LAWS OF MALAYSIA

Act 759

Islamic Financial Services Act 2013

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An Act to provide for the regulation and supervision of Islamic financial institutions, payment systems and other relevant entities and the oversight of the Islamic money market and Islamic foreign exchange market to promote financial stability and compliance with Shariah and for related, consequential or incidental matters.

[*30 June 2013, except paragraphs 1 to 10 and paragraphs 13 to 19 of Schedule 9.*] *PU(B) 277/2013.*

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PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Islamic Financial Services Act 2013.

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

Interpretation

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

Act 758.

"adjuster" has the same meaning assigned to it under subsection 2 (1) of the Financial Services Act 2013 [*Act 758*];

"advertisement" means the disseminating or conveying of information, invitation or solicitation by any means or in any form including oral and written communication by means of print, electronic and any other media;

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

"annuity" means the right to a series of periodical payments from the takaful fund at intervals of one year or less under a takaful certificate entered into by a takaful participant with a family takaful operator;

"annuity certain" means an annuity where the duration of periodic payments is pre-determined and does not depend on the death or survival of the takaful participant;

"applicant" means—

(a) in Part III and schedule 5, the person who submits, on its own behalf or through an advocate, a secretarial firm or other duly authorized representative, the application for authorization under section 9;

(b) in Part VII and schedule 6, the person who submits, on its own behalf or through an advocate, a secretarial firm or other duly authorized representative, the application for approval under that Part; or

(c) in Part VIII, the person who submits the application to be a financial holding company or proposes another company to be a financial holding company;

"appointed actuary" means an actuary appointed by a licensed takaful operator under subsection 83(1) or by the Bank under section 84;

"appointed date" in respect of any provision under this Act, means the date appointed by the Minister under subsection 1(2) as the date for the coming into operation of that provision;

"approved business" means any business set out in Part 1 of schedule 1;

"approved Islamic financial adviser" means a person approved

under section 11 to carry on Islamic financial advisory business;

"approved issuer of a designated Islamic payment instrument" means a person approved under section 11 to issue a designated Islamic payment instrument;

"approved operator of a payment system" means a person approved under section 11 to operate a payment system set out in paragraph 1 of Part 1 of schedule 1;

"approved person" means a person approved under section 11 to carry on an approved business;

"approved representative office" means a representative office in Malaysia of a foreign institution approved by the Bank under subsection 17(4);

"approved takaful broker" means a person approved under section 11 to carry on takaful broking business;

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

"associate corporation" means a corporation in which not less than twenty per cent but not more than fifty per cent of the voting shares of that corporation are held by another corporation, where the first-mentioned corporation is an associate corporation of the other corporation;

"authorization" means the grant of a licence under section 10 or the grant of an approval under section 11;

"authorized business" means a licensed business or an approved business;

"authorized person" means a person licensed under section 10 or approved under section 11 to carry on an authorized business;

Act 701. "Bank" has the same meaning as defined in subsection 2(1) of the Central Bank of Malaysia Act 2009 [*Act 701*];

Act 125. "books" has the same meaning assigned to it in subsection 4(1) of the Companies Act 1965 [*Act 125*];

"bridge institution" means a body corporate established or acquired by the Bank, and designated as a bridge institution under subsection 188(1);

"business transfer scheme" means a scheme of transfer for Islamic banking business, takaful business, international Islamic banking business or international takaful business;

"chief executive officer" in relation to—

(a) a body corporate or unincorporate, means an individual, however styled, who, either individually or jointly with one or more other persons, is responsible under the authority of the directors, for the conduct of the business and the administration of such body; or

(b) an authorized person which is established as a branch in Malaysia, means an officer principally responsible for the business of the branch in Malaysia;

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

"company" has the same meaning assigned to it in subsection 4(1) of the Companies Act 1965;

Act 56. "computer" has the same meaning assigned to it in section 3 of the Evidence Act 1950 [*Act 56*];

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

(a) produced by a computer;

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

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

"constituent document" has the same meaning assigned to it in subsection 2(1) of the Central Bank of Malaysia Act 2009;

"corporate group" means a group of corporations which are related to each other;

"corporation" has the same meaning assigned to it in subsection 4 (1) of the Companies Act 1965;

Act 502. "co-operative society" has the same meaning assigned to it in section 2 of the co-operative societies Act 1993 [*Act 502*];

"depositor" means a person entitled to the repayment of an Islamic deposit, whether the Islamic deposit was made by him or any other person;

"designated Islamic payment instrument" means an Islamic payment instrument prescribed as a designated Islamic payment instrument under section 41;

"designated payment system" means a payment system prescribed as a designated payment system under subsection 39(1);

"director" includes any person who occupies the position of a director, however styled, of a body corporate or unincorporate, and includes—

(a) a person in accordance with whose directions or instructions the directors or officers of the body are accustomed to act;

(b) an alternate or substitute director; or

(c) in particular, without limiting the foregoing, in the case of—

(i) a corporation, has the same meaning assigned to it in subsection 4(1) of the Companies Act 1965;

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

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

(iv) a partnership, means a partner;

(v) a sole proprietorship, means the sole proprietor; and

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

"document" has the same meaning assigned to it in section 3 of the Evidence Act 1950 and includes books;

"electronic money" means any Islamic payment instrument, whether tangible or intangible, that—

(a) stores funds electronically in exchange of funds paid to the issuer; and

(b) is able to be used as a means of making payment to any person other than the issuer;

"electronic terminal" means an electronic device, operated by or on behalf of an authorized person, through which a person may initiate an electronic fund transfer, and includes a point-of-sale terminal, automated teller machine or cash or cheque deposit machine;

"family takaful business" means the business relating to the administration, management and operation of a takaful arrangement under a family takaful certificate;

"family takaful certificate" means a takaful certificate by which takaful benefits are payable on death or survival, including those takaful benefits payable in respect of personal accidents, disease or sickness, and includes an annuity but excludes a personal accident takaful certificate;

"financing facility" means—

(a) the giving of any advance or other facility in whatever form or by whatever name called;

(b) the giving of a guarantee; or

(c) any other dealing or transaction as prescribed under section 4;

made in accordance with Shariah which shall include, and may be in the form of, any sale or purchase arrangement, joint venture arrangement, deferred payment sale, return sharing arrangement or other financing arrangement;

"financial group" means a financial holding company and a group of related corporations under such financial holding company primarily engaged in financial services or in other services in connection with or for the purposes of such financial services which includes at least one licensed person;

"financial holding company" means a company which—

(a) holds an aggregate of more than fifty per cent of interest in shares of a licensed person, or has an aggregate interest in shares of fifty per cent or less but has control over a licensed person; and

(b) has obtained the approval of the Bank pursuant to subsection 124(3) to be a financial holding company of such licensed person;

"financial year" has the same meaning assigned to it in subsection 4(1) of the Companies Act 1965;

"foreign company" has the same meaning assigned to it in subsection 4(1) of the Companies Act 1965;

"foreign currency" means any currency other than ringgit;

"foreign institution" means a foreign company, not being an

authorized person, which carries on any business outside Malaysia which corresponds, or is similar, to the business of any authorized person, whether or not such person has an approved representative office;

"Governor" and "Deputy Governor" have the same meaning assigned to them in subsection 2(1) of the Central Bank of Malaysia Act 2009;

"holding company" has the same meaning assigned to it in section 5 of the Companies Act 1965;

"individual" means a natural person;

"interest in shares" shall be construed as set out in schedule 3;

"international Islamic banking business" means Islamic banking business in currencies other than ringgit or such other business as prescribed under section 3;

"international takaful business" means takaful business in currencies other than ringgit;

"investment account" means an account under which money is paid and accepted for the purposes of investment, including for the provision of finance, in accordance with Shariah on terms that there is no express or implied obligation to repay the money in full and—

(a) either only the profits, or both the profits or losses, thereon shall be shared between the person paying the money and the person accepting the money; or

(b) with or without any return;

"investment company" has the same meaning assigned to it in subsection 319(1) of the Companies Act 1965;

"investment-linked takaful certificate" means a takaful certificate in respect of a contract of family takaful or an annuity where the takaful benefits are, wholly or partly, to be determined by reference to units, the value of which is related to—

(a) the income from property of any description; or

(b) the market value of such property;

"Islamic banking business" means the business of—

(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; or

(b) accepting money under an investment account; and

(c) provision of finance; and

(d) such other business as prescribed under section 3;

"Islamic deposit" means a sum of money accepted or paid in accordance with Shariah—

(a) on terms under which it will be repaid in full, with or without any gains, return or any other consideration in money or money's worth, either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and person accepting it; or

(b) under an arrangement, on terms whereby the proceeds under

the arrangement to be paid to the person paying the sum of money shall not be less than such sum of money,

but excludes money paid *bona fide*—

(i) by way of an advance or a part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services are not in fact sold, hired or otherwise provided;

(ii) by way of security for the performance of a contract or by way of security in respect of any loss which may result from the non-performance of a contract;

(iii) without limiting paragraph (ii), by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise; and

(iv) in such other circumstances, or to or by such other person, as set out in schedule 2;

"Islamic derivative" means any agreement, including an option, a swap, futures or forward contract, made in accordance with Shariah, whose market price, value, delivery or payment obligations is derived from, referenced to or based on, but not limited to, Islamic securities, commodities, assets, rates (including profit rates or exchange rates) or indices;

"Islamic factoring business" means—

(a) the business of acquiring debts or other financial obligations due to any person arising from any transaction which is in accordance with Shariah; and

(b) such other business as prescribed under section 3;

"Islamic financial adviser's representative" means an individual, however styled, in the direct employment of, acting for or by arrangement with an approved Islamic financial adviser, who performs for the Islamic financial adviser any services relating to Islamic financial advisory business;

"Islamic financial advisory business" means any of the following:

(a) analyzing the financial planning needs of a person relating to a takaful product;

(b) recommending an appropriate takaful product to a person;

(c) sourcing a takaful product from a licensed takaful operator for a person;

(d) arranging of a contract in respect of a takaful product for a person; or

(e) such other business, service or activity in relation to a financial service as prescribed under section 3;

"Islamic foreign exchange market" means a foreign exchange market where the transactions, instruments or operations are not contrary to Shariah;

"Islamic leasing business" means—

(a) the business of letting or sub-letting movable property on hire in accordance with Shariah for the purpose of the use of such property by the hirer or any other person in any

business, trade, profession or occupation or in any commercial, industrial, agricultural or other economic enterprise whatsoever and, where the lessor is the owner of the property, regardless whether the letting is with or without an option to purchase the property, and for the purpose of this definition, "movable property" includes any plant, machinery, equipment or other chattel attached or to be attached to the earth or fastened or to be fastened, permanently or otherwise, to any thing attached to the earth; and

(b) such other business as prescribed under section 3;

"Islamic payment instrument" means any instrument, whether tangible or intangible, which does not involve any element which is contrary to Shariah, that enables a person to obtain money, goods or services or to make any payment;

"Islamic securities" means securities which are in accordance with Shariah;

"issuer" means any person, acting alone or under an arrangement with another person, who undertakes to be responsible for the payment obligation in respect of an Islamic payment instrument resulting from a user being issued with or using the Islamic payment instrument;

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

"licence" means a licence granted under section 10;

"licensed business" means Islamic banking business, takaful business, international Islamic banking business or international takaful business;

"licensed international Islamic bank" means a person licensed under section 10 to carry on international Islamic banking business;

"licensed international takaful operator" means a person licensed under section 10 to carry on international takaful business;

"licensed Islamic bank" means a person licensed under section 10 to carry on Islamic banking business and includes a licensed international Islamic bank;

"licensed person" means a person licensed under section 10 to carry on licensed business;

"licensed takaful operator" means a person licensed under section 10 to carry on takaful business and includes a licensed international takaful operator;

Act 720. "Malaysia Deposit Insurance Corporation" means the Malaysia Deposit Insurance Corporation referred to in the Malaysia Deposit Insurance Corporation Act 2011 [*Act 720*];

"Malaysian takaful certificate" means a takaful certificate which is issued in Malaysia by a licensed takaful operator and is—

(a) a family takaful certificate where the takaful participant's address, as specified in the takaful certificate or any other address subsequently notified in writing by the takaful participant to the licensed takaful operator, is or was an address in Malaysia;

Act 53. *(b)* a general takaful certificate which relates to risks arising in

Malaysia, or where the takaful participant is a resident of, or a permanent establishment in, Malaysia within the meaning of the Income Tax Act 1967 [*Act 53*]; or

(c) a retakaful contract with another licensed takaful operator;

"market participant" means any person who—

(a) issues, sells, purchases, repurchases, borrows, lends, finances or otherwise deals with currencies or other Islamic financial instruments traded in the Islamic money market or Islamic foreign exchange market including over-the-counter Islamic derivatives whose price, value or payment obligations are derived from, referenced to or based on profit rates or exchange rates; or

(b) arranges transactions in the Islamic money market or Islamic foreign exchange market as an intermediary,

whether acting as a principal or an agent, and includes any other persons as prescribed under section 4;

"member" in relation to a body corporate or unincorporate which is—

(a) a corporation, means a shareholder;

(b) a co-operative society, means a member of the co-operative society;

(c) a partnership, means a partner;

(d) any other body corporate having a membership, means a member of the body; and

Act 335.

(e) a society registered under the Societies Act 1966 [*Act 335*], means a member of the society;

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

"office" refers to a place where or at which any business of any person is carried out, including the head office in Malaysia, or any other office, a branch, an agency (except for a takaful agency in the case of a licensed takaful operator), a mobile place of business, a place of business set up and maintained for a limited period only or an electronic terminal;

"officer" in relation to a body corporate or unincorporate, includes any employee or the chief executive officer of the body corporate or unincorporate;

"operator" means any person, acting alone or under an arrangement with another person, responsible for the rules, procedures and operations of a payment system;

"operator of a designated payment system" means any person who operates a designated payment system;

"participant" means any person who is permitted by the rules governing a payment system to send payment instructions or settlement instructions to the payment system and who is bound by the rules governing the payment system;

"payment instruction" or "settlement instruction" in relation to a payment system, includes an instruction to transfer, clear or settle transactions in funds or securities, as the case may be;

"payment system" means any system or arrangement for the transfer, clearing or settlement of funds or securities where the operational arrangements of the payment system or business conduct of the operator of such payment system are in accordance with Shariah;

"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;

"person covered" means a takaful participant or other person in respect of whom the takaful participant enters the contract of takaful and in respect of whom takaful benefits are payable to the takaful participant or his beneficiaries on the occurrence of pre-agreed events under the contract of takaful;

"personal accident takaful certificate" means a takaful certificate providing fixed pecuniary benefits or benefits in the nature of indemnity, or both, against risks of the person covered sustaining injury or dying as the result of an accident or becoming incapacitated in consequence of disease;

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

"prescribe" means to prescribe by an order published in the *Gazette*, and a power to prescribe includes the power to prescribe differently for different persons, payment systems or Islamic payment instruments or different classes, categories or descriptions of persons, payment systems or Islamic payment instruments;

"private company" has the same meaning assigned to it in subsection 4(1) of the Companies Act 1965;

"professional retakaful operator" means a retakaful operator which is licensed to carry on solely retakaful business;

"proper claimant" means a person who claims to be entitled to the whole or part of the takaful benefits under a takaful certificate as executor of the deceased takaful participant, parent or guardian of an incompetent nominee or an assignee or who claims to be otherwise entitled to the takaful benefits under the relevant law;

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

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

(b) any conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of immovable property 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, and fund;

(d) any negotiable instrument, including any bank note, bearer note, Treasury bill, dividend warrant, bill of exchange, 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;

"provision of finance" means entering into, or making an arrangement for another person to enter into, the businesses or activities which are in accordance with Shariah including—

(a) equity or partnership financing, including *musyarakah*, *musyarakah mutanaqisah* and *mudarabah*;

(b) lease based financing, including *al-ijarah*, *al-ijarah muntahia bi al-tamlik* and *al-ijarah thumma al-bai`*;

(c) sale based financing, including *istisna`*, *bai` bithaman ajil*, *bai` salam*, *murabahah* and *musawamah*;

(d) currency exchange contracts;

(e) fee based activity, including *wakalah*;

(f) purchase of bills of exchange, certificates of Islamic deposit or other negotiable instruments; and

(g) the acceptance or guarantee of any liability, obligation or duty of any person;

"public company" has the same meaning assigned to it in subsection 4(1) of the Companies Act 1965;

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

"relative" in relation to an individual, subject to subsection (2), means—

(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)*;

Act 276.
Act 312.

"repealed Acts" means the Islamic Banking Act 1983 [*Act 276*] and the Takaful Act 1984 [*Act 312*];

"retakaful" means takaful cover arranged by a takaful operator with a second takaful operator on the risks of the takaful fund it administers, wholly or partly, and includes any similar arrangement by a branch of the takaful operator in Malaysia with its branch outside Malaysia (the head office of the takaful operator being, for this purpose, treated as a branch);

"return" in relation to the definitions of "financing facility", "investment account" and "Islamic deposit", and "Islamic securities"

as defined in subsection 224(1), includes any form of rental, profit, dividend or benefit, and any fee or gift, payable or to be given;

"risk to financial stability" has the same meaning assigned to it in section 29 of the Central Bank of Malaysia Act 2009;

"senior officer" means a person, other than the chief executive officer or a director, having authority and responsibility for planning, directing or controlling the activities of an authorized person, operator of a designated payment system or a financial holding company 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 57, but shall not include a member of a Shariah committee;

"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;

"Shariah Advisory Council" means the Shariah Advisory Council on Islamic finance established under section 51 of the Central Bank of Malaysia Act 2009;

"Shariah committee" means the Shariah committee of an institution established pursuant to section 30;

"specify" means to specify in writing by way of standards or any other forms, and a power to specify includes the power to specify differently for different persons, payment systems or Islamic payment instruments or different classes, categories or descriptions of persons, payment systems or Islamic payment instruments;

"standards" includes any obligation or requirement as specified by the Bank under this Act and such standards may contain any interpretative, incidental, supplemental, consequential and transitional provisions as the Bank considers appropriate;

"statutory body" means any authority or body, whether corporate or unincorporate, established, appointed or constituted by any written law, but excludes any local authority;

"subsidiary" has the same meaning assigned to it in section 5 of the Companies Act 1965;

"systemic risk" in relation to a designated payment system, means—

(a) a risk that the failure of a participant or operator to meet his payment or settlement obligations will cause another participant to be unable to meet his payment or settlement obligations when due; or

(b) a risk that the failure of a participant or operator to meet his payment or settlement obligations may cause significant liquidity or credit problems that might threaten the stability of the financial system;

"takaful" means an arrangement based on mutual assistance under which takaful participants agree to contribute to a common fund providing for mutual financial benefits payable to the takaful participants or their beneficiaries on the occurrence of pre-agreed events;

"takaful agent" means a person who does all or any of the following:

(a) solicits or obtains a proposal for takaful certificate on behalf of a takaful operator;

(b) offers or assumes to act on behalf of a takaful operator in negotiating a takaful certificate; or

(c) does any other act on behalf of a takaful operator in relation to the issuance, renewal, or continuance, of a takaful certificate;

"takaful benefits" includes any benefit, whether pecuniary or not, which is payable under a takaful certificate;

"takaful broker" means a person who, as an independent contractor, carries on takaful broking business and includes a retakaful broker;

"takaful broking business" means the business of soliciting, negotiating or procuring a takaful certificate with a takaful operator, or the renewal or continuance of the takaful certificate by a person, for a takaful participant other than for himself and includes retakaful broking for a takaful operator;

"takaful business" means the business relating to the administration, management and operation of a takaful fund for its takaful participants which may involve elements of investment and savings and includes retakaful business and a reference to carrying on takaful business may include all or any of the activities set out in paragraph 5(4)*(a)*;

"takaful certificate" includes a takaful cover note or any contract of takaful for family takaful business or general takaful business whether or not embodied in or evidenced by an instrument in the form of a takaful certificate, and references to—

(a) issuing a takaful certificate shall be construed as entering into a contract of takaful, whether or not a formal contract has been issued; and

(b) a takaful certificate of a takaful operator includes a takaful certificate in respect of which the takaful operator is under any liability, whether the takaful certificate was issued by the takaful operator or the liability was transferred to the takaful operator from another takaful operator;

"takaful claim" means a demand for payment of an amount due under a takaful certificate;

"takaful contribution" means the amount payable by a takaful participant to a takaful operator under a takaful certificate and includes any remuneration for the functions and duties assumed by the takaful operator;

"takaful fund" means a takaful fund established and maintained under section 90 and in respect of takaful business referred to in sections 8 and 26, means any fund established and maintained for the purposes of such takaful business;

"takaful operator" includes a professional retakaful operator;

"takaful participant" means the person who has legal title to a takaful certificate and includes—

(a) where a takaful certificate has been assigned, the assignee;

(b) where a personal representative of a deceased takaful participant is entitled as against the takaful operator to the

benefit of a takaful certificate, the personal representative;

(c) in relation to a takaful certificate providing for the payment of annuity, an annuitant; and

(d) where under a takaful certificate, moneys are due or payable, whether periodically or otherwise, the person to whom the moneys are due or payable;

"user" means any person to whom a designated Islamic payment instrument has been issued or any person who uses a designated Islamic payment instrument to obtain money, goods or services or to make any payment;

"voting share" has the same meaning assigned to it in subsection 4 (1) of the Companies Act 1965.

Relative

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

(a) the adoption of any person by another under any written law of Malaysia or any country, territory or place outside Malaysia, or under any custom 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.

Control

(3) For the purposes of this Act, a person shall be presumed to have control over a licensed person or corporation if such person—

(a) has an interest of more than fifty per cent of the shares in the licensed person or corporation; or

(b) unless proven otherwise—

(i) has the power to elect, appoint, remove or prevent from election, appointment or removal, or cause to be elected, appointed, removed or prevented from being elected, appointed or removed, a majority of the directors of the licensed person or corporation;

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

(iii) is a person in accordance with whose directions, instructions or wishes the directors, chief executive officer or senior officers of the licensed person or corporation are accustomed or under obligation, whether formal or informal, to act,

and the phrase "controlled" or "controller" shall be construed accordingly.

Acting in concert

(4) For the purposes of this Act—

(a) "persons acting in concert" means persons who, pursuant to an agreement, arrangement or understanding, co-operate to—

(i) acquire jointly or severally interests in the shares of a corporation for the purpose of obtaining or consolidating control of that corporation; or

(ii) act jointly for the purpose of exercising control over a corporation; and

(b) without limiting the generality of paragraph *(a)*, the following persons shall be presumed to be persons acting in concert, unless proven otherwise:

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

(ii) a corporation and any of its directors, or the parent, child, brother or sister of any of its directors, or the spouse of any such director or of any such relative, or any related trusts;

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

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

(v) a person and his client which is a corporation, where the person manages on a discretionary basis the client's funds and has ten per cent or more interest in shares of the client; or

(vi) a person who owns or controls twenty per cent or more of the voting shares of a corporation falling within subparagraph (i) and any parent, child, brother or sister of such person, or the spouse of such person or any such relative, or any related trusts together with one or more persons falling within subparagraph (i).

Qualified financial agreements

(5) For the purposes of this Act—

(a) "qualified financial agreement" means—

(i) a master agreement in respect of one or more qualified financial transactions under which if certain events specified by the parties to the agreement occur—

(A) the transactions referred to in the agreement terminate or may be terminated;

(B) the termination values of the transactions under subparagraph (i) are calculated or may be calculated; and

(C) the termination values of the transactions under subparagraph (i) are netted or may be netted, so that a net amount is payable,

and where an agreement is also in respect of one or more transactions that are not qualified financial transactions, the agreement shall be deemed to be a qualified financial agreement only with respect to the transactions that are qualified financial transactions and any permitted enforcement by the parties of their rights under such

agreement;

(ii) an agreement relating to financial collateral, including a title transfer credit support agreement, with respect to one or more qualified financial transactions under a master agreement referred to in subparagraph (i); or

(iii) any other agreement as prescribed under section 4;

(b) "qualified financial transaction" means—

(i) an Islamic derivative, whether to be settled by payment or delivery; or

(ii) a repurchase, reverse repurchase or buy-sell back agreement with respect to Islamic securities;

(c) "financial collateral" means any of the following that is subject to an interest or a right that secures payment or performance of an obligation in respect of a qualified financial agreement or that is subject to a title transfer credit support agreement:

(i) cash or cash equivalents, including negotiable instruments and demand deposits;

(ii) Islamic security, an Islamic securities account or a right to acquire Islamic securities; or

(iii) futures agreement or futures account;

(d) "title transfer credit support agreement" means an agreement under which title to property has been provided for the purpose of securing the payment or performance of an obligation in respect of a qualified financial agreement.

(6) Any reference in this Act to "this Act", the "Financial Services Act 2013" or the "Central Bank of Malaysia Act 2009" shall, unless otherwise expressly stated, be deemed to include a reference to any rule, regulation, order, notification or other subsidiary legislation made under this Act, the Financial Services Act 2013 or the Central Bank of Malaysia Act 2009, as the case may be.

Prescription by Minister of additional business or activity

3. The Minister may, on the recommendation of the Bank, prescribe—

(a) any business or activity as an addition to the definition of—

(i) "Islamic banking business";

(ii) "international Islamic banking business";

(iii) "Islamic financial intermediation activities";

(iv) "Islamic factoring business"; or

(v) "Islamic leasing business",

and upon such prescription, the definition as added to shall be deemed to be an integral part of this Act as from the date of such prescription, or from such later date as may be specified in the order; and

(b) any business, service or activity in relation to a financial service as an Islamic financial advisory business for the purposes of the definition of "Islamic financial advisory

business" under subsection 2(1).

Prescription by Bank of additional agreement, dealing, transaction or person

4. The Bank may, with the concurrence of the Minister, prescribe—

(a) any agreement in respect of a financial transaction that may be entered into by parties in the financial markets, other than a standardized derivative or an agreement in respect of securities transactions entered into under the rules of a stock exchange and approved clearing house as defined in subsection 2(1) of the Capital Markets and Services Act 2007 as a qualified financial agreement for the purposes of the definition of "qualified financial agreement" in subsection 2(5);

(b) any dealing or transaction as a financing facility for the purposes of the definition of "financing facility" in subsection 2(1); and

(c) any other person as a market participant for the purposes of the definition of "market participant" in subsection 2(1).

Classification of, and construction of references to, takaful business

5. (1) For the purposes of this Act, takaful business shall be divided into two classes—

(a) family takaful business, which in addition to all takaful business concerned with family takaful certificates shall include any type of takaful business carried on as incidental only to the family takaful operator's business; and

(b) general takaful business, which means all takaful business which is not family takaful business.

(2) For the purposes of this Act, the retakaful of liabilities under takaful certificates shall be treated as belonging to the same class and description as the takaful certificates issued by the retakaful operator in respect of the retakaful of such liabilities.

(3) Notwithstanding anything in subsection (1) or the determination of a takaful certificate to a particular takaful fund by a licensed takaful operator, if the Bank is satisfied that any part of the licensed takaful operator's business which belongs to a particular class or description of takaful business ought in that licensed takaful operator's case to be treated as belonging to another class or description, the Bank may direct that it shall be so treated for the purposes of this Act.

(4) For the purposes of this Act—

(a) a reference to carrying on takaful business includes all or any of the following activities carried on by way of business:

(i) receiving proposals to participate in takaful arrangements;

(ii) negotiating on proposals to participate in takaful arrangements on behalf of a takaful operator;

(iii) issuing of takaful certificates for takaful arrangements;

(iv) collection or receipt of takaful contributions on takaful

certificates for takaful arrangements; or

(v) settlement or recovery of takaful claims on takaful certificates for takaful arrangements,

but, subject to paragraph *(c)*, does not include the carrying on of such activity by a person on behalf of a takaful operator;

(b) a person is deemed to carry out any or all of the activities set out in paragraph 5(4)*(a)* by way of business if he—

(i) engages in such activity in a manner which in itself constitutes the carrying on of a business;

(ii) holds himself out as willing and able to engage in such activity; or

(iii) regularly solicits other persons to engage with him in transactions constituting such activity; and

(c) a reference to carrying on takaful business includes carrying it on through an agent, or as an agent, but "takaful operator" does not include a takaful agent as such nor in the case of a person who is both takaful operator and takaful agent, any business done by that person as a takaful agent.

(5) For the purposes of this Act—

(a) the Minister may, on the recommendation of the Bank, prescribe any business or activity as takaful business;

(b) the Bank may determine such business or activity to belong to a particular class referred to in subsection (1) or description, of takaful business; and

(c) the businesses set out in schedule 4 shall not be treated as takaful business.

PART II

REGULATORY OBJECTIVES AND POWERS AND FUNCTIONS OF BANK

Regulatory objectives

6. The principal regulatory objectives of this Act are to promote financial stability and compliance with Shariah and in pursuing these objectives, the Bank shall—

(a) foster—

(i) the safety and soundness of Islamic financial institutions;

(ii) the integrity and orderly functioning of the Islamic money market and Islamic foreign exchange market;

(iii) safe, efficient and reliable payment systems and Islamic payment instruments; and

(iv) fair, responsible and professional business conduct of Islamic financial institutions; and

(b) strive to protect the rights and interests of consumers of Islamic financial services and products.

Powers and functions of Bank

7. (1) The Bank shall exercise the powers and perform the functions under this Act in a way which it considers most appropriate for the purpose of meeting the regulatory objectives of this Act and the Governor shall exercise such powers and perform such functions of the Bank on its behalf.

(2) The powers and functions of the Bank under this Act are in addition to, and not in derogation of, the powers and functions of the Bank under the Central Bank of Malaysia Act 2009.

(3) The Bank shall, from time to time, keep the Minister informed on matters relating to the exercise of its powers and performance of its functions under this Act.

(4) The Bank may authorize a Deputy Governor or an officer of the Bank to exercise any of its powers or perform any of its functions under this Act.

(5) The Bank may establish and authorize a committee consisting of members as the Bank may determine for the purpose of exercising any of the powers or performing any of the functions of the Bank under this Act.

(6) The Bank may, either generally or in a particular case, appoint a person, whether in or outside Malaysia, who is not an officer of the Bank—

(a) to render such assistance in the exercise of any of its powers or performance of any of its functions under this Act; or

(b) to exercise any of its powers or perform any of its functions on behalf of and in the name of the Bank,

as may be specified by the Bank.

PART III

AUTHORIZATION

Division 1

Authorized business

Authorized business to be carried on by authorized person

8. (1) Subject to section 14, no person shall carry on any authorized business unless it is—

(a) licensed by the Minister, on the recommendation of the Bank, under section 10 to carry on Islamic banking business, takaful business, international Islamic banking business or international takaful business; or

(b) approved by the Bank under section 11 to carry on any of the businesses set out in Part 1 of Schedule 1.

(2) Paragraph (1)*(b)* shall not apply, in respect of Islamic financial advisory business, to persons set out in Part 2 of Schedule 1.

(3) 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.

Application for authorization

9. An applicant for a licence under section 10 or an approval under section 11 to carry on an authorized business shall submit the application in writing to the Bank together with such documents or information as may be specified by the Bank.

Grant of licence by Minister

10. (1) In assessing an application duly made under section 9 to carry on any licensed business, the Bank shall have regard to all the factors set out in Part 1 and Part 2 of Schedule 5 and such other matters that the Bank considers relevant.

(2) Upon making an assessment under subsection (1) and where the Bank is satisfied that such applicant may be granted a licence, the Bank shall make a recommendation to the Minister to grant a licence under subsection (4) with or without conditions.

(3) The Bank shall notify the applicant in writing if the Bank does not make a recommendation to the Minister under subsection (2).

(4) Where the Bank makes a recommendation pursuant to subsection (2), the Minister may grant a licence to the applicant to carry on Islamic banking business, takaful business, international Islamic banking business or international takaful business, with or without conditions.

(5) The Bank shall notify the applicant in writing of the decision of the Minister under subsection (4).

(6) Where the Minister grants a licence under subsection (4), a licensed person shall commence its licensed business within a period or such further period as may be specified by the Minister, on the recommendation of the Bank.

Approval by Bank

11. (1) In assessing an application duly made under section 9 to carry on any approved business, the Bank shall have regard to all the factors set out in Part 1 of Schedule 5 and such other matters that the Bank considers relevant.

(2) The Bank may—

(a) approve an application to carry on any approved business, with or without conditions, or for such period as stated in the approval; or

(b) reject the application.

(3) A person approved under paragraph (2)*(a)* to carry on takaful broking business or Islamic financial advisory business shall at all times have in force a professional indemnity cover of such amount as may be specified by the Bank.

(4) The Bank shall notify the applicant in writing of its decision under subsection (2).

(5) Where the Bank approves an application under paragraph (2) *(a)*, an approved person shall commence its approved business within a period or such further period as may be specified by the Bank.

(6) Any person who contravenes subsection (3) 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.

Requirements on minimum capital funds or surplus of assets over liabilities

12. (1) No person shall be granted a licence under section 10 or an approval under section 11 if—

(a) in the case of a company, its capital funds; or

(b) in the case of a branch established in Malaysia by a foreign institution, its surplus of assets over liabilities,

is less than the minimum amount as may be prescribed by the Minister in the case of a licensed person, or the Bank in the case of an approved person.

(2) Every authorized person shall, in carrying on its authorized business, maintain at all times such minimum amount applicable to it.

(3) Notwithstanding subsections (1) and (2), the Minister may grant a licence under section 10 to a person subject to the condition that the person meets the minimum amount in the manner and within the period which are specified by the Bank with the approval of the Minister.

(4) For the purposes of this section, "capital funds" means paid-up capital and any reserves as may be specified by the Bank.

(5) Any authorized 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.

Additional conditions of licence or approval

13. (1) The Minister, upon the recommendation of the Bank, in the case of a licence granted under section 10, or the Bank in the case of an approval granted under section 11, may at any time in writing amend or revoke any existing condition of an authorization or impose any new conditions thereto.

(2) Any authorized person who fails to comply with any of the conditions imposed by the Minister or the Bank, as the case may be, under subsection (1) or 10(4), paragraph 11(2)*(a)* or subsection 12(3) 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.

Persons approved under Financial Services Act 2013 to carry on Islamic financial business

14. (1) Subsection 8(1) shall not prohibit or restrict—

(a) a licensed bank or licensed investment bank under the Financial Services Act 2013 from carrying on Islamic banking business;

(b) an approved insurance broker under the Financial Services Act 2013 from carrying on takaful broking business;

(c) an approved financial adviser under the Financial Services Act 2013 from carrying on Islamic financial advisory business;

(d) an approved operator of a payment system under the Financial Services Act 2013 from facilitating participants engaged in Islamic financial business to transfer, clear or settle funds or securities; or

(e) an approved issuer of a designated payment instrument under the Financial Services Act 2013 from issuing a designated Islamic payment instrument:

Provided that such licensed bank, licensed investment bank, approved insurance broker, approved financial adviser, approved operator of a payment system or approved issuer of a designated payment instrument has obtained the prior written approval of the Bank under subsection 15(1) of the Financial Services Act 2013.

(2) A person referred to in subsection (1) shall be subject to and comply with—

(a) the provisions of this Act, in particular the provisions of Parts IV, VI, IX, X and XIII, in so far as those provisions relate to the business such person is approved to carry on under subsection 15(1) of the Financial Services Act 2013, as if a reference in this Act to—

(i) an "authorized person" is a reference to any person referred to in paragraphs (1)*(a)* to *(e)*;

(ii) a "licensed person" is a reference to a person referred to in paragraph (1)*(a)*; or

(iii) an "approved person" is a reference to a person referred to in paragraph (1)*(b)* to *(e)*; and

(b) any standards, notices, directions, conditions, specifications or requirements specified or made under this Act relating to the business such person is approved to carry on under subsection 15(1) of the Financial Services Act 2013.

(3) The Minister may, on the recommendation of the Bank, by an order published in the *Gazette*, provide that all or any provision of this Act—

(a) shall not apply to a person referred to in subsection (1); or

(b) shall apply to a person referred to in subsection (1), with such modifications consistent with the regulatory objectives of this Act,

as may be set out in the order.

(4) Any person who contravenes any provision of this Act or of any standards, notices, directions, conditions, specifications or requirements specified or made by the Bank under this Act and applied to it under subsection (2) commits an offence and shall be liable to the same penalty applicable to a person convicted of an offence under such provisions and if no offence is provided for such contravention, the person commits a breach and the Bank may take an action under paragraph 245(3)*(b)* in addition to other enforcement actions that the Bank is empowered to take under this Act.

Division 2

Restriction on dealings of authorized persons

Authorized person to carry on authorized business only

15. (1) Unless the Bank otherwise specifies, an authorized person shall not carry on any business or activity in or outside Malaysia except in connection with or for the purposes of its authorized business.

(2) Notwithstanding subsection (1), an approved operator of a payment system or approved issuer of a designated Islamic payment instrument which is not a licensed person may carry on any business or activity which is not in connection with or for the purposes of its approved business.

(3) Except with the prior written approval of the Bank, a licensed takaful operator shall not carry on annuity certain business, financial guarantee takaful business or credit guarantee takaful business.

(4) Any authorized person who 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.

Licensed takaful operator to carry on family takaful or general takaful business

16. (1) A licensed takaful operator, other than a licensed professional retakaful operator, shall not carry on both family takaful business and general takaful business.

(2) Notwithstanding subsection (1), a licensed family takaful operator may carry on the general takaful business relating to medical by reason of disease or sickness or medical expenses subject to such requirements and conditions as may be specified by the Bank.

(3) Any licensed takaful operator 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.

Division 3

Representative office

Requirements for representative office

17. (1) No foreign institution shall—

(a) establish a representative office in Malaysia unless it has obtained the prior written approval of the Bank; or

(b) through its approved representative office, carry on any authorized business in Malaysia.

(2) Subject to the prohibition under paragraph (1)*(b)*, a foreign institution may carry on, through its approved representative office, only such activities as may be specified by the Bank.

(3) An application to establish a representative office shall be made in writing to the Bank together with such documents or information as may be specified by the Bank.

(4) The Bank may on an application having been duly made in accordance with subsection (3) approve the application, with or without conditions, or reject the application.

(5) The Bank may at any time in writing amend or revoke any

existing conditions of an approval granted under subsection (4) or impose any new condition thereto.

(6) The Bank may revoke an approval granted under subsection (4) if—

(a) the approved representative office has—

(i) breached or contravened any provision of this Act or the Central Bank of Malaysia Act 2009; or

(ii) failed to comply with any condition imposed pursuant to the approval,

regardless that there has been no prosecution or other action in respect of such breach, contravention or non-compliance;

(b) the approved representative office has contravened any law in or outside Malaysia; or

(c) it is in the interest of consumers of financial services and products in Malaysia to do so.

(7) The Bank may, with the approval of the Minister, revoke an approval granted under subsection (4) if it is in the national interest to do so.

(8) Any person who contravenes subsection (1) or (2) or fails to comply with any condition imposed under subsection (4) or (5) 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.

Division 4

Revocation, surrender or cessation of business or operations

Grounds for revocation of authorization

18. (1) The Minister may, on the recommendation of the Bank, revoke the licence of a licensed person, and the Bank may revoke the approval of an approved person, on the grounds that—

(a) the person is pursuing aims, or carrying on its operations, business, affairs and activities contrary to Shariah;

(b) the Bank has, in connection with the application under section 9, been provided with false, misleading, inaccurate or incomplete information;

(c) the person has not commenced the business in respect of which it is licensed or approved within the period specified by the Minister under subsection 10(6) or by the Bank under subsection 11(5);

(d) the person has ceased to carry on business for which it is licensed or approved;

(e) the person has—

(i) breached or contravened any provision of this Act or the Central Bank of Malaysia Act 2009;

(ii) failed to comply with any condition of its licence or approval; or

(iii) failed to comply with any direction issued by the Bank

under section 168, or an order under the Central Bank of Malaysia Act 2009,

regardless that there has been no prosecution or other action in respect of such breach, contravention or non-compliance;

(f) the person has ceased to be viable in the opinion of the Bank;

(g) the Bank, pursuant to the exercise of its powers under Part XIV relating to such person, has substantially completed all the transfer of business, assets or liabilities of the person;

(h) the person has been wound-up or otherwise dissolved; or

(i) it is in the interest of consumers of financial services and products to do so.

(2) The Minister may, on the recommendation of the Bank, revoke the licence of a licensed person, and the Bank may with the concurrence of the Minister revoke an approval of an approved person, if it is in the interest of the public to do so.

(3) In addition to subsections (1) and (2), the Bank may revoke the approval of an approved person on the grounds that—

(a) in the opinion of the Bank, the person 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 person;

(b) in the opinion of the Bank, the person is carrying on business in a manner detrimental to the interests of its customers, creditors, participants, users or the public generally;

(c) a receiver or manager of the property of the person has been appointed; or

(d) possession of the property of the person has been taken by or on behalf of a debenture holder pursuant to a charge on the property.

(4) The Bank—

(a) shall publish in the *Gazette*, as soon as practicable, a notice of a revocation of a licence under subsection (1) or (2); or

(b) may publish a notice of a revocation of an approval under subsection (1), (2) or (3) in such form as the Bank deems appropriate.

Surrender of licence or notification on cessation of business or operations

19. (1) A licensed person may surrender its licence to the Bank and upon surrendering, the licensed person shall provide a written notice of its surrender to the Bank.

(2) An approved person shall submit a written notice to the Bank if it ceases to carry on its business.

(3) An approved representative office shall submit a written notice to the Bank if it ceases operations.

(4) The surrender under subsection (1) or the notification under subsection (2) or (3) shall take effect on the date the Bank receives

such notice or where a later date is specified in the notice, on that date.

(5) The Bank—

(a) shall publish in the *Gazette*, as soon as practicable, a notice of a surrender of a licence under subsection (1); or

(b) may publish a notice of cessation of business under subsection (2) or cessation of operations under subsection (3) in such form as the Bank deems appropriate.

(6) Any person who contravenes subsection (1), (2) or (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.

Effect of revocation, surrender, notification on cessation of business or operations, and expiry

20. (1) Where—

(a) the Minister revokes a licence of a licensed person under section 18;

(b) the Bank revokes an approval of an approved representative office under subsection 17(6) or (7) or an approved person under section 18;

(c) a surrender of a licence by a licensed person or notification by an approved person on the cessation of its business or an approved representative office on the cessation of its operations has taken effect under subsection 19(4); or

(d) an approval granted to an approved person under section 11 has expired,

such person or representative office shall immediately cease to carry on its business or operations, as the case may be.

(2) Notwithstanding the revocation, surrender, notification on the cessation of business or operations, or expiry referred to in subsection (1), the person or representative office referred to in subsection (1) shall continue—

(a) to be subject to this Act to the same extent as an authorized person or approved representative office, as the case may be; and

(b) to discharge its obligations,

until the Bank is satisfied that the person or representative office has discharged its obligations, or that adequate arrangements have been made to discharge its obligations, which remain undischarged at the time of revocation, surrender, notification on the cessation of business or operations or expiry, as the case may be.

(3) A revocation, surrender, notification on the cessation of business or operations or expiry referred to in subsection (1) shall not operate so as to—

(a) avoid or affect any agreement, arrangement or transaction entered into by the person or representative office referred to in subsection (1) with any person; or

(b) affect any right, obligation or liability arising under any such

agreement, arrangement or transaction.

(4) Any person who contravenes subsection (1) or fails to discharge its obligations under subsection (2) 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.

Division 5

General matters

Form of establishment

21. (1) Unless otherwise specified by the Bank, a person who is to be licensed under section 10 to carry on Islamic banking business or takaful business (other than a person who is to be a professional retakaful operator) shall be a public company.

(2) The Bank may specify the form of establishment of—

(a) a person who is to be licensed as a professional retakaful operator, or to carry on international Islamic banking business or international takaful business; or

(b) a person who is to be approved under section 11 to carry on an approved business.

Establishment or relocation of office of authorized persons

22. (1) Unless otherwise specified by the Bank, no licensed person shall establish or relocate an office in or outside Malaysia without the prior written approval of the Bank.

(2) Where an approved person establishes or relocates an office in or outside Malaysia, such approved person shall notify the Bank in writing within such period as may be specified by the Bank.

Fees

23. (1) Regulations may be made under section 271 to prescribe—

(a) any fee to be paid by an authorized person in respect of its authorization, establishment of any office or the annual fee; and

(b) a processing fee to be paid by an applicant for authorization under section 9,

of such amount, or calculated at such rate or in such manner as set out in the regulations.

(2) Any fee paid to the Bank under this section shall be paid into and form part of the Federal consolidated Fund.

(3) Any unpaid fees may be sued for and recovered as a civil debt due to the Government and in addition, the court may order for a late payment charge to be awarded to the Government in accordance with the rules of the court and the Government shall deal with the late payment charge awarded as provided in such rules.

Publication of names of authorized persons

24. (1) The Bank shall, from time to time, publish in the *Gazette* a list of all licensed persons and any additions to or deletions from the list.

(2) The Bank shall, from time to time, publish a list of approved persons in such form as the Bank deems appropriate.

Holding out as authorized person

25. (1) No person shall hold himself out to be an authorized person unless he is authorized under this Act.

(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.

Acting on behalf of unlicensed person

26. (1) No person shall act on behalf of a foreign institution or any person who is not licensed under this Act in relation to carrying on Islamic banking business, takaful business, international Islamic banking business, or international takaful business or accepting Islamic deposits in Malaysia unless approved in writing by the Bank.

(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.

PART IV

SHARIAH REQUIREMENTS

Division 1

Shariah compliance

Interpretation

27. In this Part, "institution" refers to an authorized person or operator of a designated payment system.

Duty of institution to ensure compliance with Shariah

28. (1) An institution shall at all times ensure that its aims and operations, business, affairs and activities are in compliance with Shariah.

(2) For the purposes of this Act, a compliance with any ruling of the Shariah Advisory Council in respect of any particular aim and operation, business, affair or activity shall be deemed to be a compliance with Shariah in respect of that aims and operations, business, affair or activity.

(3) Where an 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 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 institution has rectified the non-compliance referred to in subsection (3).

(5) Any person who 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 bank to specify standards on Shariah matters

29. (1) The Bank may, in accordance with the advice or ruling of the Shariah Advisory Council, specify standards—

(a) on Shariah matters in respect of the carrying on of business, affair or activity by an 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 does 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 an 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 an institution for the purposes of compliance with Shariah.

(3) Every 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 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 an 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 2

Shariah governance

Establishment of Shariah committee

30. (1) A licensed person shall establish a Shariah committee for purposes of advising the licensed person in ensuring its business, affairs and activities comply with Shariah.

(2) For the purposes of subsection (1), where there is more than one licensed person within a financial group, one of the licensed persons may apply to the Bank for the establishment of a single Shariah committee within the financial group and the Bank may approve the application in writing if the Bank is satisfied that the Shariah committee so established is capable of ensuring compliance with Shariah by all licensed persons within the financial group.

(3) The Bank may require an approved person or operator of a designated payment system to establish a Shariah committee for purposes of advising the approved person or operator of a designated payment system in ensuring their business, affairs and activities comply with Shariah.

Appointment of Shariah committee member

31. 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 29(2)*(a)*(ii) and has obtained the prior written approval of the Bank.

Duties of Shariah committee and its members

32. A Shariah committee and every member of the Shariah committee shall have such duties and functions set out in any standards as may be specified by the Bank under subparagraph 29(2)*(a)*(i).

Cessation as member of Shariah committee

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

(a) such member resigns as a member;

(b) the institution, subject to the Bank's prior written approval under subsection (2), terminates the appointment of such member;

(c) such member is disqualified pursuant to any standards specified by the Bank under subparagraph 29(2)*(a)*(ii); or

(d) such member no longer meets the fit and proper requirements as may be specified by the Bank under subparagraph 29(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 29(2)*(a)* (ii) and as such, pursuant to paragraph (1)*(c)*, cease to be a member,

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

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

(4) Subject to section 273, 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 a 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

34. (1) Where a person ceases to be a member of a Shariah committee of an institution pursuant to—

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

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

the institution shall notify the Bank in writing of that fact and the reasons of such cessation immediately or 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 33(1) or is removed by the Bank under subsection 33(4), the institution shall appoint a new member of its Shariah committee in accordance with section 31 within such period as may be specified by the Bank.

Information to be provided to Shariah committee

35. (1) An 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 duties or perform its functions under this Act.

(2) Except as provided in section 36, a member of a Shariah committee shall not disclose any document or information furnished

under subsection (1) to any other person.

Qualified privilege and duty of confidentiality

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

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

(i) any reporting to the Bank; or

(ii) the discharge of his duties and performance of his functions,

pursuant to any standards specified by the Bank under subparagraph 29(2)*(a)*(i) 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 discharge of his duties under this Act.

Division 3

Audit on Shariah compliance

Appointment of person by institution to conduct audit on Shariah compliance

37. (1) The Bank may require an institution to appoint any person as the Bank may approve, to carry out an audit on Shariah compliance by the institution.

(2) The person appointed under subsection (1) shall have such duties and functions 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) relating to any audit on Shariah compliance under this section shall be borne by the institution.

(4) A person appointed under subsection (1) shall not be liable for a breach of duty of confidentiality between such person and the 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

38. (1) Without prejudice to section 37, the Bank may appoint for an institution any person to conduct an audit on Shariah compliance—

(a) if the institution fails to appoint a person under subsection 37 (1);

(b) in addition to the person appointed under subsection 37(1); or

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

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

(2) The person appointed under subsection (1) shall have such

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

PART V

PAYMENT SYSTEMS

Division 1

Designation of payment systems and Islamic payment instruments

Designation and revocation of designation of payment systems

39. (1) Where the Bank is of the opinion that a disruption in the operations of the payment system could affect public confidence in the overall payment systems of Malaysia or impact the monetary or financial stability of Malaysia—

(a) in the case of an operator of a payment system who is subject to the supervision or oversight of another supervisory authority in Malaysia, the Minister on the recommendation of the Bank and such supervisory authority; or

(b) in any other case, the Bank with the concurrence of the Minister,

may, by an order published in the *Gazette*, designate such payment system as a designated payment system.

(2) In the case of an operator of a payment system who is subject to the supervision or oversight of another supervisory authority in Malaysia, the Bank shall consult with such supervisory authority in forming an opinion under subsection (1).

(3) If the circumstances in subsection (1) no longer apply, the designation of a payment system may be revoked—

(a) in the case of an operator of a payment system who is subject to the supervision or oversight of another supervisory authority in Malaysia, by the Minister, on the joint recommendation of the Bank and such supervisory authority; or

(b) in any other case, by the Bank,

by an order published in the *Gazette*.

(4) The Bank and the supervisory authority shall regularly review the status of the payment system designated under paragraph (1)*(a)*, to determine whether the circumstances under subsection (1), no longer applies for purposes of making the joint recommendation under paragraph (3)*(a)*.

Operator of designated payment system

40. (1) An operator of a designated payment system under the Financial Services Act 2013 which has obtained the approval of the Bank under subsection 15(1) of that Act may facilitate participants

engaged in Islamic financial business to transfer, clear or settle funds or securities.

(2) An operator of a designated payment system referred to in subsection (1) shall be subject to and comply with—

(a) the provisions of this Act, in particular the provisions of Parts IV, VI, IX, X and XIII, in so far as those provisions relate to the business such operator is approved to carry on under subsection 15(1) of the Financial Services Act 2013, as if a reference in this Act to an "operator of a designated payment system" is a reference to an operator of a designated payment system which has obtained the approval of the Bank under subsection 15(1) of the Financial Services Act 2013; and

(b) any standards, notices, directions, conditions, specifications or requirements specified or made under this Act relating to the business such person is approved to carry on under subsection 15(1) of the Financial Services Act 2013.

(3) The Minister may, on the recommendation of the Bank, by an order published in the *Gazette*, provide that all or any provision of this Act—

(a) shall not apply to an operator of a designated payment system which has obtained the approval of the Bank under subsection 15(1) of the Financial Services Act 2013; or

(b) shall apply to an operator of a designated payment system which has obtained the approval of the Bank under subsection 15(1) of the Financial Services Act 2013, with such modifications consistent with the regulatory objectives of this Act,

as may be set out in the order.

(4) Any person who contravenes any provision of this Act or of any standards, notices, directions, conditions, specifications or requirements specified or made by the Bank under this Act and applied to it under subsection (2) commits an offence and shall be liable to the same penalty applicable to a person convicted of an offence under such provisions and if no offence is provided for such contravention, the person commits a breach and the Bank may take an action under paragraph 245(3)*(b)* in addition to other enforcement actions that the Bank is empowered to take under this Act.

Designation of Islamic payment instruments

41. Where the Bank is of the opinion that—

(a) an Islamic payment instrument may be of widespread use as a means of making payment and may affect the payment systems in Malaysia; and

(b) it is necessary to maintain the integrity, efficiency and reliability of the Islamic payment instrument,

the Bank may, with the concurrence of the Minister, by an order published in the *Gazette*, designate such Islamic payment instrument as a designated Islamic payment instrument.

Division 2

Application of this act on payment systems

42. Unless otherwise prescribed by the Bank, this Act shall apply to a person outside Malaysia who is an operator of a payment system which accepts payment instructions or settlement instructions from participants in Malaysia.

Power of bank to specify standards for payment systems

43. (1) The Bank may specify standards for payment systems—

(a) for promoting safety, integrity, efficiency or reliability of the designated payment system, the payment system set out in Part 1 of schedule 1 or the designated Islamic payment instrument including facilitating interoperability, technical specifications and security standards; or

(b) in the interest of current or prospective participants of the designated payment system or the payment system set out in Part 1 of schedule 1 or users.

(2) An operator of a designated payment system, approved operator of a payment system or approved issuer of a designated Islamic payment instrument shall at all times comply with the standards specified by the Bank under subsection (1) which are applicable to such operator or issuer.

Direction to participants of designated payment system

44. The Bank may issue directions in writing to any participant of a designated payment system if the Bank is of the opinion that it is necessary for ensuring the integrity and proper management of the designated payment system or it is in the interest of the public to do so.

Operational arrangements

45. (1) An operator of a designated payment system, approved operator of a payment system or approved issuer of a designated Islamic payment instrument shall establish the following operational arrangements:

(a) rules, procedures and requirements setting out the rights, liabilities or any other obligations of—

(i) the operator and participants of the designated payment system;

(ii) the approved operator of a payment system and its participants; and

(iii) the approved issuer of a designated Islamic payment instrument and its users,

including the risks that such participants or users may incur; and

(b) measures to ensure the safety, security and operational reliability of the designated payment system, payment system set out in Part 1 of schedule 1 or the designated Islamic payment instrument including contingency arrangements.

(2) In addition to the operational arrangements under subsection

(1), an operator of a designated payment system or approved operator of a payment system shall establish the following operational arrangements:

(a) procedures, controls and measures for the management of credit, liquidity or settlement risk, including rules determining the time when a transfer order is final in the case of payment systems that have been issued a certificate of finality by the Bank under section 48; and

(b) criteria for participation in the designated payment system or payment system set out in Part 1 of Schedule 1.

(3) Without limiting the generality of subsection (1), the approved issuer of a designated Islamic payment instrument shall establish measures to ensure prudent management of funds collected from the users, including measures to ensure that such funds are always available for repayment to the users of the designated Islamic payment instrument.

Power of bank to inspect

46. The Bank may, in considering whether—

(a) to designate or recommend to the Minister to designate a payment system under section 39;

(b) to designate an Islamic payment instrument under section 41; or

(c) to recommend to the Minister to include an operation of a payment system into Part 1 of schedule 1 under section 275,

inspect the premises, apparatus, equipment, machinery, documents and transactions relating to the payment system or Islamic payment instrument, upon giving a written notice to the operator or issuer.

Division 3

Finality of payment and netting arrangement

Interpretation

47. For the purposes of this Division—

"certificate of finality" means a certificate issued by the Bank to any designated payment system under section 48;

"certified designated payment system" means a designated payment system that has been issued a certificate of finality by the Bank which may include a payment system operated by the Bank, or by any body corporate established or acquired by the Bank under the Central Bank of Malaysia Act 2009 or by any person authorized by the Bank;

"insolvency administrator" includes a receiver, manager, receiver and manager, liquidator, provisional liquidator, judicial manager, curator, special administrator or any other person, however styled, authorized under any law in or outside Malaysia to take control of a person's property for the benefit of that person's creditors in the event that the person is, or is likely to become, insolvent;

"netting arrangement" means an arrangement in writing to convert several claims or obligations into one net claim or one net obligation;

"transfer order" means—

(a) an instruction by a participant of a designated payment system to place at the disposal of a recipient an amount of money by means of account book-entry;

(b) an instruction which, when settled, results in the assumption or discharge of a payment obligation as defined by the rules of a designated payment system; or

(c) an instruction by a participant of a designated payment system either to settle an obligation for the transfer of book-entry securities or for the transfer of such securities.

Power of bank to issue certificate of finality

48. The Bank may, with the concurrence of the Minister, by an order published in the *Gazette*, issue a certificate of finality to a designated payment system where the following criteria are met:

(a) the payment system poses or is likely to pose a systemic risk;

(b) the settlement of transfer order is effected within the designated payment system itself; and

(c) the operator of the payment system has complied with the requirements as may be specified by the Bank.

Revocation of certificate of finality

49. The Bank may, with the concurrence of the Minister, by an order published in the *Gazette*, revoke a certificate of finality if the Bank is of the opinion that—

(a) any of the criteria specified in section 48 is no longer met; or

(b) the operator of the certified designated payment system has breached or contravened any provision of this Act.

Application of this division

50. (1) The provisions of this Division shall apply to—

(a) any transfer order sent through a certified designated payment system; and

(b) any netting arrangement, in respect of claims or obligations arising from a transfer order that is final under subsection 52 (1), entered into between an operator and a participant or between participants only in respect of a certified designated payment system.

(2) Any written law relating to bankruptcy and insolvency shall continue to apply, but where there is any conflict or inconsistency between the provisions of this Division and the written law relating to bankruptcy and insolvency, the provisions of this Division shall prevail.

Transfer order made after appointment of insolvency administrator

51. This Division shall not apply in relation to any transfer order which is sent through a certified designated payment system after the expiry of the day on which an insolvency administrator is appointed in respect of an operator or a participant of a certified designated payment system.

Finality of payment and

52. (1) A transfer order shall be valid and enforceable by and

netting arrangement

against an operator or a participant of a certified designated payment system and shall be final and shall not be revoked, reversed or set aside by any person from the time the transfer order is determined to be final under the rules of the certified designated payment system required to be established under paragraph 45(2)*(a)* and no order shall be made by any court for the rectification or stay of such transfer order.

(2) A netting arrangement shall be valid and enforceable and an operator or a participant of a certified designated payment system shall do whatever is permitted or required under the netting arrangement in order to give effect to the netting arrangement.

(3) Any payment or settlement obligations owed to an operator or a participant of a certified designated payment system under the netting arrangement that has not been discharged—

(a) is provable in insolvency proceedings; and

(b) may be recovered for the benefit of creditors.

(4) Without limiting the generality of subsection 50(2), any transfer order that is final and irrevocable under subsection (1) and any netting arrangement that is valid and enforceable under subsections (2) and (3), shall be given effect notwithstanding anything to the contrary contained in—

(a) sections 223 and 224 of the Companies Act 1965 in relation to the avoidance of dispositions of property;

Act 360.Act 587.

(b) section 296 of the Companies Act 1965, section 59 of the Bankruptcy Act 1967 [*Act 360*] or subsection 40(1) of the Pengurusan Danaharta Nasional Berhad Act 1998 [*Act 587*] in relation to the disclaiming of an onerous property;

(c) section 219 of the Companies Act 1965 and section 47 of the Bankruptcy Act 1967 in relation to the time of commencement of insolvency;

(d) section 293 of the Companies Act 1965 and section 53 of the Bankruptcy Act 1967 in relation to undue preference; and

(e) section 222 of the Companies Act 1965 and section 10 of the Bankruptcy Act 1967 in relation to the power to stay or restrain proceedings.

Preservation of rights

53. For the avoidance of doubt, the provisions of this Division shall not restrict or preclude any person from enforcing his rights under the law in so far as it does not affect the finality of the transfer order or the validity and enforceability of a netting arrangement under this Division.

Non-recognition of insolvency order by foreign court

54. Notwithstanding any other written law, a court shall not recognize or give effect to an order of a foreign court exercising jurisdiction under any law of insolvency outside Malaysia in so far as the making of the order would be inconsistent with or contrary to the provisions of this Division.

Requirement to notify in event of insolvency, *etc*.

55. (1) Where an operator of a certified designated payment system—

(a) is insolvent or is likely to become insolvent;

(b) has become or is likely to become unable to meet any or all of its obligations; or

(c) has suspended payments or compounded with its creditors,

such operator shall immediately notify the participants of the certified designated payment system.

(2) Where a participant of a certified designated payment system—

(a) is insolvent or is likely to become insolvent;

(b) has become or is likely to become unable to meet any or all of its obligations; or

(c) has suspended payments or compounded with its creditors,

such participant shall immediately notify the operator who shall notify the other participants of the certified designated payment system.

(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

PRUDENTIAL REQUIREMENTS

Interpretation

56. For the purposes of Divisions 1, 2, 3 and 4, "institution" refers to an authorized person or operator of a designated payment system.

Division 1

Standards on prudential matters

Power of bank to specify standards on prudential matters

57. (1) The Bank may specify standards on prudential matters to promote—

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

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

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

(a) capital adequacy;

(b) liquidity;

(c) corporate governance;

(d) risk management;

(e) related party transactions;

(f) maintenance of reserve funds;

(g) takaful funds; and

(h) prevention of an institution from being used, intentionally or unintentionally, for criminal activities.

(3) For purposes of paragraph (2)*(e)*, "related party transactions" means transactions with an institution involving—

(a) a director, officer or shareholder of the institution;

(b) a member of the Shariah committee of the institution;

(c) any person in a position to influence or control the institution or affect the decisions of the institution;

(d) a relative or dependent of any person referred to in paragraph *(a)*, *(b)* or *(c)*; or

(e) any other person as may be specified by the Bank, which in the opinion of the Bank may cause the institution to be in a conflict of interest situation.

Institution, director and officer to comply with standards

58. (1) Every institution shall at all times—

(a) comply with the standards as may be specified by the Bank under subsection 57(1) which are applicable to such institution;

(b) ensure that its internal policies and procedures are consistent with the standards as may be specified by the Bank under subsection 57(1); and

(c) whether or not standards have been specified by the Bank under subsection 57(1), manage its business, affairs and activities in a manner consistent with sound risk management and governance practices which are effective, accountable and transparent.

(2) Every director and officer of an institution shall at all times comply with the internal policies and procedures adopted by such institution including internal policies and procedures to implement the standards as may be specified by the Bank under subsection 57 (1).

Single counterparty exposure limit for licensed person

59. (1) No licensed person shall have an exposure to a single counterparty which exceeds the limit as may be specified by the Bank under subsection 57(1).

(2) 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.

(3) For the purposes of this section, the Bank may specify what constitutes "connected", "counterparty" or "exposure".

Restrictions on payment of dividend by licensed person

60. (1) No licensed person shall declare or pay any dividend on its shares except with the prior written approval of the Bank or where the Bank has specified standards permitting the declaration of payments of any dividend under subsection 57(1).

(2) Where there is an application made by a licensed person for approval under subsection (1) in respect of the proposed amount of dividend to be declared, the Bank shall, in considering whether or not to grant an approval on the proposed amount or approve a reduced amount of dividend payment, have regard to the prevailing and prospective financial condition of the licensed person including its ability to comply with any standards as may be specified by the Bank under paragraph 57(2)*(a)*.

Maintenance of assets in Malaysia by licensed person

61. The Bank may require a licensed person to hold at all times all or such part of its assets, as may be specified by the Bank, in Malaysia.

Division 2

Corporate governance

Interpretation

62. For the purposes of this Division, "chairman" means chairman of the board of directors.

Chairman, directors and chief executive officer of institution

63. (1) Every institution shall at all times have a chief executive officer.

(2) Except with the prior written approval of the Bank—

(a) no licensed person shall appoint or elect, or reappoint or re-elect any person as its chairman, director or chief executive officer; and

(b) no person shall accept any appointment or election, or reappointment or re-election as a chairman, director or chief executive officer, of a licensed person.

(3) The licensed person shall submit an application in writing to the Bank together with such documents or information as may be specified by the Bank for the purposes of an approval under subsection (2).

(4) An approved person or operator of a designated payment system shall notify the Bank in writing of the appointment, reappointment, election or re-election of its chairman, director or chief executive officer and in the case of an approved Islamic financial adviser, its representative, within seven days or such other period as may be specified by the Bank together with such documents or information as may be specified by the Bank.

Requirements to be chairman, director, chief executive officer or senior officer

64. (1) An institution shall not appoint or elect, reappoint or re-elect any person as a chairman, director, chief executive officer or senior officer of the institution, unless such person—

(a) is an individual;

(b) is not disqualified under subsection 68(1); and

(c) has complied with the fit and proper requirements as may be specified by the Bank under section 69.

(2) No person shall accept any appointment or election, reappointment or re-election as a chairman, director, chief executive officer or senior officer of an institution, unless such person—

(a) is not disqualified under subsection 68(1); and

(b) has complied with the fit and proper requirements as may be specified by the Bank under section 69.

(3) Unless the Bank otherwise approves, a chief executive officer of an institution shall have his principal or only place of residence within Malaysia and devote the whole of his professional time to the service of the institution.

Functions and duties of board of directors

65. (1) The business and affairs of an 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 institution.

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

(a) 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 institution and reasonable standards of fair dealing;

(b) 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 institution;

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

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

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

(f) have due regard to any decision of the Shariah committee on any Shariah issue relating to the carrying on of business, affairs or activities of the institution.

(3) In carrying out its functions or duties under this Division—

(a) the board of directors of an institution shall have regard to the interests of, as the case may be, depositors, investment account holders and takaful participants of the institution or participants; and

(b) the board of directors of a licensed takaful operator shall, in the event of conflict between the interest of the takaful participants and the shareholders, give priority to the interest of the takaful participants.

Duties of directors

66. (1) A director of an institution shall at all times—

(a) act in good faith in the best interests of the 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 under subsection 29(2) 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.

Duty to disclose interests in material transaction or material arrangement

67. (1) A director of an institution shall disclose to the board of directors of the institution the nature and extent of his interest, whether directly or indirectly, in a material transaction or material arrangement with the institution.

(2) Whether or not a declaration under subsection (1) has been made, a director who has, directly or indirectly, an interest in a material transaction or material arrangement shall not be present at the board meeting where the material transaction or material arrangement is being deliberated by the board of directors.

(3) Where there is any change in the nature and extent of a director's interest in a material transaction or material arrangement subsequent to the disclosure pursuant to subsection (1), the director shall make a further disclosure of such changes in accordance with subsection (1).

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

(a) the time, form, manner, procedures or any other incidental or ancillary matters in which the disclosure under subsection (1) is to be made; and

(b) what constitutes a material transaction or material arrangement.

Disqualifications

68. (1) A person is disqualified from being appointed or elected, reappointed or re-elected, accepting any appointment or election, or holding office, as a chairman, director, chief executive officer or senior officer of an institution if—

(a) he is an undischarged bankrupt, has suspended payments or has compounded with his creditors whether in or outside Malaysia;

(b) a charge for a criminal offence relating to dishonesty or fraud under any written law or the law of any country, territory or place outside Malaysia, has been proven against him;

(c) he is prohibited from being a director of a company or in any way, whether directly or indirectly, be concerned or take part in the management of a company in Malaysia pursuant to a court order made under section 130A of the Companies Act 1965 and has not obtained any leave of the court under the same section; or

(d) under any law relating to prevention of crime, drug trafficking or immigration—

(i) an order of detention, supervision or deportation has been made against that person; or

(ii) any form of restriction or supervision by bond or otherwise, has been imposed on him.

(2) Where any criminal proceeding is pending in any court for any offence referred to in paragraph (1)*(b)* against a chairman, director, chief executive officer or senior officer of an institution, such person shall not—

(a) act in such capacity, hold any other office or act in any other capacity, in that institution; or

(b) be concerned with, take part or engage in, any manner, whether directly or indirectly, in any activity, affairs or business of, or in relation to, that institution,

except as may be permitted by the board of directors of the institution subject to such conditions as may be specified by the Bank.

(3) For the purposes of subsection (2), "criminal proceedings" 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.

Fit and proper requirements

69. (1) Without limiting the generality of section 57 and for the purposes of paragraphs 64(1)*(c)* and 64(2)*(b)*, the Bank may specify fit and proper requirements to be complied with by a chairman, director, chief executive officer or senior officer of an institution or an Islamic financial adviser's representative, which may include minimum criteria relating to—

(a) probity, personal integrity and reputation;

(b) competency and capability; and

(c) financial integrity.

(2) Where an issue arises as to whether a chairman, director, chief executive officer, senior officer or an Islamic financial adviser's representative has complied with the fit and proper requirements as specified under subsection (1), the Bank shall have full discretion to determine the issue.

Cessation from office

70. (1) Where a chairman, director, chief executive officer or senior officer of an institution or an Islamic financial adviser's representative, as the case may be—

(a) becomes disqualified under subsection 68(1); or

(b) no longer complies with any of the fit and proper requirements as may be specified by the Bank under section 69,

such chairman, director, chief executive officer, senior officer or Islamic financial adviser's representative shall immediately cease to hold office and act in such capacity.

(2) The institution shall immediately—

(a) in the case of paragraph (1)*(a)*, terminate the appointment of such chairman, director, chief executive officer, senior officer or Islamic financial adviser's representative; or

(b) in the case of paragraph (1)*(b)*, remove such chairman, director, chief executive officer, senior officer or Islamic financial adviser's representative from such office.

(3) Notwithstanding anything contained in any contract of service or any other agreement relating to his appointment, the chairman, director, chief executive officer, senior officer or Islamic financial adviser's representative terminated under paragraph (2)*(a)* shall not be entitled to claim any compensation for such termination.

Notice of cessation from office

71. An institution shall notify the Bank in writing of the fact that a person has ceased to be its chairman, director, chief executive officer, senior officer or Islamic financial adviser's representative, as the case may be, pursuant to this Division or under any other circumstances and of the reasons for the cessation within seven days from the date of such cessation.

Division 3

Transparency requirements

Interpretation

72. For the purposes of this Division—

"accounting records" has the same meaning assigned to it in subsection 4(1) of the Companies Act 1965;

Act 558.

"approved accounting standards" has the same meaning assigned to it in section 2 of the Financial Reporting Act 1997 [*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.

Maintenance of accounting records and information

73. An institution shall maintain or cause to be maintained proper accounting records and information in such manner as will sufficiently enable the institution to prepare its financial statements under section 74 and shall cause those records to be kept in such manner as to enable them to be conveniently and properly audited.

Compliance with approved accounting standards

74. (1) An 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 under subsection 57(1); or

(b) in the absence of any approved accounting standards, any standards as may be specified by the Bank under subsection 57(1).

(2) Where the financial statements of an institution are prepared in accordance with paragraph (1)*(a)*, such financial statements are deemed to have been prepared in accordance with the approved accounting standards.

Publication of financial statements

75. (1) An institution shall publish its financial statements prepared under subsection 74(1) from time to time subject to any standards as may be specified by the Bank under subsection 57(1).

(2) Notwithstanding subsection (1), the Bank may require that the financial statements shall be audited before any publication under subsection (1).

Division 4

Auditors

Appointment of auditor by institution

76. (1) Every institution shall appoint an auditor for each financial year who meets such requirements or has such qualifications set out in any standards as may be specified by the Bank under subsection 57(1).

(2) Except with the prior written approval of the Bank, no licensed person shall appoint any person as its auditor and no person shall accept any appointment as an auditor of a licensed person.

(3) An approved person or operator of a designated payment system shall notify the Bank of the appointment of its auditor within such period as may be determined by the Bank.

(4) For the purposes of this Division—

(a) a person shall not be deemed to be an officer of an institution by reason only of him having been appointed as an auditor of the institution; and

(b) the term “appointment” includes reappointment.

Appointment of auditor by Bank

77. Without prejudice to section 76, the Bank may appoint an auditor for an institution—

(a) if the institution fails to appoint an auditor as required under subsection 76(1); or

(b) to act with an existing auditor of the institution appointed under subsection 76(1),

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

Duties of auditor

78. (1) An auditor appointed under this Division shall—

(a) carry out an audit of the business, affairs and books of the

institution;

(b) submit a report of such audit to the members of the institution and the Bank;

(c) submit any additional information as may be specified by the Bank relating to the audit conducted under paragraph *(a)*;

(d) expand or extend the scope of the audit conducted under paragraph *(a)* within such time, in such manner or to such extent as may be specified by the Bank; or

(e) carry out any specific assessment of the business, affairs and books of the institution as may be specified by the Bank and submit a report to the Bank on such assessment.

(2) The remuneration and expenses of the auditor relating to any expanded or extended scope of audit under paragraph (1)*(d)* or any specific assessment under paragraph (1)*(e)* shall be borne by the institution.

(3) Any audit carried out under subsection (1) shall be in accordance with generally accepted auditing standards applicable in Malaysia.

Notice of cessation as auditor

79. Where during the course of an audit on an institution, an auditor appointed under section 76 or 77 has ceased to be an auditor of an institution, the auditor shall notify the Bank in writing of that fact and the reasons of such cessation within seven days from the date of such cessation.

Information to be provided to auditor

80. An institution and any director, officer or controller of that institution shall—

(a) provide the auditor appointed under section 76 or 77 all information within its or his knowledge or capable of being obtained by it or him which the auditor may require; and

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

to enable the auditor to carry out his duties under this Act.

Reporting obligations of auditor

81. An auditor shall report such matter to the Bank immediately in writing if, in the course of carrying out his duties as an auditor of an institution under this Act, he is satisfied that—

(a) there has been a breach or contravention of any provision of this Act or a non-compliance of any standards as may be specified by the Bank under this Act which may have a material effect on the financial position of the institution;

(b) an offence involving fraud or dishonesty under any written law has been committed by the institution or by any director or officer of the institution;

(c) any irregularity which may have a material effect on the financial position of the institution, including any irregularity which jeopardizes or may jeopardize the interests of the depositors, investment account holders, takaful participants, creditors of the institution, participants or users,

or any other serious irregularity, has occurred;

(d) he is unable to confirm that claims of depositors, investment account holders, takaful participants, creditors of the institution, participants or users, as the case may be, are covered by the assets of the institution or assets attributable to the investment accounts or takaful fund, managed by the institution, as the case may be;

(e) there is any weakness in the internal controls which is relevant to the financial reporting process undertaken by the institution; or

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

Qualified privilege and duty of confidentiality *Act 498.*

82. (1) Subsection 145(1) shall not apply to any documents or information relating to the affairs or account of any customer of an Islamic financial institution subject to such conditions as may be specified by the Bank, disclosed by an auditor of an Islamic financial institution to the Audit Oversight Board established under the Securities Commission Act 1993 [*Act 498*] or an officer or other person authorized in writing by the Audit Oversight Board to perform the responsibilities of the Audit Oversight Board.

(2) An auditor of an institution shall not be liable—

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

Division 5

Appointed actuaries

Appointment of actuary by licensed takaful operator

83. (1) Every licensed takaful operator shall appoint an actuary in respect of a family takaful business or general takaful business carried on by the licensed takaful operator.

(2) Any actuary to be appointed under subsection (1) shall meet such requirements or have such qualifications as set out in any standards as may be specified by the Bank under subsection 57(1).

(3) Except with the prior written approval of the Bank, no licensed takaful operator shall appoint any person as its actuary under subsection (1) and no person shall accept such appointment.

(4) An appointment under subsection (1) shall be for each financial year or such longer period as approved by the Bank.

Appointment of actuary by Bank

84. Without prejudice to section 83, the Bank may appoint an actuary for a licensed takaful operator if the licensed takaful operator fails to appoint an actuary as required under subsection 83(1) and the

remuneration and expenses relating to such appointment shall be borne by the licensed takaful operator.

Duties of appointed actuary

85. An appointed actuary shall have such duties and functions set out in any standards as may be specified by the Bank under subsection 57(1).

Cessation as appointed actuary

86. A person shall cease to be the appointed actuary of a licensed takaful operator if—

(a) such person resigns from office;

(b) the licensed takaful operator terminates his appointment; or

(c) such person, in the opinion of the Bank, no longer meets the requirements or cease to have the qualifications as may be specified by the Bank under subsection 83(2).

Notice of cessation as appointed actuary

87. (1) Where a person ceases to be an appointed actuary of a licensed takaful operator under section 86, such person shall notify the Bank in writing of that fact and the reasons of such cessation not later than seven days from the date of such cessation.

(2) Where a person ceases to be the appointed actuary of a licensed takaful operator under subsection (1), such takaful operator shall appoint another person as its appointed actuary under subsection 83(1) not later than such period as may be specified by the Bank from the date of the cessation.

Information to be provided to appointed actuary

88. A licensed takaful operator and any director, officer or controller of such licensed takaful operator shall—

(a) provide the appointed actuary all information within its or his knowledge or capable of being obtained by it or him which the appointed actuary may require; and

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

to enable the appointed actuary to carry out his duties and functions under this Act.

Qualified privilege and duty of confidentiality

89. An appointed actuary shall not be liable—

(a) for a breach of a duty of confidentiality between the appointed actuary and a licensed takaful operator in respect of—

(i) any reporting to the Bank; or

(ii) the discharge of his duties and performance of his functions,

pursuant to any standards as may be specified under subsection 57(1) 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 appointed actuary without malice in the discharge of his duties under this Act.

Division 6

Takaful funds and shareholders' fund

Establishment and maintenance of takaful funds

90. A licensed takaful operator shall establish and maintain one or more takaful funds for any class or description of its takaful business as may be specified by the Bank.

Takaful funds to be separate from shareholders' fund

91. A licensed takaful operator shall keep any takaful fund established and maintained under section 90 separate from its shareholders' fund.

Requirements relating to takaful funds

92. (1) A takaful fund established under section 90 shall be maintained and managed by a licensed takaful operator on behalf of and in the best interests of the takaful participants and the licensed takaful operator shall—

(a) pay into a takaful fund all receipts in respect of takaful certificates to which the takaful fund relates and which are issued by it or under which the takaful fund has undertaken liability, including all income of that takaful fund;

(b) maintain at all times assets in a takaful fund of a value equivalent to or higher than the liabilities of that takaful fund;

(c) apply the assets of a takaful fund only to meet the liabilities and expenses properly incurred by that takaful fund; and

(d) comply with such other requirements as may be specified by the Bank under paragraph 57(2)*(g)* including requirements on the types of assets to be, or not to be included, as assets of a takaful fund.

(2) For the purposes of subsection (1), the Bank may specify what constitutes "receipts", "income", "liabilities" or "expenses" of the takaful fund which are attributable to the business to which a takaful fund or takaful certificate relates, and the manner to determine or value the receipts, income, assets, liabilities or expenses.

(3) Unless the Bank otherwise approves, a licensed takaful operator shall maintain a takaful fund established under section 90 so long as it is under liability in respect of any takaful certificate or takaful claim relating to that takaful fund.

Requirements relating to shareholders' fund in respect of takaful funds

93. (1) A licensed takaful operator shall comply with any requirements relating to its shareholders' fund which are attributable to the business to which a takaful fund or takaful certificate relates as may be specified by the Bank.

(2) For the purposes of subsection (1), the Bank may specify what constitutes "receipts", "income", "assets", "liabilities" or "expenses" of the licensed takaful operator which are attributable to the business to which a takaful fund or takaful certificate relates, and the manner

to determine or value the receipts, income, assets, liabilities or expenses.

Withdrawal from takaful funds

94. A licensed takaful operator shall not make any withdrawal from a takaful fund, whether from the surplus or otherwise of that takaful fund, unless—

(a) it has complied with such requirements on withdrawals as may be specified by the Bank;

(b) the withdrawal does not impair the sustainability of the takaful fund to meet its liabilities; and

(c) the interests and fair treatment of takaful participants, including their reasonable expectations, have been given due regard.

Deficiency of takaful funds

95. Where the value of the assets of the takaful fund is less than the value specified under paragraph 92(1)*(b)*, the licensed takaful operator shall provide *qard* or other forms of financial support to the takaful fund from the shareholders' fund for an amount and on such terms and conditions as may be specified by the Bank.

Assumption of risk

96. (1) No licensed takaful operator shall cause any takaful fund which it operates to assume any risk in respect of such description of takaful certificate as may be prescribed by the Bank unless and until the takaful contribution payable is received by the licensed takaful operator in such manner and within such time as may be prescribed by the Bank.

(2) Where the takaful contribution payable under subsection (1) is received by a person on behalf of a licensed takaful operator, the receipt shall be deemed to be receipt by the licensed takaful operator for the purpose of that subsection and the onus of proving that the takaful contribution was received by a person who was not authorized to receive the takaful contribution shall lie on the licensed takaful operator.

Division 7

Subsidiaries

Establishment or acquisition of subsidiaries and acquisition or holding of material interest in corporation

97. (1) No authorized person shall—

(a) establish or acquire a subsidiary in or outside Malaysia; or

(b) acquire or hold any material interest in any corporation,

without the prior written approval of the Bank.

(2) The Bank may specify what constitutes "material interest" for the purposes of paragraph (1)*(b)*.

Application and non-application

98. (1) Divisions 1 and 2 shall apply to a licensed person incorporated in Malaysia.

(2) Sections 99, 100, 101, 111 and 112 shall not apply to the Malaysia Deposit insurance corporation, its subsidiary, bridge institution or any person appointed under paragraph 99(1)*(c)* or section 106 of the Malaysia Deposit Insurance Corporation Act 2011, where such person is exercising its powers under that Act.

Division 1

Interest in shares of licensed person

Acquisition of interest in shares requiring approval

99. (1) Subject to section 104 and except with the prior written approval of the Bank, no person—

(a) shall enter into an agreement or arrangement, to acquire any interest in shares of a licensed person by which, if the agreement or arrangement is carried out, he would hold (together with any interest in shares of that licensed person which are already held by such person) an aggregate interest of five per cent or more in the shares of the licensed person; or

(b) who has obtained an approval of the Bank under paragraph 102(3)*(a)*, or the Minister under subsection 102(6) in respect of the prohibition under subsection (2), as the case may be, shall enter into any subsequent agreement or arrangement, by which, if the agreement or arrangement is carried out, he would hold an aggregate interest in shares of a licensed person of, or exceeding—

(i) any multiple of five per cent; or

(ii) the percentage holding for a mandatory offer under the Malaysian code on Take-Overs and Mergers prescribed under section 217 of the Capital Markets and Services Act 2007.

(2) Notwithstanding subsection (1), no person shall enter into an agreement or arrangement to acquire any interest in shares of a licensed person by which, if the agreement or arrangement is carried out, he would hold (together with any interest in shares of that licensed person which are already held by such person) an aggregate of more than fifty per cent of the interest in shares of the licensed person, without obtaining the prior written approval of the Minister, on the recommendation of the Bank.

(3) For the avoidance of doubt, a person shall not be required to obtain—

(a) the approval of the Bank—

(i) under subsection (1), for any subsequent acquisition of interests in the shares of a licensed person, if—

(A) such person has already obtained the approval of the

Bank under that subsection; and

(B) such acquisition will result in the person holding interest in shares which is less than any multiple of five per cent; or

(ii) under subparagraph (1)*(b)*(i), if the approval of the Minister under subsection (2) is also required for such acquisition; or

(b) the approval of the Minister under subsection (2) for any subsequent acquisition of interests in the shares of a licensed person if such person has already obtained the approval of the Minister under subsection 102(6) to hold an aggregate of more than fifty per cent of interest in shares of the licensed person.

Control over licensed person prohibited in some cases

100. (1) Subject to subsection (2), no person shall have control over a licensed person, unless such person obtains the prior written approval of the Minister, on the recommendation of the Bank.

(2) Subsection (1) shall not apply to—

(a) any director or chief executive officer of a licensed person in respect of the carrying out of his duties and functions in the management of the licensed person; and

(b) a person who has obtained an approval of the Minister under subsection 102(6) to hold more than fifty per cent of the interest in shares of the licensed person.

Disposal of interest in shares requiring approval

101. Except with the prior written approval of the Minister, on the recommendation of the Bank, no person who has an aggregate interest in shares of a licensed person of—

(a) more than fifty per cent; or

(b) fifty per cent or less but has control over the licensed person,

shall enter into an agreement or arrangement to dispose any interest in shares of a licensed person by which, if the agreement or arrangement is carried out, such disposal would result in the person holding an interest in shares of less than fifty per cent or in any way ceasing to have control over the licensed person.

Application procedures for section 99, 100 or 101

102. (1) An application for an approval of—

(a) the Bank under subsection 99(1); or

(b) the Minister under subsection 99(2) or 100(1), or section 101,

as the case may be, shall be made by submitting the application to the Bank together with such documents or information as may be specified by the Bank.

(2) In assessing the suitability of an applicant for the purposes of—

(a) granting an approval of the Bank under subsection 99(1); or

(b) recommending to the Minister under subsection 99(2) or 100

(1),

the Bank shall take into consideration matters that the Bank considers relevant including any of the factors set out in Schedule 6, and any standards as may be specified by the Bank under subsection 103(1).

(3) Upon making an assessment under subsection (2) and where the Bank is satisfied with the suitability of the applicant, the Bank—

(a) may approve an application in respect of subsection 99(1), with or without conditions; or

(b) may make a recommendation to the Minister to approve the application in respect of subsection 99(2) or 100(1), with or without conditions.

(4) Where an application is made under subsection (1) for an approval of the Minister in respect of section 101, the Bank shall consider the application and may make a recommendation to the Minister to grant the approval if the Bank is of the opinion that it would not be detrimental to the safety and soundness of the licensed person.

(5) The Bank shall notify the applicant in writing if the Bank does not make a recommendation to the Minister under paragraph (3)*(b)* or subsection (4).

(6) Where the Bank makes a recommendation pursuant to paragraph (3)*(b)* or subsection (4), the Minister may approve the application, with or without conditions, or reject the application.

(7) The Minister, on the recommendation of the Bank, in the case of an approval under subsection (6), or the Bank, in the case of an approval under paragraph (3)*(a)*, may, at any time amend or revoke any condition imposed on such approval under subsection (6) or paragraph (3)*(a)*, as the case may be.

(8) The Bank shall notify the applicant of its decision under paragraph (3)*(a)* or the decision of the Minister under subsection (6), as the case may be.

(9) The Bank may, at any time by notice in writing, require a person who has obtained the approval of the Bank under paragraph (3)*(a)* or the Minister under subsection (6) in respect of subsection 99(2) or 100(1), to submit any information or particulars of any share acquired or held directly or indirectly either for his own benefit or any other person.

(10) Any person who has been served with a notice under subsection (9) shall submit to the Bank such information and particulars as may be specified by the Bank.

Power of Bank to specify standards on shareholder suitability

103. (1) The Bank may specify standards on shareholder suitability to give full effect to Schedule 6.

(2) Any person who has obtained the approval of the Bank in under paragraph 102(3)*(a)* or the Minister under subsection 102(6) in respect of subsection 99(2) or 100(1), shall at all times comply with the standards as may be specified under subsection (1) to the satisfaction of the Bank.

Maximum permissible holdings

104. (1) Unless with the prior written approval of the Bank, no individual shall hold more than ten per cent of interest in shares of a licensed person.

(2) The Bank may grant an approval under subsection (1) if the Bank is satisfied that—

(a) the aggregate holding of interest in shares of the licensed person by the individual would not result in him having the power to exercise control over the licensed person; and

(b) such individual has given a written undertaking that he will not, either directly or indirectly through any person connected to him, exercise any control over the licensed person.

(3) Section 270 shall apply to a written undertaking given under this section.

Notification on acquisition or disposal of interest in shares of licensed person

105. (1) Where it comes to the knowledge of a director or an officer of a licensed person or a financial holding company that—

(a) any agreement or arrangement as referred to in section 99 or 101 has been or is about to be effected; or

(b) any person approved by the Bank under paragraph 102(3)*(a)* or the Minister under subsection 102(6) in respect of subsection 99(2) or 100(1), has failed to comply or is likely to fail to comply with standards as may be specified under subsection 103(1),

the director or officer shall immediately notify the Bank of all such information which is within his knowledge.

(2) No director or officer shall be liable to any action for defamation at the suit of any person or be subject to any disciplinary proceedings in respect of the notification under subsection (1) made by the director or officer without malice.

Division 2

Action by Bank in event of breach

Order against defaulting persons

106. (1) Where the Bank is satisfied that any person (in this section referred to as "the defaulting person")—

(a) has breached section 99, 100, 101 or 104;

(b) has failed to comply with any condition imposed pursuant to the approval of the Bank or the Minister, as the case may be, under section 99, 100, 101 or 104;

(c) has failed to comply with any standards as may be specified by the Bank under subsection 103(1); or

(d) has failed to comply with an undertaking provided to the Bank under subsection 104(2),

the Bank may exercise its powers under subsection (2) as may be applicable or appropriate in the circumstances of the breach or non-compliance.

(2) Subject to section 273, where any of the circumstances described in subsection (1) exists, the Bank may make the following order:

(a) in respect of any shares which are the subject of the breach or non-compliance—

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

(ii) prohibit the exercise of any voting rights in respect of such shares;

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

(iv) except in a liquidation, prohibit the payment of any sum due from the licensed person on such shares, whether in respect of capital or otherwise; or

(v) direct the defaulting person to surrender the shares to the Bank within a certain period as may be specified by the Bank; or

(b) in respect of a breach of section 100, direct the defaulting person to take such necessary actions as may be specified by the Bank in order to cease exercising or to relinquish its control over a licensed person.

(3) An order made under subsection (2) shall be served on the defaulting person as soon as is practicable, and may be published by the Bank in such manner as the Bank deems fit.

(4) Where a defaulting person has been served with an order under subsection (2), he shall notify any person for the time being holding any shares to which such order applies, any other person specified in the order or any person to whom the order is directed.

(5) An order under subsection (2) shall be binding on the defaulting person, any person for the time being holding any shares to which such order applies and any other person specified in the order or any person to whom the order is directed, notwithstanding—

(a) anything contained in any constituent documents of the licensed person; or

(b) anything contained in any contract entered into by such persons affecting the shares relating to the licensed person.

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

(7) Any transaction entered into by the defaulting person, including any agreement or arrangement in relation to any shares, interest in shares, or security, which is in contravention of any order under subsection (2) or of any instructions or directions given by the Bank under subsection (6), shall be void and of no effect.

(8) The satisfaction of the Bank under subsection (1) that a person has breached or failed to comply with section 99, 100, 101 or 104 or standards specified by the Bank under subsection 103(1), may be

arrived at regardless that there has been no exercise of any action in respect of such breach or non-compliance.

(9) A person who fails to comply with an order issued under subsection (2) or contravenes subsection (4) 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.

Additional provisions relating to order under subparagraph 106(2)*(a)*(v)

107. (1) After considering the representation made by the defaulting person under section 273 and where the Bank confirms an order made under subparagraph 106(2)*(a)*(v), the Bank may dispose of the shares surrendered to it pursuant to the order made under that subparagraph to such persons and to such extent as shall be consistent with the same being held lawfully by the person who acquires the shares under this Act.

(2) The proceeds of the disposal of the shares under subsection (1) shall be paid into the High Court, and any person claiming to be beneficially entitled to the whole or any part of such proceeds may, within thirty days of such payment into the High Court, apply to a judge of the High Court in chambers for payment out of the same to him.

Division 3

Interest in shares of approved person

Interpretation

108. For the purposes of this Division, "an approved person" does not include an approved operator of a payment system and approved issuer of a designated Islamic payment instrument.

Acquisition of interest in shares of approved person

109. (1) Where a person enters into an agreement or arrangement to acquire any interest in shares of an approved person, by which, if the agreement or arrangement is carried out, he would hold, together with any interest in shares of the approved person which were then already held by him, an aggregate interest in shares of not less than five per cent of the shares of the approved person, such person shall notify the Bank of such fact upon entering into such agreement or arrangement within the period as may be specified by the Bank.

(2) In addition to subsection (1), no person shall enter into any agreement or arrangement for the purpose of acquiring interest in shares pursuant to subsection (1), if such acquisition will result in a change in the control of an approved person, unless such person obtains the prior written approval of the Bank upon entering into such agreement or arrangement.

(3) The Bank may specify standards on shareholder suitability to give full effect to subsections (1) and (2).

(4) Any person who has notified the Bank under subsection (1) or obtained the approval of the Bank under subsection (2), shall at all times comply with the standards specified by the Bank under subsection (3) to the satisfaction of the Bank.

(5) For the purposes of this section, the Bank may, at any time by notice in writing, require a person who has notified the Bank under

subsection (1) or obtained the approval of the Bank under subsection (2) to submit any information or particulars of any share acquired or held directly or indirectly either for his own benefit or any other person.

(6) Any person who has been served with a notice under subsection (5) shall submit to the Bank such information and particulars as may be specified by the Bank.

Division 4

Transfer of business, reconstruction or amalgamation of licensed person

Interpretation

110. For the purposes of this Division—

"security" includes any means of securing payment or discharge of a debt or liability, whether present or future, or whether vested or contingent, a charge, whether legal or equitable, a bill of exchange, guarantee, lien or pledge, whether actual or constructive, hypothecation, indemnity and undertaking;

"transferee" means a person, including a licensed person, to which the whole or any part of the licensed business of a transferor is transferred under a business transfer scheme;

"transferor" means a licensed person which transfers the whole or any part of its licensed business under a business transfer scheme.

Approval required for reconstruction or amalgamation of licensed person

111. No person shall enter into an agreement or arrangement for the reconstruction or amalgamation under the Companies Act 1965 of a licensed person except with the prior written approval of the Minister, on the recommendation of the Bank.

Approval required for business transfer scheme

112. (1) No person shall enter into an agreement or arrangement for a scheme to transfer the whole or any part of the business of a licensed person, except with the prior written approval of the Bank.

(2) For the purposes of subsection (1), in the case of a licensed international takaful operator or professional retakaful operator which is a foreign institution, a reference to "business" in subsection (1) is a reference to its Malaysian business as may be specified by the Bank.

(3) The transferor and transferee shall jointly submit an application for the approval of the Bank together with such documents or information as may be specified by the Bank.

(4) Where an agreement or arrangement for a business transfer scheme proposes to transfer the whole business, or a material part of the business of a licensed person, the Bank shall, prior to giving approval—

(a) be satisfied that the proposed agreement or arrangement is not prejudicial to—

(i) the interests of any person likely to be affected by the scheme; and

(ii) the safety and soundness of such licensed person; and

(b) obtain the concurrence of the Minister in respect of the proposed agreement or arrangement.

(5) For the purpose of subsection (4), the Bank may, after consultation with the Minister, specify what constitutes a material part of the business of a licensed person.

(6) The Bank may approve an application submitted under subsection (3), with or without conditions, or reject the application.

(7) The Bank shall notify the transferor and transferee of its decision under subsection (6) in writing.

Notification of business transfer scheme

113. (1) Before an application is made to the High Court under subsection 114(1), a transferor shall publish in the *Gazette* a notice stating its intention to make the application to the High Court for confirmation of the business transfer scheme.

(2) In addition to the notice under subsection (1), the Bank may require the transferor to give such other notice in respect of the business transfer scheme and for such purpose, the Bank may specify the following requirements:

(a) persons to whom, and when such notices shall be given;

(b) the form or manner of the notices to be given; and

(c) the period within which a person specified under paragraph *(a)* may object to the proposed scheme.

(3) Where any person files an objection to the proposed scheme, the transferor, with the approval of the Bank, may modify the scheme.

Application to High Court for confirmation of business transfer scheme

114. (1) Upon obtaining the approval of the Bank under subsection 112(6), the transferor and transferee may make an application to the High Court for confirmation of the business transfer scheme.

(2) An application to the High Court with respect to any matter connected with a business transfer scheme may be made by a person, who in the opinion of the High Court, is likely to be affected by the scheme, at any time before the High Court grants an order under subsection (3) confirming the scheme.

(3) The High Court may confirm the business transfer scheme by granting an order in the terms applied for, or with modifications to the terms applied, or refuse to confirm the scheme.

(4) When the High Court makes an order confirming the business transfer scheme under subsection (3) after hearing all parties concerned, the High Court shall fix a date, to be applied for by the transferor and transferee and to be known as the transfer date, on which the business transfer scheme shall take effect.

Bank to be party to proceedings

115. (1) A person making an application to the High Court under subsection 114(2) in relation to a business transfer scheme shall—

(a) deliver a copy of the application to the Bank;

(b) give notice to the Bank of all proceedings relating to the application; and

(c) give to the Bank a copy of any document relating to the proceedings,

at the same time as the proceedings are instituted or the document is lodged, in the High Court or the document is served on a party to the proceedings.

(2) The Bank shall be entitled to be heard in proceedings relating to the application under subsection (1).

(3) Notwithstanding that the Bank has given its approval to a business transfer scheme under subsection 112(6), the Bank may propose any modification to the scheme.

Orders sought by transferor and transferee

116. (1) In an application made under subsection 114(1), the transferor and transferee may seek all or any of the following orders:

(a) for the transferor's rights and title to the assets to be transferred to the transferee under a business transfer scheme without the need to effect the transfer of rights and titles to each asset individually;

(b) in relation to an Islamic banking business transfer scheme or international Islamic banking business transfer scheme, for any account between the transferor and its customer to become an account between the transferee and the customer, subject to the same conditions and incidents existed between the transferor and its customer, and such account to be deemed for all purposes to be a single continuing account;

(c) in relation to a takaful business transfer scheme or an international takaful business transfer scheme, for the transferee to be fully responsible for liabilities transferred by the business transfer scheme whether arising out of takaful certificates or otherwise as though the liabilities were originally assumed by the transferee without the need for the transferee to confirm each liability individually;

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

(e) for any existing agreement to which the transferor was a party to have effect as if the transferee had been a party thereto instead of the transferor;

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

(g) for any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed by, the transferor or payable at the office of the transferor, whether so drawn, given, accepted or endorsed before, on, or after, the transfer date, to have the same effect on and from the transfer date, as if it had been drawn on, or given to, or accepted or endorsed by, the transferee or were payable at

the office of the transferee;

(h) for the custody of any document, goods or thing held by the transferor as bailee immediately before the transfer date to pass to the transferee and the rights and obligations of the transferor under any contract of bailment relating to any such document, goods or thing to be transferred to the transferee;

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

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

(k) any judgment or award obtained by or against the transferor and not fully satisfied before the transfer date to be enforceable by or, as the case may be, against the transferee; and

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

(2) Where the order for confirmation of the High Court under subsection 114(3) provides for the transfer of any business, including assets and liabilities, vested in or held by the transferor, either alone or jointly with any other person, then, by virtue of the order, that business, including assets and liabilities shall, on and from the transfer date, become vested in or held by the transferee either alone or, as the case may be, jointly with such other person, and the order shall have effect according to its terms notwithstanding anything in any law and shall be binding on all persons affected by it, regardless that the person is not a party to the proceedings under this Division or any other related proceedings, or had no notice of the proceedings under this Division or of other related proceedings.

(3) Where an order of the High Court under subsection 114(3) vests any alienated land, or any share or interest in any alienated land, in the transferee—

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 of 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 subsections 420(2), (3) and (4) of the National Land Code;

Sbh 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 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 [*Sabah Cap. 68*]; or

Swk Cap. 81.

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

(4) An order of the High Court under subsection 114(3) may relate to any assets or business of the transferor outside Malaysia and, if it so relates, effect may be given to it either in accordance with any reciprocal arrangements relating to enforcement of judgments that may exist between Malaysia and the country, territory or place outside Malaysia in which such assets or business is, or where there are no such arrangements, in accordance with the law applicable in such country, territory or place.

Publication of court order under section 114

117. (1) An order of the High Court made under subsection 114(3) shall, subject to the directions of the High Court, be published by the transferee in not less than two daily newspapers published in Malaysia and approved by the Bank, one of which shall be in the national language and the other in English.

(2) A transferor shall, within thirty days after the business transfer scheme has taken effect, lodge—

(a) such documents or information relating to the business transfer scheme as may be specified by the Bank, with the Bank; and

(b) a certified copy of such order made by the High Court under subsection 114(3) together with a certified copy of the Bank's approval, with—

(i) the Registrar of Companies; and

(ii) 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.

Reimbursement of Bank's expenses

118. The transferor and transferee shall be jointly and severally liable to reimburse the Bank for any expenses the Bank may incur under this Division.

Prohibition of payment

119. Unless the Bank otherwise approves, no licensed takaful

out of takaful fund

operator shall pay to any person any remuneration out of the assets of a takaful fund in relation to a business transfer scheme.

PART VIII

FINANCIAL GROUPS

Purpose of this Part

120. The Bank is empowered under this Part to exercise oversight over financial groups for the purposes of promoting the safety and soundness of a licensed person.

Disapplication of sections 122 and 123 to licensed persons, and licensed persons and financial holding companies under Financial Services Act 2013

121. Sections 122 and 123 shall not apply to—

(a) licensed persons under this Act; and

(b) licensed persons and financial holding companies under the Financial Services Act 2013.

Application to be financial holding company

122. (1) Any company which has to obtain the prior written approval of the Minister under section 99 to hold an aggregate interest in shares of more than fifty per cent in a licensed person shall submit an application to the Bank for it to be approved as a financial holding company.

(2) A company referred to in subsection (1) may propose another company within its corporate group to be approved as a financial holding company if it can be shown that the proposed company is in a position to have control over the licensed person and its proposed financial group.

(3) A person, other than a foreign institution or a company referred to in subsections (1) and (2), which is required to obtain the prior written approval of the Minister under section 99 to hold an aggregate interest in shares of more than fifty per cent in a licensed person shall propose a company within its corporate group which will have control over a licensed person and such proposed company shall submit to the Bank an application to be approved as a financial holding company.

Power of Bank to require submission of application

123. Where the Bank considers it is necessary for the purpose of maintaining effective regulation and supervision of a licensed person, the Bank may require—

(a) any other company within the corporate group of the applicant, if the Bank is of the opinion that neither the applicant nor the other company proposed by the applicant under section 122 should be approved as a financial holding company; or

(b) a company which has an aggregate interest in shares of fifty per cent or less in the licensed person but has control over the licensed person,

to submit to the Bank an application to be approved as a financial holding company.

Approval of application as financial holding company under section 122 or 123

124. (1) An application to be a financial holding company under section 122 or 123, as the case may be, shall be submitted to the Bank together with such documents or information as may be specified by the Bank.

(2) In assessing an application under section 122 or 123 for an applicant company to be approved as a financial holding company submitted under subsection (1), the Bank shall have regard to all matters that the Bank considers relevant including the factors set out in Schedule 6 and any standards specified by the Bank under subsection 103(1).

(3) Where the Bank is satisfied that such matters referred to in subsection (2) have been fulfilled by the applicant, the Bank may approve an application made pursuant to section 122 or 123, as the case may be, with or without conditions, or reject such application.

(4) The Bank may, at any time, in writing amend or revoke any existing condition of approval of a financial holding company under subsection (3) or impose any new condition thereto and such conditions shall not have retrospective effect.

(5) The Bank shall notify the applicant of its decision under subsection (3) in writing.

Bank may approve more than one financial holding company

125. The Bank may require more than one company within a corporate group of the applicant to be approved as a financial holding company.

Business of financial holding company

126. (1) Unless the Bank otherwise approves, a financial holding company of a licensed person shall not carry on any business, other than the business of holding investments directly or indirectly in corporations which are primarily engaged in financial services or in other services in connection with or for the purpose of such financial services.

(2) The Bank may specify standards to give full effect to subsection (1).

Prudential requirements on financial holding company and subsidiaries

127. (1) Subject to subsection (2), Part VI shall apply to a financial holding company as if references in that Part to an "institution" or a "licensed person" are references to a "financial holding company".

(2) The Minister may, on the recommendation of the Bank, by an order published in the *Gazette*, provide that all or any provision of Part VI—

(a) shall not apply to a financial holding company; or

(b) shall apply with such modifications consistent with the regulatory objectives of this Act.

(3) The Bank may specify standards on prudential matters under section 57 to a subsidiary of a financial holding company, if the Bank is of the opinion that the activities of such subsidiary may pose

risks to the licensed person or its financial group.

(4) A subsidiary of a financial holding company referred to in subsection (3) shall at all times ensure that its internal policies and procedures are consistent with the standards specified by the Bank under that subsection.

(5) A financial holding company or any of its subsidiaries which contravenes any provision of this Act or any standards, notice, direction, condition, specification or requirement specified or issued by the Bank under any provision of this Act applied to it under this section commits a breach and the Bank may take an action under paragraph 245(3)*(b)* in addition to other enforcement actions that the Bank is empowered to take under this Act.

Power to issue directions to financial holding company and subsidiaries

128. (1) The Bank may issue one or more of the directions specified in subsection (2) or (3), if the Bank is of the opinion that—

(a) the financial holding company, its subsidiary or director, chief executive officer or senior officer of such financial holding company or such subsidiary—

(i) is committing or is about to commit an act, or is pursuing or is about to pursue any course of conduct or carrying on its business, in a manner that is detrimental to the safety and soundness of a licensed person;

(ii) has failed to comply with any standards, notice, condition, specification, requirement, restriction, direction or code specified, issued or made under this Act or a direction under subsection 225(6) or section 227 regardless that there has been no prosecution or other action in respect of such non-compliance; or

(iii) has breached or contravened any provision of this Act which is applicable to such financial holding company or any of its subsidiaries, the Central Bank of Malaysia Act 2009 or any written law, other than securities laws as defined in the Securities Commission Act 1993, regardless that there has been no prosecution or other action in respect of such breach or contravention; or

(b) any state of affairs exist in respect of a financial group that may directly or indirectly affect the safety and soundness of a licensed person.

(2) Subject to section 273, the Bank may issue a direction in writing to a financial holding company, any of its subsidiaries or a director or chief executive officer of such financial holding company or such subsidiary, to cease or refrain from committing an act or pursuing a course of conduct or to do any act, in relation to its business, affairs or property if the Bank is of the opinion that it is necessary to remedy any of the circumstances in subsection (1).

(3) Without limiting the generality of subsection (2) and subject to section 273, a direction under subsection (2) may include any one or more of the following directions:

(a) to vary or terminate any agreement or arrangement other than any qualified financial agreement entered into by the financial holding company or any of its subsidiaries with any person in relation to its business, affairs or property;

(b) to dispose of all or any of the investments or assets held by the financial holding company or any of its subsidiaries in any body corporate;

(c) to prohibit the financial holding company or any of its subsidiaries from carrying on any part of its business;

(d) to prohibit the financial holding company or any of its subsidiaries from entering into any other transaction or class of transactions, or to enter into it subject to such restrictions or conditions as may be specified by the Bank; or

(e) with respect to a financial holding company, to increase its capital to such amount as may be specified by the Bank.

General provisions dealing with directions

129. (1) The direction issued under subsection 128(2) or (3) shall specify—

(a) the grounds on which the Bank proposes to issue the direction; and

(b) the time by which, or period during which, the direction is to be complied with.

(2) The Bank may at any time—

(a) amend or revoke a direction; or

(b) replace a direction with another direction.

(3) Any direction issued under subsection 128(2) or (3) shall not affect the enforcement by the parties of their rights under a qualified financial agreement.

Consequences of failing to comply with directions

130. A financial holding company, its subsidiary, director or chief executive officer of such financial holding company or such subsidiary who fails to comply with a direction issued under subsection 128(2) 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.

Additional provisions relating to paragraph 128 (3)*(e)*

131. (1) A direction issued pursuant to paragraph 128(3)*(e)* may direct the financial holding company to issue shares or other capital instruments of a kind specified in the direction.

(2) Where the financial holding company issues shares or other capital instruments in compliance with a direction pursuant to subsection (1), the financial holding company shall give a notice in writing to the members of the financial holding company, to subscribe to the shares or other capital instruments within the period specified in the notice.

(3) Where a member of the financial holding company does not subscribe to the shares or other capital instruments within the period specified in the notice given by the financial holding company pursuant to subsection (2), the Bank may issue a further direction pursuant to subsection 128(2) to the financial holding company requiring the financial holding company to allot the shares or other capital instruments to a person determined by the Bank.

Power to remove director or chief executive officer of financial holding company

132. (1) Subject to section 273, the Bank may by a notice in writing, remove a director or chief executive officer of a financial holding company if the Bank is of the opinion that the director or chief executive officer of the financial holding company—

(a) no longer fulfills the fit and proper requirements specified by the Bank under section 69 which is applicable to a financial holding company pursuant to section 127, and fails to cease holding such office or acting in such capacity; or

(b) has failed to comply with or by action or negligence has contributed to the breach or contravention of, any provision of this Act, a direction of the Bank referred to in section 128 or an enforceable undertaking accepted by the Bank under section 270.

(2) A director or chief executive officer removed from office or employment in a financial holding company under subsection (1) shall cease to hold the office from which he is removed with effect from the date set out in the order and shall cease to be concerned with the business or affairs of the financial holding company.

(3) Notwithstanding anything contained in any contract of service or any other agreement relating to his appointment, the removal of the director or chief executive officer under subsection (1) shall not entitle him to claim any compensation for such removal.

Division 1

Interpretation

Interpretation

133. For the purposes of this Division, Division 2 and Schedule 7—

"eligible complainant" means any person who is eligible to refer a dispute to a financial ombudsman scheme in accordance with the terms of reference of the 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 135; 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 135; or

(ii) such person is of a class, category or description of persons as may be specified by the Bank under section 135;

"financial ombudsman scheme" means a scheme for the resolution of disputes between an eligible complainant and a financial service provider in respect of financial services or products;

"financial services or products" means financial services or financial products developed, offered or marketed, by a financial service provider or for and on behalf of another person by a financial

service provider;

"financial service provider" means an authorized person.

Division 2

Business conduct, complaints, disputes, etc.

Application

134. (1) Sections 135 and 136 shall apply without prejudice to the provisions of the Capital Markets and Services Act 2007 in so far as such provisions relate 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 licensed Islamic bank or licensed takaful operator.

(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 licensed Islamic bank or licensed takaful operator.

Standards on business conduct

135. (1) The Bank may specify standards on business conduct to a financial service provider for the purposes of ensuring that a financial service provider is fair, responsible and professional when dealing with financial consumers.

(2) Without limiting 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 to financial consumers that is accurate, clear, timely and not misleading;

(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 any class, category or description of persons for purposes of the definition of "financial consumer" under section 133.

(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

136. (1) A financial service provider shall not engage in any prohibited business conduct set out in Schedule 7.

(2) Without limiting the generality of section 277, the Bank may issue guidance in writing on—

(a) descriptions of conduct which amount to; or

(b) factors that are to be taken into account in determining whether a financial service provider has engaged in,

any prohibited business conduct set out in Schedule 7.

(3) Where the Bank issues guidance relating to prohibited business conduct set out in paragraphs 5 and 6 of Schedule 7, such guidance shall be issued in consultation with the Competition Commission.

(4) Any person who 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) In relation to any complaint from an aggrieved person involving the prohibited business conduct set out in paragraphs 5 and 6 of Schedule 7, the Bank shall refer such complaint to the Competition Commission.

Approved takaful broker, approved Islamic financial adviser and approved issuer of designated Islamic payment instrument to establish customer account

137. (1) Where—

(a) an approved takaful broker or approved Islamic financial adviser receives any money—

(i) from or on behalf of a person covered or potential person covered for or on account of a licensed takaful operator in connection with a contract of takaful or a proposed contract of takaful; or

(ii) from or on behalf of a licensed takaful operator for or on account of a person covered; or

(b) an approved issuer of a designated Islamic payment instrument as may be determined by the Bank, receives any money from or on behalf of its user in exchange of the Islamic payment instrument issued,

such approved person shall, for the purposes of this section, establish and maintain one or more accounts for its customers in a licensed Islamic bank separate from its own account.

(2) For the purposes of subsection (1)—

(a) a lien or claim on, or a right to set-off, the moneys in any account established for customers under subsection (1) shall be void unless the moneys are for fees due and owing to such approved persons; and

(b) a charge, mortgage or an attachment on the moneys in any account established for customers under subsection (1) shall be void.

(3) Moneys in the account established for customers under subsection (1) is taken to be held in trust by the approved persons for the benefit of the customers.

Financial ombudsman scheme

138. (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 271 to require any class, category or description of financial service providers—

(a) to be a member of a financial ombudsman scheme approved under subsection (2); and

(b) at all times, to comply with terms of membership of such scheme.

(2) The Bank may approve any financial ombudsman scheme for the purposes of paragraph (1)*(a)*.

(3) Regulations may be made under section 271 for the purposes of ensuring a financial ombudsman scheme is fair, accessible and effective, including regulations on the following:

(a) the matters that the Bank may have regard to in determining whether to approve a financial ombudsman scheme under subsection (2);

(b) the functions and duties of, or other requirements to be complied with by any person operating a financial ombudsman scheme;

(c) the terms of a financial ombudsman scheme setting out the scope including types of dispute that may be referred to it and its eligible complainants, membership requirements, application, operations, procedures, the fees that may be charged and the types of award which may be granted under the financial ombudsman scheme;

(d) appointment of directors of any person operating a financial ombudsman scheme;

(e) the documents or information that shall be submitted by any person operating a financial ombudsman scheme to the Bank; and

(f) withdrawal or suspension of an approval under subsection (2).

(4) A financial service provider, who is a member of a financial ombudsman scheme approved under subsection (2), 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 financial service provider to take such steps in relation to a dispute.

Act 599.

(5) Where a dispute has been referred to a 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*].

Division 3

Takaful issues

Obtaining takaful outside Malaysia

139. (1) Except with the prior written approval of the Bank, no person shall enter into or cause to be entered into, a contract of general takaful of such description as may be prescribed by the Bank with a takaful operator other than a licensed general takaful operator.

(2) The Bank may grant an approval under subsection (1) after consultation with the Minister.

(3) A person shall provide to the Bank such information on any contract of general takaful entered into, or caused to be entered into with a takaful operator other than a licensed general takaful operator, as the Bank may require by notice in writing within such period as may be specified in the notice.

Provisions relating to takaful certificates

140. Schedule 8 sets out provisions relating to takaful certificates.

Pre-contractual disclosure and representations, and remedies for misrepresentations

141. (1) Schedule 9 sets out the pre-contractual duty of disclosure and representations for contracts of takaful in Part 2, and the remedies for misrepresentations relating to contracts of takaful in Part 3.

(2) Any person who contravenes the duty of disclosure under paragraph 11 of Schedule 9 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.

Payment of takaful benefits under family takaful certificate and personal accident takaful certificate

142. Schedule 10 sets out provisions for the payment of takaful benefits upon death of a takaful participant under a family takaful certificate, and a personal accident takaful certificate, issued in respect of a contract of takaful entered into by the takaful participant upon his life.

Division 4

Information and secrecy

Interpretation

143. For the purposes of this Division—

"customer" includes a participant or user;

"Islamic financial institution" refers to—

(a) a licensed Islamic bank;

(b) a licensed international Islamic bank;

(c) an approved operator of a payment system;

(d) an operator of a designated payment system; or

(e) an approved issuer of a designated Islamic payment instrument.

Restriction on inquiring specifically into affairs of particular customer

144. (1) Nothing in this Act shall—

(a) authorize the Minister to direct the Bank; or

(b) authorize the Bank,

to inquire specifically into the affairs or account of any customer of any authorized person.

(2) Notwithstanding paragraph (1)*(b)*, the Bank may inquire into the affairs or account of a customer of an authorized person for the purposes of exercising its powers or functions under this Act, the Financial Services Act 2013 or section 47 of the Central Bank of Malaysia Act 2009.

Secrecy

145. (1) No person who has access to any document or information relating to the affairs or account of any customer of an Islamic financial institution, including—

(a) the Islamic financial institution; or

(b) any person who is or has been a director, officer or agent of the Islamic financial institution,

shall disclose to another person any document or information relating to the affairs or account of any customer of the Islamic financial institution.

(2) Subsection (1) shall not apply to any document or information relating to the affairs or account of any customer of an Islamic financial institution—

(a) that is disclosed to 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 of the Bank 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 Islamic financial 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 Islamic financial institution.

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

(4) Any person who contravenes subsection (1) or (3) 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 disclosures

146. (1) An Islamic financial institution or any of its directors or officers may—

(a) for such purpose or in such circumstances as set out in the first column of Schedule 11, 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 Islamic financial institution or its directors or officers making a disclosure for the purposes or in such circumstances set out in Schedule 11 and paragraph (1)*(b)*, shall be subject to such conditions as may be specified by the Bank.

(3) For the purposes of subsection (2), the Bank may at any time amend or revoke any existing conditions or impose any new conditions in respect of permitted disclosures by the Islamic financial institutions set out in Schedule 11 or paragraph (1)*(b)*.

(4) Any person who receives any document or information relating to the affairs or account of a customer as permitted under subsection (1) above shall not disclose such document or information to any other person.

(5) In any proceedings under paragraph 3, 4, 5, 6 or 7 of the first column of Schedule 11 or circumstances approved by the Bank under paragraph (1)*(b)*, where any document or information is likely to be disclosed in relation to a customer's account, 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 information.

(6) Unless the court otherwise orders, no person shall publish the name, address or photograph of any parties to such proceedings as are referred in subsection (5), 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 they have been concluded.

(7) Any person who fails to comply with conditions imposed by the Bank pursuant to subsection (2) or (3) or contravenes subsection (4) or (6) 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.

Division 5

Restrictions relating to consumer protection

Application of this Division

147. This Division shall not apply to a licensed bank or a licensed investment bank which has obtained the approval of the Bank under subsection 15(1) under the Financial Services Act 2013 to carry on Islamic banking business.

Islamic deposit

148. For the purposes of sections 149 and 150, "Islamic deposit" means a sum of money or any precious metal or precious stone, or any article or thing as may be prescribed by the Minister, on the recommendation of the Bank, accepted, paid or delivered, in

accordance with Shariah—

(a) on terms under which it will be repaid or returned in full, regardless whether the repayment or return is by way of instalments, with or without any gains, any form of rental, profit, dividend or benefit, including any fee or gift, payable or to be given, or any other consideration in money or money's worth, either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment or delivery and the person accepting it; or

(b) under an arrangement, on terms whereby the proceeds under the arrangement to be paid to the person paying the sum of money or any precious metal or precious stone, or any article or thing shall not be less than such sum of money or any precious metal or precious stone, or any article or thing,

but excludes money paid *bona fide*—

(i) by way of an advance or a part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services are not in fact sold, hired or otherwise provided;

(ii) by way of security for the performance of a contract or by way of security in respect of any loss which may result from the non-performance of a contract;

(iii) without limiting paragraph (ii), by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise; and

(iv) in such other circumstances, or to or by such other person, as set out in Schedule 2.

Restriction on accepting Islamic deposits

149. (1) No person shall accept Islamic deposits except under a licence granted under section 10 regardless of whether the transaction is described as a loan, a financing, an advance, an investment, a savings, a sale or a sale and repurchase or by whatever name called.

(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.

Advertisements for Islamic deposits

150. (1) No person, other than a licensed Islamic bank, shall issue, or otherwise facilitate any person to issue, an advertisement which—

(a) contains any offer or invitation—

(i) to make any Islamic deposit; or

(ii) to enter or offer to enter into any agreement to make any Islamic deposit; or

(b) is intended, directly or indirectly, to lead to or induce the making of any Islamic deposit.

(2) Subsection (1) shall not apply to the issuance by any person of any advertisement for or on behalf of a licensed Islamic bank.

(3) Any person who 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.

Restriction on use of certain words

151. (1) Except with the prior written approval of the Bank, no person shall—

(a) in its name, description or title under which such person carries on business or in the conduct of its business, use—

(i) the word “Islamic bank” unless such person is licensed under this Act to carry on Islamic banking business;

(ii) the word “takaful”, “Islamic insurance” or “Islamic assurance” unless such person is authorized under this Act to carry on takaful business, takaful broking business or Islamic financial advisory business;

(iii) the words “Islamic financial adviser” unless such person is approved under this Act to carry on Islamic financial advisory business;

(iv) any derivative of the words in subparagraph (i), (ii) or (iii) in any language; or

(v) any other words in any language,

capable of being construed as indicating thecarrying on of any of the authorized business; or *[sic]*

(b) make any representation to the effect of paragraph *(a)* in any document relating to its business or document used in the course of carrying on its business or in any other manner whatsoever.

(2) The restriction in subsection (1) shall not apply to—

(a) the persons specified in Part 1 of Schedule 12 for the word “Islamic bank” in subparagraph (1)*(a)*(i);

(b) the persons specified in Part 2 of Schedule 12 for the word “takaful”, “Islamic insurance” or “Islamic assurance” in subparagraph (1)*(a)*(ii); and

(c) the persons specified in Part 3 of Schedule 12 for the words “Islamic financial adviser” in subparagraph (1)*(a)*(iii).

(3) 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.

PART X

Islamic MONEY MARKET AND Islamic FOREIGN EXCHANGE MARKET

Power of Bank to specify standards or issue codes

152. (1) The Bank may specify standards or issue codes for the purposes of developing, or maintaining orderly conditions or the integrity of, and ensuring compliance with Shariah in, the Islamic money market or the Islamic foreign exchange market.

(2) Without limiting the generality of subsection (1), standards specified or codes issued under that subsection may include standards or codes relating to—

(a) compliance with Shariah by the market participants or any person employed by such market participants in relation to their conduct or activities in the Islamic money market or the Islamic foreign exchange market;

(b) obligations and duties of any market participant or any officer of the market participant; and

(c) the issuance, sale, purchase, repurchase, borrowing or lending, of or other dealings in, currencies or other Islamic financial instruments traded in the Islamic money market or Islamic foreign exchange market including over-the-counter Islamic derivatives whose price, value or payment obligations are derived from, referenced to or based on profit rates or exchange rates.

(3) Standards or codes may only be specified or issued under paragraph (2)*(b)* in respect of over-the-counter Islamic derivatives derived from, referenced to or based on profit rates for the purposes of ensuring compliance with Shariah and maintaining monetary stability.

(4) Any market participant or any officer of the market participant in the Islamic money market or the Islamic foreign exchange market shall at all times comply with any standards specified or codes issued by the Bank under this section.

(5) Without limiting the Bank's powers to take action under any provision of this Act, the Bank may impose any condition, restriction or prohibition including, suspension from trading and restrictions on dealings in these markets on any market participant or any officer of the market participant for failure to comply with or give effect to such standards specified or codes issued under this section.

Prohibited conduct in Islamic money market and Islamic foreign exchange market

153. (1) No person shall—

(a) engage in any conduct or activities in the Islamic money market or the Islamic foreign exchange market which is contrary to Shariah;

(b) take part in or carry out a transaction that has or is likely to have the effect of creating a rate which is an off-market rate which results in an artificial rate for dealing in Islamic financial instruments in the Islamic money market or Islamic foreign exchange market;

(c) create, or cause to be created, or do anything that is calculated to create, a false or misleading appearance of active dealing in Islamic financial instruments in the Islamic money market or Islamic foreign exchange market;

(d) make a statement, or disseminate information that is false or misleading in a material particular and is likely to induce another person to deal in Islamic financial instruments or is likely to have the effect of raising, lowering, maintaining or stabilising the market rate of such Islamic financial instruments in the Islamic money market or Islamic foreign

exchange market and when the person makes the statement, or disseminates the information—

(i) the person does not exercise due care whether the statement or information is true or false; or

(ii) the person knows, or ought reasonably to have known, the statement or information is false or is materially misleading;

(e) take part in or carry out a transaction based on information that is not generally available to persons who regularly deals in the Islamic money market or Islamic foreign exchange market that would, or would tend to, have a material effect on the price or value of Islamic financial instruments; or

(f) engage in any other conduct relating to Islamic money market or Islamic foreign exchange market as may be prescribed by the Minister, on the recommendation of the Bank.

(2) Without limiting the generality of section 277, the Bank may issue guidance in writing on—

(a) descriptions of conduct which amount to; or

(b) factors that are to be taken into account in determining whether a person has engaged in,

any conduct set out in subsection (1).

(3) 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.

Arrangement with relevant supervisory authority

154. (1) The Bank shall enter into arrangements with relevant supervisory authorities to coordinate on the regulation of Islamic financial instruments traded in the Islamic money market which are within the purview and oversight of the relevant supervisory authorities.

(2) For the purposes of this section, "relevant supervisory authorities" means any authority, body or agency in Malaysia other than the Bank which is responsible for the supervision or oversight of the capital market, or capital market intermediaries or capital market participants.

PART XI

SUBMISSION OF DOCUMENT OR INFORMATION

Submission of document or information to Bank

155. (1) Where under this Act or any written law, any person including—

(a) an authorized person;

(b) an operator of a designated payment system;

(c) a financial holding company;

(d) a market participant;

(e) an approved representative office;

(f) an Islamic financial institution prescribed under section 223;

(g) an associate corporation or related corporation of a person referred to in paragraphs *(a)* to *(f)*; or

(h) a participant, user or any other person having dealings with a person referred to in paragraphs *(a)* to *(f)*,

is required to submit any document or information to the Bank, such person shall submit such document or information to the Bank.

(2) Where, for the purposes of the exercise of any of its powers or the performance of any of its functions under this Act or any written law, the Bank requires any document or information from any person including a person referred to in subsection (1), such person shall submit such document or information to the Bank.

(3) Any person who is required to submit any document or information under subsection (1) or (2) shall not submit any document or information—

(a) which he 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.

(4) For the purposes of subsection (1) or (2), any document or information required to be submitted shall be submitted within a period, at such intervals, in the manner or form as may be specified by the Bank.

(5) Any person complying with subsection (1) or (2) shall not be treated as being in breach of any contract, agreement or arrangement.

(6) The Bank may require—

(a) any document or information submitted under subsection (1) or (2) to be verified in such manner as may be specified by the Bank; or

(b) any document produced to be certified as a true copy,

by any person, including an auditor of a person referred to in subsection (1).

(7) Subject to section 157, where a document or information obtained by the Bank under subsection (1) relates to the account or affairs of any customer of any person referred to in subsection (1), that document or information shall be secret as between the Bank and such person submitting the document or information.

(8) Any person who contravenes paragraph (3)*(a)* 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.

Submission of statistical information, *etc*.

156. (1) For the purposes of collating statistical or other information on financial intermediation or financial inclusion in Malaysia or for other purposes related to the regulatory objectives of this Act, the Bank may require any person to submit any document or information to the Bank.

(2) Subject to section 157, the Bank shall not disclose to any person any document or information submitted under subsection (1) unless such disclosure is in summary or consolidated form and does not in any manner lead to the identification of any person to which such document or information relates.

Secrecy requirements under sections 155 and 156 not to apply

157. The secrecy requirements in subsections 155(7) and 156(2) shall not apply—

(a) for the purposes of the exercise of any of its powers or the performance of any of its functions by the Bank under this Act or the Central Bank of Malaysia Act 2009, including for the purposes of—

(i) the credit bureau established under section 47 of the Central Bank of Malaysia Act 2009; or

(ii) submitting any proposal to the Financial Stability Executive Committee;

(b) in respect of information provided by the Bank under section 95 of the Malaysia Deposit Insurance Corporation Act 2011;

(c) where such disclosure is in summary or consolidated form and does not in any manner lead to the identification of any person to which such document or information relates including the publication of consolidated statements or reports in respect of each class, category or description of persons as the Bank deems appropriate by aggregating the figures in all or any document or information submitted to the Bank under section 155 or 156; and

(d) for the purposes of prosecuting any person for any offence under any written law.

PART XII

EXAMINATION

Examination of authorized person, *etc*.

158. (1) The Bank may examine, without any prior notice, the business and affairs of the following persons:

(a) an authorized person, operator of a designated payment system or a financial holding company and the offices, related corporations and any agent of any such persons, in or outside Malaysia;

(b) a market participant; or

(c) an approved representative office.

(2) The Bank may, for the purposes of an examination under subsection (1), examine any director, officer or controller of any person referred to in subsection (1).

Duty to provide access to, and produce documents, information, *etc*.

159. (1) For the purposes of an examination under section 158, a person under examination and its director, officer or controller—

(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 it may specify;

(b) shall allow the Bank to copy or make extracts of any document referred to in paragraph *(a)*; and

(c) shall give to the Bank, orally or in writing, all such information and explanation relating to its business and affairs or of its agent as the Bank may require within such time as it may specify.

(2) The Bank may take possession of any documents, titles, securities, cash, apparatus, equipment or machinery to which it has access under subsection (1), if the Bank is of the opinion that the documents, titles, securities, cash, apparatus, equipment or machinery may be—

(a) interfered with, destroyed, concealed or removed unless the Bank takes possession of them; or

(b) needed as evidence in any legal proceedings, whether civil or criminal, which may be instituted under this Act, the Central Bank of Malaysia Act 2009 or any other written law.

(3) Any person who contravenes subsection (1) or refuses to allow the Bank to take possession of the documents, titles, securities, cash, apparatus, equipment or machinery under 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.

Examination of other persons

160. (1) The Bank may, for the purposes of an examination under section 158, examine—

(a) a person who was at any time, a director or officer of a person referred to in subsection 158(1);

(b) a person who is, or was at any time having dealings with a person referred to in subsection 158(1); or

(c) a person whom the Bank believes to be acquainted with the facts and circumstances of the case, including the auditor of a person referred to in subsection 158(1) or a member of the Shariah committee of an authorized person,

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

(2) 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).

(3) 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.

Appearance before Bank

161. (1) Any person examined under sections 158 and 160 shall appear before the Bank at such place, and at such time, as may be specified by the Bank.

(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.

Examination or assessment by auditor or actuary, *etc*.

162. (1) The Bank may require an authorized person, operator of a designated payment system or financial holding company to appoint an auditor, actuary or any other person as may be specified by the Bank, as the case may be, to carry out any specific examination or assessment in respect of its business or affairs as may be specified by the Bank and submit a report of such examination or assessment to the Bank.

(2) Where an examination or assessment is required under subsection (1), the remuneration of the person appointed under subsection (1) and other expenses related to such examination or assessment shall be borne by the authorized person, operator of a designated payment system or financial holding company.

Confidential information

163. (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, or from an examination by a relevant supervisory authority under section 164, shall not be disclosed by any authorized person, operator of a designated payment system or financial holding company, or any director, officer, auditor, actuary or a member of the Shariah committee of such persons, to any other person except in such circumstances as may be specified by the Bank.

(2) A document or information referred to in subsection (1) which shall not be disclosed, whether wholly or in part, shall include—

(a) any rating assigned by the Bank or relevant supervisory authority, as the case may be, to an authorized person, operator of a designated payment system or financial holding company;

(b) any stage of intervention assigned to an authorized person, operator of a designated payment system or financial holding company;

(c) any assessment of an authorized person, operator of a designated payment system or financial holding company made by the Bank or relevant supervisory authority, as the case may be, as a result of an examination or other supervisory review of such person including any report, correspondence or recommendation made to such persons;

(d) any enforceable undertaking accepted by the Bank under section 270;

(e) any order made, or direction issued by the Bank under this Act or by the relevant supervisory authority, as the case may be, to an authorized person, operator of a designated payment system or financial holding company; 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 at 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 or the Bank thereto, 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.

Examination by relevant overseas supervisory authority

164. (1) A relevant supervisory authority outside Malaysia which exercises functions corresponding to those of the Bank under this Act may, with the approval of the Bank, examine the books and transactions of—

(a) an approved representative office in Malaysia of a foreign institution;

(b) an authorized person which operates in Malaysia as a branch of a foreign institution; or

(c) an authorized person, operator of a designated payment system or a financial holding company which is a subsidiary of a foreign institution,

established or incorporated in that country, territory or place, provided that such examination by the relevant supervisory authority is for the sole purpose of its supervisory functions.

(2) The relevant supervisory authority shall give to the Bank a written undertaking to protect the confidentiality of any information it has obtained during, or arising out of its examination under subsection (1) and the purposes for which such information may be used.

(3) Where the Bank has granted its approval under subsection (1), the provisions of section 145 shall not apply in relation to the examination to be carried out under such approval, to the extent specified in the approval.

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

Disclosure of information by Bank to relevant overseas supervisory authority

165. The Bank may, subject to such terms and conditions it deems fit, provide to a relevant supervisory authority outside Malaysia which exercises functions corresponding to those of the Bank under this Act, such document or information relating to—

(a) the affairs of—

(i) any authorized person, operator of a designated payment system or financial holding company which is a subsidiary of a foreign institution; or

(ii) any authorized person, operator of a designated payment system or financial holding company which is an associate of a foreign institution;

(b) any office of an authorized person, operator of a designated payment system or a financial holding company; or

(c) any authorized person, operator of a designated payment system or financial holding company for the purposes of assessing a proposed establishment of any office by the authorized person, operator of a designated payment system or financial holding company,

if the Bank considers it necessary that the document or information be disclosed to the relevant supervisory authority outside Malaysia for the sole purpose of carrying out its supervisory functions.

PART XIII

DIRECTIONS OF COMPLIANCE

Interpretation

166. For the purposes of this Part, "institution" refers to an authorized person or operator of a designated payment system.

Circumstances for exercising power to issue directions

167. The Bank may issue one or more of the directions specified in section 168 if the Bank is of the opinion that an institution, its director, chief executive officer or senior officer—

(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;

(b) 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 institution;

(c) is carrying on business in a manner detrimental to the interests of depositors, investment account holders, takaful participants, participants, users, creditors or the public generally;

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

(e) has failed to comply with any standards, notice, condition, specification, requirement, restriction, direction or code specified, issued or made under this Act or a direction under subsection 225(6) or section 227 regardless that there has been no prosecution or other action in respect of such non-compliance;

(f) 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, regardless that there has been no prosecution or other action in respect of the breach or contravention; or

(g) has failed to ensure the safety, efficiency and reliability of the payment system or Islamic payment instrument, having regard, *inter alia*, to the reasonableness of admission criteria for participating in the payment system and the overall cost to the participants or users of, or any other persons involved

with, the payment system or Islamic payment instrument.

Power to issue directions to institution

168. (1) Subject to section 273, the Bank may issue a direction in writing to the institution, its director, chief executive officer or senior officer, to cease or refrain from committing an act or pursuing a course of conduct or to do any act, in relation to its business, affairs or property if the Bank is of the opinion that it is necessary to remedy any of the circumstances in section 167.

(2) Without limiting the generality of subsection (1), the direction under subsection (1) may include—

(a) with respect to any institution, any one or more of the following directions:

(i) to vary or terminate any agreement or arrangement other than any qualified financial agreement entered into by the institution with any person in relation to its business, affairs or property;

(ii) to dispose of all or any of the investments or assets held by the institution in any body corporate;

(iii) to prohibit the institution from carrying on any part of its business including, imposing any limitation on or prohibiting the giving of financing facilities, the making of investments, or in the case of a licensed Islamic bank, the acceptance of Islamic deposits or acceptance of money under investment accounts, or in the case of licensed takaful operators, the entering into contracts of takaful;

(iv) to prohibit the institution from entering into any other transaction or class of transactions, or to enter into it subject to such restrictions or conditions as may be specified by the Bank; or

(v) to derecognize any income derived from any business or activity which is contrary to Shariah;

(b) with respect to an institution which is a licensed person, to increase its capital to such amount as may be specified by the Bank;

(c) with respect to an institution which is an approved operator of a payment system, approved issuer of a designated Islamic payment instrument or operator of a designated payment system, any one or more of the following directions:

(i) to make any modification to such payment system or Islamic payment instrument, as the case may be, including any operational arrangements;

(ii) cease to issue the designated Islamic payment instrument; or

(iii) cease to operate the designated payment system or a payment system set out in Part 1 of Schedule 1; and

(d) with respect to an institution which is a licensed takaful operator, to transfer from its shareholders' fund to any takaful fund managed by it, such amount and in such form or manner as may be specified by the Bank.

General provisions dealing with directions

169. (1) The direction issued under section 168 shall specify—

(a) the grounds on which the Bank proposes to issue the direction; and

(b) the time by which, or period during which, the direction is to be complied with.

(2) The Bank may at any time—

(a) amend or revoke a direction; or

(b) replace a direction with another direction.

(3) Any direction issued under section 168 shall not affect the enforcement by the parties of their rights under a qualified financial agreement.

Consequences of failing to comply with directions

170. An institution, its director, chief executive officer or senior officer who fails to comply with a direction issued under section 168 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.

Additional provisions relating to paragraph 168 (2)*(b)*

171. (1) A direction issued pursuant to paragraph 168(2)*(b)* may direct the licensed person to issue shares or other capital instruments of a kind specified in the direction.

(2) Where the licensed person issues shares or other capital instruments in compliance with a direction pursuant to subsection (1), the licensed person shall give a notice in writing to the members of the licensed person to subscribe to the shares or other capital instruments within the period specified in the notice.

(3) Where a member of the licensed person does not subscribe to the shares or other capital instruments within the period specified in the notice given by the licensed person pursuant to subsection (2), the Bank may issue a further direction pursuant to subsection 168(1) to the licensed person requiring the licensed person to allot the shares or other capital instruments to a person determined by the Bank.

PART XIV

INTERVENTION AND REMEDIAL ACTION

Application of this Part to member institution

172. (1) Notwithstanding any other provision in this Part, in respect of an institution that is a member institution as defined under the Malaysia Deposit Insurance Corporation Act 2011—

(a) the Bank may exercise the following powers:

(i) the powers under sections 173 to 175 and paragraph 200 *(a)*; and

(ii) for the sole purpose of averting or reducing any risk to financial stability and where the institution has not ceased to be viable or is not considered by the Bank to be

likely to become non-viable, the powers under the following provisions:

(A) paragraph 200*(b)*;

(B) sections 201 and 202; and

(C) section 219; and

(b) the following provisions shall continue to apply:

(i) subsections 185(1) and (2) except where the application for the appointment of a receiver and manager to manage the whole or part of the business, affairs or property of a member institution is made by the Malaysia Deposit Insurance Corporation;

(ii) subsection 185(3) and section 206; and

(iii) section 207 except where the application for the winding up of a member institution is presented by the Malaysia Deposit Insurance Corporation.

(2) For the avoidance of doubt, in respect of an institution that is a member institution as defined under the Malaysia Deposit Insurance Corporation Act 2011, in relation to section 219, the provision shall be read to apply, only in relation to the powers that may be exercised by the Bank under subsection (1).

Division 1

Removal of director, chief executive officer or senior officer

Interpretation

173. For the purposes of this Division, "institution" refers to a licensed person or an operator of a designated payment system.

Power to remove director, chief executive officer or senior officer

174. Subject to section 273, the Bank may, by an order in writing, remove a director, chief executive officer or senior officer from office or employment in an institution if the Bank is of the opinion that the director, chief executive officer or senior officer of the institution—

(a) no longer fulfils the fit and proper requirements specified under section 69 and fails to cease holding such office or acting in such capacity; or

(b) has breached, contravened or failed to comply with or, by action or negligence, has contributed to the breach or contravention of, or non-compliance with any provision of this Act, a direction under section 168 or an enforceable undertaking accepted by the Bank under section 270.

Provisions relating to removal

175. (1) A director, chief executive officer or senior officer removed from office or employment in an institution under section 174 shall cease to hold the office from which he is removed with effect from the date set out in the order and shall cease to be concerned with the business or affairs of the institution.

(2) The removal of a director, chief executive officer or senior officer under section 174 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 a person so removed from office or employment shall not be entitled to claim compensation for the loss of office.

Division 2

Power to take intervention and remedial action

Subdivision 1 - Circumstances for exercising intervention and remedial action

Interpretation

176. For the purposes of this Subdivision, "institution" refers to a licensed person, an approved issuer of a designated Islamic payment instrument or operator of a designated payment system.

Circumstances for exercise of Bank's power

177. Where the Bank is of the opinion that any of the following circumstances exist in respect of an institution:

(a) the institution has breached or contravened any provision of this Act, the Central Bank of Malaysia Act 2009 or any written law, regardless that there has been no prosecution or other action in respect of the breach or contravention;

(b) the institution has failed to comply with any direction under section 168;

(c) the assets of the institution are not sufficient to give adequate protection to its depositors, investment account holders, takaful participants, participants, users or creditors, as the case may be;

(d) the capital of the institution has reached a level or is eroding in a manner that may detrimentally affect its depositors, investment account holders, takaful participants, participants, users, creditors or the public generally;

(e) the institution has become or is likely to become insolvent or is likely to become unable to meet all or any of its obligations; or

(f) any other state of affairs exists in respect of the institution that may be materially prejudicial to the interests of the depositors, investment account holders, takaful participants, participants, users or creditors of the institution or the owners of any assets under the licensed person's administration, including where proceedings under a law relating to bankruptcy or insolvency have been commenced in Malaysia or elsewhere in respect of the holding company of the institution, including its financial holding company,

the Bank may exercise its powers under this Division or Division 3.

Subdivision 2 - Assumption of control

Interpretation

178. For the purposes of this Subdivision—

"appointed person" refers to a person appointed by the Bank under subsection 179(1);

"institution" refers to a licensed person or an operator of a designated payment system.

Power to assume control

179. (1) Subject to section 273, where any of the circumstances set out in section 177 exist in respect of an institution, the Bank may, with the prior approval of the Minister, by an order in writing, assume control of the whole or part of the business, affairs or property of the institution and manage the whole or such part of its business and affairs, or appoint any person to do so on behalf of the Bank.

(2) The terms and conditions of the appointed person shall be determined by the Bank.

(3) Where an order has been made under subsection (1) or revoked under subsection 180(1), the Bank shall—

(a) notify that fact in the *Gazette*; and

(b) give notice of the commencement of the assumption of control under subsection (1), or revocation of the order in writing under subsection 180(1), as soon as is practicable by publication in at least two daily newspapers in Malaysia, one of which shall be in the national language.

(4) All costs and expenses of the Bank, including the remuneration of the appointed person, shall be payable out of the funds and properties of the institution, as a first charge on the funds and properties of the institution.

Effect of assumption of control

180. (1) Upon assuming control of the whole or part of the business, affairs or property of the institution, the Bank or the appointed person shall take custody and control of the whole or part of the business, affairs or property of the institution, and shall manage the whole or such part of the business and affairs of the institution in the name and on behalf of that institution until the order is revoked by the Bank in writing.

(2) During the period an order under this Subdivision is in force, the functions, rights and privileges of—

(a) the directors and chief executive officer of the institution shall be suspended unless the Bank gives its approval in writing for any director to remain as director or the chief executive officer to continue in the employment of the institution on such terms and conditions as the Bank may determine; and

(b) such senior officers of the institution as may be specified by the Bank, shall be suspended.

(3) The Bank or the appointed person shall be vested with such powers and functions of the institution and its board of directors, under its constituent documents or exercisable by the institution or its directors under any written law regardless whether the powers are exercisable by resolution or in any other manner whatsoever.

(4) The Bank or the appointed person, in effecting any action

under this Subdivision, shall not be required to notify or obtain the approval of the members or creditors of the institution in a general meeting or otherwise notwithstanding any contract or law including without limitation to sections 132C, 132D and 132E of the Companies Act 1965 or anything in its constituent documents.

(5) The Bank or the appointed person may alter the constituent documents of the institution or other arrangements for governance if the alteration is necessary to facilitate the exercise of powers or performance of functions of the Bank or the appointed person under this Subdivision, in relation to the institution.

(6) The Bank or the appointed person may sell or otherwise dispose of the whole or part of the business or property of the institution, on any terms and conditions determined by the Bank.

(7) Sections 111, 112 and 113 shall not apply to any sale or disposal of the whole or part of the business or property under subsection (6).

Information and facilities

181. (1) Where control of the whole or part of the business, affairs or property of an institution has been assumed pursuant to an order under this Subdivision—

(a) the institution, its directors, chief executive officer and officers shall submit the whole or part of the business, affairs and property to such control and provide the Bank or the appointed person with such facilities, documents or information as may be required to facilitate the exercise of powers or performance of functions of the Bank or the appointed person under this Subdivision; and

(b) the Bank or the appointed person may require a person who has, at any time, been a director, chief executive officer or an officer of the institution to give the Bank or the appointed person any information relating to the business, affairs or property of the institution that the Bank or the appointed person requires.

(2) Any person who contravenes paragraph (1)*(a)* or fails to comply with the requirements under paragraph (1)*(b)* 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.

Additional provisions relating to assumption of control

182. (1) Upon assuming control of the whole or part of the business, affairs or property of the institution, where the Bank gives its approval in writing for the director or chief executive officer to remain in his appointment pursuant to paragraph 180(2)*(a)*, any remuneration payable to the director or chief executive officer of the institution shall be determined by the Bank, in relation to the activity required or authorized by the Bank or the appointed person.

(2) Notwithstanding anything contained in any contract of service or any other agreement relating to his appointment, the suspension of the director or chief executive officer under paragraph 180(2)*(a)* shall not entitle him to claim any compensation for such suspension.

(3) An order under this Subdivision shall not have the effect of—

(a) conferring on, or vesting in, the Bank or the appointed

person, any title to, or any beneficial interest in, any property of the institution to which the order relates; or

(b) rendering the Bank or the appointed person, liable for any obligation or liability of the institution, whether incurred before or after the order comes into force.

(4) Where the Bank or the appointed person sells or disposes of the whole or part of the business or property of the institution pursuant to subsection 180(6), any person aggrieved by the transacted price may appeal on the transacted price to the Assessor Committee and section 221 shall apply.

Subdivision 3 - Power to appoint receiver and manager

Interpretation

183. For the purposes of this Subdivision, "institution" refers to a licensed person, an approved issuer of a designated Islamic payment instrument or operator of a designated payment system.

Appointment of receiver and manager by Bank

184. (1) Subject to section 273, where any of the circumstances described in section 177 exist in respect of an institution, the Bank may make an application to the High Court for an order—

(a) to appoint a receiver and manager to manage the whole or part of the business, affairs or property of the institution; and

(b) 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.

(2) On an application by the Bank, the High Court shall appoint as receiver and manager such person as may be specified by the Bank in its application including such person as may be specified by the Bank to fill a vacancy or to remove and replace a receiver and manager appointed under this Subdivision.

(3) All costs and expenses of the Bank, including the remuneration of such receiver and manager shall be payable out of the funds and properties of the institution, as a first charge on the funds and properties of the institution.

(4) A receiver and manager appointed under this Subdivision may apply to the High Court for directions in relation to any particular matter arising under the appointment.

PU(A) 205/2012.

(5) Order 30 of the Rules of Court 2012 [*P.U. (A) 205/2012*] shall not apply to an application for the appointment of a receiver and manager under this Subdivision.

(6) An application for the appointment of a receiver and manager under this Subdivision may be made by way of an *ex parte* originating summons.

Appointment of receiver and manager by persons other than Bank

185. (1) Any person may make an application to the High Court for the appointment of a receiver and manager to manage the whole or part of the business, affairs or property of a licensed person, an approved person or operator of a designated payment system, as the case may be, by giving prior written notice of thirty days to the Bank

of its intention to do so.

(2) Where an application is made to the High Court for an order to appoint a receiver and manager to manage the whole or part of the business, affairs or property of a licensed person, an approved person or operator of a designated payment system, as the case may be, that person shall, as soon as practicable, deliver a sealed copy of the application to the Bank.

(3) Where, pursuant to an Islamic instrument or any other instrument, a receiver and manager is appointed over the whole or part of the business, affairs or property of a licensed person, an approved person or operator of a designated payment system, as the case may be, by a person other than the Bank, that person shall immediately notify the Bank of the appointment.

(4) Any person who contravenes subsection (1), (2) or (3) 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.

Provisions in relation to appointment of receiver and manager

186. Where a receiver and manager has been appointed by the Bank to manage the whole or part of the business, affairs or property of an institution pursuant to section 184, the receiver and manager shall have the power—

(a) to enter into any premises of the institution and take possession and control of the whole or part of the business, affairs or property of the institution and require any person in the premises to account for and deliver up to the Bank or the receiver and manager, possession and control of the whole or such part of the business or property;

(b) subject to paragraph *(c)*, to sell or otherwise dispose of the whole or part of the business or property of the institution on such terms and conditions as determined by the Bank;

(c) to sell or otherwise dispose of any property of the institution that is subject to an agreement creating a security interest to any person who agrees to assume the obligation secured by the security interest;

(d) to arrange for the assumption of all or any part of the liabilities of the institution by any person;

(e) to carry on the whole or such part of the business of the institution to the extent that the receiver and manager deems it necessary or beneficial;

(f) to sue for, defend, compromise and settle, in the name of the institution, any claim made by or against it;

(g) in the name of the institution, to do all acts and execute all receipts and other documents and for that purpose, when necessary, use its common seal; and

(h) to do all such other things as may be necessary or incidental to the exercise of the rights and powers of the receiver and manager.

Subdivision 4 - Compulsory transfer of business, assets or liabilities

Interpretation

187. For the purposes of this Subdivision—

"residual institution" means a licensed person whose business, assets or liabilities have been vested in the transferee in accordance with section 188;

"transacted price" means the price at which the whole or part of the business, assets or liabilities of a licensed person referred to in section 188 is vested in the transferee;

"transferee" means a bridge institution or any other person, as the case may be, in which is vested under this Subdivision the whole or part of the business, assets or liabilities of the licensed person referred to in section 188;

"transferor" means the licensed person under this Subdivision referred to in section 188;

"transferred business" means the whole or part of the business, assets or liabilities of the licensed person that has been vested in the transferee.

Order for compulsory transfer of business, assets or liabilities

188. (1) The Minister shall, on the recommendation of the Bank, designate in writing a body corporate established or acquired by the Bank under paragraph 48(1)*(da)* of the Central Bank of Malaysia Act 2009 as a bridge institution for the purposes of vesting in such body corporate the business, assets or liabilities of a licensed person referred to in subsection (2).

(2) Where any of the circumstances set out in section 177 exist in respect of a licensed person, the Bank may, with the prior approval of the Minister, by an order in writing, vest in a bridge institution or any other person, the whole or part of the business, assets or liabilities of such licensed person.

(3) For purposes of subsection (2), the Third Schedule of the Central Bank of Malaysia Act 2009 shall apply in relation to an order of the Bank under this Subdivision and such order shall be binding on all persons to whom the order is made or who are affected by the order.

Additional provisions relating to compulsory transfer

189. (1) The Third Schedule of the Central Bank of Malaysia Act 2009 shall apply in relation to an order of the Bank under this Subdivision, with modifications, as provided in Schedule 13 and the Minister may prescribe any other modification as may be necessary to give effect to such order.

(2) Where the Bank makes an order under this Subdivision to a licensed person, the Bank shall—

(a) notify that fact in the *Gazette*; and

(b) give notice of such order as soon as is practicable by publication in at least two daily newspapers published in Malaysia, one of which shall be in the national language.

(3) The notice under paragraph (2)*(b)* shall include the transacted price of the transfer and the right of any aggrieved person to appeal on the transacted price to the Assessor Committee.

(4) The transacted price referred to in subsection (3) shall be determined by an independent valuer.

(5) Subject to subsection (9), the transferee and the transferor shall mutually agree on the person to be appointed by the Bank as the independent valuer referred to in subsection (4).

(6) Where an agreement under subsection (5) cannot be reached between the transferee and the transferor within a period the Bank determines to be reasonable, the Bank shall refer the matter to the Minister and the appointment of an independent valuer shall be made by the Minister.

(7) The remuneration of the independent valuer appointed under subsection (5) or (6) shall be payable out of the transacted price unless otherwise determined by the Bank.

(8) In determining the transacted price under subsection (4) for the business, assets or liabilities of the transferor, the independent valuer shall—

(a) have regard to matters which the independent valuer considers relevant including the prevailing market conditions for sale or disposal of similar business, assets or liabilities of the transferor; and

(b) disregard any benefit derived from any special financial assistance provided directly or indirectly by the Bank or the Government to the transferor.

(9) Where the vesting under this Subdivision is to be in a bridge institution, the independent valuer referred to in subsection (4) shall be appointed by the Minister.

(10) Where any person aggrieved by the transacted price appeals on the transacted price to the Assessor Committee, section 221 shall apply.

Continuity obligations

190. (1) The Bank may direct the residual institution and any person who has been providing services and facilities to the transferor for the operation of its business, to continue to provide to the transferee, such services and facilities as may be required to enable a transferee to operate the transferred business effectively.

(2) The duty to provide services and facilities in pursuance of the direction of the Bank in subsection (1) is subject to a right to receive reasonable consideration from the transferee.

(3) Any residual institution or person who fails to comply with a direction 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.

Subdivision 5 - Provisions relating to bridge institution

Designation of bridge institution

191. (1) Where the Minister designates a bridge institution under section 188—

(a) the designation shall expire two years after it is made, unless the designation is—

(i) extended under paragraph *(b)*; or

(ii) terminated under paragraph *(c)*;

(b) the Minister may, on the recommendation of the Bank, extend the designation for one or more periods each of which may not exceed one year; and

(c) the designation shall terminate on the earlier of the date of occurrence of any one of the following events:

(i) the Bank ceases to hold shares in the bridge institution;

(ii) all or a substantial amount of the assets of the bridge institution are acquired, or all or a substantial amount of the liabilities of the bridge institution are assumed, or both, by a person that is not a bridge institution; or

(iii) the Minister, on the recommendation of the Bank, decides that the designation shall be terminated.

(2) Where a bridge institution changes its company name within twelve months before or after such designation, the bridge institution shall be exempt from stating or otherwise showing the former name on any seal, document or instrument whatsoever.

Publication of notice

192. Upon the designation of a bridge institution or where such designation is extended under paragraph 191(1)*(b)* or terminated under paragraph 191(1)*(c)*, the Bank shall as soon as practicable publish a notice, specifying the date on which that event occurred in at least two daily newspapers in Malaysia, one of which shall be in the national language.

Bridge institution authorized to carry on business

193. (1) Upon its designation as such, and for so long as the designation continues, a bridge institution shall be deemed to be licensed to carry on the business of the licensed person whose business, assets or liabilities have been vested in the bridge institution.

(2) The Bank may exempt the bridge institution from such requirements, or grant such approvals, under this Act as may be necessary to facilitate the carrying on of its licensed business.

Bridge institution not liable for past obligations in respect of officers

194. Where a bridge institution becomes the employer of any individual who is an officer or a former officer of a licensed person, the bridge institution shall not—

(a) be liable for any obligation of the licensed person or its predecessor in respect of such individual existing prior to the bridge institution becoming the employer of the individual or in respect of any pension plan or other post-employment benefit plan for such individual or his survivors, or in respect of any collective agreement with a trade union or a council of trade unions; or

(b) be liable for any wages or salary calculated by reference to a period of time prior to the bridge institution becoming the employer of the individual in question.

Stay in respect of bridge institution

195. During the period of ninety days following the designation of a bridge institution—

(a) no action, suit or proceeding in any court or tribunal, may be

commenced or continued against the bridge institution or in respect of its assets;

(b) no attachment, garnishment, execution or other method of enforcement of a judgement, award or order against the bridge institution or its assets may take place or continue; and

(c) no creditor of the bridge institution has any remedy against the bridge institution or its assets.

Financial assistance to bridge institution

196. Notwithstanding section 76 of the Central Bank of Malaysia Act 2009, the Bank may provide a bridge institution with such financial assistance as the Bank thinks appropriate and the bridge institution shall, on demand or at such other time as the Bank specifies, repay or reimburse to the Bank, the financial assistance on such terms and conditions as determined by the Bank.

Subdivision 6 - Restructuring of share capital

Interpretation

197. For the purposes of this Subdivision, "institution" refers to a licensed person or an operator of a designated payment system.

Power to reduce share capital of institution

198. (1) Notwithstanding any constituent documents of an institution, the Bank may apply to the High Court for an order—

(a) where the paid-up capital of the institution is lost or unrepresented by available assets, to cancel such paid-up capital of the institution which is lost or unrepresented by available assets; or

(b) where a call has been made by the institution on its members to pay on the unpaid portion of their respective shares, if any, and payment has not been made within the time specified in the call, to consolidate the paid up portion of the shares as fully paid up and to cancel any shares which remain unpaid.

(2) Where the Bank applies for the cancellation of share capital under subsection (1), the institution shall not be required to notify or obtain the approval of its members or creditors in a general meeting or otherwise.

(3) Subject to subsections (1) and (2), the provisions of section 64 of the Companies Act 1965 shall apply.

Subdivision 7 - Financial assistance

Interpretation

199. For the purposes of this Subdivision, "institution" refers to a licensed person or an operator of a designated payment system.

Liquidity or financial assistance to institution

200. Notwithstanding section 76 of the Central Bank of Malaysia Act 2009 and subject to subsection 172(1)—

(a) the Bank may provide liquidity assistance upon such terms

and conditions as the Bank deems fit, to an institution which in the opinion of the Bank is about to or is likely to suspend payment to any extent; or

(b) where any of the circumstances set out in section 177 exist in respect of an institution, the Bank may, with the prior approval of the Minister, provide financial assistance to another institution or any other person to purchase any shares, or the whole or any part of the business, assets or liabilities, of the first-mentioned institution.

Subdivision 8 - Moratorium

Interpretation

201. For the purposes of this Subdivision, "institution" refers to a licensed person or an operator of a designated payment system.

Application for moratorium

202. (1) Where the Bank, in the interests of the depositors, investment account holders or takaful participants of an institution or participants, has issued a direction prohibiting an institution from carrying on all or part of its business under this Act, the Bank may apply to the High Court and the High Court may, on the application of the Bank, make an order staying for a period not exceeding six months, the commencement or continuance of any proceedings of a civil nature by or against the institution with respect to any of its business and the High Court may, upon hearing an *ex parte* originating summons filed by the Bank, make the order.

(2) Where an order has been made under subsection (1), the Bank shall notify that fact in the *Gazette*.

Division 3

Winding up

Subdivision 1 - General provisions on winding up

Interpretation

203. For the purposes of this Division—

"institution" refers to a licensed person or an operator of a designated payment system;

"liquidator" includes a provisional liquidator, wherever applicable.

Application of Companies Act 1965 in relation to winding up of institution

204. The provisions of the Companies Act 1965 in relation to the winding up of companies shall apply to the winding up of an institution, unless specifically provided otherwise in this Division.

Bank to apply for winding up

205. Subject to section 273, where any of the circumstances specified in section 177 exist in respect of an institution, the Bank may recommend to the Minister and the Minister may on such recommendation, authorize the Bank to file an application to the High Court for the winding up of an institution and the High Court

may order the winding up of an institution pursuant to the application filed by the Bank under this Division.

Restriction on voluntary winding up

206. (1) An institution, whether or not its licence or designation has been revoked, or an approved person, shall not be wound up voluntarily without the prior written approval of the Bank.

(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.

Winding up by High Court on application by persons other than Bank

207. (1) No application for the winding up of an institution or approved person may be presented to the High Court by any person without the prior written approval of the Bank.

(2) Subject to subsection (1), where an application for the winding up of an institution or approved person is presented to the High Court by a person other than the Bank—

(a) that person shall deliver a copy of the application to the Bank at the same time as it is presented; and

(b) the Bank shall be party to the winding up proceedings and shall be entitled to appear and be heard in all proceedings relating to the application and to call, examine and cross-examine any witness.

(3) Any person who contravenes subsection (1) or paragraph (2) *(a)* 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.

Appointment and remuneration of liquidator

208. (1) The High Court, where a winding up order is made in respect of an institution pursuant to section 205, shall appoint as liquidator such person as the Bank may specify in its application and shall specify that the remuneration of the liquidator shall be determined by the Bank.

(2) On an application by the Bank, the High Court shall appoint as liquidator such person as the Bank may specify in its application—

(a) to fill a vacancy; or

(b) to remove and replace a liquidator appointed under subsection (1).

Control of liquidator

209. Subject to an order of the High Court, a liquidator, other than the Official Receiver, appointed under section 208 shall carry out his functions under the direction and supervision of the Bank.

Statement of affairs

210. The statement of affairs of an institution as at the date of the winding up order made pursuant to section 234 of the Companies Act 1965 shall be submitted to the Bank at the same time as it is submitted to the Official Receiver.

Offences by officers of

institution

211. Section 300 of the Companies Act 1965 shall apply to an institution as if references in that section to an "officer or a contributory" are references to a director, officer, agent or contributory of an institution.

Subdivision 2 - Provisions specific to licensed takaful operators

Valuation of assets and liabilities

212. In the winding up of a licensed takaful operator, whether or not its licence is revoked and whether its shareholders' fund or any takaful fund managed by it is insolvent or not, the value of the assets and liabilities of the shareholders' fund and takaful fund, including liabilities in respect of takaful certificates, shall be ascertained on such basis as the Bank may determine and the law relating to bankruptcy or insolvency shall not apply to the valuation of the liabilities.

Termination of takaful certificate

213. (1) A takaful certificate of a licensed takaful operator shall cease to remain in force with effect from the date a winding up order has been made in respect of the licensed takaful operator.

(2) Where a takaful certificate ceases to be in force under subsection (1), the takaful participant shall only be eligible to claim as a debt due to him—

(a) in the case of a general takaful certificate, a refund of a portion of the takaful contribution that is commensurate with the remaining period of the takaful certificate;

(b) in the case of a family takaful certificate, the value of that family takaful certificate;

(c) the value of the investments or savings held separately in respect of the takaful certificate; or

(d) any other refund or amount,

which shall be ascertained on such basis as may be prescribed by the Bank.

(3) The liquidator shall notify each takaful participant and, in the case of a group takaful certificate, the group takaful participant, about the cessation of the takaful certificate by registered post to his last known address of residence or office and by publication in such newspapers as may be specified by the Bank.

Waiver of strict proof of debt

214. Where it appears to the liquidator that by reason of the inadequacy of its documents, or any other circumstances, hardship would be caused if he requires strict proof of debt, he may act on such evidence as he thinks fit and payment of a debt made by the liquidator in good faith to any person as being the person entitled to it shall discharge the liquidator from all liabilities in respect of that debt.

Prohibition against issuance of takaful certificate

215. No director, officer, agent or contributory, past or present, of a licensed takaful operator which is being wound up after its cessation of takaful business, shall continue to issue a takaful certificate.

Continuation of family takaful business

216. (1) Notwithstanding paragraph 236(1)*(a)* of the Companies Act 1965, the liquidator of a licensed takaful operator carrying on family takaful business—

(a) may carry on the licensed takaful operator's family takaful business with a view to such business being transferred as a going concern to another licensed takaful operator but shall not effect a new takaful certificate; and

(b) subject to subsection (2), may transfer the licensed takaful operator's assets and liabilities to another licensed takaful operator, including liabilities under family takaful certificates attributable to the first-mentioned licensed takaful operator and the takaful funds managed by it and Division 4 of Part VII shall apply to the transfer.

(2) The liquidator may, for the purpose of a transfer under paragraph (1)*(b)*, apply to the High Court for an order to reduce—

(a) the amount of liabilities under family takaful certificates of the licensed takaful operator; or

(b) the amount of other liabilities of the takaful fund,

and the High Court may reduce the liabilities to the extent necessary taking into consideration the value of available assets in the takaful funds and shareholders' fund subject to such condition as it considers fit.

Subdivision 3 - Priority of payments in winding up

Priority of payments in winding up of licensed Islamic bank

217. (1) In the winding up of a licensed Islamic bank in or outside Malaysia—

Act 359.

(a) the assets of the licensed Islamic bank, subject to paragraph *(b)*, shall be available to meet all liabilities of that licensed Islamic bank in respect of its Islamic deposits in Malaysia in priority to all other unsecured liabilities of that licensed Islamic bank other than the preferential debts set out in subsection 292(1) of the Companies Act 1965 in the order set out in that subsection and the debts due and claims owing to the Government under section 10 of the Government Proceedings Act 1956 [*Act 359*]; and

(b) notwithstanding subsection 292(1) of the Companies Act 1965, but subject to any costs and expenses of the winding up set out in paragraph 292(1)*(a)* of the Companies Act 1965 directly incurred in realising the assets of the investment accounts and any tax set out in paragraph 292(1)*(f)* of the Companies Act 1965 which is attributable to the investment accounts, the assets of the investment accounts managed by the licensed Islamic bank in Malaysia, shall be available, in the order set out as follows:

(i) to pay outstanding costs or expenses of the investment accounts;

(ii) to pay any profit, fees, gains or other remuneration due to the licensed Islamic bank; and

(iii) to meet the liabilities to the investment account holders.

(2) For purposes of paragraph (1)*(a)*, regulations may be made under section 271 to prescribe the order of priority for payments of different categories of Islamic deposits.

(3) Without limiting the generality of subsection (1), in the winding up of a licensed international Islamic bank which is a foreign institution, the assets of such licensed international Islamic bank generated from the funds received by its office in Malaysia—

(a) shall be available to meet all liabilities of the licensed international Islamic bank in Malaysia; and

(b) with effect from the date of the winding up of the licensed international Islamic bank, shall not be sold, removed, dissipated, alienated, transferred, assigned, encumbered, distributed or otherwise dealt with in any manner whatsoever without the prior written approval of the Bank.

(4) Notwithstanding anything to the contrary in section 340 of the Companies Act 1965 or the winding up order for a licensed international Islamic bank which is a foreign institution, the provisions of this section shall prevail and have full force and effect.

(5) Any person who contravenes paragraph (3)*(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.

Priority of payments in winding up of licensed takaful operator

218. (1) In the winding up of a licensed takaful operator, the assets of a takaful fund for any class or description of takaful business established under section 90 shall be applied to meet the liabilities to takaful participants or proper claimants in respect of that takaful fund and such liabilities shall have priority over all unsecured liabilities of that takaful fund including any *qard* or other forms of financial support referred to in section 95, other than any tax set out in paragraph 292(1)*(f)* of the Companies Act 1965 which is attributable to the takaful fund.

(2) In the winding up of a licensed takaful operator—

(a) where the assets of a takaful fund managed by a licensed takaful operator is in surplus, after payment has been made to meet its liabilities under subsection (1), such surplus assets of the takaful fund shall be applied in the following order:

(i) first, to meet the liabilities of other takaful funds managed by the licensed takaful operator which are deficient and if for this purpose there are two or more takaful funds which are—

(A) in surplus, such surpluses shall be applied in proportion to the surplus in each takaful fund to meet the liabilities of the takaful fund which is deficient; or

(B) in deficit, the surplus shall be applied in proportion to the amounts of the deficiencies to meet the liabilities of the takaful funds which are deficient; and

(ii) second, any other purposes as may be prescribed by the Bank;

(b) any deficiency in the assets of a takaful fund to meet its liabilities under subsection (1) will be met—

(i) first, as provided in paragraph *(a)*, by the surplus assets of other takaful funds; and

(ii) if such surplus assets are insufficient to meet those liabilities then the balance of such liabilities shall be met by the surplus assets of the shareholders' fund after payment has been made to meet the shareholders' fund's liabilities under subsection (3); or

(c) pursuant to subparagraph (2)*(b)*(ii), where the assets of the shareholders' fund is in surplus, the surplus assets shall be applied to meet the liabilities of any takaful fund which is in deficit, and if the surplus assets are applied to meet the liabilities of two or more takaful funds the assets of which are in deficit, they shall be applied proportionately to the amount of the deficiencies.

Act 359. (3) In the winding up of a licensed takaful operator, the assets of its shareholders' fund shall be applied to meet the liabilities to takaful participants to the extent that it is attributable to the shareholders' fund and such liabilities shall have priority over all unsecured liabilities of that licensed takaful operator, other than preferential debts set out in subsection 292(1) of the Companies Act 1965 and the debts due and claims owing to the Government under section 10 of the Government Proceedings Act 1956 [*Act 359*].

(4) Without limiting the generality of subsections (1), (2) and (3), where the Bank under section 90 has specified that a licensed takaful operator which is a foreign institution shall establish and maintain separate takaful funds for its Malaysian takaful certificate, in the winding up of the licensed takaful operator, the assets of—

(a) such takaful fund shall be applied to meet the liabilities of the fund;

(b) the shareholders' fund shall be applied to meet the liabilities to takaful participants in respect of the Malaysian takaful certificate to the extent that it is attributable to the shareholders' fund; and

(c) with effect from the date of the winding up of the licensed takaful operator, shall not be sold, removed, dissipated, alienated, transferred, assigned, encumbered, distributed or otherwise dealt with in any manner whatsoever without the prior written approval of the Bank.

(5) Notwithstanding anything to the contrary in section 340 of the Companies Act 1965 or the winding up order for a licensed takaful operator which is a foreign institution, the provisions of this section shall prevail and have full force and effect.

(6) Any person who contravenes paragraph (4)*(c)* 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.

Division 4

General provisions in relation to actions taken by Bank

Power of Bank to take action under this Part

219. Nothing in this Part shall preclude the Bank from taking any

one or more actions that it is empowered to take under this Part.

Qualified financial agreement

220. (1) For the purposes of this section, "institution" refers to a licensed person, an approved issuer of a designated Islamic payment instrument or operator of a designated payment system.

(2) The parties under a qualified financial agreement may continue to enforce their rights under the qualified financial agreement and shall not be affected by—

(a) the assumption of control of a licensed person or an operator of a designated payment system pursuant to section 179;

(b) the appointment of a receiver and manager of the business, affairs or property of any institution pursuant to section 184; or

(c) the making of an order for the compulsory transfer of the business, assets or liabilities of a licensed person pursuant to section 188,

except during such period as may be prescribed in regulations made under section 271 upon the commencement of the assumption of control or the appointment of a receiver and manager.

(3) Where a qualified financial agreement is transferred to any person pursuant to the exercise of the powers under subsection 180 (6) or section 186 or to a bridge institution or any other person under section 188—

(a) the acquiring person or bridge institution shall assume all the rights and obligations under such qualified financial agreement of the institution from which such agreement was transferred; and

(b) the enforcement by the parties of their rights under such qualified financial agreement shall be in accordance with the terms of such agreement as if the acquiring person or bridge institution had always been a party to such agreement.

(4) If the qualified financial agreement is not transferred to a bridge institution or another person, the parties to such qualified financial agreement shall be entitled to enforce their rights under such agreement at the expiry of the period referred to in subsection (2).

(5) Where the qualified financial agreement of an institution is transferred to an acquiring person or a bridge institution during the period prescribed by the Bank under subsection (2), and where a person is a counterparty to two or more qualified financial transactions under that agreement with the same institution, all or none of such qualified financial transactions shall be transferred to the acquiring person or bridge institution.

(6) If a qualified financial agreement relating to financial collateral that applies to any property of the institution is transferred, that property shall also be transferred to the acquiring person or bridge institution.

Assessor Committee

221. (1) Any person aggrieved by the transacted price as a result of—

(a) a sale or disposal of the whole or part of the business or

property of a licensed person or an operator of a designated payment system by the Bank or the appointed person under subsection 180(6); or

(b) a compulsory transfer of the whole or part of the business, assets or liabilities of a licensed person pursuant to section 188,

may, within twenty-one days from the date of such sale, disposal or transfer, appeal on the transacted price to the Assessor Committee by submitting an appeal in writing to the Bank.

(2) Where any person appeals under subsection (1), the Bank shall constitute an Assessor Committee consisting of three independent persons as members of the Assessor Committee, drawn from a panel of ten persons appointed by the Minister on the recommendation of the Bank and refer the appeal to the Assessor Committee to assess the reasonableness of the transacted price.

(3) The Assessor Committee constituted under subsection (2) may determine its own procedures.

(4) In assessing the reasonableness of the transacted price, the Assessor Committee shall have regard to such matters it considers relevant including the prevailing market conditions for the sale or transfer of similar property, business, assets or liabilities of the licensed person or operator of a designated payment system.

(5) Where the Assessor Committee decides that—

(a) the transacted price is less than the price that in its opinion is the reasonable price for the property, business, assets or liabilities, it shall advise the Bank to pay the difference between the transacted price and the reasonable price; or

(b) the transacted price is in its opinion the reasonable price, it shall advise the Bank accordingly.

(6) The Bank shall notify the aggrieved person in writing of the Assessor Committee's decision under subsection (5).

(7) Notwithstanding subsection (5), where the institution is insolvent and the whole of the property, business, assets or liabilities of the licensed person or an operator of a designated payment system is sold or disposed of by the Bank or the appointed person under subsection 180(6), or transferred by the Bank under section 188, a consideration of one ringgit shall be deemed to be reasonable as the transacted price.

(8) The sale or disposal of the whole or part of the business or property under subsection 180(6) or the transfer of the whole or part of the business, assets or liabilities under section 188 shall take effect despite any appeal to or any decision made by, the Assessor Committee.

(9) A decision of the Assessor Committee is final and binding on the parties to the appeal.

PART XV

OTHER POWERS OF BANK

Division 1

Interpretation

222. For the purposes of this Division, "Islamic financial intermediation activities" includes—

(a) the accepting of Islamic deposits or money under an investment account;

(b) the giving of any advance, financing or other facility in whatever form or by whatever name called in accordance with Shariah;

(c) Islamic leasing business;

(d) Islamic factoring business;

(e) the purchase of bills of exchange, certificates of Islamic deposit, Islamic securities or other negotiable instruments;

(f) the acceptance of, or the giving of any guarantee in relation to, liability, obligation or duty of any person;

(g) Islamic hire-purchase;

(h) acquiring rights or interests in an Islamic hire-purchase, Islamic leasing or other similar transaction;

(i) any activity that is incidental, ancillary or otherwise facilitates or is closely related to the activities referred to in paragraphs *(a)* to *(h)* above; and

(j) such other business or activity as prescribed under section 3.

Power of Minister to prescribe Islamic financial institutions

223. (1) The Minister may prescribe any person which is not under the supervision or oversight of the Bank and engaging in Islamic financial intermediation activities as a prescribed Islamic financial institution—

(a) on the joint recommendation by the Bank and the relevant authority which is responsible for the regulation and supervision of such person; or

(b) on the recommendation by the Bank, in any other case,

if such person, in the opinion of the Bank, poses or is likely to pose a risk to financial stability arising from—

(i) its Islamic financial intermediation activities which may include the generation of maturity or liquidity transformation, involve imperfect credit risk transfers, create or facilitate excessive leverage or raise concerns of regulatory arbitrage;

(ii) the nature, scope, size, scale or concentration of its Islamic financial intermediation activities; or

(iii) its interconnectedness with an authorized person or any other person regulated by the Bank under any written law enforced by the Bank.

(2) For the purpose of making a recommendation under subsection (1), the Bank may, with the approval of the Minister, exercise its examination powers under Part XII on a person referred to in subsection (1) as if the references in such provisions to an "authorized person" is a reference to the person referred to in

subsection (1).

(3) The Minister may, on the recommendation of the Bank, apply all or any provisions of this Act to a prescribed Islamic financial institution from a date specified in the order under subsection (1) and with such amendments as the Minister, on the recommendation of the Bank, deems necessary, as if the references in such provisions to an "authorized person", a "licensed person", "licensed Islamic bank", "licensed takaful operator", an "institution" and a "financial service provider", as the case may be, is a reference to such prescribed Islamic financial institution.

(4) With effect from the date specified in the order made under subsection (1), the prescribed Islamic financial institution concerned shall comply with, and be subject to, the provisions of this Act as specified in the order notwithstanding anything to the contrary in any written law.

(5) The Minister may, at any time, amend or revoke an order made under subsection (1)—

(a) on the joint recommendation by the Bank and the relevant authority, in the case of an order made under paragraph (1) *(a)*; or

(b) on the recommendation by the Bank, in any other case.

(6) A prescribed Islamic financial institution which contravenes any provision of this Act or any standards, notice, direction, condition, specification or requirement specified or issued by the Bank under any provision of this Act applied to it under subsection (1) commits an offence under such provision and shall be liable to the same penalty applicable to a licensed person convicted of an offence under such provision and if no offence is provided for such contravention, the prescribed Islamic financial institution commits a breach and the Bank may take an action under paragraph 245(3)*(b)* in addition to other enforcement actions that the Bank is empowered to take under this Act.

(7) This section shall not apply to—

(a) a person licensed, approved or recognized by the Securities Commission under securities laws; or

Act 704.
Act 705.

(b) a licensed entity under the Labuan Financial Services and Securities Act 2010 [*Act 704*] and Labuan Islamic Financial Services and Securities Act 2010 [*Act 705*].

(8) For the purposes of this section, in the case of a registered person under the Capital Markets and Services Act 2007, the Bank shall—

(a) consult with the Securities Commission in forming an opinion under subsection (1);

(b) notify the Securities Commission before conducting an examination under subsection (2); and

(c) regularly review the status of such prescribed Islamic financial institution, together with the Securities Commission, to determine whether the circumstances under subsection (1) no longer applies.

Division 2

Interpretation **224.** (1) For the purposes of section 225, unless the context otherwise requires—

"designated account" means an account opened in favour of any person by a financial institution as determined by the Bank;

"foreign currency" includes—

(a) currency notes or coins which are legal tender in any country, territory or place outside Malaysia;

(b) any right to receive foreign currency—

(i) in respect of any credit or balance at a licensed Islamic bank or any other similar institution in or outside Malaysia; or

(ii) from any person in or outside Malaysia; or

(c) any document or device of a kind intended to enable the person to whom the document or device is issued to obtain foreign currency from another person on the credit of the person issuing it, and in particular, any traveller's cheque or other draft or letter of credit so intended;

"giving or obtaining of guarantee" includes a renewal or extension of such guarantee;

"gold" means—

(a) gold in whatever state or form other than gold which has been materially increased in value by skilled craftsmanship; or

(b) any right to receive gold—

(i) in respect of any credit or balance at a licensed Islamic bank or any other similar institution in or outside Malaysia; or

(ii) from any person in or outside Malaysia;

"guarantee" includes the pledging of any Islamic security issued or registered in Malaysia or any other property in Malaysia to secure the repayment of a debt, obligation or liability;

"Islamic financial instrument" includes Islamic derivatives;

"Islamic securities" means shares, stock, bonds, notes (other than promissory notes), debentures, debentures stock, units under a unit trust scheme, shares in an oil royalty, a secondary security and returns, which are in compliance with Shariah, whether in scripless form or in bearer certificates, including certificates of title to Islamic securities or any letter of allotment which may be renounced, any letter of rights, any warrants conferring an option to acquire an Islamic security, any deposit certificate in respect of Islamic securities and such other documents conferring, or containing evidence of, rights to Islamic securities as may be specified by the Bank;

"issue" in relation to Islamic securities or Islamic financial instrument, means to bring or cause to be brought into existence those Islamic securities or Islamic financial instrument, and the word "issued" or "issuance" shall be construed accordingly;

"non-resident" means—

(a) any person other than a resident;

(b) an overseas branch, a subsidiary, regional office, sales office or representative office of a resident company;

(c) Embassies, Consulates, High Commissions, supranational or international organizations; or

(d) a Malaysian citizen who has obtained permanent resident status of a country or territory outside Malaysia and is residing outside Malaysia;

"payment" includes the act of transferring to, or placing to the credit of, a person, ringgit, foreign currency, Islamic financial instrument, gold, other precious metals or other valuable consideration, as the case may be, whether under an obligation or otherwise;

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

"resident" means—

(a) a citizen of Malaysia, excluding a citizen who has obtained permanent resident status in a country or a territory outside Malaysia and is residing outside Malaysia;

(b) a non-citizen of Malaysia who has obtained permanent resident status in Malaysia and is ordinarily residing in Malaysia;

(c) a body corporate incorporated or established, or registered with or approved by any authority, in Malaysia;

(d) an unincorporated body registered with or approved by any authority in Malaysia; or

(e) the Government or any State Government;

"ringgit" means currency notes or coins which are legal tender in Malaysia and includes any right to receive ringgit in such form as may be specified by the Bank;

"settlement of a property" includes the making of any disposition, covenant, agreement or arrangement whereby the property becomes subject to a trust;

"transfer of Islamic securities" includes the buying, selling, borrowing or lending of Islamic securities.

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

(a) the Bank may specify that the document or information shall be submitted, within a period, at such intervals, in the manner or form as may be specified by the Bank; and

(b) such person shall not submit any document or information—

(i) which he knows, or has reason to believe to be false or misleading in a material particular; or

(ii) which is inaccurate or incomplete in respect of which there is a material error or omission, or any recurring error or omission.

Measures relating to international and domestic transactions

225. (1) The Bank is empowered under this section to safeguard the balance of payments position and the value of the currency of Malaysia.

(2) No person shall undertake or engage in any transaction set out in Schedule 14 except with the written approval of the Bank.

(3) Subject to any direction issued by the Bank under paragraph (6)*(e)*, the prohibition in subsection (2) in respect of the transactions in paragraph 1 of Schedule 14 shall not apply to any licensed Islamic bank.

(4) Unless otherwise expressly provided in this section and Schedule 14, subsection (2) shall apply to—

(a) all persons, classes, categories or descriptions of persons including their nominees or any person acting on their behalf notwithstanding that they are not in Malaysia; and

(b) all acts that are committed in or outside Malaysia including any act which involves, is in association with, or is preparatory to, the transactions set out in Schedule 14.

(5) The Bank in granting any written approval under subsection (2) may impose any requirement, restriction or condition in respect of the transactions in Schedule 14.

(6) The Bank may issue direction to—

(a) declare that a person is to be treated as a resident or a non-resident notwithstanding the definition of "resident" or "non-resident" in section 224;

(b) require any person to submit any document or information to the Bank or any person as may be specified by the Bank;

(c) require any payment to be made into a designated account and direct the use of such fund in the designated account as may be specified by the Bank;

(d) require any person who is entitled to sell, or to procure the sale of, any foreign currency, gold or other precious metals, to offer it, or cause it to be offered, for sale to a licensed Islamic bank or any person as may be specified by the Bank;

(e) require a licensed Islamic bank to undertake or engage in the transactions in paragraph 1 of Schedule 14 on such terms as may be specified by the Bank;

(f) require a licensed Islamic bank, or any other person to administer or ensure compliance with this section on such terms as may be specified by the Bank; or

(g) require any person to do or refrain from doing any act for the purpose of securing compliance with this section.

(7) Any written approval granted under subsection (2) and any direction issued under subsection (6) shall apply to such persons, classes, categories or descriptions of persons as may be specified by the Bank in that written approval and direction, as the case may be.

(8) Subsection (2) shall not affect the enforcement by the parties

of their rights under a qualified financial agreement.

(9) Except for paragraph 7 in Schedule 14, any person who contravenes subsection (2) or fails to comply with any requirement, restriction or condition imposed under a written approval granted under subsection (2) or any direction issued under subsection (6) commits an offence under this Act 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 235.

(10) Any ringgit, foreign currency, gold, other precious metals, Islamic security or Islamic financial instrument or any other article which is subject to a prohibition under subsection (2) in respect of the transactions in paragraph 7 of Schedule 14 shall be deemed to be prohibited goods under the Customs Act 1967 [*Act 235*] and any person who fails to comply with such prohibition or any requirement, restriction or condition imposed under a written approval granted under subsection (2) commits an offence under that Act and shall, on conviction, be liable to the penalty provided in that Act.

Power of Bank to impose levies or charges

226. (1) For the purposes of safeguarding the balance of payments position or the value of currency of Malaysia, regulations may be made under section 271 to impose levies or charges in respect of any transaction specified in Schedule 14, either generally or with conditions or in circumstances set out in the regulations.

(2) Levies or charges imposed pursuant to the regulations referred to in subsection (1) may be—

(a) specific;

(b) a minimum or maximum amount; or

(c) a percentage or proportion of the amount which is the subject matter of the transaction in Schedule 14.

Power of Bank, with approval of Minister, to issue directions

227. (1) The Bank may, with the approval of the Minister, in the national interest, issue directions to any person in Malaysia, to prohibit, restrict or require the doing of any act as may be specified by the Bank, with or without conditions, in relation to dealings or transactions, with any person resident in a country or territory, or in any currency, as may be specified by the Bank.

(2) Any person for whom the directions are issued under subsection (1) shall comply with the directions notwithstanding any other duty imposed on that person by any contract or international agreement.

(3) No person shall, in carrying out any act in compliance with the directions made under subsection (1), be treated as being in breach of any such contract or international agreement.

(4) Any person who fails to comply with any direction or condition referred to 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 fifty million ringgit or to both.

Division 3

Power of Minister to declare holiday for licensed person

228. (1) The Minister may, on the recommendation of the Bank, by notice in the *Gazette*, declare any day to be a holiday for all licensed persons, or for any class, category or description of licensed persons, or for such offices of such licensed persons, throughout, or in any part of, Malaysia, as may be specified in the notice.

(2) No licensed person, or the office of the licensed person specified in the notice, shall carry on any business on any day declared as a holiday for such licensed person under subsection (1) unless the Minister, on the recommendation of the Bank, otherwise approves.

(3) Where a day is declared to be a holiday under subsection (1)—

(a) the licensed person or its office specified in the notice is not compellable on such holiday to make a payment or to do any other act that it would not be compellable to do on any day which is public holiday within the meaning of any law relating to public holidays; and

(b) no person shall be compellable to make any payment on such holiday in or at a licensed person or its office specified in the notice, or to do in or at a licensed person or its office specified in the notice any act requiring the services of such licensed person,

and the obligation to make the payment or to do the act shall be deemed to be an obligation to make the payment or to do the act on the next day which is not a public holiday within the meaning of any law relating to public holidays.

(4) A day declared as a holiday for a licensed person or its office under subsection (1) shall not necessarily be a public holiday and nothing in this section shall affect the operation of any law relating to public holidays.

(5) Any declaration of a holiday made under subsection (1) shall not—

(a) invalidate any contract, agreement, transaction or arrangement entered into by the licensed person with any person; and

(b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

PART XVI

ENFORCEMENT AND PENALTIES

Division 1

Investigation powers

Investigation by Bank

229. Where the Bank is satisfied or has any reason to believe that any person has committed an offence under this Act, the Bank may cause an investigation to be made and for such purpose may exercise

all the powers of investigation provided under this Act.

Appointment of investigating officer

230. The Bank may appoint an officer of the Bank or any other person appointed under subsection 7(6) to be an investigating officer to conduct an investigation under this Division.

Powers of investigating officer

231. (1) An investigating officer appointed under section 230 shall have all the powers and functions conferred on the Bank under this Part, and where such investigating officer is not an officer of the Bank, he shall, in relation to such powers and functions—

(a) be subject to; and

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

the provisions of this Act, the Central Bank of Malaysia Act 2009 or any other written law applicable to an officer of the Bank as if he was an officer of the Bank.

(2) 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.

(3) The Governor shall have all the powers and functions of an investigating officer.

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

Powers of entry, search and seizure with warrant

232. (1) Where it appears to a Magistrate, upon written information on oath and after such inquiry as he considers necessary, that there is reasonable cause to believe that—

(a) any premises have been used or are about to be used for; or

(b) there is in any premises evidence necessary to the conduct of an investigation into,

the commission of an offence under this Act, the Magistrate may issue a warrant authorizing an investigating officer named in the warrant, at any reasonable time, by day or by night and with or without assistance, to enter the premises and if need be by force.

(2) A warrant under subsection (1) may authorize the investigating officer to—

(a) enter any premises and search for, seize and detain any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information;

(b) have access to, inspect, make copies of, or take extracts from, any computer, computer output, system, data, books, document 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;

(c) take possession of, and remove from the premises, any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information so seized and detained;

(d) search any person who is in, or on, such premises, and for the purpose of such search, detain such person, subject to section 236, and remove him to such place as may be necessary to facilitate the search, and seize and detain any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information found on such person;

(e) break open, examine, and search, any article, container or receptacle, including assessing into a computer; or

(f) stop, detain or search any conveyance.

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

(a) break open any outer or inner door of such premises or other obstruction to the premises, in order to effect entry into the premises;

(b) forcibly enter the premises and every part of the premises;

(c) remove by force any obstruction to entry, search, seizure, detention or removal as he is empowered to effect under this section; or

(d) detain, subject to section 236, any person found in any premises, or in any conveyance, searched under subsection (1) until such premises or conveyance have been searched.

(4) 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.

(5) 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.

Powers of entry, search and seizure without warrant

233. If the investigating officer is satisfied upon information received that he has reasonable cause to believe that by reason of delay in obtaining a search warrant under section 232 the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, the investigating officer may enter the premises and exercise in, upon and in respect of the premises all the powers referred to in section 232 in as full and ample a manner as if he was authorized to do so by a warrant issued under that section.

List of seized property, *etc.*

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

(a) prepare and sign a list of all property, apparatus, equipment, machinery, computer, computer output, system, data, books,

document or information seized; and

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

(2) The occupant of the premises entered under subsection 232(1) or section 233 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.

(3) Where such occupant or person acting on behalf of the occupant under subsection (2) 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.

Release of seized property, *etc*.

235. (1) An investigating officer shall, unless otherwise ordered by any court—

(a) on the close of investigations or any proceedings arising from such investigations; or

(b) with the prior written consent of the Bank at any time before the close of investigations,

release any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information seized, detained or removed by him or any other investigating officer under this Part, to such person as he determines to be lawfully entitled to the property, apparatus, equipment, machinery, computer, computer output, system, data, books, document 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.

(2) A record in writing shall be made by the investigating officer effecting any release of any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information under subsection (1) in respect of such release specifying therein in detail 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, apparatus, equipment, machinery, computer, computer output, system, data, books, document 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, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information to claim such property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information within the period stipulated in the notice.

(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, apparatus, equipment, machinery,

computer, computer output, system, data, books, document or information.

(5) The court upon receiving the application under subsection (4) and being satisfied that the person under subsection (1) who is lawfully entitled to the property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information cannot be located shall order the same to be forfeited or disposed of by the Bank in accordance with the order made by the court.

Search of person

236. (1) An investigating officer may search any person whom he has reason to believe has on his person any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information, or other article necessary, in his opinion, for the purpose of investigation into any offence under this Act.

Act 593.

(2) For the purpose of a search of a person under subsection (1) or section 232 or 233, an investigating officer 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.

(3) An investigating officer making a search of a person under subsection (1) may seize, detain or take possession of any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document, information or article, found upon such person for the purpose of the investigation being carried out by him.

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

(5) No person shall be searched except by a person who is of the same gender, and such search shall be conducted with strict regard to decency.

Obstruction to exercise of powers by investigating officer

237. (1) No person shall—

(a) refuse any investigating officer exercising his powers under section 232, 233 or 236, access to any premises or any part of such premises, or fail to submit to the search of his person;

(b) assault, obstruct, hinder or delay any investigating officer in the exercise of his powers under this Part;

(c) fail to comply with any lawful demand of any investigating officer in the execution of his duties under section 232, 233 or 236;

(d) refuse to give to an investigating officer any information which may reasonably be required of him and which he has it in his power to give;

(e) fail to produce to, or conceal or attempt to conceal from, an investigating officer any property, books, other document or article in relation to which the investigating officer has

reasonable grounds for suspecting that an offence or breach has been or is being committed under this Act;

(f) retrieve or endeavour to retrieve any thing which has been duly seized;

(g) furnish to an investigating officer as true, information which he knows or has reason to believe to be false, misleading, inaccurate or incomplete; or

(h) before or after any seizure, break or otherwise destroy any thing to prevent the seizure thereof, or the securing of such thing.

(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.

Requirement to provide translation

238. (1) Where an investigating officer finds, seizes, detains or takes possession of any computer, computer output, system, data, books, document or information, in the exercise of any power under this Part, and such books, other document or information or any part thereof is in a language other than the national language or the English language, or in any sign or code, the investigating officer may, orally or in writing, require the person who had the possession, custody or control of such computer, computer output, system, data, books, document or information, to furnish to the investigating officer a translation in the national language or the English language of such computer output, system, data, books, document or information within such reasonable period as the investigating officer may specify, having regard to the length of the computer output, system, data, books, document or information, or other circumstances relating to it.

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

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

(4) Any person who contravenes subsection (1) or (2) 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.

Power to examine persons

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

(a) order any person in writing to attend before him for the purpose of being examined orally in relation to any matter which may assist in the investigation into the offence or breach;

(b) order any person in writing to produce before him, within the

time specified by such officer, any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document, information, article or thing which may assist in the investigation into the offence or breach; or

(c) by notice in writing require any person to furnish a statement in writing made on oath or affirmation setting out therein all such information which may be required under the notice, being information which would be of assistance in the investigation into the offence or breach.

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

(a) a person to whom an order under paragraph (1)*(a)* has been given shall—

(i) attend in accordance with the terms of the order to be examined, and shall continue to so attend from day to day as directed by the investigating officer until the examination is completed; and

(ii) during such examination disclose all information which is within his knowledge, or which is available to him, or which is capable of being obtained by him, in respect of the matter in relation to which he is being examined, whether or not any question is put to him with regard thereto, and where any question is put to him he shall answer the question truthfully and to the best of his knowledge and belief, and shall not refuse to answer any question on the ground that it tends to incriminate him or his spouse;

(b) a person to whom an order has been given under paragraph (1)*(b)* shall not conceal, hide, destroy, alter, remove from or send out of Malaysia, or deal with, expend, or dispose of, any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document, information, article or thing specified in the order, or alter or deface any entry in any such computer output, system, data, books, document or information, or cause such acts to be done, or assist or conspire to do such acts; and

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

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

(4) Where any person discloses any information or produces any property, equipment, apparatus, machinery, computer, computer output, system, data, books, document, information, article or thing, pursuant to subsections (1) and (2), neither the first-mentioned

person, nor any other person on whose behalf or direction or as whose agent or officer the first-mentioned person may be acting, shall, on account of such disclosure or production, be liable to any prosecution for any offence under or by virtue of any law, or to any proceeding or claim in any form or of any description by any person under or by virtue of any agreement or arrangement, or otherwise.

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

(6) An examination under paragraph (1)*(a)* shall be reduced into writing by the investigating officer and shall be read to and signed by the person being examined or affixed with his thumb print, and where such person refuses to sign the record or affix his thumb print, the investigating officer shall endorse thereon under his hand the fact of such refusal and the reasons thereof, if any, stated by the person examined.

(7) The record of an examination under paragraph (1)*(a)*, or a written statement on oath or affirmation made pursuant to paragraph (1)*(c)*, or any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document, information, article or thing produced under paragraph (1)*(b)* or otherwise in the course of an examination under paragraph (1)*(a)* or under a written statement on oath or affirmation made pursuant to paragraph (1)*(c)* shall be admissible in evidence in any proceedings in any court for, or in relation to—

(a) an offence or breach under this Act;

(b) any other matter under this Act; or

(c) any offence under any other written law,

regardless whether such proceedings are against the person who was examined, or who produced the property, apparatus, equipment, machinery, computer, computer output, system, data, books, document, information, article or thing, or who made the written statement on oath or affirmation, or against any other person.

(8) Any person who contravenes subsection (1) or (2) or 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 liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.

Service of orders or notices generally, *etc*.

240. (1) Any order or notice that is given under this Part, shall, where it is required to be served on an individual, be served by—

(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 Part 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 unincorporate at its registered address or business address.

(3) If the officer effecting 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 so many of the persons who appear 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

241. (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 Part, to surrender his travel documents including passport or exit permit in his possession, within such period as specified in the notice.

(2) A notice under subsection (1) shall be served personally to the person to whom it is addressed in accordance with section 240.

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

(4) Where a person is taken 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 purpose 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 of 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

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

(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

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

(a) supply to a police officer or any other public officer a copy of any books, computer output, data, document or information seized, detained or taken possession of under section 232, 233 or 236, or of any record of examination under paragraph 239(1)*(a)*, or of any written statement on oath or affirmation made under paragraph 239(1)*(c)* or of any books, computer output, data, document or information produced under paragraph 239(1)*(b)*, or otherwise in the course of any examination under paragraph 239(1)*(a)*, or under any written statement on oath or affirmation made pursuant to paragraph 239(1)*(c)*, and such police officer or other public officer may make such use of such copy of such

record, 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, 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 Part, and such police or other public officer may make such use of any knowledge gained by such access or inspection as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person.

Investigating officer deemed to be public servant and public officer *Act 574.*

244. 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.

Division 2

Administrative actions

Power of Bank to take action

245. (1) A person has committed a breach under this Act if the person fails to comply with or give effect to—

(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 including an order made under section 106 or a direction issued under section 128 or 168, subsection 225(6) or section 227; or

(d) any standards, condition, restriction, specification, requirement or code 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 273 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, requirement or code 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 247 or if no such order has been made, 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, as the case may be;

(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 failure to comply;

(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 an authorized person, operator of a designated payment system or a market participant 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 Schedule 15;

(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 271(2)*(d)*; or

(d) failure to comply with any standards, code, order, direction, requirement, condition, specification, restriction or otherwise made or imposed pursuant to any provision set out in Schedule 15.

(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, in particular, section 106, 128 or 168, or any written law.

Lodgment of amount of not distributed with Registrar of Unclaimed Moneys
Act 370.

246. To the extent that any of the amount paid under paragraph 245 (3)*(e)* or subsection 245(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*].

Power of Bank to prescribe monetary penalty

247. The Bank may, for giving full effect to or for convenient implementation of subparagraph 245(3)*(b)*(i), or for the purposes of regulatory objectives of this Act, prescribe the following matters as it

deems necessary:

(a) classify or designate the breaches under this Act into different categories of breaches; and

(b) fix, in accordance with paragraph *(a)*, a monetary penalty, or a range of monetary penalties, in respect of each category.

Application for appeal of decisions

248. (1) Any person who is aggrieved by a decision of the Bank under paragraph 245(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.

(2) The decision of the Bank under paragraph 245(3)*(b)* or *(e)*, as the case may be, 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.

Monetary Penalty Review Committee

249. (1) There shall be established a committee to be known as the Monetary Penalty Review Committee for the purposes of section 248.

(2) The Monetary Penalty Review Committee shall consist of not less than three but not more than five members appointed by the Minister from amongst non-executive directors of the Bank or other persons.

(3) The Monetary Penalty Review Committee may determine its own procedures.

Division 3

Civil actions

Civil action by Bank

250. 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 any—

(a) provisions of this Act;

(b) provisions of any regulations made pursuant to this Act;

(c) order made or direction issued by the Bank under this Act including an order made under section 106 or a direction issued under section 128 or 168, subsection 225(6) or section 227;

(d) standards, condition, restriction, specification, requirement or code made or issued pursuant to any provision of this Act; or

(e) action taken by the Bank under subsection 245(3),

the Bank may institute civil proceedings in the court seeking any order specified under subsection 251(1) against that person whether or not that person has been charged with an offence in respect of the

contravention or breach or whether or not a contravention or breach has been proved in a prosecution.

Orders by court

251. (1) The court may, on an application by the Bank under section 250, make one or more of the following orders:

(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 authorized person, operator of a designated payment system or market participant 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 245(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, 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 unincorporate 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 thereof to be used to compensate persons who have suffered loss as a result of the contravention, breach or non-compliance.

(5) If the authorized person, operator of a designated payment system or market participant 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 authorized person, operator of a designated payment system or market participant 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 under this section may be commenced 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

252. (1) Where any person—

(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 264,

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 licensed person, the Bank may institute civil proceedings in court for the purposes of seeking indemnity from the persons referred to in subsection (2).

(2) The following persons shall be jointly and severally liable to indemnify the licensed person in full for any loss or damage to the licensed person:

(a) the person convicted of the offence, or the person whose offence has been compounded under section 264; and

(b) any director, officer or controller of the licensed person, 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 licensed person, or any person who is assisting in such management.

(3) The court may, upon reviewing an application by the Bank, make an order specifying the amount of moneys the persons referred to in subsection (2) are liable to indemnify the licensed person.

(4) The persons referred to in subsection (2) shall not be liable to so indemnify the licensed person if—

(a) the offence was committed without his knowledge, consent or connivance; and

(b) he took all reasonable precautions and had exercised due diligence to prevent the commission of the offence as he ought to have taken precautions or to have 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 licensed person.

(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 264.

Interim orders

253. If an application is made to a court for an order under subsection 251(1) or 252(1), the court may, if it deems appropriate, before considering the application, make an interim order of the kind applied for and such order shall be expressed to have effect pending the determination of the application.

Contravention of court order

254. (1) Any person who contravenes an order of the court under subsection 251(1), 252(3) or section 253 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.

(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

255. Where the Bank makes an application for an order under subsection 251(1) or 252(1), the court shall not, as a condition of the grant of the order, require any undertaking as to damages to be given by or on behalf of the Bank.

Other actions

256. An application made pursuant to subsection 251(1) or 252(1), shall not prejudice any other action that may be taken by the Bank, aggrieved person or licensed person, as the case may be, under this Act or any other law.

Evidence obtained in investigations may be used in civil proceedings

257. (1) Notwithstanding any law, any document or information obtained by the Bank in the exercise of its investigation powers against—

(a) an authorized person, operator of a designated payment system or a market participant;

(b) any director or officer of the persons referred to in paragraph *(a)*;

(c) any agent of the persons referred to in paragraph *(a)*; 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 document or information referred to in subsection (1) shall not be inadmissible in any civil proceedings under this Part 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 thereof shall be determined in accordance with the rules of evidence under any law.

Division 4

Criminal offences

Imprisonment

258. 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.

Offences in relation to entries in documents

259. (1) No person shall—

(a) make or cause to be made a false entry;

(b) omit to make, or cause to be omitted, any entry; or

(c) alter, extract, conceal or destroy, or cause to be altered, extracted, concealed or destroyed, any entry,

in any book or record, or in any report, slip, statement or other document whatsoever, relating to the business, affairs, transactions, condition, property, assets, liabilities or accounts, of an authorized person or operator of a designated payment system.

(2) No person shall evade the provisions of this Act by altering, forging, destroying, mutilating, defacing, concealing or removing any document.

(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.

Offence committed by any person acting in official capacity

260. (1) Where an offence is committed by a body corporate or unincorporate, 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 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 unincorporate has not been convicted of the offence whether or not a prosecution has been initiated or a conviction has been obtained against the body corporate or unincorporate.

(3) Subsection (1) shall not affect the criminal liability of the body corporate or unincorporate for the offence referred to in that subsection.

(4) The penalty of imprisonment for an offence applies to an individual convicted of an offence by virtue of subsection (1), notwithstanding that the imprisonment does not apply to the body corporate or unincorporate by virtue of section 258.

Offence by employees, *etc.*

261. Where a person is liable under this Act to a penalty for any act, omission, neglect or default, such person 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.

Seizable offence

262. Every offence punishable under this Act shall be a seizable offence, and a police officer not below the rank of Inspector, or an investigating officer appointed under section 230 may arrest without warrant a person whom he reasonably suspects to have committed or is committing the offence.

Duty of investigating officer to make over arrested person to police

263. An investigating officer who makes an arrest under section 262 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.

Power to compound

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

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Governor may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

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

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

Attempts, abetments and conspiracies

265. (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

266. No prosecution for an offence under this Act shall be instituted except with the written consent of the Public Prosecutor.

Division 5

General matters

Protection in relation to disclosure of information to Bank

267. (1) Where a person discloses in good faith to the Bank, his knowledge or belief or any document or information that a breach or contravention has been committed or is about to be committed under

this Act—

(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; or

(c) no contractual or other rights or remedy may be enforced against the person on the basis of 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

268. In any criminal or civil proceedings under this Act—

(a) any statement purporting 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 in writing, 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

269. The Bank may, where it thinks necessary, publish in such form and manner as it thinks fit, any information in relation to—

(a) any enforcement action taken under this Act including criminal proceedings, compounding, civil actions and administrative actions; and

(b) the outcome of actions referred to in paragraph *(a)* including the outcome of any proceedings, settlement in or out of court in relation to any breach or contravention of provisions of this Act.

PART XVII

GENERAL PROVISIONS

Enforceable undertakings

270. (1) The Minister or the Bank may accept a written undertaking given by a person in connection with a matter in relation to which the Minister or the Bank, as the case may be, has a power or function under this Act.

(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 has breached any of the terms of the undertaking—

(a) given to the Bank, the Bank may apply; or

(b) given to the Minister, the Bank may recommend to the Minister to apply,

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 a term 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) and 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.

Regulations

271. (1) The Minister may, on the recommendation of the Bank, make such regulations as may be necessary or expedient for—

(a) giving full effect to the provisions of this Act;

(b) carrying out or achieving the regulatory objectives and purposes of this Act;

(c) the further, better or more convenient implementation of the provisions of this Act; or

(d) providing for any supplemental, incidental or consequential matters in relation to this Act.

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

(a) to provide for control by the Bank by supervision, regulation, restriction, prohibition, or otherwise howsoever, with respect to the provision of finance, Islamic financial intermediation activities as defined in section 222, Islamic banking services or takaful services supplied or carried on by persons other than an authorized person;

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

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

(d) to provide for the imposition of penalties for any offence under the regulations which shall not exceed imprisonment for a term not exceeding five years or a fine not exceeding ten million ringgit or to both.

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

Provisions relating to approvals, consents, standards, codes, specifications, notices, requirements, directions or measures

272. (1) Unless otherwise expressly provided, any approval or consent granted, or any standards, code, specification, notice, requirement, direction or measures specified or issued, under this Act—

(a) may be either general or specific;

(b) may be amended or revoked by the Bank or the Minister, 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.

Opportunity to make representations

273. (1) Where—

(a) the Minister, on the recommendation of the Bank, proposes to take any action against any person under subsection 13(1), 18(1) or (2), 39(3) or section 205; or

(b) the Bank proposes to take any action against any person under subsection 13(1), 18(1), (2) or (3), 33(4) or 39(3), section 44 or 49, subsection 106(2), 128(2) or (3), 132(1), 152(5) or 168(1), section 174, subsection 179(1) or 184(1), or against any person in breach referred to in subsection 245 (1),

the Bank shall serve on such person a written notice of the proposed action.

(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 106(2), 152(5) or 245(3), the non-compliance or breach committed by the person; and

(d) where the Bank proposes to impose a monetary penalty under paragraph 245(3)*(b)*, the right of the person in breach to pay, within a period specified 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 give the person referred to in subsection (1) 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 may, as the case may be, 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 authorized person, operator of a designated payment system, depositors, investment account holders, takaful participants, participants, creditors, the financial system or the public generally.

(7) The Minister or the Bank may, as the case may be, confirm, amend or revoke the exercise of action taken under subsection (6) in consequence of representations made under that subsection.

(8) Subsection (6) shall not apply to any action taken under section 245.

(9) This section shall not apply to—

(a) a proposed action under subsection 13(1) unless the proposed action is likely to prejudice the interest of the person referred to in subsection (1); and

(b) a revocation of a licence under paragraph 18(1)*(f)*, *(g)* or *(h)*.

Exemptions

274. The Minister may, on the recommendation of the Bank and provided that it is consistent with the objects and functions of the Bank under the Central Bank of Malaysia Act 2009 or the regulatory objectives of this Act, by an order published in the *Gazette*, exempt any particular person or any class, category or description of persons, from all or any of the provisions of this Act, for such duration, and subject to such conditions, as may be specified by the Minister in the order.

Power of Minister to amend Schedule

275. The Minister may, on the recommendation of the Bank, from time to time, by an order published in the *Gazette*, amend any provision in Schedules 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of this Act and upon such publication, such provision as amended shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication or from such later date as may be specified in the order.

Decision of Minister to be final

276. Any decision made by the Minister under this Act shall be final.

Power of Bank to issue guidance

277. The Bank may issue guidance in writing to any person or to any class, category or description of persons consisting of such information, advice or recommendation as it considers appropriate—

(a) with respect to the provisions of this Act;

(b) for the purpose of carrying out or achieving the regulatory objectives of this Act; or

(c) with respect to any other matter which, in the opinion of the Bank, is desirable to give information, advice or recommendation.

Protection against suits and legal proceedings

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

(a) the Minister;

(b) the Bank;

(c) the Governor;

(d) the Deputy Governor; or

(e) any of its directors, officers or employees or any person acting on behalf of the Bank,

for or on account of, or in respect of, any act done or statement made or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance or in execution of, or intended pursuance or execution of, this Act, or any order in writing, direction, instruction, notice or other thing issued under this Act, if such act or such statement was done or made, or was omitted to be done or made, in good faith.

Application of Companies Act 1965

279. (1) Where an authorized person, operator of a designated payment system or a person prescribed as a prescribed Islamic financial institution under section 223 is a corporation to which all or any of the provisions of the Companies Act 1965 apply, such provisions shall be in addition to the provisions of this Act and not in derogation thereof, but where there is any conflict or inconsistency between the provisions of the Companies Act 1965 and this Act in their respective application to the person or operator, 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 authorized person or operator of a designated payment system, 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.

Application of certain provisions of Act to Labuan entities
Act 545.

280. (1) For the purpose of this section, "Labuan Financial Services Authority" means Labuan Financial Services Authority established under section 3 of the Labuan Financial Services Authority Act 1996 [*Act 545*].

(2) Without prejudice to the generality of Division 2 of Part XV, the provisions in such Division shall apply to any person who is under the supervision or oversight of the Labuan Financial Services Authority and the Bank may exercise such powers and perform such functions under this Act to ensure compliance with Division 2 of Part XV by such person.

(3) For the purposes of the Bank exercising oversight over a financial group, a reference to—

(a) "subsidiary" in sections 127 and 128; and

(b) "related corporation" in Parts XI and XII,

shall be deemed to include a person who is under the supervision or oversight of the Labuan Financial Services Authority where such person is within the financial group.

(4) Sections 178 and 185 of the Labuan Financial Services and Securities Act 2010 and sections 139 and 146 of the Labuan Islamic Financial Services and Securities Act 2010 shall not restrict the Bank in the exercise of powers or performance of functions under section 127 or 128, or Part XI or XII, and the Bank may exercise such powers and perform such functions under this Act to ensure compliance with section 127 or 128, or Part XI or XII.

(5) Section 146 of the Labuan Islamic Financial Services and Securities Act 2010 shall not restrict the application of this Act to any person under the supervision or oversight of the Labuan Financial Services Authority who, under this Act—

(a) operates a payment system, is a participant, or issues an Islamic payment instrument; or

(b) is a market participant.

Breach or contravention not to affect contract, agreement or arrangement

281. Except as otherwise provided in this Act, or in pursuance of any provision of this Act, no contract, agreement or arrangement, entered into in breach or contravention of any provision of this Act shall be void solely by reason of such breach or contravention:

Provided that nothing contained in this section shall affect any liability of any person for any administrative, civil or criminal actions under this Act in respect of such breach or contravention.

PART XVIII

REPEAL, SAVINGS AND TRANSITIONAL

Repeal

282. The Islamic Banking Act 1983 and the Takaful Act 1984 are repealed.

Savings and transitional

283. Notwithstanding section 282—

(a) any rule, regulation, order, notification or other subsidiary legislation made and any approval, authority, consent, decision, direction, exemption, notice, order, permission, recommendation, requirement, specification or other executive act granted or done under the repealed Acts and in force or having effect before the appointed date, shall be

deemed to have been made, granted or done under a corresponding provision in this Act or a corresponding provision in any direction issued pursuant to section 168, subsection 225(6) or section 227, and shall continue to remain in full force and effect in relation to the person to whom it applied until amended or revoked, except those subsidiary legislation set out in Schedule 16 which are deemed to have been revoked;

(b) every guideline, direction, circular or notice under the repealed Acts in relation to any matter which corresponds with any provision of this Act, issued before the appointed date and in force immediately before the appointed date, shall be deemed to be standards which have been lawfully specified under such provisions of this Act and shall remain in full force and effect in relation to the person to whom it applied until amended or revoked;

(c) any application for a licence, approval, authorization, notification, acknowledgment, consent, permission or for any other purpose whatsoever made by any person under the repealed Acts before the appointed date and pending before the appointed date, shall—

(i) if there is a corresponding provision in this Act or in any direction issued under subsection 225(6) or section 227, be dealt with as if it was made under that provision;

(ii) if a different provision has been made for the application under this Act or in any direction issued under subsection 225(6) or section 227, be dealt with in accordance with such provision; and

(iii) if there is no corresponding provision in this Act or a different provision has not been made for the application under this Act or in any direction issued under subsection 225(6) or section 227, lapse on the appointed date and any fees or other payment received with the application shall be refunded to such person;

(d) all transactions, financing facilities, dealings, contracts, powers of attorney or arrangements lawfully executed or entered into and all business lawfully done under the repealed Acts with any person shall be deemed to have been lawfully and validly executed, entered into or done under this Act, and accordingly, any right or liability under such transaction, dealing, business existing before the appointed date shall be deemed to continue to be lawful and valid under this Act;

(e) without limiting the generality of paragraph *(d)*, all takaful certificates issued, all transactions or dealings lawfully executed or entered into, and all business lawfully done, under the repealed Takaful Act 1984 by a person who was licensed or registered under that repealed Act and who is authorized or deemed to be authorized under this Act with any takaful participant, customer, creditor, debtor or other person shall be deemed to have been lawfully and validly executed, entered into, or done, under and in accordance with this Act, and any right or liability under the transaction, dealing or business existing before the appointed date shall be deemed to continue to be lawful and valid under this Act;

(f) nothing shall affect any person's liability to be investigated, prosecuted or punished for offences committed under the repealed Acts before the appointed date;

(g) any pending legal proceedings, criminal prosecution or investigation under the repealed Acts shall be continued under the repealed Acts as if the repealed Acts are in force;

(h) subject to paragraph *(i)*, any reference to the repealed Acts in any written law shall be construed as a reference to this Act and any reference to any specific provision of the repealed Acts in any written law shall be construed as a reference to a provision of this Act which corresponds closely to such specific provision;

Act 17.

(i) any reference to the Exchange Control Act 1953 [*Act 17*] repealed under the Financial Services Act 2012 or exchange control or any specific provision, or generally to the provisions, of the repealed Exchange Control Act 1953 in any written law shall be construed as a reference to section 225 or 227 of this Act or a corresponding provision in any direction issued under subsection 225(6) or section 227;

Act 731.

(j) any reference to an "authorized dealer" in subsection 1(3) of the Money Services Business Act 2011 [*Act 731*] shall be construed as a reference to a licensed Islamic bank under this Act and the interpretation of an "authorized dealer" in section 2 of that Act shall be construed accordingly;

(k) any right, benefit, privilege, obligation or liability acquired, accrued or incurred under the repealed Acts, shall continue to remain in force under this Act; and

(l) all other acts or things done under the repealed Acts shall be deemed to have been done under this Act and accordingly, shall continue to be valid and lawful under this Act.

Savings in respect of licences granted and registrations made under repealed Acts

284. (1) Subject to the provisions of subsection (2)—

(a) a licence granted to a person by the Minister under section 3 and section 30B of the repealed Islamic Banking Act 1983 to carry on Islamic banking business or international Islamic banking business, as the case may be, under that Act shall be deemed to be a licence granted under section 10 authorizing such person to carry on Islamic banking business or international Islamic banking business, as the case may be;

(b) a registration of a takaful operator under section 8 and international takaful operator under section 40B of the repealed Takaful Act 1984 to carry on takaful business or international takaful business, as the case may be, under that Act shall be deemed to be a licence granted under section 10 authorizing such person to carry on takaful business or international takaful business, as the case may be;

(c) a licence granted to a person by the Bank under section 37 of the repealed Takaful Act 1984 to carry on takaful broking business shall be deemed to be an approval granted under section 11 authorizing such person to carry on takaful broking business; and

(d) an adjuster licensed by the Bank under section 38 of the repealed Takaful Act 1984 to carry on adjusting business shall be deemed to be a registered person under subsection 18(1) of the Financial Services Act 2012.

(2) The persons referred to in subsection (1) shall continue to be subject to the conditions applicable to it before the appointed date as if such conditions were imposed under this Act.

Savings and transitional provision in respect of specific provisions of repealed Takaful Act 1984

285. Notwithstanding the repeal of the Takaful Act 1984 under section 282, a takaful fund established and maintained under section 16 of the repealed Act shall be deemed to have been established and maintained under section 90.

Conversion to single takaful business

286. A licensed takaful operator, other than a licensed professional retakaful operator, lawfully carrying on both family takaful business and general takaful business under the repealed Takaful Act 1984 shall comply with subsection 16(1) within five years of the appointed date or such longer period as may be specified by the Minister, on the recommendation of the Bank, by notice in writing to the licensed takaful operator upon its written application before the expiry of the five years.

Licensed takaful operator which is a private company to convert to public company

287. A registered takaful operator under the repealed Takaful Act 1984 which is a private company and is deemed to be a licensed takaful operator under paragraph 284(1)*(b)*, shall be converted into a public company in accordance with the Companies Act 1965 within twelve months from the appointed date or such longer period as may be specified by the Minister, on the recommendation of the Bank, by notice in writing to the licensed takaful operator upon its written application before the expiry of the twelve months.

Savings in respect of Islamic deposits under repealed Islamic Banking Act 1983

288. Islamic deposits accepted by an Islamic bank or international Islamic bank from a depositor under the repealed Islamic Banking Act 1983 which do not fall within the definition of Islamic deposits under this Act shall be deemed to be Islamic deposits as defined under this Act until such date as may be prescribed by the Minister on the recommendation of the Bank.

Savings in respect of approvals for designated Islamic payment instruments under repealed Payment Systems Act 2003
Act 627.

289. An issuer of a designated Islamic payment instrument who has obtained a written approval under subsection 25(1) of the Payment Systems Act 2003 [*Act 627*] repealed under the Financial Services Act 2013 shall be deemed to have been approved under section 11 in respect of the issuance of that designated Islamic payment instrument.

Savings in respect of financial holding company

290. (1) A company which has lawfully held more than fifty per cent of interest in shares of a licensed Islamic bank under the repealed Islamic Banking Act 1983 or a registered takaful operator under the repealed Takaful Act 1984, shall submit an application to the Bank for it to be approved as a financial holding company within a period of twelve months from the appointed date or such longer period as may be specified by the Bank.

(2) An application made under subsection (1) shall be dealt with as if it was made under section 122 and a company referred to in subsection (1) which fails to submit an application after the expiry of the twelve months or such longer period as may be specified by the Bank under subsection (1) commits a breach and the Bank may take any action under subsection 245(3).

Savings in respect of Islamic deposits accepted by co-operative societies

291. (1) Subject to the provision of this section, nothing contained in sections 149 and 150 shall render invalid any Islamic deposit accepted lawfully by a co-operative society from a person who is not a member of such co-operative society before the appointed date provided that such co-operative society shall, within six months from the appointed date or such longer period as may be specified by the Bank, submit an application to the Bank together with such documents or information as may be specified by the Bank for it to continue accepting Islamic deposits from non-members.

(2) The Bank may approve, with or without conditions, or reject the application referred to in subsection (1) and a co-operative society so approved shall comply with any condition imposed on it by the Bank.

(3) The Bank may grant an approval under subsection (2) if the Bank is satisfied that such co-operative society has given a written undertaking that it will comply with such conditions as may be imposed by the Bank under subsection (2).

(4) Section 270 shall apply to a written undertaking given under this section.

(5) The Bank may, at any time, in writing amend or revoke any existing condition imposed on such approval under subsection (2) or impose any new condition thereto.

SCHEDULE 1

[Subsection 2(1), sections 8, 43, 45, 46 and 168]

APPROVED BUSINESS

PART 1

Businesses which require approval

1. Operation of a payment system which—

   (a) enables the transfer of funds from one Islamic banking account to another, which includes any debit transfer, credit transfer or standing instructions but does not include the operation of a remittance system approved under section 40 of the Money Services Business Act 2011; or

   (b) provides Islamic payment instrument network operation which enables payments to be made through the use of an Islamic payment instrument.

2. Issuance of a designated Islamic payment instrument.

3. Takaful broking business.

4. Islamic financial advisory business.

PART 2

Persons who do not require approval for Islamic financial advisory business

5. A licensed person or an approved takaful broker under this Act.

6. A takaful agent.

Act 100.

7. A company registered under the Trust Companies Act 1949 [*Act 100*].

SCHEDULE 2

[Paragraphs 2(1)(iv) and 148(iv)]

OTHER EXCLUSIONS FROM DEFINITION OF "ISLAMIC DEPOSIT"

PART 1

Money paid by any person to—

(a) the Government or any State Government;

(b) the Bank;

(c) a statutory body or local authority which is authorized to accept, receive or take the same under any written law;

(d) a co-operative society which is authorized under the Co-operative Societies Act 1993 to accept deposits, provided that, where such person is not a member of the co-operative society as defined in the Co-operative Societies Act 1993, the co- operative society has obtained both—

(i) the approval of the Malaysia Co-operative Societies Commission under the Co-operative Societies Act 1993; and

(ii) the approval of the Bank and complies with such conditions as may be imposed by the Bank;

Act 109. Act 44.

(e) a farmers' organization registered under the Farmers' Organization Act 1973 [*Act 109*] or a fishermen's association registered under the Fishermen's Association Act 1971 [*Act 44*];

(f) its related or associate corporation;

(g) another person, in relation to any instrument or transaction falling within paragraphs *(a)* to *(e)* of the definition of "debenture" under subsection 2(1) of the Capital Markets and Services Act 2007 provided that such other person obtains the approval of the Bank and complies with such conditions as may be imposed by the Bank;

(h) another person, in relation to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, Islamic securities in accordance with the Capital Markets and Services Act 2007;

(i) another person who issues or offers to the public for subscription or purchase, or invites the public to subscribe for or purchase, any interest under an approved deed in accordance with Division 5 of Part IV of the Companies Act 1965;

(j) an approved issuer of a designated Islamic payment instrument, or an approved issuer of a designated payment instrument approved under subsection 15(1) of the Financial Services Act 2013, issuing electronic money in the course of carrying on its authorized business;

(k) another person who accepts such money *bona fide* under a *commodity murabahah* arrangement for the purposes of investment or in the course of trading; or

(l) another person, where both persons are individuals, in the course of customary, social, friendly or family relationship and the total number of such individuals who make the payments to the other person does not at any time exceed ten.

PART 2

Money paid to any person, other than a licensed Islamic bank, by—

(a) the Government or any State Government;

(b) the Bank;

(c) a statutory body, local authority or any other person which is authorized to make such payment under any written law;

(d) a co-operative society which is authorized under the Co-operative Societies Act 1993;

(e) a licensed person or an approved issuer of a designated Islamic payment instrument issuing electronic money, in the course of carrying on its authorized business;

Act 618. *(f)* a prescribed institution as defined in subsection 3(1) of the Development Financial Institutions Act 2002 [*Act 618*], in the course of its lawful business;

Act 81. *(g)* a pawnbroker licensed under the Pawnbrokers Act 1972 [*Act 81*], in the ordinary course of its lawful business;

Act 400. *(h)* a moneylender licensed under the Moneylenders Act 1951 [*Act 400*], in the ordinary course of its lawful business;

(i) any person lawfully carrying on any Islamic financial intermediation activity as defined in section 222 in the course of its ordinary business; or

(j) its related or associate corporations.

PART 3

Money paid by a licensed Islamic bank, to any person in the course of buying or borrowing Islamic securities from that person where the Islamic securities will be repurchased or returned as part of the same transaction.

SCHEDULE 3

[Subsection 2(1)]

INTEREST IN SHARES

Direct interest in shares

1. Where a person holds shares or has entered into a contract to acquire shares in a body corporate or has a right to have the shares in a body corporate to be transferred to him or otherwise has any legal

or beneficial interest in the shares of the body corporate, he shall be taken to have a direct interest in shares of the body corporate.

Effective interest in shares

2. Where a series of body corporates hold shares in succession in the subsequent level body corporate one after the other, and if a person has a direct interest in shares of a body corporate in that series (hereinafter referred to as "first level body corporate")—

(a) such person shall be taken to have an effective interest in shares of any other body corporate (hereinafter referred to as "second level body corporate") in which the first level body corporate has a direct interest in shares; and

(b) such person shall be taken to have an effective interest in shares in each subsequent level body corporate in that series following the second level body corporate, provided each preceding level body corporate in the series has a direct interest in shares of each subsequent level body corporate in that series.

Computation of effective interest in shares

3. The effective interest in shares of a person in a body corporate X in the series of body corporates referred to in paragraph 2 shall be derived by multiplying the percentage of his direct interest in the first level body corporate in the series and the direct interest of each subsequent level body corporate down to the direct interest in shares held by the preceding body corporate, in that body corporate X as follows:

$$EF^{X} = DI^{1} \times DI^{2} \times DI^{3} \ldots \times DI^{X}$$

Where—

EF^{X} represents the effective interest in shares of the person in the body corporate X;

DI^{1} represents the percentage of direct interest in shares of the person in the first level body corporate;

DI^{2} represents the percentage of direct interest in shares of the first level body corporate in the second level body corporate;

DI^{3} represents the percentage of direct interest in shares of the second level body corporate in the third level body corporate; and

DI^{X} represents the percentage of direct interest in shares of the preceding level body corporate in the series in body corporate X.

Aggregate interest in shares

4. Where in this Act, a reference is made to an aggregate interest in shares held by any person in a body corporate, the aggregate interest shall be computed by adding the legal, beneficial, direct and effective interest held by the person in that body corporate.

5. In computing the aggregate interest in shares held by a person in a body corporate, the holding of his spouse, child, family corporation or persons acting in concert with him shall be added to his holding.

Family corporation

6. For the purpose of paragraph 5, "family corporation" means a corporation in which—

(a) the individual;

(b) that individual's spouse; or

(c) that individual's child,

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

Legal and beneficial interest in shares

7. A person shall be taken to have an interest in shares of a body corporate if the person has any legal or beneficial interest in those shares.

8. A person is taken to have an interest in shares if—

(a) the person has entered into a contract or arrangement to acquire the share; or

(b) the person has a right (otherwise than because of having an interest under a trust) to have the share transferred to the person or to the person's order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition).

9. A person is taken to have an interest in shares if the person holds the interest in the share jointly with another person.

10. For the purpose of determining whether a person holds an interest in shares, it is immaterial that the interest cannot be related to a particular share.

11. An interest in shares is not to be disregarded only because of—

(a) its remoteness;

(b) the manner in which it arose; or

(c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

Certain interest to be disregarded

12. There shall be disregarded—

(a) an interest in shares held by a person whose ordinary business includes the provision of finance if the person holds the interest as security;

(b) an interest in shares if the interest is that of a person who holds the shares as bare trustee;

(c) an interest in shares held by a person, being an interest held by the person because the person holds an office as may be prescribed by the Bank; and

(d) an interest of a prescribed kind in a share, being an interest held by such persons as may be prescribed by the Bank.

13. Paragraphs 8 to 12 shall not by any implication limit the generality of paragraph 7.

SCHEDULE 4

[Paragraph 5(5)*(c)*]

BUSINESS WHICH IS NOT TAKAFUL BUSINESS

1. The operation by an employer, otherwise than for profit, of a scheme or arrangement in accordance with Shariah making financial provision for his employees' retirement, or future termination of service through death or disability.

2. The business carried on in accordance with Part II of the Societies Act 1966 that is in accordance with Shariah by a mutual benefit society as defined in section 2 of that Act.

3. Export credit or other credit guarantee takaful business carried on by Export-Import Bank of Malaysia Berhad.

4. Administration, management and operation of a scheme or an arrangement in accordance with Shariah, for the provision of benefits consisting of the supply of funeral or burial services, with or without the supply of goods connected with any such service or the payment of money, upon the death of a person for the purpose of meeting the whole or a part of the expenses of, and incidental to the funeral or burial of that person, but no other benefits except benefits incidental to the scheme or arrangement.

5. A scheme in accordance with Shariah for members under which assistance for an accident to or breakdown of a vehicle is provided whereby such assistance is in the form of—

(a) repairs to the vehicle at the place where the accident or breakdown has occurred and may include the delivery of parts, fuel, oil, water or keys to that vehicle; or

(b) removal of the vehicle to the nearest or most appropriate place at which repairs may be carried out or to the home or point of departure or original destination of the driver and passengers.

SCHEDULE 5

[Sections 10 and 11]

FACTORS FOR CONSIDERATION IN ASSESSING APPLICATION FOR LICENCE UNDER SECTION 10 OR APPROVAL UNDER SECTION 11

PART 1

1. The aims and operation of the business which is desired to be carried on by the person to be authorized will not involve any element which is contrary to Shariah.

2. The character and integrity of the applicant or, if the applicant is a body corporate, its reputation for being operated in a manner that is consistent with the standards of good governance and integrity.

3. The business of the person to be authorized is not detrimental to the interests of its future depositors, investment account holders, takaful participants, participants, users or the public generally.

4. The soundness and feasibility of the plans of the applicant for the future conduct and development of the business of the person to be authorized.

5. The nature and sufficiency of the financial resources of the applicant as a source of continuing financial support for the person to be authorized.

6. The business record and experience of the applicant.

7. The person to be authorized will be operated responsibly by persons with the competence and experience suitable for involvement in the operation of the person to be authorized.

8. Whether the application will be in the best interest of Malaysia, having regard to—

(a) the effect of the investment on the level and nature of economic activity in Malaysia, including the effect on productivity, efficiency, and quality of financial services;

(b) the contribution towards enhancing international trade and investment linkages between Malaysia and other countries;

(c) the effect of the investment on the stability of the financial system, including on conduct and behaviours that could pose a risk to the financial system; or

(d) the degree and significance of participation of Malaysians in the financial sector.

PART 2

9. Whether the nature, scale and activities of the corporate group of the applicant applying for a licence will impede the effective regulation and supervision of the person to be licensed, including having regard to the nature and degree of regulation and supervision of any financial institution within that corporate group.

SCHEDULE 6

[Subsections 102(2), 103(1) and 124(2)]

FACTORS FOR CONSIDERATION IN ASSESSING SHAREHOLDER SUITABILITY

1. The character and integrity of the applicant, or if the applicant is a body corporate, its reputation for being operated in a manner that is consistent with the standards of good governance and integrity.

2. The soundness and feasibility of the plans of the applicant for the future conduct and development of the business of the licensed person.

3. The nature and sufficiency of the financial resources of the applicant as a source of continuing financial support to the licensed person.

4. The business record and experience of the applicant.

5. Whether the nature, scale and activities of the corporate group of the applicant will impede the effective regulation and supervision of the licensed person, including having regard to the nature and degree of regulation and supervision of any financial institution within that corporate group.

6. Whether the application will be in the best interest of Malaysia, having regard to—

(a) the effect of the investment on the level and nature of economic activity in Malaysia, including the effect on productivity, efficiency and quality of financial services;

(b) the contribution towards enhancing international trade and investment linkages between Malaysia and other countries;

(c) the effect of the investment on the stability of the financial system, including on conduct and behaviours that could pose a risk to the financial system; or

(d) the degree and significance of participation of Malaysians in the financial sector.

SCHEDULE 7

[Subsection 136(1)]

LIST OF PROHIBITED BUSINESS CONDUCT

1. Engaging in 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, influence or using or threatening to use harassment, coercion, or physical force in relation to the provision of any financial service or product to a financial consumer, or 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, except for any tariff or takaful contribution rates or takaful certificate terms which have been approved by the Bank.

SCHEDULE 8

[Section 140]

PROVISIONS RELATING TO TAKAFUL CERTIFICATES

Paragraph

1. Misstatement of age

2. Objection to family takaful certificate

3. Permissible takaful interest

4. Capacity of minor to enter into contract of takaful

5. Family takaful benefits to be paid without deduction

6. Surrender of family takaful certificate

7. Non-payment of family takaful contributions

8. Election for paid-up takaful certificate

9. Additional rights conferred by paragraphs 6, 7 and 8

10. Disclosure requirements

11. Requirements relating to group takaful certificates

12. Refund of takaful contribution

Misstatement of age

1. (1) A licensed family takaful operator shall not avoid a family takaful certificate or refuse a claim under a family takaful certificate by reason only of a misstatement of the age of the person covered.

(2) Where the true age as shown by the proof is greater than that on which a family takaful certificate is based, the licensed family takaful operator may vary the sum covered by, and the surplus or profit allotted to, the family takaful certificate so that, as varied, they bear the same proportion to the sum covered by, and the surplus or profit allotted to, the family takaful certificate before variation as the amount of the takaful contribution that has been paid under the family takaful certificate as issued bears to the amount of the takaful contribution that would have become payable if the family takaful certificate had been based on the true age.

(3) Where the true age as shown by the proof is less than that on which the family takaful certificate is based, the licensed family takaful operator shall either—

(a) vary the sum covered by, and the surplus or profit allotted to, the family takaful certificate so that, as varied, it bears the same proportion to the sum covered by, and the surplus or profit allotted to, the family takaful certificate before variation as the amount of the takaful contribution that has been paid under the family takaful certificate as issued bears to the amount of the takaful contribution that would have become payable if the family takaful certificate had been based on the true age; or

(b) reduce the takaful contribution as from the date of issue of the family takaful certificate, to the amount that would have been payable if the family takaful certificate had been based on the true age and repay the takaful participant the amount of over-payments of takaful contribution less any amount that has been allotted as surplus or profit in excess of the surplus or profit that would have been allotted if the family takaful certificate had been based on the true age.

(4) Where the period of coverage of a family takaful certificate is calculated by reference to the age of the person covered, and such age is not the true age of the person covered as shown by the proof, the licensed family takaful operator may instead of, or in addition to, effecting subparagraph (2) or (3) as the case may be, vary the family takaful certificate by changing its period of coverage to the period that would have been the period of coverage if the family takaful certificate had been based on the true age of the person covered.

(5) Nothing in this paragraph shall prevent the licensed family takaful operator from calling for proof of age at any time and no family takaful certificate shall be deemed to be disputed merely because the terms of the family takaful certificate are adjusted in

accordance with subparagraph (2), (3) or (4).

Objection to family takaful certificate

2. (1) A takaful participant may, within fifteen days or such longer period as may be specified by the Bank after the delivery of a family takaful certificate of any description to him, return the family takaful certificate to the licensed family takaful operator and it shall immediately refund any takaful contribution which has been paid in respect of the family takaful certificate subject only to the deduction of expenses incurred for the medical examination of the person covered.

(2) Upon refund of takaful contribution under subparagraph (1), the family takaful certificate shall be deemed cancelled and the liability of the licensed family takaful operator shall cease.

(3) For the purposes of subparagraph (1), in respect of a family takaful certificate which is an investment-linked takaful certificate, the licensed family takaful operator shall refund—

(a) any unallocated takaful contribution;

(b) the value of any units allocated at the unit price at the next valuation date; and

(c) any takaful charges and fees which have been deducted,

less any expenses incurred for the medical examination of the person covered.

(4) For the purposes of subparagraph (1)—

(a) a family takaful certificate is deemed to be delivered to the takaful participant on the date he received it, if personally delivered;

(b) where a family takaful certificate is delivered to the takaful participant in such manner other than by personal delivery, the licensed family takaful operator shall take reasonable steps to ensure that the family takaful certificate is delivered to the takaful participant; and

(c) a family takaful certificate shall be deemed to be returned to a licensed family takaful operator by the takaful participant on the date the family takaful certificate is received by the licensed family takaful operator or on the date of posting if it is sent by registered post or on the date of transmission if it is electronically transmitted.

(5) In respect of a group takaful certificate covering the lives of three or more persons from whom takaful contribution is payable—

(a) a person covered under the group takaful certificate may notify the group takaful participant to cancel his cover within fifteen days or such longer period as may be specified by the Bank after the delivery of his certificate of takaful; and

(b) the group takaful participant shall immediately inform the licensed family takaful operator to cancel the cover for that person covered referred to in subsubparagraph *(a)*, and the licensed family takaful operator shall immediately refund any takaful contribution paid by that person covered subject only to the deduction of expenses incurred for the medical examination of that person covered directly to him and upon the refund of takaful contribution, the liability of the licensed family takaful operator shall cease only in respect of the cover for that person covered.

(6) For the purposes of subparagraph (5), where a group family takaful certificate is an investment-linked takaful certificate, the licensed family takaful operator shall refund—

(a) any unallocated takaful contribution;

(b) the value of any units allocated at the unit price at the next valuation date; and

(c) any takaful charges and fees which have been deducted,

less any expenses incurred for the medical examination of the person covered.

Permissible takaful interest

3. (1) This paragraph applies to a family takaful certificate issued in respect of a contract of family takaful entered into by a takaful participant on a person covered other than the takaful participant himself.

(2) A takaful participant entering into a contract of family takaful under subparagraph (1) shall have a permissible takaful interest in the person covered at the time such contract of takaful is entered into and at the time the takaful benefits are payable.

(3) Where a takaful participant entering into a contract of family takaful under subparagraph (1) does not have a permissible takaful interest in the person covered at the time such contract is entered into, the contract shall be void.

(4) Where a takaful participant who has entered into a contract of family takaful under subparagraph (1) does not have a permissible takaful interest in the person covered at the time the benefits are payable, such contract shall not be void by reason only that the takaful participant did not have such permissible takaful interest but shall be subject to subparagraph (5).

(5) Where at any time after a contract of family takaful under subparagraph (1) is entered, the licensed takaful operator becomes aware that a takaful participant no longer has a permissible takaful interest in the person covered, where there is no claim made or there is a claim made or on the maturity of such takaful certificate, as the case maybe, the licensed family takaful operator shall—

(a) pay to the takaful participant such moneys payable under the contract of family takaful as may be specified by the Bank; and

(b) upon such payment to the takaful participant, the contract of family takaful shall be deemed to be terminated.

(6) Subject to subparagraph (8), a person shall be deemed to have a permissible takaful interest in the person covered if that other person is—

(a) his spouse or child;

(b) his ward under the age of majority at the time the person entered into the contract of takaful;

(c) his employee; or

(d) a person on whom he is wholly or partly dependent for maintenance or education at the time he entered into the contract of takaful.

(7) In this paragraph, entered or entering into a contract of family takaful on the person covered means participating in the payment of

takaful benefits on that person's death or on the happening of any contingency dependent upon his death or survival and includes granting an annuity to commence on his death or at a time referred to in the annuity.

(8) A person entering into a contract of family takaful on a person covered pursuant to this paragraph shall, unless the person covered is a minor, obtain the prior written consent of that person.

(9) The person covered may revoke his consent by informing the licensed family takaful operator in writing.

(10) Where the person covered revokes his consent under subparagraph (9), the person entering into the contract of takaful no longer has a permissible takaful interest on that person covered.

(11) A family takaful certificate issued in respect of a contract of takaful entered into by a person where the person covered is his spouse shall not be void only on the ground of dissolution of marriage between the person and his spouse.

(12) A group takaful certificate shall not be void by reason only that the group takaful participant did not have, at the time when the contract of takaful was entered into and at the time the takaful benefits are payable, a permissible takaful interest in each person covered under the takaful certificate.

(13) For the purposes of this paragraph, a licensed family takaful operator shall obtain a declaration from the takaful participant to ensure that the takaful participant has permissible takaful interest in the person covered in the manner as may be specified by the Bank.

(14) This paragraph shall not affect a family takaful certificate issued before the appointed date.

Capacity of minor to enter into contract of takaful

4. (1) Notwithstanding any law to the contrary, a minor who has attained the age of ten years but has not attained the age of sixteen years, with the consent in writing of his parent or guardian—

(a) may participate in a family takaful arrangement in respect of a family takaful certificate upon his life or upon the life of another person in which he has a permissible takaful interest; or

(b) may assign the family takaful certificate on his life or take an assignment of a family takaful certificate.

(2) A minor who has attained the age of sixteen years—

(a) may participate in a family takaful arrangement in respect of a family takaful certificate upon his life or upon the life of another person in which he has a permissible takaful interest; or

(b) may assign the family takaful certificate on his life or take an assignment of a family takaful certificate,

and is as competent in all respects to have and exercise the powers and privileges of a takaful participant in relation to the family takaful certificate of which he is the takaful participant as he would be if he had attained the age of majority.

(3) A minor who has attained the age of sixteen years shall obtain the consent in writing of his parent or guardian to assign a family takaful certificate on his life under subsubparagraph (2)*(b)*.

Family takaful benefits to

5. (1) Takaful benefits payable under a family takaful certificate,

be paid without deduction

or takaful benefits payable on the surrender of a family takaful certificate, shall be paid without any deduction for moneys not due under the family takaful certificate or under an assignment of the family takaful certificate, unless the deduction is made with the consent of the person entitled to the takaful benefits.

(2) A provision contained in a family takaful certificate or an agreement relating to deduction of moneys not due under the family takaful certificate shall be void to the extent it entitles the licensed family takaful operator to deduct the moneys from takaful benefits payable under, or moneys payable on the surrender of the family takaful certificate without the consent of the person entitled to the takaful benefits.

(3) Subparagraphs (1) and (2) apply to a Malaysian family takaful certificate but shall not apply to a family takaful certificate issued before the appointed date.

(4) In any proceedings for the recovery of takaful benefits due under, or payable on the surrender of, a family takaful certificate, no set-off or counter-claim shall be allowed except for moneys due under the family takaful certificate or under an agreement charging the moneys on the family takaful certificate.

Surrender of family takaful certificate

6. (1) At any time after inception of a family takaful certificate which provides for surrender value, the takaful participant may, by notice in writing to the licensed family takaful operator, surrender the family takaful certificate, and he shall be entitled to receive the surrender value of the family takaful certificate, which shall be determined—

(a) in accordance with generally accepted actuarial principles;

(b) in a manner ensuring the fair treatment of takaful participants; and

(c) in compliance with standards on business conduct or fair treatment of takaful participants specified by the Bank.

(2) A licensed family takaful operator shall disclose to a proposer for a family takaful certificate, at the time of marketing, the surrender value payable under the family takaful certificate including the cost of any applicable surrender charge, and where no surrender value is payable, the licensed family takaful operator shall provide a written statement to that effect.

(3) The surrender value of any family takaful certificate issued on or before the appointed date shall be determined in accordance with the terms set out on surrender value in that family takaful certificate.

(4) Where the Bank is of the opinion that a licensed family takaful operator has not determined the surrender value of a family takaful certificate as required under subsubparagraphs (1)*(a)*, *(b)* and *(c)*, the Bank may—

(a) require the licensed family takaful operator to determine the surrender value of the family takaful certificate on a basis approved by the Bank; and

(b) require the basis under subsubparagraph *(a)* or a different basis approved by the Bank to be applied retrospectively to a family takaful certificate already issued.

(5) A family takaful certificate shall remain in force until the licensed family takaful operator has effected payment of the

surrender value of the family takaful certificate.

Non-payment of family takaful contributions

7. (1) Where a family takaful certificate provides for surrender value, it shall not lapse or be forfeited by reason of non-payment of takaful contributions but shall have effect subject to such modification as to the period for which it is to be in force, or of the takaful benefits receivable under it, or both.

(2) A modification made under subparagraph (1) shall be determined in accordance with the established policies of the licensed takaful operator applicable to the family takaful certificate.

Election for paid-up takaful certificate

8. (1) Where a family takaful certificate provides for surrender value, the takaful participant may, by notice in writing to the licensed family takaful operator, elect to exchange the family takaful certificate for a paid-up family takaful certificate for a sum covered which shall be determined—

(a) in accordance with generally accepted actuarial principles;

(b) in a manner ensuring the fair treatment of takaful participants;

(c) in a manner consistent with the surrender value payable under paragraph 6; and

(d) in compliance with standards on business conduct or fair treatment of takaful participants specified by the Bank.

(2) Where the Bank is of the opinion that a licensed family takaful operator has not determined the paid-up value of a family takaful certificate as required under subsubparagraphs (1)*(a), (b), (c)* and *(d)*, the Bank may—

(a) require the licensed family takaful operator to determine the paid-up value of the family takaful certificate on a basis approved by the Bank; and

(b) require the basis under subsubparagraph *(a)* or a different basis approved by the Bank to be applied retrospectively to a family takaful certificate already issued.

(3) A family takaful certificate shall be deemed to remain in force, in the event of an election for conversion to a paid-up family takaful certificate, until the date on which the next takaful contribution for the original takaful certificate is due.

(4) A family takaful certificate issued in place of an earlier family takaful certificate shall be treated as having come into force on the date the earlier family takaful certificate came into force.

Additional rights conferred by paragraphs 6, 7 and 8

9. The rights conferred by paragraphs 6, 7 and 8 shall be in addition to, and not in derogation of, any other rights available to the takaful participant under the terms of the family takaful certificate or otherwise.

Disclosure requirements

10. (1) No person shall invite any person to make an offer or proposal to enter into a contract of takaful without disclosing—

(a) the name of the licensed takaful operator;

(b) his relationship with the licensed takaful operator; and

(c) the takaful contribution charged by the licensed takaful operator.

(2) No person shall arrange a group takaful certificate for persons in relation to whom he has no permissible takaful interest without

disclosing to that person—

(a) the name of the licensed takaful operator;

(b) his relationship with the licensed takaful operator;

(c) the conditions of the group takaful certificate, including the remuneration payable to him; and

(d) the takaful contribution charged by the licensed takaful operator.

Requirements relating to group takaful certificates

11. (1) A licensed takaful operator shall be liable to a person whose life is covered under a group takaful certificate if the group takaful participant has no permissible takaful interest in the life of that person and if that person has paid the takaful contribution to the group takaful participant regardless that the licensed takaful operator has not received the takaful contribution from the group takaful participant.

(2) The licensed takaful operator of a group takaful certificate, where the group takaful participant has no permissible takaful interest in the person whose life is covered under a group takaful certificate, shall pay the moneys due under the takaful certificate to that person covered or any person entitled through him.

(3) Where the takaful contribution is paid by a person whose life is covered under a group takaful certificate, such person covered or any person entitled through him, may, upon written notification to the group takaful participant, take all necessary steps to recover moneys due under the takaful certificate from the licensed takaful operator in either of their own names as the case may be, or adding the group takaful participant as a party to a recovery action or proceedings in which event—

(a) if the group takaful participant is added as a party to the recovery action or proceedings, the person covered or any person entitled through him shall indemnify the group takaful participant in respect of all legal costs and expenses including party and party costs incurred in the conduct of the recovery action or proceedings;

(b) upon receipt of the notice by the person covered or any person entitled through him, the group takaful participant may notify the licensed takaful operator of any indebtedness due and owing by the person covered to the group takaful participant;

(c) if the licensed takaful operator agrees to pay the moneys due under the takaful certificate or is required to pay such moneys by a court of law or dispute resolution body, the licensed takaful operator shall deduct moneys due and owing under subsubparagraph *(b)* to the group takaful participant and pay any balance directly to the person covered or any person entitled through him; and

(d) for purposes of subsubparagraphs *(a)*, *(b)* and *(c)*, any person entitled through the person covered shall include a trustee, assignee, nominee or lawful executor or administrator, as the case may be.

Refund of takaful contribution

12. A licensed general takaful operator shall pay directly to a takaful participant any refund of takaful contribution in relation to a takaful certificate which may become due to the takaful participant for any reason including the cancellation of the takaful certificate or

alteration in its terms and conditions and such refund shall under no circumstances be paid or credited to any takaful agent.

SCHEDULE 9

[w.e.f. 30 June 2013, except paragraphs 1 to 10 and paragraphs 13 to 19.]

[Section 141]

PRE-CONTRACTUAL DISCLOSURE AND REPRESENTATIONS, AND REMEDIES FOR MISREPRESENTATIONS

PART 1

Preliminary

Paragraph

1. Application of Schedule and other laws *[Nyf.]*
2. Interpretation *[Nyf.]*
3. Contracting out *[Nyf.]*

PART 2

Pre-contractual disclosure and representations

4. Pre-contractual duty of disclosure for takaful contracts other than consumer takaful contracts *[Nyf.]*
5. Pre-contractual duty of disclosure for consumer takaful contracts *[Nyf.]*
6. Duty to take reasonable care *[Nyf.]*
7. Misrepresentation in respect of takaful contracts *[Nyf.]*
8. Group takaful certificates *[Nyf.]*
9. Entering into contract of takaful on another person whose life is covered *[Nyf.]*
10. Warranties and representations *[Nyf.]*
11. Takaful operator's, *etc*. pre-contractual duty of disclosure
12. Knowledge of, and statement by takaful agent

PART 3

Non-contestability and remedies for misrepresentations

Division 1

Non-contestability

13. Non-contestability for family takaful contracts *[Nyf.]*

Division 2

Remedies for misrepresentation

14. Application of Division *[Nyf.]*
15. Remedies for deliberate or reckless misrepresentation *[Nyf.]*
16. Remedies for careless or innocent misrepresentation *[Nyf.]*
17. Future treatment of contract *[Nyf.]*

18. Variations *[Nyf.]*

Division 3

Modifications for group takaful certificates

19. Modifications for group takaful certificates *[Nyf.]*

PART 1

Preliminary

Application of Schedule and other laws

1. (1) This Schedule shall not affect a contract of takaful entered into, varied or renewed before the date on which section 141 and this Schedule come into operation. *[Nyf.]*

Act 136.

(2) Where there is a conflict or inconsistency between a provision of this Schedule and the Contracts Act 1950 [*Act 136*], the provision of this Schedule shall prevail.

(3) Notwithstanding any other written law, the provisions of this Schedule shall apply to determine whether a licensed takaful operator may avoid a contract of takaful and in particular a contract covering third party risks in respect of death or bodily injury to any person caused by or arising out of the use of a motor vehicle or land implement drawn on a road, for misrepresentation.

Interpretation

2. In this Schedule— *[Nyf.]*

"consumer" means the individual who enters into, varies or renews a consumer takaful contract, or proposes to do so with a licensed takaful operator;

"consumer takaful contract" means a contract of takaful entered into, varied or renewed by an individual wholly for purposes unrelated to the individual's trade, business or profession.

Contracting out

3. (1) A term of a consumer takaful contract, or of any other contract, is rendered void to the extent that it would put the consumer in a worse position in respect of the matters mentioned in subparagraph (2) than he would be in by virtue of the provisions of this Schedule. *[Nyf.]*

(2) The matters referred to in subparagraph (1) are—

(a) disclosure and representations by the consumer to the licensed takaful operator before the contract is entered into, varied or renewed; and

(b) the non-contestability of contracts of family takaful and any of the remedies for consumer takaful contracts provided in Part 3 of this Schedule.

(3) This paragraph does not apply in relation to a contract for the settlement of a claim arising under a consumer takaful contract.

PART 2

Pre-contractual disclosure and representations

Pre-contractual duty of disclosure for takaful contracts other than consumer takaful contracts

4. (1) Before a contract of takaful other than a consumer takaful contract is entered into, varied or renewed, a proposer shall disclose to the licensed takaful operator a matter that— *[Nyf.]*

(a) he knows to be relevant to the decision of the licensed takaful operator on whether to accept the risk or not and the

rates and terms to be applied; or

(b) a reasonable person in the circumstances could be expected to know to be relevant.

(2) The duty of disclosure shall not require the disclosure of a matter that—

(a) diminishes the risk to the licensed takaful operator;

(b) is of common knowledge;

(c) the licensed takaful operator knows or in the ordinary course of his business ought to know; or

(d) in respect of which the licensed takaful operator has waived any requirement for disclosure.

(3) Where a proposer fails to answer or gives an incomplete or irrelevant answer to a question contained in the proposal form or asked by the licensed takaful operator and the matter was not pursued further by the licensed takaful operator, compliance with the proposer's duty of disclosure in respect of the matter shall be deemed to have been waived by the licensed takaful operator.

(4) A licensed takaful operator shall, before a contract of takaful is entered into, varied or renewed, clearly inform a proposer in writing of the proposer's pre-contractual duty of disclosure under this paragraph, and that this duty of disclosure shall continue until the time the contract is entered into, varied or renewed.

Pre-contractual duty of disclosure for consumer takaful contracts

5. (1) Before a consumer takaful contract is entered into or varied, a licensed takaful operator may request a proposer who is a consumer to answer any specific questions that are relevant to the decision of the licensed takaful operator whether to accept the risk or not and the rates and terms to be applied. *[Nyf.]*

(2) It is the duty of the consumer to take reasonable care not to make a misrepresentation to the licensed takaful operator when answering any questions under subparagraph (1).

(3) Before a consumer takaful contract is renewed, a licensed takaful operator may either—

(a) request a consumer to answer one or more specific questions in accordance with subparagraph (1); or

(b) give the consumer a copy of any matter previously disclosed by the consumer in relation to the contract and request the consumer to confirm or amend any change to that matter.

(4) It is the duty of the consumer to take reasonable care not to make a misrepresentation to the licensed takaful operator when answering any questions under subsubparagraph (3)*(a)*, or confirming or amending any matter under subsubparagraph (3)*(b)*.

(5) If the licensed takaful operator does not make a request in accordance with subparagraph (1) or (3) as the case may be, compliance with the consumer's duty of disclosure in respect of those subparagraphs, shall be deemed to have been waived by the licensed takaful operator.

(6) Where the consumer fails to answer or gives an incomplete or irrelevant answer to any request by the licensed takaful operator under subparagraph (1) or subsubparagraph (3)*(a)*, or fails to confirm or amend any matter under subsubparagraph (3)*(b)*, or does so incompletely or provides irrelevant information, as the case may be,

and the answer or matter was not pursued further by the licensed takaful operator, compliance with the consumer's duty of disclosure in respect of the answer or matter shall be deemed to have been waived by the licensed takaful operator.

(7) A licensed takaful operator shall, before a consumer takaful contract is entered into, varied or renewed, clearly inform the consumer in writing of the consumer's pre-contractual duty of disclosure under this paragraph, and that this duty of disclosure shall continue until the time the contract is entered into, varied or renewed.

(8) Subject to subparagraphs (1) and (3), a consumer shall take reasonable care to disclose to the licensed takaful operator any matter, other than that in relation to subparagraph (1) or (3), that he knows to be relevant to the decision of the licensed takaful operator on whether to accept the risk or not and the rates and terms to be applied.

(9) Nothing in this Schedule shall affect the duty of utmost good faith to be exercised by a consumer and licensed takaful operator in their dealings with each other, including the making and paying of a claim, after a contract of takaful has been entered into, varied or renewed.

Duty to take reasonable care

6. (1) In determining whether a consumer has taken reasonable care not to make a misrepresentation under subparagraph 5(2) or (4), the relevant circumstances may be taken into account including— *[Nyf.]*

(a) the consumer takaful contract in question and the manner in which the contract was marketed to the consumer;

(b) any relevant explanatory material or publicity produced or authorized by the licensed takaful operator; and

(c) how clear and specific, the licensed takaful operator's questions were.

(2) Subject to subparagraph (3), the standard of care required of the consumer under subparagraphs 5(2) and (4) shall be what a reasonable consumer in the circumstances would have known.

(3) If the licensed takaful operator was, or ought to have been, aware of any particular characteristics or circumstances of the consumer, the licensed takaful operator shall take into account such characteristics or circumstances.

Misrepresentation in respect of takaful contracts

7. (1) Part 3 of this Schedule— *[Nyf.]*

(a) in Division 1, makes provision for a misrepresentation made in relation to a contract of family takaful, whether or not a consumer takaful contract, which has been effected for a period of more than two years; and

(b) in Division 2, sets out the remedies available to a licensed takaful operator for a misrepresentation made in respect of—

(i) a consumer takaful contract of family takaful which has been effected for a period of two years or less; and

(ii) a consumer takaful contract of general takaful.

(2) The remedies set out in Division 2 shall be available to a licensed takaful operator for a misrepresentation made by a consumer before a consumer takaful contract referred to in

subsubparagraph (1)*(b)* was entered into, varied or renewed if—

(a) the consumer has made a misrepresentation in breach of his duty under subparagraph 5(2) or (4); and

(b) the licensed takaful operator shows that had it known the true facts, it would not have entered into the contract, or agreed to the variation or renewal, or would only have done so on different terms.

(3) For the purposes of this Schedule, a misrepresentation for which a licensed takaful operator has a remedy in Division 2 against a consumer may be classified as—

(a) deliberate or reckless;

(b) careless; or

(c) innocent.

(4) A misrepresentation is deliberate or reckless if the consumer knew that—

(a) it was untrue or misleading, or did not care whether or not it was untrue or misleading; and

(b) the matter to which the misrepresentation related was relevant to the licensed takaful operator, or did not care whether or not it was relevant to the licensed takaful operator.

(5) A misrepresentation made dishonestly is to be regarded as having being made deliberately or recklessly.

(6) A misrepresentation is careless or innocent, as the case may be, if it is not deliberate or reckless.

(7) It is for the licensed takaful operator to show that a misrepresentation was deliberate or reckless on a balance of probability.

(8) Unless the contrary is shown, it is to be presumed that the consumer knew that a matter about which the licensed takaful operator asked a clear and specific question was relevant to the licensed takaful operator.

Group takaful certificates

8. (1) This paragraph shall apply to a group takaful certificate which so far as the cover for a person covered under that group takaful certificate is concerned, such takaful certificate, if entered into, varied or renewed by the person covered instead of the group takaful participant, would have been a consumer takaful contract referred to in subsubparagraph 7(1)*(b)*. *[Nyf.]*

(2) So far as the cover for a person covered referred to in subparagraph (1) is concerned—

(a) paragraph 5 shall apply in relation to any disclosure, answer or representation made by the person covered to the licensed takaful operator as if the person covered was proposing to enter into, vary or renew a consumer takaful contract for the relevant cover with the licensed takaful operator; and

(b) subject to subparagraphs (3) and (4) and the modifications set out in Division 3 of Part 3 of this Schedule to the licensed takaful operator's remedies in Division 2 of Part 3 of this Schedule, the remaining provisions of this Schedule shall apply in relation to the cover for the person covered as

if the person covered had entered into, varied or renewed a consumer takaful contract for that cover with the licensed takaful operator.

(3) Subsubparagraph 7(2)*(b)* shall apply to a group takaful certificate as if it reads as follows:

"the licensed takaful operator shows that had it known the true facts, it would not have provided cover for the person covered, agreed to the variation or renewal or would only have done so on different terms.".

(4) A breach of the duty to take reasonable care not to make a misrepresentation under paragraph 5 on the part of one of any of the persons whose life is covered under a group takaful certificate shall not affect the takaful certificate so far as it relates to the other persons whose life are covered under that takaful certificate.

(5) Nothing in this paragraph shall affect any duty owed by the group takaful participant to the licensed takaful operator, or any remedy which the licensed takaful operator may have against the group takaful participant for breach of such a duty.

Entering into contract of takaful on another person whose life is covered

9. Where a consumer enters into a consumer takaful contract on another person whose life is covered who is not a party to the contract, any information provided to the licensed takaful operator by the person whose life is covered, whether requested or otherwise, is to be treated for purposes of this Schedule as if it was provided by the consumer and shall be subject to paragraph 5. *[Nyf.]*

Warranties and representations

10. Any representation made before a consumer takaful contract was entered into, varied or renewed shall not be converted into a warranty by means of any provision of the consumer takaful contract or of any terms of the variation or of any other contract, whether by declaring the representation to form the basis of the contract or otherwise. *[Nyf.]*

Takaful operator's, *etc*. pre-contractual duty of disclosure

11. (1) No licensed takaful operator, takaful agent, approved takaful broker, approved Islamic financial adviser or Islamic financial adviser's representative in order to induce a person to enter into, vary or renew, or offer to enter into, vary or renew, a contract of takaful, whether or not a consumer takaful contract, with it or through him—

(a) shall make a statement which is misleading, false or deceptive, whether fraudulently or otherwise;

(b) shall fraudulently conceal a material fact; or

(c) in the case of a takaful agent, use any marketing brochure or product illustration not authorized by the licensed takaful operator.

(2) Where a person is induced to enter into, vary or renew a contract of takaful in a manner described in subparagraph (1), the contract of takaful shall be voidable and the person shall be entitled to rescind it.

Knowledge of, and statement by takaful agent

12. (1) A person who is authorized by a licensed takaful operator to be its takaful agent and who solicits or negotiates a contract of takaful in that capacity shall be deemed, for the purpose of the formation or variation of the contract of takaful, to be the agent of the licensed takaful operator and the knowledge of that takaful agent shall be deemed to be the knowledge of the licensed takaful operator.

(2) A statement made, or an act done, by the takaful agent shall be deemed, for the purpose of the formation or variation of the contract of takaful, to be a statement made, or act done, by the licensed takaful operator notwithstanding the takaful agent's contravention of subparagraph 11(1) or any other provision of this Act.

(3) Subparagraph (1) shall not apply—

(a) where there is collusion or connivance between the takaful agent and the proposer in the formation or variation of the contract of takaful; or

(b) where a person has ceased to be a takaful agent of a licensed takaful operator and the licensed takaful operator has taken all reasonable steps to inform, or bring to the knowledge of takaful participants of the fact of such cessation.

PART 3

Non-contestability and remedies for misrepresentations

Division 1

Non-contestability

Non-contestability for family takaful contracts

13. (1) This paragraph shall apply to contracts of family takaful, whether or not consumer takaful contracts. *[Nyf.]*

(2) Where a contract of family takaful has been in effect for a period of more than two years during the lifetime of the person whose life is covered, such a contract shall not be avoided by a licensed family takaful operator on the ground that a statement made or omitted to be made in the proposal for takaful or in a report of a doctor, referee, or any other person, or in a document leading to the issue of the family takaful certificate, was inaccurate or false or misleading unless the licensed family takaful operator shows that the statement was on a material matter or suppressed a material fact and that it was fraudulently made or omitted to be made by the takaful participant or the person whose life is covered.

(3) Where a licensed family takaful operator avoids a contract of takaful under subparagraph (2), the licensed family takaful operator shall return such moneys due under such contract of takaful as may be specified by the Bank.

(4) For the purposes of subparagraph (2), "material matter" or "material fact" means a matter or fact which, if known by the licensed family takaful operator, would have led to its refusal to issue a family takaful certificate to the takaful participant or would have led it to impose terms less favourable to the takaful participant than those imposed in the family takaful certificate.

Division 2

Remedies for misrepresentation

Application of Division

14. This Division sets out the remedies available to a licensed takaful operator for a misrepresentation by a consumer made in respect of— *[Nyf.]*

(a) a consumer takaful contract of family takaful which has been effected for a period of two years or less; and

(b) a consumer takaful contract of general takaful.

Remedies for deliberate

15. (1) If a misrepresentation was deliberate or reckless, a licensed *[Nyf.]*

or reckless misrepresentation

takaful operator may avoid the consumer takaful contract and refuse all claims.

(2) Where the licensed takaful operator avoids a contract under subparagraph (1), the licensed takaful operator shall return such moneys due under such contract as may be specified by the Bank.

Remedies for careless or innocent misrepresentation

16. (1) If a misrepresentation was careless or innocent, the licensed takaful operator's remedies shall be based on what it would have done if the consumer had complied with the duty set out in paragraph 5 and subparagraphs (2) to (4) are to be read accordingly. *[Nyf.]*

(2) If the licensed takaful operator would not have entered into or renewed the consumer takaful contract on any terms, the licensed takaful operator may avoid the contract and refuse all claims, but shall return to the consumer such moneys due under such contract as may be specified by the Bank.

(3) If the licensed takaful operator would have entered into, or renewed the consumer takaful contract, but on different terms excluding terms relating to the takaful contributions, the contract is to be treated as if it had been entered into or renewed on those different terms if the licensed takaful operator so requires.

(4) In addition, if the licensed takaful operator would have entered into or renewed the consumer takaful contract, whether the terms relating to matters other than the takaful contributions would have been the same or different, but would have charged a higher takaful contribution, the licensed takaful operator may reduce proportionately the amount to be paid on a claim as may be specified by the Bank.

Future treatment of contract

17. (1) This paragraph shall apply if a misrepresentation was careless or innocent but does not relate to any outstanding claim. *[Nyf.]*

(2) Where a licensed takaful operator discovers a misrepresentation that was careless or innocent and if the licensed takaful operator would not have entered into or renewed the consumer takaful contract on any terms, subparagraph 16(2) will apply.

(3) If the licensed takaful operator would have entered into or renewed the consumer takaful contract, but on different terms or for a higher takaful contribution or both, the licensed takaful operator shall either notify the consumer that it intends to treat the contract as subsisting on different terms or it may terminate the contract by giving reasonable notice to the consumer.

(4) Where the consumer receives notice that the licensed takaful operator intends to continue the consumer takaful contract on different terms, the consumer has a choice of either continuing the contract on those amended terms or terminating the contract by giving reasonable notice to the licensed takaful operator.

(5) Where either the licensed takaful operator or the consumer terminates the contract under this paragraph, the licensed takaful operator shall refund such moneys due under such contract as may be specified by the Bank.

(6) Termination of a consumer takaful contract under this paragraph does not affect the treatment of any claim arising under the contract in the period before termination and any such claim arising shall be dealt with accordingly under paragraph 16.

(7) Nothing in this paragraph shall affect any contractual right of

the parties to terminate the consumer takaful contract.

Variations

18. (1) Where a misrepresentation is made by a consumer in respect of a variation to an existing consumer takaful contract, it is necessary to ascertain whether the subject matter of the variation can reasonably be treated separately from the subject matter of the rest of the contract. *[Nyf.]*

(2) If the subject matter of the variation can reasonably be treated separately from the subject matter of the rest of the consumer takaful contract, the remedies set out in this Division shall apply only in relation to that variation as it applies in relation to a contract.

(3) If the subject matter of the variation cannot be treated separately from the subject matter of the rest of the consumer takaful contract, the misrepresentation shall be treated as if it had been made in relation to the whole contract and the remedies set out in this Division shall apply in relation to the whole of the contract of takaful rather than merely in relation to the variation.

Division 3

Modifications for group takaful certificates

Modifications for group takaful certificates

19. This Division provides for the application of Division 2 of this Part to a group takaful certificate in accordance with the following modifications: *[Nyf.]*

(a) reference to consumer takaful contract, however described in Division 2, shall be references to that part of the group takaful certificate which provides for cover for the person covered who made the misrepresentation;

(b) reference to claims and takaful contribution shall be references to claims and takaful contribution in relation to the cover for the person covered who made the misrepresentation;

(c) any refund of takaful contribution under subparagraph 16(2) or 17(5) shall be made to the person covered if he had paid the takaful contribution for his cover; and

(d) in respect of the cover for the person covered, the right to terminate his cover wherever referred to in Division 2, shall be that of the group takaful participant.

SCHEDULE 10

[Section 142]

PAYMENT OF TAKAFUL BENEFITS UNDER FAMILY TAKAFUL CERTIFICATE AND PERSONAL ACCIDENT TAKAFUL CERTIFICATE

Paragraph

1. Application of this Schedule

2. Power to make nomination

3. Effect of nomination

4. Revocation of nomination

5. Payment of takaful benefits where there is nomination

6. Nominee who receives takaful benefits

7. Assigned or pledged takaful benefits

8. Payment of takaful benefits where there is no nomination

9. Payment to person incompetent to contract

10. Distribution of takaful benefits in due course of administration

11. Licensed takaful operator not bound to see application of takaful benefits

12. Compensation on claim amount

13. Schedule to prevail over takaful certificate and any other written law

Application of Schedule

1. In this Schedule, a reference to a takaful certificate is a reference to a family takaful certificate and a personal accident takaful certificate, effected by a takaful participant upon his life providing for the payment of takaful benefits upon his death.

Power to make nomination

2. (1) A takaful participant who has attained the age of sixteen years may nominate an individual to receive takaful benefits payable upon his death under the takaful certificate, either as an executor, or as a beneficiary under a conditional *hibah* by notifying the licensed takaful operator in writing the name, date of birth, national registration identity card number or birth certificate number and address of the nominee.

(2) A nomination under subparagraph (1) may be made—

(a) at the time the takaful certificate is issued; or

(b) if the takaful certificate has already been issued, by notifying the licensed takaful operator in writing or by submitting the takaful certificate for an endorsement of the nomination by the licensed takaful operator.

(3) A nomination made under subparagraph (1) shall be witnessed by a person of sound mind who has attained the age of eighteen years and who is not a nominee named under that subparagraph.

(4) The licensed takaful operator—

(a) shall prominently display in the nomination form that the takaful participant may—

(i) assign the takaful benefits to a nominee or designate the nominee to receive the takaful benefits as a beneficiary under conditional *hibah*; or

(ii) designate the nominee to receive the takaful benefits as an executor;

(b) shall record the nomination and the particulars of the nominee in its register of takaful certificates; and

(c) shall return the takaful certificate to the takaful participant after endorsing the nomination on the takaful certificate or by issuing an endorsement to the original takaful certificate by registered mail to the takaful participant and the nomination shall take effect from the date the nomination is registered by the licensed takaful operator.

(5) A failure to comply with subparagraph (4) shall not affect the validity of the nomination if it is otherwise proved that the

nomination was made by the takaful participant and given to the licensed takaful operator.

(6) A nomination made under subparagraph (1) may be in favour of one person or several persons and where there is more than one nominee, the takaful participant may direct that specified shares be paid to the nominees and in the absence of such direction by the takaful participant, the licensed takaful operator shall pay the nominees in equal shares.

Effect of nomination

3. (1) A nominee under subparagraph 2(1) shall receive the takaful benefits payable under a takaful certificate either as an executor or as a beneficiary under a conditional *hibah*, as the case may be, as stated in the nomination form by the takaful participant.

(2) A nomination by a takaful participant pursuant to subparagraph 2(1) for a nominee to be a beneficiary under a conditional *hibah*, shall, notwithstanding any written law, have the effect of transferring ownership, and shall transfer ownership, of the takaful benefits payable to the nominee upon the death of the takaful participant and such takaful benefits so transferred shall not form part of the estate of the deceased takaful participant or be subject to his debts.

(3) Where the takaful benefits are paid under a conditional *hibah*, if it is proved that the takaful certificate was effected and the takaful contributions were paid with intent to defraud a creditor of the takaful participant, the creditor shall be entitled to receive from the takaful benefits payable under the takaful certificate a sum equal to the takaful contributions paid under that takaful certificate.

(4) Notwithstanding subparagraph (3), if a beneficiary received the takaful benefits in good faith, and such benefits have been utilised by the beneficiary, the creditor shall receive a sum equal to the unutilised benefits if such unutilised benefits are less than the takaful contributions paid.

Revocation of nomination

4. (1) A nomination shall be revoked—

(a) upon the death of the nominee, or where there is more than one nominee, upon the death of all the nominees, during the lifetime of the takaful participant;

(b) by a notice in writing given by the takaful participant to the licensed takaful operator; or

(c) by any subsequent nomination.

(2) Subject to subparagraph (1), a nomination shall not be revoked by a will or by any other act, event or means.

(3) Where there is more than one nominee and any particular nominee who is nominated as a beneficiary under conditional *hibah* predeceases the takaful participant, the licensed takaful operator shall pay the share of the deceased nominee, upon the death of the takaful participant to the estate of the deceased takaful participant unless the takaful participant has made a subsequent nomination in place of the deceased nominee.

Payment of takaful benefits where there is nomination

5. (1) Subject to subparagraph (2), where a takaful participant dies having made a nomination, the licensed takaful operator shall pay the takaful benefits according to the direction of the nomination upon receipt of a claim by the nominee together with proof of death of the takaful participant.

(2) Where a nominee fails to claim the takaful benefits within sixty days of the licensed takaful operator becoming aware of the death of the takaful participant, the licensed takaful operator shall immediately notify the nominee in writing at his last known address of his entitlement to claim the takaful benefits.

(3) Where a nominee fails to claim the takaful benefits within twelve months of the licensed takaful operator becoming aware of the death of the takaful participant despite notification under subparagraph (2)—

(a) in the case of a nominee who is nominated as an executor, paragraph 8 shall apply as though no nomination was made; or

Act 370.

(b) in the case of a nominee who is nominated as a beneficiary under conditional *hibah*, the takaful benefits payable to such nominee shall be lodged with the Registrar of Unclaimed Moneys in accordance with the provisions of the Unclaimed Moneys Act 1965 [*Act 370*].

(4) Where a nominee dies after the death of the takaful participant but before any takaful benefits has been paid to him as nominee, the licensed takaful operator shall pay the takaful benefits to—

(a) the estate of the deceased takaful participant if the nominee is an executor; or

(b) the estate of the deceased nominee if the nominee is a beneficiary under conditional *hibah*.

Nominee who receives takaful benefits

6. (1) A licensed takaful operator shall be discharged from liability for payments of takaful benefits payable under a takaful certificate if the licensed takaful operator pays the takaful benefits to the nominee named in the takaful certificate whether that nominee receives the takaful benefits as an executor or as a beneficiary under conditional *hibah*.

(2) For purposes of subparagraph (1) where a nominee of a takaful participant receives the takaful benefits as an executor, such nominee shall distribute the takaful benefits in due course of administration of the estate of the deceased takaful participant in accordance with the will of that takaful participant or the law relating to the distribution of the estate of deceased persons as applicable to that takaful participant.

Assigned or pledged takaful benefits

7. (1) Notwithstanding a nomination under paragraph 2, where the takaful benefits, wholly or partly, have been pledged as security or assigned to a person, the claim of the person entitled under the security or the assignee shall have priority over the claim of the nominee and subject to the rights under the security or the assignment being preserved, the licensed takaful operator shall pay the balance of the takaful benefits to the nominee.

(2) Where more than one person is entitled under the security or the assignment, the respective rights of the persons entitled under the security or the assignment shall be in the order of priority according to the priority of the date on which written notification of the security or the assignment was given to the licensed takaful operator, both security and assignment being treated as one class for this purpose.

Payment of takaful benefits where there is no nomination

8. (1) Where a takaful participant dies without having made a nomination relating to takaful benefits under a takaful certificate, the licensed takaful operator shall subject to paragraph 7, pay the takaful

benefits of the deceased takaful participant to the lawful executor or administrator of his estate.

(2) Where the licensed takaful operator is satisfied that there is no lawful executor or administrator of the estate of the deceased takaful participant at the time of payment of takaful benefits, the licensed takaful operator may pay the takaful benefits to a proper claimant without requiring the grant of probate or letters of administration or a distribution order—

(a) where the takaful benefits do not exceed one hundred thousand ringgit or such greater amount as may be prescribed by the Bank, all such takaful benefits; or

(b) where the takaful benefits exceed one hundred thousand ringgit, or such greater amount as may be prescribed by the Bank, an amount not greater than one hundred thousand ringgit or such greater amount as may be prescribed by the Bank.

(3) The licensed takaful operator shall pay the balance of the takaful benefits under subsubparagraph (2)*(b)* to the lawful executor or administrator of the estate of the deceased takaful participant.

(4) In this paragraph, a reference to takaful benefits is a reference to the aggregate amount of takaful benefits in respect of all takaful certificates of the takaful participant with that licensed takaful operator where the takaful participant has not made any nomination.

Act 97.

(5) The grant of probate or letters of administration or distribution order in respect of a personal estate comprising takaful benefits, by a court in Malaysia or a competent authority outside Malaysia, or its court certified copy shall be sufficient proof to the licensed takaful operator to pay the takaful benefits to the person named therein as the lawful executor or administrator provided that the same has been duly registered with the court in Malaysia and sealed in accordance with the Probate and Administration Act 1959 [*Act 97*].

(6) Takaful benefits paid under this paragraph shall be deemed to have been duly paid and the licensed takaful operator shall be discharged from liability in respect of the takaful benefits so paid notwithstanding the absence or invalidity of, or any defect in the grant of probate or letters of administration or distribution order or any other document having the same effect.

(7) A person to whom a payment is made under this paragraph shall give a receipt which shall be deemed to be a valid receipt.

Payment to person incompetent to contract

Act 50.

9. Where a person has not attained the age of eighteen years, or who is certified by a medical practitioner fully registered under the Medical Act 1971 [*Act 50*] to be of unsound mind and no committee of his estate has been appointed, or to be incapable, by reason of infirmity of mind or body, of managing himself and his property and affairs, the licensed takaful operator—

(a) in the case of a nominee who receives the takaful benefits beneficially under a conditional *hibah*, shall pay the takaful benefits to the parent of the incompetent nominee, and where there is no surviving parent of the incompetent nominee—

(i) if the takaful benefits do not exceed fifty thousand ringgit, may pay the takaful benefits to a proper claimant who satisfies the licensed takaful operator that the proper claimant will apply the takaful benefits for the maintenance and benefit of the nominee, subject to the

execution of an undertaking by that proper claimant that the takaful benefits will be applied solely for the maintenance and benefit of the nominee; and

(ii) if the takaful benefits exceed fifty thousand ringgit, shall pay the takaful benefits to the Public Trustee or a trust company nominated by the takaful participant; or

(b) in the case of a person to whom takaful benefits are payable under subparagraph 8(2), pay to the Public Trustee or a trust company nominated by the takaful participant.

Distribution of takaful benefits in due course of administration

10. A person to whom takaful benefits may be paid under paragraph 8 shall receive the takaful benefits as an executor and not solely as a beneficiary and shall distribute the takaful benefits in due course of administration of the estate of the deceased takaful participant in accordance with the terms of a will of the deceased person, and if there is no such will, in accordance with the law applicable to the administration, distribution and disposition of his estate upon his intestacy.

Licensed takaful operator not bound to see application of takaful benefits

11. A licensed takaful operator shall not in any circumstances be bound or concerned to ensure the application of any takaful benefits which it has paid in respect of any person under this Schedule.

Compensation on claim amount

12. (1) Where a claim or a part of a claim made under a family takaful certificate, or under a personal accident takaful certificate upon the death of a takaful participant is not paid by a licensed takaful operator within sixty days of notification of the claim, the licensed takaful operator shall pay a minimum compensation at the rate of investment yield of the participant's risk fund plus one percent or such other rate as may be specified by the Bank, on the amount of takaful benefits upon expiry of the sixty days until the date of payment, whereby the one percent is to be paid from shareholders' funds.

(2) Where the balance of takaful benefits are to be paid by a licensed takaful operator to the lawful executor or administrator of the estate of the deceased takaful participant under subparagraph 8 (3), compensation payable under subparagraph (1) shall only apply to such balance of takaful benefits upon expiry of sixty days from the time that the lawful executor or administrator produces the grant of probate or letters of administration or distribution order until the date of payment.

Schedule to prevail over takaful certificate and any other written law

13. (1) This Schedule shall have effect in relation to a takaful certificate which is in force on or after the appointed date, and in relation to a nomination made before, on or after the appointed date, notwithstanding anything contained in the takaful certificate, and nothing contained in a takaful certificate shall derogate from, or be construed as derogating in any manner or to any extent from, this Schedule.

(2) This Schedule shall have full force and effect notwithstanding anything inconsistent with or contrary to any other written law relating to probate, administration, distribution, or disposition, of the estates of deceased persons, or in any practice or custom in relation to these matters.

SCHEDULE 11

[Section 146]

PERMITTED DISCLOSURES

First column	*Second column*
Purposes for or circumstances in which customer documents or information may be disclosed	*Persons to whom 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, as the case may be, the executor, administrator or legal personal representative.
Act 98. 2. In connection with an application 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.	Any person whom an Islamic financial 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, 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 or winding up or dissolution.
4. Any criminal proceedings or civil proceedings between an Islamic financial 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 Islamic financial institution seeks relief by way of interpleader; or *(c)* one or more parties in respect of property in or over which some right or interest has been conferred on the Islamic financial institution.	All persons to whom the disclosure is necessary for the purpose of the criminal proceedings or civil proceedings.
5. Compliance by a licensed Islamic bank 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	All persons to whom the disclosure is required to be made

	Sessions Court.	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. Performance of functions of the Malaysia Deposit Insurance Corporation.	Any director or officer of the Malaysia Deposit Insurance Corporation or any other person, authorized by the Malaysia Deposit Insurance Corporation to receive the documents or information.
	9. Disclosure by a licensed Islamic bank for the purpose of performance of functions of an approved trade repository under the Capital Markets and Services Act 2007.	Any officer of the approved trade repository authorized to receive the documents or information.
	10. Documents or information is required by the Inland Revenue Board of Malaysia under section 81 of the Income Tax Act 1967 for purposes 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 Inland Revenue Board of Malaysia authorized to receive the documents or information.
Act 710.	11. Disclosure of credit information of a customer to a credit reporting agency registered under the Credit Reporting Agencies Act 2010 [*Act 710*] for purposes of carrying on credit reporting business as defined in the Credit Reporting Agencies Act 2010.	Any officer of credit reporting agency authorized to receive the documents or information.
	12. Performance of any supervisory functions, exercise any of supervisory powers or discharge any of supervisory duties by a relevant authority outside Malaysia which exercises functions corresponding to those of the Bank under this Act.	Any officer of the relevant authority authorized to receive the documents or information.
	13. Conduct of centralized functions, which include audit, risk management, finance or information technology or any other centralized function within the financial group.	The head office or holding company of an Islamic financial institution whether in or outside Malaysia or any other person designated by the head office or holding company to perform such functions.
	14. Due diligence exercise	Any person participating or

approved by the board of directors of the Islamic financial institution in connection with— *(a)* merger and acquisition; *(b)* capital raising exercise; or *(c)* sale of assets or whole or part of business.	otherwise involved in the due diligence exercise approved by the board of the Islamic financial institution.
15. Performance of functions of the Islamic financial institution which are outsourced.	Any person engaged by the Islamic financial institution to perform the outsourced function.
16. Disclosure to a consultant or adjuster engaged by the Islamic financial institution.	Consultant or adjuster engaged by the Islamic financial institution.
17. An Islamic financial institution has reason to suspect that an offence under any written law has been, is being or may be committed.	Any officer of another Islamic financial institution or the relevant associations of Islamic financial institutions authorized to receive the documents or information.

SCHEDULE 12

[Subsection 151(2)]

RESTRICTION ON USE OF CERTAIN WORDS

PART 1

Islamic bank

1. An association of licensed Islamic banks or association of employees of any such licensed Islamic banks.

PART 2

Takaful, Islamic insurance or Islamic assurance

2. A person who appends to his name a takaful qualification conferred on him by a prescribed body, where the qualification so appended is followed with the initials of the name of that body.

3. An association of licensed takaful operators, approved takaful brokers, approved Islamic financial advisers or association of employees of any such persons.

4. A takaful agent registered with any association of licensed takaful operators.

PART 3

Islamic financial adviser

5. A licensed takaful operator.

6. An approved takaful broker.

7. A licensed Islamic bank.

8. A licensed bank which has obtained approval to carry on Islamic

banking business under the Financial Services Act 2012.

9. An approved insurance broker which has obtained approval to carry on takaful broking business under the Financial Services Act 2012.

10. A person who appends to his name a takaful qualification conferred on him by a prescribed body, where the qualification so appended is followed with the initials of the name of that body.

11. An association of approved financial advisers or association of employees of any such approved persons.

SCHEDULE 13

[Subsection 189(1)]

ADDITIONAL PROVISIONS RELATING TO COMPULSORY TRANSFER

The Third Schedule of the Central Bank of Malaysia Act 2009 shall apply in relation to an order of the Bank under Subdivision 4, Division 2, Part XIV with the following modifications:

1. A reference to subsection 36(18) in paragraph 1 of the Third Schedule is a reference to section 187 of this Act.

2. A reference to subparagraph 32(1)*(c)*(iii) in the Third Schedule is a reference to section 188 of this Act.

3. A reference to subsection 32(1A) in subparagraph 2(5) of the Third Schedule is a reference to section 220 of this Act.

4. A reference to section 94 in subparagraph 4(7)*(j)* of the Third Schedule is a reference to section 271 of this Act.

5. A reference to "shares or other capital instruments" in the Third Schedule is not applicable for the purposes of this subdivision.

6. Paragraph 5 of the Third Schedule is not applicable for the purposes of this subdivision.

SCHEDULE 14

[Subsection 225(2)]

LIST OF TRANSACTIONS

1. The act of—

(a) buying, selling, exchanging, borrowing or lending;

(b) issuing, publishing or disseminating information in any form or advertisements which may lead, directly or indirectly, to the buying, selling, exchanging, borrowing or lending; or

(c) retaining or using,

of foreign currency, gold or other precious metals;

2. The act of—

(a) borrowing or lending; or

(b) issuing, publishing or disseminating information in any form or advertisements which may lead, directly or indirectly, to

the borrowing or lending,

of ringgit between non-residents or between a resident and a non–resident; or

(c) retaining or using of ringgit by a non-resident;

3. The making of any payment by a person to another person including a payment—

(a) to or for the credit of a non-resident;

(b) by a resident or a non-resident;

(c) as consideration for or in association with—

(i) the receipt of a payment or the acquisition of a property, outside Malaysia, by any person; or

(ii) the creation in favour of, or the transfer to, any person, of a right to receive a payment or to acquire a property, outside Malaysia;

(d) under a judgment or order of any court or an award of any arbitrator or under any written law in favour of a non-resident, or a resident outside Malaysia; or

(e) for settlement of property in favour of a non-resident, or a resident outside Malaysia,

other than—

(A) payment in ringgit between residents in Malaysia; and

(B) payment in foreign currency between non-residents outside Malaysia;

4. The receiving of any payment in paragraph 3;

5. The giving or obtaining of any guarantee, indemnity or undertaking in respect of any debt, obligation or liability;

6. The issuance, transfer or substitution or the doing of any act in relation to an Islamic security or an Islamic financial instrument other than—

(a) the issuance or transfer of any ringgit-denominated Islamic security between residents in Malaysia; or

(b) the substitution of any ringgit-denominated Islamic security for other ringgit-denominated Islamic security between residents in Malaysia;

7. The importing into, or exporting from, Malaysia, of any ringgit, foreign currency, gold, other precious metals, Islamic security, Islamic financial instrument or any other article as may be specified by the Bank;

8. The act of—

(a) receiving export proceeds by any person in Malaysia—

(i) for an amount that is less than the full value of the subject matter exported; or

(ii) in a manner or within a period other than those as may be specified by the Bank; or

(b) doing or refraining from doing any act by any person in Malaysia which would lead to or result in the non-receipt of

export proceeds, in whole or in part; or

9. The doing or refraining from doing any act by any person in Malaysia, who has a right to receive an amount of ringgit or foreign currency, which would to lead or result in the delay or the non-receipt of the amount, in whole or in part.

SCHEDULE 15

[Paragraph 245(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 16(2);
2. subsection 22(1) or (2);
3. subsection 29(2), paragraph 29(4)*(a)* or subsection 29(5);
4. subsection 30(1), (2) or (3);
5. section 31;
6. section 32;
7. paragraph 33(1)*(c)* or *(d)*, or subsection (2) or (3);
8. subsection 34(1) or (2);
9. subsection 35(1) or (2);
10. subsection 37(1) or (2);
11. subsection 38(2);
12. subsection 43(2);
13. section 44;
14. subsection 45(1), (2) or (3);
15. subsection 58(1) or (2);
16. subsection 59(1);
17. subsection 60(1);
18. section 61;
19. subsection 63(1), (2), (3) or (4);
20. subsection 64(1), (2) or (3);
21. subsection 65(1), (2) or (3);
22. paragraph 66(1)*(a)*, *(b)* or *(d)*;
23. subsection 67(1), (2), (3) or (4);
24. subsection 68(2);
25. subsection 69(1);
26. subsection 70(1) or (2);
27. section 71;

28. section 73;
29. subsection 74(1);
30. subsection 75(1) or (2);
31. subsection 76(1), (2) or (3);
32. subsection 78(1) or (3);
33. section 79;
34. section 80;
35. section 81;
36. subsection 83(1), (2), (3), or (4);
37. section 85;
38. paragraph 86*(c)*;
39. subsection 87(1) or (2);
40. section 88;
41. section 90;
42. section 91;
43. subsection 92(1) or (3);
44. subsection 93(1);
45. section 94;
46. section 95;
47. subsection 96(1);
48. subsection 97(1);
49. subsection 99(1) or (2);
50. subsection 100(1);
51. section 101;
52. subsection 102(3), (7) or (10);
53. subsection 103(2);
54. subsection 104(1);
55. subsection 105(1);
56. subsection 106(6);
57. subsection 109(1), (2), (4), (5) or (6);
58. section 111;
59. subsection 112(1), (2), (3) or (6);
60. subsection 113(1) or (2);
61. subsection 115(1);
62. subsection 117(1) or (2);
63. section 119;
64. subsection 122(1) or (3);
65. section 123;

66. subsection 124(1), (3) or (4);

67. subsection 126(1) or (2);

68. subsection 127(4);

69. subsection 135(1);

70. subsection 137(1);

71. subsection 138(4);

72. subsection 139(1) or (3);

73. subsection 152(4);

74. subsection 155(1) or (2), paragraph 155(3)*(b)*, or subsection 155 (4) or (6);

75. subsection 156(1);

76. subsection 162(1);

77. subsection 228(2);

78. subsection 290(2);

79. subsection 291(2);

80. paragraph 10 of Schedule 8; or

81. any requirement imposed on a licensed takaful operator in Schedules 8, 9 and 10, except for paragraph 11 of Schedule 9.

SCHEDULE 16

[Section 283]

LIST OF SUBSIDIARY LEGISLATION REVOKED

PU(A) 308/1985.	1. Takaful (Operators Registration) Regulations 1985 [*P.U.(A) 308/1985*]
PU(A) 310/1985.	2. Takaful (Statutory Deposits) Regulations 1985 [*P.U.(A) 310/1985*]
PU(A) 314/1985.	3. Takaful (Power to Compound) Regulations 1985 [*P.U.(A) 314/1985*]
PU(A) 337/1990.	4. Takaful (Prescribed Loan) Regulations 1990 [*P.U.(A) 337/1990*]
PU(A) 93/1991.	5. Takaful (Prescribed Loan) Regulations 1991 [*P.U.(A) 93/1991*]
PU(A) 435/1995.	6. Takaful (Prescribed Loan) Regulations 1995 [*P.U.(A) 435/1995*]
PU(A) 237/1997.	7. Takaful (Prescribed Loan) Regulations 1997 [*P.U.(A) 237/1997*]
PU(A) 17/2003.	8. Takaful (Prescribed Financial Institution, Loan and Investment) Regulations 2003 [*P.U.(A) 17/2003*]
PU(B) 465/2008.	9. Notification under subsection 40C(2) [*P.U.(B) 465/2008*]