offence is a body corporate, the punishment of imprisonment set out in the fourth column of the Fourth Schedule shall not apply to it.

(2) The Minister may, on the recommendation of the Bank, from time to time, by order published in the *Gazette*, amend the Fourth Schedule—

- (a) by deleting the whole of any item therein, whereupon the provisions of section 104 shall apply to the offence specified in that item;
- (b) by adding a new item thereto and providing the fines therefor under the fifth and sixth columns of that Schedule which shall not be in excess of five hundred thousand ringgit and two thousand ringgit respectively;
- (c) by increasing or decreasing the amount of fines provided under the fifth and sixth column, respectively, provided that the aggregate of increases from time to time of any fine provided in the fifth column shall not, in any case, be in excess of five hundred thousand ringgit or, in the case of a fine provided in the sixth column, be in excess of two thousand ringgit; or
- (d) to correct any error in the second or third column of that Schedule.

(3) References to “this Act” in this section shall not include any regulations, order or other subsidiary legislation made under this Act.

General penalty. **104.** Any person who contravenes—

- (a) any provision of this Act; or
- (b) any specification or requirement made, or any order in writing, direction, instruction, or notice given, or any limit, term, condition or restriction imposed, or any other thing howsoever done, in the exercise of any power conferred under, pursuant to, or by virtue of, any provision of this Act,

shall be guilty of an offence under such provision, and if no penalty is expressly provided for the offence in this Act, shall on conviction be liable to be punished with a fine not exceeding five hundred thousand ringgit, and in the case of a continuing offence, shall, in addition, be liable to be punished with a daily fine not exceeding one thousand ringgit for every day during which the offence continues.

Offences in relation to entries in books, documents, etc. **105.** No person shall, with intent to deceive—

- (a) make or cause to be made a false entry;
- (b) omit to make, or cause to be omitted, any entry; or
- (c) alter, abstract, conceal or destroy, or cause to be altered, abstracted, concealed or destroyed, any entry,

in any book or record, or in any report, slip, statement or other document whatsoever, relating to the business, affairs, transactions, condition, property, assets, liabilities or accounts, of a licensed institution, a scheduled institution, a representative office, or a non-scheduled institution in respect of which an order has been made by the Minister under section 93 (1).

Offences by institution and by servants and agents. **106.** (1) Where any offence against any provision of this Act has been committed by any institution, any person who at the time of the commission of the offence was a director, officer, or controller, of the institution or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of such institution, or was assisting in such management, shall be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Where any person (hereinafter in this subsection referred to as the "principal") would be liable under this Act to any punishment or penalty for any act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any clerk, servant or agent of his, or of the clerk or servant of such agent:

Provided that such act, omission, neglect or default was committed by the principal's clerk or servant in the course of his employment, or by the agent when acting on behalf of the principal, or by the clerk or servant of such agent in the course of his employment by such agent or otherwise on behalf of the agent.

Joinder of offences. **107.** Notwithstanding anything contained in any other written law, where a person is accused of more than one offence under this Act, he may be charged with and tried at one trial for any number of such offences committed within the space of any length of time.

Power of Governor to compound offences. **108.** (1) The Governor, with the concurrence of the Minister, may, in a case where he deems it fit and proper to do so, compound any offence committed by any person which is punishable under section 103 or 104, or under any other provision of this Act, by making a written offer to such person to compound the offence by paying to the Governor within such time as may be specified in the offer such sum of money as may be specified in the offer which shall not exceed fifty per centum of the amount of the maximum fine (including the daily fine, if any, in the case of a continuing offence) to which that person would have been liable if he had been convicted of the offence.

(2) Any monies paid to the Governor pursuant to the provisions of subsection (1) shall be paid into and form part of the Federal Consolidated Fund.

(3) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer, or any extension of it which the Governor may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (1), no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made.

Power of officer of Bank to prosecute offences under Act with consent of Public Prosecutor.

109. (1) Any officer or employee of the Bank authorised in writing by the Governor may, with the consent of the Public Prosecutor in writing, prosecute in any court any case in respect of any offence committed under this Act.

F.M.S. Cap. 6.

(2) For the purposes of section 380 of the Criminal Procedure Code, an officer or employee of the Bank authorised under subsection (1) shall be deemed to be a public officer.

Offences to be seizable offences.

110. Every offence punishable under section 103 or 104 shall be a seizable offence, and a police officer not below the rank of Inspector, or an investigating officer appointed under section 82 (1), may arrest without warrant any person whom he reasonably suspects to have committed or to be committing any such offence.

Duty of investigating officer to make over arrested person to police.

111. An investigating officer appointed under section 82 (1) making an arrest under section 110 shall without unnecessary delay make over the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and thereafter the person arrested as aforesaid shall be dealt with as provided by the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

Attempts', preparations, abetments and conspiracies punishable as offences.

112. (1) Any person who—

(a) attempts to commit any offence under this Act;

(b) does any act preparatory to or in furtherance of the commission of any offence under this Act; or

(c) abets or is engaged in a criminal conspiracy to commit (as those terms are defined in the Penal Code) any offence under the Act, whether or not the offence is committed in consequence thereof,

F.M.S. Cap. 45.

shall be guilty of such offence and shall be liable to the penalty provided for such offence.

(2) Any provision of this Act which contains a reference to an offence under any specific provision of this Act shall be read as including a reference to an offence under subsection (1) in relation to the offence under that specific provision.

PART XV

GENERAL PROVISIONS

Submission to Bank of information required by it. **113.** (1) If, for the purpose of the exercise of any of its powers, the performance of any of its functions, or the discharge of any of its duties, under this Act, or under any other written law, the Bank requires any information from any licensed institution, or any scheduled institution, or any foreign institution or from any other person engaged in the provision of finance, or from any corporation related to any of the aforesaid institutions or the aforesaid person, on any matter relating to the affairs or business of such institution, person or corporation, such institution, person or corporation, shall submit such information to the Bank.

Act 519. (2) Where the information obtained by the Bank under subsection (1) relates to the account or affairs of any customer of the institution, person or corporation supplying the information, that information shall be secret as between the Bank and the institution, person or corporation supplying it, except where it is to be used for the purpose of prosecuting any person for any offence under any written law or for the purposes of the credit bureau established under section 30(1)(mmm) of the Central Bank of Malaysia Act 1958.

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Indemnity. **114.** (1) No action, suit, prosecution or other proceeding whatsoever shall lie or be brought, instituted, or maintained in any court or before any other authority against—

- (a) the Government of Malaysia or a State Government;
- (b) the Bank;
- (c) any officer or employee of any such Government or of the Bank, either personally or in his official capacity; or
- (d) any person lawfully acting on behalf of any such Government, or on behalf of the Bank, or on behalf of any such officer or employee, either personally or in his capacity as a person acting on such behalf,

for or on account of, or in respect of, any act done or statement made or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance or in execution of, or intended pursuance or execution of, this Act, or any order in writing, direction, instruction, notice or other thing whatsoever issued under this Act:

Provided that such act or such statement was done or made, or was omitted to be done or made, in good faith.

(2) For the purposes of this section—

- (a) any member of the administration of the Government of Malaysia or a State Government shall be deemed to be

an officer of the respective Government; and

- (b) the Governor, Deputy Governor, any director of the Bank, any member of the Advisory Panel, any person appointed by the Bank pursuant to section 3 (3) or section 73 (1) (E) or (2) (a), and any receiver or manager appointed by the High Court pursuant to section 73 (2) (b) or (c), shall be deemed to be an officer of the Bank. *Act A954.*

(3) In subsection (2) “member of the administration” has the meaning assigned to it in Article 160 (2) of the Federal Constitution.

Prohibition on receipt of gifts, commissions, etc.

115. (1) No director, officer or agent of a licensed institution, a scheduled institution, or a foreign institution or any non-scheduled institution in respect of which the Minister has made an order under section 93 (1), or any other person being a person receiving any payment or remuneration in any capacity, professional or otherwise, from such institution, shall, directly or indirectly, ask for or receive, or consent or agree to receive, any gift, commission, emolument, gratuity, money, property, token or thing of value, or any service, facility or other intangible benefit, whether for his own personal benefit or advantage or for the benefit or advantage of any other person, from any person other than from the institution, for procuring or endeavouring to procure for any person—

- (a) any credit facility from that institution;
- (b) the purchase or discount of any draft, note, cheque, bill of exchange or other obligation by that institution;
- (c) permission to overdraw any account with that institution (in the case where the institution is a licensed bank); or
- (d) any other thing relating to the business or affairs of that institution.

(2) The provisions of subsection (1) shall not in any manner derogate from, and shall be without prejudice to, any other written law relating to corruption or illegal gratification.

Regulations.

116. (1) The Bank may, with the approval of the Minister, from time to time, make such regulations as may be necessary or expedient for giving full effect to the provisions of this Act, for carrying out or achieving the objects and purposes of this Act or any provisions thereof, or for the further, better or more convenient implementation of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made—

- (a) to provide for control by the Bank by supervision, regulation, restriction, prohibition, or otherwise howsoever, with respect to—
 - (i) the acquisition or holding of any interest in the shares of any corporation, or the acquisition or development of any immovable property, or the acquisition of any interest in immovable property or in its development, by a licensed institution; or
 - (ii) the giving of any credit facility by any licensed institution to any person by way of consumer credit, or for the financing of any derivative instrument, the acquisition or holding of immovable property or any

- interest therein, or the acquisition or holding of any shares or any interest in shares, or the acquisition or holding of any other property as may be prescribed by the Bank;
- (iii) the issuance or acquisition, holding or disposal of derivative instruments by a licensed institution;
 - (iv) the provision of finance, banking services, money transmission or remittance services supplied or carried on by persons other than licensed institutions and to create offences, in respect of the contravention of such regulations and provide penalties not exceeding a fine of ten million ringgit for such offences;
 - (v) activities of holding companies of licensed institutions;
- (b) to provide for a declaration to be made, from time to time, by every director, controller, officer, or other person responsible for the business or affairs, of a licensed institution, or a scheduled institution, or a foreign institution or a non-scheduled institution in respect of which the Minister has made an order under section 93 (1), to such body of persons or such person, being a body or person related to such institution, as may be specified in the regulations—
- (i) of any interest in shares, or other interest or right whatsoever, held by, or on behalf of, or in trust for, such director, controller, officer, or other person, or any relative of his, in any corporation, or in any partnership, firm or other body unincorporate, other than that institution;
 - (ii) of any office of director or manager, or interest as agent, held by him in any body, whether corporate or unincorporate, or in any sole-proprietorship, or in any statutory body, other than that institution; or
 - (iii) of any other category, class or description of property, assets, interest, office, or position, held by him;
- (c) to provide for returns or information, periodical or otherwise, to be supplied by licensed institutions, or scheduled institutions or foreign institutions or non-scheduled institutions in respect of which the Minister has made an order under section 93 (1);
- (d) to provide for the control of advertisements by licensed institutions, or scheduled institutions or foreign institutions or non-scheduled institutions in respect of which the Minister has made an order under section 93 (1);
- (e) to provide for the imposition of duties, liabilities, responsibilities, restrictions, limitations, prohibitions or sanctions, or the conferment of rights, privileges, benefits or indemnities on directors, officers or shareholders of licensed institutions or holding companies of licensed institutions;
- (i) directors, officers or shareholders of licensed institutions or holding companies of licensed institutions; or

Act A1211.

- (ii) the parties to any electronic fund transfer system set up, or operating, in Malaysia;

(f) *(Deleted)*.

Act A1211.

(g) to provide for forms in respect of any matter under this Act, or under any regulations made under this section;

(h) to provide for fees to be paid to the Bank in respect of any matter under this Act, or under any regulations made under this section;

(i) to provide for any other matter which is required by any provision of this Act to be provided for by regulations.

(3) Regulations made under this section may relate to all, or any class, category, or description of persons, and may make different provisions for different classes, categories or descriptions of persons.

(4) References to "this Act" in this section shall not include any regulations, order or other subsidiary legislation made under this Act.

Decision of Minister to be final. **117.** Except as otherwise provided in this Act, any decision made by the Minister under this Act, whether an original decision by him or a decision on appeal to him from a decision of the Bank, shall be final.

Exemptions. **118.** (1) The Minister may, on the recommendation of the Bank—

(a) in consideration of the special circumstances relating to the constituent documents of any particular person, or of any class, category or description of persons, and the nature of the business carried on by such particular person, or by such class, category or description of persons; and

(b) if he is satisfied that it would not be—

(i) prejudicial to the promotion of a sound financial structure in Malaysia; and

(ii) contrary to the public interest to do so,

by order published in the *Gazette* exempt such particular person, or such class, category or description of persons, from all or any of the provisions of this Act.

(2) An exemption under subsection (1) shall be granted for such duration as may be specified in the order, or for the duration of the existence of the person, and may be made subject to such limitations, restrictions or conditions as the Minister may specify in the order.

(3) The Minister may at any time, on the recommendation of the Bank, by order published in the *Gazette*—

(a) (i) revoke any order made under subsection (1) in respect of a particular person; or

(ii) exclude from the operation of an order made under subsection (1) in respect of any class, category or description of persons, any particular person belonging to that class, category or description of

persons,

if he is satisfied, after giving the person concerned an opportunity to be heard, that such person has failed to observe any limitation, restriction or condition subject to which the exemption was granted, or that such person is otherwise no longer suitable to continue to be granted exemption;

- (b) revoke an order made under subsection (1) in respect of a class, category or description of persons without giving to any member of that class, category or description of persons an opportunity to be heard, if he is satisfied that it has become necessary to do so for the promotion of a sound financial structure in Malaysia or for the protection of the public interest; or
- (c) add to, delete from, vary, rescind, or otherwise amend, any limitation, restriction or condition subject to which an exemption under sub-section (1) was granted to any person, or to any class, category or description of persons, or otherwise amend any provision of an order under subsection (1):

Provided that where any such amendment relates to an order in respect of a particular person and not to an order in respect of a class, category or description of persons, and is prejudicial to such person, it shall be made only after giving such person an opportunity to be heard.

(4) An order under subsection (1) or (3) shall be laid before the Dewan Rakyat as soon as practicable after its publication in the *Gazette*.

(5) Nothing contained in this section shall empower the Minister to exempt any person from section 96 or 97.

119. (*Deleted*).

Act A1211.

Declaration of holidays. **120.** (1) The Minister may, on the recommendation of the Bank, at any time by notice in the *Gazette*, declare any day or days to be a holiday or holidays for all licensed institutions, or for any class, category or description of licensed institutions.

(2) No licensed institution shall do any business with the public on any day declared a holiday for such licensed institution under the provisions of subsection (1).

(3) A day declared as a holiday under the provisions of subsection (1) shall not necessarily be a public holiday and nothing in this section shall affect the provisions of any written law relating to public holidays.

(4) Any reference to a holiday for licensed institutions, or for any class, category or description of licensed institutions, in any written law shall include—

- (a) any day declared to be a holiday under the provisions of subsection (1); and
- (b) any day which is a public holiday within the meaning of any written law relating to public holidays.

Compensation. **121.** (1) Where any person—

- (a) has been convicted of any offence under this Act or under any other written law; or
- (b) has had any offence committed by him under this Act compounded under section 108,

and such offence has resulted in, or caused, or subsequent to its commission, results in, or causes, any loss or damage of any nature or in any form—

- (aa) to a licensed institution; or
- (bb) to a scheduled institution or a non-scheduled institution, in respect of which the Minister has made an order under section 24 (1), or 93 (1), respectively;

regardless, in the case of an institution referred to in paragraph (bb), whether the offence was committed, or the loss or damage occurred, before or after any such order as is referred to in paragraph (bb) was made—

- (aaa) the person convicted of the offence, or the person whose offence has been compounded under section 108; and
- (bbb) any director, officer or controller of the institution, or any person purporting to act in any such capacity, or any person who is in any manner or to any extent responsible for the management of the affairs of the institution, or any person who is assisting in such management,

shall be jointly and severally liable to indemnify the institution in full for such loss or damage:

Provided that a person referred to in paragraph (bbb) shall not be liable to so indemnify the institution if—

- (aaaa) the offence was committed without his consent or connivance; and
- (bbbb) he had exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions, powers, and duties in his capacity, and to all the circumstances in which the offence was committed.

(2) Where the Bank is satisfied—

- (a) on information received by it from an institution referred to in subsection (1), or from any other person having any dealing with such institution; or
- (b) after an examination under section 69 or 70, or an investigation under Part XI; and
- (c) after such inquiry, if any, as it may deem fit or proper to make, in consequence of such information, examination or investigation,

that any person is liable under subsection (1) to indemnify the licensed institution for any loss or damage as is referred to in subsection (1), it may issue a certificate specifying the amount of such liability.

(3) The amount specified in a certificate under subsection (2), with any variation thereof under subsection (4), where applicable, shall be a civil debt due from the person against whom it is issued

to the institution which sustained the loss or damage, and may be enforced by such institution by civil execution proceedings in a Sessions Court having jurisdiction in the area in which the principal place of business of the institution is located, as if it were a judgment of that Court, notwithstanding that the amount specified in the certificate, or any matter dealt with in or under the certificate, is beyond the jurisdiction of the Sessions Court:

Provided that such proceedings are instituted in such Court within three months from the date on which the certificate is issued, or in a case where subsection (4) applies, within three months after the conclusion of any proceedings under subsection (4) where such proceedings result in the certificate being confirmed or varied.

(4) A certificate under subsection (2) shall be valid notwithstanding that no opportunity may have been given to the person against whom it is issued to make any representation, or to be heard, in the matter, before it is issued, but, in such case, proceedings to enforce payment in respect of the certificate under subsection (3) shall not be taken unless such person has first been given a reasonable opportunity to make representations to the Bank in respect of the matters to which the certificate relates, and where such representations are made, the Bank may, in consequence thereof, after giving an opportunity to the institution concerned to be heard or to make representations thereon, confirm, vary or revoke the certificate.

(5) A certificate under subsection (2), with any variation thereof under subsection (4), shall be conclusive evidence that the amount specified therein is a civil debt due from the person against whom it is issued to the licensed institution specified in the certificate.

(6) A notification of a certificate under subsection (2), and of any variation or revocation of it under subsection (4), shall be published in the *Gazette* as soon as practicable after it has been issued, varied or revoked, as the case may be.

(7) With effect from the date of the publication in the *Gazette* of a notification under subsection (6) of a certificate under subsection (2), the person against whom it is issued shall not sell, dispose, charge, pledge, transfer or otherwise deal in, or dissipate, or remove from or send out of Malaysia, any monies, assets, or other properties whatsoever, belonging to him without the prior written approval of the Bank—

- (a) until the expiry of the period provided under subsection (3) for the institution of proceedings in a Sessions Court for the enforcement of the certificate; or
- (b) where proceedings are instituted in a Sessions Court under subsection (3) within the period provided therein, until the Court otherwise orders.

(8) The prohibitions imposed under subsection (7) upon the person against whom a certificate under subsection (2) is issued, shall also apply to any person having custody, control or possession of, or holding in trust, any monies, assets, or other properties whatsoever belonging to the person against whom a certificate is issued.

(9) Where proceedings have been commenced by the Bank under subsection (2) and a certificate under that subsection has not yet been issued, the institution which sustained the loss or damage referred to in subsection (1) may, after giving written notice to the Bank, institute proceedings in a court in respect of such loss or damage, and where such proceedings have been so instituted in a court, the proceeding under subsection (2) shall immediately

thereupon be discontinued and the provisions of this section shall, thereafter, cease to apply in relation to such loss or damage.

(10) Where a certificate has been issued under subsection (2), the institution in whose favour it has been issued, may, instead of enforcing the certificate under subsection (3), institute (after giving written notice to the Bank of its intention to do so), within the period set out in subsection (3), or such further period as the court may allow, proceedings in a court in respect of the loss or damage referred to in subsection (1), whereupon—

- (a) such certificate shall cease to be enforceable or to have any effect whatsoever, but without prejudice to the notification of its issue published in the *Gazette* under subsection (6), and the prohibition under subsections (7) and (8) in relation thereto;
- (b) any proceedings under subsection (4) which may then be pending shall be discontinued; and
- (c) the court in which such proceedings are instituted may, if it deems just and proper to do so, make an order for revocation of the notification of the issue of the certificate under subsection (2) published in the *Gazette* under subsection (6), and immediately thereupon the prohibitions under subsections (7) and (8) shall cease to have effect.

(11) An order of the court under subsection (10) (c) for the revocation of a notification in the *Gazette* of the issue of a certificate under subsection (2), shall be published in the *Gazette* as soon as practicable after it has been made.

Application of
Companies Act
1965.
Act 125.

122. (1) Where a licensed institution, or a scheduled institution or a non-scheduled institution in respect of which the Minister has made an order under section 24(1) or 93(1) respectively, is a corporation to which all or any of the provisions of the Companies Act 1965 apply, such provisions shall be in addition to the provisions of this Act and not in derogation thereof, but where there is any conflict or inconsistency between the provisions of the Companies Act 1965 and this Act in their respective application to the institution, the provisions of this Act shall prevail.

Act A954.

(2) Where any difficulty or doubt arises in the application of subsection (1) in relation to any particular institution, or any particular matter or circumstance, or generally, the Minister may on the reference of the difficulty or doubt to him by the Bank, resolve the same by a direction in writing.

(3) References to “this Act” in this section shall not include any regulations, order or other subsidiary legislation made under this Act.

Application of
Exchange Control
Act 1953.
Act 17.

123. Nothing contained in this Act shall in any manner affect, or derogate from, the provisions of the Exchange Control Act 1953, and in the application of any provision of this Act to any person, the provision shall apply subject to the provisions of that Act and, accordingly, in the event of any conflict or inconsistency between any provision of this Act and that Act, the provisions of that Act shall prevail.

Islamic banking or

124. (1) Except as provided in section 33, nothing in this Act or the Islamic Banking Act 1983 shall prohibit or restrict any licensed

financial business. institution from carrying on Islamic banking business or Islamic financial business, in addition to its existing licensed business, provided that the licensed institution shall consult the Bank before it carries on Islamic banking business or any Islamic financial business.

Act 276.

(2) For the avoidance of doubt, it is declared that a licensed institution shall, in respect of the Islamic banking business or Islamic financial business carried on by it, be subject to the provisions of this Act.

(3) Any licensed institution carrying on Islamic banking business or Islamic financial business, in addition to its existing licensed business may, from time to time seek the advice of the Syariah Advisory Council established under subsection (7), on the operations of its business in order to ensure that it does not involve any element which is not approved by the Religion of Islam.

(4) Any licensed institution carrying on Islamic banking business or Islamic financial business shall comply with any written directions relating to the Islamic banking business or any other Islamic financial business, carried on by such licensed institution, issued from time to time by the Bank, in consultation with the Syariah Advisory Council.

(5) Any licensed institution carrying on Islamic banking business or Islamic financial business shall be deemed to be not an Islamic bank.

(6) This Act shall not apply to an Islamic bank.

(7) For the purposes of this section—

(a) “Syariah Advisory Council” means the Syariah Advisory Council established under section 16B(1) of the Central Bank of Malaysia Act 1958;

Act A 1211.

Act 276.

(b) “Islamic banking business” has the meaning assigned thereto under the Islamic Banking Act 1983; and

(c) “Islamic financial business” means any financial business, the aims and operations of which, do not involve any element which is not approved by the Religion of Islam.

Contravention not to affect contract, agreement or arrangement. **125.** Except as otherwise provided in this Act, or in pursuance of any provision of this Act, no contract, agreement or arrangement, entered into in contravention of any provision of this Act shall be void solely by reason of such contravention:

Provided that nothing contained in this section shall affect any criminal liability of any person for an offence under this Act in respect of such contravention.

Power to issue guidelines, etc. **126.** The Bank or the Minister may generally in respect of this Act, or in respect of any particular provision of this Act, or generally in respect of the conduct of all or any of the licensed or scheduled businesses, issue such guidelines, circulars, or notes as the Bank or the Minister may consider desirable.

PART XVI

AMENDMENT, REPEAL AND TRANSITIONAL PROVISIONS

Retrospective
amendment of
Finance
Companies Act
1969.
Act 6.

127. (1) The Finance Companies Act 1969, hereinafter referred to in this section as “the Act”, is amended in the manner specified in subsections (2), (3) and (4).

(2) Section 2 of the Act is amended—

(a) by deleting the word “or” in subparagraph (i) of paragraph (b) in the definition of “finance business”, and substituting for the comma at the end of subparagraph (ii), the words “; or” and inserting thereafter the following new subparagraph:

‘ “(iii) the provision of finance,”; and

(b) by inserting after the definition of “Minister” the following new definition:

‘ “provision of finance” means—

(a) the business of letting or sub-letting movable property on hire for the purpose of the use of such property by the hirer or any other person in any business, trade, profession or occupation, or in my commercial, industrial, agricultural or other economic enterprise whatsoever and, where the lessor is the owner of the property, regardless whether the letting is with or without an option to purchase the property; and for the purpose of this definition, “movable property” includes any plant, machinery, equipment or other chattel attached or to be attached to the earth or fastened or to be fastened, permanently or otherwise, to any thing attached to the earth;

(b) the business of acquiring debts due to any person; and

Act 212.

(c) the business of hire-purchase, including that which is subject to the Hire-Purchase Act 1967;’.

(3) Section 20 of the Act is amended by inserting after the word “security” in paragraph (a) of subsection (2) the words “, and for the purpose of this paragraph, any property, whether movable or immovable, including any right, interest, claim or chose in action, whether vested or contingent, in relation to any property, and any conveyance executed for conveying, assigning or otherwise transferring or disposing of immovable property whereof the person executing the conveyance is the proprietor or possessed or wherein he is entitled to a contingent right either for his whole interest or for any less interest, may, constitute security”.

(4) The amendments to the Act made under subsections (2) and (3) shall have effect, and shall be deemed always to have been an integral part of the Act, as from the date of the commencement of the Act until immediately before the date of the commencement of the repeal of the Act under section 128 (1).

Repeal of Finance
Companies Act
1969 and Banking
Act 1973, and

128. (1) The Finance Companies Act 1969 and the Banking Act 1973 are repealed with effect from the effective date.

savings in respect
thereof.

Act 6.
Act 102.

(2) Notwithstanding subsection (1)—

- (a) (i) all regulations, orders, directions, notifications, exemptions and other subsidiary legislation, howsoever called; and
- (ii) all approvals, directions, decisions, notifications, exemptions and other executive acts, howsoever called,

made, given, or done under, or in accordance with, or by virtue of, the repealed Acts shall be deemed to have been made, given, or done under, or in accordance with, or by virtue of, the corresponding provisions of this Act, and shall continue to remain in full force and effect in relation to the persons to whom they applied until amended, repealed, rescinded, revoked or replaced under, in accordance with, or by virtue of, the corresponding provisions of this Act.

- (b) every guideline, circular, or note issued by the Bank or the Minister to banks, finance companies, merchant banks, discount houses or money-brokers before the effective date, and in force immediately before the effective date, shall be deemed to have been lawfully issued under section 126 in relation to the particular provision of this Act corresponding to the matter dealt with in the guideline, circular or note, and shall remain in full force and effect until it is amended, rescinded, or replaced under this Act;
- (c) any application for a licence, approval or consent, or for any other purpose whatsoever, or any appeal, made by any person to the Minister or to the Bank under either of the repealed Acts before the effective date, and pending immediately before the effective date, shall, if there is a corresponding provision in this Act, be dealt with as if it was made under that provision and, if there is no such corresponding provision in this Act, such application or appeal shall lapse on the effective date; and
- (d) all transactions or dealings lawfully executed or entered into, and all business lawfully done, under or in accordance with any of the repealed Acts by a person who was licensed under the respective repealed Act and who is licensed or deemed to be licensed in respect of a corresponding business under this Act, with any depositor or other customer, creditor, debtor, or other person, shall be deemed to have been lawfully and validly executed, entered into, or done, under and in accordance with this Act, and, accordingly, any right or liability under such transaction, dealing or business existing, immediately before the effective date, shall be deemed to continue to be lawful and valid under this Act.

Savings in respect
of licences
granted under
Banking Act 1973

129. (1) Subject to the provisions of this section, any licence granted to—

and Finance
Companies Act
1969.

- (a) a corporation by the Minister under section 3 (4) of the repealed Banking Act 1973 authorising it to carry on banking business under that Act, shall be deemed to be a licence granted under section 6 (4) to carry on banking business and shall—
 - (i) in the case of a licence granted under the said section 3 (4) to a corporation which is a public company immediately before the effective date, remain valid for a period of six months from the effective date; and
 - (ii) in the case of a licence granted under the said section 3 (4) to a corporation which, immediately before the effective date, is a bank established outside Malaysia, remain valid for a period of five years from the effective date, or for such further period as the Minister may at any time before the expiry of the said five years specify by notice in writing to the bank on the application of such bank; or
- (b) a public company by the Minister under section 7 (3) of the repealed Finance Companies Act 1969 enabling it to carry on finance business under that Act, shall be deemed to have been granted under section 6 (4) to carry on finance company business and shall remain valid for a period of six months from the effective date.

(2) A licence as is referred to in subsection (1) (a) (i) or (b) shall be surrendered by the holder of the licence before the expiry of the period of six months referred to therein, whereupon the Minister shall grant to such holder a licence under section 6 (4), with or without conditions—

- (a) in the case of the surrender of a licence as is referred to in subsection (1) (a) (i), to carry on—
 - (i) where the holder is a bank, banking business; or
 - (ii) where the holder is a merchant bank, merchant banking business; and
- (b) in the case of the surrender of a licence as is referred to in subsection (1) (b), a licence to carry on finance company business.

(3) A licence as is referred to in subsection (1) (a) (ii) shall be surrendered by the holder of the licence before the expiry of the period of its validity under subsection (1) (a) (ii), and if before such surrender the holder has, subject to section 49, transferred its property, business and liabilities to a public company, such public company shall, upon application to the Minister and surrender of such licence by the holder, be granted a licence under section 6 (4), with or without conditions, to carry on banking business.

(4) A licence under section 6 (4) which is granted pursuant to the surrender of a licence under subsection (2) or (3) shall have effect from the date of the surrender.

(5) During the period between the effective date and the date of the surrender of a licence in accordance with subsection (2) or (3), as may be applicable, (both dates inclusive), the licence shall—

- (a) continue to remain subject to the conditions, if any, applicable to it immediately before the effective date, such conditions being deemed to be imposed under this Act in respect of a licence granted under section 6 (4);
- (b) be subject to the provisions of this Act applicable to a licence granted under section 6 (4); and
- (c) be subject to any other condition, limitation or restriction that may be imposed pursuant to this Act,

as if it were a licence granted under section 6 (4).

(6) Where any licence is not surrendered to the Bank within the period specified in subsection (2) or (3), as may be applicable, such licence shall, upon the expiry of such period, be deemed to be revoked and the provisions of section 13 shall apply in relation to such revocation in the same manner as they apply to the revocation of a licence granted under section 6 (4).

Modifications to construction of other written laws. **130.** Where in any written law, any reference is made to—

- (a) any of the repealed Acts, it shall be construed as a reference to this Act;
- (b) any specific provision of any of the repealed Acts, it shall be construed as a reference to a provision of this Act which corresponds as nearly as may be to such specific provision;
- (c) a bank licensed under the Banking Act 1973, it shall be construed as a reference to a licensed bank or a licensed merchant bank, according as to whether it is carrying on banking business or merchant banking business; or
- (d) a finance company licensed under the Finance Companies Act 1969, it shall be construed as a reference to a licensed finance company.

Consequential amendments to the Companies Act 1965.
Act 125. **131.** The Companies Act 1965 is amended—

- (a) by substituting for the definition of “banking corporation” in section 4 (1) of that Act the following:
 - ‘ “banking corporation” means a licensed bank, a licensed merchant bank and an Islamic bank;’;
- (b) by inserting in section 4 of that Act immediately after subsection (1), the following new subsection (1A):

‘(1A) In this Act—

- Act 372. (a) “licensed bank”, “licensed business”, “licensed discount house”, “licensed finance company”, “licensed institution”, “licensed merchant bank”,

“licensed money-broker”, “non-scheduled institution”, “scheduled business” and “scheduled institution” shall have the meanings assigned thereto in section 2 (1) of the Banking and Financial Institutions Act 1989; and

Act 276. (b) “Islamic bank” or “Islamic banking business” shall have the meaning assigned thereto in the Islamic Banking Act 1983.’;

(c) by substituting for the words “finance company licensed under the Finance Companies Act 1969” in section 169 (19) of that Act the words “a licensed finance company, a licensed discount house, a licensed money-broker, a scheduled institution in respect of which the Minister charged with responsibility for finance has made an order under section 24 (1) of the Banking and Financial Institutions Act 1989 and a non-scheduled institution in respect of which such Minister has made an order under section 93 (1) of that Act”;

(d) by substituting for paragraph (f) of section 217 (1) of that Act, the following:

Act 372. “(f) in the case of a company which is a licensed institution, or a scheduled institution in respect of which the Minister charged with responsibility for finance has made an order under section 24 (1) of the Banking and Financial Institutions Act 1989, or a non-scheduled institution in respect of which such Minister has made an order under section 93 (1) of that Act, Bank Negara Malaysia,”;

(e) by deleting paragraph (g) of section 217 (1) of that Act;

(f) by substituting for paragraph (j) of section 218 (1) of that Act the following:

Act 372. “(j) the company has held a licence under the Banking and Financial Institutions Act 1989 or the Islamic Banking Act 1983, and that licence has been revoked or surrendered; or”; and
Act 276.

(g) by substituting for paragraph (k) of section 218 (1) of that Act the following:

“(k) the company has carried on Islamic banking business, licensed business, or scheduled business, or it has accepted,

received or taken deposits in Malaysia, in contravention of the Islamic Banking Act 1983 or the Banking and Financial Institutions Act 1989, as the case may be.”.

FIRST SCHEDULE

(Section 2 (1), paragraph (D) of the definition of "deposit")

Part I

Money paid by any person to—

- (a) the Government of Malaysia or any State;
- (b) the Bank; or
- (c) a statutory body, local authority or co-operative society which is authorised under any written law to accept, receive or take the same;
- (d) its related or associate corporation;
- (dd) Pengurusan Danaharta Nasional Berhad, provided that—*PU(A) 87/1999.*
 - (i) the money is paid for purposes of carrying out its powers under the Pengurusan Danaharta Nasional Berhad Act 1998 [*Act 587*];
 - (ii) more than fifty per cent of its issued share capital is owned by the Minister of Finance incorporated under the Minister of Finance (Incorporation) Act 1957 [*Act 375*];
 - (iii) it borrows from a corporation; and
 - (iv) each borrowing shall be not less than ten million ringgit;
- (e) any other person, including any person referred to in paragraphs (c) (d) and (dd) in relation to any instrument or transaction falling within paragraphs (a) to (e) of the definition of “debenture” under subsection 2(1) of the Securities Commission Act 1993 [*Act 498*] by such other person with the approval of the Bank and in compliance with such conditions as may be imposed by the Bank; or*PU(A) 245/2000.*
- (f) any other person, including any person referred to in paragraphs (c), (d) and (dd), in relation to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures as defined under subsection 2(1) of the Securities Commission Act 1993 by such other person.*PU(A) 245/2000.*

Part II

Money paid to any person, other than a licensed bank, a licensed finance company, a licensed merchant bank or a licensed discount house, by—

- (a) the Government of Malaysia or any State;
- (b) the Bank;

Ord. 42/51.
Sabah Cap. 81.
Sarawak Cap. 114.

- (c) a statutory body, a local authority, a co-operative society or any other person which is authorised under any written law to make such payment;
- (d) a licensed institution, a scheduled institution, an insurance company or a pawnbroker in the ordinary course of its lawful business;
- (e) a moneylender licensed under the Moneylenders Ordinance 1951, the Money Lenders Ordinance of Sabah or the Moneylenders Ordinance of Sarawak in the course of his lawful business of money-lending;
- (ee) Pengurusan Danaharta Nasional Berhad, provided that—PU(A) 87/1999.
 - (i) the money is paid for purposes of carrying out its powers under the Pengurusan Danaharta Nasional Berhad Act 1998, and
 - (ii) more than fifty per cent of its issued share capital is owned by the Minister of Finance incorporated under the Minister of Finance (Incorporation) Act 1957.
- (f) any other person in the course of, and for the purpose of, a *bona fide* lawful business other than money-lending, carried on by such other person;
- (g) an individual where the person to whom the payment is made—
 - (i) is also an individual and the payment is made in the course of customary, social or friendly relationship; or
 - (ii) is his relative,provided that the total number of such individuals or relatives from whom such payments are held by him does not at any one time exceed ten; or
- (h) its related or associate corporations.

Part III

PU(A) 245/2000.

Money paid by a licensed institution to any person in the course of buying or borrowing securities from that person where the securities will be repurchased or returned as part of the same transaction.

SECOND SCHEDULE

(Section 6 (1))

Minimum Criteria

Directors etc. to be fit and proper persons

1. (1) Every person who is, or is to be, a director, controller or manager of the institution is a fit and proper person to hold the particular position which he holds or is to hold.
- (2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfil those responsibilities and to whether the

interests of depositors or potential depositors, if any, of the institution are, or are likely to be, in any way threatened by his holding that position.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has—

- (a) committed an offence involving fraud or other dishonesty, or violence;
- (b) contravened any provision made by or under any written law appearing to the Bank to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
- (c) engaged in any business practices appearing to the Bank to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business; or
- (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

Business to be directed by at least two individuals

2. At least two individuals effectively direct the business of the institution.

Composition of board of directors

3. The directors include such number (if any) of directors without executive responsibility for the management of its business as the Bank considers appropriate having regard to the circumstances of the institution and the nature and scale of its operations.

Business to be conducted in prudent manner

4. (1) The institution conducts, or will conduct, its business in a prudent manner.

(2) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain, net assets which, together with other financial resources available to the institution of such nature and amount as are considered appropriate by the Bank, are—

- (a) of an amount which is commensurate with the nature and scale of the institution's operation; and
- (b) of an amount and nature sufficient to safeguard the interests of its depositors and potential depositors, having regard to the particular factors mentioned in subparagraph (3) and any other factors appearing to the Bank to be relevant.

(3) The particular factors referred to in subparagraph (2) (b) are—

- (a) the nature and scale of the institution's operations; and

- (b) the risks inherent in those operations and, in the operations of any other related corporations of the institution so far as capable of affecting the institution.

Integrity and skill

5. The business of the institution is or will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

Shareholding structure

6. The shareholding structure of the institution is in accordance with the economic policy of Malaysia.

Other criteria as the Bank may prescribe

7. Such other criteria as the Bank, with the concurrence of the Minister, may prescribe.

THIRD SCHEDULE

(Section 2 (1), definition of “scheduled business”)

1. Building credit business.
2. (Deleted).
3. Development finance business.
4. Factoring business.
5. Leasing business.

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FOURTH SCHEDULE

(Section 103)

Offences and Penalties

<i>First Column</i>	<i>Second Column</i>	<i>Third Column</i>	<i>Fourth Column</i>	<i>Fifth Column</i>	<i>Sixth Column</i>
Serial No.	Provision of this Act under section 103 (a)	Provision of this Act under section 103 (b)	Imprisonment	Fine \$	Daily Fine \$
1.	Section 4 (a)	—	10 years	10 million	100 thousand
2.	Section 4 (b)	—	5 years	5 million	50 thousand
3.	—	Section 6 (4)	—	3 million	3 thousand
4.	—	Section 8 (1)	10 years	10 million	10 thousand
5.	—	Section 9	—	3 million	3 thousand

6.	Section 13	—	10 years	10 million	100 thousand
7.	Section 14 (1)	—	—	1 million	1 thousand
8.	Section 14 (2)	—	—	1 million	1 thousand
9.	Section 15 (1)	—	5 years	5 million	5 thousand
10.	Section 16	—	—	5 thousand	5 hundred
11.	Section 17 (1)	—	—	1 million	—
12.	Section 17 (2)	—	—	100 thousand	5 hundred
13.	Section 19 (1)	—	5 years	5 million	5 thousand
14.	Section 20 (1)	—	5 years	5 million	5 thousand
15.	Section 20 (2)	—	10 years	10 million	10 thousand
16.	Section 20 (3)	—	5 years	5 million	5 thousand
17.	—	Section 21 (2)	—	500 thousand	5 hundred
18.	Section 22	—	—	100 thousand	5 hundred
19.	Section 23	—	2 years	1 million	1 thousand
20.	Section 25 (1)	—	10 years	10 million	100 thousand
21.	Section 26 (1)	—	10 years	10 million	—
22.	—	Section 26 (2)	—	3 million	3 thousand
23.	Section 27	—	5 years	5 million	—
24.	Section 28	—	10 years	10 million	—
25.	Section 29	—	5 years	5 million	—
26.	Section 30	—	—	1 million	—
27.	—	Section 31 (2)	—	1 million	—
28.	Section 32 (1)	—	3 years	3 million	3 thousand
29.	Section 33	—	3 years	3 million	3 thousand
30.	Section 34 (1)	—	—	1 million	1 thousand

31.	—	Section 34 (2)	—	1 million	—
32.	—	Section 35 (1)	—	1 million	1 thousand
33.	Section 36 (1)	—	—	1 million	1 thousand
34.	—	Section 36 (2)	—	1 million	—
35.	—	Section 37 (1)	—	1 million	1 thousand
36.	—	Section 38 (1)	—	One percentum of the shortfall for the day or each of the days to which the charge relates	—
37.	Section 38 (5)	—	—	One percentum of the shortfall for the day or each of the days to which the charge relates	—
38.	—	Section 39 (1)	—	One percentum of the shortfall for each day the offence continues	—
39.	Section 40 (1)	—	1 year	1 million	1 thousand
40.	Section 40 (2)	—	1 year	1 million	1 thousand
41.	Section 40 (3)	—	1 year	1 million	1 thousand
42.	Section 40 (4)	—	3 years	3 million	—
43.	Section 40 (6)	—	3 years	3 million	—
44.	Section 40 (7)	—	—	1 million	1 thousand
45.	Section 40 (10)	—	3 years	3 million	3 thousand
46.	Section 40 (14)	—	3 years	3 million	3 thousand

47.	Section 40 (15)	—	3 years	3 million	3 thousand
48.	Section 40 (16)	—	3 years	3 million	3 thousand
49.	Section 41 (1)	—	—	1 million	1 thousand
50.	Section 41 (2)	—	—	1 million	1 thousand
51.	—	Section 41 (3)	—	1 million	1 thousand
52.	Section 41 (4)	—	—	1 million	—
53.	Section 41 (5)	—	—	1 million	1 thousand
54.	Section 42	—	—	1 million	1 thousand
55.	Section 43 (1)	—	—	1 million	1 thousand
56.	—	Section 43 (2)	—	1 million	1 thousand
57.	Section 43 (3)	—	—	1 million	1 thousand
58.	Section 44 (1)	—	5 years	5 million	5 thousand
59.	Section 45 (1)	—	5 years	5 million	—
60.	Section 45 (3)	—	5 years	5 million	—
61.	Section 46 (1)	—	5 years	5 million	50 thousand
62.	Section 47	—	5 years	5 million	5 thousand
63.	Section 49 (1)	—	10 years	10 million	—
64.	—	Section 49 (7)	5 years	5 million	5 thousand
65.	Section 50 (4)	—	—	1 million	1 thousand
66.	Section 50 (5)	—	—	1 million	1 thousand
67.	Section 51	—	5 years	5 million	5 thousand
68.	Section 52 (1)	—	5 years	5 million	5 thousand
69.	Section 52 (2)	—	5 years	5 million	5 thousand
70.	Section 52 (3)	—	5 years	5 million	—

71.	—	Section 54 (1)	5 years	5 million	—
72.	Section 54 (4)	—	5 years	5 million	5 thousand
73.	—	Section 54 (10)	—	1 million	1 thousand
74.	Section 55 (1)	—	3 years	3 million	—
75.	Section 56 (1)	—	3 years	3 million	—
76.	—	Section 56 (2)	3 years	3 million	3 thousand
77.	Section 56 (3)	—	3 years	3 million	3 thousand
78.	Section 57 (1)	—	3 years	3 million	—
79.	Section 57 (2)	—	—	3 million	—
80.	Section 58 (1)	—	1 year	1 million	—
81.	Section 58 (2)	—	1 year	1 million	—
82.	Section 59	—	3 years	3 million	—
83.	Section 60 (1)	—	5 years	5 million	—
84.	Section 60 (4)	—	5 years	5 million	—
85.	Section 60 (5)	—	5 years	5 million	—
86.	Section 60 (6)	—	5 years	5 million	5 thousand
87.	—	Section 60 (9)	5 years	5 million	—
88.	Section 61 (1)	—	5 years	5 million	—
89.	—	Section 61 (3)	1 year	1 million	—
90.	Section 62(1)	—	5 years	5 million	—
91.	Section 63	—	5 years	5 million	—
92.	Section 64 (1)	—	3 years	3 million	3 thousand
93.	Section 64 (3)	—	3 years	3 million	—
94.	Section 64 (4)	—	3 years	3 million	3 thousand
95.	Section 64 (5)	—	3 years	3 million	—

96.	Section 64 (6)	—	1 year	1 million	—
97.	Section 65 (1)	—	5 years	5 million	—
98.	—	Section 65 (2)	3 years	3 million	3 thousand
99.	Section 66 (1)	—	—	1 million	1 thousand
100.	Section 66 (3)	—	—	1 million	1 thousand
101.	—	Section 67	5 years	5 million	—
102.	Section 68 (1)	—	3 years	3 million	3 thousand
103.	Section 71 (1)	—	3 years	3 million	3 thousand
104.	Section 71 (3)	—	5 years	3 million	3 thousand
105.	Section 72	—	5 years	3 million	3 thousand
106.	—	Section 73 (1) (A)	10 years	10 million	10 thousand
107.	—	Section 73 (1) (B)	10 years	10 million	10 thousand
108.	—	Section 73 (1) (D) (ii)	—	1 million	1 thousand
109.	—	Section 73 (1) (E)	—	1 million	1 thousand
110.	—	Section 73 (4)	10 years	10 million	10 thousand
111.	—	Section 73 (5)	10 years	10 million	10 thousand
112.	Section 74 (2)	—	—	1 million	1 thousand
113.	Section 75 (1)	—	3 years	3 million	3 thousand
114.	Section 76 (1)	—	5 years	5 million	5 thousand
115.	Section 76 (4)	—	5 years	5 million	5 thousand
116.	—	Section 80 (1) (a)	5 years	5 million	5 thousand
117.	—	Section 80 (1) (b)	5 years	5 million	5 thousand
118.	—	Section 80 (1) (d)	5 years	5 million	5 thousand
119.	—	Section 80 (1) (e)	5 years	5 million	5 thousand
120.	—	Section 80	5 years	5 million	5

		(4)			thousand
121.	Section 85	—	5 years	5 million	5 thousand
122.	—	Section 86 (1)	—	1 million	1 thousand
123.	Section 86 (2)	—	—	1 million	1 thousand
124.	Section 87 (2)	—	5 years	5 million	5 thousand
125.	—	Section 94 (1)	5 years	5 million	5 thousand
126.	Section 97 (1)	—	3 years	3 million	—
127.	Section 97 (3)	—	3 years	3 million	—
128.	Section 99 (2)	—	3 years	3 million	—
129.	Section 99 (3)	—	3 years	3 million	—
130.	Section 105	—	10 years	10 million	—
131.	Section 113 (1)	—	3 years	3 million	3 thousand
132.	Section 115 (1)	—	10 years	10 million	—
133.	—	Section 118 (2)	1 year	1 million	1 thousand
134.			(Deleted)		
135.			(Deleted)		
136.			(Deleted)		
137.			(Deleted)		
138.			(Deleted)		
139.			(Deleted)		
140.	Section 120 (2)	—	1 year	1 million	—
141.	Section 121 (7)	—	10 years	10 million	10 thousand
142.	Section 121 (8)	—	10 years	10 million	10 thousand
143.	—	Section 129 (5)	—	1 million	1 thousand
144.	Section 129 (6)	—	10 years	10 million	10 thousand
143.	—	Section 129 (5)	—	1 million	1 thousand
144.	Section	—	10	10 million	10

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years

thousand