

Development Financial Institutions Act 2002 (Act 618)



LAWS OF MALAYSIA

Act 618

Development Financial Institutions Act 2002

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

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PART I

PRELIMINARY

Short title and commencement **1.** (1) This Act may be cited as the Development Financial Institutions Act 2002.

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

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

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

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

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

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

(a) a corporation, means a shareholder; and

(b) a partnership, means a partner;

“statutory body” means any authority or body, whether

corporate or unincorporate, established, appointed or constituted by any written law, but does not include any local authority;

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

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

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

“specify” means specify in writing;

“prescribe” means prescribed by order published in the *Gazette*;

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

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

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

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

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

(b) any conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of immovable property where the person

executing the conveyance is the proprietor or possessor, or is entitled to a contingent right, either for the whole or part of the interest;

“individual” means a natural person;

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

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

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

“credit facility” means an advance, loan or other facility by which the borrower has access, directly or indirectly, to the funds of the lender and includes the giving of a guarantee or credit insurance in relation to a credit facility;

“interest in a share” means a legal or equitable interest in a share;

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

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

“client” includes a customer;

“trust fund” means any fund established under section 43;

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

contingent;

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

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

“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 any other place of business;

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

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

- (a) a co-operative society, means a member of the board, or other governing body, of the co-operative society;
- (b) a statutory body, means a member of the board, committee, council or other governing body of the statutory body;
- (c) a partnership, means a partner;
- (d) a sole proprietorship, means the sole-proprietor; and
- (e) any other body, association or group of persons, whether corporate or unincorporate, means a person having the direction and control of the management of its business or affairs;

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

- (a) has an interest in more than fifty per cent of the shares of the institution;
- (b) has the power to appoint or cause to be appointed a majority of the directors of the institution; or
- (c) has the power to make or cause to be made decisions

in respect of the business or administration of the institution, and to give effect to such decisions or cause them to be given effect to,

and the word “control” shall be construed accordingly;

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

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

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

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

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

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

- (a) the spouse of the person;
- (b) the brother or sister of the person;
- (c) the brother or sister of the spouse of the person; or
- (d) any lineal ascendant or descendant of the person;

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

- (a) any person who is a nominee or an officer of that person;
- (b) any person who manages the affairs of that person;
- (c) any firm of which such person, or any nominee of his, is a partner or a person in charge or in control of its business or affairs;

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

- (e) the trustee of any trust, where—
 - (i) the trust has been created by that person; or
 - (ii) the total value of the assets contributed by that person to the trust at any time, whether before or after the creation of the trust, amounts, at any time, to not less than twenty per cent of the total value of the assets of the trust;

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

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

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

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

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

“capital funds” means paid-up capital and reserves, and includes, for the purposes of sections 38 and 39, the whole or such proportion of any other class, category or description of capital as the Bank may specify.

(2) For the purposes of this Act—

- (a) “persons acting in concert” means persons who have entered into an agreement or arrangement to acquire jointly or severally interests in shares of a corporation for the purpose of obtaining or consolidating control of that corporation or act jointly for the purpose of exercising control over a corporation by means of interests in shares of that corporation already held by them jointly or severally; and
- (b) without prejudice to the generality of paragraph (a), the following persons shall be presumed to be persons acting in concert, unless the contrary is established:
 - (i) a corporation and its related and associate corporations;
 - (ii) a corporation and any of its directors, or the relative

or associate of any of its directors, or any related trusts;

- (iii) a corporation and any pension fund established by it;
- (iv) a person and any investment company, unit trust or other fund whose investments such person manages on a discretionary basis; or
- (v) a financial adviser and its client which is a corporation, where the financial adviser manages on a discretionary basis the client's funds and has ten per cent or more interest in the shares of the client.

(3) For the purpose of this Act—

- (a) a corporation is established when it is incorporated;
- (b) a statutory body is established when it comes into existence under the law establishing, appointing or constituting it;
- (c) a co-operative society is established when it is registered;
- (d) a partnership is established when it is formed;
- (e) a sole-proprietorship is established when it commences its business;
- (f) any other individual, body, association or group of persons, whether corporate or unincorporate, which requires registration or other form of recording or recognition under any written law before it can lawfully commence its activities, is established when it is so registered, recorded or recognized.

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

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

(2) The Bank may authorise any of its officers to perform any of its functions under this Act.

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

PART II

MANAGEMENT, OWNERSHIP AND CONTROL

Board of directors **5.** The board of directors of a prescribed institution shall be responsible for carrying out the policy and general administration of the affairs and business of the prescribed institution in accordance with this Act.

Appointment of Chief Executive Officer and directors **6.** (1) A prescribed institution shall appoint a Chief Executive Officer and directors for an initial term not exceeding two years and the Chief Executive Officer and directors shall, subject to the constituent documents of the prescribed institution, be eligible for annual reappointment.

(2) Notwithstanding subsection (1), a prescribed institution shall, prior to the appointment of any person as its Chief Executive Officer or director, seek the Bank's verification on whether such a person satisfies the criteria set out in the Schedule.

(3) Any prescribed institution that contravenes subsection (1) or (2) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(4) A prescribed institution shall notify the Bank of the appointment of its Chief Executive Officer and its directors within fourteen days from the date of the appointment.

(5) Any prescribed institution that contravenes subsection (4) commits an offence and shall on conviction be liable to a

fine not exceeding one hundred thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding one hundred ringgit for each day during which the offence continues after conviction.

Disqualification of
Chief Executive
Officer and director

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

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

(2) Any prescribed institution or person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

Effect of
disqualification

8. (1) Where a person becomes disqualified by virtue of subsection 7(1), he shall cease to hold office, and the

prescribed institution shall terminate his appointment in such capacity, and that person, notwithstanding any contract of service, shall not be entitled to claim any compensation for his loss of office or termination of appointment.

(2) Notwithstanding subsection (1), the Bank, with the concurrence of the Minister charged with the responsibility for a prescribed institution, may direct the prescribed institution to terminate the appointment of any person who becomes disqualified by virtue of subsection 7(1) and the prescribed institution shall terminate the appointment of that person in such capacity, and that person, notwithstanding any contract of service, shall not be entitled to claim any compensation for his loss of office or termination of appointment.

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

(4) Any prescribed institution that fails to comply with the direction under subsection (2) or any person who contravenes subsection (3) commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit, and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

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

Exemption from **9.** (1) A person who is disqualified by virtue of paragraph

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

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

Notice of cessation of office **10.** (1) A prescribed institution shall notify the Bank in writing of the fact that a person has ceased to be its Chief Executive Officer or director and the reasons for it within fourteen days from the date of the cessation.

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding one hundred ringgit for each day during which the offence continues after conviction.

Disclosure of interest **11.** (1) A director who has an interest, directly or indirectly, in relation to any matter being considered, or about to be considered, by the board of directors of the prescribed institution must disclose the nature of his interest to the meeting of the board as soon as practicable after the relevant facts have come to the director's knowledge.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three months or to both and, in the case of a continuing offence, to a further fine not exceeding two hundred and fifty ringgit for each day during which the offence continues after conviction.

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

(4) Any person who contravenes subsection (3) commits an offence and shall on conviction be liable to a fine not

exceeding ten thousand ringgit.

(5) After the disclosure has been made and recorded, the director shall, in relation to that matter—

- (a) refrain from taking part or from being present in any deliberation or decision of the board; and
- (b) be disregarded for the purpose of constituting a quorum of the board.

(6) Any person who contravenes subsection (5) commits an offence and shall on conviction be liable to a fine not exceeding two hundred and fifty thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding two hundred and fifty ringgit for each day during which the offence continues after conviction.

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

Acquisition of interest
in shares

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

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

(3) Any person who contravenes subsection (1) or (2) commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both, and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

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

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

Change in control, amalgamation and merger **14.** (1) Unless the Minister otherwise approves, no person shall—

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

(b) amalgamate or merge with any prescribed institution.

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

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

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

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

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

- (b) the vesting of any property held by the prescribed institution, either alone or jointly with any other person, in the other person either alone or, as the case may be, jointly with any other person, on and from the transfer date, in the same capacity, upon the trusts, and with and subject to the powers, provisions and liabilities, respectively;
- (c) for any existing instrument, whether in the form of a deed, will or otherwise, or order of any court, under or by virtue of which any property became vested in the prescribed institution, to be construed and to have effect as if for any reference to the prescribed institution there were substituted a reference to the other person;
- (d) for any existing agreement to which the prescribed institution was a party to have effect as if the other person had been a party instead of that prescribed institution;
- (e) for any account between the prescribed institution and any of its customers to become an account between the other person and the customer and such account to be deemed for all purposes to be a single continuing account;
- (f) for any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent, whether or not in relation to an account, given to the prescribed institution, either alone or jointly with another person, to have effect, in respect of anything due to be done, as if given to the other person either alone or, as the case may be, jointly with such other person;
- (g) for any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed by, the prescribed institution or payable at the place of business of that prescribed institution, whether so drawn, given, accepted or endorsed before, on, or after, the transfer date, to have the same effect on and from the transfer date, as if it had been drawn on, or given to, or accepted or endorsed by, the other person or were payable at the place of business of the other person;

- (h) for the custody of any document, goods or thing held by the prescribed institution as bailee immediately before the transfer date to pass to the other person and the rights and obligations of the prescribed institution under any contract of bailment relating to any such document, goods or thing to be transferred to the other person;
- (i) for any collateral held immediately before the transfer date by the prescribed institution, or by a nominee of, or trustee for, the prescribed institution, as collateral for the payment or discharge of any liability of any person, to be held by the other person or, as the case may be, to be held by that nominee or trustee as the nominee of, or trustee for, the other person, and to the extent of those liabilities, be available to the other person as collateral for the payment or discharge of those liabilities and where any such collateral extends to future advances or future liabilities, to be held by, and to be available to, the other person as collateral for future advances by, and future liabilities to, the other person in the same manner in all respects as future advances by, or future liabilities to, that prescribed institution were collateralised immediately before the transfer date;
- (j) where any right or liability of the prescribed institution is transferred to the other person, for the other person to have the same rights, powers and remedies and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority for ascertaining, protecting or enforcing that right or resisting that liability as if it had at all times been a right or liability of the other person, including those rights or liabilities in respect of any legal proceedings or applications to any authority pending immediately before the transfer date by or against that prescribed institution;
- (k) for any judgment or award obtained by or against the prescribed institution and not fully satisfied before the transfer date to be enforceable by or, as the case may be, against the other person; and
- (l) for all such incidental, consequential and supplemental

orders as are necessary to secure that the transfer shall be fully and effectively carried out.

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

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

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

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

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

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

(6) Any person who contravenes subsection (4) or (5) commits an offence and shall on conviction be liable to a fine

not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

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

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

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

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

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

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

Own shares or shares
of holding company as
collateral

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

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

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

Application to the
Bank

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

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

(3) The Bank shall consider the application under

subsection (1) and make a recommendation to the Minister whether the application should be approved or refused.

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

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

(6) Any person who fails to comply with any modification or condition imposed by the Minister under subsection (5) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

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

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

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

Effect of contravention **21.** (1) Where the Bank is satisfied that any person has contravened subsection 12(1) regardless as to whether or not there is any prosecution of any person for such contravention, the Bank may make a preliminary order in writing—

(a) prohibiting the transfer of, or the carrying out of the

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

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

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

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

(2) Any person who fails to comply with an order under subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding six months or to both.

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

(4) Any person who fails to comply with an order under subsection (3) commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding six months or to both.

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

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

Preliminary order by
the Bank

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

(2) A preliminary order shall be binding on—

(a) the defaulting person;

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

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

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

(4) Any person who contravenes subsection (3) commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding six months or to both, and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

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

Confirmation of
preliminary order

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

(2) Where the Bank confirms a preliminary order, it may

dispose of the shares surrendered to it under subsection 22(3) to such person and to such extent as the Bank may determine.

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

Direction to give effect to order

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

(2) Any person who fails to comply with the direction under subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding six months or to both and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

PART III

RESTRICTIONS ON BUSINESS

Control of establishment or acquisition of subsidiaries

25. (1) Unless the Bank otherwise approves in writing, no prescribed institution shall establish or acquire any subsidiary in or outside Malaysia.

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

(3) The Bank may approve an application to establish or

acquire a subsidiary under subsection (1), with or without conditions, or reject the application.

(4) Any prescribed institution that fails to comply with the terms and conditions imposed under subsection (3) commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

Direction in respect of subsidiary

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

- (a) rationalise the business of any of its subsidiaries;
- (b) transfer the business of any of its subsidiaries to another corporation, including the prescribed institution or any of its other subsidiaries; or
- (c) wind up any of its subsidiaries.

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

(3) Any prescribed institution that fails to comply with the direction under this section commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

Restriction or prohibition of business

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

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit, and, in the case of a continuing offence, to a further fine not exceeding three

thousand ringgit for each day during which the offence continues after conviction.

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

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

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

(4) Any prescribed institution that fails to comply with the prohibition, direction or restriction under subsection (3) commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

Prohibition of credit facilities

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

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

(3) No prescribed institution shall grant any credit facility to—

(a) any of its members, directors or officers or any other person receiving remuneration from it (other than an accountant, advocate, architect, estate agent, doctor or any other person receiving remuneration from it in respect of his professional services);

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

(c) any corporation in the shares of which any of its members, directors or officers has any interest which,

in aggregate, is of an amount that is in excess of such percentage as the Bank may specify; and

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

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

(a) any credit facility which is provided for under his scheme of service; or

(b) where there is no such provision and the prescribed institution is satisfied that special or compassionate circumstances exist, a loan not exceeding at any one time—

(i) six months of his remuneration; or

(ii) his remuneration for such longer period as may be approved by the Bank.

(5) For the purposes of this section, “director” or “officer” includes a spouse, child or parent of a director or officer.

Restriction of credit to single person

29. (1) Subject to subsection 28(1), no prescribed institution shall grant to any single person any credit facility, whether from its own funds or any trust fund it manages under section 43 which in aggregate is of an amount that is in excess of such percentage as the Bank may specify.

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

(3) Notwithstanding subsection (1), a prescribed institution may enter into such transaction, and with such person, as the Minister may, on the recommendation of the Bank, direct the prescribed institution.

(4) In computing the amount of credit facility granted to a single person, any credit facility given to the following persons shall be deemed to be a credit facility granted to such single person:

(a) where such single person is an individual, his or her

spouse, child or family corporation;

(b) where such single person is a corporation, its related or associate corporations;

Act 502. (c) where such single person is a society registered under any written law relating to co-operative societies, its subsidiaries as defined in section 2 of the Co-operatives Societies Act 1993 [*Act 502*], and the related or associate corporations of such subsidiaries; or

(d) persons acting in concert with such person.

(5) For the purposes of paragraph (4) (a), “family corporation” means a corporation in which—

(a) the individual;

(b) the individual’s spouse; or

(c) that individual’s child,

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

(6) Notwithstanding subsection (4), the Bank may specify that all or any persons mentioned in paragraph (4) (a), (b), (c) or (d) shall be excluded in the application of that subsection in relation to any particular person to whom a credit facility is to be given, and at the same time specify the criteria or the basis on which that person is to be so excluded.

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

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

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

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

Disclosure of
director's interest

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

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

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

- (a) sets out the nature and extent of his interest in the body or sole proprietorship, as the case may be; and
- (b) is brought up and read at the meeting of the directors of the prescribed institution at which it is served or, if it is not served at a meeting of directors, at the next

meeting of directors after it has been served on each director.

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

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

- (a) after he becomes a director of the prescribed institution; or
- (b) if already a director, after he commences to hold such office or to possess such property.

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

(7) Any person who contravenes subsection (6) commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit.

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

(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 five years or to both.

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

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

institution to—

- (a) submit any information relating to its policy and procedure for the granting of any credit facility;
- (b) submit a report on the limit or the terms and conditions imposed, the directions given, and the agreements made, in relation to the authority of each of its directors or officers authorised to grant credit facilities; or
- (c) modify the policies or procedures referred to in paragraph (a), or vary the matters mentioned in paragraph (b), as the Bank deems fit and proper, either generally, or in relation to any class of directors or officers, or in relation to any particular director or officer, and such modification or variation shall be binding on the prescribed institution and its directors and officers.

(5) Any prescribed institution that fails to comply with the direction under subsection (4) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the **offence** continues after conviction. ^[sic]

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

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

- (a) not to make investment of a specified class or description; or
- (b) to realise, before the expiry of a specified period or such extended period as the Bank may approve, the whole or a specified proportion of its investment.

(3) Any prescribed institution that fails to comply with a direction under subsection (1) or (2) commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day

during which the offence continues after conviction.

PART IV

OBLIGATIONS AND SOURCING OF FUNDS

- Statement of corporate intent
- 34.** (1) A prescribed institution shall, for each financial year, submit to the Bank within such period as the Bank may specify, such statement of corporate intent as may be approved by the Minister charged with the responsibility for that prescribed institution.
- (2) The statement of corporate intent under subsection (1) shall be in such form as the Bank may specify and shall include the prescribed institution's strategic plans and manner of sourcing for funds for the following financial year.
- (3) The Bank may, on receipt of the prescribed institution's approved statement of corporate intent under subsection (1), accept it with or without modification or condition or refuse it.
- (4) A prescribed institution whose statement of corporate intent is rejected under subsection (3) shall submit a modified statement of corporate intent under subsection (1) within such time as the Bank may specify.
- (5) A prescribed institution shall implement the statement of corporate intent accepted by the Bank with or without modification or condition under subsection (3) and the Bank shall measure the performance of the prescribed institution according to that statement of corporate intent.
- (6) Any prescribed institution that contravenes subsection (1), (2), (4) or (5) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

- Annual funding
- 35.** (1) A prescribed institution shall, for each financial year, submit to the Bank an annual funding requirement for

the Minister's approval, within such period, and in such form, as the Bank may specify.

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(3) The funding requirement submitted under subsection (1) shall include a copy each of the following—

(a) an operational plan and financial plan for the following financial year; and

(b) any other information as the Bank may specify.

(4) Notwithstanding subsection (1), a prescribed institution may—

(a) apply to the Minister for additional funding for its own account, an existing trust fund or a new trust fund; or

(b) apply to the Bank for approval to borrow from its related or associate corporation.

(5) The Minister, on the recommendation of the Bank, or the Bank, as the case may be, may approve an application under this section subject to such purpose, terms and conditions as the Minister or the Bank, as the case may be, may specify.

(6) The Minister or the Bank, as the case may be, may reject an application under this section within three months of receiving the application without assigning any reasons for the rejection.

Restrictions on
payment of dividend

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

(2) Before a prescribed institution declares any dividend, it shall apply in writing for the approval of the Bank in respect of the amount proposed to be declared, and the Bank may

approve such amount, or a reduced amount, or prohibit payment of any dividend, having regard to the financial condition of the prescribed institution.

(3) Any prescribed institution that contravenes subsection (1) or (2) commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

Maintenance of liquid assets

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

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction.

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

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

(5) Any prescribed institution that contravenes subsection (4) commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction.

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

Maintenance of capital funds **38.** (1) The Bank may require a prescribed institution to maintain capital funds, unimpaired by losses, in such ratio to all or any of its assets or to all or any of its liabilities, including those of all its offices in and outside Malaysia, as the Bank may specify.

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

Maintenance of reserve fund **39.** (1) The Bank may require a prescribed institution to—

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

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

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

(4) Nothing in this section shall authorise the prescribed

institution to pay dividends out of its reserve fund.

(5) Any prescribed institution that contravenes this section commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

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

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

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

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

Other prudential
requirements **41.** (1) The Bank may require a prescribed institution to meet such other prudential requirements, and within such time, as the Bank may specify.

(2) Any prescribed institution that contravenes any requirements under subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction.

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

(2) Any prescribed institution that contravenes subsection

(1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit.

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

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

(b) a copy of its amended constituent documents.

(4) Any prescribed institution that contravenes subsection (3) commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding one hundred ringgit for each day during which the offence continues after conviction.

PART V

DEALINGS WITH GOVERNMENT FUNDS

Establishment and maintenance of trust fund **43.** A prescribed institution may, with the agreement of the Government, establish and maintain a separate trust for any fund allocated by the Government, and manage such trust fund for and on behalf of the Government separately from its own funds.

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

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction.

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

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

(5) Any prescribed institution that contravenes any direction under subsection (4) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

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

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

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

(3) Any prescribed institution that contravenes this section commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction.

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

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a

fine not exceeding five million ringgit and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction.

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

(2) Any prescribed institution that contravenes any specification under subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

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

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

(3) Any prescribed institution that fails to comply with the direction under subsection (1) or (2) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

Breach of trust **50.** (1) Any director or officer of a prescribed institution who, being in any manner entrusted with property in any trust fund or with any dominion over property in any trust fund either solely or jointly with any other person, dishonestly misappropriates, or converts to his own use, that property, or dishonestly uses or disposes of that property in violation of the provisions of this Part prescribing the mode

in which such trust is to be discharged, or wilfully suffers any other person to do so, commits criminal breach of trust.

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

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

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

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

(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 five years or to both and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction.

PART VI

CONTROL OF DEFAULTER

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

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction.

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

- (a) is carrying on its business in a manner detrimental to the interests of its stakeholders or the public generally;
- (b) is insolvent, or has become or is likely to become unable to meet all or any of its obligations, or is about to suspend payment to any extent; or
- (c) has contravened any provision of this Act or any provision of any written law, regardless that there has been no criminal prosecution in respect of the contravention,

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

- (2) For the purpose of subsection (1), the Bank may—
- (a) require the prescribed institution to take any steps, or any action, or to do or not to do any act or thing in relation to the institution, or its business, or its directors or officers, which the Bank considers necessary and which it sets out in the order, within such time as may be set out in the order;
 - (b) prohibit the prescribed institution from extending any further credit facility for such period as may be set out in the order, and make the prohibition subject to such exceptions, and impose such conditions in relation to the exceptions, as may be set out in the order, and, from time to time, by further order similarly made, extend the period;
 - (c) notwithstanding anything in any written law, or any limitations contained in the constituent documents of the prescribed institution, for reasons to be recorded by it in writing, remove from office, with effect from such

date as may be set out in the order, any officer of the prescribed institution;

- (d) notwithstanding anything in any written law, or any limitations contained in the constituent documents of the prescribed institution, and, in particular, notwithstanding any limitation as to the minimum or maximum number of directors, for reasons to be recorded by it in writing—
 - (i) remove from office, with effect from such date as may be set out in the order, any director of the prescribed institution; or
 - (ii) appoint any person as a director of the prescribed institution, and provide in the order for that person to be paid by the prescribed institution such remuneration as may be set out in the order; or
- (e) appoint a person to advise the prescribed institution in relation to the proper conduct of its business, and provide in the order for that person to be paid by the prescribed institution such remuneration as may be set out in the order.

(3) Any prescribed institution that fails to comply with any requirement under paragraph (2) (a) or contravenes any prohibition under paragraph (2) (b), commits an offence and shall on conviction be liable to a fine not exceeding ten million ringgit, and, in the case of a continuing offence, to a further fine not exceeding ten thousand ringgit for each day during which the offence continues after conviction.

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

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

- (a) for the Bank to assume control of all or part of the property, business and affairs of the prescribed institution, and carry on all or part of its business and affairs, or for the Bank to appoint any person to do so on behalf of the Bank, and for the costs and expenses of the Bank, or the remuneration of the person so

appointed, to be payable out of the funds and properties of the prescribed institution as a first charge on it;

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

Representation in
respect of order

56. (1) Subject to subsection (2), no order under subsection 54(1) or section 55 shall be made unless the prescribed institution, and in the case of an order under paragraph 54(1) (c) or subparagraph 54(2) (d) (i), also the officer or director who is to be removed from office, has been given a reasonable opportunity of making representations against, or otherwise in respect of, the proposed order.

(2) If in the opinion of the Minister or the Bank, as the case may be, any delay would be detrimental to the interests of the prescribed institution, its stakeholders or the public generally, the order may be made first and the opportunity to make representations against or otherwise in relation to the order shall be given immediately after the order has been made.

(3) The order of the Minister or the Bank may, in consequence of such representations, either be confirmed, with or without modification, or revoked under subsection (4), subject to such conditions, if any, as the Bank, with the concurrence of the Minister, or the Minister, on the recommendation of the Bank, as the case may be, thinks fit to impose.

(4) An order of the Minister or the Bank under this section

may at any time be revoked by an order similarly made by the Bank, or by the Minister, as the case may be, and any such order may contain all such direction of an incidental, ancillary, or consequential nature, as may be deemed necessary or expedient by the Bank or the Minister, as the case may be.

(5) Any prescribed institution that contravenes subsection (3) or (4) commits an offence and shall on conviction be liable to a fine not exceeding ten million ringgit and, in the case of a continuing offence, to a further fine not exceeding ten thousand ringgit for each day during which the offence continues after conviction.

Appointment under
section 54

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

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

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

Removal from office
under section 54

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

affairs or business of, or in relation to, that prescribed institution.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

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

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

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit and, in the case of a continuing offence, to a fine not exceeding five thousand ringgit for each day during which the offence continues after conviction.

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

(4) All the powers of the prescribed institution and its directors under its constituent documents, or exercisable by the prescribed institution or its directors under any written law, regardless whether such powers are exercisable by

resolution, special resolution, or in any other manner shall be vested in the Bank, or in the appointed person, as the case may be, and any difficulty that arises may be resolved by the Minister by a direction in writing.

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

(6) Any person who contravenes subsection (5) commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction.

(7) For the avoidance of doubt, it is hereby declared that an order under paragraph 55(a) shall not have the effect of conferring on, or vesting in, the Bank, or the appointed person, as the case may be, any title to, or any beneficial interest in, any property of the prescribed institution.

Reduction of share
capital and
cancellation of shares

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

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

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

Act 125. (4) The powers conferred on the Bank and the appointed person under this section shall be in addition to any powers exercisable under subsection 64(1) of the Companies Act 1965, and where an application is made to the High Court under subsection (1), the High Court may exercise any of the powers conferred on it under section 64 of the Companies Act 1965 in relation to an application for confirmation and subsections 64(9) and 64(10) of that Act shall apply to the application.

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

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

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

- (a) to prohibit the prescribed institution from carrying on all of its business, or any part of it;
- (b) to prohibit the prescribed institution from doing or performing any act or function in connection with all of its business or any part of it;
- (c) to authorise the Bank, or the appointed person, as the case may be, to apply to the High Court for an order staying for a period not exceeding six months the commencement or continuance of all or any actions and proceedings of a civil nature by or against the

prescribed institution with respect to all or any of its business;

(d) provide for all such matters of an incidental, ancillary or consequential nature, or for which it may be otherwise necessary or expedient to provide, to give effect to the order, including provisions for the Bank or the appointed person, as the case may be, to take into custody or control the property, books, documents or effects of the prescribed institution.

(2) Any prescribed institution that contravenes an order made under subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction.

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

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

PART VII

AUDITOR AND ACCOUNTS

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

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

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

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

Disqualification of
auditor

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

- (a) is not an approved company auditor;
- (b) has any direct or indirect interest in that prescribed institution, including an interest in its shares;
- (c) is a director, controller or employee of that prescribed institution;
- (d) is indebted to that prescribed institution or to any related corporation of that prescribed institution; or
- (e) has been convicted of any offence under this Act or the Companies Act 1965, or of any offence under any other written law involving fraud or dishonesty.

(2) Any prescribed institution or person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

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

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

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

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

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

(6) Any person who contravenes subsection (5) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or both and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

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

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

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

(2) Any firm that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit.

- Consent to act as auditor **66.** No prescribed institution shall appoint a person as auditor under subsection 63(1) unless that person, prior to his appointment, has consented in writing to act as auditor, and consent in the case of a firm shall be under the hand of at least one of its partners.
- Appointment of audit firm **67.** The appointment of a firm in the name of the firm as auditor shall take effect and operate as an appointment of the persons who are members of that firm at the time of the appointment.
- Auditor not deemed to be employee **68.** For the purposes of this Part, a person shall not be deemed to be an employee of a prescribed institution or its related corporation by reason only of his having been appointed an auditor of the prescribed institution or its related corporation.
- Auditor's report **69.** (1) An auditor of a prescribed institution shall submit a report of the audit to the members of the prescribed institution and the report—
- (a) in the case of a prescribed institution which is a company, shall be made in accordance with section 174 of the Companies Act 1965; and
 - (b) in the case of a prescribed institution, other than a company, shall certify whether or not in the opinion of the auditor—
 - (i) all the information and explanations which are in the opinion of the auditor necessary for the purposes of the audit have been obtained;
 - (ii) according to the best of the information and explanations given to him, the profit and loss account and balance sheet give a true and fair view of the state of the affairs of the prescribed institution for the financial year concerned;
 - (iii) books of account have been kept properly by the prescribed institution so far as it appears from the audit of the accounts; and

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

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

Additional requirement
on auditor

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

- (a) submit such additional information in relation to his audit as the Bank may specify; or
- (b) enlarge or extend the scope of his audit of the business and affairs of the prescribed institution in such manner or to such extent as the Bank may specify,

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

(2) Any person who fails to comply with the requirements of subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

Auditor to report
certain matters to the
Bank

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

- (a) there has been a contravention of or failure to comply with any provision of this Act or any specification or requirement made, or any order in writing, direction, instruction, or notice given, or any limit, term, condition or restriction imposed under this Act;
- (b) an offence involving fraud or dishonesty under any other written law has been committed by the prescribed institution or any of its employees;
- (c) losses have been incurred by the prescribed institution which reduce its capital funds to an extent that the prescribed institution is no longer able to comply with

the specifications of the Bank under subsection 38(1);

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

(e) he is unable to confirm the claims of the stakeholders of the prescribed institution.

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

(3) Notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise, the auditor of a prescribed institution shall not be liable for breach of a duty of confidentiality between the auditor and the prescribed institution for reporting to the Bank in good faith in compliance with subsection (1).

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

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

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

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

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

form as the Bank may specify:

- (a) duly audited revenue account together with supporting statements;
- (b) duly audited profit and loss account and balance sheet together with supporting statements;
- (c) a certificate by the auditor;
- (d) a report by the board of directors on its operations in the financial year; and
- (e) a statutory declaration by one of its non-executive directors and its chief executive officer in respect of matters in paragraphs (a), (b) and (d).

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

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

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

- (a) a copy of any report made by its auditor to its board of directors following the audit of its annual accounts; and
- (b) a report on the action taken by its board of directors on the auditor's report.

(5) Any prescribed institution that contravenes subsection (4) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one

thousand ringgit for each day during which the offence continues after conviction.

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

- (a) a revenue account together with supporting statements;
- (b) a profit and loss account and balance sheet together with supporting statements; and
- (c) a certification of the documents mentioned in paragraph (a) or (b) signed by the chief executive officer and the employee responsible for its financial management.

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

Accounting standards **75.** (1) A prescribed institution shall maintain its accounts in compliance with approved accounting standards.

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

Act 558. (3) Approved accounting standards referred to in subsection (1) shall have the same meaning assigned to it under section 2 of the Financial Reporting Act 1997 [*Act 558*].

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

Bank may specify.

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

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

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

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

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

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

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

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

(b) publishing its accounts under section 78.

(7) Any prescribed institution that contravenes subsection (6) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit.

Submission of annual
accounts

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

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

Action in relation to
annual accounts

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

- (a) publish in not less than two daily newspapers published in Malaysia and approved by the Bank, one in the national language and another in English language; and
- (b) exhibit in a conspicuous position at each of its branches in Malaysia,

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

(2) Any prescribed institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

Admissibility of
document

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

Liability where proper
accounting records not
kept

80. (1) If accounting records necessary to exhibit and explain the transactions and true financial condition of a prescribed institution are not kept, a past and present employee of the prescribed institution responsible for keeping proper accounting records commits an offence unless he proves that the offence was committed without his

consent or connivance and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

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

PART VIII

EXAMINATION AND INVESTIGATION

Examination by the Bank **82.** The Bank may, from time to time, examine, with or without any prior notice, the books or other documents, accounts and transactions of a prescribed institution and any of its offices in or outside Malaysia.

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

Duty to produce and
provide access to
document and
information

84. (1) A prescribed institution under examination and its director, employee and agent—

- (a) shall afford the examiner access to its documents;
- (b) shall provide the examiner facility to carry out the examination; and

Act 519.

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

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

(3) An examiner may take possession of a document or cash to which he has 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 1958 or any other written law.

Examination of person
other than prescribed
institution

85. (1) The examiner may examine—

- (a) a person who is, or was at any time, a director or employee of a prescribed institution or of its agent;
- (b) a person who is, or was at any time, a client of, or otherwise having dealings with, the prescribed institution; or

(c) a person whom he believes to be acquainted with the facts and circumstances of the case, including the auditor of a prescribed institution,

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

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(3) An auditor shall not be liable for breach of a contract relating to, or duty of, confidentiality for giving a document or information to the examiner.

Appearance before
examiner

86. (1) A person examined under section 82 or 83 or subsection 85(1) shall appear before the examiner at his office at such time as he may specify.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

Investigation by the
Bank

87. Where the Bank has reason to suspect the commission of an offence under this Act, the Bank shall cause an investigation to be conducted.

Appointment of
investigating officer

88. (1) For the purposes of an investigation under this Part, the Bank may appoint its employee or any other person to be an investigating officer.

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

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

(4) An investigating officer shall be subject to the direction and control of the Bank which has authorised him to act on its behalf.

Powers of an
investigating officer

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

- (a) enter any premises belonging to or in possession or control of the prescribed institution or its holding company, subsidiary, or employee;
- (b) search the premises for any property, record, report or document and seize and detain **my** property, record, report or document which is necessary in the investigating officer's opinion, for the purpose of an investigation into an offence under this Act; *[sic]*
- (c) inspect, make copies of, or take extracts from, any record, report or document so seized and detained;
- (d) take possession of, and remove from the premises, any property, record, report or document so seized and detained and detain it for such period as he deems necessary;
- (e) search any person who is in, or on such premises, if the investigating officer has reason to suspect that that person has on his person any property, report, record or document, including personal document, necessary, in the investigating officer's opinion, for the purpose of an investigation into an offence under this Act;
- (f) break open, examine, and search, any article, container or receptacle; or
- (g) stop, detain or search any conveyance.

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

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

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

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

(3) An investigating officer may seize, take possession of, and detain for such duration as he thinks necessary, any property, record, report or document produced before him in the course of his investigation or found on the person who is being searched by him.

(4) An investigating officer, in the course of his investigation

or search, shall—

(a) prepare and sign a list of every property, record, report or document seized; and

(b) state in the list the location in which, or the person on whom, the property, record, report or document is found.

(5) The occupant of the premises entered in the course of investigation, or any person on his behalf, shall be present during the search, and a copy of the list prepared under subsection (4) shall be delivered to such person at his request.

Power to examine
persons

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

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

(a) to attend before him for examination;

(b) to produce before him any property, record, report or document; or

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

(3) Any person who contravenes subsection (2) commits an offence and shall on conviction **be a liable** to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction. *[sic]*

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

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

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

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

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

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

(8) Any person who—

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

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

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

particular,

commits an offence and shall on conviction **be a liable** to a ^[sic] fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit, for each day during which the offence continues after conviction.

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

Search of person **92.** (1) An investigating officer searching any person under paragraph 89(1) (e) 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 authorisation of a magistrate, and may, if necessary, remove the person in custody to another place to facilitate such search.

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

Obstruction to exercise of powers by an investigating officer **93.** (1) Any person who—

- (a) refuses any investigating officer access to any premises or fails to submit to the search of his person;
- (b) assaults, obstructs, hinders or delays an investigating officer in effecting any entrance which he is entitled to effect;

- (c) fails to comply with any lawful demands of any investigating officer in the execution of his duties under this Part;
- (d) refuses to give to an investigating officer any property, document or information which may reasonably be required of him and which he has in his power to give;
- (e) fails to produce to, or conceal or attempt to conceal from, an investigating officer, any property, record, report or document, which the investigating officer requires;
- (f) rescues or attempts to rescue any thing which has been duly seized;
- (g) furnishes to an investigating officer as true any information which he knows or has reason to believe to be false; or
- (h) before or after any search or seizure, breaks or otherwise destroys any thing to prevent its seizure, or the securing of the property, report, record or document,

commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

Requirement to
provide translation

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

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

(3) Any person who fails to comply with the requirement

in subsection (1) or contravenes subsection (2) commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding six months or to both and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for each day during which the offence continues after conviction.

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

Delivery of property,
record, report or
document

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

(2) An investigating officer may grant permission to any person to inspect the property, record, report or document he had detained and taken possession of under subsection (1) if the person is entitled to inspect such property, record, report or document under this Act.

(3) A person who—

(a) fails to deliver any property, record, report or document that is required by an investigating officer; or

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

commits an offence and shall on conviction shall be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

Seizing of property,
record, report or
document

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

Release of property,
record, report or
document seized

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

- (a) on the close of an investigation or any proceedings arising from the investigation; or
- (b) with the prior written consent of the Bank or any investigating officer superior to him in rank, at any time before the close of investigation,

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

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

Act 593.

(3) Where the investigating officer is unable to determine the person who is lawfully entitled to the property, record, report or document or where there is more than one claimant to such property, record, report or document or where the investigating officer is unable to locate the person under subsection (1) who is lawfully entitled to the property, record, report or document, the investigating officer shall report the matter to a magistrate who shall then deal with the property, record, report or document as provided for in paragraphs 413(ii), (iii) and (iv) and sections 414, 415 and 416 of the Criminal Procedure Code [*Act 593*].

Investigating officer may arrest without warrant **98.** An investigating officer appointed under section 88 may arrest without warrant a person whom he reasonably suspects to have committed or to be committing any offence under this Act.

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

Assistance to police or other public officer **100.** Notwithstanding any other written law, the Bank, on its own initiative, or at the request of a police officer or a public officer in the course of his investigation of an offence under any written law, may allow that officer access to—

- (a) a copy of a document seized, detained or taken possession of;
- (b) a record of examination; or
- (c) a written statement on oath or affirmation.

Investigating officer deemed to be public servant and public officer **101.** An investigating officer shall be deemed to be a public servant for the purposes of the Penal Code [Act 574], and to be a public officer for the purposes of the Criminal Procedure Code. *Act 574.*

Report to Minister **102.** (1) The Minister charged with the responsibility for a development financial institution or with the responsibility for the subject or matter relating to any of the businesses or activities carried on by a development financial institution may submit a report to the Minister with a recommendation to examine into the affairs of the development financial institution under sections 84 to 86.

- (2) The State Authority, in the case of—
 - (a) a development financial institution which is a statutory body established by State law or by any subsidiary legislation made under any State law; or
 - (b) any other development financial institution which falls

under the responsibility, powers, control or jurisdiction of the State Authority,

may submit a report to the Minister with a recommendation to examine the business and affairs of the development financial institution under sections 84 to 86.

- Powers of Minister **103.** (1) Where the Minister receives a report and recommendation under section 102, he may decide, on the recommendation of the Bank—
- (a) not to take any action in the matter, and inform the Minister referred to in subsection 102(1) or the State Authority referred to in subsection 102(2) which submitted the report accordingly; or
 - (b) that it is necessary to examine into the business and affairs of the development financial institution for the protection of the interests of its stakeholders.
- (2) For the avoidance of doubt, it is hereby declared that—
- (a) before the Minister makes a decision under paragraph (1)(b); or
 - (b) before the Minister referred to in subsection 102(1) or the State Authority referred to in subsection 102(2), submits the report and recommendation under section 102 to the Minister,

it shall not be necessary for the Minister, or the Minister referred to in subsection 102(1) or the State Authority referred to in subsection 102(2), to give an opportunity to the development financial institution to make any representation to the Minister, or to the Minister referred to in paragraph 102(1), or to the State Authority referred to in subsection 102(2), as the case may be.

- Application of sections 84 to 86 **104.** (1) Where the Minister decides that it is necessary to examine the business and affairs of a development financial institution under paragraph 103(1)(b), the provisions of sections 84 to 86 shall apply to the development financial institution as if it was prescribed in such manner, to such extent, and with all such amendments as the Minister may, on the recommendation of the Bank, prescribe.

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

Application of sections 89 to 101 **105.** Where any development financial institution for which an order is made under subsection 104(1) contravenes subsection 84(1), 85(1) or 86(1), the provisions of sections 89 to 101 shall apply to that development financial institution.

Provisions of this Part to prevail **106.** The provisions of this Part shall have full force and effect notwithstanding anything contained in any other written law.

PART IX

MISCELLANEOUS

General offence **107.** Any person who contravenes or fails to comply with—
(a) any provision of this Act or regulations made under it; or
(b) any specification or requirement made, or any order in writing, direction, instruction or notice given, or any limit, term, condition or restriction imposed, in the exercise of any power conferred under or pursuant to any provision of this Act or regulations made under it,
commits an offence and shall on conviction, if no penalty is expressly provided for the offence under this Act or the regulations, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term of not exceeding six months or to both.

Falsification, concealment and destruction of document **108.** A person, with intent to deceive, in respect of a document to be produced or submitted under any provision of this Act, who makes or causes to be made a false entry,

omits to make, or causes to be omitted, any entry, or alters, abstracts, conceals or destroys, or causes to be altered, abstracted, concealed or destroyed, any entry, forges a document, or makes use of or hold in his possession a false document, purporting to be a valid document, alters any entry made in any document, or issues or uses a document which is false or incorrect, wholly or partially, or misleading commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

Offence by body
corporate

109. (1) Where an offence is committed by a body corporate or an association of persons, a person—

- (a) who is its director, controller, officer, or partner; or
- (b) who is concerned in the management of its affairs,

at the time of the commission of the offence, is deemed to have committed that offence unless that person proves that the offence was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.

(2) An individual may be prosecuted for an offence under subsection (1) notwithstanding that the body corporate or association of persons has not been convicted of the offence.

(3) Subsection (1) shall not affect the criminal liability of the body corporate or association of persons for the offence referred to in that subsection.

(4) Any person who would have committed an offence if any act had been done or omitted to be done by him personally commits that offence and shall on conviction be liable to the same penalty if such act had been done or omitted to be done by his agent or officer in the course of that agent's business or in the course of that officer's employment, as the case may be, unless he proves that the offence was committed without his knowledge or consent and that he took all reasonable precautions to prevent the

doing of, or omission to do, such act.

Offence by an individual **110.** Where a person is liable under this Act to a penalty for any act, omission, neglect or default, he shall be liable to the same penalty for the act, omission, neglect or default of his employee, director, controller, or agent if the act, omission, neglect or default was committed by—

- (a) his employee in the course of the employee's employment;
- (b) his director in carrying out the function of a director;
- (c) his controller in carrying out the function of a controller; or
- (d) his agent when acting on his behalf.

Joinder of offences **111.** Notwithstanding anything contained in any other written law, where a person is accused of more than one offence under this Act, he may be charged with and tried at one trial for any number of the offences committed within any length of time.

Seizable offence **112.** Every offence punishable under this Act shall be a seizable offence.

Power of Governor to compound offences **113.** (1) The Governor may, with the consent of the Public Prosecutor, offer in writing to compound any offence under this Act, or under regulations made under this Act, by accepting from the person reasonably suspected of having committed the offence such amount not exceeding fifty per cent of the amount of the maximum fine for that offence, including the daily fine, if any, in the case of a continuing offence, to which that person would have been liable if he had been convicted of the offence, within such time, as may be specified in the offer.

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

(3) An offer under subsection (1) may be made at any time

after the offence has been committed, but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer, or such extended of time as the Bank may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

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

Attempts, preparations, abetments and conspiracies punishable as offences

114. (1) Any person who—

- (a) attempts to commit an offence under this Act;
- (b) does an act preparatory to, or in furtherance of, the commission of an offence under this Act; or
- (c) abets or is engaged in a criminal conspiracy to commit (as those terms are defined in the Penal Code) an offence under this Act, whether or not the offence is committed in consequence of it,

commits an offence and is liable to the penalty for that offence.

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

Annual report

115. The Bank shall include in its annual accounts and annual report made under subsection 48(1) of the Central Bank of Malaysia Act 1958 an annual report on the working of this Act during the preceding calendar year before the end of April each year and the report shall include a summary of documents lodged with it.

Submission of information and statistics

116. (1) A prescribed institution and a development financial institution for which an order is made under

subsection 104(1) shall submit to the Bank, or such person as the Bank may specify, such document or information as it may require by notice in writing within such time as it may specify and the prescribed institution or the development financial institution, as the case may be, shall not submit any document which it knows, or has reason to believe, to be false or misleading.

(2) Any prescribed institution or any development institution that contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

Act 372. (3) A prescribed institution which is a scheduled institution under the Banking and Financial Institutions Act 1989 [*Act 372*] shall submit under subsection (1) any document, statement or information required to be submitted under subsection 21(1) of that Act, and the prescribed institution shall be deemed to have complied with that subsection.

(4) The Bank may require the document or information submitted under subsection (1) to be duly certified by the auditor of the prescribed institution or the development financial institution, as the case may be.

Indemnity 117. No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any court or before any authority against the Minister, the Bank, its director, officer or employee, or any person acting on its behalf, either personally or in his official capacity, for, or on account of, or in respect of an act done or statement made, or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance of or in execution of, or intended pursuance of or execution of, this Act or any order in writing, direction, instruction or other thing issued under this Act if such act or statement was done or made, or was omitted to be done or made, in good faith.

Prohibition on receipt of gifts, commission, 118. (1) No director, officer or agent of a prescribed

etc. institution, or any other person being a person receiving any payment or remuneration in any capacity, professional or otherwise, from such prescribed institution, shall, directly or indirectly, ask for or receive, or consent or agree to receive, any gift, commission, emolument, gratuity, money, property, token or thing of value exceeding one hundred ringgit or any service, facility or other intangible benefit, whether for his own personal benefit or advantage or for the benefit or advantage of any other person, from any person other than from the prescribed institution, for procuring or endeavouring to procure for any person—

(a) any credit facility from that prescribed institution; or

(b) any other thing relating to the business or affairs of that prescribed institution.

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

Secrecy **119.** (1) Except for the purposes of this Act, nothing in this Act shall authorise the Bank or the Minister to direct the Bank to inquire specifically into the affairs of any individual client of a prescribed institution or a development financial institution.

(2) No director or officer of any prescribed institution or of any external bureau established, or any agent appointed, by the prescribed institution to undertake any part of its business, whether during or after his tenure of office, or during or after his employment, and no person who for any reason has by any means access to any record, book, register, correspondence, or other document, or material, relating to the affairs or, in particular, the account of any particular customer of the prescribed institution, 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 the affairs or account of such customer.

(3) This section shall not apply to information which at the time of disclosure is, or has already been made, lawfully available to the public from any source or to information which is in the form of a summary or collection of

information where information relating to a particular prescribed institution or a development financial institution or its stakeholders is not explicitly stated.

(4) No person who has information which to his knowledge has been disclosed in contravention of subsection (1) shall disclose the information to another person.

Permitted disclosure **120.** (1) Section 119 shall not apply to the disclosure of information or document—

- (a) to the Minister, the Bank, its director or employee, a person appointed under subsection 4(3) or an appointed person, where the disclosure is in the course of performance of functions;
- (b) to a person rendering service to the Bank in relation to a matter requiring professional knowledge;
- (c) which the customer, or his personal representative, has given permission in writing to disclose;
- (d) in a case where the customer is declared bankrupt, or, if the customer is a corporation, the corporation is being or has been wound up, in Malaysia or in any country, territory or place outside Malaysia;
- (e) where the information is required by a party to a *bona fide* commercial transaction, or to a prospective *bona fide* commercial transaction, to which the customer is also a party, to assess the creditworthiness of the customer relating to such transaction, provided that the information required is of a general nature and does not enable the details of the customer's account or affairs to be ascertained;
- (f) for the purposes of any criminal proceedings or in respect of any civil proceedings—
 - (i) between a prescribed institution and its customer or his guarantor relating to the customer's transaction with the prescribed institution; or
 - (ii) between the prescribed institution and two or more parties making adverse claims to money in a customer's account where the prescribed institution seeks relief by way of interpleader;

- (g) where the prescribed institution has been served a garnishee order attaching money in the account of the customer;
- (h) to an external bureau established, or to an agent appointed, by the prescribed institution with the prior written consent of the Bank;
- (i) where such disclosure is required or authorised under any other provision of this Act;
- (j) where such disclosure is authorised under any Federal law to be made to a police officer investigating into any offence under such law and such disclosure to the police officer being, in any case, limited to the accounts and affairs of the person suspected of the offence; or
- (k) where such disclosure is authorised in writing by the Bank.

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

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

Decision of Minister to be final **121.** Except as otherwise provided in this Act, any decision made by the Minister under this Act, whether an original decision by him or a decision on appeal to him from a decision of the Bank, shall be final.

Exemptions **122.** The Minister may, upon the recommendation of the Bank, if he considers it consistent with the purposes of this Act or in the interest of the public, by order published in the

Gazette, exempt any prescribed institution from any of the provisions of this Act for such duration and subject to such condition as the Minister may specify.

Regulations **123.** (1) The Minister may, on the recommendation of the Bank, make such regulations as are necessary or expedient to give full effect to or for carrying out the provisions of this Act.

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

(a) to provide that any act or omission in contravention of any provision of such regulations shall be an offence;

(b) to provide for the imposition of penalties for such offences which shall not exceed a fine of one million ringgit or imprisonment for a term not exceeding one year or both; and

(c) to provide for the imposition of an additional penalty for a continuing offence which shall not exceed one thousand ringgit for each day that the offence continues after conviction.

Amendment of Schedule **124.** The Minister may, by order published in the *Gazette*, amend the Schedule.

Application of other laws **125.** (1) Where there is a conflict or inconsistency between the provisions of this Act and that of the—

Act 372. (a) Banking and Financial Institutions Act 1989;

Act 202. (b) Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act 1978 [*Act 202*];

Act 125. (c) Companies Act 1965;

Act 502. (d) Co-operatives Societies Act 1993; or

(e) the constituent documents of a prescribed institution, the provisions of this Act shall prevail.

(2) Where any difficulty or doubt arises in the application of subsection (1) in relation to any particular prescribed

institution, or any particular matter or circumstance, or generally, the Minister may, on the reference of the difficulty or doubt to him by the Bank, resolve the same by a direction in writing.

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

Power to issue guidelines, *etc.*

126. The Bank may issue such guidelines, circulars or notices in respect of this Act relating to the conduct of the business and affairs of a prescribed institution as are necessary or expedient to give full effect to or for carrying out the provisions of this Act.

Application of Exchange Control Act 1953
Act 17.

127. Nothing contained in this Act shall in any manner affect, or derogate from, the provisions of the Exchange Control Act 1953 [*Act 17*], and in the application of any provision of this Act to any person, the provision shall apply subject to the provisions of that Act and, accordingly, in the event of any conflict or inconsistency between any provision of this Act and that Act, the provisions of that Act shall prevail.

Contravention not to affect contract, agreement or arrangement

128. (1) Except as otherwise provided in this Act, or in pursuance of any provision of this Act, no contract, agreement or arrangement entered into in contravention of any provision of this Act shall be void solely by reason of such contravention.

(2) Subsection (1) shall not affect any criminal liability of any person for an offence under this Act in respect of such contravention.

Islamic banking or financial business
Act 276.

129. (1) Nothing in this Act or the Islamic Banking Act 1983 [*Act 276*] shall prohibit or restrict any prescribed institution from carrying on Islamic banking business or Islamic financial business in addition to its existing business, provided that the prescribed institution shall obtain the prior written approval of the Bank before it carries on Islamic banking business or any Islamic financial business.

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

(3) The Bank may, in consultation with the Syariah Advisory Council established under the Banking and Financial Institutions Act 1989, issue directions to a prescribed institution on matters relating to Islamic banking business or any other Islamic financial business and the prescribed institution shall comply with the written directions.

(4) The prescribed institution may, in carrying on Islamic banking business or Islamic financial business, seek the advice of the Syariah Advisory Council on the operations of such business in order to ensure that it does not involve any element which is not approved by the religion of Islam.

(5) For the purposes of this section—

Act 276.

(a) “Islamic banking business” has the same meaning assigned to it by the Islamic Banking Act 1983; and

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

Savings 130. (1) Any requirement for the approval of the Minister or the Bank, as the case may be, under this Act shall be deemed to have been given in accordance with the provisions of this Act and shall continue to remain in full force and effect in relation to the persons to whom it applies until modified, rescinded or revoked in accordance with the provisions of this Act.

(2) The chief executive officer or director of a prescribed institution shall, on the commencement date, be deemed to have complied with the Minimum Criteria for Appointment in the Schedule and notwithstanding any disqualification under section 7, shall continue to remain in office until the expiry of his term of appointment.

SCHEDULE

[Subsection 6(2)]

Minimum Criteria For Appointment

Chief Executive Officer and director to be “fit and proper” persons

1. (1) Pursuant to subsection 6(2) of the Act, a prescribed institution, in determining whether a person is a “fit and proper” person to hold or is to hold the position of a Chief Executive Officer or director, shall have regard to—

- (a) his probity, his competence and soundness of judgement for fulfilling the responsibilities of that position;
- (b) the diligence with which he is fulfilling or likely to fulfil those responsibilities; and
- (c) whether the interests of the stakeholders and the general public are, or are likely to be, in any way threatened by that position.

(2) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous business conduct and activities of the person in question and, in particular, to any evidence that he—

- (a) has been compounded or convicted or as chief executive officer or director, has caused to be compounded or convicted, an offence which is punishable with—
 - (i) imprisonment for one year or more, whether by itself, or in lieu, or in addition to, a fine; or
 - (ii) a fine of twenty thousand ringgit or more;
- (b) contravened any provision made by or under any written law appearing to the Bank to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;

- (c) engaged in or been associated with, any business practices, or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

Additional criteria for a Chief Executive Officer

2. A person who is, or is to be, a Chief Executive Officer of a prescribed institution—

- (a) shall have the educational qualifications and experience which will enable him to satisfactorily discharge his responsibilities;
- (b) shall not have held a position of responsibility in the management of a company which has been convicted of an offence under any written law during his tenure of office unless he proves that such offence was committed without his knowledge or consent and he was not in a position to prevent the offence;
- (c) shall not have held a position of responsibility in the management of any company which during his tenure of office—
 - (i) has defaulted in payment of any judgement sum against it;
 - (ii) has suspended payment or has compounded with its creditors; or
 - (iii) has had a receiver or manager appointed in respect of its property;
- (d) shall be available for full time employment, and shall not carry on any other business or vocation, except as a non-executive director or shareholder of another company;
- (e) shall not be engaged actively in any political activity;
- (f) shall not have caused a conflict of interest situation with that of the prescribed institution, either by himself or through his relative;
- (g) shall not have acted in a manner which may cast doubt on his fitness to hold the position of chief executive officer, or acted in blatant disregard for proper professional conduct, especially in dealings with the stakeholders and the general public; and

- (h) shall not have been a party to any action or decision of the management of a prescribed institution which is detrimental to the interests of the prescribed institution, its stakeholders, and the general public.

Additional criteria for a director

3. A person who is, or is to be, a director of a prescribed institution—

- (a) shall have the educational qualifications and experience which will enable him to carry out and perform his duties;
- (b) shall not have acted in a manner which may cast doubt on his fitness to hold the position of a director; and
- (c) *(Deleted)*. *PU(A) 285/2007.*
- (d) shall not have been a party to any action or decision of the board or management of the prescribed institution which is detrimental to its interests.

Other criteria as the Bank may prescribe

4. The Bank may, with the concurrence of the Minister, prescribe such other additional criteria as in its opinion expedient for the purpose of protecting the interests of the prescribed institution, its stakeholders and the general public.

Discretion of the Bank

5. The Bank shall have full discretion to determine whether a person has complied with this Schedule.