LAWS OF MALAYSIA

Act 618

Development Financial Institutions Act 2002

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An Act to make provisions for the regulation and supervision of development financial institutions and for matters connected therewith.

[*15 February 2002*] *PU(B) 51/2002.*

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PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Development Financial Institutions Act 2002.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Application

2. (1) This Act shall apply to such development financial institutions as may be prescribed by the Minister by order published in the *Gazette*.

(2) For the avoidance of doubt, the Minister may, by order published in the *Gazette*, on the recommendation of the Bank, provide that all or any part of the provisions of this Act shall not apply in respect of any development financial institution, or shall apply with such modifications as may be set out in the order and such modifications must be consistent with the intent and purpose of this Act.

Interpretation

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

"child" includes an illegitimate child, a step-child and a child adopted under any written law of Malaysia or of any place outside Malaysia, or under any custom recognised by a class of persons in or outside Malaysia;

"member", in relation to an institution which is—

(a) a corporation, means a shareholder; and

(b) a partnership, means a partner;

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

Act 519. "Bank" means the Central Bank of Malaysia established under the Central Bank of Malaysia Act 1958 [*Act 519*];

Act 125. "related", in relation to a corporation, means related within the meaning of section 6 of the Companies Act 1965 [*Act 125*];

"books" includes any register or other record of information and any accounts or accounting records, however compiled, recorded or stored; Act A1502.

"collateral" includes a mortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, lien or pledge (whether actual or constructive), hypothecation, indemnity, undertaking or other means of securing payment or discharge of a debt or liability (whether present or future, or whether vested or contingent);

"specify" means specify in writing by way of standards or any other forms; Act A1502.

"prescribe" means prescribed by order published in the *Gazette*;

Act 56. "document" has the same meaning as in the Evidence Act 1950 [*Act 56*];

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

"Governor" and "Deputy Governor" mean the Governor and Deputy Governor of the Bank respectively; Act A1502.

"property" means any movable or immovable property, whether tangible or intangible and includes— Act A1502.

(a) any right, interest, title, claim, chose in action, power or privilege, whether present or future, or whether vested or contingent, in relation to any property, or which is otherwise of value;

(b) any conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of immovable property of which the person executing the conveyance is the proprietor or has possession or in which he is entitled to a contingent right, either for the whole interest or for any less interest;

(c) any security, including any stock, share, debenture and fund;

(d) any negotiable instrument, including any bank note, bearer note, Treasury bill, dividend warrant, bill of exchange, promissory note, cheque and negotiable certificate of deposit; or

(e) any mortgage or charge, whether legal or equitable, guarantee, lien or pledge, whether actual or constructive, letter of hypothecation, trust receipt, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present or future, or whether vested or contingent;

"individual" means a natural person;

Act A1502.

"development financial institution" means an institution which carries on any activity, whether for profit or otherwise, with or without any Government funding, *with* the purpose of promoting development in the industrial, agricultural, commercial or other economic sector, including the provision of capital or other financing facility; and for the purposes of this definition, "development" includes the commencement of any new industrial, agricultural, commercial or other economic venture or the expansion or improvement of any such existing venture;

"prescribed institution" means a development financial institution which is prescribed by the Minister under subsection 2(1);

"Shariah committee" means the Shariah committee established under section 33F; *Act A1502.*

Act 125. "approved company auditor" has the same meaning as in the Companies Act 1965;

"financing facility" means— *Act A1502.*

(a) an advance, loan or other facility, in whatever form or by whatever name called, by which the customer has access, directly or indirectly, to the funds of the prescribed institution and includes a financing facility which is made in accordance with Shariah; and

(b) the giving of a guarantee, credit insurance or takaful cover in relation to a financing facility;

"interest in a share" means a legal or equitable interest in a share;

"Government" means the Federal Government, or any State Government, any local authority, or any other authority or body, whether corporate or unincorporate, established, appointed or constituted by any written law;

"Chief Executive Officer", in relation to an institution, means an individual, who either individually or jointly with one or more other persons, is responsible, subject to the authority of the directors, for the conduct of the business and the administration of the institution;

"computer" has the same meaning as in the Evidence Act 1950; *Act A1502.*

"client" includes a customer;

"trust fund" means any fund established under section 43;

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

"Shariah Advisory Council" means the Shariah Advisory Council established under the Central Bank of Malaysia Act 2009 [*Act 701*]; *Act A1502.*

"Minister" means the Minister for the time being charged with the responsibility for finance;

"person" includes an individual, any corporation, statutory body, local authority, society, trade union, co-operative society, partnership and any other body, organization, association or group of persons, whether corporate or unincorporate; *Act A1502.*

"computer output" means a statement or representation, whether in written, printed, pictorial, film, graphical, acoustic or other form— *Act A1502.*

(a) produced by a computer;

(b) displayed on the screen of a computer; or

(c) accurately translated from a statement or representation so produced;

"officer", in relation to an institution, means any of its employees and includes its Chief Executive Officer;

"senior officer", in relation to a prescribed institution, means a person, other than the Chief Executive Officer or a director, having authority and responsibility for planning, directing or controlling the activities of a prescribed institution including the chief operating officer, members of decision-making committees and other persons performing key functions such as risk management, compliance, internal audit or other functions as may be specified by the Bank under section 41, but shall not include a member of a Shariah committee; *Act A1502.*

"office" includes the principal place of business, a branch, an agency, a mobile place of business, a place of business set up and maintained for a limited period only, an electronic terminal and any other place of business; *Act A1502.*

"stakeholder", in relation to a prescribed institution, means the Government or any person who provides funding or any other assistance to the prescribed institution, or its members, customers, depositors, policy owners or creditors, as the case may be;

"director" includes any person who occupies the position of a director, and includes a person in accordance with whose directions and instructions the directors or officers are accustomed to act and an alternate or substitute director, and without prejudice to the foregoing, in the case of—

(a) a co-operative society, means a member of the board, or other governing body, of the co-operative society;

(b) a statutory body, means a member of the board, committee, council or other governing body of the statutory body;

(c) a partnership, means a partner;

(d) a sole proprietorship, means the sole-proprietor; and

(e) any other body, association or group of persons, whether corporate or unincorporate, means a person having the direction and control of the management of its business or affairs;

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

(a) has an interest in more than fifty per cent of the shares of the institution;

(b) has the power to appoint or cause to be appointed a majority of the directors of the institution; *Act A1502.*

(c) has the power to make or cause to be made decisions in respect of the business or administration of the institution, and to give effect to such decisions or cause them to be given effect to; or

(d) in accordance with whose directions, instructions or wishes the directors, chief executive officer or senior officers of the institution are accustomed or under obligation, whether formal or informal, to act, *Act A1502.*

and the word "control" shall be construed accordingly;

"chairman", in relation to a prescribed institution, means chairman *Act A1502.*

of the board of directors;

Act 125. "corporation" has the same meaning as in the Companies Act 1965;

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

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

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

"premises" includes any land, building, structure or place;

"relative", in relation to an individual, subject to subsection (1A), means— *Act A1502.*

(a) the spouse of the individual;

(b) the brother or sister of the individual, or of the spouse of the individual;

(c) any lineal ascendant or descendant of the individual, or of the spouse of the individual;

(d) the spouse of any individual referred to in paragraph *(b)* or *(c)*;

(e) any lineal descendant of an individual referred to in paragraph *(b)* or *(d)*;

(f) any uncle, aunt or cousin of the individual, or of the spouse of the individual; or

(g) any spouse, or any lineal ascendant or descendant, of an individual referred to in paragraph *(f)*;

"associate", in relation to a person, means—

(a) any person who is a nominee or an officer of that person;

(b) any person who manages the affairs of that person;

(c) any firm of which such person, or any nominee of his, is a partner or a person in charge or in control of its business or affairs;

Act 125. *(d)* any corporation within the meaning of the Companies Act 1965, of which such person, or any nominee of his, is a director or is in charge or in control of its business or affairs, or in which such person, alone or together with any nominee of his, has or have a controlling interest, or shares to the total value of not less than twenty per cent of the total issued capital of that corporation; or *Act A1502.*

(e) the trustee of any trust, where—

(i) the trust has been created by that person; or

(ii) the total value of the assets contributed by that person to the trust at any time, whether before or after the creation of the trust, amounts, at any time, to not less than twenty per cent of the total value of the assets of the trust;

"standards" includes any obligation or requirement as specified by the Bank under this Act and such standards may contain any *Act A1502.*

interpretative, incidental, supplemental, consequential and transitional provisions;

Act 125. "subsidiary" has the same meaning as in section 5 of the Companies Act 1965;

Act 125. "company" has the same meaning as in the Companies Act 1965;

Act 125. "holding company" has the same meaning as in section 5 of the Companies Act 1965;

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

"modification" includes amendment, adaptation, alteration, variation, addition, division, substitution or exclusion;

"capital funds" means paid-up capital and reserves, and includes, for the purposes of sections 33C, 38 and 39, the whole or such proportion of any other class, category or description of capital as the Bank may specify. *Act A1502.*

(1A) For the purpose of the definition of "relative" in subsection (1)— *Act A1502.*

(a) the adoption of any person by another under any written law of Malaysia or any country, territory or place outside Malaysia, or under any custom recognized by any class of persons in Malaysia or in any country, territory or place outside Malaysia, shall be treated as creating between the adopter and the adopted person the same natural relationship as the adoptive relationship, and other relationships in relation to it shall be determined accordingly; and

(b) references therein to a relationship include, where relevant, a relationship by half-blood.

(2) For the purposes of this Act—

(a) "persons acting in concert" means persons who, pursuant to an agreement, arrangement or understanding, co-operate to acquire jointly or severally interests in shares of a corporation for the purpose of obtaining or consolidating control of that corporation or act jointly for the purpose of exercising control over a corporation; and *Act A1502.*

(b) without prejudice to the generality of paragraph *(a)*, the following persons shall be presumed to be persons acting in concert, unless the contrary is established:

(i) a corporation and its related and associate corporations;

(ii) a corporation and any of its directors, or the relative or associate of any of its directors, or any related trusts;

(iii) a corporation and any pension fund established by it;

(iv) a person and any investment company, unit trust or other fund whose investments such person manages on a discretionary basis; *Act A1502.*

(v) a financial adviser and its client which is a corporation, where the financial adviser manages on a discretionary basis the client's funds and has ten per cent or more interest in the shares of the client; or *Act A1502.*

(vi) a person who owns or controls twenty per cent or more *Act A1502.*

of the voting shares of a corporation falling within subparagraph (i) and any relative of such person, or any related trusts together with one or more persons falling within subparagraph (i).

(3) For the purpose of this Act—

(a) a corporation is established when it is incorporated;

(b) a statutory body is established when it comes into existence under the law establishing, appointing or constituting it;

(c) a co-operative society is established when it is registered;

(d) a partnership is established when it is formed;

(e) a sole-proprietorship is established when it commences its business;

(f) any other individual, body, association or group of persons, whether corporate or unincorporate, which requires registration or other form of recording or recognition under any written law before it can lawfully commence its activities, is established when it is so registered, recorded or recognized.

(4) For the purpose of this Act, a corporation is an associate corporation of another corporation if not less than twenty per cent and not more than fifty per cent of the shares of the first-mentioned corporation are held by that other corporation.

(5) Any reference in this Act to the power of the Minister or the Bank to impose or specify conditions shall include the power of the Minister or the Bank, as the case may be, to amend or revoke any existing conditions or impose any new conditions. *Act A1502.*

Functions of the Bank

4. (1) The Bank shall have all the functions conferred on it by this Act and the Governor shall perform the functions of the Bank on its behalf.

(2) The Bank may authorise a Deputy Governor or any of its officers to perform any of its functions under this Act. *Act A1502.*

(2A) The Bank may establish and authorize a committee consisting of members as the Bank may determine to perform any or all of its functions under this Act on behalf of and in the name of the Bank. *Act A1502.*

(3) The Bank may, either generally or in a particular case, appoint a person who is not an officer of the Bank to perform any or all of its functions on behalf of and in the name of the Bank or render such assistance in the performance of its functions under this Act as the Bank may specify. *Act A1502.*

PART II

MANAGEMENT, OWNERSHIP AND CONTROL

Board of directors

5. (1) The business and affairs of a prescribed institution shall be managed under the direction and oversight of its board of directors, subject to this Act and any other written law which may be applicable to the prescribed institution. *Act A1502.*

(2) Without prejudice to the generality of subsection (1), the board of directors shall—

(a) ensure that the strategies pursued by the prescribed institution are consistent with its constituent documents and

any specification made by the Bank pursuant to subsection 28(1), and that the prescribed institution has the capacity and capability to manage such strategies;

(b) set and oversee the implementation of business and risk objectives and strategies, and in doing so, shall have regard to the long term viability of the prescribed institution and reasonable standards of fair dealing;

(c) ensure and oversee the effective design and implementation of sound internal controls, compliance and risk management systems commensurate with the nature, scale and complexity of the business and structure of the prescribed institution;

(d) oversee the performance of the senior management in managing the business and affairs of the prescribed institution;

(e) ensure that there is a reliable and transparent financial reporting process within the prescribed institution; and

(f) promote timely and effective communications between the prescribed institution and the Bank on matters affecting or that may affect the safety and soundness of the prescribed institution.

(3) In carrying out its functions and duties under this section, the board of directors of a prescribed institution shall have regard to the interests of the customers and depositors of the prescribed institution.

Duties of directors

5A. (1) A director of a prescribed institution shall at all times— *Act A1502.*

(a) act in good faith in the best interests of the prescribed institution;

(b) exercise reasonable care, skill and diligence with—

(i) the knowledge, skill and experience which may reasonably be expected of a director having the same responsibilities; and

(ii) any additional knowledge, skill and experience which the director has;

(c) only exercise powers conferred on him for the purposes for which such powers are conferred;

(d) exercise sound and independent judgment; and

(e) comply with any standards specified by the Bank which are applicable to a director.

(2) Subsection (1) has effect in addition to, and not in derogation of, any written law or rule of law relating to the duty or liability of a director.

(3) Any director who contravenes paragraph (1)*(c)* commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.

Appointment of Chief Executive Officer and directors

6. (1) Except with prior written approval of the Minister, no prescribed institution shall appoint or reappoint any person as its Chief Executive Officer or director. *Act A1502.*

(2) The prescribed institution shall only submit an application for approval under subsection (1) after seeking and obtaining the Bank's verification that the person has complied with the criteria set out in

the First Schedule.

(3) No prescribed institution shall appoint or reappoint any person as its Chief Executive Officer or director and no person shall accept any appointment or reappointment as a Chief Executive Officer or director of a prescribed institution, unless such person has been verified by the Bank as having complied with the criteria set out in the First Schedule.

(4) A prescribed institution shall notify the Bank of the appointment or reappointment of its Chief Executive Officer or directors within fourteen days from the date of the appointment or reappointment, as the case may be.

Compliance with criteria in First Schedule

Act A1502.

6A. A chairman, director, Chief Executive Officer or senior officer of a prescribed institution shall at all times comply with the criteria set out in the First Schedule.

Disqualification of Chief Executive Officer and director

7. (1) No prescribed institution shall appoint a person and no person shall accept appointment as a Chief Executive Officer or director of a prescribed institution—

(a) if he is a bankrupt or has compounded with his creditors, whether in or outside Malaysia;

(b) without prejudice to paragraph *(c)*, if a charge for a criminal offence relating to dishonesty, fraud or violence under any written law punishable with imprisonment for one year or more, whether by itself, or in lieu of, or in addition to, a fine, has been proved against him in any court in or outside Malaysia;

(c) if a charge for any offence under this Act has been proved against him;

(d) if there has been made against him any order of detention, supervision, restricted residence, banishment or deportation, or if there has been imposed on him any form of restriction or supervision, by bond or otherwise, under any law relating to prevention of crime, or preventive detention for the prevention of crime or drug trafficking, or restricted residence, or banishment or immigration; or

(e) if he has been a director of, or directly concerned in the management of, any corporation which is being or has been wound up by a court or other authority competent to do so in or outside Malaysia.

(2) *(Deleted)*.

Act A1502.

Cessation of office

Act A1502.

8. (1) Where—

(a) a Chief Executive Officer or director of a prescribed institution becomes disqualified by virtue of subsection 7(1); or

(b) a chairman, director, Chief Executive Officer or senior officer of a prescribed institution no longer complies with any of the criteria set out in the First Schedule,

he shall immediately cease to hold office and cease to act in such capacity.

Act A1502.

(1A) The prescribed institution shall immediately—

(a) in the case of paragraph (1)*(a)*, terminate the appointment of such Chief Executive Officer or director; or

(b) in the case of paragraph (1)*(b)*, remove the chairman, director, Chief Executive Officer or senior officer from such office.

(1B) Notwithstanding anything contained in any contract of service or any other agreement relating to his appointment, such Chief Executive Officer or director terminated under paragraph (1A) *(a)* shall not be entitled to claim any compensation for such termination. *Act A1502.*

(2) Subject to section 123B and notwithstanding subsections (1) and (1A), the Bank, with the concurrence of the Minister, may direct the prescribed institution— *Act A1502.*

(a) to terminate the appointment of the Chief Executive Officer or director who becomes disqualified by virtue of subsection 7(1); or

(b) to remove the Chief Executive Officer or director who no longer complies with any of the criteria as set out in the First Schedule,

and the prescribed institution shall comply with such direction to terminate the appointment of that person in such capacity or remove that person from such office, as the case may be, and notwithstanding anything contained in any contract of service or any other agreement relating to his appointment, the Chief Executive Officer or director terminated under paragraph *(a)* shall not be entitled to claim any compensation for such termination.

(3) During the pendency of any criminal proceedings in any court for any offence referred to in paragraph 7(1) *(b)* or *(c)* against any person who is a Chief Executive Officer or director of a prescribed institution, such person shall not act in such capacity, or hold any other office, or act in any other capacity, in that prescribed institution, or in any manner, whether directly or indirectly, be concerned with, or take part or engage in, any activity, affairs or business of, or in relation to, that prescribed institution, except as may be authorised by the Bank, and subject to such conditions as the Bank may impose.

(4) *(Deleted)*. *Act A1502.*

(5) For the purpose of subsection (3), criminal proceedings referred to in that subsection shall be deemed to be pending from the date that the accused person is first charged in court for the offence until the date of the final conclusion of the proceedings, whether in the court of original jurisdiction or, in the event of any appeal by any party, in the court of final appellate jurisdiction.

Exemption from disqualification

9. (1) A person who is disqualified by virtue of paragraph 7(1) *(e)* may, with the written consent of the prescribed institution in which he is holding office or is to be appointed, apply to the Bank in writing to exempt him from that paragraph, and, the Bank may, with the concurrence of the Minister, grant such exemption, subject to such conditions as the Bank considers fit to impose.

(2) The person applying for an exemption under subsection (1) and the prescribed institution in which he is holding office or is to be appointed shall submit such particulars and information as the Bank may specify.

Notice of cessation of office

10. (1) A prescribed institution shall notify the Bank in writing of the fact that a person has ceased to be its chairman, director, Chief Executive Officer or senior officer and the reasons for it within *Act A1502.*

fourteen days from the date of the cessation.

(2) *(Deleted)*. *Act A1502.*

Disclosure of interest

11. (1) A director of a prescribed institution who has an interest, directly or indirectly, in a transaction or arrangement with the prescribed institution, or in any matter being or about to be considered by the prescribed institution, shall, as soon as practicable, disclose to the board of directors of the prescribed institution the nature and extent of his interest. *Act A1502.*

(2) *(Deleted)*. *Act A1502.*

(3) The secretary to the board shall record in the board's minutes the disclosure referred to in subsection (1).

(4) *(Deleted)* *Act A1502.*

(5) Whether or not a disclosure under subsection (1) has been made, the director shall, in relation to that transaction, arrangement or matter— *Act A1502.*

(a) refrain from taking part or from being present in any deliberation or decision of the board; and

(b) be disregarded for the purpose of constituting a quorum of the board.

(6) *(Deleted)* *Act A1502.*

(7) No act or proceedings of the board shall be invalidated on the ground that any member of the board has contravened the provisions of this section.

Acquisition of interest in shares

12. (1) Unless the Minister otherwise approves, no person shall acquire, together with any interests in the shares of a prescribed institution which are already held by him, or by him and by persons acting in concert with him, an aggregate interest in shares of five per cent or more of the shares of that prescribed institution, or such other percentage as the Minister may prescribe.

(2) No person who has obtained an approval of the Minister under subsection (1) shall acquire any further interest in the shares of such prescribed institution without obtaining the approval of the Minister and subsection (1) shall apply to an application for approval under this subsection.

(3) Any person who contravenes subsection (1) or (2) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding fifty million ringgit or to both. *Act A1502.*

Report of acquisition to the Bank

13. (1) Where it comes to the knowledge of a prescribed institution that any acquisition as is referred to in subsection 12(1) has been effected or is about to be effected in respect of itself, the prescribed institution shall report it to the Bank within thirty days from the date the prescribed institution becomes aware of such acquisition.

(2) *(Deleted)*. *Act A1502.*

Change in control, amalgamation and merger

14. (1) Unless the Minister otherwise approves, no person shall—

(a) subject to subsection 12(1), take control of a prescribed institution or its holding company; or

(b) amalgamate or merge with any prescribed institution.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding fifty million ringgit or to both. *Act A1502.*

Transfer of business

15. (1) Unless the Minister otherwise approves, a prescribed institution shall not sell, dispose of, or transfer the whole or any part of its business, including all property derived from, or used in or for the purpose of such business.

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding fifty million ringgit or to both. *Act A1502.*

Application to High Court for transfer of business

16. (1) A prescribed institution transferring its business under paragraph 14(1) *(b)* or subsection 15(1) to another person may make a joint application to the High Court by way of an *ex parte* originating summons for all or any of the following orders—

(a) the date on and from which the transfer shall take effect, being a date earlier or later than the date of the application;

(b) the vesting of any property held by the prescribed institution, either alone or jointly with any other person, in the other person either alone or, as the case may be, jointly with any other person, on and from the transfer date, in the same capacity, upon the trusts, and with and subject to the powers, provisions and liabilities, respectively;

(c) for any existing instrument, whether in the form of a deed, will or otherwise, or order of any court, under or by virtue of which any property became vested in the prescribed institution, to be construed and to have effect as if for any reference to the prescribed institution there were substituted a reference to the other person;

(d) for any existing agreement to which the prescribed institution was a party to have effect as if the other person had been a party instead of that prescribed institution;

(e) for any account between the prescribed institution and any of its customers to become an account between the other person and the customer and such account to be deemed for all purposes to be a single continuing account;

(f) for any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent, whether or not in relation to an account, given to the prescribed institution, either alone or jointly with another person, to have effect, in respect of anything due to be done, as if given to the other person either alone or, as the case may be, jointly with such other person;

(g) for any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed by, the prescribed institution or payable at the place of business of that prescribed institution, whether so drawn, given, accepted or endorsed before, on, or after, the transfer date, to have the same effect on and from the transfer date, as if it had been drawn on, or given to, or accepted or endorsed by, the other person or were payable at the place of business of the other person;

(h) for the custody of any document, goods or thing held by the

prescribed institution as bailee immediately before the transfer date to pass to the other person and the rights and obligations of the prescribed institution under any contract of bailment relating to any such document, goods or thing to be transferred to the other person;

(i) for any collateral held immediately before the transfer date by the prescribed institution, or by a nominee of, or trustee for, the prescribed institution, as collateral for the payment or discharge of any liability of any person, to be held by the other person or, as the case may be, to be held by that nominee or trustee as the nominee of, or trustee for, the other person, and to the extent of those liabilities, be available to the other person as collateral for the payment or discharge of those liabilities and where any such collateral extends to future advances or future liabilities, to be held by, and to be available to, the other person as collateral for future advances by, and future liabilities to, the other person in the same manner in all respects as future advances by, or future liabilities to, that prescribed institution were collateralised immediately before the transfer date;

(j) where any right or liability of the prescribed institution is transferred to the other person, for the other person to have the same rights, powers and remedies and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority for ascertaining, protecting or enforcing that right or resisting that liability as if it had at all times been a right or liability of the other person, including those rights or liabilities in respect of any legal proceedings or applications to any authority pending immediately before the transfer date by or against that prescribed institution;

(k) for any judgment or award obtained by or against the prescribed institution and not fully satisfied before the transfer date to be enforceable by or, as the case may be, against the other person; and

(l) for all such incidental, consequential and supplemental orders as are necessary to secure that the transfer shall be fully and effectively carried out.

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

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

(4) The order of the High Court made under subsection (1) shall, subject to the directions of the High Court, be published by the

person acquiring the business in not less than two daily newspapers published in Malaysia and approved by the Bank, one of which shall be in the national language and the other in the English language.

(5) The prescribed institution shall lodge, within thirty days of the making of the order of the High Court under subsection (1), an authenticated copy of such order together with an authenticated copy of the agreement or arrangement for the transfer approved by the Minister under subsection 19(5), and an authenticated copy of the Minister's approval, with—

(a) the Registrar of Companies or Registrar General of Co-operative Societies, as the case may be; and

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

(6) *(Deleted)*. *Act A1502.*

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

Transfer of immovable property

17. Where an order of the High Court under subsection 16(2) vests any alienated land or any share or interest in any alienated land in an other person— *[sic]*

Act 56/1965.

(a) the High Court shall, where such alienated land is in Peninsular Malaysia, pursuant to subsection 420(2) of the National Land Code [*Act 56/1965*], cause a copy of the order to be served on the Registrar of Titles or the Land Administrator, as the case may be, immediately after the making of the order so that the Registrar of Titles or the Land Administrator, as the case may be, gives effect to the provisions of subsections 420(2), (3) and (4) of the Code;

Sabah Cap 68.

(b) where such alienated land is in Sabah, the transferee shall, as soon as practicable after the order has been made, present an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land as provided under the Land Ordinance of Sabah [*Cap. 68*];

Swk Cap 81.

(c) where such alienated land is in Sarawak, the transferee shall, as soon as practicable after the order has been made, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land as provided under section 171 of the Land Code of Sarawak [*Cap. 81*]; or

(d) where such alienated land is in the Federal Territory of Labuan, the transferee shall, as soon as practicable after the order has been made, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land as provided under subsection 114(2) of the Land Ordinance of Sabah as modified by the Federal Territory of Labuan (Modification of Land Ordinance) Order 1984.

Own shares or shares of holding company as collateral

18. (1) Unless the Bank otherwise approves in writing, no person shall grant a financing facility to any person against the collateral of the shares or property of a prescribed institution or its holding company if the shares or property to be provided as collateral for the proposed financing facility, by itself, or together with any other shares or property of that prescribed institution already held as collateral for any other financing facilities given by him, would constitute five per cent or more of the shares or property of that prescribed institution or its holding company. *Act A1502.*

(2) Unless the Bank otherwise approves, no prescribed institution shall grant any financing facility, or enter into any other transaction, against the collateral of its own shares or property or the shares or property of its holding company. *Act A1502.*

(3) Any person who contravenes subsection (1) or any prescribed institution that contravenes subsection (2) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both. *Act A1502.*

Application to the Bank

19. (1) Any application for the Minister's approval under subsection 12(1), 14(1) or 15(1) shall be made to the Bank together with such information and documents as the Bank may specify.

(2) Where any information or document required by the Bank is not provided within the time specified or any extended time granted by the Bank, the application shall, without prejudice to a fresh application being made, be deemed to be withdrawn.

(3) The Bank shall consider the application under subsection (1) and make a recommendation to the Minister whether the application should be approved or refused.

(4) A recommendation to approve an application shall not be made if the Bank is satisfied that it would be contrary to the public interest to do so.

(5) Upon receiving an application and the recommendation of the Bank under this section, the Minister may approve the application with or without any modification or condition, or refuse the application.

(6) Any person who fails to comply with any modification or condition imposed by the Minister under subsection (5) commits an offence and shall on conviction be liable to a fine not exceeding ten million ringgit. *Act A1502.*

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

(8) A person who submits or provides any information or document under subsection (1) which he knows, or has reason to believe, to be false or misleading commits an offence and shall on conviction be liable to a fine not exceeding ten million ringgit. *Act A1502.*

Defence relating to contravention

20. It shall be a defence to a charge for an offence relating to contraventions under section 12, 13, 14, 15 or 18 for the accused to prove that he had no knowledge of the acts, omissions, facts or circumstances constituting the contravention, provided he had reported the contravention to the Bank within seven days of becoming aware of those acts, omissions, facts or circumstances which constituted such contravention.

Effect of contravention

21. (1) Where the Bank is satisfied that any person has

contravened subsection 12(1) regardless as to whether or not there is any prosecution of any person for such contravention, the Bank may make a preliminary order in writing—

(a) prohibiting the transfer of, or the carrying out of the agreement to transfer, such shares or, in the case of unissued shares, prohibiting the transfer of, or the carrying out of the agreement to transfer, the right to be issued with them;

(b) prohibiting the exercise of any voting rights in respect of such shares;

(c) prohibiting the issue of any further shares in right of such shares or in pursuance of any offer made to their holder; or

(d) except in a liquidation, prohibiting the payment of any sums due from the prescribed institution on such shares, whether in respect of capital or otherwise.

(2) Any person who fails to comply with an order under subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding one year or to a fine not exceeding five million ringgit or to both. *Act A1502.*

(3) Where the Bank is satisfied that any person has contravened subsection 18(1), the Bank may make a preliminary order in writing prohibiting the exercise of any rights under any collateral, or right to transfer any shares or property constituting such collateral regardless as to whether or not there is any prosecution of the person for such contravention.

(4) Any person who fails to comply with an order under subsection (3) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding one year or to a fine not exceeding five million ringgit or to both. *Act A1502.*

(5) Any transaction, including any agreement or arrangement in relation to any shares, or interest in shares, or security, which is in contravention of a preliminary order, or an order confirmed under subsection 23(1), or of any direction of the Bank under subsection 24 (1), shall be void and of no effect.

(6) A person is not entitled to be given an opportunity to be heard before the Bank makes a preliminary order under subsection (1) against him or which affects him in any manner.

Preliminary order by the Bank

22. (1) A preliminary order under section 21 shall be served on the defaulting person as soon as practicable, and may be publicised in such manner as the Bank deems fit, if, in the opinion of the Bank, it needs to be publicised.

(2) A preliminary order shall be binding on—

(a) the defaulting person;

(b) any person for the time being holding any shares to which such order applies; and

(c) any other person specified in the order or to whom the order is directed.

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

(4) Any person who contravenes subsection (3) commits an *Act A1502.*

offence and shall on conviction be liable to imprisonment for a term not exceeding one year or to a fine not exceeding five million ringgit or to both.

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

Confirmation of preliminary order

23. (1) The Bank may, after considering the representations made under subsection 22(5), either confirm the preliminary order, or revoke it, or vary it in such manner as it deems fit.

(2) Where the Bank confirms a preliminary order, it may dispose of the shares surrendered to it under subsection 22(3) to such person and to such extent as the Bank may determine.

(3) The proceeds of the disposal of the shares under subsection (2) shall be paid into the High Court, and any person claiming to be beneficially entitled to the whole or any part of such proceeds may, within thirty days of such payment into the High Court, apply to a judge of the High Court in chambers for payment out of the proceeds to him.

Direction to give effect to order

24. (1) The Bank may direct the directors or officers of the prescribed institution to give effect to a preliminary order of the Bank under subsection 22(1) or an order of the Bank confirmed under subsection 23(1), or to take such action as may be incidental, ancillary or consequential to such order.

(2) Any person who fails to comply with the direction under subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding one year or to a fine not exceeding five million ringgit or to both. *Act A1502.*

PART III

RESTRICTIONS ON BUSINESS

Control of establishment or acquisition of subsidiaries or acquisition or holding of material interest in corporations

25. (1) Unless the Bank otherwise approves in writing, no prescribed institution shall establish or acquire any subsidiary in or outside Malaysia, or acquire or hold any material interest in any corporation. *Act A1502.*

(2) (*Deleted*). *Act A1502.*

(3) The Bank may approve an application to establish or acquire a subsidiary, or acquire or hold any material interest in any corporation, under subsection (1), with or without conditions, or reject the application. *Act A1502.*

(4) Every prescribed institution shall at all times comply with any condition as may be specified by the Bank under subsection (3). *Act A1502.*

(5) The Bank may specify what constitutes "material interest" for the purposes of subsection (1) and paragraph 26(1)*(d)*. *Act A1502.*

Direction in respect of subsidiary or material interest in corporations

26. (1) Notwithstanding any approval under subsection 25(1), the Bank may, in the interest of a prescribed institution, direct the prescribed institution to— *Act A1502.*

(a) rationalise the business of any of its subsidiaries;

(b) transfer the business of any of its subsidiaries to another corporation, including the prescribed institution or any of its other subsidiaries; *Act A1502.*

(c) wind up any of its subsidiaries; or *Act A1502.*

(d) dispose of all or any of its interest in its subsidiary or corporation in which it holds a material interest. *Act A1502.*

(1A) In determining the interest of a prescribed institution under subsection (1), the Bank shall take into consideration matters that the Bank considers relevant including whether the activities of that subsidiary or corporation in which the prescribed institution holds a material interest— *Act A1502.*

(a) is consistent with the business carried on by the prescribed institution; or

(b) directly or indirectly affect the safety and soundness of the prescribed institution.

(2) For the purposes of subsection (1), the prescribed institution shall comply with the Bank's direction within such period as the Bank may specify.

(3) (*Deleted*). *Act A1502.*

Restriction or prohibition of business

27. (1) Except with the prior written approval of the Bank, a prescribed institution shall not carry on, whether on its own account or on a commission basis, and whether alone or with others, any activity in or outside Malaysia, otherwise than in connection with or for the purposes of carrying on its business.

(2) (*Deleted*). *Act A1502.*

(3) The Bank may, in the interest of promoting orderly development in any economic sector—

(a) prohibit or restrict a prescribed institution from carrying on such description of business as it may specify; or

(b) direct a prescribed institution to carry on such description of business as it may specify.

(4) (*Deleted*). *Act A1502.*

Prohibition of financing facilities

28. (1) No prescribed institution shall grant to any person any financing facility, whether from its own funds or any trust fund it manages under section 43, except for such purposes or on such collateral as the Bank may specify. *Act A1502.*

(2) (*Deleted*). *Act A1502.*

(3) Unless otherwise specified by the Bank, no prescribed institution shall grant any financing facility to— *Act A1502.*

(a) any of its members, directors or officers or any other person receiving remuneration from it (other than any person receiving remuneration from it in respect of his professional services); *Act A1502.*

(b) any body corporate or unincorporate, or any sole proprietorship, in which any of its members, directors or officers is a director or manager, or for which any of its members, directors or officers is a guarantor or an agent; and *Act A1502.*

(c) (*deleted*); *Act A1502.*

(d) any person for whom any of its members, directors or officers has given any guarantee or other undertaking involving financial liability.

(3A) No prescribed institution shall grant any financing facility to any corporation in the shares of which any of its members, directors or officers has any interest which, in aggregate, is of an amount that is in excess of such percentage as the Bank may specify. *Act A1502.*

(4) Notwithstanding subsection (3), a prescribed institution may, subject to such terms and conditions as it may impose, grant to any of its officers or its executive director—

(a) any financing facility which is provided for under his scheme of service; or *Act A1502.*

(b) where there is no such provision and the prescribed institution is satisfied that special or compassionate circumstances exist, a loan not exceeding such period as may be specified by the Bank. *Act A1502.*

(5) For the purposes of this section, "director" or "officer" includes a spouse, child or parent of a director or officer, or any other person as may be specified by the Bank. *Act A1502.*

Single counterparty exposure limit

29. (1) Subject to subsection 28(1) and except as may be approved by the Minister on the recommendation of the Bank, no prescribed institution shall have an exposure to a single counterparty, whether in relation to its own funds or any trust fund it manages under section 43, which exceeds the limit as may be specified by the Bank. *Act A1502.*

(1A) An exposure to a single counterparty referred to in subsection (1) shall include an exposure to any group of persons connected to such single counterparty but shall not include any exposure to, and any exposure explicitly guaranteed by, the Bank or the Government. *Act A1502.*

(1B) For the purposes of this section, the Bank may specify what constitutes "connected", "counterparty" or "exposure". *Act A1502.*

(2) (*Deleted*). *Act A1502.*

(3) (*Deleted*). *Act A1502.*

(4) (*Deleted*). *Act A1502.*

(5) (*Deleted*). *Act A1502.*

(6) (*Deleted*). *Act A1502.*

Restriction on giving of financing facility

30. (1) A prescribed institution may, whether from its own funds or any trust fund it manages under section 43, and notwithstanding paragraph 28(3) *(a)*, grant a financing facility to the spouse, child or parent of any of its directors or officers for the purchase of a house if— *Act A1502.*

(a) the person to whom the financing facility is given has creditworthiness which is not less than that normally required by the prescribed institution of other persons to whom financing facilities are given;

(b) the terms of the financing facility are not less favourable to the prescribed institution than those normally offered to other persons;

(c) the giving of the financing facility will be in the interests of the prescribed institution; and

(d) the financing facility is approved by all other directors of the prescribed institution at a duly constituted meeting of the directors where not less than three quarters of all the directors of the prescribed institution are present and such approval has been recorded in the minutes of that meeting.

Disclosure of director's interest

31. (1) Every director of a prescribed institution who has in any manner, whether directly or indirectly, any interest in a proposed financing facility, whether from its own funds or from any trust fund it manages under section 43, to be given to any person by such prescribed institution shall as soon as practicable declare in writing the nature of his interest to a duly constituted meeting of directors, and the secretary of the prescribed institution, or other officer appointed by the prescribed institution for the purpose, shall cause a copy of such declaration to be circulated immediately to every director regardless whether he was present or not at such meeting. *Act A1502.*

(2) (*Deleted*). *Act A1502.*

(3) For the purposes of subsection (1), a general notice in writing served on each director of the prescribed institution by a director to the effect that he is a director, officer or member of the body corporate or unincorporate or a director or officer of the sole proprietorship to which the financing facility is proposed to be given shall be deemed to be sufficient declaration of interest in relation to such proposed financing facility if the general notice— *Act A1502.*

(a) sets out the nature and extent of his interest in the body or sole proprietorship, as the case may be; and

(b) is brought up and read at the meeting of the directors of the prescribed institution at which it is served or, if it is not served at a meeting of directors, at the next meeting of directors after it has been served on each director.

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

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

(a) after he becomes a director of the prescribed institution; or

(b) if already a director, after he commences to hold such office or to possess such property.

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

(7) (*Deleted*). *Act A1502.*

Control of credit limit

32. (1) A director or officer of a prescribed institution shall not grant any financing facility in excess of the limit, or outside the scope of any terms and conditions, imposed on him by the prescribed institution, or in contravention of any directions given to him, or any agreement made with him, by the prescribed institution. *Act A1502.*

(2) (*Deleted*). *Act A1502.*

(3) Subsection (1) applies to the funds of the prescribed institution and any trust fund it manages under section 43.

(4) The Bank may by written notice direct a prescribed institution to—

(a) submit any information relating to its policy and procedure for the granting of any financing facility; *Act A1502.*

(b) submit a report on the limit or the terms and conditions imposed, the directions given, and the agreements made, in relation to the authority of each of its directors or officers authorised to grant financing facilities; or *Act A1502.*

(c) modify the policies or procedures referred to in paragraph *(a)*, or vary the matters mentioned in paragraph *(b)*, as the Bank deems fit and proper, either generally, or in relation to any class of directors or officers, or in relation to any particular director or officer, and such modification or variation shall be binding on the prescribed institution and its directors and officers.

(5) (*Deleted*). *Act A1502.*

Investment of assets

33. (1) Subject to subsection (2), a prescribed institution shall invest any of its assets in such manner, and maintain the assets in such place, as the Bank, with the approval of the Minister, may specify.

(2) The Bank may direct a prescribed institution in writing—

(a) not to make investment of a specified class or description; or

(b) to realise, before the expiry of a specified period or such extended period as the Bank may approve, the whole or a specified proportion of its investment.

(3) (*Deleted*). *Act A1502.*

PART IIIA *Act A1502.*

ISLAMIC FINANCIAL BUSINESS

Division 1 *Act A1502.*

Interpretation

Interpretation and application

33A. (1) For the purposes of this Part— *Act A1502.*

"investment account" has the same meaning as in the Islamic Financial Services Act 2013 [*Act 759*];

"Islamic deposit" has the same meaning as in the Islamic Financial Services Act 2013;

"Islamic financial business" means the business or activity in accordance with Shariah which a prescribed institution is approved to carry on under paragraph 33B(1)*(a)* or *(b)*, which may include—

(a) accepting Islamic deposits on current account, deposit account, savings account or other similar accounts, with or without the business of paying or collecting cheques drawn by or paid in by customers; and

(b) accepting money under an investment account.

(2) In Division 2 to Division 4 of this Part, "prescribed institution" refers to a prescribed institution which has obtained an

approval of the Bank under subsection 33B(1) to carry on Islamic financial business.

(3) In the case of a prescribed institution which has obtained the approval of the Bank under paragraph 33B(1)*(b)*, Division 2 to Division 4 of this Part shall apply only to the business or activity which the prescribed institution is approved to carry on under that paragraph.

Prescribed institution permitted to carry on business or activity in accordance with Shariah

33B. (1) Nothing in this Act or the Islamic Financial Services Act 2013 shall prohibit or restrict any prescribed institution from— *Act A1502.*

(a) carrying on its entire business or activity in accordance with Shariah; or

(b) carrying on business or activity in accordance with Shariah in addition to its existing conventional business,

provided that the prescribed institution obtains the prior written approval of the Bank.

(2) The Bank may impose any condition on the approval granted by the Bank under subsection (1).

(3) A prescribed institution which has obtained an approval of the Bank under paragraph (1)*(b)* shall not carry on its entire business or activity in accordance with Shariah unless such prescribed institution obtains the prior written approval of the Bank under paragraph (1)*(a)*.

(4) Any prescribed institution that contravenes subsection (1) or (3) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding fifty million ringgit or to both.

Requirement on prescribed institution approved under paragraph 33B(1)(b)

33C. (1) A prescribed institution which has obtained the approval of the Bank under paragraph 33B(1)*(b)* shall— *Act A1502.*

(a) establish and maintain at all times a fund with such minimum amount as may be specified by the Bank to fund the operations of its Islamic financial business; and

(b) keep all assets and liabilities of its Islamic financial business separate from its other assets and liabilities in such manner as may be specified by the Bank.

(2) The fund established under paragraph (1)*(a)* shall—

(a) be funded from the capital funds of the prescribed institution and other sources of funds as may be specified by the Bank; and

(b) be segregated from the capital funds of the prescribed institution for the operations of its business or activity other than the Islamic financial business.

(3) Unless otherwise specified by the Bank, the assets of a prescribed institution which has obtained the approval of the Bank under paragraph 33B(1)*(b)* relating to its Islamic financial business shall not be—

(a) used to fund the operations of its conventional business; and

(b) subject to the debts or other obligations of the prescribed institution in relation to its conventional business.

Shariah compliance

Duty to ensure compliance with Shariah

33D. (1) A prescribed institution shall at all times ensure that its business, affairs and activities are in compliance with Shariah. *Act A1502.*

(2) For the purposes of subsection (1), a compliance with any advice or ruling of the Shariah Advisory Council in respect of any particular business, affair or activity shall be deemed to be a compliance with Shariah in respect of that business, affair or activity.

(3) Where a prescribed institution becomes aware that it is carrying on any of its business, affair or activity in a manner which is not in compliance with Shariah or the advice of its Shariah committee or the advice or ruling of the Shariah Advisory Council, the prescribed institution shall—

(a) immediately notify the Bank and its Shariah committee of the fact;

(b) immediately cease from carrying on such business, affair or activity and from taking on any other similar business, affair or activity; and

(c) within thirty days of becoming aware of such non-compliance or such further period as may be specified by the Bank, submit to the Bank a plan on the rectification of the non-compliance.

(4) The Bank may carry out an assessment as it thinks necessary to determine whether the prescribed institution has rectified the non-compliance referred to in subsection (3).

(5) Any prescribed institution that contravenes subsection (1) or (3) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.

Power of the Bank to specify standards on Shariah matters

33E. (1) The Bank may, in accordance with the advice or ruling of the Shariah Advisory Council, specify standards— *Act A1502.*

(a) on Shariah matters in respect of the carrying on of business, affair or activity by a prescribed institution which requires the ascertainment of Islamic law by the Shariah Advisory Council; and

(b) to give effect to the advice or rulings of the Shariah Advisory Council.

(2) In addition, the Bank may also specify standards relating to any of the following matters which do not require the ascertainment of Islamic law:

(a) Shariah governance including—

(i) functions and duties of the board of directors, senior officers and members of the Shariah committee of a prescribed institution in relation to compliance with Shariah;

(ii) fit and proper requirements or disqualifications of a member of a Shariah committee; and

(iii) internal Shariah compliance functions; and

(b) any other matter in relation to the business, affair and activity of a prescribed institution for the purposes of

compliance with Shariah.

(3) Every prescribed institution, its director, Chief Executive Officer, senior officer or member of a Shariah committee shall at all times comply with the standards specified by the Bank under subsections (1) and (2) which are applicable to such person.

(4) Every prescribed institution shall at all times—

(a) ensure that its internal policies and procedures on Shariah governance are consistent with the standards specified by the Bank under this section; and

(b) whether or not standards have been specified by the Bank under this section, manage its business, affairs and activities in a manner which is not contrary to Shariah.

(5) Every director, officer or a member of a Shariah committee of a prescribed institution shall at all times comply with the internal policies and procedures adopted by such institution to implement the standards specified by the Bank under subsection (1) or (2).

(6) Any person who fails to comply with any standards specified under subsection (1), commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.

Division 3 *Act A1502.*

Shariah governance

Establishment of Shariah committee

33F. A prescribed institution shall establish a Shariah committee for the purpose of advising the prescribed institution in ensuring its business, affairs and activities comply with Shariah. *Act A1502.*

Appointment of Shariah committee member

33G. No person shall be appointed, reappointed or accept any appointment as a member of a Shariah committee unless such person meets the requirements as set out in any standards as may be specified by the Bank under subparagraph 33E(2)*(a)*(ii) and has obtained the prior written approval of the Bank. *Act A1502.*

Functions and duties of Shariah committee and its members

33H. A Shariah committee and every member of the Shariah committee shall have such functions and duties set out in any standards as may be specified by the Bank under subparagraph 33E (2)*(a)*(i). *Act A1502.*

Cessation as member of Shariah committee

33I. (1) A member of a Shariah committee shall cease to be a member if— *Act A1502.*

(a) such member resigns as a member;

(b) the prescribed institution, subject to subsection (3), terminates the appointment of such member;

(c) such member is disqualified pursuant to any standards specified by the Bank under subparagraph 33E(2)*(a)*(ii); or

(d) such member no longer meets the fit and proper requirements as may be specified by the Bank under subparagraph 33E(2)*(a)*(ii) to the satisfaction of the Bank.

(2) A member of a Shariah committee who—

(a) resigns as a member; or

(b) becomes aware that he is disqualified pursuant to any standards specified by the Bank under subparagraph 33E(2) *(a)*(ii) and as such, pursuant to paragraph (1)*(c)*, ceases to be a member,

shall notify the Bank of that fact and the reasons immediately or in any case not later than fourteen days of such circumstance.

(3) A prescribed institution shall not terminate the appointment of a member of its Shariah committee unless the prescribed institution has obtained the prior written approval of the Bank to do so.

(4) Subject to section 123B, the Bank may, by an order in writing, remove a member of a Shariah committee if the Bank is of the opinion that—

(a) any of the circumstances set out in paragraph (1)*(c)* or *(d)* has occurred in relation to that member and such member remains to be a member of the Shariah committee; or

(b) such member has contravened any provision of this Act or failed to comply with any standards applicable to him.

(5) The removal of a member of a Shariah committee under subsection (4) shall be lawful and valid notwithstanding anything contained in a contract of service or any other agreement relating to his appointment and whether or not made or provided for under any written law, and the person so removed from office shall not be entitled to claim compensation for the loss of office.

Notice of cessation as member of Shariah committee

Act A1502.

33J. (1) Where a person ceases to be a member of a Shariah committee of a prescribed institution pursuant to—

(a) paragraph 33I(1)*(a)*, *(b)* or *(d)*; or

(b) paragraph 33I(1)*(c)*, if such disqualification is within the prescribed institution's knowledge,

the prescribed institution shall notify the Bank in writing of that fact and the reasons of such cessation immediatelyor in any case not later than fourteen days from the date of such cessation.

(2) Where a person ceases to be a member of a Shariah committee under subsection 33I(1) or is removed by the Bank under subsection 33I(4), the prescribed institution shall appoint a new member of its Shariah committee in accordance with section 33G within such period as may be specified by the Bank.

Information to be provided to Shariah committee

Act A1502.

33K. (1) A prescribed institution and any director, officer or controller of such institution shall—

(a) provide any document or information within its or his knowledge, or capable of being obtained by it or him, which the Shariah committee may require; and

(b) ensure that such document or information provided under paragraph (a) is accurate, complete, not false or misleading in any material particular,

to enable the Shariah committee to carry out its functions and duties under this Act.

(2) Except as provided in section 33L, a member of a Shariah committee shall not disclose any document or information provided under subsection (1) to any other person.

Qualified privilege and duty of confidentiality

Act A1502.

33L. A member of a Shariah committee shall not be liable—

(a) for a breach of a duty of confidentiality between such member and the prescribed institution in respect of—

(i) any reporting to the Bank; or

(ii) the carrying out of his functions and duties,

pursuant to any standards specified by the Bank under subsection 33E(2) which was done or made in good faith; or

(b) to be sued in any court for defamation in respect of any statement made by the member without malice in the carrying out of his functions and duties under this Act.

Division 4 *Act A1502.*

Audit on Shariah compliance

Appointment of person by prescribed institution to conduct audit on Shariah compliance

33M. (1) The Bank may require a prescribed institution to appoint any person as the Bank may approve, to carry out an audit on Shariah compliance by the prescribed institution. *Act A1502.*

(2) The person appointed under subsection (1) shall have such functions and duties as may be specified by the Bank and shall submit a report to the Bank on the audit carried out pursuant to this section.

(3) The remuneration and expenses of the person appointed under subsection (1) shall be borne by the prescribed institution.

(4) A person appointed under subsection (1) shall not be liable for a breach of duty of confidentiality between such person and the prescribed institution in respect of matters reported to the Bank pursuant to an audit on Shariah compliance under this section.

Appointment of person by Bank to conduct audit on Shariah compliance

33N. (1) Without prejudice to section 33M, the Bank may appoint for a prescribed institution any person to conduct an audit on Shariah compliance— *Act A1502.*

(a) if the prescribed institution fails to appoint a person under subsection 33M(1);

(b) in addition to the person appointed under subsection 33M(1); or

(c) under any other circumstances as the Bank deems appropriate for the purposes of compliance with Shariah by the prescribed institution,

and the remuneration and expenses relating to such appointment shall be borne by the prescribed institution.

(2) The person appointed under subsection (1) shall have such functions and duties as may be specified by the Bank and shall submit a report to the Bank on the audit carried out pursuant to this section.

(3) The person appointed under subsection (1) shall not be liable for a breach of duty of confidentiality between such person and the prescribed institution in respect of matters reported to the Bank pursuant to an audit on Shariah compliance under this section.

PART IV

OBLIGATIONS AND SOURCING OF FUNDS

Statement of corporate intent

34. (1) A prescribed institution shall, for each financial year, submit to the Bank within such period as the Bank may specify, such statement of corporate intent as may be approved by the Minister charged with the responsibility for that prescribed institution.

(2) The statement of corporate intent under subsection (1) shall be in such form as the Bank may specify and shall include the prescribed institution's strategic plans and manner of sourcing for funds for the following financial year.

(3) (*Deleted*). *Act A1502.*

(4) (*Deleted*). *Act A1502.*

(5) (*Deleted*). *Act A1502.*

(6) (*Deleted*). *Act A1502.*

Annual funding

35. (1) A prescribed institution shall, for each financial year, submit to the Bank, within such period and in such form as the Bank may specify, an annual funding requirement as may be approved by the Minister. *Act A1502.*

(2) (*Deleted*). *Act A1502.*

(3) (*Deleted*). *Act A1502.*

(4) Notwithstanding subsection (1), a prescribed institution shall submit to the Bank any additional funding requirement for its own account, an existing trust fund or a new trust fund as may be approved by the Minister. *Act A1502.*

(5) (*Deleted*). *Act A1502.*

(6) (*Deleted*). *Act A1502.*

Restrictions on payment of dividend

36. (1) A prescribed institution shall not pay any dividend on its shares until all its capitalised expenditure (including preliminary expenses, organisation expenses, shares selling commission, brokerage, amount of losses incurred, and any other item of expenditure not represented by tangible assets) has been written off.

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

(3) (*Deleted*). *Act A1502.*

Maintenance of liquid assets

37. (1) The Bank may specify that a prescribed institution shall hold such minimum, or minimum average, amount of liquid assets in Malaysia as may be set out in the specification at all times or for such period, and in such ratio or formula.

(2) (*Deleted*). *Act A1502.*

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

(4) For the purpose of subsection (1), the Bank shall specify a period of not less than seven days within which a prescribed institution shall comply with the specification.

(5) (*Deleted*). *Act A1502.*

(6) The Bank may prohibit any prescribed institution from giving any financing facilities to any person during the period in which the prescribed institution has failed to comply with any requirement of a specification under this section. *Act A1502.*

Maintenance of capital

38. (1) The Bank may require a prescribed institution to

funds maintain capital funds, unimpaired by losses, in such ratio to all or any of its assets or to all or any of its liabilities, including those of all its offices in and outside Malaysia, as the Bank may specify.

(2) (*Deleted*). *Act A1502.*

Maintenance of reserve fund

39. (1) The Bank may require a prescribed institution to—

(a) maintain a reserve fund; and

(b) before declaring any dividend from its net profits of each year (after due provision made for taxation), transfer to its reserve fund out of the net profits of each year—

(i) a sum equal to not less than fifty per cent of the net profits of that year, so long as the amount of the reserve fund is less than fifty per cent of its paid-up capital; or

(ii) a sum equal to not less than twenty-five per cent of the net profits of that year, so long as the amount of the reserve fund is fifty per cent but less than one hundred per cent of its paid-up capital.

(2) Notwithstanding subsection (1), the Bank may specify a different portion of the net profits of each year to be transferred to the reserve fund of a prescribed institution for the purpose of ensuring that the amount of its reserve fund is sufficient for the purpose of its business and adequate in relation to its liabilities.

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

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

(5) (*Deleted*). *Act A1502.*

Maintenance of assets in Malaysia

40. (1) Unless the Bank otherwise approved in writing, a prescribed institution shall hold at all times in Malaysia such minimum amount of assets as the Bank may specify.

(2) For the purpose of subsection (1), the minimum amount of assets to be held in Malaysia shall be expressed as a percentage of all or such of the liabilities of the prescribed institution as the Bank may specify.

(3) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding fifty million ringgit. *Act A1502.*

(4) For the purpose of subsection (1), the Bank may specify a period of not less than seven days within which the prescribed institution shall comply with the specification.

Power of Bank to specify other prudential requirements

41. (1) The Bank may specify standards for other prudential matters to promote— *Act A1502.*

(a) the sound financial position of a prescribed institution; or

(b) integrity, professionalism and expertise in the conduct of the business, affairs and activities of a prescribed institution.

(2) Without prejudice to the generality of subsection (1), standards specified under that subsection may include standards

relating to—

(a) corporate governance;

(b) risk management; and

(c) prevention of a prescribed institution from being used, intentionally or unintentionally, for criminal activities.

(3) The Bank may, in the interest of the prescribed institution, specify standards on prudential matters under this section to a subsidiary of a prescribed institution.

(4) Every prescribed institution and a subsidiary of a prescribed institution shall at all times—

(a) comply with the standards as may be specified by the Bank under this section;

(b) ensure that its internal policies and procedures are consistent with the standards as may be specified by the Bank under this section; and

(c) whether or not standards have been specified by the Bank under this section, manage its business, affairs and activities in a manner consistent with sound risk management and governance practices which are effective, accountable and transparent.

(5) Every director and officer of a prescribed institution and a subsidiary of a prescribed institution shall at all times comply with the internal policies and procedures adopted by such institution or subsidiary including internal policies and procedures to implement the standards as may be specified by the Bank under this section.

Amendment of constituent documents

42. (1) A prescribed institution shall not make any amendment to its constituent documents, unless it has furnished to the Bank in writing particulars of the proposed amendment and obtained the prior written approval of the Bank.

(2) (*Deleted*). *Act A1502.*

(3) A prescribed institution shall, within thirty days after making any amendment to its constituent documents, furnish to the Bank—

(a) in writing particulars of the amendment duly verified by a statutory declaration made by one of its directors; and

(b) a copy of its amended constituent documents.

(4) (*Deleted*). *Act A1502.*

PART IVA *Act A1502.*

BUSINESS CONDUCT AND CONSUMER PROTECTION

Interpretation

42A. For the purposes of this Part and the Second Schedule— *Act A1502.*

"eligible complainant" means any person who is eligible to refer a dispute to the Financial Ombudsman Scheme in accordance with the terms of the Financial Ombudsman Scheme;

"financial consumer" means any person who uses, has used or may be intending to use, any financial service or product—

(a) for personal, domestic or household purposes;

(b) in connection with a small business as may be specified by the Bank under section 42C; or

(c) whether or not for the purposes set out in paragraph *(a)* or *(b)*, if—

(i) the value of the financial services or products does not exceed an amount as may be specified by the Bank under section 42C; or

(ii) such person is of a class, category or description of persons as may be specified by the Bank under section 42C;

"financial services or products" means financial services or financial products developed, offered or marketed, by a prescribed institution or for and on behalf of another person by a prescribed institution;

Act 758. "Financial Ombudsman Scheme" means a financial ombudsman scheme approved under subsection 126(2) of the Financial Services Act 2013 [*Act 758*] or subsection 138(2) of the Islamic Financial Services Act 2013.

Application

42B. (1) Sections 42C and 42D shall apply without prejudice to the provisions of the Capital Markets and Services Act 2007 [*Act 671*] in so far as such provisions relate to any of the regulated activities carried on by a prescribed institution under that Act. *Act A1502.*

(2) The Bank shall enter into an arrangement in writing with the Securities Commission to coordinate on the regulation of business conduct relating to capital market products or capital market services as defined in subsection 2(1) of the Capital Markets and Services Act 2007, developed, offered or marketed by a prescribed institution.

Standards on business conduct

42C. (1) The Bank may specify standards on business conduct for the purpose of ensuring that a prescribed institution is fair, responsible and professional when dealing with financial consumers. *Act A1502.*

(2) Without prejudice to the generality of subsection (1), standards specified under that subsection may include standards relating to—

(a) transparency and disclosure requirements including the provision of information that is accurate, clear, timely and not misleading to financial consumers;

(b) fairness of terms in a financial consumer contract for financial services or products;

(c) promotion of financial services or products;

(d) provision of recommendations or advice including assessments of suitability and affordability of financial services or products offered to financial consumers; and

(e) complaints and dispute resolution mechanisms.

(3) The Bank may specify standards for the purposes of the definition of "financial consumer" under section 42A.

(4) Where the Bank specifies a standard on business conduct under subsection (1) which relates specifically to capital market products or capital market services as defined in subsection 2(1) of the Capital Markets and Services Act 2007, such standard shall be specified jointly with the Securities Commission.

Prohibited business conduct

42D. (1) A prescribed institution shall not engage in any prohibited business conduct set out in the Second Schedule. *Act A1502.*

(2) Without prejudice to the generality of section 126, the Bank

may issue guidance in writing on—

(a) descriptions of conduct which amount to any prohibited business conduct set out in the Second Schedule; or

(b) factors that are to be taken into account in determining whether a prescribed institution has engaged in any prohibited business conduct set out in the Second Schedule.

(3) Where the Bank issues guidance relating to prohibited business conduct set out in paragraphs 5 and 6 of the Second Schedule, such guidance shall be issued in consultation with the Competition Commission.

(4) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million ringgit or to both.

(5) The Bank shall refer any complaint from an aggrieved person involving the prohibited business conduct set out in paragraphs 5 and 6 of the Second Schedule to the Competition Commission.

Act 712. (6) In this section, "Competition Commission" means the Competition Commission established under the Competition Act 2010 [*Act 712*].

Financial Ombudsman Scheme

42E. (1) For the purposes of ensuring effective and fair handling of complaints and for the resolution of disputes in connection with financial services or products, regulations may be made under section 123— *Act A1502.*

(a) to require any class, category or description of prescribed institutions to be a member of the Financial Ombudsman Scheme and to comply at all times with the terms of membership of such scheme; and

(b) on the terms of the Financial Ombudsman Scheme setting out the scope including types of dispute that may be referred to it and its eligible complainants, the fees that may be charged and the types of award which may be granted under the Financial Ombudsman Scheme.

(2) A prescribed institution who is a member of the Financial Ombudsman Scheme shall—

(a) provide documents or information as may be required for the purposes of the resolution of disputes referred to the Financial Ombudsman Scheme; and

(b) comply with any award granted under the Financial Ombudsman Scheme, including a direction that requires the prescribed institution to take such steps in relation to a dispute.

Act 599. (3) Where a dispute has been referred to the Financial Ombudsman Scheme by an eligible complainant, the eligible complainant is not entitled to lodge a claim on such dispute with the Tribunal for Consumer Claims established under the Consumer Protection Act 1999 [*Act 599*].

PART V

DEALINGS WITH GOVERNMENT FUNDS

Establishment and maintenance of trust fund

43. A prescribed institution may, with the agreement of the Government, establish and maintain a separate trust for any fund

allocated by the Government, and manage such trust fund for and on behalf of the Government separately from its own funds.

Utilisation of trust funds

44. (1) No prescribed institution shall apply the assets of a trust fund to meet liabilities or expenses not properly attributable to that trust fund.

Act A1502.

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding twenty-five million ringgit.

(3) For the purposes of subsection (1), the Bank may specify the amount and types of liabilities and expenses that may be charged to any trust fund.

(4) The Bank may, if it is satisfied that a prescribed institution has applied any assets of a trust fund to meet liabilities or expenses not properly attributable to that trust fund, direct the prescribed institution to charge such liabilities or expenses to the assets of the relevant trust fund or the assets of the prescribed institution.

Act A1502.

(5) (*Deleted*).

Investment of trust fund

45. A prescribed institution may invest money in any trust fund, in so far as the money is not for the time being required to be expended or utilised for the purposes for which the trust fund was set up, in such investments as the Bank may specify and all income accruing in respect of such investments shall be credited to the trust fund.

Credit into trust fund

46. (1) A prescribed institution shall pay into a trust fund all money received by it in respect of the business to which the trust fund relates.

(2) A prescribed institution shall pay to a trust fund all income arising from the investment of the assets of that trust fund.

Act A1502.

(3) Any prescribed institution that contravenes this section commits an offence and shall on conviction be liable to a fine not exceeding twenty-five million ringgit.

Property of trust fund as collateral

Act A1502.

47. (1) No prescribed institution shall provide the property of a trust fund as collateral for a financing facility granted by any person to the prescribed institution or to any other person.

Act A1502.

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding twenty-five million ringgit.

Valuation of trust fund

48. (1) A prescribed institution shall value the assets and determine the liabilities of a trust fund in such manner as the Bank may specify.

Act A1502.

(2) (*Deleted*).

Transfer of trust fund

49. (1) The Minister may, on the recommendation of the Bank, direct a prescribed institution to transfer all the assets and liabilities of any trust fund to another trust fund maintained and managed by the prescribed institution.

(2) Notwithstanding subsection (1), the Minister may, on the recommendation of the Bank, direct a prescribed institution to transfer any trust fund to another person, including a prescribed institution and section 16 shall apply to the transfer with the necessary modification.

Act A1502.

(3) Any prescribed institution that fails to comply with the direction under subsection (1) or (2) commits an offence and shall on

conviction be liable to a fine not exceeding five million ringgit.

Breach of trust

50. (1) Any director or officer of a prescribed institution who, being in any manner entrusted with property in any trust fund or with any dominion over property in any trust fund either solely or jointly with any other person, dishonestly misappropriates, or converts to his own use, that property, or dishonestly uses or disposes of that property in violation of the provisions of this Part prescribing the mode in which such trust is to be discharged, or wilfully suffers any other person to do so, commits criminal breach of trust.

Act A1502.

(2) Any person who commits criminal breach of trust as set out in subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding twice the value of the property which is the subject matter of the breach or fifty million ringgit, whichever is higher, or to both.

Determination of trust fund

51. A trust fund established under section 43 shall be determined upon its winding up or dissolution or the completion of the transfer of its assets and liabilities to another trust fund under section 49.

Application of a trust fund in a winding-up

52. (1) In the winding up of a prescribed institution, the assets of a trust fund shall be applied to meet the liabilities of the trust fund to the extent that they are apportioned to the trust fund.

(2) Unless the Minister otherwise approves, where the assets of a trust fund exceeds its liabilities, the surplus assets shall not be applied to meet the liabilities of other trust funds which are deficient.

Act A1502.

(3) Any person who contravenes subsection (1) or (2) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.

PART VI

CONTROL OF DEFAULTER

Inability to meet obligations

53. (1) A prescribed institution, which considers that it is insolvent, or is likely to become unable to meet all or any of its obligations or that it is about to suspend payment to any extent, shall immediately inform the Bank of that fact.

Act A1502.

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding twenty-five million ringgit.

Action by the Bank

Act A1502.

54. (1) Where the Bank is satisfied whether pursuant to information under subsection 53(1) or after an examination under Part VIII, or if the Bank is of the opinion, that a prescribed institution—

(a) is carrying on its business in a manner detrimental to the interests of its stakeholders or the public generally;

Act A1502.

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

Act A1502.

(c) has breached or contravened any provision of this Act, the Central Bank of Malaysia Act 2009 or any written law, other than securities laws as defined in the Securities Commission Act 1993 [*Act 498*], regardless that there has been no prosecution or other action in respect of the breach or contravention;

(d) has failed to comply with any standards, notice, condition, specification, requirement, restriction or direction specified, issued or made under this Act, regardless that there has been no prosecution or other action in respect of such non-compliance; *Act A1502.*

(e) is conducting an activity which is inconsistent with its constituent documents or with any specification made under subsection 28(1); *Act A1502.*

(f) is committing or is about to commit an act, or is pursuing or is about to pursue any course of conduct, that is unsafe or unsound or has failed to commit an act or pursue a course of conduct that is necessary to maintain the safety and soundness of the prescribed institution; *Act A1502.*

(g) has failed to manage its business or affairs in a manner that is consistent with sound risk management and good governance practices; or *Act A1502.*

(h) that has obtained an approval to carry on its business or activity in accordance with Shariah under— *Act A1502.*

(i) paragraph 33B(1)*(a)*, is carrying on or is about to carry on any part of its business, affairs or activities in a manner which is contrary to Shariah; or

(ii) paragraph 33B(1)*(b)*, is carrying on or is about to carry on any part of its Islamic financial business in a manner which is contrary to Shariah,

the Bank may, by order in writing, exercise any one or more of the powers in subsection (2).

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

(a) require the prescribed institution to take any steps, or any action, or to do or not to do any act or thing in relation to the institution, or its business, or its directors or officers, which the Bank considers necessary and which it sets out in the order, within such time as may be set out in the order;

(b) prohibit the prescribed institution from extending any further financing facility for such period as may be set out in the order, and make the prohibition subject to such exceptions, and impose such conditions in relation to the exceptions, as may be set out in the order, and, from time to time, by further order similarly made, extend the period; *Act A1502.*

(c) notwithstanding anything in any written law, or any limitations contained in the constituent documents of the prescribed institution, for reasons to be recorded by it in writing, remove from office, with effect from such date as may be set out in the order, any officer of the prescribed institution;

(d) notwithstanding anything in any written law, or any limitations contained in the constituent documents of the prescribed institution, and, in particular, notwithstanding any limitation as to the minimum or maximum number of directors, for reasons to be recorded by it in writing—

(i) remove from office, with effect from such date as may be set out in the order, any director of the prescribed institution; or

(ii) appoint any person as a director of the prescribed institution, and provide in the order for that person to be paid by the prescribed institution such remuneration as may be set out in the order; or

(e) appoint a person to advise the prescribed institution in relation to the proper conduct of its business, and provide in the order for that person to be paid by the prescribed institution such remuneration as may be set out in the order.

(3) Any prescribed institution that fails to comply with any requirement under paragraph (2)*(a)* or contravenes any prohibition under paragraph (2)*(b)*, commits an offence and shall on conviction be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding fifty million ringgit or to both. *Act A1502.*

(4) Notwithstanding subsections (1) and (2), the powers of the Bank under paragraphs (2) *(b)*, *(c)*, *(d)* and *(e)* shall not be exercised without the prior concurrence of the Minister.

Action by the Minister

55. Notwithstanding section 54, the Minister may, on the recommendation of the Bank, prescribe—

(a) for the Bank to assume control of all or part of the property, business and affairs of the prescribed institution, and carry on all or part of its business and affairs, or for the Bank to appoint any person to do so on behalf of the Bank, and for the costs and expenses of the Bank, or the remuneration of the person so appointed, to be payable out of the funds and properties of the prescribed institution as a first charge on it;

(b) whether or not an order has been made under paragraph *(a)*, authorise an application to be made by the Bank to the High Court to appoint a receiver or manager to manage all or part of the business, affairs and property of the prescribed institution, and for all such incidental, ancillary or consequential orders or directions of the High Court in relation to such appointment as may, in the opinion of the Bank, be necessary or expedient; or

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

56. (*Deleted*). *Act A1502.*

Appointment under section 54

57. (1) A person appointed by the Bank under subparagraph 54 (2)*(d)*(ii), paragraph 54(2)*(e)*, or paragraph 55*(a)* shall be appointed subject to such terms and conditions, and for such period, as may be determined by the Bank, and shall hold his appointment at the pleasure of the Bank and shall not incur any obligation or liability solely by reason of his holding such appointment.

(2) The appointment of a director under subparagraph 54(2)*(d)* (ii) shall not affect any provision of the constituent documents enabling the prescribed institution to have further directors where the maximum number of directors allowed under the constituent documents has not already been reached or exceeded by the appointment.

(3) Where a receiver or manager has been appointed in respect of a prescribed institution by the High Court under paragraph 55*(b)*, all proper costs, charges and expenses, including the remuneration of such receiver or manager shall be payable out of the assets of the prescribed institution in priority to all other claims.

Removal from office under section 54

58. (1) Any officer or director removed from office in a prescribed institution under paragraph 54(2)*(c)* or subparagraph 54(2)*(d)*(i) shall cease to hold the office from which he is removed with effect from the date set out in the order, and shall not hold any other office in that prescribed institution or, in any manner, whether directly or indirectly, be concerned with, or take part, or engage in, any activity, affairs or business of, or in relation to, that prescribed institution.

Act A1502.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.

(3) The removal of an officer or director under paragraph 54(2)*(c)* or subparagraph 54(2)*(d)*(i) shall be lawful and valid notwithstanding anything contained in any contract of service or other contract or agreement, whether express or implied, whether individual or collective, and whether or not made or provided for under any written law, and a person so removed from office shall not be entitled to claim any compensation for the loss or termination of office.

Assumption of control

59. (1) Where an order is made under paragraph 55*(a)*, the prescribed institution and its directors and officers shall submit its property, business and affairs to the control of the Bank or the person appointed by the Bank and shall provide the Bank or such appointed person all such facilities as may be required to carry on the business and affairs of the prescribed institution.

Act A1502.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding twenty-five million ringgit.

(3) The Bank, or the appointed person, as the case may be, shall remain in control of the property, business and affairs of the prescribed institution, and carry on its business and affairs in its name and on its behalf, until such time as the order is revoked under subsection 56(4).

(4) All the powers of the prescribed institution and its directors under its constituent documents, or exercisable by the prescribed institution or its directors under any written law, regardless whether such powers are exercisable by resolution, special resolution, or in any other manner shall be vested in the Bank, or in the appointed person, as the case may be, and any difficulty that arises may be resolved by the Minister by a direction in writing.

(5) During the period that an order under paragraph 55*(a)* is in force, no director of the prescribed institution shall, either directly or indirectly, engage in any activity in relation to the prescribed institution, except as may be required or authorised by the Bank, or the appointed person, as the case may be, and no remuneration shall accrue or be payable to any director of the prescribed institution, except such as may relate to any activity required or authorised by the Bank, or the appointed person, as the case may be.

Act A1502.

(6) Any person who contravenes subsection (5) commits an offence and shall on conviction be liable to a fine not exceeding twenty-five million ringgit.

(7) For the avoidance of doubt, it is hereby declared that an order under paragraph 55*(a)* shall not have the effect of conferring on, or vesting in, the Bank, or the appointed person, as the case may be,

any title to, or any beneficial interest in, any property of the prescribed institution.

Reduction of share capital and cancellation of shares

60. (1) Notwithstanding anything in any written law or the constituent documents of a prescribed institution, where the paid-up capital of the prescribed institution is lost or unrepresented by available assets, the Bank or the appointed person, as the case may be, may apply to the High Court for an order to reduce its share capital by cancelling any portion of its paid-up capital which is lost or unrepresented by available assets.

(2) Where the High Court makes an order under subsection (1) to reduce the share capital of the prescribed institution, the Court may, if, on the expiry of thirty days from the date of any call made by the prescribed institution on its members to pay on their respective shares, payment on any such shares has not been made, order that such shares for which payment has not been made be cancelled.

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

Act 125.

(4) The powers conferred on the Bank and the appointed person under this section shall be in addition to any powers exercisable under subsection 64(1) of the Companies Act 1965, and where an application is made to the High Court under subsection (1), the High Court may exercise any of the powers conferred on it under section 64 of the Companies Act 1965 in relation to an application for confirmation and subsections 64(9) and 64(10) of that Act shall apply to the application.

Extension of jurisdiction

61. Any reference in this Part to a prescribed institution shall be read as including a reference to—

(a) its related corporation; and

(b) a person controlled by a director or directors of the prescribed institution, or by persons acting in concert with a director or directors of the prescribed institution.

Moratorium

62. (1) Where the Bank or an appointed person has assumed control of a prescribed institution, the Minister may, on the recommendation of the Bank, if he considers it to be in the interest of the stakeholders of the prescribed institution or the public generally, prescribe for all or any of the following:

(a) to prohibit the prescribed institution from carrying on all of its business, or any part of it;

(b) to prohibit the prescribed institution from doing or performing any act or function in connection with all of its business or any part of it;

(c) to authorise the Bank, or the appointed person, as the case may be, to apply to the High Court for an order staying for a period not exceeding six months the commencement or continuance of all or any actions and proceedings of a civil nature by or against the prescribed institution with respect to all or any of its business;

(d) provide for all such matters of an incidental, ancillary or consequential nature, or for which it may be otherwise necessary or expedient to provide, to give effect to the order,

including provisions for the Bank or the appointed person, as the case may be, to take into custody or control the property, books, documents or effects of the prescribed institution.

(2) Any prescribed institution that contravenes an order made under subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding twenty-five million ringgit. *Act A1502.*

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

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

PART VII

AUDITOR AND ACCOUNTS

Appointment of auditor

63. (1) A prescribed institution shall appoint, for each financial year before a date to be specified by the Bank, an auditor approved by the Bank.

(2) (*Deleted*). *Act A1502.*

(3) Where a prescribed institution fails to appoint an auditor before the date specified in subsection (1), the Bank may appoint an auditor for the prescribed institution and the remuneration and expenses of the auditor as specified by the Bank shall be paid by the prescribed institution.

(4) If the Bank considers it desirable that another auditor should act with the auditor appointed under subsection (1) or (3), the Bank may appoint another auditor, whose remuneration and expenses, as specified by the Bank, shall be paid by the prescribed institution.

Disqualification of auditor

64. (1) No prescribed institution shall knowingly appoint as its auditor a person, and no person shall knowingly consent to be appointed as an auditor of a prescribed institution by the prescribed institution or by the Bank, if that person—

(a) is not an approved company auditor;

(b) has any direct or indirect interest in that prescribed institution, including an interest in its shares;

(c) is a director, controller or employee of that prescribed institution;

(d) is indebted to that prescribed institution or to any related corporation of that prescribed institution; or

(e) has been convicted of any offence under this Act or the Companies Act 1965, or of any offence under any other written law involving fraud or dishonesty.

(2) (*Deleted*). *Act A1502.*

(3) Notwithstanding subsection (1), the Bank may approve in writing a person who is disqualified by virtue of subsection (1) to be appointed as an auditor if the Bank is satisfied that it would not be contrary to the interest of the prescribed institution.

(4) For the purposes of subsection (1), a person shall be deemed to be an employee of a prescribed institution—

(a) if he is an employee of a related corporation of that prescribed institution; or

(b) except where the Bank, in the circumstances of the case, otherwise directs, if he has, within the preceding period of twelve months, been an employee or promoter of that prescribed institution or its related corporation.

Act 125. (5) Unless approved by the Bank under subsection (3), an auditor for a prescribed institution who is disqualified under subsection (1) or section 9 of the Companies Act 1965 shall immediately cease to be the auditor of the prescribed institution.

(6) (*Deleted*). *Act A1502.*

Restriction on audit firm

65. (1) A firm shall not knowingly consent to be appointed, and shall not knowingly act, as auditor for a prescribed institution unless—

(a) all the partners of the firm who are resident in Malaysia are approved company auditors; and

(b) subject to subsection 64(3), no partner is disqualified under paragraph 64(1) *(b)* to *(e)*, from acting as the auditor of the prescribed institution.

(2) (*Deleted*). *Act A1502.*

Consent to act as auditor

66. No prescribed institution shall appoint a person as auditor under subsection 63(1) unless that person, prior to his appointment, has consented in writing to act as auditor, and consent in the case of a firm shall be under the hand of at least one of its partners.

Appointment of audit firm

67. The appointment of a firm in the name of the firm as auditor shall take effect and operate as an appointment of the persons who are members of that firm at the time of the appointment.

Auditor not deemed to be employee

68. For the purposes of this Part, a person shall not be deemed to be an employee of a prescribed institution or its related corporation by reason only of his having been appointed an auditor of the prescribed institution or its related corporation.

Auditor's report

69. (1) An auditor of a prescribed institution shall submit a report of the audit to the members of the prescribed institution and the report—

(a) in the case of a prescribed institution which is a company, shall be made in accordance with section 174 of the Companies Act 1965; and

(b) in the case of a prescribed institution, other than a company, shall certify whether or not in the opinion of the auditor—

(i) all the information and explanations which are in the opinion of the auditor necessary for the purposes of the audit have been obtained;

(ii) according to the best of the information and explanations given to him, the profit and loss account and balance sheet give a true and fair view of the state of the affairs

of the prescribed institution for the financial year concerned;

(iii) books of account have been kept properly by the prescribed institution so far as it appears from the audit of the accounts; and

(iv) proper returns adequate for the purposes of the audit have been received by him from offices of the prescribed institution not visited.

(2) (*Deleted*). *Act A1502.*

Additional requirement on auditor

70. (1) The Bank may require an auditor to—

(a) submit such additional information in relation to his audit as the Bank may specify; or

(b) enlarge or extend the scope of his audit of the business and affairs of the prescribed institution in such manner or to such extent as the Bank may specify,

within such time as the Bank may specify and the prescribed institution shall pay to the auditor such remuneration as the Bank may specify.

(2) (*Deleted*). *Act A1502.*

Auditor to report certain matters to the Bank

71. (1) An auditor shall immediately report to the Bank if, in the course of his duties as an auditor of a prescribed institution, he is satisfied that—

(a) there has been a contravention of or failure to comply with any provision of this Act or any specification or requirement made, or any order in writing, direction, instruction, or notice given, or any limit, term, condition or restriction imposed under this Act;

(b) an offence involving fraud or dishonesty under any other written law has been committed by the prescribed institution or any of its employees;

(c) losses have been incurred by the prescribed institution which reduce its capital funds to an extent that the prescribed institution is no longer able to comply with the specifications of the Bank under subsection 38(1);

(d) any irregularity which jeopardises the interest of stakeholders of the prescribed institution, or any other serious irregularity, has occurred; *Act A1502.*

(e) he is unable to confirm the claims of the stakeholders of the prescribed institution; *Act A1502.*

(f) there is any weakness in the internal controls which is relevant to the financial reporting process undertaken by the prescribed institution; or *Act A1502.*

(g) the financial position of the prescribed institution is likely to be or has been materially affected by any event, conduct of activity by the prescribed institution or any weakness in the internal controls of the prescribed institution. *Act A1502.*

(2) (*Deleted*). *Act A1502.*

(3) Notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any written

law or otherwise, the auditor of a prescribed institution shall not be liable for breach of a duty of confidentiality between the auditor and the prescribed institution for reporting to the Bank in good faith in compliance with subsection (1).

Information to auditor

72. (1) A prescribed institution, and its director, controller or employee shall—

(a) furnish to its auditor any information within its knowledge which the auditor may require; and

(b) ensure that information furnished to the auditor is not false or misleading or incomplete in any material particular.

(2) (*Deleted*). *Act A1502.*

Qualified privilege and duty of confidentiality

72A. (1) Subject to subsection (2), subsection 119(3) shall not apply to any document or information relating to the affairs or account of any customer of a prescribed institution disclosed by an auditor of a prescribed institution to the Audit Oversight Board established under the Securities Commission Act 1993 or an officer or other person authorized in writing by the Audit Oversight Board to perform the responsibilities of the Audit Oversight Board. *Act A1502.*

(2) The disclosure under subsection (1) shall be subject to such conditions as may be specified by the Bank.

(3) An auditor of a prescribed institution shall not be liable—

(a) for a breach of a duty of confidentiality between the auditor and the prescribed institution in respect of any reporting to the Bank done in good faith under this Part; or

(b) to be sued in any court for defamation in respect of any statement made by the auditor without malice in the discharge of his duties under this Act.

Annual accounts

73. (1) A prescribed institution shall, within ninety days after the end of each financial year, or such further period as the Bank may approve, submit to the Bank, in respect of its entire operations inside and outside Malaysia, a copy each in print and in record stored or recorded by electronic means and on electronic medium the following documents in such form as the Bank may specify:

(a) duly audited revenue account together with supporting statements;

(b) duly audited profit and loss account and balance sheet together with supporting statements;

(c) a certificate by the auditor;

(d) a report by the board of directors on its operations in the financial year; and

(e) a statutory declaration by one of its non-executive directors and its chief executive officer in respect of matters in paragraphs *(a)*, *(b)* and *(d)*.

(2) (*Deleted*). *Act A1502.*

(3) The revenue account, profit and loss account and balance sheet laid before the general meeting of a prescribed institution or submitted to the Registrar of Companies or the Registrar-General of Co-operative Societies shall be in such form as the Bank may specify and the amounts appearing in the revenue account, profit and loss account and balance sheet shall be the same as those reported under this section and any qualification in respect of the returns under this

section shall also be incorporated in those accounts.

(4) A prescribed institution shall submit to the Bank within sixty days from the date of its auditor's report or such further period as the Bank may approve—

(a) a copy of any report made by its auditor to its board of directors following the audit of its annual accounts; and

(b) a report on the action taken by its board of directors on the auditor's report.

(5) (*Deleted*). *Act A1502.*

Quarterly returns

74. (1) A prescribed institution shall submit to the Bank in respect of its operations for each quarter of a calendar year two copies each of the following in such form, and within such time, as the Bank may specify:

(a) a revenue account together with supporting statements;

(b) a profit and loss account and balance sheet together with supporting statements; and

(c) a certification of the documents mentioned in paragraph *(a)* or *(b)* signed by the chief executive officer and the employee responsible for its financial management.

(2) (*Deleted*). *Act A1502.*

Accounting standards

75. (1) For the purposes of this section— *Act A1502.*

Act 558. "financial statements" has the same meaning as set out in the approved accounting standards issued or approved by the Malaysian Accounting Standards Board under the Financial Reporting Act 1997 [*Act 558*];

"approved accounting standards" has the same meaning as in the Financial Reporting Act 1997.

(2) A prescribed institution shall prepare its financial statements in accordance with—

(a) the approved accounting standards subject to any standards as may be specified by the Bank; or

(b) in the absence of any approved accounting standards, any standards as may be specified by the Bank.

(3) Where the financial statements of a prescribed institution which has obtained the approval under subsection 33B(1) to carry on Islamic financial business are prepared in accordance with paragraph (2)*(a)*, such financial statements are deemed to have been prepared in accordance with the approved accounting standards in so far as the financial statements relate to its Islamic financial business.

Annual accounts and quarterly returns to be rectified

76. (1) The Bank may, by notice in writing, require a prescribed institution to submit additional information or explanation in relation to any document or information submitted under section 73 or 74 within such time as the Bank may specify.

(2) (*Deleted*). *Act A1502.*

(3) The Bank may require the additional information or explanation to be certified by the prescribed institution's auditor.

(4) The Bank may, after considering the explanation referred to in subsection (1), or if such explanation has not been given by or on behalf of the prescribed institution within the time specified—

(a) reject the document submitted under section 73 or 74; or

(b) direct the prescribed institution to vary the document or all other related documents within such time as is specified in the direction.

(5) Where a direction is given by the Bank under paragraph 4*(b)*, the document to which it relates shall be deemed not to have been lodged until it is re-submitted with the variation required by the direction.

(6) The Bank, on the basis of information available to it or on review of returns filed under section 74, may direct a prescribed institution to obtain its confirmation of compliance with section 73 before—

(a) laying its accounts before its general meeting; and

(b) publishing its accounts under section 78.

(7) (*Deleted*). *Act A1502.*

Submission of annual accounts

77. (1) A prescribed institution shall, within fourteen days of the laying of its accounts at its annual general meeting, or within such further period as the Bank may approve, submit to the Bank, a copy each in print and in record stored or recorded by an electronic means and on electronic medium, of its accounts as laid before the annual general meeting together with minutes of the meeting duly certified by its company secretary.

(2) (*Deleted*). *Act A1502.*

Action in relation to annual accounts

78. (1) A prescribed institution shall, within fourteen days of the laying of its accounts at its annual general meeting, or within such further period as the Bank may approve—

(a) publish in not less than two daily newspapers published in Malaysia and approved by the Bank, one in the national language and another in English language; and

(b) exhibit in a conspicuous position at each of its branches in Malaysia,

a copy each of the reports of the board of directors, its revenue account, profit and loss account and balance sheet as laid before its general meeting and such other document as the Bank may specify.

(2) (*Deleted*). *Act A1502.*

Admissibility of document

79. In any proceedings, a certificate signed by an authorised officer of the Bank stating that a document is submitted by a prescribed institution under section 73 or 74 or is a document that accompanies a document so submitted, shall be admissible in court as evidence of the fact so certified.

Liability where accounting records and information not kept

80. (1) If accounting records or information necessary to exhibit and explain the transactions and true financial condition of a prescribed institution are not kept, a past and present employee of the prescribed institution responsible for keeping proper accounting records or information commits an offence unless he proves that the offence was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances. *Act A1502.*

(1A) For the purposes of subsection (1), "accounting records" has the same meaning as in the Companies Act 1965. *Act A1502.*

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding one year or to a fine not exceeding five million ringgit or to both. *Act A1502.*

Application to trust fund

81. For the avoidance of doubt, it is hereby declared that in the preparation of documents in relation to a prescribed institution's operations under this Part, sections 69 to 80 shall apply with the necessary modifications to the operation of each of the trust funds managed by the prescribed institution under Part V.

PART VIII

EXAMINATION AND INVESTIGATION

Examination by the Bank

82. The Bank may, from time to time, examine, with or without any prior notice, the business and affairs of a prescribed institution, its offices and subsidiaries in or outside Malaysia. *Act A1502.*

Power of Minister to direct examination

83. The Minister may at any time direct the Bank to examine the business and affairs of any prescribed institution and any of its offices and subsidiaries in or outside Malaysia if he suspects that such prescribed institution or its subsidiary is carrying on business in a manner which is, or which is likely to be, detrimental to the interests of stakeholders or has insufficient assets to cover liabilities to the public, or is contravening any provision of this Act or any other written law. *Act A1502.*

Duty to produce and provide access to document and information

84. (1) A prescribed institution or its subsidiary under examination and its director, employee and agent— *Act A1502.*

(a) shall afford the Bank access to its documents, including documents of title to its assets, all securities held by it in respect of its customers' transactions and investments held by it, cash, premises, apparatus, equipment or machinery, and produce to the Bank all such documents or cash, as the Bank may require within such time as the Bank may specify; *Act A1502.*

(b) shall provide the Bank facility to carry out the examination; and *Act A1502.*

Act 519.

(c) shall give to the Bank, orally or in writing, such information as he may require relating to the business of that person, or his agent, within such time as may be specified by the Bank. *Act A1502.*

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both. *Act A1502.*

(3) The Bank may take possession of any document, title, security, cash, apparatus, equipment or machinery to which he has access under subsection (1) where in his opinion— *Act A1502.*

(a) it is necessary for the purpose of inspection, including copying or making an extract;

(b) it may be interfered with, destroyed, concealed or removed unless he takes possession of it; or

(c) it may be needed as evidence in any legal proceedings, whether civil or criminal, which may be instituted under this Act, the Central Bank of Malaysia Act 1958 or any other written law.

(4) Any person who refuses to allow the Bank to take possession of the document, title, security, cash, apparatus, equipment or machinery under subsection (3), commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both. *Act A1502.*

Examination of person other than prescribed institution

85. (1) The Bank may examine— *Act A1502.*

(a) a person who is, or was at any time, a director or employee of a prescribed institution, its subsidiary or of its agent; *Act A1502.*

(b) a person who is, or was at any time, a client of, or otherwise having dealings with, the prescribed institution or its subsidiary; or *Act A1502.*

(c) a person whom the Bank believes to be acquainted with the facts and circumstances of the case, including the auditor of a prescribed institution or its subsidiary or a member of the Shariah committee, *Act A1502.*

and that person shall give such document, information or explanation as the Bank may require within such time as the Bank may specify. *Act A1502.*

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both. *Act A1502.*

(3) Any person falling under paragraph (1)*(b)*, an auditor or a member of the Shariah committee referred to in paragraph (1)*(c)* shall not be liable for breach of a contract relating to, or duty of, confidentiality for giving a document, information or explanation under subsection (1). *Act A1502.*

Appearance before Bank

86. (1) A person examined under section 82 or 83 or subsection 85(1) shall appear before the Bank at such place and at such time as the Bank may specify. *Act A1502.*

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both. *Act A1502.*

Confidential information

86A. (1) Any document or information produced by the Bank as provided in subsection (2) as a result of the administration or enforcement of this Act, the Central Bank of Malaysia Act 2009 or any other written law administered by the Bank, shall not be disclosed, whether wholly or in part, by any prescribed institution or any director, officer, auditor or a member of the Shariah committee of such prescribed institution, to any other person except in such circumstances as may be specified by the Bank. *Act A1502.*

(2) The document or information referred to in subsection (1) shall include—

(a) any rating assigned by the Bank to a prescribed institution;

(b) any stage of intervention assigned to a prescribed institution;

(c) any assessment of a prescribed institution as a result of an examination or other supervisory review of such prescribed institution including any report, correspondence or recommendation made to such prescribed institution;

(d) any enforceable undertaking accepted by the Bank under section 107A;

(e) any order made or direction issued by the Bank under this Act to a prescribed institution; or

(f) any other information as may be specified by the Bank.

(3) In any court proceedings, where any document or information referred to in this section is likely to be disclosed, the court, of its own motion, or on the application of a party to the proceedings or the Bank, may order for such proceedings to be held *in camera* and in such case, the document or information shall be secret as between the court and parties thereto or the Bank, and no such party shall disclose such document or information to any other person.

(4) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.

Investigation by the Bank

87. Where the Bank has reason to suspect the commission of an offence under this Act, the Bank may cause an investigation to be conducted and for such purpose, may exercise all the powers of investigation provided under this Act. *Act A1502.*

Appointment of investigating officer

88. (1) For the purposes of an investigation under this Act, the Bank may appoint its employee or any other person appointed under subsection 4(3) to be an investigating officer. *Act A1502.*

(1A) An investigating officer appointed under subsection (1) shall have all the powers and functions conferred on the Bank under this Act. *Act A1502.*

(2) The Bank may instruct any person to take such steps as may be necessary to facilitate an investigation under subsection (1).

Act 519. (3) An investigating officer who is not an employee of the Bank shall be subject to, and enjoy such rights, privileges, protection, immunities and indemnities as may be specified in this Act, the Central Bank of Malaysia Act 1958 or other written law applicable to an employee of the Bank. *Act A1502.*

(4) An investigating officer, in exercising his powers and performing his functions, shall be subject to and comply with the directions, controls, instructions, conditions, restrictions or limitations as may be specified by the Bank, orally or in writing, either generally, or in any particular case or circumstance. *Act A1502.*

(5) An investigating officer conducting any examination of any person under this Act shall have the power to administer an oath or affirmation to the person who is being examined. *Act A1502.*

Governor to have powers and functions of investigating officer

88A. The Governor shall have all the powers and functions of an investigating officer. *Act A1502.*

Powers of an investigating officer

89. (1) An investigating officer appointed under subsection 88 (1) may, without a search warrant—

(a) enter any premises; *Act A1502.*

(b) search such premises, seize and detain any property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information which is necessary in the investigating officer's opinion, for the purpose of an investigation into an offence *Act A1502.*

under this Act;

(c) inspect, make copies of, or take extracts from, any record, report, document, computer, computer output, system, data, books or information so seized and detained, including access to any program or data held in any computer or have access to, inspect or check the operation of any computer and any associated apparatus or material; *Act A1502.*

(d) take possession of, and remove from the premises, any property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information so seized and detained and detain it for such period as he deems necessary; *Act A1502.*

(e) search any person who is in, or on such premises, if the investigating officer has reason to suspect that that person has on his person any property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information, including personal document, necessary, in the investigating officer's opinion, for the purpose of an investigation into an offence under this Act; *Act A1502.*

(f) break open, examine, and search, any article, container or receptacle, including accessing into a computer; or *Act A1502.*

(g) stop, detain or search any conveyance.

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

(a) break open any outer or inner door of any premises and enter such premises;

(b) remove by force any obstruction to such entry, search, seizure, detention or removal as he is empowered to effect; or

(c) detain any person found on such premises until the search is completed.

(3) An investigating officer may seize, take possession of, and detain for such duration as he thinks necessary, any property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information produced before him in the course of his investigation or found on the person who is being searched by him. *Act A1502.*

(3A) An investigating officer shall, for the purposes of this section, be provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of any program or data held in any computer including in a form in which the information contained in a computer can be taken away and in which it is visible and legible. *Act A1502.*

(3B) Any computer output, data, books, document, information or statement obtained by or provided to an investigating officer in the course of a search under this section shall, notwithstanding any law to the contrary, be admissible in evidence in any proceedings under this Act. *Act A1502.*

(4) An investigating officer, in the course of his investigation or search, shall—

(a) prepare and sign a list of every property, record, report, document, apparatus, equipment, machinery, computer, *Act A1502.*

computer output, system, data, books or information seized; and

(b) state in the list the location in which, or the person on whom, the property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information is found or obtained. *Act A1502.*

(5) The occupant of the premises entered in the course of investigation, or any person on his behalf, shall in every instance be permitted to attend during the search, sign the search list or affix his thumb print thereon, and be given a copy of the search list prepared and signed or affixed thumb print under this section. *Act A1502.*

(6) Where such occupant or person acting on behalf of the occupant refuses to sign the search list or affix his thumb print on the search list, the investigating officer shall endorse on the search list, under his name, the fact of and reasons for such refusal, if any, stated by such occupant or person acting on behalf of the occupant. *Act A1502.*

Power to examine persons

90. (1) Notwithstanding any written law, or oath, undertaking or requirement of secrecy or confidentiality to the contrary, or an obligation under an agreement or arrangement, express or implied, to the contrary, an investigating officer conducting an investigation shall have the power to administer an oath or affirmation to a person who is being examined.

(2) An investigating officer may order, orally or in writing, a person whom he believes to be acquainted with the facts and circumstances of the case—

(a) to attend before him for examination;

(b) to produce before him, within the time specified by such officer, any property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books, information, article or thing which may assist in the investigation into the offence or breach; or *Act A1502.*

(c) to furnish to him a statement in writing made on oath or affirmation setting out such information as he may require.

(3) Any person who contravenes subsection (2) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both. *Act A1502.*

(4) The person examined under subsection (2) shall be legally bound to answer all questions relating to such case put to him by the investigating officer, but he may refuse to answer any question the answer of which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(5) A person making a statement under paragraph (2) *(c)* shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to the questions of the investigating officer.

(6) An investigating officer examining a person under subsection (2) shall first inform that person of the provisions of subsections (4) and (5).

(7) A statement made by any person under paragraph (2) *(c)* shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print—

(a) after it has been read to him in the language in which he made it; and

(b) after he has been given an opportunity to make any correction he may wish.

(8) Any person who—

(a) fails to appear before an investigating officer as required under paragraph (2)*(a)*;

(b) refuses to answer any question put to him by an investigating officer under subsection (4); or

(c) furnishes to an investigating officer any information or statement that is false or misleading in any material particular,

commits an offence and shall on conviction be a liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.

[sic] Act A1502.

Admissibility of evidence

91. The record of an examination under paragraph 90(2)*(a)*, any property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books, information, article or thing produced under paragraph 90(2)*(b)* or any statement under paragraph 90(2)*(c)* shall, notwithstanding any written law or rule of law to the contrary, be admissible in evidence in any court proceedings for, or in relation to, an offence under this Act, or any other written law regardless whether such proceedings are against the person examined, or who produced the property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books, information, article or thing, or who made the written statement on oath or affirmation or against any other person.

Act A1502.

Search of person

Act 593.

92. (1) An investigating officer searching a person under paragraph 89(1)*(e)* may, subject to the provisions of the Criminal Procedure Code [*Act 593*], detain such person as may be necessary to have the search carried out, and may remove him in custody to such place as may be necessary to facilitate such search.

Act A1502.

(1A) Any search of a person conducted under this Part shall be in accordance with the provisions in the Criminal Procedure Code.

Act A1502.

(2) No person shall be searched under this Part except by an investigating officer of the same gender and such search shall be carried out with strict regard to decency.

Obstruction to exercise of powers by an investigating officer

93. (1) Any person who—

(a) refuses any investigating officer access to any premises or fails to submit to the search of his person;

(b) assaults, obstructs, hinders or delays an investigating officer in effecting any entrance which he is entitled to effect;

(c) fails to comply with any lawful demands of any investigating officer in the execution of his duties under this Part;

(d) refuses to give to an investigating officer any property, document or information which may reasonably be required of him and which he has in his power to give;

(e) fails to produce to, or conceal or attempt to conceal from, an investigating officer, any property, record, report or

document, which the investigating officer requires;

(f) rescues or attempts to rescue any thing which has been duly seized;

(g) furnishes to an investigating officer as true any information which he knows or has reason to believe to be false; or

(h) before or after any search or seizure, breaks or otherwise destroys any thing to prevent its seizure, or the securing of the property, report, record or document,

commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both. *Act A1502.*

Requirement to provide translation

94. (1) Where an investigating officer finds, seizes, detains, or takes possession of any property, record, report, document, computer, computer output, system, data, books or information which, wholly or partly, is in a language other than the national language or English language, or is in any sign or code, the investigating officer may, orally or in writing, require the person who had the possession, custody or control of the property, record, report, document, computer, computer output, system, data, books or information, to furnish to him a translation in the national language or English language within such period as he may specify. *Act A1502.*

(2) No person shall knowingly furnish a translation under subsection (1) which is not an accurate, faithful and true translation of the document.

(3) Any person who fails to comply with the requirement in subsection (1) or contravenes subsection (2) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both. *Act A1502.*

(4) Where the person required to furnish a translation under subsection (1) is not the person who is suspected to have committed the offence, the Bank may pay him reasonable fees and reimburse him for such reasonable expenses as he may have incurred in furnishing the translation.

Delivery of property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books, information, article or thing

95. (1) An investigating officer may, by a notice in writing, require any person to deliver to him any property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books, information, article or thing which he has reason to suspect has been used in the commission of an offence under this Act or is able to assist in the investigation of an offence under this Act that is in the possession or custody of, or under the control of, that person or within the power of that person to furnish. *Act A1502.*

(2) An investigating officer may grant permission to any person to inspect the property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books, information, article or thing he had detained and taken possession of under subsection (1) if the person is entitled to inspect such property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books, information, article or thing under this Act. *Act A1502.*

(3) A person who—

(a) fails to deliver any property, record, report, document, apparatus, equipment, machinery, computer, computer *Act A1502.*

output, system, data, books, information, article or thing that is required by an investigating officer; or

(b) obstructs or hinders an investigating officer while exercising any of his powers under subsection (1),

commits an offence and shall on conviction shall be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both. *Act A1502.*

Seizing of property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books, information, article or thing

96. An investigating officer may seize, take possession of, and retain for such duration as he deems necessary any property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books, information, article or thing produced before him in the course of an examination under paragraph 90(2)*(a)* or *(b)*, or search of a person under subsection 92 (1), for ascertaining whether anything relevant to the investigation is concealed, or is otherwise, upon such person. *Act A1502.*

Release of property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information seized

97. (1) An investigating officer shall, unless otherwise ordered by any court— *Act A1502.*

(a) on the close of an investigation or any proceedings arising from the investigation; or

(b) with the prior written consent of the Bank or any investigating officer superior to him in rank, at any time before the close of investigation,

release any property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information seized, detained or removed by him or any other investigating officer, to such person as he determines to be lawfully entitled to the property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information if he is satisfied that it is not required for the purpose of any prosecution or proceedings under this Act, or for the purpose of any prosecution under any other written law. *Act A1502.*

(2) The investigating officer effecting the release under subsection (1) shall record in writing the circumstances of, and the reason for such release.

(3) Where an investigating officer is unable to locate the person who is lawfully entitled to the property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information the investigating officer shall cause to be published a notice in the Bank's website calling upon any person who is lawfully entitled to the property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information to claim such property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information within the period stipulated in the notice. *Act A1502.*

(4) Where no claim is made upon the expiry of the period specified in the notice published under subsection (3), the investigating officer shall make an application in writing to the court as to the disposal of such property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information. *Act A1502.*

(5) The court upon receiving the application under subsection (4) and being satisfied that the person who is lawfully entitled to the property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information cannot be located shall order for the property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information to be forfeited or disposed of by the Bank in accordance with the order made by the court. *Act A1502.*

Investigating officer may arrest without warrant

98. An investigating officer appointed under section 88 or a police officer not below the rank of Inspector may arrest without warrant a person whom he reasonably suspects to have committed or to be committing any offence under this Act. *Act A1502.*

Arrested person to be made over to police officer

99. An investigating officer who makes an arrest under section 98 shall make over the arrested person to a police officer without unnecessary delay and the arrested person shall be dealt with according to the law relating to criminal procedure as if he had been arrested by a police officer.

Service of orders or notices generally, *etc.*

99A. (1) Any order or notice that is given under this Act, shall, where it is required to be served on an individual, be served by— *Act A1502.*

(a) delivering it personally to the person for whom it is intended;

(b) delivering it to an adult person at the last-known place of residence, occupation or business of the person for whom it is intended; or

(c) sending it by registered post to the person for whom it is intended.

(2) Any order or notice that is given under this Act shall, where it is required to be served on a body corporate or unincorporate, be served by delivering the order or notice to an officer or agent of the body corporate or unincorporated at its registered address or business address.

(3) If the officer effecting the service of any order or notice under subsection (1) or (2) is satisfied, for reasons to be recorded by him in writing, that the order or notice cannot be served in the manner provided in subsection (1) or (2), the order or notice may be served by affixing the order or notice on a conspicuous part of the premises—

(a) in which the individual for whom the order or notice is intended is known to have last resided, to have been last employed or to have last carried on business; or

(b) at the last known registered address or business address of the body corporate or unincorporate for whom the order or notice is intended,

and in such case the order or notice shall be deemed to have been duly served.

(4) If upon an investigation made under this Act, it appears to the investigating officer that there is sufficient evidence or reasonable grounds for suspicion to justify the commencement or continuance of any proceedings against any person, the investigating officer shall require a complainant, if any, and any person who appears to such investigating officer to be acquainted with the circumstances of the case as he thinks necessary, to execute a bond to appear before any

court therein named or to give evidence in any court proceedings.

(5) If any complainant or person referred to in subsection (4) refuses to execute a bond under that subsection, the investigating officer shall report such refusal to the court which may thereupon in its discretion issue a warrant or summons to secure the attendance of such complainant or person.

Surrender of travel documents

99B. (1) Notwithstanding any written law to the contrary, an investigating officer may, by notice in writing, require any person who is the subject of an investigation for an offence under this Act, to surrender his travel documents including passport or exit permit in his possession, within such period as specified in the notice. *Act A1502.*

(2) A notice under subsection (1) shall be served personally to the person to whom it is addressed in accordance with section 99A.

(3) A person to whom a notice under subsection (1) is served shall comply with such notice, failing which he may be arrested and brought before a magistrate.

(4) Where a person is brought before a magistrate, unless such person complies with the notice under subsection (1) or satisfies the magistrate that he does not possess a travel document, the magistrate shall by warrant commit such person to prison—

(a) until the expiry of a period of fourteen days from the date of his committal; or

(b) until he complies with the notice under subsection (1),

whichever occurs earlier.

(5) For the purposes of subsection (4), a certificate signed by the Public Prosecutor to the effect that the person has complied with the written notice under subsection (1) shall be sufficient warrant for the Superintendent of Prison to discharge such person.

(6) An investigating officer may, with the written approval of the Bank, by notice in writing issued to any immigration officer, request that any person who is the subject of an investigation in respect of an offence under this Act be prevented from leaving Malaysia.

(7) The immigration officer may, upon being notified by a written notice made under subsection (6), require the person who is the subject of an investigation in respect of an offence under this Act, to surrender his passport, exit permit or any other travel document in his possession to an immigration officer.

Act 155.

(8) Subject to any order issued or made under any written law relating to immigration, "immigration officer" means any person appointed under section 3 of the Immigration Act 1959/63 [*Act 155*].

Agent provocateur

99C. Notwithstanding any law or rule of law to the contrary, in any proceedings against any person for an offence under this Act— *Act A1502.*

(a) no *agent provocateur*, whether he is an officer of the Bank or not, shall be presumed to be an accomplice or be unworthy of credit by reason only of his having attempted to commit or to abet, or having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of such attempt, abetment or engagement was to secure evidence against such person;

(b) any statement whether oral or in writing made to an *agent provocateur* by any person, including any person who is subsequently charged with an offence under this Act, shall

be admissible in evidence and given due weight and consideration at any trial for an offence under this Act; and

(c) a conviction for any offence under this Act solely on the uncorroborated evidence of any *agent provocateur* shall not be illegal and no such conviction shall be set aside merely because the court which tried the case has failed to refer in the grounds of its judgment to the need to warn itself against the danger of convicting on such evidence.

Assistance to police or other public officer

Act A1502.

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

(a) supply to a police officer or any other public officer a copy of—

(i) any record, report, books, computer output, data, document or information seized, detained or taken possession of under section 89;

(ii) any record of examination under paragraph 90(2)*(a)*;

(iii) any written statement made on oath or affirmation pursuant to paragraph 90(2)*(c)*; or

(iv) any record, report, books, computer output, data, document or information produced under paragraph 90 (2)*(b)*, or otherwise in the course of any examination under paragraph 90(2)*(a)*, or under any written statement made on oath or affirmation pursuant to paragraph 90(2) *(c)*,

and such police officer or other public officer may make such use of such copy of such record, report, statement, books, computer output, data, document or information as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions or the discharge of his duties, in respect of any person; or

(b) allow a police officer or any other public officer to have access to and inspect any property, record, report, apparatus, equipment, machinery, computer, computer output, system, data, books, document, information, article or thing which had been produced before, or seized, detained or taken possession of by, an investigating officer under this Act, and such police officer or other public officer may make such use of any knowledge gained by such access or inspection as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions or the discharge of his duties, in respect of any person.

Investigating officer deemed to be public servant and public officer

Act 574.

Act A1502.

101. An investigating officer shall be deemed to be a public servant for the purposes of the Penal Code [*Act 574*], and to be a public officer for the purposes of the Criminal Procedure Code and the Evidence Act 1950 or any other written law which the Minister may, on the recommendation of the Bank, prescribe.

Report to Minister

Act A1502.

102. (1) The Minister charged with the responsibility for a development financial institution or with the responsibility for the subject or matter relating to any of the businesses or activities carried on by a development financial institution may submit a report to the Minister with a recommendation to examine into the business and affairs of the development financial institution under sections 84 to 86.

(2) The State Authority, in the case of—

(a) a development financial institution which is a statutory body established by State law or by any subsidiary legislation made under any State law; or

(b) any other development financial institution which falls under the responsibility, powers, control or jurisdiction of the State Authority,

may submit a report to the Minister with a recommendation to examine the business and affairs of the development financial institution under sections 84 to 86.

Powers of Minister

103. (1) Where the Minister receives a report and recommendation under section 102, he may decide, on the recommendation of the Bank—

(a) not to take any action in the matter, and inform the Minister referred to in subsection 102(1) or the State Authority referred to in subsection 102(2) which submitted the report accordingly; or

(b) that it is necessary to examine into the business and affairs of the development financial institution for the protection of the interests of its stakeholders.

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

(a) before the Minister makes a decision under paragraph (1)*(b)*; or

(b) before the Minister referred to in subsection 102(1) or the State Authority referred to in subsection 102(2), submits the report and recommendation under section 102 to the Minister,

it shall not be necessary for the Minister, or the Minister referred to in subsection 102(1) or the State Authority referred to in subsection 102(2), to give an opportunity to the development financial institution to make any representation to the Minister, or to the Minister referred to in paragraph 102(1), or to the State Authority referred to in subsection 102(2), as the case may be.

Application of sections 84 to 86

104. (1) Where the Minister decides that it is necessary to examine the business and affairs of a development financial institution under paragraph 103(1)*(b)*, the provisions of sections 84 to 86 shall apply to the development financial institution as if it was prescribed in such manner, to such extent, and with all such amendments as the Minister may, on the recommendation of the Bank, prescribe.

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

Application of sections 89 to 101

105. Where any development financial institution for which an order is made under subsection 104(1) contravenes subsection 84(1), 85(1) or 86(1), the provisions of sections 89 to 101 shall apply to that development financial institution.

Provisions of this Part to prevail

106. The provisions of this Part shall have full force and effect notwithstanding anything contained in any other written law.

Power of the Bank to take action

106A. (1) A person has committed a breach under this Act if the person fails to comply with or give effect to— *Act A1502.*

(a) any provision of this Act;

(b) any regulations made under this Act;

(c) any order made or any direction issued under this Act by the Bank; or

(d) any standards, condition, restriction, specification or requirement under this Act.

(2) The Bank shall have regard to the following matters in determining the appropriate action to be taken in each case:

(a) the effectiveness of the enforcement action to be taken under this Act;

(b) the proportionality of the action to be taken with the breach committed;

(c) deterrence of future breaches of similar nature by other persons; and

(d) any other matter that is considered as relevant in the opinion of the Bank.

(3) If the Bank is of the opinion that a person has committed a breach and it is appropriate to take action against that person, the Bank may, subject to section 123B, take any one or more of the following actions:

(a) make an order in writing requiring the person in breach—

(i) to comply with or give effect to; or

(ii) to do or not to do any act in order to ensure compliance with,

such provisions, regulations, order, direction, standards, condition, restriction, specification or requirement referred to in subsection (1);

(b) subject to subsection (4), impose a monetary penalty—

(i) in accordance with the order published in the *Gazette* made under section 106C or if no such order has been made, in accordance with such amount as the Bank considers appropriate, but in any event not exceeding five million ringgit in the case of a breach that is committed by a body corporate or unincorporate or one million ringgit in the case of a breach that is committed by any individual;

(ii) which shall not exceed three times the gross amount of pecuniary gain made or loss avoided by such person as a result of the breach; or

(iii) which shall not exceed three times the amount of money which is the subject matter of the breach,

whichever is greater for each breach or non-compliance;

(c) reprimand in writing the person in breach or require the person in breach to issue a public statement in relation to such breach, if it is in the opinion of the Bank that such

breach is relevant for the information of the general public;

(d) make an order in writing requiring the person in breach to take such steps as the Bank may direct to mitigate the effect of such breach; or

(e) make an order in writing requiring the prescribed institution to remedy the breach including making restitution to any other person aggrieved by such breach.

(4) The Bank may impose a monetary penalty under paragraph (3)*(b)* only in respect of the following:

(a) breach of any provision set out in the Third Schedule;

(b) breach of any requirement under any other provision of this Act where no offence is provided for non-compliance of that requirement;

(c) failure to comply with any requirement imposed under regulations made under this Act where no provision for imposition of penalty is provided for in accordance with paragraph 123(2)*(b)*; or

(d) failure to comply with any standards, order, direction, requirement, condition, specification, restriction or otherwise made or imposed pursuant to any provision set out in the Third Schedule.

(5) If a breach is committed by a body corporate or unincorporate, any action under subsection (3) can be taken against a person—

(a) who is its director, controller, officer or partner, or was purporting to act in any such capacity; or

(b) who is concerned in the management of its affairs,

at the time of the breach unless that person demonstrates that the breach was committed without his consent or connivance and that he exercised such diligence to prevent the breach as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.

(6) If a breach is committed by a person—

(a) who is a director, controller, officer or partner of a body corporate or unincorporate, or was purporting to act in any such capacity; or

(b) who is concerned in the management of the affairs of a body corporate or unincorporate,

an action under subsection (3) can be taken against the body corporate or unincorporate.

(7) For the purposes of paragraph (3)*(e)*, in determining whether or not any amount is to be paid by a person in breach, the Bank shall have regard to—

(a) whether or not one or more persons have suffered loss or been otherwise adversely affected as a result of the breach; or

(b) the profits that have accrued to such person in breach.

(8) Any monetary penalty paid by a person in accordance with paragraph (3)*(b)* shall be paid into and form part of the Federal Consolidated Fund.

(9) Where a person fails to pay a monetary penalty imposed by the Bank under paragraph (3)*(b)* within the period specified by the Bank, the penalty imposed by the Bank may be sued for and recovered as a civil debt due to the Government.

(10) Where a person fails to remedy the breach including making restitution to any other person aggrieved by the breach under paragraph (3)*(e)*, notwithstanding any other written law, the Bank may sue for and recover such sum as a civil debt due to the person aggrieved by the breach.

(11) Nothing in this section shall preclude the Bank from taking any of the actions that it is empowered to take under this Act or any written law.

Lodgement of amount not distributed with Registrar of Unclaimed Moneys *Act 370.*

106B. To the extent that any of the amount paid under paragraph 106A(3)*(e)* or subsection 106A(10) has not been distributed by the person in breach after reasonable efforts to notify the aggrieved persons have failed due to the difficulty of notifying the aggrieved persons, such amount shall be lodged with the Registrar of Unclaimed Moneys in accordance with the provisions of the Unclaimed Moneys Act 1965 [*Act 370*]. *Act A1502.*

Power of Bank to prescribe monetary penalty

106C. The Bank may, with the concurrence of the Minister, prescribe the following matters as it deems necessary, for giving full effect to or for convenient implementation of subparagraph 106A(3)*(b)*(i), or for the purposes of this Act: *Act A1502.*

(a) the classification or designation of breaches under this Act into different categories of breaches; and

(b) the fixing, in accordance with paragraph *(a)*, of a monetary penalty, or a range of monetary penalties, in respect of each category of breaches.

Application for appeal of decisions

106D. (1) Any person who is aggrieved by a decision of the Bank under paragraph 106A(3)*(b)* or *(e)* may, within twenty-one days after the person has been notified of the decision, appeal by filing a notice in writing to the Monetary Penalty Review Committee established under the Financial Services Act 2013 or Islamic Financial Services Act 2013. *Act A1502.*

(2) The decision of the Bank under paragraph 106A(3)*(b)*or *(e)* shall not take effect until the appeal is disposed of.

(3) The Monetary Penalty Review Committee may decide to confirm the decision of the Bank or require the Bank to reconsider and reach a decision in accordance with the findings of the Committee.

PART VIIIB

Act A1502.

CIVIL ACTIONS

Civil action by Bank

106E. Where it appears to the Bank that there is a reasonable likelihood that any person will contravene or has contravened or will breach or has breached or is likely to fail to comply with or has failed to comply with— *Act A1502.*

(a) any provisions of this Act;

(b) any provisions of any regulations made under this Act;

(c) any order made or direction issued by the Bank under this Act;

(d) any standards, condition, restriction, specification or

requirement under this Act; or

(e) any action taken by the Bank under subsection 106A(3),

the Bank may institute civil proceedings in a court seeking any order specified under subsection 106F(1) against that person whether or not that person has been charged with an offence in respect of the contravention, breach or non-compliance or whether or not the contravention, breach or non-compliance has been proved in a prosecution.

Orders by court

106F. (1) The court may, on an application by the Bank under section 106E, make one or more of the following orders: *Act A1502.*

(a) an order requiring the person to pay an amount which shall not exceed three times—

(i) the gross amount of pecuniary gain made or loss avoided by such person as a result of the contravention, breach or non-compliance; or

(ii) the amount of money which is the subject matter of the contravention, breach or non-compliance,

as the case may be;

(b) an order requiring the person to pay a civil penalty in such amount as the court considers appropriate having regard to the severity or gravity of the contravention, breach or non-compliance, but in any event not exceeding twenty-five million ringgit;

(c) an order—

(i) restraining the person from engaging in any specific conduct; or

(ii) requiring the cessation of the contravention, breach or non-compliance;

(d) an order directing a person to do a certain act;

(e) an order directing the person or any other person who appears to have been involved in the contravention, breach or non-compliance to take such steps as the court may direct to mitigate the effect of such contravention, breach or non-compliance;

(f) an order directing the prescribed institution to remedy the contravention, breach or non-compliance including making restitution to any other person aggrieved by such contravention, breach or non-compliance;

(g) where a person has refused or failed to comply with any action taken by the Bank under subsection 106A(3), an order directing the person to comply with such action that is taken by the Bank; and

(h) any other order deemed appropriate by the court including any ancillary order deemed desirable in consequence of the making of an order under any provision in this subsection.

(2) The court may make an order under subsection (1) against a person—

(a) who is the director, controller, officer or partner of a body corporate or unincorporate, or was purporting to act in any such capacity; or

(b) who is concerned in the management of the affairs of a body corporate or unincorporate,

in the event where the contravention, breach or non-compliance has been committed by the body corporate or unincorporated unless that person proves that the contravention, breach or non-compliance was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the contravention, breach or non-compliance as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.

(3) If a contravention, breach or non-compliance is committed by a person—

(a) who is a director, controller, officer or partner of a body corporate or unincorporate, or was purporting to act in any such capacity; or

(b) who is concerned in the management of the affairs of a body corporate or unincorporate,

an order under subsection (1) can be made against the body corporate or unincorporate.

(4) Any sum ordered by the court under subsection (1), shall be applied—

(a) firstly, to reimburse the Bank for all costs of the proceedings in respect of the contravention, breach or non-compliance; and

(b) secondly, to pay persons aggrieved by the contravention, breach or non-compliance in the case of an order under paragraph (1)*(f)*; or

(c) thirdly, to pay into and form part of the Federal Consolidated Fund unless the court orders for such sums or part of the sum to be used to compensate persons who have suffered loss as a result of the contravention, breach or non-compliance.

(5) If the prescribed institution considers that it is not practicable to provide a remedy to the persons referred to in paragraph (1)*(f)* in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the person whom it is appropriate to provide a remedy, the prescribed institution shall lodge such amount with the Registrar of Unclaimed Moneys in accordance with the provisions of the Unclaimed Moneys Act 1965.

(6) The court may revoke or vary an order made by it under this section or suspend the operation of such an order.

(7) The powers conferred on the court under this section are in addition to any of its other powers, and do not derogate from its other powers provided under any other written law.

(8) Applications referred to in subsection (1) may be made at any time within six years from the date on which the Bank discovered the contravention, breach or non-compliance.

Civil action to seek compensation

106G. (1) Where any person— *Act A1502.*

(a) has been convicted of an offence under this Act or under any other written law; or

(b) has had any offence committed by him compounded under section 113,

and such offence has resulted in, or caused, or subsequent to its commission, results in, or causes, any loss or damage of any nature or in any form to a prescribed institution, the Bank may institute civil proceedings in court for the purpose of seeking indemnity from the persons referred to in subsection (2).

(2) The following persons shall be jointly and severally liable to indemnify the prescribed institution in full for any loss or damage to the prescribed institution:

(a) the person convicted of the offence, or the person against whom the offence has been compounded under section 113; and

(b) any director, officer or controller of the prescribed institution, any other person purporting to act in any such capacity, or any person who is in any manner or to any extent responsible for the management of the affairs of the prescribed institution, or any person who is assisting in such management.

(3) The court may, upon reviewing the application by the Bank, make an order specifying the amount of moneys the persons referred to in subsection (2) are liable to indemnify the prescribed institution.

(4) The persons referred to in subsection (2) shall not be liable to so indemnify the prescribed institution if—

(a) the offence was committed without his knowledge, consent or connivance; and

(b) he has taken all reasonable precautions and had exercised due diligence to prevent the commission of the offence as he ought to have taken or exercised, having regard to the nature of his functions and to all the circumstances in which the offence was committed.

(5) An amount ordered by the court under subsection (3) shall be applied—

(a) firstly, to reimburse the Bank for all costs of the proceedings to seek the indemnity; and

(b) secondly, to compensate the prescribed institution.

(6) Civil proceedings under subsection (1) may be commenced at any time within six years from the date on which the person has been convicted of the offence under this Act or other written law or compounded under section 113.

Interim orders

106H. If an application is made to a court for an order under subsection 106F(1) or 106G(1), the court may, if it deems appropriate, before considering the application, make any interim order as may have been applied for and such interim order shall have effect pending the determination of the application of the order. *Act A1502.*

Contravention of court order

106I. (1) Any person who contravenes any order of the court made under subsection 106F(1), 106G(3) or section 106H commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both. *Act A1502.*

(2) Subsection (1) does not affect the powers of the court in relation to the punishment of contempt of court.

No undertaking as to damages

106J. Where the Bank makes an application for an order under subsection 106F(1) or 106G(1), the court shall not, as a condition of *Act A1502.*

the grant of the order, require any undertaking as to damages to be given by or on behalf of the Bank.

Other actions

106K. An application made under subsection 106F(1) or 106G(1) shall not prejudice any other action that may be taken by the Bank, aggrieved person or prescribed institution, as the case may be, under this Act or any other law. *Act A1502.*

Evidence obtained in investigations may be used in civil proceedings

106L. (1) Notwithstanding any law, any property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books, information, article or thing obtained by the Bank in the exercise of its investigation powers against— *Act A1502.*

(a) a prescribed institution;

(b) any director or officer of the prescribed institution;

(c) any agent of the prescribed institution; or

(d) any other person,

may be used by the Bank in a civil action instituted by the Bank.

(2) For the avoidance of doubt, any property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books, information, article or thing referred to in subsection (1) shall not be inadmissible in any civil proceedings under this Act to which the Bank is a party by reason only that it was obtained by the Bank in the exercise of its investigation powers and the admissibility shall be determined in accordance with the rules of evidence under any law.

PART IX

MISCELLANEOUS

107. (*Deleted*). *Act A1502.*

Enforceable undertakings

107A. (1) The Minister or the Bank may accept a written undertaking given by a person in connection with a matter relating to the powers and functions of the Minister or the Bank, as the case may be. *Act A1502.*

(2) The written undertaking accepted under subsection (1) may be varied or withdrawn by the person giving the undertaking with the consent of the Minister or the Bank, as the case may be.

(3) If the Bank considers that a person who has given a written undertaking to the Minister or the Bank has breached any of the terms of the undertaking—

(a) the Bank may apply, in relation to the undertaking given to the Bank; or

(b) the Bank may recommend to the Minister to apply, in relation to the undertaking given to the Minister,

to the High Court for an order under subsection (4) by way of originating summons.

(4) If the High Court is satisfied that a person has breached any of the terms of the undertaking, the High Court may make any or all of the following orders:

(a) an order directing the person to comply with the undertaking;

(b) an order directing the person to pay to the Federal Consolidated Fund an amount up to the amount of any financial benefit that the person obtained, whether directly or indirectly, that is reasonably attributable to the breach;

(c) any order that the High Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach; or

(d) any other order that the High Court considers appropriate.

(5) The Bank shall be entitled to be heard in proceedings relating to an application made to the High Court in respect of a breach of undertaking given to the Minister.

Falsification, concealment and destruction of document

108. A person, with intent to deceive, in respect of a document to be produced or submitted under any provision of this Act, who makes or causes to be made a false entry, omits to make, or causes to be omitted, any entry, or alters, abstracts, conceals or destroys, or causes to be altered, abstracted, concealed or destroyed, any entry, forges a document, or makes use of or hold in his possession a false document, purporting to be a valid document, alters any entry made in any document, or issues or uses a document which is false or incorrect, wholly or partially, or misleading commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both. *Act A1502.*

Imprisonment

108A. Where the penalty of imprisonment has been provided for an offence under this Act, such penalty shall not apply to a body corporate convicted of the offence. *Act A1502.*

Offence by body corporate

109. (1) Where an offence is committed by a body corporate or an association of persons, a person—

(a) who is its director, controller, officer, or partner; or

(b) who is concerned in the management of its affairs,

at the time of the commission of the offence, is deemed to have committed that offence unless that person proves that the offence was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.

(2) An individual may be prosecuted for an offence under subsection (1) notwithstanding that the body corporate or association of persons has not been convicted of the offence.

(3) Subsection (1) shall not affect the criminal liability of the body corporate or association of persons for the offence referred to in that subsection.

(4) Any person who would have committed an offence if any act had been done or omitted to be done by him personally commits that offence and shall on conviction be liable to the same penalty if such act had been done or omitted to be done by his agent or officer in the course of that agent's business or in the course of that officer's employment, as the case may be, unless he proves that the offence was committed without his knowledge or consent and that he took all reasonable precautions to prevent the doing of, or omission to do, such act.

Offence by an individual

110. Where a person is liable under this Act to a penalty for any act, omission, neglect or default, he shall be liable to the same

penalty for the act, omission, neglect or default of his employee, director, controller, or agent if the act, omission, neglect or default was committed by—

(a) his employee in the course of the employee's employment;

(b) his director in carrying out the function of a director;

(c) his controller in carrying out the function of a controller; or

(d) his agent when acting on his behalf.

Joinder of offences

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

Seizable offence

112. Every offence punishable under this Act shall be a seizable offence.

Power of Governor to compound offences

Act A1502.

113. (1) The Governor may, with the consent of the Public Prosecutor, offer in writing to compound any offence under this Act, or under regulations made under this Act, by accepting from the person reasonably suspected of having committed the offence such amount not exceeding fifty per cent of the amount of the maximum fine for that offence 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) Any money paid to the Governor pursuant to subsection (1) shall be paid into and shall form part of the Federal Consolidated Fund.

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

(4) 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.

Attempts, preparations, abetments and conspiracies punishable as offences

114. (1) Any person who—

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

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

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

commits an offence and is liable to the penalty for that offence.

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

Prosecution

Act A1502.

114A. No prosecution for an offence under this Act shall be instituted except with the written consent of the Public Prosecutor.

Protection in relation to disclosure of information to Bank

114B. (1) Where a person discloses in good faith to the Bank his knowledge or belief or any document or information that a contravention, breach or non–compliance has been committed or is about to be committed under this Act— *Act A1502.*

(a) such person shall not be liable for a breach of a duty of confidentiality imposed by any law, contract or rules of professional conduct;

(b) it shall be a defence in an action, a suit, prosecution or proceeding that is brought, instituted or maintained in any court or before any other authority against the person who made the disclosure to the Bank that in his belief the disclosure was necessary for the carrying into effect the provisions of this Act; and

(c) no contractual or other rights or remedy may be enforced against the person on the basis of the disclosure.

(2) Any document or information disclosed to the Bank under subsection (1) and the information and identity of the person making the disclosure shall be secret between the Bank and the person who made the disclosure.

Evidential provision

114C. In any criminal or civil proceedings under this Act— *Act A1502.*

(a) any statement purported to be signed by the Governor or any other person authorized to perform the functions of the Bank on its behalf, which forms part of or is annexed to any letter, register, record or document, however expressed, described or represented; or

(b) the production of a printed copy of a standard, specification, order, direction, instruction, notice, requirement, condition or restriction, letter, register, record, document or any other instrument specified or issued pursuant to this Act,

shall, until the contrary is proved, be evidence of any fact stated therein.

Power of Bank to publish information

114D. The Bank may, where it thinks necessary, publish in such form and manner as it thinks fit, any information in relation to— *Act A1502.*

(a) any enforcement action taken under this Act including criminal proceedings, compounding, civil actions and administrative actions; and

(b) the outcome of the actions referred to in paragraph *(a)* including the outcome of any proceedings, settlement in or out of court in relation to any contravention, breach or non-compliance of the provisions of this Act.

Annual report

115. The Bank shall include in its annual accounts and annual report made under subsection 48(1) of the Central Bank of Malaysia Act 1958 an annual report on the working of this Act during the preceding calendar year before the end of April each year and the report shall include a summary of documents lodged with it.

Submission of information and statistics

116. (1) A prescribed institution and a development financial institution for which an order is made under subsection 104(1) and their subsidiaries shall submit to the Bank or such person as the Bank may specify, such document or information as the Bank may require by notice in writing within such time as the Bank may specify and the prescribed institution, the development financial institution or their subsidiary, as the case may be, shall not submit any document or information— *Act A1502.*

(a) which it knows or has reason to believe, to be false or misleading in a material particular; or

(b) which is inaccurate or incomplete in respect of which there is a material error or omission, or any recurring error or omission.

(2) Any prescribed institution or any development institution that contravenes paragraph 1*(a)* commits an offence and shall on conviction be liable to a fine not exceeding twenty-five million ringgit. *Act A1502.*

(2A) Any person complying with subsection (1) shall not be treated as being in breach of any contract, agreement or arrangement. *Act A1502.*

(3) (*Deleted*). *Act A1502.*

(4) The Bank may require the document or information submitted under subsection (1) to be duly certified by any person including the auditor of the prescribed institution or the development financial institution, as the case may be. *Act A1502.*

Indemnity

117. No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any court or before any authority against the Minister, the Governor, the Deputy Governor, the Bank, its director, officer or employee, or any person acting on its behalf, either personally or in his official capacity, for, or on account of, or in respect of an act done or statement made, or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance of or in execution of, or intended pursuance of or execution of, this Act or any order in writing, direction, instruction or other thing issued under this Act if such act or statement was done or made, or was omitted to be done or made, in good faith. *Act A1502.*

Prohibition on receipt of gifts, commission, *etc*.

118. (1) No director, officer or agent of a prescribed institution, or any other person being a person receiving any payment or remuneration in any capacity, professional or otherwise, from such prescribed institution, shall, directly or indirectly, ask for or receive, or consent or agree to receive, any gift, commission, emolument, gratuity, money, property, token or thing of value exceeding one hundred ringgit or any service, facility or other intangible benefit, whether for his own personal benefit or advantage or for the benefit or advantage of any other person, from any person other than from the prescribed institution, for procuring or endeavouring to procure for any person—

(a) any financing facility from that prescribed institution; or *Act A1502.*

(b) any other thing relating to the business or affairs of that prescribed institution.

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

Secrecy

119. (1) Nothing in this Act shall authorize the Bank or the Minister to direct the Bank to inquire specifically into the affairs or account of any client of a prescribed institution or a development financial institution. *Act A1502.*

(2) Notwithstanding subsection (1), the Bank may inquire into the affairs or account of a customer of a prescribed institution for the purposes of exercising its powers or functions under this Act, the Financial Services Act 2013, the Islamic Financial Services Act 2013

or section 47 of the Central Bank of Malaysia Act 2009.

(3) No person, who has access to any document or information relating to the affairs or account of any customer of a prescribed institution, including—

(a) the prescribed institution; or

(b) any person who is or has been a director, officer or agent of the prescribed institution,

shall disclose to another person any document or information relating to the affairs or account of any customer of the prescribed institution.

(4) Subsection (3) shall not apply to any document or information relating to the affairs or account of any customer of a prescribed institution—

(a) that is disclosed to the Minister, the Bank, any officer of the Bank or any person appointed under this Act or the Central Bank of Malaysia Act 2009 for the purposes of exercising any powers or functions under this Act or the Central Bank of Malaysia Act 2009;

(b) that is in the form of a summary or collection of information set out in such manner as does not enable information relating to any particular customer of the prescribed institution to be ascertained from it; or

(c) that is at the time of disclosure is or has already been made lawfully available to the public from any source other than the prescribed institution.

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

(6) Any person who contravenes subsection (3) or (5) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million ringgit or to both.

Permitted disclosure

120. (1) A prescribed institution or any of its directors or officers may— *Act A1502.*

(a) for such purpose or in such circumstances as set out in the first column of the Fourth Schedule, disclose any document or information relating to the affairs or account of its customer to such persons specified in the second column of that Schedule; or

(b) disclose any document or information relating to the affairs or account of its customer to any person where such disclosure is approved in writing by the Bank.

(2) The prescribed institution or its directors or officers making a disclosure for the purposes or in such circumstances as set out in the Fourth Schedule and paragraph (1)*(b)*, shall be subject to such conditions as may be specified by the Bank.

(3) Any person who receives any document or information relating to the affairs or account of a customer as permitted under subsection (1) shall not disclose such document or information to any other person.

(4) In any proceedings under paragraph 3, 4, 5, 6 or 7 of the first

column of the Fourth Schedule or circumstances approved by the Bank under paragraph (1)*(b)*, where any document or information is likely to be disclosed, in relation to the affairs or account of a customer, the court may, on its own motion, or on the application of a party to the proceedings or the customer to which the document or information relates—

(a) order that the proceedings be held in camera and in such case, the document or information shall be secret as between the court and the parties thereto, and no such party shall disclose such document or information to any other person; and

(b) make such further orders as it may consider necessary to ensure the confidentiality of the customer's document or information.

(5) Unless the court otherwise orders, no person shall publish the name, address or photograph of any parties to such proceedings as are referred to in subsection (4), or any document or information likely to lead to the identification of the parties thereto, either during the currency of the proceedings or at any time after the proceedings have been concluded.

(6) Any person who fails to comply with the conditions imposed by the Bank pursuant to subsection (2) or contravenes subsection (3) or (5) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million ringgit or to both.

Decision of Minister to be final

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

Exemptions

122. The Minister may, upon the recommendation of the Bank, if he considers it consistent with the purposes of this Act or in the interest of the public, by order published in the *Gazette*, exempt any prescribed institution from any of the provisions of this Act for such duration and subject to such condition as the Minister may specify.

Regulations

123. (1) The Minister may, on the recommendation of the Bank, make such regulations as are necessary or expedient to give full effect to or for carrying out the provisions of this Act.

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

(a) to provide that any act or omission in contravention of any provision of such regulations shall be an offence; and *Act A1502.*

(b) to provide for the imposition of penalties for such offences with imprisonment for a term not exceeding five years or a fine not exceeding ten million ringgit or to both. *Act A1502.*

(c) (*deleted*). *Act A1502.*

Provisions relating to approvals, consents, standards, specifications, notices, requirements or directions

123A. (1) Unless otherwise expressly provided, any approval or consent granted, or any standards, specification, notice, requirement or direction specified or issued under this Act— *Act A1502.*

(a) may be either general or specific;

(b) may be amended or revoked by the Minister or the Bank, as the case may be; or

(c) shall be issued or communicated in such manner as the Bank thinks appropriate and shall be valid for all purposes.

(2) Any approval or consent under subsection (1) may be—

(a) absolute or conditional; or

(b) limited so as to expire on a specified date, unless renewed.

(3) Where power is given to the Minister or the Bank under this Act to make any specification, the Minister or the Bank shall have the power to specify differently for different persons or different classes, categories or descriptions of persons.

Opportunity to make representations

123B. (1) T: Where the Minister, on the recommendation of the Bank, or the Bank proposes to take any action against any person under subsection 8(2), 26(1), 33I(4), 54(1), section 55 or subsection 106A(3), the Bank shall serve on such person a written notice of the proposed action. *Act A1502.*

(2) The written notice under subsection (1) shall set out—

(a) the action that the Minister or the Bank, as the case may be, proposes to take and the grounds for such action;

(b) the period within which the person referred to in subsection (1) may make a written representation to the Minister or the Bank, as the case may be;

(c) in the case of any proposed action under subsection 106A(3), the non-compliance or breach committed by the person; and

(d) where the Bank proposes to impose a monetary penalty under paragraph 106A(3)*(b)*, the right of the person in breach to pay, within a specified period in the notice, the monetary penalty stated in such notice.

(3) The person referred to in subsection (1) shall be given a reasonable opportunity to make a written representation to the Minister or the Bank, as the case may be, by submitting such representation to the Bank within fourteen days from the date of the notice by the Bank.

(4) After the expiry of the period of fourteen days from the date of the notice by the Bank and considering any written representation under subsection (3), the Minister, on the recommendation of the Bank, or the Bank, as the case may be, shall decide whether to—

(a) proceed with the proposed action or a variation of such action; or

(b) take no further action.

(5) The Minister or the Bank, as the case may be, shall inform the person referred to in subsection (1) by a written notice of the decision under subsection (4) and the decision shall take effect from the date specified in the notice.

(6) Notwithstanding subsection (1), the Minister or the Bank, as the case may be, may first take the proposed action and the opportunity to make representations shall be given immediately after the action has been taken if any delay in taking the proposed action would be detrimental to the interests of any prescribed institution, its stakeholders, the financial system or the public generally.

(7) The Minister or the Bank, as the case may be, may confirm, amend or revoke the action taken under subsection (6) in consequence of the representations made under that subsection.

(8) Subsection (6) shall not apply to any action taken under section 106A.

Amendment of Schedule

124. The Minister may, on the recommendation of the Bank, by an order published in the *Gazette*, amend the First Schedule, Second Schedule and Fourth Schedule. *Act A1502.*

Application of other laws

125. (1) Where there is a conflict or inconsistency between the provisions of this Act and that of the—

Act 372. *(a)* Banking and Financial Institutions Act 1989;

Act 202. *(b)* Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act 1978 [*Act 202*];

Act 125. *(c)* Companies Act 1965;

Act 502. *(d)* Co-operatives Societies Act 1993; or

(e) the constituent documents of a prescribed institution,

the provisions of this Act shall prevail.

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

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

Power of the Bank to issue guidance

126. The Bank may issue guidance in writing consisting of such information, advice or recommendation as it considers appropriate— *Act A1502.*

(a) with respect to the provisions of this Act;

(b) for the purposes of regulating and supervising prescribed institutions; or

(c) with respect to any other matter which, in the opinion of the Bank, is desirable to give information, advice or recommendation.

Application of measures relating to international and domestic transactions

127. Nothing contained in this Act shall in any manner affect or derogate from, Division 2, Part XIV of the Financial Services Act 2013 or Division 2, Part XV of the Islamic Financial Services Act 2013, and in the application of any provision of this Act to any person, the provision shall apply subject to the provisions in those Divisions and, accordingly, in the event of any conflict or inconsistency between any provision of this Act and those Divisions, the provisions in those Divisions shall prevail. *Act A1502.*

Contravention not to affect contract, agreement or arrangement

128. (1) Except as otherwise provided in this Act, or in pursuance of any provision of this Act, no contract, agreement or arrangement entered into in contravention of any provision of this Act shall be void solely by reason of such contravention.

(2) Subsection (1) shall not affect any criminal liability of any person for an offence under this Act in respect of such contravention.

129. (*Deleted*). *Act A1502.*

Savings

130. (1) Any requirement for the approval of the Minister or the Bank, as the case may be, under this Act shall be deemed to have been given in accordance with the provisions of this Act and shall continue to remain in full force and effect in relation to the persons to whom it applies until modified, rescinded or revoked in

accordance with the provisions of this Act.

(2) The chief executive officer or director of a prescribed institution shall, on the commencement date, be deemed to have complied with the Minimum Criteria for Appointment in the First Schedule and notwithstanding any disqualification under section 7, shall continue to remain in office until the expiry of his term of appointment. *Act A1502.*

FIRST SCHEDULE *Act A1502.*

PU(A) 14/2016.

[Subsections 6(2) and (3), section 6A and subsections 8(1) and (2)]

Minimum Criteria For Appointment

Chairman, director, Chief Executive Officer and senior officer to be "fit and proper" persons *PU(A) 14/2016.*

1. (1) A prescribed institution and the Bank, in determining whether a person is a "fit and proper" person to hold or continue to hold the position of a chairman, director, Chief Executive Officer or senior officer, shall have regard to— *PU(A) 14/2016.*

(a) his probity, his reputation, his competence and soundness of judgement for fulfilling the responsibilities of that position; *PU(A) 14/2016.*

(b) the diligence with which he is fulfilling or likely to fulfil those responsibilities; *PU(A) 14/2016.*

(c) whether the interests of the stakeholders and the general public are, or are likely to be, in any way threatened by the holding of that position by him; and *PU(A) 14/2016.*

(d) his financial integrity. *PU(A) 14/2016.*

(1A) Without prejudice to the generality of subparagraph (1), for the purpose of determining whether a person is "fit and proper", the prescribed institution and the Bank shall have regard to the following: *PU(A) 14/2016.*

(a) that probity and reputation are values that can be demonstrated through personal qualities such as honesty, integrity, trustworthiness, diligence, independence of mind and fairness, which are demonstrated over time and demand a disciplined and on-going commitment to high ethical standards;

(b) that competency is demonstrated by a person who has capability, relevant knowledge, experience and ability to understand the technical requirements of the business, the inherent risks and the management process required to perform his role in the relevant position effectively; and

(c) that financial integrity is demonstrated by a person who manages his financial affairs properly and prudently.

(2) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous business conduct and activities of the person in question and, in particular, to any evidence that he—

(a) has been compounded or convicted or as chief executive officer or director, has caused to be compounded or convicted, an offence which is punishable with—

(i) imprisonment for one year or more, whether by itself, or in lieu, or in addition to, a fine; or

(ii) a fine of twenty thousand ringgit or more;

(b) contravened any provision made by or under any written law appearing to the Bank to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;

(c) engaged in or been associated with, any business practices, or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

Additional criteria for a Chief Executive Officer

2. A person who is, or is to be, a Chief Executive Officer of a prescribed institution—

(a) shall have the educational qualifications and experience which will enable him to satisfactorily discharge his responsibilities;

(b) shall not have held a position of responsibility in the management of a company which has been convicted of an offence under any written law during his tenure of office unless he proves that such offence was committed without his knowledge or consent and he was not in a position to prevent the offence;

(c) shall not have held a position of responsibility in the management of any company which during his tenure of office—

(i) has defaulted in payment of any judgement sum against it;

(ii) has suspended payment or has compounded with its creditors; or

(iii) has had a receiver or manager appointed in respect of its property;

(d) shall be available for full time employment, and shall not carry on any other business or vocation, except as a non-executive director or shareholder of another company;

(e) shall not be engaged actively in any political activity;

(f) shall not have caused a conflict of interest situation with that of the prescribed institution, either by himself or through his relative;

(g) shall not have acted in a manner which may cast doubt on his fitness to hold the position of chief executive officer, or acted in blatant disregard for proper professional conduct, especially in dealings with the stakeholders and the general public; and

(h) shall not have been a party to any action or decision of the management of a prescribed institution which is detrimental to the interests of the prescribed institution, its stakeholders, and the general public.

Additional criteria for a director

3. A person who is, or is to be, a director of a prescribed

institution—

(a) shall have the educational qualifications and experience which will enable him to carry out and perform his duties;

(b) shall not have acted in a manner which may cast doubt on his fitness to hold the position of a director; and

(c) (*Deleted*). *PU(A) 285/2007.*

(d) shall not have been a party to any action or decision of the board or management of the prescribed institution which is detrimental to its interests.

Other criteria as the Bank may prescribe

4. The Bank may, with the concurrence of the Minister, prescribe such other additional criteria as in its opinion expedient for the purpose of protecting the interests of the prescribed institution, its stakeholders and the general public.

Discretion of the Bank

5. The Bank shall have full discretion to determine whether a person has complied with this Schedule.

SECOND SCHEDULE *Act A1502.*

[Subsection 42D(1)]

LIST OF PROHIBITED BUSINESS CONDUCT

1. Engaging in a conduct that is misleading or deceptive, or is likely to mislead or deceive in relation to the nature, features, terms or price of any financial service or product.

2. Inducing or attempting to induce a financial consumer to do an act or omit to do an act in relation to any financial service or product by—

(a) making a statement, illustration, promise, forecast or comparison which is misleading, false or deceptive;

(b) dishonestly concealing, omitting or providing material facts in a manner which is ambiguous; or

(c) recklessly making any statement, illustration, promise, forecast or comparison which is misleading, false or deceptive.

3. Exerting undue pressure or influence, or using or threatening to use harassment, coercion or physical force in relation to—

(a) the provision of any financial service or product to a financial consumer; or

(b) the payment for any financial service or product by a financial consumer.

4. Demanding payments from a financial consumer in any manner for unsolicited financial services or products including threatening to bring legal proceedings unless the financial consumer has communicated his acceptance of the offer for such financial services or products either orally or in writing.

5. Exerting undue pressure on, or coercing, a financial consumer to acquire any financial service or product as a condition for acquiring another financial service or product.

6. Colluding with any other person to fix or control the features or terms of any financial service or product to the detriment of any financial consumer.

THIRD SCHEDULE

Act A1502.

[Paragraph 106A(3)*(b)*]

IMPOSITION OF MONETARY PENALTY

A monetary penalty may be imposed in respect of a breach or non-compliance with the following provisions or standards, requirements, conditions, specifications, restrictions or otherwise made or imposed pursuant to such provisions:

1. subsection 5(1), (2) or (3)
2. paragraph 5A(1)*(a)*, *(b)*, *(d)* or *(e)*
3. subsection 6(1), (2), (3) or (4)
4. section 6A
5. subsection 7(1)
6. subsection 8(1), (1A), (2) or (3)
7. subsection 10(1)
8. subsection 11(1), (3) or (5)
9. subsection 13(1)
10. subsection 16(4) or (5)
11. subsection 25(1) or (3)
12. subsection 26(2)
13. subsection 27(1) or (3)
14. subsection 28(1), (3) or (3A)
15. subsection 29(1)
16. subsection 31(1), (4), (5) or (6)
17. subsection 32(1) or (4)
18. subsection 33(1) or (2)
19. subsection 33B(2)
20. subsection 33C(1), (2) or (3)
21. subsection 33E(2), paragraph 33E(4)*(a)* or subsection 33E(5)
22. section 33F
23. section 33G
24. section 33H
25. paragraph 33I(1)*(c)* or *(d)*, or subsection 33I(2) or (3)
26. subsection 33J(1) or (2)
27. subsection 33K(1) or (2)
28. subsection 33M(1) or (2)
29. subsection 33N(2)
30. subsection 34(1) or (2)

31. subsection 35(1) or (4)
32. subsection 36(1) or (2)
33. subsection 37(1), (4) or (6)
34. subsection 38(1)
35. subsection 39(1), (2) or (3)
36. subsection 41(4) or (5)
37. subsection 42(1) or (3)
38. subsection 42C(1)
39. subsection 42E(2)
40. subsection 44(4)
41. subsection 48(1)
42. subsection 63(1)
43. subsection 64(1) or (5)
44. subsection 65(1)
45. section 66
46. subsection 69(1)
47. subsection 70(1)
48. subsection 71(1)
49. subsection 72(1)
50. subsection 73(1), (3) or (4)
51. subsection 74(1)
52. subsection 75(2)
53. subsection 76(1) or (3), paragraph 76(4)*(b)* or subsection 76(6)
54. subsection 77(1)
55. subsection 78(1)
56. paragraph 116(1)*(b)* or subsection 116(4)

FOURTH SCHEDULE

Act A1502.

[Section 120]

PERMITTED DISCLOSURES

(1) *Purposes for or circumstances in which customer's documents or information may be disclosed*	(2) *Persons to whom customer's documents or information may be disclosed*
1. Documents or information which is permitted in writing by the customer, the executor or administrator of the customer, or in the case of a customer who is incapacitated, any other legal personal representative.	Any person permitted by the customer or, the executor, administrator or legal personal representative, as the case may be.
2. In connection with an application	Any person whom a

for a *Faraid* certificate, grant of probate, letters of administration or a distribution order under the Small Estates (Distribution) Act 1955 [*Act 98*] in respect of a deceased customer's estate.	prescribed institution in good faith believes is entitled to obtain a *Faraid* certificate, the grant of probate, letters of administration or a distribution order.
3. In a case where the customer is declared bankrupt or is being or has been wound up or dissolved in Malaysia or in any country, territory or place outside Malaysia.	All persons to whom the disclosure is necessary in connection with the bankruptcy, winding up or dissolution.
4. Any criminal proceedings or civil proceedings between a prescribed institution and— *(a)* its customer, his surety or guarantor relating to the customer's transaction; *(b)* two or more parties making adverse claims to money in a customer's account where the prescribed institution seeks relief by way of interpleader; or *(c)* one or more parties in respect of property in or over which any right or interest has been conferred on the prescribed institution.	All persons to whom the disclosure is necessary for the purpose of the criminal proceedings or civil proceedings.
5. Compliance by a prescribed institution which has been served a garnishee order attaching moneys in the account of a customer.	All persons to whom the disclosure is required to be made under the garnishee order.
6. Compliance with a court order made by a court not lower than a Sessions Court.	All persons to whom the disclosure is required to be made under the court order.
7. Compliance with an order or request made by an enforcement agency in Malaysia under any written law for the purposes of an investigation or prosecution of an offence under any written law.	An investigating officer authorized under the written law to investigate or any officer authorized to carry out prosecution, or any court.
8. Documents or information is required by the Inland Revenue Board of Malaysia under section 81 of the Income Tax Act 1967 [*Act 53*] for the purpose of facilitating exchange of information pursuant to taxation arrangements or agreements having effect under section 132 or 132A of the Income Tax Act 1967.	Any officer of the Inland Revenue Board of Malaysia authorized to receive the documents or information.

9. Disclosure of credit information of a customer to a credit reporting agency registered under the Credit Reporting Agencies Act 2010 [*Act 710*] for the purpose of carrying on credit reporting business as defined in the Credit Reporting Agencies Act 2010.	Any officer of the credit reporting agency authorized to receive the documents or information.
10. Performance of functions of the prescribed institution which are outsourced.	Any person engaged by the prescribed institution to perform the outsourced function.
11. Disclosure to a consultant engaged by the prescribed institution.	Consultant engaged by the prescribed institution.