LAWS OF MALAYSIA

Act 731

Money Services Business Act 2011

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An Act to provide for the licensing, regulation and supervision of money services business and to provide for related matters.

[*1 December 2011*.] *PU(B) 590/2011.*

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PART I

PRELIMINARY

Short title, commencement and non-application

1. (1) This Act may be cited as the Money Services Business Act 2011.

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

(3) This Act shall not apply to any authorized dealer.

Interpretation **2.** In this Act, unless the context otherwise requires—

"accounts" includes records of any financial transactions of licensees;

Act 577. "repealed Act" means the Money-Changing Act 1998 [*Act 577*];

"unsafe and unsound practices" means any practice or conduct by a licensee or a money services business agent which creates the likelihood of insolvency, loss or dissipation of the assets of the licensee or the money services business agent, or is otherwise detrimental to the interest of its customers or the public;

"Bank" means the Central Bank of Malaysia;

"licensed bank" means—

Act 372. *(a)* a licensed bank with the same meaning as assigned to it in section 2 of the Banking and Financial Institutions Act 1989 [*Act 372*]; or

Act 276. *(b)* an Islamic bank with the same meaning as assigned to it in section 2 of the Islamic Banking Act 1983 [*Act 276*];

"fund" or "money" includes any unit of account or unit of value that facilitates the purchase of goods or services;

"data" means representations of information or concepts that are being prepared or have been prepared in a form suitable for use in a computer;

"money services business agent" means a person—

(a) appointed by a licensee in accordance with section 43 to carry on money services business on behalf of the licensee; and

(b) registered by the Bank as a money services business agent under section 44;

"Governor" means the Governor of the Bank and includes a Deputy Governor of the Bank;

"property" means—

(a) assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, however acquired; or

(b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including bank credits, traveller's cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;

"licence" means a licence granted under section 7;

"chief executive officer", in relation to a licensee, means a person, by whatever name called, who, either individually or jointly with one or more other persons, is responsible, subject to the authority of the board of directors of the licensee, for the conduct of the business and the management of the licensee;

"computer" means any device for recording, storing, processing, retrieving or producing any information or other matter, or for performing any one or more of those functions, by whatever name or description that device is called, and where two or more computers carry out any one or more of those functions in combination or in succession or otherwise conjointly, they shall be treated as a single computer, whether the computers are located within the same premises or otherwise, whether in or outside Malaysia;

"information" includes explanations as may be required by the Bank;

"foreign currency" means currency notes or coins which are legal tender in any country, territory or place outside Malaysia, and includes any right to receive foreign currency in such form as the Bank may prescribe, but excludes such foreign currency as the Bank may prescribe;

"specify" means specify in writing, and a power to specify includes the power to specify differently for different persons or different classes, categories or descriptions of persons, and to amend any specification;

"prescribe" means prescribe by regulations published in the *Gazette*, and a power to prescribe includes the power to prescribe differently for different persons or different classes, categories or descriptions of persons;

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

"computer output" means a statement or a 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;

"office" includes the principal place of business, a branch, an agency, a mobile place of business, a place of business set-up and maintained for a limited period only,

and an electronic terminal or platform and any other place from where, or at which, a money services business is or was carried on;

Act 265. "employee", in relation to a licensee, has the same meaning as assigned to it in the Employment Act 1955 [*Act 265*] and includes the chief executive officer and the manager;

"licensee" means a person licensed under this Act;

Act 125. "substantial shareholdings" and "substantial shareholders" have the same meaning as assigned to them in section 69D of the Companies Act 1965 [*Act 125*];

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

(a) a corporation, has the same meaning as assigned to it in section 4 of the Companies Act 1965;

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

(c) a partnership, means a partner;

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

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

"controller", in relation to a licensee, means a person who, either alone or with any associate—

(a) has an interest in more than fifty per centum of the shares of the licensee;

(b) has an interest in one-third or more of its voting shares;

(c) has the power to appoint or cause to be appointed a majority of the directors of the licensee;

(d) has the power to make or cause to be made, decisions in respect of the conduct of the business or the management of the licensee and to give effect to such decisions or cause them to be given effect to; or

(e) is the chief executive officer of the licensee or of a body corporate of which the subsidiary is a licensee,

and the word "control" shall be construed accordingly;

"manager", in relation to a licensee, means an officer of the licensee by whatever name called, responsible for an office of the licensee, or for a department or a division of such licensee;

Act 17. "authorized dealer", in relation to foreign currency, means a person for the time being authorized by an order of the Controller of Foreign Exchange under the Exchange Control Act 1953 [*Act 17*] to act for the purposes of that Act as an authorized dealer;

"wholesale currency business" means the business of—

(a) buying or selling foreign currency with an authorized dealer, a licensee or any person outside Malaysia, as the case may be;

(b) importing foreign currency notes from, or exporting foreign currency notes to, any person outside Malaysia; or

(c) such other business as the Bank may prescribe;

"remittance business" means the business of transferring funds or facilitating the transfer of funds, whether in any form or by any means or whether there is any movement of funds or not, on behalf of an originator person in or outside Malaysia, with a view to making the funds available to a beneficiary person in or outside Malaysia and the originator person and the beneficiary person may be the same person, but excludes such other businesses, activities, systems or arrangements as the Bank may prescribe;

"money-changing business" means any or all of the following businesses:

(a) the business of entering into an exchange transaction at a rate of exchange;

(b) the business of buying or selling travellers' cheques, on behalf of an issuer of travellers' cheques, at a rate of exchange;

(c) such other business as the Bank may prescribe;

"money services business" means any or all of the following businesses:

(a) money-changing business;

(b) remittance business;

(c) wholesale currency business;

"premises" include—

(a) a structure, whether or not movable or offshore, physical or otherwise, building, tent, vehicle, vessel, hovercraft or aircraft;

(b) a place, whether or not enclosed or built upon; and

(c) part of any premises, including premises of a kind referred to in paragraph *(a)* or *(b)*;

"programme" means data representing instructions or statements that, when executed in a computer, causes the computer to perform a function, which includes logic, control, arithmetic, deletion, storage, and retrieval, and communication or telecommunication to, from or within a computer;

"ringgit" means currency notes or coins which are legal tender in Malaysia and includes any right to receive ringgit in such form as the Bank may prescribe;

"company" has the same meaning as assigned to it in section 4 of the Companies Act 1965;

"appointed date" means the date of coming into operation of this Act;

"exchange transaction" means an exchange of one foreign currency with ringgit or with another foreign currency.

Functions, powers and duties of the Bank

Act 701.

3. (1) The Bank shall have all the functions and powers conferred, and the duties imposed on it by this Act, and the same shall be in addition to those conferred or imposed under the Central Bank of Malaysia Act 2009 [*Act 701*].

(2) For the purpose of this Act, the Governor shall perform the functions of the Bank on its behalf.

(3) The Bank may authorize an employee or an officer of the Bank or any other person to perform any or all of the functions, exercise any of the powers or discharge any of the duties of the Bank under this Act.

PART II

LICENSING

Prohibition from carrying on money services business

4. (1) No person shall carry on money services business without a licence issued under this Act.

(2) Subsection (1) shall not apply to a money services business agent.

(3) The Bank may prescribe different classes, categories or descriptions of licence in respect of money services business.

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

Application for licence

5. (1) An application for a licence to carry on money services business shall be made in writing to the Bank by an applicant—

(a) in such form and manner together with such documents as the Bank may specify; and

(b) by submitting such information as the Bank may prescribe.

(2) No person shall apply for a licence to carry on money services business unless it is a company.

(3) The Bank may, by written notice, require the applicant or any person who is or is to be a director, controller or chief executive officer of the applicant to provide additional information or documents.

(4) If any additional information or document required under subsection (3) is not provided by the applicant or its director, controller or chief executive officer, as the case may be, within the period specified in the written notice or any extended period granted by the Bank, the application shall be deemed to be withdrawn and shall not be further proceeded with, but without affecting the right of the applicant to make a fresh application.

Requirements for a licence

6. (1) An applicant for a licence to carry on money services business shall comply with the following requirements:

(a) every person who is, or is to be, a substantial shareholder, director, controller, chief executive officer, or manager of the applicant has fulfilled the minimum criteria of a “fit and proper” person as the Bank may prescribe;

(b) the applicant has a sound business plan;

(c) the applicant has appropriate, sound and adequate governance arrangements, internal control

mechanisms and procedures to manage the operations of the intended money services business activities;

Act 613. *(d)* the applicant has appropriate, sound and adequate internal control mechanisms and compliance programmes to comply with the requirements of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 [*Act 613*] and other statutory obligations to which the applicant is or will be subject;

(e) the applicant has the financial capability to satisfy the capital requirements as the Bank may prescribe;

(f) the information and documents furnished by the applicant to the Bank are true and accurate; and

(g) the applicant has met other requirements which are necessary to manage the operations of the money services business as the Bank may specify.

(2) The Bank shall have full discretion to determine whether an applicant has complied with the requirements under subsection (1).

(3) The Bank, in considering the application for a licence under section 5 shall take into account the following matters:

(a) any matter relating to any person who is or will be employed by, or associated with, the applicant for the purpose of the money services business of the applicant;

(b) any matter relating to any related or associate corporation or to any substantial shareholder, director, controller or chief executive officer of the applicant;

(c) any information relating to the applicant in the possession of the Bank whether provided by the applicant or not; and

(d) whether the granting of the licence would be beneficial to the national and economic interest of Malaysia.

Grant or refusal of licence

7. (1) The Bank may, after considering the application for a licence under section 5 and being satisfied that all the requirements under subsection 6(1) have been complied with and all matters under subsection 6(3) have been taken into account, grant a licence or refuse to grant the licence.

(2) The Bank may impose such conditions as it considers appropriate in granting a licence.

(3) The duration of a licence shall be for a period as the Bank may prescribe.

(4) A licensee who fails to comply with any condition imposed under subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

Fees

8. (1) A licensee shall pay to the Bank—

(a) an annual fee for each of its offices; and

(b) such other fees as the Bank may prescribe relating to its money services business,

of such amount and in such manner as the Bank may prescribe.

(2) There shall be no refund of any annual fee or other fees paid under subsection (1) by the Bank to any person in the event a licence is revoked, or not renewed by the Bank, or surrendered to the Bank, before the expiry of the licence.

Renewal of licence

9. (1) An application by a licensee for renewal of its licence shall be made in writing to the Bank—

(a) in such form and manner together with such documents as the Bank may specify; and

(b) by submitting such information as the Bank may prescribe.

(2) The Bank may, by written notice, require the licensee or a director, controller or chief executive officer of the licensee to provide additional information or documents.

(3) The Bank may, after considering the application for renewal of licence under subsection (1)—

(a) renew the licence, with or without conditions; or

(b) refuse to renew the licence.

(4) The Bank may refuse the application for renewal of a licence made under this section if—

(a) the application is received by the Bank after the expiry of the licence;

(b) the application was not made in accordance with subsection (1);

(c) the licensee has failed to submit the additional information or documents as required under subsection (2);

(d) the licensee has not complied with the requirements of this Act, or regulations, guidelines, circulars, standards or notices under this Act; or

(e) the business conduct of the licensee, in the opinion of the Bank, was unsatisfactory.

(5) Where a licensee submits an application for renewal of its licence as provided under subsection (1), the licence shall continue to be in force until a decision is made by the Bank on the application for the renewal of the licence.

(6) Where the Bank proposes to refuse to renew the licence, the Bank shall give the licensee a written notice setting out the grounds for the refusal as soon as practicable.

(7) The licensee shall be given an opportunity to make a written representation to the Bank within fourteen days from the date of the written notice under subsection (6).

(8) Where no written representation is received by the Bank within the period specified under subsection (7), the Bank shall refuse the application for renewal of the licence by written notice.

(9) Where written representation is received, the Bank shall, after considering the written representation, give the licensee written notice of its decision as soon as practicable.

(10) A refusal to renew the licence under subsection (8) or (9) shall not take effect until the expiry of the licence or if the licence is still valid pursuant to subsection (5), until the expiry of a period of fourteen days from the date of the written notice under subsection (8) or (9), as the case may be.

(11) A licensee who fails to comply with any condition imposed under paragraph (3)*(a)* commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

Conditions of licence

10. (1) Notwithstanding any other provisions of this Act, the Bank may, at any time—

(a) amend or revoke any condition imposed under this Act; or

(b) impose a limit on any condition imposed under this Act so as to expire on a specified date.

(2) Notwithstanding any other provisions of this Act, the Bank may, at any time, impose any new conditions on a licence.

(3) A licensee who fails to comply with any condition imposed under subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

Display of licence

11. (1) Every licensee shall display in a conspicuous position—

(a) its licence at its principal place of business; and

(b) a copy of its licence at each of its other offices.

(2) Subsection (1) shall not apply to an electronic terminal.

(3) A licensee who contravenes subsection (1) commits an offence.

Revocation of licence

12. (1) The Bank may revoke a licence if it is satisfied that—

Act 553. *Act 312.* *Act 627.* *Act 618.*

(a) the licensee, its chief executive officer, or any of its shareholders, controllers, directors, or managers, has been convicted of an offence under the Central Bank of Malaysia Act 2009, the Banking and Financial Institutions Act 1989, the Islamic Banking Act 1983, the Insurance Act 1996 [*Act 553*], the Takaful Act 1984 [*Act 312*], the Exchange Control Act 1953, the Payment Systems Act 2003 [*Act 627*], the Development Financial Institutions Act 2002 [*Act 618*] or any other written law administered by the Bank or the Companies Act 1965 or any offence involving fraud, dishonesty, corruption or other offences of the same kind;

(b) the controller of the licensee has failed to comply with the minimum criteria of a "fit and proper" person;

(c) the licensee goes into liquidation or is wound up or is otherwise dissolved;

(d) the licensee is contravening or has contravened section 19, 21, 22, 29, 30, 32, 34, 35, 36, 37, 39, 40 or 42 or subsection 33(2);

(e) the licensee has contravened any of the conditions of its licence;

(f) the licensee has ceased to carry on money services business for which it is licensed for any continuous period of six months, or for any period aggregating nine months during a continuous period of twelve months;

(g) the licensee has engaged in unsafe and unsound practices;

(h) the licensee is contravening or has contravened the provisions of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001; or

(i) the licensee has failed to ensure that its money services business agents comply with the prudential requirements as the Bank may prescribe.

(2) Where the Bank proposes to revoke a licence, the Bank shall give the licensee written notice setting out the proposed revocation and the grounds for the revocation.

(3) The licensee shall be given an opportunity to make written representation to the Bank within fourteen days from the date of the written notice under subsection (2).

(4) Where no written representation is received by the Bank within the period specified under subsection (3), the Bank shall revoke the licence by written notice.

(5) Where written representation is received, the Bank shall, after considering the representation, give the licensee written notice of its decision.

(6) A revocation under subsection (4), or a decision to revoke a licence under subsection (5), shall come into effect immediately or at any date as the Bank may specify in its written notice.

(7) Where the Bank decides under subsection (5) not to revoke the licence, the Bank may impose such conditions on the licensee as it may specify in the written notice given under that subsection.

(8) The satisfaction of the Bank that paragraph (1)*(d)*, *(e)*, *(h)* or *(i)* has been contravened by a licensee may be arrived at regardless as to whether or not there is any prosecution of any licensee for such contravention.

Appeal against revocation of licence

13. (1) A person whose licence has been revoked may, within fourteen days of the date of the written notice in subsection 12(4) or (5) or within such extended period as

the Bank may allow, appeal in writing against the revocation to the Minister whose decision shall be final.

(2) Every appeal under subsection (1) shall be submitted to the Bank and the Bank shall forward the written appeal to the Minister together with the Bank's recommendation as to whether the appeal ought to be allowed or dismissed.

Licence to be forwarded to the Bank

14. (1) A licensee shall forward the licence to the Bank within fourteen days from—

(a) the date of the expiry of the licence;

(b) the date the refusal to renew the licence takes effect under subsection 9(10); or

(c) the date the revocation of the licence takes effect under subsection 12(6),

as the case may be.

(2) A licensee who contravenes subsection (1) commits an offence.

Effect of expiry, non-renewal, revocation or surrender of licence

15. (1) A licensee shall, immediately or within such period as the Bank may specify, cease to carry on the money services business in respect of which the licence was granted if—

(a) the licence has expired;

(b) the refusal to renew the licence has taken effect under subsection 9(10);

(c) revocation of the licence has taken effect under subsection 12(6); or

(d) surrender of the licence has taken effect under section 16.

(2) A licensee who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

(3) A licensee whose licence has been revoked or not renewed under this Act shall not have any claim whatsoever against the Bank or be entitled to compensation from the Bank for any damage or loss suffered by or caused to the licensee by such revocation or non-renewal of licence.

Surrender of licence

16. (1) A licensee proposing to surrender its licence shall give the Bank written notice informing the Bank of the proposed surrender of the licence, reasons for the surrender and the date on which the surrender is to take effect.

(2) The licensee shall forward the licence to the Bank within fourteen days from the date on which the surrender is to take effect.

Preservation of rights and claims

17. Any revocation, expiry, non-renewal or surrender of a licence under this Act shall not operate so as to—

(a) affect any agreement, transaction or arrangement relating to the money services business, as the case may be, entered into by—

(i) a person prior to the revocation, expiry, non-renewal or surrender of the licence; or

(ii) a licensee prior to such revocation, expiry, non-renewal or surrender of the licence,

as the case may be; or

(b) affect any right, claim, obligation or liability arising under any such agreement, transaction or arrangement.

Approval for change in name of licensee

18. (1) No licensee shall effect any change in its name without the prior written approval of the Bank.

(2) A licensee who contravenes subsection (1) commits an offence.

Restriction of business

19. (1) Except with the prior written approval of the Bank, a licensee shall not carry on any business activity other than a money services business activity for which it is licensed under this Act.

(2) Without prejudice to the generality of subsection (1), a licensee shall only carry on a money services business activity for which it is licensed under this Act.

(3) A licensee who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

Publication of list of licensees

20. (1) The Bank shall publish in the *Gazette* a list of licensees not later than on 30 April in each year.

(2) Where there is any amendment to the list of licensees under subsection (1) at any time during the interval between one publication and the next following publication under subsection (1), the Bank shall cause to be published in the *Gazette* a notice thereof.

(3) Without prejudice to subsection (1), the Bank may publish the list of licensees or any amendments to the list in such form and manner as the Bank thinks fit.

PART III

MONEY SERVICES BUSINESS

Office of licensee

21. (1) No licensee shall open or relocate an office in Malaysia without the prior written approval of the Bank.

(2) A licensee shall apply in writing for the written approval of the Bank under subsection (1)—

(a) in such form and manner together with such documents as the Bank may specify; and

(b) by submitting such information as the Bank may prescribe.

(3) The Bank, in granting its approval under subsection (1), may impose such conditions as it thinks fit.

(4) A licensee who contravenes subsection (1) or fails to comply with any condition imposed under subsection (3) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

Maintenance of capital

22. (1) A licensee shall maintain, at all times, minimum capital funds as the Minister, on the recommendation of the Bank, may prescribe.

(2) Notwithstanding subsection (1), the Bank may direct a licensee in writing to increase the minimum capital funds of such licensee within such time as the Bank may require if in the opinion of the Bank the increase is appropriate based on an evaluation of the financial condition, risk exposure, internal control mechanisms or risk-management process of the licensee and the licensee shall maintain such capital funds at all times.

(3) A licensee who contravenes subsection (1) or (2) commits an offence.

Use of words "money services business", *etc*.

23. (1) No person shall, without the prior written approval of the Bank, use the words "money services business", "money-changer", "currency exchange", "money exchange", "forex dealer", "foreign exchange", "*bureau de change*", "remittance services", "money transfer", "money remit", "funds transfer", "foreign currency wholesale dealer" or any of their derivatives in any language, or any other words in any language capable of being construed as indicating the carrying on of money services business, in relation to its business, or in the name, description or title under which it carries on business or make any representation to such effect in any bill head, letter, notice or advertisement or in any other manner.

(2) Subsection (1) shall not apply to a licensee, a money services business agent, an association of licensees for money services business, an association of employees of licensees for money services business and an authorized dealer.

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

Name to be affixed outside office

24. (1) A licensee shall at all times affix or paint, conspicuously and legibly, on the outside of each of its offices—

(a) its name; and

(b) in the case of a licensee who carries on money services business, in the national language the words "Perniagaan Perkhidmatan Wang Berlesen"; or

(c) in the case of a licensee who carries on money-changing business, remittance business or wholesale currency business as a sole purpose business under section 19, in the national language the words "Pengurup Wang", "Pengirim Wang" or "Peniaga Mata Wang Borong", as the case may be.

(2) A licensee shall display its name and the nature of its business in accordance with subsection (1) for any dealing carried out through any electronic means or mobile services.

(3) A licensee who contravenes subsection (1) or (2) commits an offence.

Advertisement

25. (1) No person, other than a licensee or a money services business agent, shall issue or publish, or otherwise facilitate any person to issue or publish, an advertisement containing—

(a) an invitation or offer to enter into any transaction relating to money services business; or

(b) information which may lead, directly or indirectly, to a transaction relating to money services business.

Provided that the prohibition in this subsection shall not apply to the publication by any person of any such advertisement for or on behalf of a licensee or a money services business agent.

(2) No person shall issue, publish, or otherwise facilitate any person to issue or publish an advertisement relating to money services business which he knows to be misleading, false or deceptive in a material particular.

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

Transparency in dealings

26. (1) A licensee shall provide adequate disclosure to its customers on its products or services and any other information relating to such products or services as the Bank may prescribe, prior to the execution of any money services business transaction with its customers.

(2) A licensee who contravenes subsection (1) commits an offence.

Licensee to issue receipt

27. (1) A licensee shall, upon completing any transaction relating to its money services business, issue a receipt to its customers in such form and manner as the Bank may prescribe.

(2) A licensee who contravenes subsection (1) commits an offence.

Maintenance of records by licensee

28. (1) A licensee shall maintain all accounts, duplicate copies of receipts and other records, including any information and documents for each transaction of its money services business, in such manner as to enable the reconstruction of any of the transactions and to ensure the convenient audit of the accounts, receipts and records for a period of not less than seven years from the date of the

execution, completion or termination of the transaction, as the case may be.

(2) A licensee who contravenes subsection (1) commits an offence.

Sale, leasing, *etc*., of money services business

29. (1) No licensee shall, without the prior written approval of the Bank—

(a) sell, dispose, lease, assign or transfer howsoever, the whole or any part of its money services business to; or

(b) amalgamate or merge its money services business with,

any other person.

(2) A licensee who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

Appointment of director, chief executive officer or manager

30. (1) No licensee shall appoint a person as a director or chief executive officer unless such person fulfils the minimum criteria of a "fit and proper" person as the Bank may prescribe and the licensee has obtained the prior written approval of the Bank for the proposed appointment.

(2) A licensee shall apply in writing for the written approval of the Bank under subsection (1)—

(a) in such form and manner together with such documents as the Bank may specify; and

(b) by submitting such information as the Bank may prescribe.

(3) No licensee shall appoint a person as a manager unless such person fulfils the minimum criteria of a "fit and proper" person as the Bank may prescribe.

(4) No person shall accept the appointment as a director, chief executive officer or manager of a licensee if such person fails to fulfil the minimum criteria of a "fit and proper" person as the Bank may prescribe.

(5) The Bank shall have full discretion to determine whether a person has fulfilled the minimum criteria of a "fit and proper" person under subsections (1) and (3).

(6) Where a director, chief executive officer or manager fails to fulfil the minimum criteria of a "fit and proper"

person as the Bank may prescribe during the tenure of his appointment, he shall immediately cease to hold office in such capacity and act as such, and the licensee shall immediately terminate his appointment in such capacity.

(7) A person who has ceased to hold office under subsection (6) shall not have any claim whatsoever against the Bank or be entitled to compensation from the Bank for any damage or loss suffered by or caused to him by the loss or termination of his office.

(8) During the pendency of any criminal proceedings in any court for any offence under any written law involving fraud, dishonesty, corruption or other offences of the same kind against any person who is a director, chief executive officer or manager of a licensee, such person shall not act in such capacity, hold any other office, or act in any other capacity, in that licensee, or in any manner, whether directly or indirectly, be concerned with or take part or engage in, any activity, affairs or business whatsoever of or in relation to that licensee, except as may be authorized by the Bank, subject to such conditions as the Bank may impose and such conditions shall be complied with by such person.

(9) For the purpose of subsection (8), criminal proceedings referred to shall be deemed to be pending from the date 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.

(10) A licensee shall notify the Bank in writing of the fact that its director, chief executive officer or manager—

(a) has ceased to hold office in such capacity; or

(b) is involved in the criminal proceedings referred to in subsection (8),

and the reasons therefor within fourteen days from the date of the cessation of office or the charge, as the case may be.

(11) Any person who contravenes subsection (1), (3), (4), (6), (8) or (10) commits an offence.

Appointment of auditor

31. (1) A licensee, at its own expense, shall appoint annually an auditor who fulfils the requirements as the Bank may prescribe, to carry out an audit of its money services business.

(2) A licensee shall notify the Bank in writing of—

(a) the appointment of an auditor under subsection (1); and

(b) the termination of the appointment of an auditor appointed under subsection (1) and the reasons for such termination,

and such notification shall be made to the Bank within fourteen days of such appointment or termination, as the case may be.

(3) Where an auditor appointed by a licensee under subsection (1) fails to fulfil the requirements as the Bank may prescribe under that subsection during the tenure of his appointment, he shall immediately cease to be the auditor of the licensee and inform such fact to the licensee, and the licensee concerned shall immediately terminate the appointment of the auditor.

(4) The Bank may require an auditor appointed under subsection (1)—

(a) to submit to the Bank, at any time, such information as the Bank may require in relation to the audit carried out by the auditor;

(b) to enlarge or extend the scope of his audit of the money services business and affairs of the licensee;

(c) to carry out an examination or establish any procedure in any particular case; or

(d) to submit a report to the Bank on any matters in paragraphs *(b)* and *(c)*,

within such time as the Bank may specify.

(5) For the purposes of paragraph (4)*(a)*, the information required in relation to the audit may include the following:

(a) financial statements of the money services business;

(b) the volume of transactions relating to the money services business in ringgit equivalent;

(c) a report as to whether proper records of the transactions in relation to the money services business have been maintained; and

(d) a report as to whether the licensee has complied with the provisions of this Act and any other written laws as the Bank may prescribe.

(6) Where an auditor appointed under subsection (1) in the course of the performance of his duties under this section suspects or has knowledge that the licensee has committed any offence under this Act or any other written

laws, it shall be lawful for and incumbent upon the auditor to give information of such suspicion or commission of an offence to the Bank.

(7) The licensee shall pay the remuneration of the auditor in relation to the services of the auditor under this section.

(8) The Bank, if it thinks that the auditor appointed by the licensee has not carried out his duties to the satisfaction of the Bank, may require the licensee to appoint another auditor.

(9) The licensee shall submit a copy of the audit report duly signed by the auditor to the Bank not later than three months or such other period as the Bank may specify, after the end of the financial year of the licensee.

(10) For the purpose of this section, "financial statement" includes the latest audited annual balance sheet, profit and loss account, and statement setting out the sources of the funds, of a licensee.

(11) A licensee who contravenes subsection (1), (2), (3), (7), (8) or (9) commits an offence.

(12) An auditor who contravenes subsection (3), (4) or (6) commits an offence.

Shareholders of licensee

32. (1) A licensee shall not allow any of its shares to be acquired by any person unless such person fulfils the minimum criteria of a "fit and proper" person as the Bank may prescribe.

(2) A licensee shall obtain the prior written approval of the Bank for any new substantial shareholder.

(3) The Bank shall have full discretion to determine whether a person has fulfilled the minimum criteria of a "fit and proper" person under subsection (1).

(4) Where any shareholder fails to fulfil the minimum criteria of a "fit and proper" person as the Bank may prescribe during the course of the money services business, the licensee shall inform the Bank in writing of such fact as soon as possible and the shareholder shall dispose of his shareholding in the licensee as soon as possible.

(5) For the purposes of this section—

(a) "shareholder" includes any person acting in concert with the shareholder; and

(b) "person acting in concert" means a person who has entered into an agreement or arrangement to—

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

(ii) act jointly for the purpose of exercising control over a corporation by means of interests in shares of that corporation already held by them jointly or severally,

and without prejudice to the generality of this paragraph, the following persons shall be presumed to be a person acting in concert unless the contrary is established:

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

(B) 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, for any related trust;

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

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

(E) a financial adviser and its client which is a corporation, where the financial adviser manages on a discretionary basis the funds of its client and has ten per centum or more interest in the shares of the client.

(6) A licensee who contravenes subsection (1), (2) or (4) commits an offence.

Effecting change in shareholding structure

33. (1) Subject to subsection (2), a licensee shall notify the Bank in writing of any change in its shareholders and shareholding structure not later than fourteen days after the changes become effective.

(2) A licensee shall not effect a change in its shareholders and shareholding structure where the change would result in the change of control of its money services business without the prior written approval of the Bank.

(3) The Bank may, at any time after receiving an application under subsection (2), require the licensee to provide additional information or documents as the Bank may require.

(4) A licensee who contravenes subsection (1) or (2) commits an offence.

Submission of information or documents

34. (1) Every licensee shall submit to the Bank, or to such person as the Bank may authorize in writing, such returns, documents or information, and within such time, as the Bank may require.

(2) Notwithstanding subsection (1), the Bank may require any person to submit any information as the Bank may specify.

(3) A licensee who contravenes subsection (1) or any person who fails to comply with any requirement specified under subsection (2) commits an offence.

Submission of false information

35. Any person who—

(a) evades the provisions of this Act by altering, forging, destroying, mutilating, defacing, concealing, removing or by not submitting, any documents; or

(b) furnishes any information required under any of the provisions of this Act which is false, inaccurate, misleading or contains material errors or omissions,

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

Operational and governance arrangements

36. (1) A licensee shall institute and maintain—

(a) internal control mechanisms, which include risk management arrangements, accounting procedures and security measures, to ensure the safety and integrity of its money services business;

(b) governance arrangements which are effective, accountable and transparent to ensure the continued integrity of its money services business operations, and

(c) adequate procedures to ensure compliance with the Anti-Money Laundering and Anti-Terrorism Act 2001 and other written laws,

as the Bank may prescribe.

(2) A licensee who contravenes subsection (1) commits an offence.

PART IV

REMITTANCE BUSINESS

Customers' funds to be kept separately

37. (1) A licensee who carries on remittance business shall maintain a designated account at a licensed bank for the purpose of remittance business with its customers.

(2) A licensee who is carrying on remittance business shall deposit all moneys received from its customers for the purpose of remittance business into the account referred to in subsection (1) and such deposits shall be made no later than the next business day following the business day on which the moneys were received by the licensee.

(3) A licensee shall not withdraw or utilise moneys from an account maintained under subsection (1) except—

(a) money that has been paid into the account by the licensee for the purposes of opening or maintaining the account;

(b) money properly required for making remittance to or on behalf of a customer;

(c) money properly required for payment of the fees or charges of a licensee for rendering remittance services to a customer and the customer has been notified that any moneys held for him will be applied towards or in satisfaction of such fees and charges;

(d) to provide refunds to customers of the remittance business of the licensee; or

(e) any interest accruing, if applicable.

(4) No money shall be paid into a designated account of a licensee maintained under subsection (1) except—

(a) money which a licensee has paid into such an account for the purpose of opening or maintaining the account; or

(b) money required by subsection (2) to be paid into such an account.

(5) It shall be the duty of a licensee to withdraw any money wrongly deposited into its designated account

maintained under subsection (1) in contravention of subsection (4) immediately upon discovery of the mistake.

(6) The moneys in an account maintained under subsection (1) shall not be liable to be attached, sequestered or levied upon for or in respect of any debt of a licensee or any claim whatsoever against a licensee.

(7) Where a licensee is declared insolvent or is wound up by an order of a court, the moneys in an account maintained under subsection (1) shall not be deemed to form part of the property of the licensee.

(8) A licensee who contravenes subsection (1), (2), (3), (4), (5) or (6) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

Certificate of closure

38. (1) A person who has ceased to carry on remittance business arising from the expiry, non-renewal, revocation or surrender of its licence under this Act shall submit a certificate of closure, issued by an auditor, to the Bank within sixty days after the cessation of business.

(2) The auditor referred to in subsection (1) may be an auditor appointed under subsection 31(1) or any other auditor appointed by a licensee who fulfils the requirements as the Bank may prescribe under that subsection.

(3) The certificate of closure issued by the auditor under subsection (1) shall confirm that a person who has ceased to carry on remittance business under subsection (1) has successfully remitted all funds received from customers prior to the cessation of business of a licensee to the intended beneficiaries and that contingency arrangements or measures have been taken to ensure that where the funds have not been successfully delivered, the funds have been refunded to the customers.

(4) Any person who contravenes subsection (1) commits an offence.

Operational requirements

39. (1) A licensee who carries on remittance business shall comply with—

(a) the maximum remittance transaction limit;

(b) the time frame for outward remittance instructions for disbursement of funds to be conveyed to its correspondent agent;

(c) the time frame for inward remittance funds to be made available for collection or delivered to the beneficiary; and

(d) any other requirements,

as the Bank may prescribe.

(2) A licensee who contravenes subsection (1) commits an offence.

Use of remittance system by a licensee who carries on remittance business

40. (1) No licensee who carries on remittance business shall utilise a remittance system, whether its own system or a system of a third party, without the prior written approval of the Bank.

(2) The remittance system under subsection (1) shall meet the minimum requirements as the Bank may prescribe.

(3) The Bank, in granting its approval under subsection (1), may impose such conditions as it thinks fit and such conditions shall be complied with by the licensee.

(4) A licensee who contravenes subsection (1) or (3) commits an offence.

Revocation of approval granted under subsection 40 (1)

41. (1) The Bank may revoke an approval granted under subsection 40(1) to a licensee who carries on remittance business.

(2) Where the Bank proposes to revoke the approval granted under subsection 40(1), the Bank shall give the licensee a written notice setting out the proposed revocation and the grounds for the revocation.

(3) The licensee shall be given an opportunity to make written representation to the Bank within fourteen days from the date of the written notice.

(4) Where no written representation is received by the Bank within the period specified under subsection (3), the Bank shall revoke the approval by written notice.

(5) Where written representation is received, the Bank, after considering the representation, shall give the licensee written notice of its decision.

(6) A revocation under subsection (4), or a decision to revoke an approval under subsection (5), shall not take effect until the expiration of fourteen days from the date of

the written notice under subsection (4) or (5) or such other period as the Bank may specify, as the case may be.

(7) Where the Bank decides under subsection (5) not to revoke the approval, it may impose such conditions on the licensee as it may specify in the written notice given under that subsection.

(8) A licensee who fails to comply with any condition imposed under subsection (7) commits an offence.

PART V

MONEY SERVICES BUSINESS AGENTS

Appointment of money services business agents

42. (1) No licensee shall appoint a money services business agent to carry on money services business on its behalf unless the money services business agent fulfils the minimum criteria of a "fit and proper" person as the Bank may prescribe and the licensee has obtained the prior written approval of the Bank for the proposed appointment.

(2) For the purposes of subsection (1), the Bank may prescribe the classes, categories or descriptions of licensees who are eligible to apply to appoint a money services business agent.

(3) A licensee who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

Application and grant of approval

43. (1) A licensee shall apply in writing for the written approval of the Bank under section 42 to appoint a money services business agent—

(a) in such form and manner and together with such documents as the Bank may specify; and

(b) by submitting such information as the Bank may prescribe.

(2) The Bank may, by written notice, require the licensee to provide additional information or documents.

(3) Without prejudice to subsection (2), the Bank may take into consideration any information in its possession whether provided by the licensee or not.

(4) The Bank may grant an approval to a licensee to appoint money services business agent, with or without conditions, or refuse to grant an approval.

(5) A licensee who fails to comply with any condition imposed under subsection (4) commits an offence.

Register of money services business agents

44. (1) The Bank shall maintain a register of money services business agents approved for appointment under subsection 43(4) in such form and manner as the Bank deems fit.

(2) Any person may, on payment of a fee as the Bank may prescribe, inspect the register of money services business agents maintained under subsection (1) during the office hours of the Bank.

(3) A copy of or an extract from the register of money services business agents maintained under subsection (1) certified to be a true copy or extract under the hand and seal of the Bank shall, in any proceedings, be admissible in evidence as of equal validity as the original document.

Prohibition from carrying on money services business on behalf of a licensee

45. (1) No person shall carry on money services business on behalf of a licensee unless the person is—

(a) a company;

(b) appointed by a licensee under section 43; and

(c) duly registered by the Bank as a money services business agent under section 44.

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

Money services business agents to comply with provisions of this Act, *etc*.

46. (1) A money services business agent shall comply with the provisions of this Act and any other requirements as the Bank may prescribe.

(2) A money services business agent who contravenes subsection (1) commits an offence.

(3) Where an offence under this Act has been committed by a money services business agent, the licensee of that

agent shall also be guilty of that offence unless the licensee proves to the satisfaction of the court that having regard to all the circumstances the licensee took all reasonable means and precautions to prevent such act or omission.

Revocation of approval for appointment of money services business agent

47. (1) The Bank may revoke the written approval granted under subsection 43(4) for the appointment of a money services business agent if the Bank is satisfied that—

(a) the money services business agent has failed to fulfil the minimum criteria of a "fit and proper" person as the Bank may prescribe at any time during the period of the appointment of such agent;

(b) the money services business agent is contravening or has contravened such provisions of this Act or any other requirements as the Bank may prescribe under subsection 46(1);

(c) the appointment of the money services business agent has been terminated by a licensee; or

(d) the money services business agent has engaged in unsafe and unsound practices in carrying out its money services business.

(2) Where the Bank proposes to revoke the written approval under subsection (1), the Bank shall give the licensee written notice setting out the proposed revocation and the grounds for the revocation.

(3) The licensee shall be given an opportunity to make written representation to the Bank within fourteen days from the date of the written notice under subsection (2).

(4) Where no written representation is received by the Bank within the period specified under (3), the Bank shall revoke the written approval by written notice.

(5) Where written representation is received, the Bank shall, after considering the representation, give the licensee written notice of its decision.

(6) A revocation under subsection (4), or a decision to revoke the written approval under subsection (5), shall not take effect until the expiration of fourteen days from the date of the written notice under subsection (4) or (5) or such other period as the Bank may specify, as the case may be.

(7) Where the Bank decides under subsection (5) not to revoke the written approval, the Bank may impose such

conditions on the licensee and the money services business agent as the Bank may specify in the written notice given under that subsection.

(8) The satisfaction of the Bank under paragraph (1)*(b)* that any of the provisions of this Act or any other requirements have been contravened by a money services business agent may be arrived at regardless as to whether or not there is any prosecution of any person for such contravention.

(9) The Bank shall immediately remove a money services business agent from the register of money services business agents maintained by the Bank under section 44 from the date the revocation takes effect under subsection (6).

(10) A licensee shall immediately terminate the appointment of its money services business agent whose approval has been revoked by the Bank and shall instruct such agent to cease to carry on money services business on behalf of the licensee from the date the revocation takes effect under subsection (6).

(11) Any revocation of the written approval granted to a money services business agent under this section shall not operate so as to—

(a) affect any agreement, transaction or arrangement relating to the money services business, as the case may be, entered into by such money services business agent prior to the date the revocation of the approval takes effect under subsection (6); or

(b) affect any right, claim, obligation or liability arising under any such agreement, transaction or arrangement.

(12) The duties and liabilities of a money services business agent in respect of its customers shall be assumed by the licensee who appointed such agent upon the coming into effect of the revocation of approval of such agent under subsection (6).

(13) A licensee who—

(a) fails to comply with any condition imposed under subsection (7) commits an offence; or

(b) contravenes subsection (10) commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

(14) A money services business agent whose approval has been revoked by the Bank and the revocation has taken

effect under subsection (6) shall not have any claim whatsoever against the Bank or be entitled to any compensation from the Bank for any damage or loss suffered by or caused to him by such revocation.

PART VI

EXAMINATION

Examination of licensee, *etc*.

48. An examiner authorized in writing by the Bank shall examine, without any prior written notice, the properties, documents, information, remittance system or transactions of—

(a) a licensee or its money services business agent or any of its offices; or

(b) a money services business agent or any of its offices.

Examination of specific persons

49. (1) In carrying out an examination of any licensee or money services business agent under section 48, the examiner may examine—

(a) a person who is, or was at any time, a director, chief executive officer or employee of that licensee or money services business agent, as the case may be;

(b) a person who is, or was at any time, a controller or shareholder of that licensee or money services business agent, as the case may be; or

(c) a person who is, or was at any time, having dealings, transactions or arrangements with that licensee or money services business agent, or acquainted with the facts and circumstances of the case, including the auditor of that licensee,

and that person shall give such document or information as the examiner may require within such time and manner as he may specify.

(2) An auditor who is subject to an examination under this section shall not be liable for breach of a contract relating to, or duty of, confidentiality for giving a document or information to the examiner.

(3) Any person who contravenes subsection (1) commits an offence.

Right of access and production of property, *etc*.

50. (1) For the purposes of an examination under section 48 or 49, a licensee or money services business agent, and its directors, chief executive officers and employees, as the case may be, shall, when under examination—

(a) allow access to all property, apparatus, equipment, machinery, computer, computer output, systems including remittance system, documents or information;

(b) produce all such property, apparatus, equipment, machinery, computer, computer output, systems, documents or information; or

(c) provide the necessary password, encryption code, decryption code, software or hardware or any other means required to access and enable comprehension of any computer output,

to an examiner for purposes of the examination within such time and manner as the examiner may require.

(2) Notwithstanding the generality of subsection (1), the examiner under subsection (1) may take possession of any property, apparatus, equipment, machinery, computer, computer output, systems, documents or information to which he is given access under subsection (1) where in his opinion—

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

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

(c) it may be needed as evidence in any legal proceedings, whether civil or criminal, which may be instituted under this Act, the Central Bank of Malaysia Act 2009 or any other written law.

(3) Any person who contravenes subsection (1) commits an offence.

Appearance before examiner

51. (1) A person to be examined under section 48 or 49 shall appear before the examiner at such time as he may specify.

(2) Any person who contravenes subsection (1) commits an offence.

Confidentiality of examination reports

52. (1) Where a report or any part thereof has been produced in any form in respect of a licensee or money services business agent by the Bank upon an examination

under section 48 or 49, the report shall not be disclosed by the licensee or money services business agent or any of its directors, chief executive officers, employees or auditors to any other person except in the circumstances provided under subsection (2).

(2) Disclosure of the report referred to in subsection (1) may be made—

(a) by the licensee or money services business agent, to any of its directors, chief executive officers, employees or auditors solely in connection with the performance of the duties of such person, as the case may be;

(b) by the licensee or money services business agent, in compliance with an order of court; or

(c) by the licensee or money services business agent, to any other person with the prior written approval of the Bank.

(3) In granting a written approval for any disclosure under paragraph (2)*(c)*, the Bank may impose such conditions as it considers appropriate.

(4) The obligation on a director, chief executive officer, employee or auditor referred to in subsection (1) shall continue after the termination or cessation of his appointment or employment with the licensee or money services business agent.

(5) Any person who has any document or information which to his knowledge has been disclosed in contravention of subsection (1) shall not disclose the same to any other person.

(6) Any person who contravenes subsection (1), (4) or (5) or fails to comply with any condition imposed under subsection (3) commits an offence.

PART VII

INVESTIGATION AND ENFORCEMENT

Appointment of investigating officer

53. The Bank may appoint any of its officers or employees or any other person authorized under subsection 3(3) to be an investigating officer.

Powers of investigating officer

54. (1) An investigating officer appointed under section 53 shall have all the powers, functions and duties conferred on an investigating officer under this Part, and where such investigating officer is not an officer or employee of the Bank, he shall, in relation to such powers, functions and duties—

(a) be subject to; and

(b) enjoy such rights, privileges, 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 or employee of the Bank as if he was an officer or employee of the Bank.

(2) An investigating officer shall be subject to the direction and control of the Governor, or of such other officer of the Bank as may be authorized by the Governor to act on his behalf, and of any investigating officer superior to him in rank, and shall exercise his powers, perform his functions, and discharge his duties referred to in subsection (1) in compliance with such directions, instructions, conditions, restrictions or limitations as the Governor, or an officer of the Bank authorized to act on his behalf, or an investigating officer superior in rank, may specify orally or in writing, either generally or in any particular case or circumstance.

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

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

Search and seizure with warrant

55. (1) If 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 for 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 issued under subsection (1) may authorize the investigating officer to—

(a) enter any premises and there search for, seize and detain any property, apparatus, equipment, machinery, computer, computer output, system, document or information;

(b) inspect, make copies of, or take extracts from, any property, apparatus, equipment, machinery, computer, computer output, system, document or information so seized and detained;

(c) take possession of, and remove from the premises, any property, apparatus, equipment, machinery, computer, computer output, system, document or information so seized and detained;

(d) search any person who is in, or on, such premises, and for the purpose of the search, detain the person 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, document or information found on the person;

(e) break open, examine, and search, any article, container or receptacle; or

(f) stop, detain or search any conveyance.

(3) An investigating officer searching any person under paragraph (2)*(d)* may detain the person for such period as may be necessary to have the search carried out which shall not in any case exceed twenty-four hours without the authorization of a Magistrate, and may if necessary remove him in custody to another place as the Bank may determine to facilitate such search.

(4) No person shall be searched except by another person of the same gender, and such search shall be conducted with strict regard to decency.

(5) An investigating officer may, in the exercise of his powers under this section, if it is necessary so to do—

(a) break open any outer or inner door of the premises or any fence, enclosure, gate 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; and

(d) detain any person found in the premises until the search has been completed.

Search and seizure without warrant

56. 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 55 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 55 in as full and ample a manner as if he was authorized to do so by a warrant issued under that section.

Power of an investigating officer in the course of investigation

57. An investigating officer may seize, take possession of, and detain any property, apparatus, equipment, machinery, computer, computer output, system, document or information produced before him in the course of his investigation.

Access to data, *etc*.

58. An investigating officer shall for the purposes of this Part be provided with the necessary password, encryption code, decryption code, software or hardware or any other means required—

(a) for securing access to any programme or data held in a computer; or

(b) to enable comprehension of any computer output in a form in which the information contained in a computer output can be taken away and in which it is visible and legible.

Warrant admissible notwithstanding defects

59. A search warrant issued under this Act shall be valid and enforceable notwithstanding any defect, mistake or omission in the warrant or in the application for the warrant, and any property, apparatus, equipment, machinery, computer, computer output, system, document or information seized under the warrant shall be admissible in evidence in any proceedings under this Act.

List of property, *etc*., seized

60. (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, 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, document or information is found or obtained.

(2) The occupant of the premises entered under subsection 55(1) or section 56 in the course of investigation, or any person on his behalf, or where there is no such occupant or such person on his behalf, a police officer, shall in every instance be permitted to attend during the search, sign the search list or affix his thumbprint thereon, and be given a copy of the search list prepared and signed under this section.

(3) Where such occupant, person acting on behalf of the occupant or police officer under subsection (2) refuses to sign the search list or affix his thumbprint thereon, the investigating officer shall endorse on the search list, under his name, the fact of such refusal and the reasons therefor, if any, stated by such occupant, person acting on behalf of the occupant or police officer.

(4) For the purposes of subsections (2) and (3), "police officer" means a police officer not below the rank of Inspector.

Release of the property, *etc*., seized

61. (1) An investigating officer, unless otherwise ordered by any court, shall—

(a) on the close of investigations or any proceedings arising therefrom; or

(b) with the prior written consent of any officer of the Bank authorized by the Governor to act on his behalf for this purpose, or any investigating officer superior to him in rank, at any time before the close of investigations,

release any property, apparatus, equipment, machinery, computer, computer output, system, document or information seized, detained or removed by him, or by any other investigating officer under this Part, to the person from whom the property, apparatus, equipment, machinery, computer, computer output, system, document or information was seized, detained or removed, if he is satisfied that the property, apparatus, equipment,

machinery, computer, computer output, system, document or information 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) The investigating officer who effects the release under subsection (1) shall record in writing the circumstances of, and the reasons for, the release.

(3) Where an investigating officer is unable to locate the person under subsection (1) from whom the property, apparatus, equipment, machinery, computer, computer output, system, document or information was seized, detained or removed, he shall make an application in writing to the court as to the disposal of such property, apparatus, equipment, machinery, computer, computer output, system, document or information.

(4) The court upon receiving the application under subsection (3) and being satisfied that the person under subsection (1) from whom the property, apparatus, equipment, machinery, computer, computer output, system, document or information was seized, detained or removed cannot be located shall order the same to be forfeited or disposed of by the Bank.

Obstruction to exercise of powers by an investigating officer

62. Any person who—

(a) refuses an investigating officer exercising his powers under this Part, access to any premises or part thereof, or fails to submit to the search of his person;

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

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

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

(e) fails to produce to, or conceals or attempts to conceal from, an investigating officer, or destroys, alters or removes, any property, apparatus, equipment, machinery, computer, computer output, system,

document or information which the investigating officer may require;

(f) retrieves or endeavours to retrieve anything which has been seized, detained or removed;

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

(h) before or after any search or seizure, conceals, hides, alters, disposes of, breaks or otherwise destroys any property, apparatus, equipment, machinery, computer, computer output, system, document or information to prevent its seizure or the securing of the property, apparatus, equipment, machinery, computer, computer output, system, document or information,

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

Requirement to provide translation

63. (1) Where an investigation officer finds, seizes, detains or takes possession of, a document which, wholly or partly, is in a language other than the national language or the English language, or in any sign or code, the investigating officer, orally or in writing, may require the person who had the possession, custody or control of the document, to furnish to the investigating officer a translation in the national language or the English language within such period as he may specify.

(2) Where the person is required to furnish a translation under subsection (1) is not the person under investigation, the Bank may pay him a reasonable fee for the translation.

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

(4) Any person who contravenes subsection (3) commits an offence.

Notice to call for examination

64. (1) For the purpose of an examination under this Part, any notice that is given shall, if practicable, be served personally on the person specified in such notice.

(2) In the case of a corporation, the notice may be served on the secretary or other like officer of the corporation or

on any person who is responsible for the management of the affairs of the corporation.

(3) Where the person specified in a notice given under this section cannot by the exercise of due diligence be found, the notice may be served—

(a) in the case of an individual person, at his residential address by leaving a copy thereof for him with some adult member of his family, with his servant residing with him or with any other adult person occupying the same premises with him; or

(b) in the case of an entity including a licensee or money services business agent, at its registered address or business address, by leaving a copy thereof with an employee of the entity or to affix such notice to some prominent part of the premises of the entity.

(4) When the person specified in any notice given under this Act cannot by the exercise of due diligence be found, and service cannot be effected as provided by subsection (3), a copy of the notice shall be affixed to some prominent part of the premises or such other place in which the person specified in the notice ordinarily resides, and in such case the notice shall be deemed to have been duly served.

(5) 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.

(6) If any complainant or person referred to in subsection (5) 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.

Power to examine person

65. (1) Where an investigating officer has reason to suspect that an offence is being or has been committed under this Act, he may, by notice in writing—

(a) order any person to attend before him for the purpose of being examined orally by the investigating officer in relation to any matter which may in the opinion of the investigating officer assist in the investigation into such offence;

(b) order any person to produce before the investigating officer property, apparatus, equipment, machinery, computer, computer output, system, document, information, article or thing which may, in the opinion of the investigating officer assist in the investigation into such offence; or

(c) 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 written notice, being information which, in the opinion of the investigating officer, would be of assistance in the investigation into such offence,

and shall reduce into writing any statement made by the person so examined.

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

(a) a person to whom an order under paragraph (1)*(a)* has been given shall attend in accordance with the terms of the order to be examined, and shall continue to so attend from day to day as directed by the investigating officer until the examination is completed, and shall during such examination disclose all information which is within his knowledge, or which is available to him, or which is capable of being obtained by him, in respect of the matter in relation to which he is being examined, whether or not any question is put to him with regard thereto, and where any question is put to him he shall answer the same truthfully and to the best of his knowledge and belief, and shall not refuse to answer any question on the ground that it tends to incriminate him or his spouse;

(b) a person to whom an order has been given under 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, document, information, article, or thing specified in the order, or alter or deface any entry in any such document, or cause the same to be done, or assist or conspire to do the same; and

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

(4) Where any person discloses any information or produces any property, apparatus, equipment, machinery, computer, computer output, system, 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 employee the first-mentioned person may be acting, shall, on account of such disclosure or production, be liable to any prosecution for any offence under or by virtue of any law, or to any proceedings or claim in any form or of any description by any person under or by virtue of any agreement or arrangement, or otherwise howsoever.

(5) An investigating officer may seize, take possession of and retain for such duration as he deems necessary, any property, apparatus, equipment, machinery, computer, computer output, system, 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) A statement that has been reduced into writing by the investigating officer in accordance with subsection (1) shall be read to and signed by the person being examined, and where such person refuses to sign the record, the investigating officer shall endorse thereon under his hand the fact of such refusal and the reasons therefor, if any, stated by the person examined.

(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, 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, notwithstanding any written law or rule of law to the contrary, be admissible in evidence in any proceedings in any court—

(a) for, or in relation to, an offence under this Act;

(b) for, or in relation to, any other matter under this Act; or

(c) for, or in relation to, any offence under any other written law,

regardless whether such proceedings are against the person who was examined, or who produced the property, apparatus, equipment, machinery, computer, computer output, system, document, information, article or thing, or who made the written statement on oath or affirmation, or against any other person.

(8) Any person who fails to comply with an order or requirement of an investigating officer under subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

Surrender of travel documents

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

(2) A notice under subsection (1) shall be served in the manner provided in section 64.

(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 written notice 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, upon being notified of a written notice made under subsection (6), may 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 banishment or immigration, "immigration officer" means any person appointed under section 3 of the Immigration Act 1959/63 [*Act 155*].

(9) Notwithstanding subsection (3), any person who fails to comply with the written notice under subsection (1) commits an offence.

Assistance to police officer or public authority, *etc*.

67. Notwithstanding anything under this Act or any other written law, the Bank, on its own initiative, or at the request of a police officer or any public authority or institution, in the course of any investigation under any law, may allow that police officer, public authority or institution to have access to or a copy of—

(a) a document seized, detained or taken possession of;

(b) a record of examination; or

(c) a written statement on oath or affirmation,

under this Act.

Investigating officer deemed to be public servant and public officer

Act 574.

Act 593.

68. 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 [*Act 593*] or any other written law which the Minister, on the recommendation of the Bank, may prescribe.

Seizable offence

69. An offence punishable under this Act is a seizable offence, and a police officer not below the rank of Inspector, or an investigating officer appointed under section 53 may arrest without warrant a person whom he reasonably suspects to have committed or is committing such offence.

Arrested person to be made over to the police

70. An investigating officer who makes an arrest under section 69 shall, without unnecessary delay, make over the arrested person to a police officer or, in the absence of a police officer, take such person to the nearest police station, and thereafter the person arrested shall be dealt with according to the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

Agent provocateur

71. 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 or employee 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.

Specific persons in respect of whom powers of

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

investigation may be exercised

(a) against—

(i) any past or present business associate of;

(ii) any person who is or was a relative of;

(iii) any person who is, or was at any time, having any dealings or transactions, including auditors of, with;

(iv) any past or present director, chief executive officer, employee or agent of;

(v) any person who is or was concerned with the control or management, in whole or in part of the affairs of; or

(vi) any shareholders or any person who has or had an interest in the shares, or otherwise has or had an interest in the property of,

the person suspected to have committed an offence under this Act;

(b) against any business associate or relative of a person referred to in paragraph *(a)*; or

(c) against any body corporate or unincorporated in which any person referred to in paragraph *(a)* is a director, chief executive officer, employee or agent, where such body is a corporation, has an interest in the shares of the corporation.

PART VIII

OTHER POWERS OF THE BANK

Power of the Bank to issue directives

73. (1) Where the Bank is of the opinion that—

(a) a licensee or money services business agent—

(i) is carrying on money services business in a manner detrimental to the interests of its customers or the public generally;

(ii) is contravening or has contravened any provision of this Act or any regulations made under this Act;

(iii) has failed to comply with any guidelines, circulars, standards or notices issued by the Bank under section 74, as the case may be; or

(iv) has become or is likely to become unable to meet all or any of its obligations under this Act; or

(b) it is necessary to do so as a result of any examination or investigation under this Act,

the Bank may issue a directive in writing to—

(A) prohibit a licensee or money services business agent from carrying on all or such part of its business as may be set out in the directive;

(B) prohibit the licensee or money services business agent from doing or performing any act or function connected with all or such part of its business as may be set out in the directive;

(C) suspend the business of a licensee or money services business agent to such extent and for such period as may be necessary to give effect to the prohibitions under paragraph (A) or (B);

(D) empower the Bank to take into its custody or control, document, property or effects of the licensee or money services business agent of a licensee; or

(E) require a licensee or money services business agent to take any step, take any action, do or refrain from doing any act or thing, whatsoever, which in the opinion of the Bank is necessary to remedy the situation, as the case may be.

(2) In giving any directive under subsection (1), the Bank may include requirements of a consequential, ancillary or incidental nature to be complied with by the licensee or money services business agent and the Bank may impose such terms, conditions and requirements as the Bank deems fit.

(3) Where the Bank proposes to issue a written directive under subsection (1) to a licensee or money services business agent, the Bank shall give such person written notice setting out the proposed action and the grounds for such action.

(4) The licensee or money services business agent shall be given an opportunity to make written representation to the Bank within fourteen days from the date of the written notice.

(5) Where the Bank considers that any delay in giving the directive to a licensee or money services business agent

under this section would be detrimental to the interests of customers or the public, the Bank may give the directive and the opportunity to make representation under subsection (4) shall be given immediately after the decision to give the directive has been made and in consequence of the representation, the Bank, may confirm or revoke the directive.

(6) Where no written representation is received by the Bank within the period specified under subsection (4), the Bank shall proceed with the proposed action under subsection (3) by written notice.

(7) Where written representation is received, the Bank shall, after considering the representation, give the licensee or money services business agent written notice of its decision.

(8) A decision to take action under subsection (6) or (7) shall take effect immediately or at any date as the Bank may specify in its written notice, as the case may be.

(9) Where the Bank decides under subsection (7) not to take any action, the Bank may impose such conditions on the licensee or money services business agent, as the case may be, as it may specify in the directive given under that subsection.

(10) The licensee or money services business agent shall comply with any directive issued under this section within such time as the Bank may determine.

(11) A licensee or money services business agent shall cease its business where the proposed action or decision taking effect under subsection (8) relates to the suspension of the business, and such suspension shall not operate as to affect—

(a) any agreement, transaction or arrangement relating to the business entered into by the licensee or money services business agent, as the case may be; or

(b) any right, claim, obligation or liability arising under any such agreement, transaction or arrangement, as the case may be,

prior to the suspension of the business.

(12) The satisfaction of the Bank under subsection (1) that any of the provisions of this Act or any regulations made under this Act has been contravened or that any guidelines, circulars, standards or notices has not been complied with by a licensee or money services business agent may be arrived at regardless as to whether or not

there is any prosecution for the contravention or non-compliance.

(13) A licensee or money services business agent shall not have any claim whatsoever against the Bank or be entitled to compensation from the Bank for any damage or loss suffered by or caused to him by such directives issued by the Bank under subsection (1).

(14) Any person who—

(a) fails to comply with any condition imposed under subsection (9) commits an offence; or

(b) contravenes subsection (10) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both.

Power of the Bank to issue guidelines, *etc*.

74. (1) The Bank may generally in respect of this Act, or in respect of any particular provision of this Act, or generally in respect of the conduct of all or any of the licensees, issue such guidelines, circulars, standards or notices as the Bank may consider desirable.

(2) The Bank may revoke or amend the whole or any part of any guidelines, circulars, standards or notices issued under this section.

(3) A person to whom the guidelines, circulars, standards or notices referred to in subsection (1) apply shall comply with such guidelines, circulars, standards or notices within such period as may be specified by the Bank.

(4) Where a person referred to in subsection (3) contravenes or fails to comply with any guidelines, circulars, standards or notices issued by the Bank, the Bank may take any action as set out in subsection 73(1) or 75(2) as the Bank deems fit.

Power of the Bank to take administrative actions

75. (1) Where a person—

(a) is contravening or has contravened the provisions of this Act other than the provisions set out in the Schedule; or

(b) fails to comply with, observe, enforce or give effect to any guidelines, circulars, standards or notices issued by the Bank under section 74, in circumstances where the person is under an obligation to comply with, observe, enforce or give

effect to such guidelines circulars, standards or notices, as the case may be,

such person has committed a breach under this Act.

(2) Where a person has committed a breach under subsection (1) and the Bank is satisfied that it is appropriate to take action against that person, the Bank may take one or more of the following actions:

(a) to direct the person in breach to comply with, observe, enforce or give effect to such provisions, guidelines, circulars, standards or notices, as the case may be;

(b) to impose a penalty in proportion to the severity or gravity of the breach, but in any event not exceeding one hundred thousand ringgit;

(c) to reprimand the person in breach;

(d) to require the person in breach to take such measures as the Bank may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach; or

(e) to issue a public statement to the effect that, in the opinion of the Bank, it is necessary for the purpose of public interest.

(3) The Bank shall not take any action under subsection (2) without giving the person in breach written notice setting out the proposed action and the grounds for such action.

(4) The person in breach shall be given an opportunity to make written representation to the Bank within fourteen days from the date of the written notice.

(5) Where no written representation is received by the Bank within the period specified under subsection (4), the Bank shall proceed with the proposed action under subsection (3) by written notice.

(6) Where written representation is received, the Bank shall, after considering the representation, give the person in breach written notice of its decision.

(7) A decision to take action under subsection (5) or (6) shall take effect immediately or at any date as the Bank may specify in its written notice, as the case may be.

(8) Where a person has failed to pay a penalty imposed by the Bank under paragraph (2)*(b)*, the penalty imposed

by the Bank may be sued for and recovered as a civil debt due to the Government of Malaysia.

(9) For the purposes of paragraph (2)*(d)*, in determining whether or not restitution is to be made by a person in breach, the Bank shall have regard to—

(a) the profits that have accrued to such person in breach; or

(b) whether one or more persons have suffered loss or have been otherwise adversely affected as a result of the breach.

(10) Without prejudice to any other remedy, where a direction under paragraph (2)*(d)* had required the person in breach to make restitution in the form of monetary payment and the person in breach fails to pay the restitution, the Bank may sue for and recover the restitution 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 against the person in breach.

(12) To the extent that any of the amounts obtained under paragraph (2)*(d)* or subsection (10) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be paid to the Federal Consolidated Fund.

Civil action by the Bank

76. The Bank may institute civil proceedings in the court against a person, whether or not such person has been charged with any offence under this Act, or whether or not a contravention has been proved in a prosecution.

Power of court to make certain orders

77. (1) Where on an application by the Bank, it appears to the court that—

(a) there is reasonable likelihood that any person will contravene any provision of this Act; or

(b) any person has contravened a provision of this Act and that there are steps which could be taken to remedy the contravention or to mitigate the effect of such contravention including making restitution to any other person aggrieved by such contravention,

whether or not that person has been charged with an offence in respect of the contravention or whether or not a contravention has been proved in a prosecution, the court may, without prejudice to any order it would be entitled to

make otherwise than pursuant to this section, make one or more of the following orders:

(A) an order restraining or requiring the cessation of the contravention;

(B) an order requiring that person, or any other person, who appears to have been knowingly involved in the contravention, to take such steps as the court may direct to remedy it or to mitigate its effect including making restitution to any other person aggrieved by such contravention;

(C) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;

(D) an order restraining the person from acquiring, disposing of or otherwise dealing with, property which the court is satisfied such person is reasonably likely to dispose of or otherwise deal with;

(E) where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do any act that he is required to do under any provision of this Act, an order requiring such person to do such act;

(F) in a case where the person is a chief executive officer, director or manager responsible for the money services business of a licensee or money services business agent, an order removing him from office or that he be barred from becoming a chief executive officer, director or manager of the licensee or money services business agent, or be involved in the management, directly or indirectly, of the licensee or money services business agent for such period as may be determined by the court; or

(G) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding provisions of this subsection.

(2) If an application is made to a court for an order under subsection (1), the court may, if in its opinion it is desirable to do so, before considering the application, make an interim order and such order shall be expressed to have effect pending the determination of the application.

(3) The court may, before making an order under subsection (1), direct that notice of an application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(4) Where an application is made to the court for an order under paragraph (1)(E), the court may grant the order—

(a) where the court is satisfied that the person has refused or failed to do the required act, whether or not it appears to the court that the person intends to again refuse or fail or continue to refuse or fail, to do the required act; or

(b) where it appears to the court that in the event that such an order is not granted, it is likely that the person will refuse or fail to do the required act, whether or not the person has previously refused or failed to do the act or whether or not there is any imminent risk of damage to any person if the person required to do such act or thing refuses or fails to do so.

(5) Where an application for an order under subsection (1) is made by the Bank or any person duly authorized by the Bank, 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.

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

(7) Subsection (6) does not affect the powers of the court in relation to the punishment of contempt of court.

(8) The court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

Power to make regulations

78. (1) The Bank may, with the approval of the Minister, make such regulations as may be necessary or expedient for giving full effect to the provisions of this Act.

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

(a) to provide for administrative actions pursuant to section 75 and for civil actions pursuant to section 76;

(b) to provide for offences which may be compounded;

(c) to provide that any act or omission in contravention of any provision of the regulations shall be an offence; and

(d) to provide for the imposition of penalties for offences provided in the regulations which shall not exceed a fine of five hundred thousand ringgit or imprisonment for a term not exceeding three years or to both.

Power of the Bank to publish information

79. The Bank may, in such form and manner as it considers appropriate, publish any information as the Bank may consider necessary or expedient for the purposes of public interest, including the following information:

(a) the acceptance by any person of an offer to compound an offence under subsection 88(1);

(b) the repeal or revocation of any exemption granted under section 91;

(c) the conviction of any person for any offence under this Act; or

(d) any other action taken by the Bank against any person under this Act.

PART IX

MISCELLANEOUS

Offence by body corporate

80. Where an offence against any provision of this Act has been committed by a body corporate, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or who in any manner has control of the money services business of the body corporate or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of such body corporate, or was assisting in such management, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge, consent or connivance and that he exercised all due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

Offence by employee or agent

81. (1) Where any person would be liable under this Act to any punishment or penalty for any act, omission, neglect or default, such person shall be liable to the same

punishment or penalty for every such act, omission, neglect or default of any employee or agent of his or of the employee of such agent, if such act, omission, neglect or default was committed by the employee of the person in the course of his employment, or by the agent when acting on behalf of the person, or by the employee of such agent in the course of his employment by such agent or otherwise on behalf of the agent.

(2) Nothing under subsection (1) shall absolve an agent, officer or employee from any liability for an offence.

Joinder of offences

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

Protection against suits and legal proceedings

83. No action, suit, prosecution or other proceedings 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; or

(d) 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 of or in execution of, or intended pursuance of or execution of, this Act or any order in writing, direction or other thing issued under this Act if such act or statement was done or made, or was omitted to be done or made, in good faith.

Secrecy

84. (1) No person who is or has been a director, chief executive officer, controller or employee of a licensee or money services business agent shall give, produce, divulge, reveal, publish or otherwise disclose to any person, or make a record for any person of, any information or document whatsoever relating to the affairs or accounts of any of its customers.

(2) No person, who for any reason, has by any means access to any information or document relating to the customers of a licensee or money services business agent,

shall give, produce, divulge, reveal, publish or otherwise disclose to any person, or make a record for any person of, any information or document relating to such customer.

(3) No person who has any information or document which to his knowledge has been disclosed in contravention of subsection (1) or (2) shall in any manner disclose the information or document to any other person.

(4) Any person who contravenes this section commits an offence.

Permitted disclosures

85. The provisions of section 84 shall not apply to the disclosure of any information or document—

(a) to the Bank, or to any director or officer of the Bank, or to any person appointed by the Bank under subsection 3(3), where the disclosure is for the purpose of the exercise of powers, the performance of functions or the discharge of duties of the Bank, or of the director or officer of the Bank, or of the person appointed under subsection 3(3);

(b) to any person rendering professional services to the Bank in relation to any matter of law, accountancy, valuation, or any other matter requiring professional knowledge, where he is authorized in writing by the Bank to obtain the information from the licensee or money services business agent for the purpose of his services to the Bank;

(c) which at the time of the disclosure is, or has already been made, lawfully available to the public from any source other than the licensee or money services business agent;

(d) which is in the form of a summary, consolidation, aggregate or collection of information set out in such manner as does not enable information relating to any particular customer to be ascertained from it;

(e) which the customer, or his personal representative, has given permission in writing to disclose;

(f) where such disclosure is required or authorized under any other provision of this Act;

(g) where such disclosure is required by any court; or

(h) where such disclosure is required or authorized by any court or under any written law.

Attempts, abetments and conspiracies

86. (1) A person commits an offence and is liable to the penalty for that offence if he—

(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 an offence under this Act, whether or not the offence is committed in consequence of it.

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

General penalty

87. Any person who commits an offence under this Act for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Power to compound

88. (1) The Governor may, with the consent in writing of the Public Prosecutor, offer in writing to compound any offence committed by any person under this Act and prescribed to be a compoundable offence by making a written offer to such person to compound the offence upon payment to the Governor of such amount not exceeding the amount of the maximum fine for that 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.

(3) If the amount specified in the offer under subsection (1) 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.

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

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

Prosecution

89. No prosecution for an offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

Minister may amend the Schedule

90. The Minister may, on the recommendation of the Bank, by order published in the *Gazette* amend the Schedule.

Exemptions

91. The Minister may, by order published in the *Gazette*, exempt any particular person or any class, category or description of persons, from all or any of the provisions of this Act subject to such limitations, restrictions or conditions as the Minister may specify in the order.

Act to be read together with the Exchange Control Act 1953

92. (1) This Act shall be read together with the Exchange Control Act 1953 and the provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Exchange Control Act 1953.

(2) In the event of any inconsistencies between the provisions of this Act and the Exchange Control Act 1953, the Exchange Control Act 1953 shall prevail.

PART X

REPEAL, SAVINGS AND TRANSITIONAL

Repeal

Act 577.

93. The Money-Changing Act 1998 is repealed.

Savings

94. (1) Subject to section 95—

(a) a person who has been licensed under section 7 of the Money-Changing Act 1998 shall be deemed to be licensed under section 7 on the appointed date and may carry on money-changing business under this Act;

(b) a person who has been granted permission by the Controller of Foreign Exchange under section 10 of

the Exchange Control Act 1953 to carry on remittance business shall be deemed to be licensed under section 7 of this Act on the appointed date and may carry on remittance business under this Act;

(c) a person who has been granted permission by the Controller of Foreign Exchange under sections 4, 24 and 25 of the Exchange Control Act 1953 to carry on wholesale currency business, shall be deemed to be licensed under section 7 of this Act on the appointed date and may carry on wholesale currency business under this Act; and

(d) a person who has received a written notification from the Bank under section 5 of the Payment Systems Act 2003 in respect of providing remittance business by utilising its own remittance system, providing remittance business by utilising a remittance system of a third party, or providing a remittance system to any person, shall be deemed to be approved under section 40 on the appointed date and may continue to utilise such system under this Act.

(2) A person specified in subsection (1) shall comply with such conditions to such extent and within such time, as the Bank may specify.

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

Grant of licence to persons deemed to be licensed or permitted to carry on business

95. (1) Where the remaining period of validity of the licence or the permission referred to in section 94—

(a) is less than two years from the appointed date, such person shall apply under section 5 for a licence to carry on money services business within three months from the appointed date or such further period as the Bank may specify; or

(b) is two years or more from the appointed date, such person shall apply under section 5 for a licence to carry on money services business within six months from the appointed date or such further period as the Bank may specify.

(2) Where the period of validity of the licence or the permission referred to in section 94 is not specified, such person shall apply under section 5 for a licence to carry on money services business within six months from the

appointed date or such further period as the Bank may specify.

(3) An application under subsection (1) or (2) for a licence to carry on remittance business shall be submitted together with the application to obtain the prior written approval of the Bank under section 40 to utilise a remittance system, whether its own system or the system of a third party.

(4) A person referred to in paragraph 94(1)*(d)* shall be deemed to have obtained the written approval of the Bank under section 40 to utilise a remittance system upon the granting of such approval to a licensee under that section by the Bank.

(5) The Bank may grant a licence under section 7 to a person referred to in subsection (1), or (2) with or without conditions, or refuse to grant a licence.

(6) The licence or permission of a person referred to in section 94 shall be revoked—

(a) if subsection (1) or (2) is not complied with, upon the expiry of the period specified in that subsection; or

(b) if subsection (1) or (2) is complied with but a licence is refused under section 7, on the date of the refusal.

(7) Where the Bank proposes not to grant a licence under this Act to a person referred to in section 94, the Bank shall give the person written notice setting out the intention of the Bank and the grounds for not granting the licence.

(8) The person shall be given an opportunity to make written representation to the Bank within fourteen days from the date of the written notice by the Bank.

(9) Where no written representation is received by the Bank within the period specified under subsection (8), the Bank shall not grant a licence.

(10) Where written representation is received, the Bank shall, after considering the representation, give the person written notice of its decision.

(11) Where the Bank grants a licence under section 7 to a person referred to in section 94, the licensee shall comply with the provisions of this Act by increasing its capital funds to such amount as the Bank may prescribe within one year from the date the licence is granted.

(12) A licensee who fails to comply with any condition imposed under subsection (5) commits an offence and shall, on conviction, be liable to a fine not exceeding five

million ringgit or to imprisonment for a term not exceeding ten years or to both.

Transitional

96. Notwithstanding sections 93 and 94—

(a) all the—

(i) regulations, orders, directions, notifications, exemptions and other subsidiary legislation, howsoever called; and

(ii) approvals, directions, decisions, notifications, exemptions and other executive acts, howsoever called,

made, given, or done under, or in accordance with, or by virtue of, the repealed Act, sections 4, 10, 24, 25 and 39 of the Exchange Control Act 1953 in relation to wholesale currency business or remittance business, as the case may be, or section 5 of the Payment Systems Act 2003 in relation to remittance system operator, shall be deemed to have been made, given, or done under, or in accordance with, or by virtue of, the corresponding provisions of this Act, and shall continue to remain in full force and effect in relation to the persons to whom they apply until amended, repealed, rescinded, revoked or replaced under, in accordance with, or by virtue of, the corresponding provisions of this Act;

(b) all the guidelines, circulars, standards, notices or notifications issued by the Bank or the Minister relating to money-changing business, remittance business, wholesale currency business and remittance system operators, before the appointed date and in force immediately after the appointed date, shall be deemed to have been lawfully issued under section 74 in relation to the particular provision of this Act corresponding to the matter dealt with in the guidelines, circulars, standards, notices or notifications and shall remain in full force and effect until amended, rescinded or replaced under this Act;

(c) any application for a licence, permission, approval, notification or consent, or for any other purpose whatsoever, made by any person to the Minister or to the Bank under the repealed Act, sections 4, 10, 24, 25 and 39 of the Exchange Control Act 1953 in relation to wholesale currency business or remittance business, as the case may be, or section 5 of the Payment Systems Act 2003 in relation to remittance system operator, before the appointed date, and

pending immediately before the appointed date, shall lapse on the appointed date;

(d) transactions or dealings lawfully executed or entered into, and all business lawfully done, under or in accordance with the repealed Act, sections 4, 10, 24, 25 and 39 of the Exchange Control Act 1953 in relation to wholesale currency business or remittance business, as the case may be, or section 5 of the Payment Systems Act 2003 in relation to remittance system operator, shall be deemed to have been lawfully and validly executed, entered into, or done, under and in accordance with this Act, and accordingly, any right or liability under such transaction, dealing or business existing, immediately before the appointed date, shall be deemed to continue to be lawful and valid under this Act;

(e) nothing shall affect the liability of any person to be prosecuted or punished for offences or breaches committed under the repealed Act, the Exchange Control Act 1953 or the Payment Systems Act 2003 before the appointed date;

(f) any pending legal proceeding, criminal prosecution, investigation or any sentence imposed or action taken before the appointed date in respect of an offence or breach under the repealed Act, the Exchange Control Act 1953 or the Payment Systems Act 2003 may be instituted, continued or enforced as if this Act had not been enacted; and

(g) any pending appeal to the Minister under section 13 of the repealed Act shall be continued or completed under the repealed Act.

SCHEDULE

[Paragraph 75(1)*(a)*]

EXCLUDED PROVISIONS FROM ADMINISTRATIVE ACTIONS

The following provisions are excluded from administrative actions by the Bank:

1. subsection 4(1);
2. subsection 7(4);
3. subsection 9(11);
4. subsection 10(3);
5. subsection 15(1);

6. subsection 19(1);
7. subsection 21(1);
8. subsection 23(1);
9. subsection 25(1);
10. subsection 25(2);
11. subsection 27(1);
12. subsection 28(1);
13. subsection 29(1);
14. subsection 30(1);
15. subsection 30(3);
16. subsection 30(4);
17. subsection 30(8);
18. subsection 30(10);
19. subsection 32(1);
20. subsection 32(2);
21. subsection 32(4);
22. subsection 33(2);
23. section 35;
24. subsection 37(1);
25. subsection 37(2);
26. subsection 37(3);
27. subsection 37(4);
28. subsection 37(5);
29. subsection 37(6);
30. subsection 42(1);
31. subsection 45(1);
32. section 62;
33. subsection 65(8);
34. subsection 73(10);
35. paragraph 73(14)*(a)*
36. subsection 77(6); and
37. subsection 95(12).

last updated December 1, 2011.