

Central Bank of Malaysia Act 2009



LAWS OF MALAYSIA

Act 701

Central Bank of Malaysia Act 2009

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An Act to provide for the continued existence of the Central Bank of Malaysia and for the administration, objects, functions and powers of the Bank, for consequential or incidental matters.

[25 November 2009 *PU(B)* 533/2009.
except paragraph 23(8)(b) and sections 61 to 66.]

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PART I

PRELIMINARY

Short title and commencement 1. (1) This Act may be cited as the Central Bank of Malaysia Act 2009.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different parts or different provisions of this Act.

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

“Bank” means Bank Negara Malaysia or in English, the “Central

Bank of Malaysia”;

“Board” means the Board of Directors of the Bank;

“Board Audit Committee” means the Board Audit Committee established under paragraph 21(1)(b);

“Board Governance Committee” means the Board Governance Committee established under paragraph 21(1)(a);

“Board Risk Committee” means the Board Risk Committee established under paragraph 21(1)(c);

“capital instruments” means preference shares, loan stocks, subordinated term debts or other instruments approved by the Bank to be eligible as capital;

“constituent document”, in relation to a body corporate or unincorporate, means any document or instrument, under or by which the body is constituted, established, incorporated, or its governing and administrative structure, the scope of its functions, business, powers or duties are set out, whether contained in one or more but not limited to the following documents or instruments:

- (a) statute;
- (b) charter;
- (c) memorandum of association;
- (d) articles of association;
- (e) constitution;
- (f) rules or by-laws; and
- (g) partnership agreement;

“Deputy Governor” means a Deputy Governor of the Bank;

“derivatives” means financial instruments including an option, a swap, a futures or forward contract or any other financial product or any combination of such instruments whose market price, value, delivery or payment obligations are derived from, referenced to or based on, but not limited to, underlying securities or commodities prices, assets, rates (including interest rates or exchange rates) or indices;

“director” means a director of the Bank appointed under subsection 16(1), and includes the Governor and the Deputy Governors;

“financial institution” means a person carrying on a financial business regulated under the laws enforced by the Bank and in addition includes any—

- (a) person who operates any payment system or issues any payment instrument; and
- (b) person carrying on any other financial business as the Minister may prescribe;

“financial markets” includes the money market, the foreign exchange market, the capital market and the derivatives market;

“Financial Stability Executive Committee” means the Financial Stability Executive Committee established under section 37;

“financing” means the giving of any advance, loan, credit or other facility in whatever form or by whatever name called, including the giving of a guarantee or undertaking of any surety

obligations for another person and where such financing is extended in accordance with the Shariah shall include, and may be in the form of, without limitation, any sale or purchase arrangement, joint venture arrangement, deferred payment sale, return sharing arrangement or any other financing arrangement made in accordance with the Shariah;

“foreign currency” means currency notes or coins which are legal tender in any country, territory or place outside Malaysia and any reference to foreign currency in this Act includes a reference to any right to receive foreign currency in respect of any credit or balance at a bank or any other similar institution in or outside Malaysia;

“Governor” means the Governor of the Bank;

“international financial institution” means any institution which is established in or outside Malaysia by more than one country, central bank or monetary authority in relation to financial or monetary matters and includes the Asian Development Bank, the Bank for International Settlements, the International Bank for Reconstruction and Development, the International Monetary Fund, the Islamic Development Bank and the Islamic Financial Services Board;

“Islamic financial business” means any financial business in ringgit or other currency which is subject to the laws enforced by the Bank and consistent with the Shariah;

“Islamic financial institution” means a financial institution carrying on Islamic financial business;

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

“Monetary Policy Committee” means the Monetary Policy Committee established under section 23;

“officer” means any officer of the Bank appointed under section 83;

“payment systems” means any system or arrangement for the transfer, clearing or settlement of funds or securities;

“prescribed” means prescribed under the Act from time to time by order published in the *Gazette*;

Act 125. “related corporation”, in relation to a corporation, means a corporation which is deemed to be related to the first-mentioned corporation under section 6 of the Companies Act 1965 [*Act 125*];

Act 519. “repealed Act” means the Central Bank of Malaysia Act 1958 [*Act 519*];

“return” includes any form of rental, profit, dividend or benefit, including any fee or gift, payable or to be given in relation to financing extended in accordance with the Shariah;

“Shariah Advisory Council” means the Shariah Advisory Council on Islamic Finance established under section 51;

“specified” means specified under the Act from time to time in writing;

“supervisory authority” means any authority, body or agency in or outside Malaysia other than the Bank which is responsible for the supervision or oversight of any financial institution, financial market, capital market intermediary or participant or payment system.

(2) For the purposes of this Act—

“Board Committees” refers collectively to the committees of the Board established under section 21;

“financial business” refers collectively to conventional financial business and Islamic financial business;

“financial system” refers collectively to financial institutions, capital market intermediaries or participants, financial markets and payment systems in Malaysia.

(3) For the purposes of this Act—

- (a) a power to prescribe includes the power to make different provisions in the order, for different persons or different classes, categories or descriptions of persons; and
- (b) a power to specify includes the power to specify differently for different persons or different classes, categories or descriptions of persons.

(4) A reference to a financial institution or person includes a reference to a class, category or description of such institution or person.

(5) Where under this Act, power is given to the Bank to require any person, or where any person is required under this Act, to submit to the Bank any data, information or document—

- (a) the Bank may specify that the data, information or document shall be submitted, within a period, at such intervals, in the manner or form as the Bank may set out in the specification; and
- (b) such person shall not submit any data, information or document—
 - (i) which he knows, or has reason to believe, to be false, incomplete, inaccurate or misleading; or
 - (ii) in respect of which there is a material error or omission.

PART II

THE BANK, ITS OBJECTS AND FUNCTIONS

The Bank established under Central Bank of Malaysia Act 1958

3. (1) Notwithstanding the repeal of the Central Bank of Malaysia Act 1958 by section 99, the body corporate established under the repealed Act under the name “Bank Negara Malaysia” or, in English, “Central Bank of Malaysia” shall continue to be in existence under and subject to the provisions of this Act.

(2) The Bank is the same body corporate established under the repealed Act.

(3) The Bank shall continue to have perpetual succession and a common seal and may sue and be sued in its own name.

(4) The Bank shall have its Head Office in Kuala Lumpur and may open branches and appoint agents and correspondents in or outside Malaysia.

(5) The Bank may, by instrument, under its common seal, appoint a person whether in or outside Malaysia to be its attorney, and the person so appointed may, subject to the instrument, do any act or execute any power or function which he is authorized by the instrument to do or execute.

Central bank for Malaysia 4. The Bank shall be the central bank for Malaysia.

Principal objects and functions of the Bank 5. (1) The principal objects of the Bank shall be to promote monetary stability and financial stability conducive to the sustainable growth of the Malaysian economy.

(2) The primary functions of the Bank are as follows:

- (a) to formulate and conduct monetary policy in Malaysia;
- (b) to issue currency in Malaysia;
- (c) to regulate and supervise financial institutions which are subject to the laws enforced by the Bank;
- (d) to provide oversight over money and foreign exchange markets;
- (e) to exercise oversight over payment systems;
- (f) to promote a sound, progressive and inclusive financial system;
- (g) to hold and manage the foreign reserves of Malaysia;
- (h) to promote an exchange rate regime consistent with the fundamentals of the economy; and
- (i) to act as financial adviser, banker and financial agent of the Government.

(3) The Bank shall have all the powers necessary, incidental or ancillary to give effect to its objects and carry out its functions.

(4) The Bank in giving effect to its objects and carrying out its functions under this Act shall have regard to the national interest.

PART III

FINANCIAL PROVISIONS

Capital 6. (1) The capital of the Bank shall be one hundred million ringgit.

(2) The capital may be increased by such amount as the Minister may approve from time to time and the Government shall subscribe and pay the amount of the increase to the Bank.

(3) The payment of the increase in capital referred to in subsection (2) may be made by way of transfer from the General Reserve Fund as the Minister may from time to time approve.

General Reserve Fund 7. (1) There shall be a General Reserve Fund which shall include the amount standing to the credit of the General Reserve Fund established under section 7 of the repealed Act immediately before the coming into operation of this Act and such other amounts as are placed to the credit of the General Reserve Fund under this Act.

(2) At the end of each financial year, the net profit of the Bank

for that year shall be determined after allowing for the expenses of operations in giving effect to its objects, carrying out its functions and conducting its business or affairs, including contributions to staff welfare, provident and pension funds, grants or other contributions to such persons as may be provided by this Act or other written law and after provision has been made for bad and doubtful debts, diminution in value of assets and other contingencies as are usually provided for by banks.

(3) The Bank may transfer any amount from the net profit to any contingency reserve, fluctuation reserve or such other reserve as the Board deems prudent or necessary.

(4) The net profit of the Bank less any unrealized gains and after the transfers under subsection (3) shall be dealt with as follows:

- (a) such amount as the Minister, on the recommendation of the Board, so determines shall be placed to the credit of the General Reserve Fund; and
- (b) the remainder shall be paid to the Government:

Provided that—

- (i) in the case of any year at the end of which the General Reserve Fund is less than the capital of the Bank, the whole of the net profit shall be credited to the General Reserve Fund; and
- (ii) in the case of any year at the end of which the General Reserve Fund is not less than the capital of the Bank, but less than twice the capital of the Bank, not less than thirty per centum of the net profit shall be credited to the General Reserve Fund.

(5) Nothing in this section shall prevent the Bank from transferring such amounts from the General Reserve Fund to any contingency reserve, fluctuation reserve or such other reserve as the Board deems prudent or necessary.

- Financial year** 8. The financial year of the Bank shall begin on the first day of January and end on the thirty-first day of December of each year.
- Requirement to keep accounts and other records** 9. The Bank shall cause proper accounts and other records to be kept in respect of its business, affairs and operations and shall, as soon as practicable, after the end of each financial year, cause to be prepared financial statements for that financial year.
- Accounting standards** 10. In preparing its financial statements, the Bank shall comply with accounting standards to the extent that it is, in the opinion of the Board, appropriate to do so, having regard to the objects and functions of the Bank.
- External audit** 11. The Auditor General shall audit the accounts of the Bank.
- Statement of assets and liabilities** 12. (1) The Bank shall, immediately after the fifteenth day and after the last day of each month, prepare and publish a statement of its assets and liabilities as at the close of business on such days respectively or, if either of those days is a holiday, then at the close

of business on the last business day preceding those days.

(2) A copy of the statement made under subsection (1) shall be submitted to the Minister.

Preparation and
publication of
financial
statements and
report

13. (1) The Bank shall within three months from the close of its financial year—

- (a) submit to the Minister a copy of the financial statements of the Bank prepared under section 9 and certified by the Auditor General, and such statements shall then be published in the *Gazette*; and
- (b) submit to the Minister a report by the Board on the working of the Bank throughout the year and such report shall be published by the Bank.

(2) The financial statements of the Bank and the report referred to in paragraph (1)(b) shall be laid before the Senate and the House of Representatives or if the Senate and the House of Representatives are not then sitting, at the sitting of the following meeting of the Senate and the House of Representatives.

PART IV

GOVERNANCE OF THE BANK

Board of Directors

14. (1) There shall be a Board of Directors of the Bank.

(2) The Board shall—

- (a) be responsible for the general administration of the affairs and business of the Bank and the approval of the budget and operating plan of the Bank;
- (b) have oversight of the management of the Bank and keep under constant review the performance of the Bank in giving effect to its objects, carrying out its functions and the use of the resources of the Bank; and
- (c) be responsible for such other matters as provided under this Act.

(3) The Board shall consist of the following members:

- (a) the Governor;
- (b) not more than three Deputy Governors; and
- (c) not less than five but not more than eight directors appointed under subsection 16(1).

(4) The Board may require the Bank to produce any book or document and shall have access to any information which is necessary or relevant for the carrying out of its functions under this Act.

(5) For the purposes of carrying out its functions under this Act, the Board may issue by-laws as are necessary and expedient in relation to the administration, affairs and business of the Bank or in

respect of any other matters as set out in this Act.

Governor and Deputy Governor 15. (1) The Governor shall be appointed by the Yang di-Pertuan Agong and the Deputy Governors by the Minister.

(2) The Governor and Deputy Governors shall be persons of impeccable reputation with proven experience and recognized knowledge in monetary or financial matters.

(3) The Governor and Deputy Governors shall be appointed on such terms and conditions as provided for in their respective letters of appointment.

(4) The Governor shall be appointed for a term of five years and the Deputy Governors shall each be appointed for a term of three years.

(5) The Governor and Deputy Governors shall be eligible for reappointment.

(6) The Governor shall manage the Bank and may, unless otherwise provided under this Act or any other written law, exercise all powers and do all acts which may be exercised or done by the Bank under this Act or such written law.

(7) During the absence of the Governor or inability of the Governor to act due to any cause, the Deputy Governor designated by the Board, on the recommendation of the Board Governance Committee, shall manage the Bank and exercise all powers and do all acts which may be exercised or done by the Governor under subsection (6).

(8) The Governor and Deputy Governors shall, unless provided otherwise under this Act, devote the whole of their professional time to the service of the Bank and while holding office shall not occupy any other office or employment whether remunerated or not:

Provided that they may if so appointed with the approval of the Minister—

- (a) become directors, governors or members of a board, by whatever name called, or of a committee or task force of any international financial institution or international organization which the Government or Bank participates in or is a member of or to which the Government has adhered or given support or approval;
- (b) become directors of any corporation which is established by the Bank under this Act or of any corporation in Malaysia which the Bank has acquired or holds shares in;
- (c) become members of any committee or commission referred to in subsection 70(1); or
- (d) become members of any charitable or educational organisation.

(9) Notwithstanding subsection (8) or any other provision in this Act, the Governor or Deputy Governors may be appointed by any written law to exercise such powers, discharge such duties, and perform such functions under any written law, and to be conferred with such title of office as may be set out in such written law.

(10) The Governor and Deputy Governors shall be accountable to the Board for their acts and decisions.

(11) The Governor may resign from office by notice in writing under his hand addressed to the Yang di-Pertuan Agong and in the case of a Deputy Governor by notice in writing under his hand addressed to the Minister.

Appointment of director **16.** (1) The directors referred to in paragraph 14(3)(c) shall be appointed by the Yang di-Pertuan Agong on the advice of the Minister on such terms and conditions as provided for in their respective letters of appointment.

(2) Before giving advice on an appointment of a person to the office of director under subsection (1), the Minister shall have regard to—

- (a) that person's probity and standing;
- (b) that person's knowledge, skill and experience in banking, economics or finance; and
- (c) the likelihood of any conflict between the interests of the Bank and any interest which that person has or represents.

(3) A director shall, at all times, act honestly and in the best interest of the Bank and use reasonable diligence in the discharge of the duties of his office.

(4) A director shall not make improper use of any information acquired or exercise any improper influence by virtue of his position as a director to gain, directly or indirectly, an advantage for himself or for any other person.

(5) A director shall not act as representative or delegate on the Board from any commercial, financial, agricultural, industrial or other interests with which he may be connected:

Provided that the prohibition shall not extend to any director holding or for the time being acting in the office of Secretary General to the Treasury.

(6) Except as provided in paragraph 17(2)(a), a director appointed under subsection (1) shall hold office for a term of three years and shall be eligible for reappointment.

(7) The directors appointed under subsection (1) shall be paid by the Bank such remuneration and allowances as may be approved by the Minister.

(8) A director may resign from office by notice in writing under his hand addressed to the Yang di-Pertuan Agong.

Disqualification of Governor, Deputy Governor and director **17.** (1) No person shall be appointed or shall remain as Governor, Deputy Governor or other director of the Bank if he—

- (a) is or becomes a member of the Senate or House of Representatives or any Legislative Assembly;
- (b) subject to paragraph (2)(a), is or becomes a public officer;
- (c) subject to paragraph (2)(b), is or becomes an officer or a director of any entity under the supervision of the Bank;
- (d) is convicted of a criminal offence involving dishonesty or of any criminal offence for which he has been sentenced to imprisonment;

- (e) is or becomes bankrupt or suspends payment or compounds with his creditors;
 - (f) is or becomes involved in any activity which may interfere with his independence in discharging his duties; or
 - (g) is not a Malaysian citizen.
- (2) Notwithstanding subsection (1)—
- (a) a director appointed under subsection 16(1) may be the person holding the office of Secretary General to the Treasury, and notwithstanding subsection 16(6) shall remain a member of the Board for so long as he holds the office of Secretary General to the Treasury or for such lesser time as may be provided in his letter of appointment; and
 - (b) a Deputy Governor appointed with the approval of the Board to the board of any body corporate established or acquired by the Bank under section 48 shall not be required to vacate his office as member of the Board.
- (3) The Yang di-Pertuan Agong may terminate the appointment of the Governor or any director appointed under subsection 16(1), and the Minister may terminate the appointment of any Deputy Governor, if he—
- (a) becomes of unsound mind or incapable of carrying out his duties;
 - (b) is guilty of serious misconduct in relation to his duties;
 - (c) is absent, except on leave granted by the Minister in the case of the Governor, or by the Governor in the case of all other directors, from all meetings of the Board held during two consecutive months or during any three months in any period of twelve months;
 - (d) fails to comply with his obligations under section 20; or
 - (e) is disqualified under subsection (1).

Vacancies in office of Governor, Deputy Governor or director **18.** If the office of the Governor or any Deputy Governor or any other director becomes vacant before the expiry of the term for which he has been appointed, another person may be appointed by the Yang di-Pertuan Agong in the case of the Governor or a director appointed under subsection 16(1), or by the Minister in the case of a Deputy Governor, for the unexpired period of the term of office of the person in whose place he is appointed.

Meetings of Board **19.** (1) The Governor shall be the chairman of the Board and in his absence, the directors present shall elect a chairman among the directors appointed under subsection 16(1) and the person so elected shall preside and have all the powers of the chairman.

(2) The Board may meet as often as necessary but not less than once in each month.

(3) The chairman or any other director may, at any time, call a meeting of the Board.

(4) The person calling a meeting shall ensure that—

- (a) each director is given at least three days' notice of the meeting; or

(b) if the meeting is to be convened as a matter of urgency, the directors agree to waive the requirement under paragraph (a).

(5) At any meeting of the Board, the quorum shall be five directors, the majority of whom shall be directors appointed under subsection 16(1) and decisions shall be adopted by a simple majority of the votes of the directors present and voting:

Provided that in the case of an equality of votes, the chairman shall have a casting vote.

(6) The chairman of the Board may authorize a director to use live video, television links or other appropriate communication or multimedia facilities to participate in any meeting of the Board where, prior to the meeting, the director, by notification to the chairman, has requested for such authorization and the director shall be treated as being present for the meeting.

(7) A resolution in writing, signed by all of the directors, shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held and any such resolution may consist of several documents in like form, each signed by one or more directors.

Disclosure of interest

20. (1) A director who has any direct or indirect interest in any dealing or business with the Bank or in the exercise or proposed exercise by the Bank of a power shall disclose that interest at the first meeting of the Board at which he is present after the relevant facts have come to his knowledge.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Board and, after the disclosure, the director—

(a) shall not be present at, or take part in, any deliberation or decision of the Board with respect to that dealing or business or the exercise or proposed exercise of the power; and

(b) shall be disregarded for the purpose of constituting a quorum of the Board for any such deliberation or decision.

(3) No act or proceeding of the Board shall be invalidated on the ground of the contravention of subsection (1) by a director.

(4) A director who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit.

Board committees

21. (1) The Board shall establish the following committees of the Board:

(a) the Board Governance Committee;

(b) the Board Audit Committee; and

(c) the Board Risk Committee.

(2) Each Board Committee shall be responsible for such matters and shall have such functions as provided under this Act.

(3) The Board Governance Committee shall have the following functions:

(a) to recommend members of the Monetary Policy Committee,

Assessor Committee and other committees of the Bank as may be appointed or established by the Bank from time to time;

- (b) to examine and recommend to the Board the budget and operating plan of the Bank for approval; and
- (c) to be responsible for such other matters as provided under this Act.

(4) The functions of the Board Audit Committee shall be to assist the Board in its oversight of—

- (a) the integrity of the accounts and financial statements of the Bank;
- (b) the effectiveness of the internal control system of the Bank;
- (c) the performance of the internal audit function of the Bank; and
- (d) the compliance by the Bank with legal and regulatory requirements.

(5) The functions of the Board Risk Committee shall be to assist the Board in its oversight of the review and management of the enterprise risks of the Bank.

(6) Each Board Committee shall consist of at least three directors appointed under subsection 16(1).

(7) Unless the Board determines otherwise, the procedures of each Board Committee shall be as set out in the First Schedule.

PART V

MONETARY FUNCTIONS AND OPERATIONS OF THE BANK

Monetary policy 22. (1) In promoting monetary stability, the Bank shall pursue a monetary policy which serves the interests of the country with the primary objective of maintaining price stability giving due regard to the developments in the economy.

(2) The monetary policy of the Bank shall be formulated and implemented autonomously by the Bank, without any external influence.

Monetary Policy Committee 23. (1) There shall be a committee of the Bank to be known as the “Monetary Policy Committee” which shall have the responsibility for formulating the monetary policy and the policies for the conduct of monetary policy operations.

(2) The Monetary Policy Committee shall consist of the Governor, the Deputy Governors and not less than three but not more than seven other members.

(3) Members of the Monetary Policy Committee may be appointed from amongst directors appointed under subsection 16(1) or officers and such members shall be appointed by the Board on the recommendation of the Board Governance Committee.

(4) In addition to subsection (3), the Minister may appoint any other person as a member of the Monetary Policy Committee on

the recommendation of the Board Governance Committee.

(5) The Board Governance Committee, in recommending any person to be a member of the Monetary Policy Committee, shall at all times be satisfied that the person has the expertise and experience relevant to the responsibility and functions of the Monetary Policy Committee and be a person of probity, competence and sound judgment.

(6) The members of the Monetary Policy Committee, other than the Governor and Deputy Governors, may each be appointed for a term not exceeding three years and shall be eligible for reappointment.

(7) The Governor and Deputy Governors shall remain as members of the Monetary Policy Committee for so long as the Governor or Deputy Governors hold office as Governor or Deputy Governor.

(8) No person shall be appointed as a member of the Monetary Policy Committee or shall remain as a member if he—

- (a) is or becomes a member of the Senate or House of Representatives or any Legislative Assembly;
- (b) is or becomes an officer or a director of any entity under the supervision of the Bank; *nyf.*
- (c) is or becomes a public officer unless otherwise approved by the Board or in the case of a person appointed under subsection (4), the Minister;
- (d) is convicted of a criminal offence involving dishonesty or of any criminal offence for which he has been sentenced to imprisonment;
- (e) is or becomes bankrupt or suspends payment or compounds with his creditor;
- (f) is or becomes involved in any activity which may interfere with his independence in discharging his duties; or
- (g) is not a Malaysian citizen.

(9) The Board, or in the case of a person appointed under subsection (4), the Minister, may remove a member of the Monetary Policy Committee if—

- (a) the Board or the Minister, as the case may be, is satisfied that he is guilty of serious misconduct in relation to his duties as a member of the committee;
- (b) he becomes of unsound mind or incapable of carrying out his duties; or
- (c) he is disqualified under subsection (8).

(10) The monetary policy of the Bank shall be formulated only at a duly convened meeting of the Monetary Policy Committee.

(11) The Monetary Policy Committee shall be chaired by the Governor or in the absence of the Governor, by the Deputy Governor designated by the Board under subsection 15(7).

(12) The First Schedule shall apply to the Monetary Policy Committee.

Publication of **24.** Following each meeting of the Monetary Policy Committee,

monetary policy statement the Bank shall publish a monetary policy statement on the decision made at the meeting and the rationale for such decision.

Monetary policy operations **25.** (1) In this Part, “monetary policy operations” means any transaction undertaken by the Bank to manage liquidity in the financial system.

(2) The Monetary Policy Committee shall establish general principles, guidelines, and terms and conditions for the monetary policy operations carried out by the Bank under this Part.

Conduct of monetary policy operations **26.** (1) The Bank shall conduct monetary policy operations to implement the decisions of the Monetary Policy Committee.

(2) For the purpose of conducting monetary policy operations, the Bank—

- (a) may issue securities in its own name provided that the total amount of securities issued shall not at any time exceed the amount of the foreign reserves;
- (b) may purchase, sell and redeem securities issued by the Bank pursuant to paragraph (a);
- (c) may require a reserve to be held at the Bank by each financial institution;
- (d) shall have the powers set out in section 75, in particular paragraphs (c), (d), (e), (f), (g), (h), (i) and (l); and
- (e) may undertake such other financial transactions involving currencies, securities, precious metals or other commodities or financial instruments as approved by the Monetary Policy Committee.

(3) The terms and conditions of a requirement under paragraph (2)(c) may include—

- (a) the principles and method for the determination of reserve;
- (b) the penalty which shall not exceed one-tenth of one per centum of the amount of the deficiency for every day during which the deficiency continues or other sanctions for any non-compliance with the requirement;
- (c) in the case of—
 - (i) an Islamic financial institution, the returns which may be given; or
 - (ii) any other financial institution, the interest which may be paid,by the Bank on the reserve.

PART VI

FINANCIAL STABILITY FUNCTIONS AND POWERS OF THE BANK

Chapter 1

Powers for promoting financial stability

- Dual financial system **27.** The financial system in Malaysia shall consist of the conventional financial system and the Islamic financial system.
- Financial stability powers under the laws **28.** The powers conferred upon the Bank under this Act and the written laws set out in the Second Schedule are for the purposes of promoting financial stability.
- Interpretation **29.** For the purposes of this Chapter, “risk to financial stability” means a risk which in the opinion of the Bank disrupts, or is likely to disrupt, the financial intermediation process including the orderly functioning of the money market and foreign exchange market, or affects, or is likely to affect, public confidence in the financial system or the stability of the financial system.
- Information for purposes of financial stability **30.** (1) In the interest of financial stability, the Bank may request any supervisory authority or Government agency in Malaysia overseeing the following persons to submit to the Bank any information or document relating to the activities, financing, accounts, transactions, customers’ accounts or any other information of such persons which the Bank considers necessary for giving effect to the financial stability object under this Act:
- (a) any financial institution;
 - (b) any participant, intermediary, exchange, depository or provider of clearing, settlement or other services in the financial markets;
 - (c) any other person which in the opinion of the Bank may pose a risk to financial stability; or
 - (d) any related corporation of a person referred to in paragraph (a), (b) or (c).
- (2) Where any person referred to in paragraph (1)(a), (b), (c) or (d) is not under the supervision or oversight of any supervisory authority or Government agency, the Bank shall by order in writing require such person to submit the information or document required under subsection (1).
- Order for financial stability **31.** (1) Where the Bank considers it necessary in the interest of financial stability, the Bank may issue an order in writing requiring any person to take such measures as the Bank may consider necessary or appropriate to avert or reduce any risk to financial stability.
- (2) Before issuing an order under subsection (1), the Bank shall give the person an opportunity to make representation.
- (3) Notwithstanding subsection (2), an order under subsection (1) may be issued first and the opportunity to make representations shall be given immediately after the order has been issued if any delay would aggravate the risk to financial stability.
- (4) An order issued under subsection (1) may be amended or modified where the representation is made after the order is

issued.

(5) Any person who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

Power for averting or reducing risk to financial stability

32. (1) Without prejudice to section 31, the Bank may, for the purpose of averting or reducing any risk to financial stability—

- (a) provide liquidity assistance to any financial institution;
- (b) enter into arrangements with other central banks to provide liquidity assistance to subsidiaries or branches outside Malaysia of any financial institution established in Malaysia; or
- (c) in the case of any financial institution which has ceased to be viable or which the Bank considers likely to become non-viable—
 - (i) purchase or subscribe to the shares or other capital instruments issued by such financial institution;
 - (ii) provide financing to any other financial institution or a body corporate established by the Bank under paragraph 48(1)(d) to purchase the whole or part of the business, assets, liabilities, shares or other capital instruments of such financial institution; or
 - (iii) subject to subsection 38(2), by order published in the *Gazette*, vest in the Bank, a body corporate established by the Bank under paragraph 48(1)(d), another financial institution or any other person the whole or part of the business, assets or liabilities of, or all or any of the shares or other capital instruments issued by, such financial institution.

(2) Notwithstanding the definition of “financial institution” in subsection 2(1), the financial institution for purposes of paragraph 1(a) shall include any financial institution which is under the supervision or oversight of any other supervisory authority or is not under the supervision or oversight of the Bank or any other supervisory authority.

Due diligence

33. In relation to a financial institution referred to in paragraph 32(1)(a) or (b) or any of its related corporations, the Bank may conduct due diligence and examine, take possession of or make copies or extracts of any books, documents, accounts and transactions of the financial institution or any of its related corporations or require such institution or any of its related corporations to submit any information or document the Bank requires prior to the tabling of any proposal at a meeting of the Financial Stability Executive Committee under subparagraph 38(1)(a)(ii) or prior to providing any liquidity assistance or during the period where any such assistance is being provided.

Liquidity assistance under paragraph 32(1)(a) or (b)

34. Liquidity assistance under paragraph 32(1)(a) or (b) may be provided by way of—

- (a) financing against such form of security as the Bank may consider sufficient;
- (b) purchase or commitment to purchase assets of the financial institution;
- (c) lending or exchanging assets of the Bank against assets of the financial institution;
- (d) guarantees or indemnities; or
- (e) such other arrangements as the Bank may consider appropriate,

upon such terms and conditions as the Bank thinks fit in the circumstances.

Additional provisions relating to subparagraph 32(1)(c)(i)

35. (1) The Bank may, as it deems necessary, in exercising its powers under subparagraph 32(1)(c)(i) in relation to a financial institution, by order in writing—

- (a) remove from office, with effect from such date as may be specified in the order, any director, officer or employee of the financial institution;
- (b) vary or terminate the contract of service of any director, officer or employee of the financial institution as may be specified in the order; or
- (c) appoint any person as a director, officer or employee of the financial institution subject to such terms and conditions as the Bank may specify.

(2) Before exercising its powers under subsection (1), the Bank shall give the director, officer or employee of the financial institution an opportunity to make representation.

(3) This section shall have full force and effect notwithstanding—

- (a) any conflict or inconsistency between this section and any other provision of this Act;
- (b) anything contained in any law including the law by or under which the financial institution is constituted, established, incorporated or registered; or
- (c) anything contained in the constituent document of the financial institution or in any contract entered into by or on behalf of the financial institution or in any contract affecting the shares or other capital instruments issued by or otherwise relating to the financial institution.

Additional provisions relating to subparagraph 32(1)(c)(iii)

36. (1) The Third Schedule shall apply in relation to an order of the Bank under subparagraph 32(1)(c)(iii) and such order shall be binding on all persons to whom the order is made or who are affected by the order regardless that such persons had no notice of any circumstances which led to the making of the order, or had no opportunity to be heard by, or make any representation to, the Bank regarding the order.

(2) This section shall have full force and effect notwithstanding—

- (a) any conflict or inconsistency between this section and any

other provision of this Act;

- (b) anything contained in any law including the law by or under which the financial institution is constituted, established, incorporated or registered; or
- (c) anything contained in the constituent document of the financial institution or in any contract entered into by or on behalf of the financial institution or in any contract affecting the shares or other capital instruments issued by or otherwise relating to the financial institution.

(3) Where the Bank makes an order to a financial institution referred to in subparagraph 32(1)(c)(iii), the Bank shall give notice of such order by publication in at least two daily newspapers published in Malaysia, one of which shall be in the national language.

(4) The notice under subsection (3) shall include the transacted price of the transfer and the right of any affected person to appeal under subsection (11) on the transacted price to the Assessor Committee constituted under subsection (12).

(5) The transacted price referred to in subsection (4) shall be determined by an independent valuer.

(6) Subject to subsection (14), the transferee and the transferor shall mutually agree on the person to be appointed by the Bank as the independent valuer under subsection (5).

(7) Where an agreement under subsection (6) cannot be reached between the transferee and the transferor within a period the Bank determines to be reasonable, the appointment of an independent valuer shall be made by the Minister upon the matter being referred to him by the Bank and the decision of the Minister shall be final.

(8) The remuneration of the independent valuer appointed under subsection (6) or (7) shall be payable out of the transacted price unless otherwise determined by the Bank.

(9) In determining the transacted price under subsection (5) for the business, assets, liabilities, shares or other capital instruments of the transferor, the independent valuer shall—

- (a) have regard to matters which the independent valuer considers relevant including the prevailing market conditions for sale or disposal of similar business, assets, liabilities, shares or other capital instruments of the transferor; and
- (b) disregard any benefit derived from any special financial assistance provided directly or indirectly by the Bank or the Government to the transferor.

(10) Notwithstanding subsection (9), where the transferor is insolvent and the whole of the business, assets or liabilities of the transferor are vested under subparagraph 32(1)(c)(iii), a consideration of one ringgit shall be deemed to be reasonable as the transacted price under subsection (5).

(11) Any person aggrieved by the transacted price may, within twenty-one days from the date of publication of the notice under subsection (3), appeal on the transacted price to the Assessor Committee constituted under subsection (12) by submitting the appeal in writing to the Bank.

(12) Where any person appeals under subsection (11), the Bank shall constitute an Assessor Committee consisting of three

independent persons as members of the Assessor Committee, drawn from a panel of ten persons appointed by the Minister on the recommendation of the Board Governance Committee, and refer the appeal to the Assessor Committee.

(13) The Assessor Committee constituted under subsection (12) may determine its own procedures.

(14) Where the vesting under subparagraph 32(1)(c)(iii) is to be in the Bank or a body corporate established by the Bank under paragraph 48(1) (d), the independent valuer referred to in subsection (5) shall be appointed by the Minister.

(15) A vesting of the business, assets, liabilities, shares or other capital instruments of a transferor under subparagraph 32(1)(c)(iii) shall take effect despite any appeal under subsection (11), or any decision made by the Assessor Committee.

(16) The Bank may, as it deems necessary, in exercising its powers under subparagraph 32(1)(c)(iii) in relation to a transferor, by order in writing—

- (a) remove from office, with effect from such date as may be specified in the order, any director, officer or employee of the transferor;
- (b) vary or terminate the contract of service of any director, officer or employee of the transferor as may be specified in the order; or
- (c) appoint any person as a director, officer or employee of the transferor subject to such terms and conditions as the Bank may specify.

(17) Before exercising its powers under subsection (16), the Bank shall give the director, officer or employee of such transferor an opportunity to make representation.

(18) For purposes of this section—

“transacted price” means the price at which the whole or part of the business, assets or liabilities of, or all or any of the shares or other capital instruments of a financial institution referred to in subparagraph 32(1)(c)(iii) is vested in the transferee;

“transferee” means the Bank, a body corporate established by the Bank under paragraph 48(1)(d), a financial institution, or any other person, as the case may be, in which is vested under subparagraph 32(1)(c)(iii) the whole or part of the business, assets or liabilities of, or all or any of the shares or other capital instruments issued by the financial institution which has ceased to become viable or which the Bank considers likely to become non-viable;

“transferor” means the financial institution under subparagraph 32(1)(c)(iii) which has ceased to become viable or which the Bank considers likely to become non-viable, the shareholders of such financial institution or the holders of the capital instruments of such financial institution, as the case may be.

Financial Stability
Executive
Committee

37. (1) For the purposes of section 38, there shall be a committee of the Bank to be known as the “Financial Stability Executive Committee”.

(2) The Financial Stability Executive Committee shall consist of the Governor, one Deputy Governor and not less than three but not more than five other members appointed by the Minister on the

recommendation of the Board from amongst directors appointed under subsection 16(1) or other persons.

(3) The Board, in recommending any person to be a member of the Financial Stability Executive Committee, shall at all times be satisfied that the person has the expertise and experience relevant to the responsibility and functions of the Financial Stability Executive Committee and be a person of probity, competence and sound judgment.

(4) Except in the case of meetings of the Financial Stability Executive Committee relating to financial institutions which are subject to the laws enforced by the Bank, the Secretary General to the Treasury shall be informed of and be invited to all meetings of the Financial Stability Executive Committee.

(5) When the Secretary General to the Treasury or his representative attends a meeting of the Financial Stability Executive Committee referred to in subsection (4) he attends as a member of the Financial Stability Executive Committee.

(6) Where any proposal made by the Bank under subsection 38(1) is in respect of a person or financial institution under the supervision or oversight of another supervisory authority, the head of that supervisory authority shall be informed and the head of that supervisory authority or his representative shall be present at the meeting of the Financial Stability Executive Committee as a member.

(7) The absence of the Secretary General to the Treasury or his representative at any meeting of the Financial Stability Executive Committee or the head of any supervisory authority concerned or his representative, as the case may be, at any meeting of the Financial Stability Executive Committee shall not invalidate the decision made at such meeting of the Committee.

(8) The Financial Stability Executive Committee shall be chaired by the Governor or, in the absence of the Governor, by the Deputy Governor designated by the Board under subsection 15(7).

(9) The Financial Stability Executive Committee shall meet as required by the Bank and at any meeting of the Financial Stability Executive Committee the quorum shall be three members, including the Governor or, in the absence of the Governor, the Deputy Governor designated by the Board under subsection 15(7).

(10) The Financial Stability Executive Committee may determine its own procedures.

Powers and
functions of the
Financial Stability
Executive
Committee

38. (1) The Bank shall table the following proposals at a meeting of the Financial Stability Executive Committee:

- (a) a proposal in respect of a person or financial institution, as the case may be, which is under the supervision or oversight of any other supervisory authority, or is not under the supervision or oversight of the Bank or any other supervisory authority—
 - (i) under subsection 31(1) for an order to be issued to such person; or
 - (ii) under paragraph 32(1)(a) for the provision of liquidity assistance to such financial institution;

- (b) a proposal under paragraph 32(1)(b) to enter into arrangements in relation to subsidiaries or branches outside Malaysia of a financial institution established in Malaysia;
- (c) a proposal under subparagraph 32(1)(c)(i) for the purchase or subscription of shares or other capital instruments of a financial institution;
- (d) a proposal under subparagraph 32(1)(c)(ii) for the provision of financing for the purchase of business, assets, liabilities, shares or other capital instruments of another financial institution; and
- (e) a proposal under subparagraph 32(1)(c)(iii) for an order to vest the business, assets, liabilities, shares or other capital instruments of a financial institution in the Bank, a body corporate established by the Bank under paragraph 48(1)(d), another financial institution or any other person.

(2) The Financial Stability Executive Committee may decide to accept any proposal tabled at the meeting of the Committee under subsection (1), reject the proposal or require the Bank to table another proposal for the consideration of the Committee and the Bank shall act in accordance with the decision of the Committee.

Nature of relief 39. (1) In any civil proceedings before any court in relation to any order issued by the Bank under subsection 31(1) or subparagraph 32(1)(c)(iii) or any other action, arrangement, scheme or measures of the Bank in connection with financial stability related or consequent to any such order or in relation to any other matter under this Chapter, the court shall, subject to subsection (2) and the provisions of this Act, have power to make all such orders as it has power to make in proceedings between parties, and otherwise to give such appropriate relief as the case may require.

(2) In any civil proceedings against the Bank, in relation to any order issued by the Bank under subsection 31(1) or subparagraph 32(1)(c)(iii) or any other action, arrangement, scheme or measures of the Bank in connection with financial stability related or consequent to any such order or in relation to any other matter under this Chapter—

- (a) if any relief is sought as might in proceedings between parties be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance; and
- (b) for the recovery of land or other property, the court shall not make an order for the recovery of the land or the delivery of the property.

(3) The court shall not in any civil proceedings in relation to any order issued by the Bank under subsection 31(1) or subparagraph 32(1)(c)(iii) or any other action, arrangement, scheme or measures of the Bank in connection with financial stability related or consequent to any such order or in relation to any other matter under this Chapter grant any injunction or make any order against an officer of the Bank if the effect of granting the injunction or making the order would be to give any relief against the Bank which could not have been obtained in proceedings against the Bank.

(4) Any order issued under subsection 31(1) or subparagraph 32(1)(c)(iii) shall have effect in accordance with the provisions of this Part and, notwithstanding any legal proceedings instituted

pursuant to subsection (2), shall be binding on any person to whom the order is issued.

Arrangements with other supervisory authorities

40. (1) For the purposes of promoting financial stability, the Bank may—

- (a) enter into arrangements to co-operate with other supervisory authorities and co-ordinate financial stability measures with such supervisory authorities; and
- (b) obtain any information or document from, or share any information or document with, any other supervisory authority if the Bank considers it necessary that such information or document be so obtained or shared.

(2) Where the Bank shares any information or document under paragraph (1)(b)—

- (a) with any supervisory authority in Malaysia, such information or document shall not be disclosed to any person except with the written consent of the Bank; or
- (b) with any supervisory authority outside Malaysia, such supervisory authority shall give an appropriate undertaking for protecting the confidentiality of such information or document and the purposes for which the information or document may be used.

Advice or recommendations on financial stability to supervisory authorities

41. The Bank may, in the interest of financial stability advise, or make recommendations to any supervisory authority in Malaysia on—

- (a) the implications of any written law, policies or measures proposed by such authority which may affect financial stability; and
- (b) appropriate measures or safeguards to take for purposes of promoting financial stability.

Confidentiality

42. (1) Except as provided in paragraph 40(1)(b) and section 86, any information or document submitted by any person under section 30 shall be confidential as between the person and the Bank.

(2) Any person who is required to submit any information or document under section 30 and any supervisory authority in Malaysia from which information or document is to be obtained by the Bank under paragraph 40(1)(b) shall provide such information or document, notwithstanding the provisions of any written law whether enacted before or after the commencement of this Act or 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.

(3) Any person shall not, in complying with the requirement to submit any information or document under subsection (2), be treated as being in breach of any such contract, agreement or arrangement.

Chapter 2

Money market and foreign exchange market

- Rules, guidelines, etc., for money market, etc.
- 43.** (1) The Bank may issue rules, codes, standards, principles or guidelines for the purposes of regulating, developing, or maintaining orderly conditions or the integrity of, the money market, the foreign exchange market or the market for the derivatives related to the currencies, securities and other financial instruments traded in these markets.
- (2) Without prejudice to the generality of subsection (1), rules, codes, standards, principles or guidelines may be issued in respect of the money market, the foreign exchange market or the market for the derivatives related to the currencies, securities and other financial instruments traded in these markets—
- (a) to ensure orderly dealings in such markets;
 - (b) to impose obligations and duties on participants of such markets or any system established or operated, including those pursuant to subsection 44(1); and
 - (c) on the issuance or acquisition, holding or disposal of financial instruments in such markets.
- (3) The Bank may, subject to such terms and conditions as the Bank may impose, appoint a self-regulatory organization established for the foreign exchange market or the market for the derivatives related to the currencies, securities and other financial instruments traded in these markets for the purposes of—
- (a) promoting the regulation, development and maintenance of orderly conditions or the integrity of such markets; and
 - (b) rendering such assistance as the Bank may specify in the exercise of its powers under subsection (1) or exercising such powers on behalf of the Bank.
- (4) The appointment referred to in subsection (3) shall be published in the *Gazette*.
- (5) The Bank shall enter into arrangements with supervisory authorities in Malaysia to co-ordinate on the regulation of derivatives or financial instruments in the money market which are within the supervision and oversight of the supervisory authorities.
- The Bank may establish system for funds, debt securities, etc.
- 44.** (1) The Bank or any body corporate established or acquired by the Bank under paragraph 48(1)(c) or any person authorized by the Bank may establish or operate any system, electronic or otherwise, as may be necessary—
- (a) to facilitate the transferring, clearing and settlement of funds and debt securities;
 - (b) to facilitate the tendering, issuance, borrowing and lending of debt securities;
 - (c) to provide information to any person relating to the money market or to the tender, issue, trading and offer, or bid prices of debt securities or any other related information relating to debt securities;

- (d) for the central handling of debt securities deposited with the Bank by means of entries in debt securities accounts without physical delivery of certificates;
- (e) for the carrying out of any other activity related to any of the systems in paragraphs (a) to (d); and
- (f) for the dissemination of information relating to paragraphs (a) to (e),

in such markets, as the case may be.

(2) The Bank may function as a depository or paying agent or undertake any other ancillary or incidental function related to the establishment or operation of any of the systems referred to in subsection (1).

(3) For purposes of this section, "debt securities" includes—

- Act 637.* (a) stock issued under the Loan (Local) Act 1959 [*Act 637*];
- Act 188.* (b) Treasury Bills issued under the Treasury Bills (Local) Act 1946 [*Act 188*];
- Act 275.* (c) investments under the Government Funding Act 1983 [*Act 275*];
- (d) securities issued by the Bank under paragraph 26(2)(a);
- (e) debentures, as defined in the Companies Act 1965, denominated and payable in ringgit issued by the Government of any State, any public authority, any statutory body, any corporation including a private or a public company, or such other persons who under their constituent documents may issue such debentures that are tendered, deposited, cleared or settled through any system established or operated by the Bank pursuant to this section; and
- (f) such securities or debentures as may be approved by the Minister on the recommendation of the Board that are tendered, deposited, cleared or settled through any system established or operated by the Bank or any body corporate established or acquired by the Bank or any person authorized by the Bank pursuant to this section.

Chapter 3

Financial services and other functions

- Co-operation with financial institutions
- 45.** The Bank shall use its best endeavours in co-operation with financial institutions in Malaysia to—
- (a) promote and maintain banking and financial services for the public; and
 - (b) foster high standards of banking and finance in Malaysia.

- Clearing houses and settlement of balances between financial
- 46.** (1) In order to facilitate the clearing of cheques and other credit or payment instruments for financial institutions or any person approved by the Bank, the Bank or any body corporate established or acquired under paragraph 48(1)(c) may, at an

institutions appropriate time and in conjunction with such institutions or person, establish a clearing house in Kuala Lumpur and in such other place as the Bank or the body corporate may consider necessary.

(2) A financial institution or any person approved by the Bank shall settle, in such manner as the Bank or the body corporate may from time to time specify by notice in writing, all balances between itself and any other financial institution or any person approved by the Bank arising out of the general clearances effected in Kuala Lumpur and such other places as the Bank or a body corporate established or acquired under paragraph 48(1)(c) may specify.

Credit bureau 47. (1) The Bank may establish a credit bureau to collect, in such manner and to such extent as the Bank thinks fit, credit information (including information on and relating to the rejection of any cheque by a paying bank by reason of insufficiency of funds in the account of the drawer of the cheque) or any other information which the Bank considers relevant in the assessment of the creditworthiness of the customers of any financial institution.

(2) Notwithstanding section 86, the Bank may disclose, in such manner and to such extent as the Bank thinks fit, the credit information to—

- (a) any financial institution for the purpose of assisting in assessing the creditworthiness of its existing and potential customers or for the purpose of assisting a financial institution to assess the eligibility of a customer to maintain or open a current account with the financial institution being a financial institution authorized by the Bank to operate a current account, provided that the information disclosed by the Bank shall be secret between the Bank and the financial institution unless the financial institution is requested by a customer to disclose the information in respect of the customer's account;
- (b) a customer of a financial institution in respect of his own account, or as the Bank thinks fit, to a customer or any person in respect of any account in which such customer or person has incurred any financial obligation, for the purpose of verifying the accuracy of the credit information provided by the financial institution, or for any other purpose as the Bank thinks fit, provided that the information disclosed by the Bank to such customer or person in respect of any account in which such customer or person has incurred any financial obligation shall be secret between the Bank and the customer or person concerned;
- (c) any credit reporting agency which is registered under any law relating to credit reporting agencies, as the Bank thinks fit, for the purpose of providing credit reporting or credit assessment services, or for any other purpose as the Bank thinks fit, provided that the information disclosed by the Bank shall be secret between the Bank and the credit reporting agency and provided further that the consent of the customer shall be obtained for the disclosure of the information in respect of his account;
- (d) such other person as the Bank thinks fit, in order to compile information or data or conduct research for the purpose of giving effect to the objects and carrying out the functions of the Bank under this Act, provided that any publication by the Bank or such other person of the information, data or research shall be consolidated or aggregated and shall not

in any manner lead to the identification of any customer of a financial institution to which such information, data or research relate; and

- (e) such other person as the Bank considers necessary in respect of the account of a customer of a financial institution, for any purpose as the Bank thinks fit, provided that the customer of the financial institution has given his or its consent for the disclosure of the information in respect of his or its account.

(3) No action, suit, prosecution or other proceeding shall lie or be brought, instituted or maintained in any court or before any other authority against the Bank on account of or in respect of any act done or statement made or omitted to be done or made under this section if the act or statement was done or made or omitted to be done or made in good faith.

(4) Any director, officer or employee of the Bank, a financial institution or a credit reporting agency or any person referred to in paragraph (2)(d) or (e) to whom any credit information has been disclosed who fails to comply with the conditions provided for in the same provision commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit.

Establishment of body corporate,
etc. **48.** (1) Notwithstanding section 76, the Bank may—

- (a) establish a body corporate for the purpose of training, research and development of human resource in relation to banking and financial services;
- (b) establish a body corporate for the purposes of providing financial counselling, debt management services and education on financial management;
- (c) establish a body corporate or acquire, hold or sell shares of a body corporate, wholly or partly, to operate payment systems or issue payment instruments, and undertake any other ancillary or incidental function or activity, for the purpose of promoting and developing payment systems and payment instruments in Malaysia;
- (d) establish a body corporate or acquire or hold shares of a body corporate, wholly or partly, for the purposes of subparagraph 32(1)(c) (i), (ii) or (iii); and
- (e) with the approval of the Minister on the recommendation of the Board, and subject to section 50, establish a body corporate or acquire, hold or sell shares of a body corporate, wholly or partly, for the purposes of giving effect to its objects and carrying out its functions under this Act.

(2) The Bank may—

- (a) grant, donate or provide financing as may be necessary for the establishment or operations of a body corporate established under paragraphs (1)(a) and (b) and create and manage a fund to meet the expenses of such body corporate;
- (b) provide financing as may be necessary for the establishment or operations of a body corporate established or acquired under paragraph (1)(c) or (d); and

(c) subject to section 50, provide financing as may be necessary for the establishment or operations of a body corporate established or acquired under paragraph (1)(e).

(3) The Bank may only provide financing under paragraph (2)(b) to a body corporate established or acquired under paragraph (1)(c) which is wholly owned by the Bank.

(4) The Bank may only provide financing under paragraph (2)(b) to a body corporate established or acquired under paragraph (1)(d) which is wholly owned by the Bank or jointly owned by the Bank and the Government.

Act 400. (5) The Moneylenders Act 1951 [*Act 400*] shall not apply to a body corporate established under paragraph (1)(d).

Financing for special purposes **49.** The Bank, with the approval of the Minister on the recommendation of the Board, may establish funds to provide financing through financial institutions on such terms and conditions as the Bank thinks necessary—

(a) in the event of any exigent circumstances or *force majeure*; and

(b) to any segment of the economy for the purposes of promoting financial inclusion.

Limit on investment and financing **50.** The value of shares held by the Bank under paragraph 48(1)(e) together with the financing made under paragraph 48(2)(c) and funds established under section 49 shall not in the aggregate at any time exceed two times the General Reserve Fund.

PART VII

ISLAMIC FINANCIAL BUSINESS

Chapter 1

Shariah Advisory Council

Establishment of Shariah Advisory Council **51.** (1) The Bank may establish a Shariah Advisory Council on Islamic Finance which shall be the authority for the ascertainment of Islamic law for the purposes of Islamic financial business.

(2) The Shariah Advisory Council may determine its own procedures.

Functions of Shariah Advisory Council **52.** (1) The Shariah Advisory Council shall have the following functions:

(a) to ascertain the Islamic law on any financial matter and issue a ruling upon reference made to it in accordance with this Part;

(b) to advise the Bank on any Shariah issue relating to Islamic financial business, the activities or transactions of the Bank;

(c) to provide advice to any Islamic financial institution or any other person as may be provided under any written law; and

(d) such other functions as may be determined by the Bank.

(2) For the purposes of this Part, “ruling” means any ruling made by the Shariah Advisory Council for the ascertainment of Islamic law for the purposes of Islamic financial business.

Appointment of members to Shariah Advisory Council

53. (1) The Yang di-Pertuan Agong may, on the advice of the Minister after consultation with the Bank, appoint from amongst persons who are qualified in the Shariah or who have knowledge or experience in the Shariah and in banking, finance, law or such other related disciplines as members of the Shariah Advisory Council.

(2) If a judge of the High Court, the Court of Appeal or the Federal Court, or a judge of the Shariah Appeal Court of any State or Federal Territory, is to be appointed under subsection (1), such appointment shall not be made except—

(a) in the case of a judge of the High Court, the Court of Appeal or the Federal Court, after consultation by the Bank with the Chief Justice; and

(b) in the case of a judge of the Shariah Appeal Court of any State or Federal Territory, after consultation by the Bank with the Chief Shariah Judge of the respective State or Federal Territory, as the case may be.

(3) A member of the Shariah Advisory Council appointed under subsection (1) shall hold office on such terms and conditions as may be provided in their respective letters of appointment, and shall be eligible for reappointment.

(4) The members of the Shariah Advisory Council shall be paid such remuneration and allowances as may be determined by the Board from the funds of the Bank.

Secretariat to Shariah Advisory Council

54. The Bank may—

(a) establish a secretariat and such other committees as it considers necessary to assist the Shariah Advisory Council in carrying out its functions; and

(b) appoint any officer of the Bank or any other person to be a member of the secretariat or such other committees.

The Bank and Islamic financial institutions to consult Shariah Advisory Council

55. (1) The Bank shall consult the Shariah Advisory Council on any matter—

(a) relating to Islamic financial business; and

(b) for the purpose of carrying out its functions or conducting its business or affairs under this Act or any other written law in accordance with the Shariah,

which requires the ascertainment of Islamic law by the Shariah Advisory Council.

(2) Any Islamic financial institution in respect of its Islamic financial business, may—

(a) refer for a ruling; or

(b) seek the advice,

of the Shariah Advisory Council on the operations of its business in order to ascertain that it does not involve any element which is inconsistent with the Shariah.

Reference to
Shariah Advisory
Council for ruling
from court or
arbitrator

56. (1) Where in any proceedings relating to Islamic financial business before any court or arbitrator any question arises concerning a Shariah matter, the court or the arbitrator, as the case may be, shall—

(a) take into consideration any published rulings of the Shariah Advisory Council; or

(b) refer such question to the Shariah Advisory Council for its ruling.

(2) Any request for advice or a ruling of the Shariah Advisory Council under this Act or any other law shall be submitted to the secretariat.

Effect of Shariah
rulings

57. Any ruling made by the Shariah Advisory Council pursuant to a reference made under this Part shall be binding on the Islamic financial institutions under section 55 and the court or arbitrator making a reference under section 56.

Shariah Advisory
Council ruling
prevails

58. Where the ruling given by a Shariah body or committee constituted in Malaysia by an Islamic financial institution is different from the ruling given by the Shariah Advisory Council, the ruling of the Shariah Advisory Council shall prevail.

Chapter 2

Powers of the Bank

The Bank to issue
circulars,
guidelines, etc., on
Shariah matters

59. (1) The Bank may issue such written circulars, guidelines or notices on any Shariah matter relating to the Islamic financial business carried on by any Islamic financial institution in accordance with the advice or ruling of the Shariah Advisory Council.

(2) An Islamic financial institution shall comply with any written circulars, guidelines or notices issued by the Bank under subsection (1) and within such time as may be set out in the circulars, guidelines or notices.

(3) Any person who fails to comply with any circulars, guidelines or notices issued by the Bank under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit.

Promotion of Malaysia as an international Islamic financial centre

60. (1) The Bank shall, in co-operation with the Government or any Government agency, statutory body, supervisory authority or international or supranational organization, develop and promote Malaysia as an international Islamic financial centre.

(2) For the purposes of subsection (1), the Bank may—

- (a) establish a secretariat or other committees to assist the Government or any organization, council, agency or committee established by the Government; and
- (b) generally take such measures or facilitate such actions or provide financing,

as may be necessary for the development and promotion of Malaysia as an international Islamic financial centre.

PART IX

FOREIGN RESERVES

Duty of the Bank to hold and manage foreign reserves

67. (1) It shall be the duty of the Bank at all times to hold and manage foreign reserves for the purposes of giving effect to its objects, carrying out its functions under this Act and maintaining public confidence.

(2) Subject to section 68, the foreign reserves held and managed under subsection (1) shall consist of the following:

- (a) gold or other precious metals;
- (b) foreign currency;
- (c) securities of, or guaranteed by—
 - (i) governments or agencies of such governments; or
 - (ii) international financial institutions;
- (d) any readily available drawing facility of such international financial institutions;
- (e) bills of exchange; and
- (f) such other securities and other financial instruments including derivatives.

Policies and guidelines on foreign reserves

68. The Bank shall hold and manage the foreign reserves in accordance with the policies and guidelines established by the Board.

PART X

RELATIONS WITH GOVERNMENT

Banker and

69. (1) In its function as banker and financial agent to the Government, the Bank—

financial agent to
Government

- (a) shall keep account of Government moneys that it receives and disburses; and
 - (b) may undertake the issue and management of securities, Treasury Bills and other financial instruments publicly issued by the Government.
- (2) The Bank shall not charge the Government for any expenses incurred for the services provided under subsection (1).

Advice to, and
acting generally as
agent for,
Government

70. (1) The Governor or any Deputy Governor with the approval of the Minister or any officer of the Bank with the approval of the Governor, may upon request of the Government, act as a member of any committee or commission appointed by the Government to advise or enquire into any matter affecting monetary, financial, banking or currency matters in Malaysia or outside Malaysia.

(2) The Bank, where it is appropriate and consistent with its objects and the provisions of this Act and if it is within its competence and expertise—

- (a) shall, upon request by the Government or where the Bank considers it necessary in the interest of the economy, advise the Government on economic matters;
- (b) may, upon request of the Government, act as a member of any committee affecting economic matters in Malaysia;
- (c) may, upon request of the Government, represent the Government as its agent in all dealings, negotiations or transactions relating to monetary, financial, banking, currency or economic matters with any government or authorities outside Malaysia to which the Government has adhered or given support or approval; or
- (d) may act generally as agent to the Government on such terms and conditions to be agreed between the Bank and the Government.

Temporary
financing to
Government

71. (1) The Board may extend temporary financing to the Government on terms prevailing in the market in respect of temporary deficiencies of budget revenue.

(2) All financing extended under subsection (1) shall be repaid as soon as possible and shall in any event be payable not more than three months after the end of the financial year of the Government in which it is extended; and if after that date any such financing remains outstanding, the power of the Bank to extend further financing in any subsequent financial year shall not be exercisable unless and until the outstanding financing has been repaid.

(3) The aggregate amount of financing extended by the Bank under subsection (1) and securities issued by the Government, purchased by the Bank excluding any such securities acquired in the course of, or held solely for, monetary policy operations, shall not at any time exceed twelve and a half per centum of the estimated receipts of the Federation shown in the statement laid before the House of Representatives pursuant to Article 99 of the Federal Constitution for the financial year of the Government in which the financing is extended.

- Issues of policy **72.** (1) The Bank shall keep the Minister informed of policies relating to its principal objects.
- (2) In the event of a difference of opinion between the Minister and the Bank relating to its principal objects, the Minister and the Bank shall endeavour to reach an agreement.
- (3) If the Minister and the Bank are unable to reach an agreement, the Board shall furnish to the Minister a statement in relation to the matter in respect of which the difference of opinion has arisen.
- (4) The Minister shall then submit a recommendation together with the statement furnished by the Board under subsection (3) to the Cabinet.
- (5) Acting on the recommendation of the Minister and the statement furnished by the Board, the Cabinet may determine the policy to be adopted by the Bank.
- (6) The Minister shall inform the Bank of the policy as determined under subsection (5) and that the Government accepts responsibility for the policy.
- (7) The Bank shall then give effect to the policy as determined under subsection (5).
- (8) If the Board objects to the policy as determined under subsection (5), the Board may submit its objections and reasons therefor in writing to the Minister who shall cause the same together with the policy as determined under subsection (5) to be laid before the House of Representatives, or, if the House of Representatives is not then sitting, at the sitting of the following meeting of the House of Representatives.

PART XI

OTHER POWERS OF THE BANK

- Compliance with the Shariah **73.** (1) The Bank may, in giving effect to its objects, carrying out its functions or conducting its business or affairs under this Act or any other written law, put in place such arrangements or take such measures as may be approved by the Shariah Advisory Council to ensure that such functions, business or affairs are in accordance with the Shariah.
- (2) Without prejudice to the generality of subsection (1), where any arrangements or measures under subsection (1) require—
- (a) the establishment of a corporation or a partnership;
 - (b) the entering into any commercial, agricultural or industrial undertaking; or
 - (c) transaction involving trade, bailment, sale, purchase, lease or sale and lease back, agency, endowment or other business or dealing involving services, intellectual property, commodities, other assets or properties,
- which is prohibited or not authorized by this Act, the Bank may, only for the purpose of carrying out its functions or conducting its business or affairs in accordance with the Shariah, put in place such arrangements or take such measures.

Acquisition of immovable property— **74.** The Bank may purchase, acquire or lease immovable property—

- (a) for the purposes of carrying out its functions or conducting its business or affairs in accordance with the Shariah pursuant to section 73;
- (b) for the provision or future provision of—
 - (i) business premises for the Bank and its agencies and any clearing houses established pursuant to section 46;
 - (ii) residences for the Governor, Deputy Governors, officers and employees; and
 - (iii) amenities for the promotion of the welfare of officers and employees; or
- (c) as may be provided in any provision of this Act.

General powers of the Bank **75.** The Bank, where it is consistent with its objects, functions and other provisions in this Act, may—

- (a) enter into contracts;
- (b) acquire, purchase, take, hold and enjoy movable or immovable property of every description and may convey, assign, surrender, yield up, charge, mortgage, demise, lease, rent, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property or any interest vested in the Bank upon such terms as the Bank deems fit;
- (c) purchase, sell, repurchase, lend or borrow currencies, securities, gold, other precious metals or other commodities or enter into derivatives;
- (d) exchange the currencies, securities, gold, other precious metals or other commodities or financial instruments referred to in paragraph (c) for other currencies, securities, gold, other precious metals or other commodities or financial instruments;
- (e) purchase, sell, discount and rediscount bills of exchange, Treasury bills or promissory notes drawn in or outside Malaysia and maturing within one year from the date of acquisition or such other period as may be approved by the Minister;
- (f) purchase, sell or repurchase any certificate of deposit issued by any financial institution;
- (g) act as agent, correspondent or banker for, or open and maintain accounts for, or accept deposits of gold, other precious metals or money in any currency from, any central bank, monetary authority, international financial institution, international monetary authority or other financial institutions outside Malaysia;
- (h) open accounts for, and accept deposits of gold, other precious metals or money in any currency from—
 - (i) the Government, any State Government, public authority or financial institution; or

- (ii) any other person in Malaysia with the prior approval of the Minister;
- (i) open and maintain accounts, place deposits of gold, other precious metals or money in any currency with any financial institution in or outside Malaysia, central bank, monetary authority, international financial institution or international monetary authority;
- (j) undertake on behalf of customers and correspondents the purchase, sale, collection and payment of securities, currencies and credit instruments in and outside Malaysia, and the purchase or sale of gold and other precious metals;
- (k) accept from customers for custody securities and other articles of value;
- (l) accept assets, including book entry securities, as collateral;
- (m) borrow money, establish credits and provide guarantees and indemnities in any currencies, in or outside Malaysia;
- (n) issue demand drafts and other kinds of remittances made payable at its own offices and branches or at the offices of agents or correspondents;
- (o) invest in securities on behalf of staff and pension funds and other internal funds of the Bank; and
- (p) do generally all such things as may be commonly done by bankers.

Business which the Bank may not transact **76.** Unless otherwise provided in this Act, the Bank may not—

- (a) engage in trade or otherwise have a direct interest in any commercial, agricultural, industrial or any other undertaking except in the course of the satisfaction of debts due to the Bank provided that any such interest shall be disposed of at the earliest suitable opportunity;
- (b) provide financing upon security of any shares;
- (c) purchase the shares of any corporation;
- (d) extend unsecured financing or financing secured otherwise than as set out in this Act:

Provided that in the event of any debt due to the Bank becoming in the opinion of the Bank endangered, the Bank may secure such debt on any immovable or movable property of the debtor and may acquire such property, which shall, however, be resold at the earliest suitable moment;

- (e) draw or accept bills payable otherwise than on demand; and
- (f) accept for discount, or as security for any financing extended by the Bank, bills or notes signed by members of the Board or by the officers or employees of the Bank.

Measures to safeguard monetary and **77.** (1) Notwithstanding the provisions of this Act, the Board may, for the purpose of giving effect to the objects of the Bank or safeguarding the balance of payments position, by notice in writing

financial stability give directions to, or impose requirements on, any person including financial institutions in respect of or relating to—

- (a) transactions between residents, non-residents or residents and non-residents, in ringgit or foreign currency, or involving gold, other precious metals, securities or other financial instruments including derivatives; or
- (b) the receipt, surrender or retention of foreign currency, gold or other precious metals.

(2) For the purposes of this section—

“foreign currency” shall have the meaning as in subsection 2(1) and in addition includes any document of a kind intended to enable the person to whom the document is issued to obtain foreign currency from some other person on the credit of the person issuing it, and in particular to any traveller’s cheque or other draft or letter of credit so intended;

“non-resident” means—

- (a) any person other than a resident;
- (b) an overseas branch, subsidiary, regional office, sales office or representative office of a resident company;
- (c) Embassies, Consulates, High Commissions, supranational or international organizations;
- (d) a Malaysian citizen who has obtained permanent resident status of a country or territory outside Malaysia and is residing outside Malaysia; or
- (e) any other person as may be specified by the Bank to be a non-resident;

“person” means a natural person, any corporation, statutory body, local authority, society, trade union, co-operative society, partnership or any other body, organization, association or group of persons, whether corporate or unincorporated and in addition includes the Government, any State Government or any other government;

“resident” means—

- (a) a citizen of Malaysia, excluding a citizen who has obtained permanent resident status in a country or territory outside Malaysia and is residing outside Malaysia;
- (b) a non-citizen of Malaysia who has obtained permanent resident status in Malaysia and is ordinarily residing in Malaysia;
- (c) a body corporate incorporated or established, or registered with or approved by any authority, in Malaysia;
- (d) an unincorporated body registered with or approved by any authority in Malaysia;
- (e) the Government or any State Government; or
- (f) any other person as may be specified by the Bank to be a resident;

“securities” means shares, stock, bonds, notes (other than promissory notes), debentures, debenture stock, units under a unit trust scheme, shares in an oil royalty, a secondary security and coupons whether in scripless form or in bearer certificates, including certificates of title to securities or any letter of allotment

which may be renounced, any letter of rights, any warrants conferring an option to acquire a security, any deposit certificate in respect of securities and such other documents conferring, or containing evidence of, rights to securities as the Bank may prescribe;

“transactions” include—

- (a) buying or selling;
- (b) borrowing or lending;
- (c) payment, transfer or settlement;
- (d) issuance, transfer or substitution of securities;
- (e) giving or obtaining financial guarantee, indemnity or similar undertaking in respect of any debt, obligation or liability;
- (f) any act which involves, is in association with, or is preparatory to, the matters in paragraphs (a), (b), (c), (d), (e) and (g); or
- (g) issuance or publication of advertisement of the matters in paragraphs (a), (b), (c), (d) and (e).

(3) Any person who fails to comply with the directions or requirements of the Board under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

Record of
international
accounts

78. (1) For the purposes of giving effect to its objects and carrying out its functions under this Act, the Bank shall maintain a record of international accounts containing such data and information as the Bank may determine.

(2) For the purpose of maintaining the record of international accounts, the Bank shall have the power to require in writing at any time persons which, in the opinion of the Bank, having in their possession or under their custody or control, or has within their capacity to obtain, compile or submit, any data, information or document relating to the record of international accounts—

- (a) to submit such data, information or document to the Bank;
or
- (b) to attend before an officer of the Bank to answer any enquiries in relation to such data, information or document.

(3) Any person who is required to submit any data, information or document under this section shall ensure that—

- (a) such data, information or document submitted pursuant to any requirement under paragraph (2)(a); or
- (b) any answer to any enquiry pursuant to any requirement under paragraph (2)(b),

is true, correct, complete and not misleading.

(4) Any person who is required to submit any data, information or document under this section shall comply with such requirement, notwithstanding the provisions of any written law whether enacted before or after the commencement of this Act or 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.

(5) Any person shall not, in complying with the requirement to submit any information or document under subsection (4), be treated as being in breach of any such contract, agreement or arrangement.

(6) The Bank may publish in any manner it deems fit, consolidated statements of all or any part of the record of international accounts, aggregating the data, information or particulars in documents received or obtained under subsection (2), provided that such publication shall not in any manner lead to the identification of any person to which such data, information, or particulars relate.

(7) Notwithstanding section 88 or any other written law but without prejudice to subsection (6), any data, information or document received or obtained by the Bank under subsection (2) shall only be disclosed by the Bank for the purposes of maintaining the record of international accounts, giving effect to its principal objects or carrying out its primary functions under section 5, and shall not be otherwise disclosed by the Bank to any other person.

(8) For the purposes of this section—

(a) “person” means a natural person, any corporation, statutory body, local authority, society, trade union, co-operative society, partnership or any other body, organization, association or group of persons, whether corporate or unincorporate and in addition includes the Government, any State Government or any other government;

“record of international accounts” refers collectively to the records of balance of payments and international investment position of Malaysia;

“record of balance of payments” means a record of economic and financial transactions of Malaysia with any country, territory or place outside Malaysia during a period deemed appropriate by the Bank;

“record of international investment position” means the position of financial assets and liabilities of Malaysia with any country, territory or place outside Malaysia as at a date deemed appropriate by the Bank; and

(b) the Bank may determine—

(i) the economic and financial transactions which may be included or excluded from the record of balance of payments;

(ii) the external financial assets and liabilities of Malaysia which may be included or excluded from the record of international investment position; and

(iii) any territory or place as being in or outside Malaysia.

(9) Any person who fails to comply with the requirements of the Bank under subsection (2), (3) or (4) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit.

PART XII

INTERNATIONAL MATTERS

International co- 79. The Bank may—

operation

- (a) participate in any arrangement, scheme, programme or initiative with any other central banks, monetary authorities or international financial institutions or authorities outside Malaysia to promote bilateral, regional and international monetary, financial or economic co-operation; or
- (b) with the approval of the Minister on the recommendation of the Board, fund or provide financing in whole or in part for the arrangement, scheme, programme or initiative referred to in paragraph (a).

Membership in international organizations **80.** The Bank shall exercise the rights and perform the obligations arising from the—

- Act 472.* (a) membership of Malaysia in the International Monetary Fund under the Bretton Woods Agreements Act 1957 [*Act 472*];
- Act 623.* (b) membership of the Bank in the Islamic Financial Services Board pursuant to the Islamic Financial Services Board Act 2002 [*Act 623*]; and
- (c) membership of Malaysia or the Bank in any international organization in respect of which provision is made in any federal law.

Participation in Bank for International Settlements and other international financial institutions **81.** The Bank may acquire, hold and sell shares of—

- (a) the Bank for International Settlements; and
- (b) any other international financial institution,

and exercise the rights and perform the obligations arising from its membership or participation in the Bank for International Settlements and such other international financial institution.

Regulations or directions to discharge Government's international obligations under United Nations Security Council Resolutions **82.** (1) Where the Security Council of the United Nations decides, in pursuance of Article 41 of the Charter of the United Nations, on measures to be employed to give effect to any of its decision and calls upon the Government of Malaysia to apply such measures, the Bank may, in relation to the measures that are within the functions and duties of the Bank, with the approval of the Minister, make regulations for, or issue directions in writing to any financial institution or class of financial institutions to enable those measures to be effectively applied.

(2) Any financial institution for which the regulations are made or to which directions are issued under subsection (1) shall comply with the regulations or directions notwithstanding any other duty imposed on the financial institution by any contract or law or international agreement.

(3) Any financial institution shall not, in carrying out any act in

compliance with the regulations made or directions issued under subsection (1), be treated as being in breach of any such contract or law or international agreement.

(4) Any financial institution who fails to comply with subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

PART XIII

OFFICERS AND EMPLOYEES

Officers and employees of the Bank **83.** (1) The Bank may appoint such officers and employees as it considers to be necessary for the efficient conduct of the business of the Bank.

(2) Officers and employees of the Bank shall hold office for such period, receive such salaries and allowances and shall be subject to such by-laws on conduct and discipline and other terms and conditions of service as may be determined by the Board.

(3) The Bank may, with the approval of the Minister, out of the funds of the Bank establish and maintain a pension and provident fund for its officers and employees, which in this subsection includes the Governor and the Deputy Governors, and their dependants.

(4) There shall continue to be a Bank Negara Malaysia Staff Welfare Account which shall include the amount standing to the credit of the Bank Negara Malaysia Staff Welfare Account created under subsection 15(5) of the repealed Act immediately before the coming into operation of this Act and such other amounts as are placed to the credit of the Bank Negara Malaysia Staff Welfare Account under this Act.

(5) The Bank Negara Malaysia Staff Welfare Account shall be utilized for such purposes conducive to the welfare of the officers and employees of the Bank, including their dependants, as may from time to time be provided in trust directions to be issued by the Board with the approval of the Minister, and such directions may provide for the manner and the procedure for the making of the grant, financing or other payments from the Bank Negara Malaysia Staff Welfare Account.

Financing for housing, vehicles, studies and scholarships **84.** (1) Without prejudice to subsections 83(4) and (5), but subject to subsections (2), (3) and (4), the Bank shall not extend financing to an officer or employee.

(2) The Bank may extend financing to an officer or employee upon such terms and conditions as the Board may determine—

(a) for the purchase, erection, alteration, renovation or enlargement of a house in which he resides or intends to reside;

(b) to discharge a mortgage or encumbrance on such a house; or

(c) for the purchase of a vehicle.

(3) The Bank may, where the Governor is satisfied that special

or compassionate circumstances exist or the purpose is appropriate, extend financing to an officer or employee on such terms and conditions as the Governor may determine, not exceeding at any one time an amount equal to three months' salary of the officer or employee.

(4) The Bank may extend financing for studies or scholarships to any officer or employee of the Bank or any child, including a step-child or adopted child of such officer or employee, or to any suitable person, in accordance with such terms and conditions as may be approved by the Board generally or in any particular case.

Remuneration not to be related to profits **85.** No salary, fee, wage, or other remuneration, or allowance, paid by the Bank shall be computed by reference to the profits of the Bank.

PART XIV

GENERAL

Preservation of secrecy **86.** (1) Without prejudice to section 88, and except for the purpose of the performance of his duties or the carrying out of his functions or when lawfully required to do so by any court or under any law, no person who is or has been director, officer, or employee of the Bank or member of the Shariah Advisory Council or any committee appointed under this Act shall disclose to any person any information relating to the business or affairs of the Bank or of a financial institution or of a customer of the Bank or of a financial institution which he has acquired in the performance of his duties or the carrying out of his functions.

(2) Any person who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both.

Immunity **87.** (1) No action, suit, prosecution or other proceeding shall lie or be brought, instituted, or maintained in any court or before any other authority against—

- (a) any officer or employee of the Bank;
- (b) any person lawfully acting on behalf of the Bank, or on behalf of any such officer or employee, in his capacity as a person acting on such behalf; or
- (c) any person appointed pursuant to this Act,

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, in pursuance or in execution of, or intended pursuance or execution of, this Act, any order in writing, direction, instruction, notice or other thing 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) In this section, the expression "officer" includes the Governor, the Deputy Governors and the other directors.

Power to report suspected offence **88.** (1) Where the Bank in the course of the exercise of any of its powers, or the discharge of any of its duties, or the performance of any of its functions, under this Act, or under any law enforced by the Bank referred to in the Second Schedule or other written law, suspects that any person has committed any offence under this Act, or any of the Acts referred to in the Second Schedule, or any other written law, it shall be lawful for the Bank to give information of such commission to a police officer in charge of a police station or to any other police officer, or to convey any or all information in relation to such offence to any financial institution or other person affected by such offence, or to any authority or person having power to investigate under, or enforce, the provision of the law under which the offence is suspected by the Bank to have been committed.

(2) Subsection (1) shall have full force and effect, notwithstanding anything inconsistent with, or contrary to it, in the Act or any law enforced by the Bank referred to in the Second Schedule or in any other written law.

Power to compound **89.** (1) The Governor may, with the consent in writing of the Public Prosecutor, offer in writing to compound any offence punishable under this Act or any regulations made under this Act, by accepting from the person reasonably suspected of having committed the offence, such sum of money as he thinks fit not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted of the offence, within such time as may be specified in the offer.

(2) 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 if the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Governor may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and any document or thing seized in connection with the offence may be released by the Bank, subject to such terms and conditions as the Bank thinks fit.

(4) All sums of money accepted under subsection (1) shall be paid into the Federal Consolidated Fund.

Prosecution **90.** No prosecution in respect of any offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

Offence by body corporate **91.** (1) If a body corporate commits an offence under this Act or any regulations made under this Act, any person who at the time of the commission of the offence was a director, chief executive officer, chief operating officer, manager, secretary or other similar officer of the body corporate 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 the body corporate or was assisting in such management—

(a) may be charged severally or jointly in the same proceedings with the body corporate; and

- (b) if the body corporate is found to have committed the offence, shall be deemed to have committed that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—
 - (i) that the offence was committed without his knowledge, consent or connivance; and
 - (ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

(2) If any person would be liable under this Act to any punishment or penalty for his 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 employee or agent of his, or of the employee of the agent, if the act, omission, neglect or default was committed—

- (a) by that person's employee in the course of his employment;
- (b) by the agent when acting on behalf of that person; or
- (c) by the employee of the agent in the course of his employment by the agent or otherwise on behalf of the agent acting on behalf of that person.

The Bank may be represented by officer or employee of the Bank in civil proceedings

92. Notwithstanding the provisions of any written law—

- (a) in any civil proceedings by or against the Bank; or
- (b) in any other civil proceedings in which the Bank is required or permitted by the court to be represented, or to be heard, or is otherwise entitled to be represented or to be heard,

any officer or employee of the Bank authorized by the Governor for the purpose, may, on behalf of the Bank, institute such proceedings or appear as an advocate therein and may make all appearances and applications and do all acts in respect of such proceedings on behalf of the Bank.

Fees and charges

93. Subject to subsection 69(2), the Bank may impose such fees or charges as it deems appropriate for the services provided by the Bank or the Shariah Advisory Council in relation to its functions under this Act or any other written law.

Power to make regulations

94. (1) The Bank may, with the approval of the Minister, make regulations for the better carrying out of the objects and purposes of this Act.

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

- (a) to give effect to section 78;
- (b) to provide for administrative penalties pursuant to section 98;
- (c) to provide that any act or omission in contravention of any

provision of the regulations shall be an offence; and

- (d) to provide for the imposition of penalties for any offence under the regulations which shall not exceed one million ringgit or to imprisonment for a term not exceeding one year or to both.

Power to issue guidelines, etc. **95.** The Bank may, for—

- (a) giving effect to its objects and carrying out its functions or conducting its business or affairs;
- (b) giving full effect to any provision of this Act; or
- (c) the further, better or more convenient implementation of the provisions of this Act,

generally in respect of this Act, or in respect of any particular provision of this Act, or generally in respect of the conduct of the Bank, issue such guidelines, by-laws, circulars, standards or notices as the Bank may consider necessary or expedient.

Exemptions **96.** The Minister may, on the recommendation of the Bank and provided that it is not inconsistent with the objects and functions of the Bank, by order published in the *Gazette*, exempt any particular person or any class, category or description of persons, from all or any of the provisions of this Act, for such duration, and subject to such conditions, as the Minister may specify in the order.

Power to amend Schedule **97.** The Minister may, on the recommendation of the Bank, from time to time by order published in the *Gazette* amend any provision in the First, Second or Third Schedule and upon such publication, such provision as 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.

Power to impose administrative penalty **98.** (1) The Bank may, by regulations made under section 94, impose administrative penalties on any person for any delay in complying with any directive, guideline, standard, circular, specification, order or notice issued by the Bank in respect of any provision of this Act.

(2) The Bank shall, before making a decision to impose any administrative penalty on any person, serve on him a written notice calling on him to show cause why the administrative penalty should not be imposed on him.

(3) If a satisfactory explanation is not received within fourteen days from the date of the written notice, the Bank may impose an administrative penalty in an amount not exceeding five hundred ringgit for each day of non-compliance and such amount shall not in total exceed the sum of five thousand ringgit.

PART XV

REPEAL, SAVINGS AND TRANSITIONAL

Repeal **99.** The Central Bank of Malaysia Act 1958 is repealed.
Act 519.

Savings and transitional **100.** Notwithstanding the repeal of the Central Bank of Malaysia Act 1958 under section 99—

- (a) Part III of the repealed Act shall continue to remain in full force and effect until such date to be appointed by the Minister in accordance with subsection 1(2) for the coming into operation of Part VIII of this Act;
- (b) subparagraphs 30(1)(oo)(ii), (iii), (iiia), (iv) and (v) of the repealed Act shall continue to remain in full force and effect until such date to be appointed by the Minister by notification in the *Gazette* for the repeal to take effect;
- (c) the capital of the Bank under the repealed Act which on the coming into operation of this Act stands at one hundred million ringgit of which the amount of twenty million ringgit being the capital of the Bank which was subscribed and paid up by the Government under subsection 6(2) of the repealed Act on the establishment of the Bank and the additional amount of eighty million ringgit which was subsequently subscribed and paid up by the Government pursuant to subsection 6(3) of the repealed Act shall continue to remain as the capital of the Bank under this Act;
- (d) the person holding office under the repealed Act immediately before the coming into operation of this Act as—
 - (i) Governor;
 - (ii) Deputy Governor;
 - (iii) director; or
 - (iv) officer or employee of the Bank,shall be deemed to have been appointed under this Act and shall continue to hold such office for the unexpired period of the term of office of such person under the repealed Act at the time of the repeal of that Act under section 99;
- (e) the Head Office and any branches opened, or any agent, correspondent or attorney appointed under the repealed Act shall be deemed to be opened and appointed under or in accordance with this Act;
- (f) the Syariah Advisory Council established and its members appointed under the repealed Act shall be deemed to be established and appointed, as the case may be, under or in accordance with this Act;
- (g) currency notes and coins issued under the repealed Act and which are legal tender immediately before the coming into operation of this Act shall continue to be legal tender in Malaysia at their face value as provided in section 24 of the repealed Act and every contract, sale, payment, bill, note, instrument and security for money and every transaction, dealing, matter and thing relating to money or involving the payment of, or the liability to pay, any money which but for this paragraph would have been made, executed, entered into, done and had for in, and in relation to currency notes and coins issued under the repealed Act shall be deemed

to be validly made, executed, entered into, done and had for in and in relation to currency notes and coins issued under this Act;

- (h) currency notes and coins issued under the repealed Act which have ceased to be legal tender shall not be affected by this Act and any obligation of the Bank relating to the currency notes and coins under the repealed Act shall continue to be in force under this Act;
- (i) subsidiary legislation and any approval, direction, decision, exemption, trust directions, recommendation, specification and other executive act made or done under the repealed Act and in force or having effect immediately before the coming into operation of this Act, shall be deemed to have been made or done under the corresponding provisions of this Act, and shall continue to remain in full force and effect in relation to the person to whom it applied until amended or replaced;
- (j) any directive, notice or circular issued, or any act or thing done, by the Bank in relation to Islamic financial business, or any ruling made by the Syariah Advisory Council established under section 16B of the repealed Act before the coming into operation of this Act shall be deemed to have been validly issued, done or made under this Act and shall continue to remain in full force and effect in relation to the person to whom it applied until amended or replaced;
- (k) any securities issued by the Bank under—
 - (i) subparagraph 30(1)(bb)(i) of the repealed Act and any right or liability relating to the securities shall continue under the repealed Act until the obligation is discharged; and
 - (ii) subparagraph 30(1)(bbb)(i) of the repealed Act and any right or liability relating to the securities shall be deemed to continue to be issued under or in accordance with this Act;
- (l) all transactions, dealings, contracts, powers of attorney or arrangements lawfully executed or entered into and all business lawfully done, under or in accordance with the repealed Act with any other person shall be deemed to have been lawfully and validly executed, entered into or done, under or in accordance with this Act, and accordingly, any right or liability under such transaction, dealing or business existing immediately before the coming into operation of this Act, shall be deemed to continue to be lawful and valid under this Act;
- (m) nothing shall affect any person's liability to be prosecuted or punished for offences committed under the repealed Act immediately before the coming into operation of this Act;
- (n) any pending legal proceedings, criminal prosecution, investigation or disciplinary proceedings under the repealed Act shall be continued under the repealed Act;
- (o) any body corporate, clearing house, credit bureau or any systems established or operated by the Bank under the repealed Act shall be deemed to have been established or operated under or in accordance with this Act;
- (p) any securities or shares subscribed, acquired or held by the Bank under the repealed Act shall be deemed to have been lawfully and validly subscribed, acquired or held by the

Bank under or in accordance with this Act;

- (q) any trust deed or deed issued or executed under the repealed Act shall be deemed to have been lawfully and validly issued or executed under or in accordance with this Act;
- (r) any reserve held by banking institutions or Islamic banks at the Bank pursuant to paragraph 37(1)(c) or (d) of the repealed Act, as the case may be, shall be deemed to be held under or in accordance with this Act;
- (s) any obligation pursuant to any grants, loans or other payments made by the Bank under the Bank Negara Malaysia Staff Welfare Account established under subsection 15(5) or any scholarships granted by the Bank under section 49 of the repealed Act shall continue to remain in force under the repealed Act until the obligation is discharged;
- (t) any loan provided by the Bank under section 49 of the repealed Act shall continue to remain in force under the repealed Act until the loan is settled;
- (u) the General Reserve Fund established under section 7 of the repealed Act, any pension and provident fund established under subsection 15(3) of the repealed Act and the Bank Negara Malaysia Staff Welfare Account established under subsection 15(5) of the repealed Act shall be deemed to have been established under or in accordance with this Act and any moneys standing in or due to be paid to the funds shall be transferred to and be deemed to be part of the General Reserve Fund, pension and provident fund and Bank Negara Malaysia Staff Welfare Account, as the case may be, established under this Act;
- (v) any movable, immovable property and asset purchased, acquired, leased or held by the Bank under the repealed Act shall be deemed to have been purchased, acquired, leased or held under or in accordance with this Act;
- (w) any reference to the repealed Act in any written law shall be construed as a reference to this Act and any reference to any specific provision of the repealed Act in any written law shall be construed as a reference to a provision of this Act which corresponds as nearly as may be to such specific provision;
- (x) any membership of the Bank in any organization or to any committee or commission appointed by the Government or participation in any bilateral, regional or international co-operation or scheme under the repealed Act, as the case may be, shall continue to be in force under this Act for the unexpired period of the membership or participation;
- (y) any act required to be done under the repealed Act shall be deemed to be required to be done under or in accordance with this Act; and
- (z) any other right, benefit, privilege, obligation or liability acquired, accrued or incurred under the repealed Act, including any obligation to preserve secrecy, shall not be affected by this Act and shall continue to remain in force as if this Act had not been enacted.

FIRST SCHEDULE

[Sections 21 and 23]

1. Unless otherwise provided in this Act, the Board shall appoint any member to act as a chairman to preside over the meetings of the committee.
2. A member of any of the committees may at any time resign his office by giving a written notice of at least thirty days to the Bank.
3. The provision on quorum and frequency of meetings of the committees shall be as follows:

Committee (1)	Quorum (2)	Frequency of meetings (3)
Board Governance Committee	Not less than two-thirds of the members of the Board Governance Committee	At least two times a year
Board Audit Committee	Not less than two-thirds of the members of the Board Audit Committee	At least four times a year
Board Risk Committee	Not less than two-thirds of the members of the Board Risk Committee	At least two times a year
Monetary Policy Committee	Not less than two-thirds of the members of the Monetary Policy Committee of whom two must be the Governor (or in the absence of the Governor, the Deputy Governor designated by the Board under subsection 15(7)) and a Deputy Governor	At least six times a year

4. Notwithstanding column (3) of paragraph 3, the committees shall also meet as and when required or directed by the chairman.
5. The chairman may authorize a member to use live video, television links or other appropriate communication or multimedia facilities to participate in any meeting of the committee where, prior to the meeting, the member, by notification to the chairman, has requested for such authorization and such member shall be treated as being present for the meeting.
6. Except for the Monetary Policy Committee established under section 23, a resolution in writing, signed by all of the members of the other committees shall be as valid and effectual as if it had been passed at a meeting of any of the committees duly convened and held and any such resolution may consist of several documents in like form, each signed by one or more members.
7. Unless otherwise provided in this Act, any committee may act notwithstanding any vacancy in its membership and its proceedings shall not be invalidated by—
 - (a) the absence of any member;
 - (b) any defect afterwards discovered in the appointment or qualification of any member or the constitution of the committee;
 - (c) any omission, defect or irregularity in the convening or

conduct of a meeting; or

(d) the presence or participation of a person who is not a member of the committee.

8. A committee may determine for any particular reason or on a particular occasion that the decisions of the committee would be by vote.

9. Any advice given by any member, the deliberations and decisions of the meetings of the committees including any dissenting views of members or any result of any vote under paragraph 8 shall be recorded in the minutes of the meetings. The deliberations, proceedings and the decisions of the committees shall be confidential and except as otherwise provided in section 86 shall not be disclosed to any person outside the committee.

10. The chairman may, with the concurrence of all the members of the committee, invite any officer or person to attend and participate in the discussions of the committee.

11. A committee may, if it deems necessary in carrying out its functions, call upon any officer or person to provide any information or document which is relevant to the functions of such committee.

12. A committee may appoint an officer to act as secretary to the committee.

13. The Board may make further by-laws on the procedures relating to the meetings of the committees.

SECOND SCHEDULE

[Section 28]

- | | |
|-----------------|---|
| <i>Act 276.</i> | 1. Islamic Banking Act 1983 [<i>Act 276</i>] |
| <i>Act 312.</i> | 2. Takaful Act 1984 [<i>Act 312</i>] |
| <i>Act 372.</i> | 3. Banking and Financial Institutions Act 1989 [<i>Act 372</i>] |
| <i>Act 553.</i> | 4. Insurance Act 1996 [<i>Act 553</i>] |
| <i>Act 577.</i> | 5. Money-Changing Act 1998 [<i>Act 577</i>] |
| <i>Act 613.</i> | 6. Anti-Money Laundering and Anti-Terrorism Financing Act 2001 [<i>Act 613</i>] |
| <i>Act 618.</i> | 7. Development Financial Institutions Act 2002 [<i>Act 618</i>] |
| <i>Act 627.</i> | 8. Payment Systems Act 2003 [<i>Act 627</i>] |

THIRD SCHEDULE

[Section 36]

Interpretation 1. In this Schedule, unless the context otherwise requires—

“claim” means any claim, defence, counterclaim, set-off, legal or other proceeding, action, equity or equitable interest of any kind by an obligor or any third party against a transferor, or in respect of any business, asset or liability, whether present or future, or whether vested or contingent;

“disclosed claim” means any specific claim disclosed by the transferor to the transferee in writing prior to the vesting date;

“disclosed obligation” means an obligation or liability owed to the obligor by the transferor under or with respect to an asset and which obligation or liability is disclosed by the transferor to the transferee in writing prior to the vesting date;

“interest in land” means—

- (a) any interest in land, whether registered or registrable, including one to which the Strata Titles Act 1985 [*Act 318*] applies and which is capable of being transferred under Part Fourteen of the National Land Code [*Act 56/1965*] or relating to the State of Sabah, Part V of the Land Ordinance [*Cap. 68*] or relating to the State of Sarawak, Part VII of the Land Code [*Cap. 81*];
- (b) any Registrar’s caveat, lien holder’s caveat or other caveat; or
- (c) any other rights or entitlements relating to land;

“obligor” means any person who owes a duty or obligation of any nature, whether present or future, or whether vested or contingent, to the transferor under or with respect to an asset, including without limitation, an obligor under any financing or security arrangement or other chose-in-action;

“registered interest” means any right or interest—

- (a) in a charge to which section 108 of the Companies Act 1965 applies and is duly registered in accordance with that section;
- (b) in land which is duly registered under the Strata Titles Act 1985, the National Land Code, the Land Ordinance relating to the State of Sabah or the Land Code relating to the State of Sarawak;
- (c) in a ship which is duly registered under the Merchant Shipping Ordinance 1952 [*Ord. 70/1952*]; or
- (d) duly registered under any other law or under foreign law;

“Registration Authority” includes—

- (a) the registrar of any court;
- (b) the Registrar of Companies as designated under subsection 7(1) of the Companies Act 1965;
- (c) the Registrar as defined under section 5 of the National Land Code, the Registrar as defined under section 4 of the Land Ordinance relating to the State of Sabah or the Registrar under the Land Code relating to the State of Sarawak, as the case may be;
- (d) the registrar of Malaysian ships appointed under subsection 14(1) of the Merchant Shipping Ordinance 1952 and includes the Registrar General of Ships as appointed under subsection 14(1) of the Ordinance; or
- (e) a central depository, an authorized depository agent or any person maintaining a register or record of ownership, interest or security;

“transferee” has the same meaning assigned to it in subsection 36(18);

“transferor” has the same meaning assigned to it in subsection 36(18);

“vesting date” means the date stated on a vesting order as the date on which any business, assets, liabilities, or shares or other capital instruments vest or are deemed to vest in the transferee;

“vesting order” means an order made under subparagraph 32(1)(c)(iii) and includes a replacement vesting order made under paragraph 11 of this Schedule.

Vesting order 2. (1) Where the Bank makes a vesting order, the vesting order shall be in accordance with this Schedule.

(2) A vesting order may be in such form as determined by the Bank from time to time and shall take effect in accordance with this Schedule.

(3) A vesting order stating that any business, assets, liabilities, shares or other capital instruments to be vested shall be conclusive evidence of such vesting as of the vesting date.

(4) Where a vesting order is made, the transferor and transferee, as the case may be, shall not be required to—

(a) notify or obtain the approval of their shareholders or creditors in a general meeting or otherwise notwithstanding any contract or law including without limitation sections 132C, 132D and 132E of the Companies Act 1965 or anything in their constituent documents; or

(b) make a take-over offer or be required to acquire the shares of other shareholders of the transferor or its borrowers notwithstanding anything to the contrary in any contract or law.

(5) A vesting order may restrict or prevent the termination of any agreements or transactions in accordance with their terms subject to such conditions as may be imposed in the vesting order.

(6) A vesting order may make other provisions for the purposes of, or in connection with, the vesting of any business, assets, liabilities, shares or other capital instruments of the transferor.

(7) A vesting order may require or permit—

(a) a transferor to provide a transferee with information and assistance; or

(b) a transferee to provide a transferor with information and assistance.

(8) Any person in complying with the vesting order for the purposes of subparagraph (7) shall not be treated as being in breach of any law, contract, agreement or arrangement.

(9) The powers under this Schedule are without prejudice to, and in addition to any other rights and powers of the Bank.

Notice 3. (1) The Bank shall serve the vesting order made under subparagraph 32(1)(c)(iii) to the transferor and transferee in such manner as the Bank may deem appropriate.

(2) The directors of a financial institution shall inform the members of the financial institution that an order under subparagraph 32(1)(c)(iii) has been made against the financial institution not later than thirty days after the order has been received by the financial institution.

(3) No director of a financial institution shall be liable to be sued in any court or before any other authority for not being able to carry out his duty under subsection 132(1) of the Companies Act 1965 in relation to any act necessary to effect the vesting of the business,

assets, liabilities, shares or other capital instruments of the financial institution from the date an order under subparagraph 32(1)(c)(iii) is made by the Bank.

Vesting of
business, assets
or liabilities
Act 67

4. (1) No provision in any law including subsection 4(3) of the Civil Law Act 1956 [Act 67] or agreement limiting or prohibiting the right of the transferor or requiring any consent to assign, sell, dispose of, novate or transfer any business, assets or liabilities shall insofar as such limitation, prohibition or consent requirement is concerned, have any application or effect in respect of any order made by the Bank under subparagraph 32(1)(c)(iii).

(2) Where the Bank makes a vesting order—

- (a) in the case where an asset is held by the transferor alone immediately before the vesting date, such asset shall on and from the vesting date vest in the transferee; and
- (b) in the case where the asset is held jointly by the transferor with another person immediately before the vesting date, such asset shall on and from the vesting date vest in the transferee in accordance with subparagraph (5) jointly with that other person.

(3) Where the assets vested in a transferee in accordance with this Schedule include any financing, the transferee is deemed to have given the financing or issued the guarantee, as the case may be, notwithstanding that the financing or guarantee had been drawn down or issued by the transferor.

(4) Where the security for any financing that is vested under this Schedule in the transferee includes a share—

- (a) for the purposes of paragraph 6A(9)(b) of the Companies Act 1965, the transferee, shall be deemed to hold an interest in the share only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money; and
- (b) the interest of the transferee in the share shall be disregarded for the purposes of section 6A of the Companies Act 1965.

(5) The transferee shall, on and from the vesting date for any assets, acquire all of the transferor's present and future rights, title and interests in, and disclosed obligations with respect to, such asset, free of any encumbrance, caveat, prohibitory order, injunction or claim save for any registered interest existing as at the vesting date and disclosed claims.

(6) On and from the vesting date for a liability—

- (a) the transferee shall assume and be vested with that liability and becomes liable, instead of the transferor, to discharge that liability;
- (b) the transferor shall be deemed to have been released and discharged from that liability; and
- (c) any depositor, creditor or other person who is owed that liability shall be deemed to have consented to and accepted the assumption by the transferee of that liability.

(7) Without prejudice to subparagraphs (1), (2), (3), (4), (5) and (6) in relation to any business, assets or liabilities, as the case may be, vested in the transferee—

- (a) each obligor with respect to such assets, shall be deemed

to have released and discharged the transferor from all the disclosed obligations with respect to such assets;

- (b) any person having any right, title or interest in such assets, shall be deemed to have consented to and accepted the vesting in the transferee of all the disclosed obligations with respect to such assets;
- (c) an existing agreement or instrument, whether in the form of a deed, will or otherwise, or order of any court, under or by virtue of which, the transferor has title or ownership of or rights to such assets shall be construed and shall have effect as if for any reference in it to the transferor there were substituted a reference to the transferee;
- (d) an existing agreement or instrument in relation to such assets to which the transferor was a party shall have effect insofar as it is applicable to the disclosed obligations, disclosed claims and registered interests as if the transferee had been a party to it instead of the transferor;
- (e) an existing instruction, order, mandate, power of attorney, authority, undertaking or consent in relation to an account which was given to the transferor, either alone or jointly with another person, shall be deemed to have effect, as if given to the transferee either alone or jointly with such other person, as the case may be;
- (f) if any security were held immediately before the vesting 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, such security shall be held by the transferee, that nominee or trustee, as the case may be, as the nominee of, or trustee for, the transferee with the same priority as the transferor, and to the extent of that liability, shall be available to the transferee as security for the payment or discharge of that liability, and if any such security extends to future advances or future liabilities, shall be held by and be available to the transferee as security for future advances by or 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 vesting date;
- (g) in addition to any other right, power or remedy granted to the transferee in this Schedule, the transferee shall have the rights, powers and remedies (and in particular the rights and powers as to taking or resisting legal or other proceedings or making or resisting applications to any authority) for ascertaining, protecting or enforcing the rights, title, interests and disclosed obligations vested in the transferee including those rights, title, interests or obligations in respect of any legal or other proceedings or applications to any authority pending immediately before the vesting date by or against the transferor, and resisting any disclosed claims or registered interests as if they had at all times been the rights, title, interests or obligations of the transferee;
- (h) a judgment or award obtained by the transferor and not fully satisfied before the vesting date shall be enforceable by the transferee;
- (i) no acquisition by the transferee or disposal by the transferor, shall be void or voidable by reason of the application of any law;

(j) where any—

(i) profit or other return; or

(ii) interest,

payable under any agreement is to be determined by reference to the cost of funds or base lending rate or other reference point of the transferor, or is no longer determinable as provided in the agreement, the return or interest payable under such agreement shall be as prescribed by regulations made under section 94 or in any particular case, as the transferee may agree with the obligor;

(k) where the custody of any goods, things or documents is held by the transferor as bailee immediately before the vesting date, such goods, things or documents shall be deemed to have passed to the transferee and the rights and disclosed obligations of the transferor under any contract of bailment shall be transferred free of any claim save for disclosed claims;

(l) a negotiable instrument or order for payment of money given to or drawn on or accepted by the transferor, whether so given, drawn or accepted before, on or after the vesting date, shall have the same effect on and from the vesting date, as if it had been given to or drawn on or accepted by the transferee; and

(m) any account between the transferor and its customer shall 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.

(8) Without prejudice to subparagraphs (1), (2), (3), (4), (5), (6) and (7), a vesting of any business, assets or liabilities in the transferee shall not, unless otherwise provided for in the vesting order—

(a) be regarded as placing—

(i) the transferee;

(ii) the transferor;

(iii) any person deriving title from the transferee; or

(iv) any other person,

in breach of or default under, any contract, agreement, undertaking, guarantee, indemnity or any other arrangement, or in breach of confidence;

(b) be regarded as giving rise to a right or duty for any person to—

(i) terminate, cancel, modify or replace an agreement;

(ii) enforce or accelerate the performance of an obligation; or

(iii) require the performance of an obligation not otherwise arising for performance;

(c) be regarded as placing the transferor, the transferee or any other person in breach of any law or agreement prohibiting, restricting or regulating the assignment, sale, disposal or transfer of any asset or disclosure of information;

- (d) release a surety from an obligation;
- (e) invalidate or discharge a contract or security; or
- (f) be regarded as terminating, cancelling or varying any rights, privileges, exemptions (including any tax exemptions) or priorities to which the transferor was entitled and which by virtue of this Schedule has vested in the transferee.

(9) Without prejudice to the generality of subparagraphs (1), (2), (3), (4), (5), (6), (7), and (8) but subject to paragraph 4, in any proceedings brought by or against any transferee in respect of any business, assets or liabilities vested in the transferee pursuant to this Schedule, no person shall, unless such claim is a disclosed claim, raise as a claim or defence to such proceedings any of the following matters:

- (a) that, that person has had or would have had a set-off or counterclaim against the transferor or any other person;
- (b) that any person had a prior interest, whether legal or equitable, in the business, assets or liabilities;
- (c) that any person was a party to or privy to any fraud, duress, coercion, undue influence or misrepresentation;
- (d) that there was a mistake of law or fact;
- (e) that any agreement to which the business, assets or liabilities relates was in furtherance of an illegal purpose or that any consideration given or received thereunder was unlawful, or that the object of the agreement which constitutes or is one of the constituents of the business, assets or liabilities is unlawful;
- (f) that there was a total failure of or no consideration or there was any partial failure of consideration;
- (g) that the person who executed, is deemed to have executed or who is a party to, any document of title for the assets or written contract which evidences, gives rise to or secures the asset or liability, did not understand the document;
- (h) that the person who executed, is deemed to have executed or who is a party to, any document of title for the asset or written contract which evidences, gives rise to or secures the asset or liability did not have the capacity or the authority to do the same; and
- (i) that there is an error in any statement of account issued by the transferor or any other person in respect of the liability or any debt to which the assets relate.

Vesting of shares or other capital instruments 5. (1) A vesting order shall provide for the vesting of any shares or other capital instruments of a financial institution which has ceased to be viable or which the Bank considers likely to become non-viable under subparagraph 32(1)(c)(iii) to take effect free from any trust, liability, adverse claim or other encumbrances.

(2) A vesting order for the vesting of any shares or other capital instruments may provide for—

- (a) the extinguishment of rights of holders of warrants or other instruments that entitle the holder to acquire shares in the financial institution which has ceased to be viable or which the Bank considers likely to become non-viable under subparagraph 32(1)(c)(iii);
- (b) the financial institution which has ceased to be viable or

which the Bank considers likely to become non-viable under subparagraph 32(1)(c)(iii) to not issue any further shares, warrants, or such other securities which are convertible or exchangeable into shares in such financial institution;

- (c) any shares or capital instruments of a financial institution which has ceased to be viable or which the Bank considers likely to become non-viable under subparagraph 32(1)(c)(iii) to be converted from one form or class to another; or
- (d) the removal from the official list of any stock exchange the shares of the transferor or a particular class of securities of the transferor.

Preservation of rights

6. (1) A person who is precluded from making a claim against any transferee or is precluded from raising a defence against that transferee under this Schedule, shall be entitled to seek compensation against the transferor in respect of such claim.

(2) Where the court is satisfied that the person referred to in subparagraph (1) has a claim against the transferor including any prior equitable interest in the assets which that person could have raised or claimed but is precluded by subparagraph 4(9) that person shall be entitled to such compensation from the transferor in respect of such claim as the court considers fair and reasonable.

Additional provisions on land

7. (1) Notwithstanding the provisions of the National Land Code, the Land Ordinance relating to the State of Sabah, the Land Code relating to the State of Sarawak or any other law, any caveat, prohibitory order or any other encumbrance which was entered, endorsed, registered or lodged, prior to, on or after, the vesting date shall not prevent a vesting of any interest in land of the transferor to the transferee.

(2) Where a vesting order vests in the transferee, any interest in land—

(a) in Peninsular Malaysia, on receipt of—

- (i) payment of the prescribed fee; and
- (ii) the vesting order,

the Registrar under the National Land Code shall, without the need for any further application or filing of any further document, make a memorial on the register document of title and make such other entries and generally do all things as may be necessary to give effect to the vesting;

(b) in Sabah, on receipt of—

- (i) payment of the prescribed fee; and
- (ii) the vesting order,

the Registrar under the Land Ordinance relating to the State of Sabah shall, without the need for any further application or filing of any further document, make a memorial on the register document of title and make such other entries and generally do all things as may be necessary to give effect to the vesting; and

(c) in Sarawak, on receipt of—

- (i) payment of the prescribed fee; and
- (ii) the vesting order,

the Registrar under the Land Code relating to the State of Sarawak shall, without the need for any further application

or filing of any further document, make a memorial on the register document of title and make such other entries and generally do all things as may be necessary to give effect to the vesting.

(3) Notwithstanding any provision in the National Land Code, the Land Ordinance relating to the State of Sabah, the Land Code relating to the State of Sarawak or any other law, a vesting order shall be effective to vest an interest in land in the transferee as of the vesting date and shall be conclusive evidence of such vesting.

Other Registration Authorities to give effect to vesting order

8. (1) Notwithstanding the provisions of any other law, any Registration Authority other than the Registrar under the National Land Code, the Registrar under the Land Ordinance relating to the State of Sabah and the Registrar under the Land Code relating to the State of Sarawak, shall, on receipt of—

- (a) payment of the prescribed fee; and
- (b) the vesting order,

without the need for any further application or filing of any further documents, do all things and make all entries or memorials in any register or record kept by the Registration Authority as may be necessary to give effect to the vesting of any business, assets or liabilities, shares or other capital instruments referred to in subparagraph 32(1)(c)(iii) to which the vesting order relates.

(2) For the purpose of this paragraph, subsection 112A(1) of the Companies Act 1965 shall be deemed to apply to the transferee as if for the word “thirty” in that subsection the words “one hundred and eighty” had been substituted.

Automatic substitution in any legal or other proceedings

9. Notwithstanding the provisions of any other law, every registrar of courts shall automatically upon receipt of a copy of the vesting order do all things and make all entries in any register or record kept by such registrar as may be necessary to give effect to the automatic substitution of the transferee in place of the transferor as a party in any legal or other proceedings.

Immunity of Registration Authority

10. A Registration Authority shall not be liable to any person in respect of the making of any memorial on or entry in the register document of title or any other register or record in reliance of the vesting order.

Replacement vesting order

11. (1) The Bank may, by order published in the *Gazette*, make a new vesting order (in this paragraph referred to as “replacement vesting order”) to replace any vesting order it has previously made in order to rectify any omission or error in the vesting order.

(2) Any replacement vesting order made by the Bank under subparagraph (1) stating that any business, assets, liabilities, shares or other capital instruments have been vested in the transferee shall be conclusive evidence of such vesting as of the vesting date stipulated in the replacement vesting order.

(3) If any law stipulates a time period within which a vesting of any of the assets stated to be the subject of a replacement vesting order made under subparagraph (1) shall be registered or filed, that period shall commence from the date the replacement vesting order is made.

(4) Any act done by a transferee, transferor or any other person, in reliance of a vesting order previously made shall not be affected by any omission or error rectified in a replacement vesting order made under subparagraph (1).

(5) For the purposes of this Act, any reference to a vesting order shall be deemed to include a reference to a replacement vesting

order made under subparagraph (1).

Transfer of foreign assets and foreign liabilities 12. (1) This paragraph applies in relation to foreign assets and foreign liabilities held by the transferor.

(2) For the purposes of this paragraph—

“foreign assets” means assets of the transferor outside Malaysia;

“foreign law” means the law of the country or territory outside Malaysia in which the assets of the transferor are situated or liabilities of the transferor are to be discharged;

“foreign liabilities” means the liabilities of the transferor to be discharged outside Malaysia.

(3) The transferor and transferee shall each take any necessary steps to ensure that the vesting of any foreign assets or foreign liabilities of the transferor is effective under foreign law where such vesting is not wholly effective by virtue of the vesting order.

(4) Until the vesting of foreign assets or foreign liabilities is effective under foreign law, the transferor shall—

(a) hold the assets as a trustee for the benefit of the transferee together with any additional asset or right accruing by virtue of the original asset or right; and

(b) discharge any liability on behalf of the transferee.

(5) The transferee must meet any expenses of the transferor in complying with this paragraph.

(6) An obligation imposed by this paragraph is enforceable as if created by contract between the transferor and transferee.