

FINANCIAL SERVICES BILL 2012

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A BILL

i n t i t u l e d

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

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Financial Services Act 2012.

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

Interpretation

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

“adjuster” means a person who carries on adjusting business;

“adjusting business” means the business of investigating the cause and circumstances of a loss and ascertaining the quantum of the loss in relation to insurance or takaful claims;

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

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

“annuity” means the right to a series of periodical payments at intervals of one year or less under a contract with a life insurer;

“annuity certain” means an annuity where the duration of periodic payments is pre-determined and does not depend on the death or survival of the policy owner;

“applicant” means—

- (a) in Part III and Schedule 5, the person who submits, on its own behalf or through an advocate, a secretarial firm or other duly authorized representative, the application for authorization under section 9;
- (b) in Part VI and Schedule 6, the person who submits, on its own behalf or through an advocate, a secretarial firm or other duly authorized representative, the application for approval under that Part; or
- (c) in Part VII, the person who submits the application to be a financial holding company or proposes another company to be a financial holding company;

“appointed actuary” means an actuary appointed by a licensed insurer under subsection 74(1) or by the Bank under section 75;

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

“approved business” means any business set out in Division 1 of Part 1 of Schedule 1;

“approved financial adviser” means a person approved under section 11 to carry on financial advisory business;

“approved insurance broker” means a person approved under section 11 to carry on insurance broking business;

“approved issuer of a designated payment instrument” means a person approved under section 11 to issue a designated payment instrument;

“approved money-broker” means a person approved under section 11 to carry on money-broking business;

“approved operator of a payment system” means a person approved under section 11 to operate a payment system set out in paragraph 1 of Division 1 of Part 1 of Schedule 1;

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

“approved representative office” means a representative office in Malaysia of a foreign institution approved by the Bank under subsection 19(4);

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

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

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

“authorized business” means a licensed business or an approved business;

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

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

“banking business” means—

(a) the business of—

- (i) accepting deposits on current account, deposit account, savings account or other similar account;
- (ii) paying or collecting cheques drawn by or paid in by customers; and
- (iii) provision of finance; and

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

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

“bridge institution” means a body corporate established or acquired by the Bank, and designated as a bridge institution under subsection 176(1);

“business transfer scheme” means a scheme of transfer for banking business, investment banking business or insurance business;

“chief executive officer”, in relation to—

- (a) a body corporate or unincorporate, means an individual, however styled, who, either individually or jointly with one or more other persons, is responsible under the authority of the directors, for the conduct of the business and the administration of such body; or
- (b) an authorized person which is established as a branch in Malaysia, means an officer principally responsible for the business of the branch in Malaysia;

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

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

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

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

- (a) produced by a computer;
- (b) displayed on the screen of a computer; or
- (c) accurately translated from a statement or representation so produced;

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

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

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

“co-operative society” has the same meaning assigned to it in section 2 of the Co-operative Societies Act 1993 [*Act 502*];

“credit facility” means—

- (a) the giving of any advance, loan or other facility in whatever form or by whatever name called;
- (b) the giving of a guarantee; or
- (c) any other dealing or transaction as prescribed under section 4;

“deposit” means a sum of money accepted or paid on terms under which it will be repaid in full, with or without interest or any other consideration in money or money’s worth, either on

demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person accepting it, but excludes money paid *bona fide*—

- (a) by way of an advance or a part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services are not in fact sold, hired or otherwise provided;
- (b) by way of security for the performance of a contract or by way of security in respect of any loss which may result from the non-performance of a contract;
- (c) without limiting paragraph (b), by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise; and
- (d) in such other circumstances, or to or by such other person, as set out in Schedule 2;

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

“derivative” means any agreement, including an option, a swap, futures or forward contract, whose market price, value, delivery or payment obligations is derived from, referenced to or based on, but not limited to, securities, commodities, assets, rates (including interest rates or exchange rates) or indices;

“designated payment instrument” means a payment instrument prescribed as a designated payment instrument under section 31;

“designated payment system” means a payment system prescribed as a designated payment system under subsection 30(1);

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

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

- (b) an alternate or substitute director; or
- (c) in particular, without limiting the foregoing, in the case of—
 - (i) a corporation, has the same meaning assigned to it in subsection 4(1) of the Companies Act 1965;
 - (ii) a co-operative society, means a member of the board, or other governing body howsoever called, of the co-operative society;
 - (iii) a statutory body, means a member of the board, committee, council or other governing body howsoever called, of the statutory body;
 - (iv) a partnership, means a partner;
 - (v) a sole proprietorship, means the sole proprietor; and
 - (vi) any other body, association or group of persons, whether corporate or unincorporate, means any person having the direction and control of the management of its affairs or business;

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

“electronic money” means any payment instrument, whether tangible or intangible, that—

- (a) stores funds electronically in exchange of funds paid to the issuer; and
- (b) is able to be used as a means of making payment to any person other than the issuer;

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

“factoring business” means—

- (a) the business of acquiring debts due to any person; and
- (b) such other business as prescribed under section 3;

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

“financial advisory business” means any of the following:

- (a) analyzing the financial planning needs of a person relating to an insurance product;
- (b) recommending an appropriate insurance product to a person;
- (c) sourcing an insurance product from a licensed insurer for a person;
- (d) arranging of a contract in respect of an insurance product for a person; or
- (e) such other business, service or activity in relation to a financial service as prescribed under section 3;

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

“financial holding company” means a company which—

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

(b) has obtained the approval of the Bank pursuant to subsection 112(3) to be a financial holding company of such licensed person;

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

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

“foreign currency” means any currency other than ringgit;

“foreign institution” means a foreign company, not being an authorized person or a registered person, which carries on any business outside Malaysia which corresponds, or is similar, to the business of any authorized person or registered person, whether or not such person has an approved representative office;

“foreign insurer” means an insurer incorporated outside Malaysia;

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

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

“individual” means a natural person;

“insurance” includes reinsurance;

“insurance agent” means a person who does all or any of the following:

(a) solicits or obtains a proposal for insurance on behalf of an insurer;

(b) offers or assumes to act on behalf of an insurer in negotiating a policy; or

(c) does any other act on behalf of an insurer in relation to the issuance, renewal or continuance of a policy;

“insurance broker” means a person who, as an independent contractor, carries on insurance broking business and includes a reinsurance broker;

“insurance broking business” means the business of soliciting, negotiating or procuring a policy with an insurer, or the renewal or continuance of the policy by a person, for a policy owner other than for himself and includes reinsurance broking for an insurer;

“insurance claim” means a demand for payment of an amount due under a policy;

“insurance fund” means an insurance fund established and maintained under section 81;

“insurer” includes a professional reinsurer;

“interest in shares” shall be construed as set out in Schedule 3;

“investment account” has the same meaning assigned to it in subsection 2(1) of the Islamic Financial Services Act 2012 [Act];

“investment banking business” means—

(a) the business of—

(i) accepting deposits on deposit account; and

(ii) provision of finance;

(b) any regulated activity carried on pursuant to a Capital Markets Services Licence under the Capital Markets and Services Act 2007 [Act 671]; and

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

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

“investment-linked policy” means a contract of insurance on human life or an annuity where the benefits are, wholly or partly, to be determined by reference to units, the value of which is related to—

- (a) the income from property of any description; or
- (b) the market value of such property;

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

“leasing business” means—

- (a) the business of letting or sub-letting movable property on hire for the purpose of the use of such property by the hirer or any other person in any business, trade, profession or occupation or in any commercial, industrial, agricultural or other economic enterprise whatsoever and, where the lessor is the owner of the property, regardless whether the letting is with or without an option to purchase the property, but excludes the business of hire-purchase which is subject to the Hire-Purchase Act 1967 [Act 212] and for the purpose of this definition, “movable property” includes any plant, machinery, equipment or other chattel attached or to be attached to the earth or fastened or to be fastened, permanently or otherwise, to any thing attached to the earth; and
- (b) such other business as prescribed under section 3;

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

“licence” means a licence granted under section 10;

“licensed bank” means a person licensed under section 10 to carry on banking business;

“licensed business” means banking business, insurance business or investment banking business;

“licensed insurer” means a person licensed under section 10 to carry on insurance business;

“licensed investment bank” means a person licensed under section 10 to carry on investment banking business;

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

“life business” means the business of undertaking liability under a life policy;

“life policy” means a policy by which payment of policy moneys is insured on death or survival, including extensions of cover for personal accident, disease or sickness and includes an annuity but excludes a personal accident policy;

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

“Malaysian policy” means a policy which is issued in Malaysia by a licensed insurer and is—

- (a) a life policy where the policy owner’s address, as specified in the policy or any other address subsequently notified in writing by the policy owner to the insurer, is or was an address in Malaysia;
- (b) a general policy which relates to risks arising in Malaysia, or where the policy owner is a resident of, or a permanent establishment in, Malaysia within the meaning of the Income Tax Act 1967 [*Act 53*]; or
- (c) a reinsurance contract with another licensed insurer;

“market participant” means any person who—

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

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

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

“member”, in relation to a body corporate or unincorporate which is—

- (a) a corporation, means a shareholder;
- (b) a co-operative society, means a member of the co-operative society;
- (c) a partnership, means a partner;
- (d) any other body corporate having a membership, means a member of the body; and
- (e) a society registered under the Societies Act 1966 [Act 335], means a member of the society;

“merchant acquiring services” means a business of an operator of a payment system that enters into a contract with a merchant for the purpose of accepting payment instruments for payment of goods or services;

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

“money-broking business” means the business of arranging transactions between buyers and sellers in the money market or foreign exchange market as an intermediary in consideration of brokerage fees paid or to be paid, but excludes the buying or selling of Malaysian currency or foreign currencies as a principal in such markets;

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

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

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

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

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

“participating life policy” means any life policy conferring a right to the policy owner to participate in allocations, of which the amount or timing is at the discretion of the insurer, from the assets of an insurance fund under subsection 81(2);

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

“payment instrument” means any instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to make any payment;

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

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

“personal accident policy” means a policy providing fixed pecuniary benefits or benefits in the nature of indemnity, or both, against risks of the person insured sustaining injury or dying as the result of an accident or becoming incapacitated in consequence of disease;

“policy” means an insurance policy and includes a cover note or a contract of insurance, whether or not embodied in or evidenced by a document in the form of an insurance policy, and references to—

- (a) issuing a policy shall be construed as entering into a contract of insurance, whether or not a formal contract has been issued; and
- (b) a policy of an insurer includes a policy or a bond in respect of which the insurer is under any liability, whether the policy was issued by the insurer or the liability was transferred to the insurer from another insurer;

“policy moneys” includes any benefit, whether pecuniary or not, which is secured by a policy;

“policy owner” means the person who has legal title to a policy and includes—

- (a) where a policy has been assigned, the assignee;
- (b) where a personal representative of a deceased policy owner is entitled as against the insurer to the benefit of a policy, the personal representative;
- (c) in relation to a policy providing for the payment of annuity, an annuitant; and
- (d) where under a policy, moneys are due or payable, whether periodically or otherwise, the person to whom the moneys are due or payable;

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

“premium” means the amount payable to an insurer under a policy as consideration for the obligations assumed by the insurer;

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

“professional reinsurer” means a reinsurer which is licensed to carry on solely reinsurance business;

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

- (a) any right, interest, title, claim, chose in action, power or privilege, whether present or future, or whether vested or contingent, in relation to any property, or which is otherwise of value;
- (b) any conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of immovable property of which the person executing the conveyance is the proprietor or has possession or in which he is entitled to a contingent right, either for the whole interest or for any less interest;
- (c) any security, including any stock, share, debenture and fund;
- (d) any negotiable instrument, including any bank note, bearer note, Treasury bill, dividend warrant, bill of exchange, promissory note, cheque and negotiable certificate of deposit; or
- (e) any mortgage or charge, whether legal or equitable, guarantee, lien or pledge, whether actual or constructive, letter of hypothecation, trust receipt, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present or future, or whether vested or contingent;

“provision of finance” includes—

- (a) lending of money;
- (b) leasing business;
- (c) factoring business;
- (d) purchase of bills of exchange, promissory notes, certificates of deposit, debentures or other negotiable instruments; and

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

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

“registered adjuster” means a registered person carrying on adjusting business;

“registered business” means any business set out in Part II of Schedule 1;

“registered operator of a payment system” means a registered person operating a payment system set out in paragraph 9 of Part II of Schedule 1;

“registered person” means a registered person under subsection 18(1);

“reinsurance” means insurance cover effected by an insurer with a second insurer on the risks, wholly or partly, it has accepted and includes any similar arrangement by a branch of the insurer in Malaysia with its branch outside Malaysia (the head office of the insurer being, for this purpose, treated as a branch);

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

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

(a) the spouse of the individual;

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

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

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

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

- (f) any uncle, aunt or cousin of the individual, or of the spouse of the individual; or
- (g) any spouse, or any lineal ascendant or descendant, of an individual referred to in paragraph (f);

“repealed Acts” means the Banking and Financial Institutions Act 1989 [*Act 372*], the Exchange Control Act 1953 [*Act 17*], the Insurance Act 1996 [*Act 553*] and the Payment Systems Act 2003 [*Act 627*];

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

“senior officer” means a person, other than the chief executive officer or a director, having authority and responsibility for planning, directing or controlling the activities of an authorized person, operator of a designated payment system or a financial holding company including the chief operating officer, members of decision-making committees and other persons performing key functions such as risk management, compliance, internal audit or other functions as may be specified by the Bank under section 47;

“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;

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

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

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

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

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

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

“takaful claim” has the same meaning assigned to it in subsection 2(1) of the Islamic Financial Services Act 2012;

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

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

Relative

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

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

Control

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

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

(b) unless proven otherwise—

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

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

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

and the phrase “controlled” or “controller” shall be construed accordingly.

Acting in concert

(4) For the purposes of this Act—

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

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

- (ii) act jointly for the purpose of exercising control over a corporation; and
- (b) without limiting the generality of paragraph (a), the following persons shall be presumed to be persons acting in concert, unless proven otherwise:
 - (i) a corporation and its related and associate corporations;
 - (ii) a corporation and any of its directors, or the parent, child, brother or sister of any of its directors, or the spouse of any such director or of any such relative, or any related trusts;
 - (iii) a corporation and any pension fund established by it;
 - (iv) a person and any investment company, unit trust fund or any other fund whose investments such person manages on a discretionary basis;
 - (v) a person and his client which is a corporation, where the person manages on a discretionary basis the client's funds and has ten per cent or more interest in shares of the client; or
 - (vi) a person who owns or controls twenty per cent or more of the voting shares of a corporation falling within subparagraph (i) and any parent, child, brother or sister of such person, or the spouse of such person or any such relative, or any related trusts together with one or more persons falling within subparagraph (i).

Qualified financial agreements

(5) For the purposes of this Act—

(a) “qualified financial agreement” means—

- (i) a master agreement in respect of one or more qualified financial transactions under which if certain events specified by the parties to the agreement occur—
 - (A) the transactions referred to in the agreement terminate or may be terminated;

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

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

- (ii) an agreement relating to financial collateral, including a title transfer credit support agreement, with respect to one or more qualified financial transactions under a master agreement referred to in subparagraph (i); or
- (iii) any other agreement as prescribed under section 4;

(b) “qualified financial transaction” means—

- (i) a derivative, whether to be settled by payment or delivery; or
- (ii) a repurchase, reverse repurchase or buy-sell back agreement with respect to securities;

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

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

- (ii) security, a securities account or a right to acquire securities; or
- (iii) futures agreement or futures account;
- (d) “title transfer credit support agreement” means an agreement under which title to property has been provided for the purpose of securing the payment or performance of an obligation in respect of a qualified financial agreement.

(6) Any reference in this Act to “this Act”, the “Islamic Financial Services Act 2012” or the “Central Bank of Malaysia Act 2009” shall, unless otherwise expressly stated, be deemed to include a reference to any rule, regulation, order, notification or other subsidiary legislation made under this Act, the Islamic Financial Services Act 2012 or the Central Bank of Malaysia Act 2009, as the case may be.

Prescription by Minister of additional business or activity

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

- (a) any business or activity as an addition to the definition of—
 - (i) “banking business”;
 - (ii) “investment banking business”;
 - (iii) “financial intermediation activities”;
 - (iv) “factoring business”; or
 - (v) “leasing business”,

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

- (b) any business, service or activity in relation to a financial service as a financial advisory business for the purposes of the definition of “financial advisory business” under subsection 2(1).

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

4. The Bank may, with the concurrence of the Minister, prescribe—
- (a) any agreement in respect of a financial transaction that may be entered into by parties in the financial markets, other than a standardized derivative or an agreement in respect of securities transactions entered into under the rules of a stock exchange and approved clearing house as defined in subsection 2(1) of the Capital Markets and Services Act 2007 as a qualified financial agreement for the purposes of the definition of “qualified financial agreement” in subsection 2(5);
 - (b) any dealing or transaction as a credit facility for the purposes of the definition of “credit facility” in subsection 2(1); and
 - (c) any other person as a market participant for the purposes of the definition of “market participant” in subsection 2(1).

Classification of, and construction of references to, insurance business

5. (1) For the purposes of this Act, insurance business shall be divided into two classes—
- (a) life business, which in addition to all insurance business concerned with life policies shall include any type of insurance business carried on as incidental only to the life insurer’s business; and
 - (b) general business, which means all insurance business which is not life business.
- (2) For the purposes of this Act, the reinsurance of liabilities under insurance policies shall be treated as belonging to the same class and description as the insurance policies being reinsured.

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

(4) For the purposes of this Act—

(a) the activity of—

(i) effecting a contract of insurance; or

(ii) carrying out a contract of insurance,

by way of business shall constitute the carrying on of an insurance business;

(b) a person is deemed to effect, or carry out, a contract of insurance by way of business if he—

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

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

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

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

(5) For the purposes of this Act—

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

- (b) the Bank may determine such business or activity to belong to a particular class referred to in subsection (1) or description, of insurance business; and
- (c) the businesses set out in Schedule 4 shall not be treated as insurance business.

PART II

REGULATORY OBJECTIVES AND POWERS AND FUNCTIONS OF BANK

Regulatory objectives

6. The principal regulatory objective of this Act is to promote financial stability and in pursuing this objective, the Bank shall—

- (a) foster—
 - (i) the safety and soundness of financial institutions;
 - (ii) the integrity and orderly functioning of the money market and foreign exchange market;
 - (iii) safe, efficient and reliable payment systems and payment instruments; and
 - (iv) fair, responsible and professional business conduct of financial institutions; and
- (b) strive to protect the rights and interests of consumers of financial services and products.

Powers and functions of Bank

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

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

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

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

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

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

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

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

as may be specified by the Bank.

PART III

AUTHORIZATION AND REGISTRATION

Division 1

Authorized business

Authorized business to be carried on by authorized person

8. (1) No person shall carry on any authorized business unless it is—

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

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

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

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

Application for authorization

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

Grant of licence by Minister

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

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

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

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

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

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

Approval by Bank

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

(2) The Bank may—

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

(b) reject the application.

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

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

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

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

Requirements on minimum capital funds or surplus of assets over liabilities

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

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

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

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

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

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

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

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

Additional conditions of licence or approval

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

(2) Any authorized person who fails to comply with any of the conditions imposed by the Minister or the Bank, as the case may be, under subsection (1) or 10(4), paragraph 11(2)(a) or subsection 12(3) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million ringgit or to both.

Division 2

Restriction on dealings of authorized persons

Authorized person to carry on authorized business only

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

(2) Notwithstanding subsection (1) and subject to paragraphs 15(1)(d) and (e), an approved operator of a payment system or approved issuer of a designated payment instrument which is not a licensed person may carry on any business or activity which is not in connection with or for the purposes of its approved business.

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

(a) a licensed insurer shall not carry on annuity certain business, financial guarantee insurance business or credit guarantee insurance business; and

(b) a licensed investment bank shall not accept money on deposit which is repayable on demand by cheques, drafts, orders or any other instrument drawn by a depositor on such licensed investment bank.

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

Authorized person and operator of designated payment system permitted to carry on certain Islamic financial business

15. (1) Upon an application to the Bank and where the Bank has granted its written approval—

- (a) a licensed bank or licensed investment bank may carry on Islamic banking business;
- (b) an approved insurance broker may carry on takaful broking business;
- (c) an approved financial adviser may carry on Islamic financial advisory business;
- (d) an operator of a designated payment system or approved operator of a payment system may facilitate participants engaged in Islamic financial business to transfer, clear or settle funds or securities; or
- (e) an approved issuer of a designated payment instrument may issue a designated Islamic payment instrument.

(2) A person approved under subsection (1) shall be subject to—

- (a) the provisions of the Islamic Financial Services Act 2012, in particular the provisions of Parts IV, VI, IX, X and XIII of the Act, in so far as those provisions relate to the business such person is approved to carry on under that subsection; and
- (b) any standards, notices, directions, conditions, specifications or requirements specified or made under that Act relating to the business such person is approved to carry on under that subsection.

(3) Without limiting the generality of subsection (2), a licensed bank or licensed investment bank approved under subsection (1) shall, for the purposes of carrying on Islamic banking business—

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

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

(4) The Islamic banking fund established under paragraph (3) (a) shall—

(a) be funded from the capital funds of the licensed bank or licensed investment bank and other sources of funds as may be specified by the Bank; and

(b) be segregated from the capital funds of the licensed bank or licensed investment bank for the operations of its licensed business under this Act.

(5) Unless otherwise specified by the Bank, the assets of a licensed bank or licensed investment bank in relation to its Islamic banking business shall not be—

(a) used to fund the operations of its licensed business under this Act; and

(b) subject to the debts or other obligations of the licensed bank or licensed investment bank in relation to its licensed business under this Act.

(6) An operator of a designated payment system or approved operator of a payment system who has obtained the approval of the Bank under subsection (1) shall—

(a) put in place operational arrangements of the payment system, including liquidity facilities which are; or

(b) ensure its business conduct is,

not contrary to Shariah in so far as the operational arrangements and the business conduct relate to the business which such operator is approved to carry on under subsection (1).

(7) The board of directors of—

(a) a licensed bank or licensed investment bank; or

- (b) an approved person or an operator of a designated payment system which is required by the Bank under subsection 30(3) of the Islamic Financial Services Act 2012 to establish a Shariah committee,

shall, without prejudice to section 56, have due regard to the advice of its Shariah committee in respect of the Islamic financial business carried on by the person.

- (8) For the purposes of this section—

“designated Islamic payment instrument”, “Islamic banking business”, “Islamic financial advisory business”, “Shariah committee” and “takaful broking business” have the same meaning as defined in subsection 2(1) of the Islamic Financial Services Act 2012;

“Islamic financial business” has the same meaning as defined in subsection 2(1) of the Central Bank of Malaysia Act 2009.

- (9) Any person who fails to obtain the approval of the Bank to carry on any business referred to under subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding fifty million ringgit or to both.

Licensed insurer to carry on life or general business

16. (1) A licensed insurer, other than a licensed professional reinsurer, shall not carry on both life business and general business.

(2) Notwithstanding subsection (1), a licensed life insurer may carry on the business of insuring solely against disease or sickness or solely against medical expenses subject to such requirements and conditions as may be specified by the Bank.

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

Division 3

Registered business

Registered business to be carried on by registered person

17. (1) No person shall carry on registered business unless it has—

- (a) fulfilled such requirements and submitted such documents or information as may be prescribed by the Bank; and
- (b) notified the Bank in writing of the date of commencement of its business.

(2) Subsection (1) shall not apply in respect of adjusting business to—

- (a) an advocate, solicitor or a member of any other profession who acts or assists in adjusting insurance or takaful claims incidental to his practice and who does not hold himself out as an adjuster;
- (b) an adjuster of aviation or maritime losses; or
- (c) an employee of a licensed insurer or licensed takaful operator under the Islamic Financial Services Act 2012, who in the course of his employment, acts or assists in adjusting insurance or takaful claims and who does not hold himself out as an adjuster.

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

Registered person to comply with standards

18. (1) A person is a registered person if such person has complied with subsection 17(1) and has commenced its registered business.

(2) The Bank may specify standards for registered persons and a registered person shall at all times comply with such standards.

Division 4

Representative office

Requirements for representative office

19. (1) No foreign institution shall—

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

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

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

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

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

(5) The Bank may at any time in writing amend or revoke any existing conditions of an approval granted under subsection (4) or impose any new condition thereto.

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

(a) the approved representative office has—

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

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

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

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

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

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

(8) Any person who contravenes subsection (1) or (2) or fails to comply with any condition imposed under subsection (4) or (5) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding fifty million ringgit or to both.

Division 5

Revocation, deregistration, surrender or cessation of business or operations

Grounds for revocation of authorization

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

- (a) the Bank has, in connection with the application under section 9, been provided with false, misleading, inaccurate or incomplete information;
- (b) the person has not commenced the business in respect of which it is licensed or approved within the period specified by the Minister under subsection 10(6) or by the Bank under subsection 11(5);

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

(d) the person has—

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

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

(iii) failed to comply with any direction issued by the Bank under section 156 or an order under the Central Bank of Malaysia Act 2009,

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

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

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

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

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

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

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

(a) in the opinion of the Bank the person is committing or is about to commit an act, or is pursuing or is about to

pursue any course of conduct, that is unsafe or unsound or has failed to commit an act or pursue a course of conduct that is necessary to maintain the safety and soundness of the person;

- (b) in the opinion of the Bank, the person is carrying on business in a manner detrimental to the interests of its customers, creditors, participants, users or the public generally;
- (c) a receiver or manager of the property of the person has been appointed; or
- (d) possession of the property of the person has been taken by or on behalf of a debenture holder pursuant to a charge on the property.

(4) The Bank—

- (a) shall publish in the *Gazette*, as soon as practicable, a notice of a revocation of a licence under subsection (1) or (2); or
- (b) may publish a notice of a revocation of an approval under subsection (1), (2) or (3) in such form as the Bank deems appropriate.

Grounds for deregistration

21. The Bank may deregister a registered person if—

- (a) the person has provided the Bank with false, misleading, inaccurate or incomplete information for the purposes of subsection 17(1);
- (b) the person has ceased to carry on business for which it is registered;
- (c) the person has—
 - (i) breached or contravened any provision of this Act or the Central Bank of Malaysia Act 2009; or

- (ii) failed to comply with any specification or standards under this Act,

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

- (d) the shareholder, director or any person concerned with the operation or management of the registered person has been convicted of an offence under this Act or an offence involving fraud or dishonesty under any other written law; or
- (e) the person has been wound-up or otherwise dissolved or a receiver or manager of the property of the person has been appointed.

Surrender of licence or notification on cessation of business or operations

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

(2) An approved person or a registered person, as the case may be, shall submit a written notice to the Bank if it ceases to carry on its business.

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

(4) The surrender under subsection (1) or the notification under subsection (2) or (3) shall take effect on the date the Bank receives such notice or where a later date is specified in the notice, on that date.

(5) The Bank—

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

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

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

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

23. (1) Where—

- (a) the Minister revokes a licence of a licensed person under section 20;

- (b) the Bank—

- (i) revokes an approval of an approved representative office under subsection 19(6) or (7) or an approved person under section 20; or

- (ii) deregisters a registered person under section 21;

- (c) a surrender of a licence by a licensed person or notification by an approved person or registered person on the cessation of its business or an approved representative office on the cessation of its operations has taken effect under subsection 22(4); or

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

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

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

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

(b) to discharge its obligations,

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

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

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

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

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

Division 6

General matters

Form of establishment

24. (1) A person who is to be licensed under section 10 to carry on banking business, insurance business (other than a person who is to be a professional reinsurer) or investment banking business shall be a public company.

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

(a) a person who is to be licensed as a professional reinsurer;
or

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

Establishment or relocation of office of authorized persons

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

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

Fees

26. (1) Regulations may be made under section 260 to prescribe—

- (a) any fee to be paid by an authorized person or a registered person in respect of its authorization or registration, establishment of any office or the annual fee; and
- (b) a processing fee to be paid by an applicant for authorization under section 9 or a person who has complied with paragraph 17(1)(a),

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

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

(3) Any unpaid fees may be sued for and recovered as a civil debt due to the Government and in addition, the court may order for a payment of a penalty for late payment up to an amount equivalent to twice the amount of the fees unpaid and costs of recovering the amount including but not limited to costs of legal proceedings.

Publication of names of authorized persons and registered persons

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

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

Holding out as authorized person or registered person

28. (1) No person shall hold himself out to be—

(a) an authorized person unless he is authorized; or

(b) a registered person unless he is registered,

under this Act.

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

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

Acting on behalf of unlicensed person

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

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

PART IV

PAYMENT SYSTEMS

Division 1

Designation of payment systems and payment instruments

Designation and revocation of designation of payment systems

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

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

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

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

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

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

by an order published in the *Gazette*.

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

Designation of payment instruments

31. Where the Bank is of the opinion that—

- (a) a payment instrument may be of widespread use as a means of making payment and may affect the payment systems in Malaysia; and
- (b) it is necessary to maintain the integrity, efficiency and reliability of the payment instrument,

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

Division 2

Requirements for operation of payment systems and issuance of designated payment instruments

Application of this Act on payment systems

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

Power of Bank to specify standards for payment systems

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

- (a) for promoting safety, integrity, efficiency or reliability of the designated payment system, the payment system set

out in Division 1 of Part I of Schedule 1, the payment system set out in paragraph 9 of Part II of Schedule 1 or the designated payment instrument including facilitating interoperability, technical specifications and security standards; or

- (b) in the interest of current or prospective participants of the designated payment system, the payment system set out in Division 1 of Part I of Schedule 1 or the payment system set out in paragraph 9 of Part II of Schedule 1 or users.

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

Direction to participants of designated payment system

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

Operational arrangements

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

- (a) rules, procedures and requirements setting out the rights, liabilities or any other obligations of—
- (i) the operator and participants of the designated payment system;

- (ii) the approved operator of a payment system and its participants; and
- (iii) the approved issuer of a designated payment instrument and its users,

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

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

(2) In addition to the operational arrangements under subsection (1), an operator of a designated payment system or approved operator of a payment system shall establish the following operational arrangements:

- (a) procedures, controls and measures for the management of credit, liquidity or settlement risk, including rules determining the time when a transfer order is final in the case of payment systems that have been issued a certificate of finality by the Bank under section 38; and
- (b) criteria for participation in the designated payment system or payment system set out in Division 1 of Part I of Schedule 1.

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

Power of Bank to inspect

36. The Bank may, in considering whether—

- (a) to designate or recommend to the Minister to designate a payment system under section 30;

- (b) to designate a payment instrument under section 31;
- (c) to recommend to the Minister to include an operation of a payment system into Division 1 of Part I of Schedule 1 under section 264; or
- (d) to recommend to the Minister to include an operation of a payment system into Part II of Schedule 1 under section 264,

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

Division 3

Finality of payment and netting arrangement

Interpretation

37. For the purposes of this Division—

“certificate of finality” means a certificate issued by the Bank to any designated payment system under section 38;

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

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

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

“transfer order” means—

- (a) an instruction by a participant of a designated payment system to place at the disposal of a recipient an amount of money by means of account book-entry;
- (b) an instruction which, when settled, results in the assumption or discharge of a payment obligation as defined by the rules of a designated payment system; or
- (c) an instruction by a participant of a designated payment system either to settle an obligation for the transfer of book-entry securities or for the transfer of such securities.

Power of Bank to issue certificate of finality

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

- (a) the payment system poses or is likely to pose a systemic risk;
- (b) the settlement of transfer order is effected within the designated payment system itself; and
- (c) the operator of the payment system has complied with the requirements as may be specified by the Bank.

Revocation of certificate of finality

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

- (a) any of the criteria specified in section 38 is no longer met; or
- (b) the operator of the certified designated payment system has breached or contravened any provision of this Act.

Application of this Division

- 40.** (1) The provisions of this Division shall apply to—
- (a) any transfer order sent through a certified designated payment system; and
 - (b) any netting arrangement, in respect of claims or obligations arising from a transfer order that is final under subsection 42(1), entered into between an operator and a participant or between participants only in respect of a certified designated payment system.
- (2) Any written law relating to bankruptcy and insolvency shall continue to apply, but where there is any conflict or inconsistency between the provisions of this Division and the written law relating to bankruptcy and insolvency, the provisions of this Division shall prevail.

Transfer order made after appointment of insolvency administrator

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

Finality of payment and netting arrangement

- 42.** (1) A transfer order shall be valid and enforceable by and against an operator or a participant of a certified designated payment system and shall be final and shall not be revoked, reversed or set aside by any person from the time the transfer order is determined to be final under the rules of the certified designated payment system required to be established under paragraph 35(2)(a) and no order shall be made by any court for the rectification or stay of such transfer order.
- (2) A netting arrangement shall be valid and enforceable and an operator or a participant of a certified designated payment system shall do whatever is permitted or required under the netting arrangement in order to give effect to the netting arrangement.

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

(a) is provable in insolvency proceedings; and

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

(4) Without limiting the generality of subsection 40(2), any transfer order that is final and irrevocable under subsection (1) and any netting arrangement that is valid and enforceable under subsections (2) and (3), shall be given effect notwithstanding anything to the contrary contained in—

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

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

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

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

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

Preservation of rights

43. For the avoidance of doubt, the provisions of this Division shall not restrict or preclude any person from enforcing his rights under the law in so far as it does not affect the finality of

the transfer order or the validity and enforceability of a netting arrangement under this Division.

Non-recognition of insolvency order by foreign court

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

Requirement to notify in event of insolvency, etc.

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

- (a) is insolvent or is likely to become insolvent;
- (b) has become or is likely to become unable to meet any or all of its obligations; or
- (c) has suspended payments or compounded with its creditors,

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

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

- (a) is insolvent or is likely to become insolvent;
- (b) has become or is likely to become unable to meet any or all of its obligations; or
- (c) has suspended payments or compounded with its creditors,

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

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

PART V

PRUDENTIAL REQUIREMENTS

Interpretation

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

Division 1

Standards on prudential matters

Power of Bank to specify standards on prudential matters

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

- (a) the sound financial position of an institution; or
- (b) integrity, professionalism and expertise in the conduct of the business, affairs and activities of an institution.

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

- (a) capital adequacy;
- (b) liquidity;
- (c) corporate governance;
- (d) risk management;
- (e) related party transactions;

- (f) maintenance of reserve funds;
- (g) insurance funds; and
- (h) prevention of an institution from being used, intentionally or unintentionally, for criminal activities.

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

- (a) a director, officer or shareholder of the institution;
- (b) any person in a position to influence or control the institution or affect the decisions of the institution;
- (c) a relative or dependent of any person referred to in paragraph (a) or (b); or
- (d) any other person as may be specified by the Bank, which in the opinion of the Bank may cause the institution to be in a conflict of interest situation.

Institution, director and officer to comply with standards

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

- (a) comply with the standards as may be specified by the Bank under subsection 47(1) which are applicable to such institution;
- (b) ensure that its internal policies and procedures are consistent with the standards as may be specified by the Bank under subsection 47(1); and
- (c) whether or not standards have been specified by the Bank under subsection 47(1), manage its business, affairs and activities in a manner consistent with sound risk management and governance practices which are effective, accountable and transparent.

(2) Every director and officer of an institution shall at all times comply with the internal policies and procedures adopted by such institution including internal policies and procedures to implement the standards as may be specified by the Bank under subsection 47(1).

Registered operator of payment system to comply with standards

49. The Bank may require a registered operator of a payment system to comply with all or any standards as may be specified by the Bank under subsection 47(1), or any part of such standards, with such amendments as the Bank deems necessary, if the Bank is of the opinion that it is necessary to promote public confidence in, or for the safety, reliability and efficiency of, the payment systems of Malaysia.

Single counterparty exposure limit for licensed person

50. (1) No licensed person shall have an exposure to a single counterparty which exceeds the limit as may be specified by the Bank under subsection 47(1).

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

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

Restriction on payment of dividend by licensed person

51. (1) No licensed person shall declare or pay any dividend on its shares except with the prior written approval of the Bank or where the Bank has specified standards permitting the declaration of payments of any dividend under subsection 47(1).

(2) Where there is an application made by a licensed person for approval under subsection (1) in respect of the proposed amount of dividend to be declared, the Bank shall, in considering whether or not to grant an approval on the proposed amount or approve a reduced amount of dividend payment, have regard to the prevailing and prospective financial condition of the licensed person including its ability to comply with any standards as may be specified by the Bank under paragraph 47(2)(a).

Maintenance of assets in Malaysia by licensed person

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

Division 2

Corporate governance

Interpretation

53. For the purposes of this Division, “chairman” means chairman of the board of directors.

Chairman, directors and chief executive officer of institution

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

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

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

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

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

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

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

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

(a) is an individual;

(b) is not disqualified under subsection 59(1); and

(c) has complied with the fit and proper requirements as may be specified by the Bank under section 60.

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

(a) is not disqualified under subsection 59(1); and

(b) has complied with the fit and proper requirements as may be specified by the Bank under section 60.

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

Functions and duties of board of directors

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

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

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

- (b) ensure and oversee the effective design and implementation of sound internal controls, compliance and risk management systems commensurate with the nature, scale and complexity of the business and structure of the institution;
- (c) oversee the performance of the senior management in managing the business and affairs of the institution;
- (d) ensure that there is a reliable and transparent financial reporting process within the institution; and
- (e) promote timely and effective communications between the institution and the Bank on matters affecting or that may affect the safety and soundness of the institution.

(3) In carrying out its functions or duties under this Division, the board of directors of an institution shall have regard to the interests of depositors or policy owners of the institution and participants.

Duties of directors

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

- (a) act in good faith in the best interests of the institution;
- (b) exercise reasonable care, skill and diligence with—
 - (i) the knowledge, skill and experience which may reasonably be expected of a director having the same responsibilities; and
 - (ii) any additional knowledge, skill and experience which the director has;
- (c) only exercise powers conferred on him for the purposes for which such powers are conferred; and
- (d) exercise sound and independent judgment.

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

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

Duty to disclose interests in material transaction or material arrangement

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

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

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

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

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

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

Disqualifications

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

- (a) he is an undischarged bankrupt, has suspended payments or has compounded with his creditors whether in or outside Malaysia;
- (b) a charge for a criminal offence relating to dishonesty or fraud under any written law or the law of any country, territory or place outside Malaysia, has been proven against him;
- (c) he is prohibited from being a director of a company or in any way, whether directly or indirectly, be concerned or take part in the management of a company in Malaysia pursuant to a court order made under section 130A of the Companies Act 1965 and has not obtained any leave of the court under the same section; or
- (d) under any law relating to prevention of crime, drug trafficking or immigration—
 - (i) an order of detention, supervision, or deportation has been made against that person; or
 - (ii) any form of restriction or supervision by bond or otherwise, has been imposed on him.

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

- (a) act in such capacity, hold any other office or act in any other capacity, in that institution; or
- (b) be concerned with, take part or engage in any manner, whether directly or indirectly, in any activity, affairs or business of, or in relation to, that institution,

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

(3) For the purposes of subsection (2), “criminal proceedings” shall be deemed to be pending from the date that the accused person is first charged in court for the offence until the date of the final conclusion of the proceedings, whether in the court of original jurisdiction or, in the event of any appeal by any party, in the court of final appellate jurisdiction.

Fit and proper requirements

60. (1) Without limiting the generality of section 47 and for the purposes of paragraphs 55(1)(c) and 55(2)(b), the Bank may specify fit and proper requirements to be complied with by a chairman, director, chief executive officer or senior officer of an institution or a financial adviser’s representative, which may include minimum criteria relating to—

(a) probity, personal integrity and reputation;

(b) competency and capability; and

(c) financial integrity.

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

Cessation from office

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

(a) becomes disqualified under subsection 59(1); or

(b) no longer complies with any of the fit and proper requirements as may be specified by the Bank under section 60,

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

(2) The institution shall immediately—

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

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

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

Notice of cessation from office

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

Division 3

Transparency requirements

Interpretation

63. For the purposes of this Division—

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

“approved accounting standards” has the same meaning assigned to it in section 2 of the Financial Reporting Act 1997 [*Act 558*];

“financial statements” has the same meaning as set out in the approved accounting standards issued or approved by the Malaysian Accounting Standards Board under the Financial Reporting Act 1997.

Maintenance of accounting records and information

64. An institution shall maintain or cause to be maintained proper accounting records and information in such manner as will sufficiently enable the institution to prepare its financial statements under section 65 and shall cause those records to be kept in such manner as to enable them to be conveniently and properly audited.

Compliance with approved accounting standards

65. An institution shall prepare its financial statements in accordance with—

- (a) the approved accounting standards subject to any standards as may be specified by the Bank under subsection 47(1);
or
- (b) in the absence of any approved accounting standards, any standards as may be specified by the Bank under subsection 47(1).

Publication of financial statements

66. (1) An institution shall publish its financial statements prepared under section 65 from time to time subject to any standards as may be specified by the Bank under subsection 47(1).

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

Division 4

Auditors

Appointment of auditor by institution

67. (1) Every institution shall appoint an auditor for each financial year who meets such requirements or has such qualifications set out in any standards as may be specified by the Bank under subsection 47(1).

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

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

(4) For the purposes of this Division—

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

(b) the term “appointment” includes reappointment.

Appointment of auditor by Bank

68. Without prejudice to section 67, the Bank may appoint an auditor for an institution—

(a) if the institution fails to appoint an auditor as required under subsection 67(1); or

(b) to act with an existing auditor of the institution appointed under subsection 67(1),

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

Duties of auditor

- 69.** (1) An auditor appointed under this Division shall—
- (a) carry out an audit of the business, affairs and books of the institution;
 - (b) submit a report of such audit to the members of the institution and the Bank;
 - (c) submit any additional information as may be specified by the Bank relating to the audit conducted under paragraph (a);
 - (d) expand or extend the scope of the audit conducted under paragraph (a) within such time, in such manner or to such extent as may be specified by the Bank; or
 - (e) carry out any specific assessment of the business, affairs and books of the institution as may be specified by the Bank and submit a report to the Bank on such assessment.
- (2) The remuneration and expenses of the auditor relating to any expanded or extended scope of audit under paragraph (1) (d) or any specific assessment under paragraph (1)(e) shall be borne by the institution.
- (3) Any audit carried out under subsection (1) shall be in accordance with generally accepted auditing standards applicable in Malaysia.

Notice of cessation as auditor

70. Where during the course of an audit on an institution, an auditor appointed under section 67 or 68 has ceased to be an auditor of an institution, the auditor shall notify the Bank in writing of that fact and the reasons of such cessation within seven days from the date of such cessation.

Information to be provided to auditor

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

- (a) provide the auditor appointed under section 67 or 68 all information within its or his knowledge or capable of being obtained by it or him which the auditor may require; and
- (b) ensure that all such information provided under paragraph (a) is accurate, complete, not false or misleading in any material particular,

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

Reporting obligations of auditor

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

- (a) there has been a breach or contravention of any provision of this Act or a non-compliance of any standards as may be specified by the Bank under this Act which may have a material effect on the financial position of the institution;
- (b) an offence involving fraud or dishonesty under any written law has been committed by the institution or by any director or officer of the institution;
- (c) any irregularity which may have a material effect on the financial position of the institution, including any irregularity which jeopardizes or may jeopardize the interests of the depositors, policy owners, creditors of the institution, participants or users, or any other serious irregularity, has occurred;
- (d) he is unable to confirm that claims of depositors, policy owners, creditors of the institution, participants or users, as the case may be, are covered by the assets of the institution or insurance fund, as the case may be;

- (e) there is any weakness in the internal controls which is relevant to the financial reporting process undertaken by the institution; or
- (f) the financial position of the institution is likely to be or has been materially affected by any event, conduct of activity by the institution or any weakness in the internal controls of the institution.

Qualified privilege and duty of confidentiality

73. (1) Subsection 133(1) shall not apply to any documents or information relating to the affairs or account of any customer of a financial institution subject to such conditions as may be specified by the Bank, disclosed by an auditor of a financial institution to the Audit Oversight Board established under the Securities Commission Act 1993 [*Act 498*] or an officer or other person authorized in writing by the Audit Oversight Board to perform the responsibilities of the Audit Oversight Board.

- (2) An auditor of an institution shall not be liable—
 - (a) for a breach of a duty of confidentiality between the auditor and the institution in respect of any reporting to the Bank done in good faith under this Division; or
 - (b) to be sued in any court for defamation in respect of any statement made by the auditor without malice in the discharge of his duties under this Act.

Division 5

Appointed actuaries

Appointment of actuary by licensed insurer

74. (1) Every licensed insurer shall appoint an actuary in respect of a life or general business carried on by the licensed insurer.

(2) Any actuary to be appointed under subsection (1) shall meet such requirements or have such qualifications set out in any standards as may be specified by the Bank under subsection 47(1).

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

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

Appointment of actuary by Bank

75. Without prejudice to section 74, the Bank may appoint an actuary for a licensed insurer if the licensed insurer fails to appoint an actuary as required under subsection 74(1) and the remuneration and expenses relating to such appointment shall be borne by the licensed insurer.

Duties of appointed actuary

76. An appointed actuary shall have such duties and functions set out in any standards as may be specified by the Bank under subsection 47(1).

Cessation as appointed actuary

77. A person shall cease to be the appointed actuary of a licensed insurer if—

- (a) such person resigns from office;
- (b) the licensed insurer terminates his appointment; or
- (c) such person, in the opinion of the Bank, no longer meets the requirements or cease to have the qualifications as may be specified by the Bank under subsection 74(2).

Notice of cessation as appointed actuary

78. (1) Where a person ceases to be an appointed actuary of a licensed insurer under section 77, such person shall notify the Bank in writing of that fact and the reasons of such cessation not later than seven days from the date of such cessation.

(2) Where a person ceases to be the appointed actuary of a licensed insurer under subsection (1), such insurer shall appoint another person as its appointed actuary under subsection 74(1) not later than such period as may be specified by the Bank from the date of the cessation.

Information to be provided to appointed actuary

79. A licensed insurer and any director, officer or controller of such licensed insurer shall—

- (a) provide the appointed actuary all information within its or his knowledge or capable of being obtained by it or him which the appointed actuary may require; and
- (b) ensure that all such information provided under paragraph (a) is accurate, complete, not false or misleading, in any material particular,

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

Qualified privilege and duty of confidentiality

80. An appointed actuary shall not be liable—

- (a) for a breach of a duty of confidentiality between the appointed actuary and a licensed insurer in respect of—
 - (i) any reporting to the Bank; or
 - (ii) the discharge of his duties and performance of his functions,

pursuant to any standards as may be specified under subsection 47(1) which was done or made in good faith; or

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

Division 6

Insurance funds

Establishment and maintenance of insurance funds

81. (1) A licensed insurer shall establish and maintain one or more insurance funds for any class or description of its insurance business as may be specified by the Bank.

(2) Notwithstanding subsection (1), a licensed life insurer shall establish and maintain a separate insurance fund for its life insurance business relating to participating life policies.

(3) The Bank may specify that a licensed life insurer shall establish and maintain more than one insurance fund for its participating life policies under subsection (2).

Requirements relating to insurance funds

82. (1) A licensed insurer shall—

- (a) pay into an insurance fund all receipts in respect of policies to which the insurance fund relates and which are issued by it or under which it has undertaken liability, including all income of that insurance fund;
- (b) maintain at all times assets in an insurance fund of a value equivalent to or higher than the liabilities of that insurance fund;
- (c) apply the assets of an insurance fund only to meet the liabilities and expenses properly incurred by that insurance fund; and

(d) comply with such other requirements as may be specified by the Bank under paragraph 47(2)(g) including requirements on the types of assets to be, or not to be, included as assets of the insurance fund.

(2) For the purposes of subsection (1), the Bank may specify what constitutes “receipts”, “income”, “liabilities” or “expenses” and the manner to determine or value the receipts, income, assets, liabilities or expenses.

(3) Unless the Bank otherwise approves, a licensed insurer shall maintain an insurance fund established under section 81 so long as it is under liability in respect of any policy or insurance claim relating to that insurance fund.

Withdrawal from insurance funds

83. A licensed insurer shall not make any withdrawal from an insurance fund, whether from the surplus or otherwise of that insurance fund, unless—

- (a) it has complied with such requirements on withdrawals as may be specified by the Bank;
- (b) the withdrawal does not impair the sustainability of the insurance fund to meet its liabilities; and
- (c) in respect of an insurance fund for participating life policies, the interests and fair treatment of policy owners, including their reasonable expectations, have been given due regard.

Assumption of risk

84. (1) No licensed insurer shall assume any risk in respect of such description of policy as may be prescribed by the Bank unless and until the premium payable is received by the licensed insurer in such manner and within such time as may be prescribed by the Bank.

(2) Where the premium payable under subsection (1) is received by a person on behalf of a licensed insurer, the receipt shall be deemed to be receipt by the licensed insurer for the

purpose of that subsection and the onus of proving that the premium was received by a person who was not authorized to receive the premium shall lie on the licensed insurer.

Division 7

Subsidiaries

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

85. (1) No authorized person shall—

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

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

without the prior written approval of the Bank.

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

PART VI

OWNERSHIP, CONTROL AND TRANSFER OF BUSINESS

Application and non-application

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

(2) Sections 87, 88, 89, 99 and 100 shall not apply to the Malaysia Deposit Insurance Corporation, its subsidiary, bridge institution or any person appointed under paragraph 99(1)(c) or section 106 of the Malaysia Deposit Insurance Corporation Act 2011, where such person is exercising its powers under that Act.

Division 1

*Interest in shares of licensed person***Acquisition of interest in shares requiring approval**

87. (1) Subject to section 92 and except with the prior written approval of the Bank, no person—

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

(b) who has obtained an approval of the Bank under paragraph 90(3)(a), or the Minister under subsection 90(6) in respect of the prohibition under subsection (2), as the case may be, shall enter into any subsequent agreement or arrangement, by which, if the agreement or arrangement is carried out, he would hold an aggregate interest in shares of a licensed person of, or exceeding—

(i) any multiple of five per cent; or

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

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

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

(a) the approval of the Bank—

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

(A) such person has already obtained the approval of the Bank under that subsection; and

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

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

(b) the approval of the Minister under subsection (2) for any subsequent acquisition of interests in the shares of a licensed person if such person has already obtained the approval of the Minister under subsection 90(6) to hold an aggregate of more than fifty per cent of interest in shares of the licensed person.

Control over licensed person prohibited in some cases

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

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

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

(b) a person who has obtained an approval of the Minister under subsection 90(6) to hold more than fifty per cent of the interest in shares of the licensed person.

Disposal of interest in shares requiring approval

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

- (a) more than fifty per cent; or
- (b) fifty per cent or less but has control over the licensed person,

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

Application procedures for section 87, 88 or 89

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

- (a) the Bank under subsection 87(1); or
- (b) the Minister under subsection 87(2) or 88(1), or section 89,

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

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

- (a) granting an approval of the Bank under subsection 87(1); or
- (b) recommending to the Minister under subsection 87(2) or 88(1),

the Bank shall take into consideration matters that the Bank considers relevant including any of the factors set out in Schedule 6, and any standards as may be specified by the Bank under subsection 91(1).

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

- (a) may approve an application in respect of subsection 87(1), with or without conditions; or
- (b) may make a recommendation to the Minister to approve the application in respect of subsection 87(2) or 88(1), with or without conditions.

(4) Where an application is made under subsection (1) for an approval of the Minister in respect of section 89, the Bank shall consider the application and may make a recommendation to the Minister to grant the approval if the Bank is of the opinion that it would not be detrimental to the safety and soundness of the licensed person.

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

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

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

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

(9) The Bank may, at any time by notice in writing, require a person who has obtained the approval of the Bank under paragraph (3)(a) or the Minister under subsection (6) in respect of an application in respect of subsection 87(2) or subsection 88(1), to submit any information or particulars of any share acquired or held directly or indirectly either for his own benefit or any other person.

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

Power of Bank to specify standards on shareholder suitability

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

(2) Any person who has obtained the approval of the Bank under paragraph 90(3)(a) or the Minister under subsection 90(6) in respect of subsection 87(2) or 88(1), shall at all times comply with the standards as may be specified under subsection (1) to the satisfaction of the Bank.

Maximum permissible holdings

92. No individual shall hold more than ten per cent of interest in shares of a licensed person.

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

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

- (a) any agreement or arrangement as referred to in section 87 or 89 has been or is about to be effected; or
- (b) any person approved by the Bank under paragraph 90(3)(a) or the Minister under subsection 90(6) in respect of subsection 87(2) or 88(1), has failed to comply or is likely to fail to comply with standards as may be specified under subsection 91(1),

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

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

Division 2

Action by Bank in event of breach

Order against defaulting persons

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

- (a) has breached section 87, 88, 89 or 92;
- (b) has failed to comply with any condition imposed pursuant to the approval of the Bank or the Minister, as the case may be, under section 87, 88 or 89; or
- (c) has failed to comply with any standards as may be specified by the Bank under subsection 91(1),

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

(2) Subject to section 262, where any of the circumstances described in subsection (1) exists, the Bank may make the following order:

- (a) in respect of any shares which are the subject of the breach or non-compliance—
 - (i) prohibit the transfer of, or the carrying out of the agreement to transfer, such shares, or, in the case of unissued shares, prohibit the transfer of, or the carrying out of the agreement to transfer, the right to be issued with such unissued shares;
 - (ii) prohibit the exercise of any voting rights in respect of such shares;
 - (iii) prohibit the issue of any further shares in right of such shares or in pursuance of any offer made to their holder;
 - (iv) except in a liquidation, prohibit the payment of any sum due from the licensed person on such

shares, whether in respect of capital or otherwise;
or

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

(b) in respect of a breach of section 88, direct the defaulting person to take such necessary actions as may be specified by the Bank in order to cease exercising or to relinquish its control over a licensed person.

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

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

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

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

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

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

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

(8) The satisfaction of the Bank under subsection (1) that a person has breached or failed to comply with section 87, 88 or 89 or standards specified by the Bank under subsection 91(1), may be arrived at regardless that there has been no exercise of any action in respect of such breach or non-compliance.

(9) A person who fails to comply with an order issued under subsection (2) or contravenes subsection (4) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.

Additional provisions relating to order under subparagraph 94(2)(a)(v)

95. (1) After considering the representation made by the defaulting person under section 262 and where the Bank confirms an order made under subparagraph 94(2)(a)(v), the Bank may dispose of the shares surrendered to it pursuant to the order made under that subparagraph to such persons and to such extent as shall be consistent with the same being held lawfully by the person who acquires the shares under this Act.

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

Division 3

*Interest in shares of approved person***Interpretation**

96. For the purposes of this Division, “an approved person” does not include an approved operator of a payment system and an approved issuer of a designated payment instrument.

Acquisition of interest in shares of approved person

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

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

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

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

(5) For the purposes of this section, the Bank may, at any time by notice in writing, require a person who has notified the Bank under subsection (1) or obtained the approval of the Bank

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

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

Division 4

Transfer of business, reconstruction or amalgamation of licensed person

Interpretation

98. For the purposes of this Division—

“security” 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;

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

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

Approval required for reconstruction or amalgamation of licensed person

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

Approval required for business transfer scheme

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

(2) For the purposes of subsection (1), in the case of a licensed person which is a foreign insurer, a reference to “business” in subsection (1) is a reference to its Malaysian business as may be specified by the Bank.

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

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

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

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

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

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

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

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

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

Notification of business transfer scheme

101. (1) Before an application is made to the High Court under subsection 102(1), a transferor shall publish in the *Gazette* a notice stating its intention to make the application to the High Court for confirmation of the business transfer scheme.

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

- (a) persons to whom, and when such notices shall be given;
- (b) the form or manner of the notices to be given; and
- (c) the period within which a person specified under paragraph (a) may object to the proposed scheme.

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

Application to High Court for confirmation of business transfer scheme

102. (1) Upon obtaining the approval of the Bank under subsection 100(6), the transferor and transferee may make an application to the High Court for an order for confirmation of the business transfer scheme.

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

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

(4) When the High Court makes an order confirming the business transfer scheme under subsection (3) after hearing all parties concerned, the High Court shall fix a date, to be applied

for by the transferor and transferee and to be known as the transfer date, on which the business transfer scheme shall take effect.

Bank to be party to proceedings

103.(1) A person making an application to the High Court under subsection 102(2) in relation to a business transfer scheme shall—

- (a) deliver a copy of the application to the Bank;
- (b) give notice to the Bank of all proceedings relating to the application; and
- (c) give to the Bank a copy of any document relating to the proceedings,

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

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

(3) Notwithstanding that the Bank has given its approval to a business transfer scheme under subsection 100(6), the Bank may propose any modification to the scheme.

Orders sought by transferor and transferee

104.(1) In an application made under subsection 102(1), the transferor and transferee may seek all or any of the following orders:

- (a) for the transferor's rights and title to the assets to be transferred to the transferee under a business transfer scheme without the need to effect the transfer of rights and titles to each asset individually;
- (b) in relation to a banking or an investment banking business transfer scheme, for any account between the transferor and its customer to become an account between the transferee and the customer, subject to the same conditions and incidents existed between the transferor and its customer, and such account to be deemed for all purposes to be a single continuing account;

- (c) in relation to an insurance business transfer scheme, for the transferee to be fully responsible for liabilities transferred by the business transfer scheme whether arising out of policies or otherwise as though the liabilities were originally assumed by the transferee without the need for the transferee to confirm each liability individually;
- (d) for any existing instrument, whether in the form of a deed, will or otherwise, or order of any court, under or by virtue of which any property became vested in the transferor, to be construed and to have effect as if for any reference therein to the transferor there were substituted a reference to the transferee;
- (e) for any existing agreement to which the transferor was a party to have effect as if the transferee had been a party thereto instead of the transferor;
- (f) for any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent, whether or not in relation to an account, given to the transferor, either alone or jointly with another person, to have effect, in respect of anything due to be done as if given to the transferee either alone or, as the case may be, jointly with the other person;
- (g) for any negotiable instrument or order for payment of money drawn on, or given to, or accepted or endorsed by, the transferor or payable at the office of the transferor, whether so drawn, given, accepted or endorsed before, on, or after, the transfer date, to have the same effect on and from the transfer date, as if it had been drawn on, or given to, or accepted or endorsed by, the transferee or were payable at the office of the transferee;
- (h) for the custody of any document, goods or thing held by the transferor as bailee immediately before the transfer date to pass to the transferee and the rights and obligations of the transferor under any contract of bailment relating to any such document, goods or thing to be transferred to the transferee;
- (i) for any security held immediately before the transfer date by the transferor, or by a nominee of, or trustee for, the transferor, as security for the payment or discharge of any liability of any person, to be held by the transferee or, as the case may be, to be held by that nominee or

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

- (j) where any right or liability of the transferor is transferred to the transferee, for the transferee to have the same rights, powers and remedies (and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority) for ascertaining, protecting or enforcing that right or resisting that liability as if it had at all times been a right or liability of the transferee, including those rights or liabilities in respect of any legal proceedings or applications to any authority pending immediately before the transfer date by or against the transferor;
- (k) any judgment or award obtained by or against the transferor and not fully satisfied before the transfer date to be enforceable by or, as the case may be, against the transferee; and
- (l) for all such incidental, consequential and supplemental orders as are necessary to secure that the business transfer scheme shall be fully and effectively carried out.

(2) Where the order for confirmation of the High Court under subsection 102(3) provides for the transfer of any business, including assets and liabilities, vested in or held by the transferor, either alone or jointly with any other person, then, by virtue of the order, that business, including assets and liabilities, shall, on and from the transfer date, become vested in or held by the transferee either alone or, as the case may be, jointly with such other person, and the order shall have effect according to its terms notwithstanding anything in any law and shall be binding on all persons affected by it, regardless that the person is not a party to the proceedings under this Division or any other related proceedings, or had no notice of the proceedings under this Division or of other related proceedings.

(3) Where an order of the High Court vests any alienated land, or any share or interest in any alienated land, in the transferee—

- (a) the High Court shall, where such alienated land is in Peninsular Malaysia, pursuant to subsection 420(2) of the National Land Code [*Act 56 of 1965*], cause a copy of the order to be served on the Registrar of Titles or the Land Administrator, as the case may be, immediately after the making of the order so that the Registrar of Titles or the Land Administrator, as the case may be, gives effect to subsections 420(2), (3) and (4) of the National Land Code;
- (b) where such alienated land is in Sabah, the transferee shall, as soon as practicable after the order has been made, present an authenticated copy of such order to the Registrar for registration of the vesting of the alienated land or of the share or interest in alienated land as provided under the Land Ordinance of Sabah [*Sabah Cap. 68*]; or
- (c) where such alienated land is in Sarawak, the transferee shall, as soon as practicable after the order has been made, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land, in the transferee, as provided under section 171 of the Land Code of Sarawak [*Sarawak Cap. 81*].

(4) An order of the High Court under subsection 102(3) may relate to any assets or business of the transferor outside Malaysia and, if it so relates, effect may be given to it either in accordance with any reciprocal arrangements relating to enforcement of judgments that may exist between Malaysia and the country, territory or place outside Malaysia in which such assets or business is, or where there are no such arrangements, in accordance with the law applicable in such country, territory or place.

Publication of court order under section 102

105. (1) An order of the High Court made under subsection 102(3) shall, subject to the directions of the High Court, be published by the transferee in not less than two daily newspapers published in Malaysia and approved by the Bank, one of which shall be in the national language and the other in English.

(2) A transferor shall, within thirty days after the business transfer scheme has taken effect, lodge—

- (a) such documents or information relating to the business transfer scheme as may be specified by the Bank, with the Bank; and
- (b) a certified copy of such order made by the High Court under subsection 102(3) together with a certified copy of the Bank's approval, with—
 - (i) the Registrar of Companies; and
 - (ii) the appropriate authority, if any, concerned with the registration or recording of dealings in any movable property, or any interest in movable property transferred pursuant to the order.

Reimbursement of Bank's expenses

106. The transferor and transferee shall be jointly and severally liable to reimburse the Bank for any expenses the Bank may incur under this Division.

Prohibition of payment out of insurance fund

107. Unless the Bank otherwise approves, no licensed insurer shall pay to any person any remuneration out of the assets of an insurance fund in relation to a business transfer scheme.

PART VII

FINANCIAL GROUPS

Purpose of this Part

108. The Bank is empowered under this Part to exercise oversight over financial groups for the purposes of promoting the safety and soundness of a licensed person.

Disapplication of sections 110 and 111 to licensed persons

109. Sections 110 and 111 shall not apply to licensed persons.

Application to be financial holding company

110. (1) Any company which has to obtain the prior written approval of the Minister under section 87 to hold an aggregate interest in shares of more than fifty per cent in a licensed person shall submit an application to the Bank for it to be approved as a financial holding company.

(2) A company referred to in subsection (1) may propose another company within its corporate group to be approved as a financial holding company if it can be shown that the proposed company is in a position to have control over the licensed person and its proposed financial group.

(3) A person, other than a foreign institution or a company referred to in subsections (1) and (2), which is required to obtain the prior written approval of the Minister under section 87 to hold an aggregate interest in shares of more than fifty per cent in a licensed person shall propose a company within its corporate group which will have control over a licensed person and such proposed company shall submit to the Bank an application to be approved as a financial holding company.

Power of Bank to require submission of application

111. Where the Bank considers it is necessary for the purpose of maintaining effective regulation and supervision of a licensed person, the Bank may require—

- (a) any other company within the corporate group of the applicant, if the Bank is of the opinion that neither the applicant nor the other company proposed by the applicant under section 110 should be approved as a financial holding company; or
- (b) a company which has an aggregate interest in shares of fifty per cent or less in the licensed person but has control over the licensed person,

to submit to the Bank an application to be approved as a financial holding company.

Approval of application as financial holding company under section 110 or 111

112. (1) An application to be a financial holding company under section 110 or 111, as the case may be, shall be submitted to the Bank together with such documents or information as may be specified by the Bank.

(2) In assessing an application under section 110 or 111 for an applicant company to be approved as a financial holding company submitted under subsection (1), the Bank shall have regard to all matters that the Bank considers relevant including the factors set out in Schedule 6 and any standards specified by the Bank under subsection 91(1).

(3) Where the Bank is satisfied that such matters referred to in subsection (2) have been fulfilled by the applicant, the Bank may approve an application made pursuant to section 110 or 111, as the case may be, with or without conditions, or reject such application.

(4) The Bank may, at any time, in writing amend or revoke any existing condition of approval of a financial holding company under subsection (3) or impose any new condition thereto and such conditions shall not have retrospective effect.

(5) The Bank shall notify the applicant of its decision under subsection (3) in writing.

Bank may approve more than one financial holding company

113. The Bank may require more than one company within a corporate group of the applicant to be approved as a financial holding company.

Business of financial holding company

114. (1) Unless the Bank otherwise approves, a financial holding company of a licensed person shall not carry on any business, other than the business of holding investments directly or indirectly in

corporations which are primarily engaged in financial services or in other services in connection with or for the purpose of such financial services.

(2) The Bank may specify standards to give full effect to subsection (1).

Prudential requirements on financial holding company and subsidiaries

115. (1) Subject to subsection (2), Part V shall apply to a financial holding company as if references in that Part to an “institution” or a “licensed person” are references to a “financial holding company”.

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

(a) shall not apply to a financial holding company; or

(b) shall apply with such modifications consistent with the regulatory objectives of this Act.

(3) The Bank may specify standards on prudential matters under section 47 to a subsidiary of a financial holding company, if the Bank is of the opinion that the activities of such subsidiary may pose risks to the licensed person or its financial group.

(4) A subsidiary of a financial holding company referred to in subsection (3) shall at all times ensure that its internal policies and procedures are consistent with the standards specified by the Bank under that subsection.

(5) A financial holding company or any of its subsidiaries which contravenes any provision of this Act or any standards, notice, direction, condition, specification or requirement specified or issued by the Bank under any provision of this Act applied to it under this section commits a breach and the Bank may take an action under paragraph 234(3)(b) in addition to other enforcement actions that the Bank is empowered to take under this Act.

Power to issue directions to financial holding company and subsidiaries

116. (1) The Bank may issue one or more of the directions specified in subsection (2) or (3), if the Bank is of the opinion that—

- (a) the financial holding company, its subsidiary or director, chief executive officer or senior officer of such financial holding company or such subsidiary—
 - (i) is committing or is about to commit an act, or is pursuing or is about to pursue any course of conduct or carrying on its business, in a manner that is detrimental to the safety and soundness of a licensed person;
 - (ii) has failed to comply with any standards, notice, condition, specification, requirement, restriction, direction or code specified, issued or made under this Act or a direction under subsection 214(6) or section 216 regardless that there has been no prosecution or other action in respect of such non-compliance; or
 - (iii) has breached or contravened any provision of this Act which is applicable to such financial holding company or any of its subsidiaries, the Central Bank of Malaysia Act 2009 or any written law, other than securities laws as defined in the Securities Commission Act 1993, regardless that there has been no prosecution or other action in respect of such breach or contravention; or
- (b) any state of affairs exist in respect of a financial group that may directly or indirectly affect the safety and soundness of a licensed person.

(2) Subject to section 262, the Bank may issue a direction in writing to a financial holding company, any of its subsidiaries or a director or chief executive officer of such financial holding company or such subsidiary to cease or refrain from committing an act or pursuing a course of conduct or to do any act, in relation to its business, affairs or property if the Bank is of the opinion that it is necessary to remedy any of the circumstances in subsection (1).

(3) Without limiting the generality of subsection (2) and subject to section 262, a direction under subsection (2) may include any one or more of the following directions:

- (a) to vary or terminate any agreement or arrangement other than any qualified financial agreement entered into by the financial holding company or any of its subsidiaries with any person in relation to its business, affairs or property;
- (b) to dispose of all or any of the investments or assets held by the financial holding company or any of its subsidiaries in any body corporate;
- (c) to prohibit the financial holding company or any of its subsidiaries from carrying on any part of its business;
- (d) to prohibit the financial holding company or any of its subsidiaries from entering into any other transaction or class of transactions, or to enter into it subject to such restrictions or conditions as may be specified by the Bank; or
- (e) with respect to a financial holding company, to increase its capital to such amount as may be specified by the Bank.

General provisions dealing with directions

117. (1) The direction issued under subsection 116(2) or (3) shall specify—

- (a) the grounds on which the Bank proposes to issue the direction; and
- (b) the time by which, or period during which, the direction is to be complied with.

(2) The Bank may at any time—

- (a) amend or revoke a direction; or
- (b) replace a direction with another direction.

(3) Any direction issued under subsection 116(2) or (3) shall not affect the enforcement by the parties of their rights under a qualified financial agreement.

Consequences of failing to comply with directions

118. A financial holding company, its subsidiary, director or chief executive officer of such financial holding company or such subsidiary who fails to comply with a direction issued under subsection 116(2) or (3) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding fifty million ringgit or to both.

Additional provisions relating to paragraph 116(3)(e)

119. (1) A direction issued pursuant to paragraph 116(3)(e) may direct the financial holding company to issue shares or other capital instruments of a kind specified in the direction.

(2) Where the financial holding company issues shares or other capital instruments in compliance with a direction pursuant to subsection (1), the financial holding company shall give a notice in writing to the members of the financial holding company, to subscribe to the shares or other capital instruments within the period specified in the notice.

(3) Where a member of the financial holding company does not subscribe to the shares or other capital instruments within the period specified in the notice given by the financial holding company pursuant to subsection (2), the Bank may issue a further direction pursuant to subsection 116(2) to the financial holding company requiring the financial holding company to allot the shares or other capital instruments to a person determined by the Bank.

Power to remove director or chief executive officer of financial holding company

120. (1) Subject to section 262, the Bank may by a notice in writing, remove a director or chief executive officer of a financial holding company if the Bank is of the opinion that the director or chief executive officer of the financial holding company—

- (a) no longer fulfills the fit and proper requirements specified by the Bank under section 60 which is applicable to a financial holding company pursuant to section 115,

and fails to cease holding such office or acting in such capacity; or

- (b) has failed to comply with or by action or negligence has contributed to the breach or contravention of, any provision of this Act, a direction of the Bank referred to in section 116 or an enforceable undertaking accepted by the Bank under section 259.

(2) A director or chief executive officer removed from office or employment in a financial holding company under subsection (1) shall cease to hold the office from which he is removed with effect from the date set out in the order and shall cease to be concerned with the business or affairs of the financial holding company.

(3) Notwithstanding anything contained in any contract of service or any other agreement relating to his appointment, the removal of the director or chief executive officer under subsection (1) shall not entitle him to claim any compensation for such removal.

PART VIII

BUSINESS CONDUCT AND CONSUMER PROTECTION

Division 1

Interpretation

Interpretation

121. For the purposes of this Division, Division 2 and Schedule 7—

“eligible complainant” means any person who is eligible to refer a dispute to a financial ombudsman scheme in accordance with the terms of reference of the scheme;

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

- (a) for personal, domestic or household purposes;
- (b) in connection with a small business as may be specified by the Bank under section 123; or

- (c) whether or not for the purposes set out in paragraph (a) or (b), if—
- (i) the value of the financial services or products does not exceed an amount as may be specified by the Bank under section 123; or
 - (ii) such person is of a class, category or description of persons as may be specified by the Bank under section 123;

“financial ombudsman scheme” means a scheme for the resolution of disputes between an eligible complainant and a financial service provider in respect of financial services or products;

“financial services or products” means financial services or financial products developed, offered or marketed, by a financial service provider or for and on behalf of another person by a financial service provider;

“financial service provider” means an authorized person or a registered person but excludes an approved money-broker.

Division 2

Business conduct, complaints, disputes, etc.

Application

122. (1) Sections 123 and 124 shall apply without prejudice to the provisions of the Capital Markets and Services Act 2007 in so far as such provisions relate to capital market products or capital market services as defined in subsection 2(1) of the Capital Markets and Services Act 2007, developed, offered or marketed by a licensed bank, licensed insurer or licensed investment bank.

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

Standards on business conduct

123. (1) The Bank may specify standards on business conduct to a financial service provider for the purposes of ensuring that a financial service provider is fair, responsible and professional when dealing with financial consumers.

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

- (a) transparency and disclosure requirements including the provision of information to financial consumers that is accurate, clear, timely and not misleading;
- (b) fairness of terms in a financial consumer contract for financial services or products;
- (c) promotion of financial services or products;
- (d) provision of recommendations or advice including assessments of suitability and affordability of financial services or products offered to financial consumers; and
- (e) complaints and dispute resolution mechanisms.

(3) The Bank may specify any class, category or description of persons for purposes of the definition of “financial consumer” in section 121.

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

Prohibited business conduct

124. (1) A financial service provider shall not engage in any prohibited business conduct set out in Schedule 7.

(2) Without limiting the generality of section 266, the Bank may issue guidance in writing on—

- (a) descriptions of conduct which amount to; or
- (b) factors that are to be taken into account in determining whether a financial service provider has engaged in,

any prohibited business conduct set out in Schedule 7.

(3) Where the Bank issues guidance relating to prohibited business conduct set out in paragraphs 5 and 6 of Schedule 7, such guidance shall be issued in consultation with the Competition Commission.

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

(5) In relation to any complaint from an aggrieved person involving the prohibited business conduct set out in paragraphs 5 and 6 of Schedule 7, the Bank shall refer such complaint to the Competition Commission.

Approved insurance broker, approved financial adviser and approved issuer of designated payment instrument to establish customer account

125. (1) Where—

- (a) an approved insurance broker or approved financial adviser receives any money—
 - (i) from or on behalf of an insured or potential insured for or on account of a licensed insurer in connection with a contract of insurance or a proposed contract of insurance; or
 - (ii) from or on behalf of a licensed insurer for or on account of an insured; or
- (b) an approved issuer of a designated payment instrument as may be determined by the Bank, receives any money from or on behalf of its user in exchange of the payment instrument issued,

such approved person shall, for the purposes of this section, establish and maintain one or more accounts for its customers in a licensed bank separate from its own account.

(2) For the purposes of subsection (1)—

(a) a lien or claim on, or a right to set-off, the moneys in any account established for customers under subsection (1) shall be void unless the moneys are for fees due and owing to such approved persons; and

(b) a charge, mortgage or an attachment on the moneys in any account established for customers under subsection (1) shall be void.

(3) Moneys in the account established for customers under subsection (1) is taken to be held in trust by the approved persons for the benefit of the customers.

Financial ombudsman scheme

126. (1) For the purposes of ensuring effective and fair handling of complaints and for the resolution of disputes in connection with financial services or products, regulations may be made under section 260 to require any class, category or description of financial service providers—

(a) to be a member of a financial ombudsman scheme approved under subsection (2); and

(b) at all times, to comply with terms of membership of such scheme.

(2) The Bank may approve any financial ombudsman scheme for the purposes of paragraph (1)(a).

(3) Regulations may be made under section 260 for the purposes of ensuring a financial ombudsman scheme is fair, accessible and effective, including regulations on the following:

(a) the matters that the Bank may have regard to in determining whether to approve a financial ombudsman scheme under subsection (2);

(b) the functions and duties of, or other requirements to be complied with by any person operating a financial ombudsman scheme;

- (c) the terms of a financial ombudsman scheme setting out the scope including types of dispute that may be referred to it and its eligible complainants, membership requirements, application, operations, procedures, the fees that may be charged and the types of award which may be granted under the financial ombudsman scheme;
 - (d) appointment of directors of any person operating a financial ombudsman scheme;
 - (e) the documents or information that shall be submitted by any person operating a financial ombudsman scheme to the Bank; and
 - (f) withdrawal or suspension of an approval under subsection (2).
- (4) A financial service provider, who is a member of a financial ombudsman scheme approved under subsection (2), shall—
- (a) provide documents or information as may be required for the purposes of the resolution of disputes referred to the financial ombudsman scheme; and
 - (b) comply with any award granted under the financial ombudsman scheme, including a direction that requires the financial service provider to take such steps in relation to a dispute.
- (5) Where a dispute has been referred to a financial ombudsman scheme by an eligible complainant, the eligible complainant is not entitled to lodge a claim on such dispute with the Tribunal for Consumer Claims established under the Consumer Protection Act 1999 [*Act 599*].

Division 3

Insurance issues

Obtaining insurance outside Malaysia

127. (1) Except with the prior written approval of the Bank, no person shall enter into or cause to be entered into, a contract of general insurance of such description as may be prescribed by the Bank with an insurer other than a licensed general insurer.

(2) The Bank may grant an approval under subsection (1) after consultation with the Minister.

(3) A person shall provide to the Bank such information on any contract of general insurance entered into, or caused to be entered into with an insurer other than a licensed general insurer, as the Bank may require by notice in writing within such period as may be specified in the notice.

Provisions relating to policies

128. Schedule 8 sets out provisions relating to policies.

Pre-contractual disclosure and representations, and remedies for misrepresentations

129. (1) Schedule 9 sets out the pre-contractual duty of disclosure and representations for contracts of insurance in Part 2, and the remedies for misrepresentations relating to contracts of insurance in Part 3.

(2) Any person who contravenes the duty of disclosure under paragraph 11 of Schedule 9 commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million ringgit or to both.

Payment of policy moneys under life policy or personal accident policy

130. Schedule 10 sets out provisions for the payment of policy moneys upon death of a policy owner under a life policy, including a life policy under section 23 of the Civil Law Act 1956 [*Act 67*] or personal accident policy effected by him upon his own life.

Division 4

*Information and secrecy***Interpretation**

131. For the purposes of this Division—

“customer” includes a participant or user;

“financial institution” refers to—

- (a) a licensed bank;
- (b) a licensed investment bank;
- (c) an approved operator of a payment system;
- (d) a registered operator of a payment system;
- (e) an operator of a designated payment system; or
- (f) an approved issuer of a designated payment instrument.

Restriction on inquiring specifically into affairs of particular customer

132. (1) Nothing in this Act shall—

- (a) authorize the Minister to direct the Bank; or
- (b) authorize the Bank,

to inquire specifically into the affairs or account of any customer of any authorized person.

(2) Notwithstanding paragraph (1)(b), the Bank may inquire into the affairs or account of a customer of an authorized person for the purposes of exercising its powers or functions under this Act, the Islamic Financial Services Act 2012 or section 47 of the Central Bank of Malaysia Act 2009.

Secrecy

133. (1) No person who has access to any document or information relating to the affairs or account of any customer of a financial institution, including—

- (a) the financial institution; or
- (b) any person who is or has been a director, officer or agent of the financial institution,

shall disclose to another person any document or information relating to the affairs or account of any customer of the financial institution.

(2) Subsection (1) shall not apply to any document or information relating to the affairs or account of any customer of a financial institution—

- (a) that is disclosed to the Bank, any officer of the Bank or any person appointed under this Act or the Central Bank of Malaysia Act 2009 for the purposes of exercising any powers or functions of the Bank under this Act or the Central Bank of Malaysia Act 2009;
- (b) that is in the form of a summary or collection of information set out in such manner as does not enable information relating to any particular customer of the financial institution to be ascertained from it; or
- (c) that is at the time of disclosure is, or has already been made lawfully available to the public from any source other than the financial institution.

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

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

Permitted disclosures

134. (1) A financial institution or any of its directors or officers may—

- (a) for such purpose or in such circumstances as set out in the first column of Schedule 11, disclose any document or information relating to the affairs or account of its customer to such persons specified in the second column of that Schedule; or
- (b) disclose any document or information relating to the affairs or account of its customer to any person where such disclosure is approved in writing by the Bank.

(2) The financial institution or its directors or officers making a disclosure for the purposes or in such circumstances set out in Schedule 11 and paragraph (1)(b), shall be subject to such conditions as may be specified by the Bank.

(3) For the purposes of subsection (2), the Bank may at any time amend or revoke any existing conditions or impose any new conditions in respect of permitted disclosures by the financial institutions set out in Schedule 11 or paragraph (1)(b).

(4) Any person who receives any document or information relating to the affairs or account of a customer as permitted under subsection (1) shall not disclose such document or information to any other person.

(5) In any proceedings under paragraph 3, 4, 5, 6 or 7 of the first column of Schedule 11 or circumstances approved by the Bank under paragraph (1)(b), where any document or information is likely to be disclosed in relation to a customer's account, the court may, on its own motion, or on the application of a party to the proceedings or the customer to which the document or information relates—

- (a) order that the proceedings be held *in camera* and in such case, the document or information shall be secret as between the court and the parties thereto, and no such party shall disclose such document or information to any other person; and
- (b) make such further orders as it may consider necessary to ensure the confidentiality of the customer information.

(6) Unless the court otherwise orders, no person shall publish the name, address or photograph of any parties to such proceedings as are referred in subsection (5), or any document or information likely to lead to the identification of the parties thereto, either during the currency of the proceedings or at any time after they have been concluded.

(7) Any person who fails to comply with conditions imposed by the Bank pursuant to subsection (2) or (3) or contravenes subsection (4) or (6) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million ringgit or to both.

Division 5

Restrictions relating to consumer protection

Application of this Division

135. This Division shall not apply to a licensed Islamic bank under the Islamic Financial Services Act 2012.

Deposit

136. For the purposes of sections 137 and 138, “deposit” means a sum of money or any precious metal or precious stone, or any article or thing as may be prescribed by the Minister, on the recommendation of the Bank, accepted, paid or delivered on terms under which it will be repaid or returned in full, regardless whether the repayment or return is by way of instalments, with or without interest or any other consideration in money or money’s worth, either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment or delivery and the person accepting it, but excludes money paid *bona fide*—

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

- (b) by way of security for the performance of a contract or by way of security in respect of any loss which may result from the non-performance of a contract;
- (c) without limiting paragraph (b), by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise; and
- (d) in such other circumstances, or to or by such other person, as set out in Schedule 2.

Restriction on accepting deposits

137. (1) No person shall accept deposits except under a licence granted under section 10 regardless of whether the transaction is described as a loan, an advance, an investment, a savings, a sale or a sale and repurchase or by whatever name called.

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

Advertisements for deposits

138. (1) No person, other than a licensed bank or licensed investment bank, shall issue, or otherwise facilitate any person to issue, an advertisement which—

- (a) contains any offer or invitation—
 - (i) to make any deposit; or
 - (ii) to enter or offer to enter into any agreement to make any deposit; or
- (b) is intended, directly or indirectly, to lead to or induce the making of any deposit.

(2) Subsection (1) shall not apply to the issuance by any person of any advertisement for or on behalf of a licensed bank or licensed investment bank.

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

Restriction on use of certain words

139. (1) Except with the prior written approval of the Bank, no person shall—

(a) in its name, description or title under which such person carries on business or in the conduct of its business, use—

(i) the word “bank” unless such person is licensed under this Act to carry on banking business or investment banking business;

(ii) the word “insurance” or “assurance” unless such person is authorized or registered under this Act to carry on insurance business, insurance broking business, financial advisory business or adjusting business;

(iii) the words “financial adviser” unless such person is approved under this Act to carry on financial advisory business;

(iv) any derivative of the words in subparagraph (i), (ii) or (iii) in any language; or

(v) any other words in any language,

capable of being construed as indicating the carrying on of any of the authorized or registered businesses; or

(b) make any representation to the effect of paragraph (a) in any document relating to its business or document used in the course of carrying on its business or in any other manner whatsoever.

(2) The restriction in subsection (1) shall not apply to—

(a) the persons specified in Part 1 of Schedule 12 for the word “bank” in subparagraph (1)(a)(i);

(b) the persons specified in Part 2 of Schedule 12 for the word “insurance” or “assurance” in subparagraph (1)(a)(ii); and

(c) the persons specified in Part 3 of Schedule 12 for the words “financial adviser” in subparagraph (1)(a)(iii).

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

PART IX

MONEY MARKET AND FOREIGN EXCHANGE MARKET

Power of Bank to specify standards or issue codes

140. (1) The Bank may specify standards or issue codes for the purposes of developing, or maintaining orderly conditions or the integrity of, the money market or foreign exchange market.

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

(a) obligations and duties of any market participant or any officer of the market participant; and

(b) the issuance, sale, purchase, repurchase, borrowing or lending, of or other dealings in, currencies or other financial instruments traded in the money market or foreign exchange market including over-the-counter derivatives whose price, value or payment obligations are derived from, referenced to or based on interest rates or exchange rates.

(3) Standards or codes may only be specified or issued under paragraph (2)(b) in respect of over-the-counter derivatives derived from, referenced to or based on interest rates for the purposes of maintaining monetary stability.

(4) Any market participant or any officer of the market participant in the money market or foreign exchange market shall at all times comply with any standards specified or codes issued by the Bank under this section.

(5) Without limiting the Bank's powers to take action under any provision of this Act, the Bank may impose any condition, restriction or prohibition including, suspension from trading and restrictions on dealings in these markets on any market participant or any officer of the market participant for failure to comply with or give effect to such standards specified or codes issued under this section.

Prohibited conduct in money market and foreign exchange market

141. (1) No person shall—

- (a) take part in or carry out a transaction that has or is likely to have the effect of creating a rate which is an off-market rate which results in an artificial rate for dealing in financial instruments in the money market or foreign exchange market;
- (b) create, or cause to be created, or do anything that is calculated to create, a false or misleading appearance of active dealing in financial instruments in the money market or foreign exchange market;
- (c) make a statement, or disseminate information that is false or misleading in a material particular and is likely to induce another person to deal in financial instruments or is likely to have the effect of raising, lowering, maintaining or stabilising the market rate of such financial instruments in the money market or foreign exchange market and when the person makes the statement, or disseminates the information—
 - (i) the person does not exercise due care whether the statement or information is true or false; or
 - (ii) the person knows, or ought reasonably to have known, the statement or information is false or is materially misleading;
- (d) take part in or carry out a transaction based on information that is not generally available to persons who regularly deals in the money market or foreign exchange market that would, or would tend to, have a material effect on the price or value of financial instruments; or

(e) engage in any other conduct relating to money market or foreign exchange market as may be prescribed by the Minister, on the recommendation of the Bank.

(2) Without limiting the generality of section 266, the Bank may issue guidance in writing on—

(a) descriptions of conduct which amount to; or

(b) factors that are to be taken into account in determining whether a person has engaged in,

any conduct set out in subsection (1).

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

Arrangement with relevant supervisory authority

142. (1) The Bank shall enter into arrangements with relevant supervisory authorities to coordinate on the regulation of financial instruments traded in the money market which are within the purview and oversight of the relevant supervisory authorities.

(2) For the purposes of this section, “relevant supervisory authorities” means any authority, body or agency in Malaysia other than the Bank which is responsible for the supervision or oversight of the capital market, or capital market intermediaries or capital market participants.

PART X

SUBMISSION OF DOCUMENT OR INFORMATION

Submission of document or information to Bank

143. (1) Where under this Act or any written law, any person including—

(a) an authorized person;

(b) a registered person;

- (c) an operator of a designated payment system;
- (d) a financial holding company;
- (e) a market participant;
- (f) an approved representative office;
- (g) a financial institution prescribed under section 212;
- (h) an associate corporation or related corporation of a person referred to in paragraphs (a) to (g); or
- (i) a participant, user or any other person having dealings with a person referred to in paragraphs (a) to (g),

is required to submit any document or information to the Bank, such person shall submit such document or information to the Bank.

(2) Where, for the purposes of the exercise of any of its powers or the performance of any of its functions under this Act or any written law, the Bank requires any document or information from any person including a person referred to in subsection (1), such person shall submit such document or information to the Bank.

(3) Any person who is required to submit any document or information under subsection (1) or (2) shall not submit any document or information—

- (a) which he knows, or has reason to believe, to be false or misleading in a material particular; or
- (b) which is inaccurate or incomplete in respect of which there is a material error or omission, or any recurring error or omission.

(4) For the purposes of subsection (1) or (2), any document or information required to be submitted shall be submitted within a period, at such intervals, in the manner or form as may be specified by the Bank.

(5) Any person complying with subsection (1) or (2) shall not be treated as being in breach of any contract, agreement or arrangement.

(6) The Bank may require—

(a) any document or information submitted under subsection (1) or (2) to be verified; or

(b) any document produced to be certified as true copy,

by such person or in such manner as may be specified by the Bank, including an auditor of a person referred to in subsection (1).

(7) Subject to section 145, where a document or information obtained by the Bank under subsection (1) relates to the account or affairs of any customer of any person referred to in subsection (1), that document or information shall be secret as between the Bank and such person submitting the document or information.

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

Submission of statistical information, etc.

144. (1) For the purposes of collating statistical or other information on financial intermediation or financial inclusion in Malaysia or for other purposes related to the regulatory objectives of this Act, the Bank may require any person to submit any document or information to the Bank.

(2) Subject to section 145, the Bank shall not disclose to any person any document or information submitted under subsection (1) unless such disclosure is in summary or consolidated form and does not in any manner lead to the identification of any person to which such document or information relates.

Secrecy requirements under sections 143 and 144 not to apply

145. The secrecy requirements in subsections 143(8) and 144(2) shall not apply—

(a) for the purposes of the exercise of any of its powers or the performance of any of its functions by the Bank

under this Act or the Central Bank of Malaysia Act 2009, including for the purposes of—

- (i) the credit bureau established under section 47 of the Central Bank of Malaysia Act 2009; or
 - (ii) submitting any proposal to the Financial Stability Executive Committee;
- (b) in respect of information provided by the Bank under section 95 of the Malaysia Deposit Insurance Corporation Act 2011;
- (c) where such disclosure is in summary or consolidated form and does not in any manner lead to the identification of any person to which such document or information relates including the publication of consolidated statements or reports in respect of each class, category or description of persons as the Bank deems appropriate by aggregating the figures in all or any document or information submitted to the Bank under section 143 or 144; and
- (d) for the purposes of prosecuting any person for any offence under any written law.

PART XI

EXAMINATION

Examination of authorized person, etc.

146. (1) The Bank may examine, without any prior notice, the business and affairs of the following persons:

- (a) an authorized person, registered person, operator of a designated payment system or financial holding company, and the offices, related corporations and any agent of any such persons, in or outside Malaysia;
- (b) a market participant; or
- (c) an approved representative office.

(2) The Bank may, for the purposes of an examination under subsection (1), examine any director, officer or controller of any person referred to in subsection (1).

Duty to provide access to, and produce documents, information, etc.

147. (1) For the purposes of an examination under section 146, a person under examination and its director, officer or controller—

- (a) shall afford the Bank access to its documents, including documents of title to its assets, all securities held by it in respect of its customers' transactions and investments held by it, cash, premises, apparatus, equipment or machinery, and produce to the Bank all such documents or cash, as the Bank may require within such time as it may specify;
- (b) shall allow the Bank to copy or make extracts of any document referred to in paragraph (a); and
- (c) shall give to the Bank, orally or in writing, all such information and explanation relating to its business and affairs or of its agent as the Bank may require within such time as it may specify.

(2) The Bank may take possession of any documents, titles, securities, cash, apparatus, equipment or machinery to which it has access under subsection (1), if the Bank is of the opinion that the documents, titles, securities, cash, apparatus, equipment or machinery may be—

- (a) interfered with, destroyed, concealed or removed unless the Bank takes possession of them; or
- (b) needed as evidence in any legal proceedings, whether civil or criminal, which may be instituted under this Act, the Central Bank of Malaysia Act 2009 or any other written law.

(3) Any person who contravenes subsection (1) or refuses to allow the Bank to take possession of the documents, titles, securities, cash, apparatus, equipment or machinery under subsection (2), commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.

Examination of other persons

148. (1) The Bank may, for the purposes of an examination under section 146, examine—

- (a) a person who was at any time, a director or officer of a person referred to in subsection 146(1);
- (b) a person who is, or was at any time having dealings with a person referred to in subsection 146(1); or
- (c) a person whom the Bank believes to be acquainted with the facts and circumstances of the case, including the auditor of a person referred to in subsection 146(1),

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

(2) Any person falling under paragraph (1)(b), or an auditor referred to in paragraph (1)(c) shall not be liable for breach of a contract relating to, or duty of, confidentiality for giving a document, information or explanation under subsection (1).

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

Appearance before Bank

149. (1) Any person examined under sections 146 and 148 shall appear before the Bank at such place, and at such time, as may be specified by the Bank.

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

Examination or assessment by auditor or actuary

150. (1) The Bank may require an authorized person, operator of a designated payment system or financial holding company to appoint an auditor, or actuary, as the case may be, to carry out any specific examination or assessment in respect of its business or affairs as may be specified by the Bank and submit a report of such examination or assessment to the Bank.

(2) Where an examination or assessment is required under subsection (1), the remuneration of the auditor or actuary and other expenses related to such examination or assessment shall be borne by the authorized person, operator of a designated payment system or financial holding company.

Confidential information

151. (1) Any document or information produced by the Bank as provided in subsection (2) as a result of the administration or enforcement of this Act, the Central Bank of Malaysia Act 2009 or any other written law administered by the Bank, or from an examination by a relevant supervisory authority under section 152, shall not be disclosed by any authorized person, operator of a designated payment system or financial holding company, or any director, officer, auditor or actuary of such persons, to any other person except in such circumstances as may be specified by the Bank.

(2) A document or information referred to in subsection (1) which shall not be disclosed, whether wholly or in part, shall include—

- (a) any rating assigned by the Bank or relevant supervisory authority, as the case may be, to an authorized person, operator of a designated payment system or financial holding company;
- (b) any stage of intervention assigned to an authorized person, operator of a designated payment system or financial holding company;
- (c) any assessment of an authorized person, operator of a designated payment system or financial holding company made by the Bank or relevant supervisory authority,

as the case may be, as a result of an examination or other supervisory review of such person including any report, correspondence or recommendation made to such persons;

- (d) any enforceable undertaking accepted by the Bank under section 259;
- (e) any order made, or direction issued by the Bank under this Act or by the relevant supervisory authority, as the case may be, to an authorized person, operator of a designated payment system or financial holding company; or
- (f) any other information as may be specified by the Bank.

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

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

Examination by relevant overseas supervisory authority

152. (1) A relevant supervisory authority outside Malaysia which exercises functions corresponding to those of the Bank under this Act may, with the approval of the Bank, examine the books and transactions of—

- (a) an approved representative office in Malaysia of a foreign institution;
- (b) an authorized person which operates in Malaysia as a branch of a foreign institution; or

- (c) an authorized person, registered person, operator of a designated payment system or financial holding company which is a subsidiary of a foreign institution,

established or incorporated in that country, territory or place, provided that such examination by the relevant supervisory authority is for the sole purpose of its supervisory functions.

(2) The relevant supervisory authority shall give to the Bank a written undertaking to protect the confidentiality of any information it has obtained during, or arising out of its examination under subsection (1) and the purposes for which such information may be used.

(3) Where the Bank has granted its approval under subsection (1), the provisions of section 133 shall not apply in relation to the examination to be carried out under such approval, to the extent specified in the approval.

(4) A copy of the report of an examination under subsection (1) shall be lodged with the Bank upon the conclusion of such examination.

Disclosure of information by Bank to relevant overseas supervisory authority

153. The Bank may, subject to such terms and conditions it deems fit, provide to a relevant supervisory authority outside Malaysia which exercises functions corresponding to those of the Bank under this Act, such document or information relating to—

- (a) the affairs of—
- (i) any authorized person, registered person, operator of a designated payment system or financial holding company which is a subsidiary of a foreign institution; or
 - (ii) any authorized person, registered person, operator of a designated payment system or financial holding company which is an associate of a foreign institution;

- (b) any office of an authorized person, registered person, operator of a designated payment system or financial holding company; or
- (c) any authorized person, registered person, operator of a designated payment system or financial holding company for the purposes of assessing a proposed establishment of any office by the authorized person, registered person, operator of a designated payment system or financial holding company,

if the Bank considers it necessary that the such document or information be disclosed to the relevant supervisory authority outside Malaysia for the sole purpose of carrying out its supervisory functions.

PART XII

DIRECTIONS OF COMPLIANCE

Interpretation

154. For the purposes of this Part, “institution” refers to an authorized person or operator of a designated payment system.

Circumstances for exercising power to issue directions

155. The Bank may issue one or more of the directions specified in section 156 if the Bank is of the opinion that an institution, its director, chief executive officer or senior officer—

- (a) is committing or is about to commit an act, or is pursuing or is about to pursue any course of conduct, that is unsafe or unsound or has failed to commit an act or pursue a course of conduct that is necessary to maintain the safety and soundness of the institution;
- (b) is carrying on business in a manner detrimental to the interests of depositors, policy owners, participants, users, creditors or the public generally;
- (c) has failed to manage its business or affairs in a manner that is consistent with sound risk management and good governance practices;

- (d) has failed to comply with any standards, notice, condition, specification, requirement, restriction, direction or code specified, issued or made under this Act or a direction under subsection 214(6) or section 216 regardless that there has been no prosecution or other action in respect of such non-compliance;
- (e) has breached or contravened any provision of this Act, the Central Bank of Malaysia Act 2009 or any written law, other than securities laws as defined in the Securities Commission Act 1993, regardless that there has been no prosecution or other action in respect of the breach or contravention; or
- (f) has failed to ensure the safety, efficiency and reliability of the payment system or payment instrument, having regard, *inter alia*, to the reasonableness of admission criteria for participating in the payment system and the overall cost to the participants or users of, or any other persons involved with, the payment system or payment instrument.

Power to issue directions to institution

156. (1) Subject to section 262, the Bank may issue a direction in writing to the institution, its director, chief executive officer or senior officer, to cease or refrain from committing an act or pursuing a course of conduct or to do any act, in relation to its business, affairs or property if the Bank is of the opinion that it is necessary to remedy any of the circumstances in section 155.

(2) Without limiting the generality of subsection (1), the direction under subsection (1) may include—

- (a) with respect to any institution, any one or more of the following directions:
 - (i) to vary or terminate any agreement or arrangement other than any qualified financial agreement entered into by the institution with any person in relation to its business, affairs or property;
 - (ii) to dispose of all or any of the investments or assets held by the institution in any body corporate;

- (iii) to prohibit the institution from carrying on any part of its business including, imposing any limitation on or prohibiting the giving of credit facilities, the making of investments, or in the case of a licensed bank or licensed investment bank, the acceptance of deposits, or in the case of a licensed insurer, the effecting of policies; or
 - (iv) to prohibit the institution from entering into any other transaction or class of transactions, or to enter into it subject to such restrictions or conditions as may be specified by the Bank;
- (b) with respect to an institution which is a licensed person, to increase its capital to such amount as may be specified by the Bank; and
- (c) with respect to an institution which is an approved operator of a payment system, approved issuer of a designated payment instrument or operator of a designated payment system, any one or more of the following directions:
- (i) to make any modification to such payment system or payment instrument, as the case may be, including any operational arrangements;
 - (ii) cease to issue the designated payment instrument; or
 - (iii) cease to operate the designated payment system or a payment system set out in Division 1 of Part 1 of Schedule 1.

General provisions dealing with directions

- 157.** (1) The direction issued under section 156 shall specify—
- (a) the grounds on which the Bank proposes to issue the direction; and
 - (b) the time by which, or period during which, the direction is to be complied with.

(2) The Bank may at any time—

(a) amend or revoke a direction; or

(b) replace a direction with another direction.

(3) Any direction issued under section 156 shall not affect the enforcement by the parties of their rights under a qualified financial agreement.

Consequences of failing to comply with directions

158. An institution, its director, chief executive officer or senior officer who fails to comply with a direction issued under section 156 commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding fifty million ringgit or to both.

Additional provisions relating to paragraph 156(2)(b)

159. (1) A direction issued pursuant to paragraph 156(2)(b) may direct the licensed person to issue shares or other capital instruments of a kind specified in the direction.

(2) Where the licensed person issues shares or other capital instruments in compliance with a direction pursuant to subsection (1), the licensed person shall give a notice in writing to the members of the licensed person to subscribe to the shares or other capital instruments within the period specified in the notice.

(3) Where a member of the licensed person does not subscribe to the shares or other capital instruments within the period specified in the notice given by the licensed person pursuant to subsection (2), the Bank may issue a further direction pursuant to subsection 156(1) to the licensed person requiring the licensed person to allot the shares or other capital instruments to a person determined by the Bank.

PART XIII

INTERVENTION AND REMEDIAL ACTION

Application of this Part to member institution

160. (1) Notwithstanding any other provision in this Part, in respect of an institution that is a member institution as defined under the Malaysia Deposit Insurance Corporation Act 2011—

(a) the Bank may exercise the following powers:

(i) the powers under sections 161 to 163 and paragraph 188(a); and

(ii) for the sole purpose of averting or reducing any risk to financial stability and where the institution has not ceased to be viable or is not considered by the Bank to be likely to become non-viable, the powers under the following provisions:

(A) paragraph 188(b);

(B) sections 189 and 190; and

(C) section 208; and

(b) the following provisions shall continue to apply:

(i) subsections 173(1) and (2) except where the application for the appointment of a receiver and manager to manage the whole or part of the business, affairs or property of a member institution is made by the Malaysia Deposit Insurance Corporation;

(ii) subsection 173(3) and section 194; and

(iii) section 195 except where the application for the winding up of a member institution is presented by the Malaysia Deposit Insurance Corporation.

(2) For the avoidance of doubt, in respect of an institution that is a member institution as defined under the Malaysia Deposit Insurance Corporation Act 2011, in relation to section 208, the provision shall be read to apply only in relation to the powers that may be exercised by the Bank under subsection (1).

Division 1

*Removal of director, chief executive officer or senior officer***Interpretation**

161. For the purposes of this Division, “institution” refers to a licensed person or an operator of a designated payment system.

Power to remove director, chief executive officer or senior officer

162. Subject to section 262, the Bank may, by an order in writing, remove a director, chief executive officer or senior officer from office or employment in an institution if the Bank is of the opinion that the director, chief executive officer or senior officer of the institution—

- (a) no longer fulfils the fit and proper requirements specified under section 60 and fails to cease holding such office or acting in such capacity; or
- (b) has breached, contravened or failed to comply with or, by action or negligence, has contributed to the breach or contravention of, or non-compliance with any provision of this Act, a direction under section 156 or an enforceable undertaking accepted by the Bank under section 259.

Provisions relating to removal

163. (1) A director, chief executive officer or senior officer removed from office or employment in an institution under section 162 shall cease to hold the office from which he is removed with effect from the date set out in the order and shall cease to be concerned with the business or affairs of the institution.

(2) The removal of a director, chief executive officer or senior officer under section 162 shall be lawful and valid notwithstanding anything contained in a contract of service or any other agreement relating to his appointment and whether or not made or provided for under any written law, and a person so removed from office or employment shall not be entitled to claim compensation for the loss of office.

Division 2

Power to take intervention and remedial action

Subdivision 1 - Circumstances for exercising intervention and remedial action

Interpretation

164. For the purposes of this Subdivision, “institution” refers to a licensed person, an approved issuer of a designated payment instrument or operator of a designated payment system.

Circumstances for exercise of Bank’s power

165. Where the Bank is of the opinion that any of the following circumstances exist in respect of an institution:

- (a) the institution has breached or contravened any provision of this Act, the Islamic Financial Services Act 2012, the Central Bank of Malaysia Act 2009 or any written law, regardless that there has been no prosecution or other action in respect of the breach or contravention;
- (b) the institution has failed to comply with any direction under section 156;
- (c) the assets of the institution are not sufficient to give adequate protection to its depositors, policy owners, participants, users or creditors, as the case may be;
- (d) the capital of the institution has reached a level or is eroding in a manner that may detrimentally affect its depositors, policy owners, participants, users, creditors or the public generally;
- (e) the institution has become or is likely to become insolvent or is likely to become unable to meet all or any of its obligations; or
- (f) any other state of affairs exists in respect of the institution that may be materially prejudicial to the interests of the depositors, policy owners, participants, users or

creditors of the institution, including where proceedings under a law relating to bankruptcy or insolvency have been commenced in Malaysia or elsewhere in respect of the holding company of the institution, including its financial holding company,

the Bank may exercise its powers under this Division or Division 3.

Subdivision 2 - Assumption of control

Interpretation

166. For the purposes of this Subdivision—

“appointed person” refers to a person appointed by the Bank under subsection 167(1);

“institution” refers to a licensed person or an operator of a designated payment system.

Power to assume control

167. (1) Subject to section 262, where any of the circumstances set out in section 165 exist in respect of an institution, the Bank may, with the prior approval of the Minister, by an order in writing, assume control of the whole or part of the business, affairs or property of the institution and manage the whole or such part of its business and affairs, or appoint any person to do so on behalf of the Bank.

(2) The terms and conditions of the appointed person shall be determined by the Bank.

(3) Where an order has been made under subsection (1) or revoked under subsection 168(1), the Bank shall—

(a) notify that fact in the *Gazette*; and

(b) give notice of the commencement of the assumption of control under subsection (1), or revocation of the order in writing under subsection 168(1), as soon

as is practicable by publication in at least two daily newspapers in Malaysia, one of which shall be in the national language.

(4) All costs and expenses of the Bank, including the remuneration of the appointed person, shall be payable out of the funds and properties of the institution, as a first charge on the funds and properties of the institution.

Effect of assumption of control

168. (1) Upon assuming control of the whole or part of the business, affairs or property of the institution, the Bank or the appointed person shall take custody and control of the whole or part of the business, affairs or property of the institution, and shall manage the whole or such part of the business and affairs of the institution in the name and on behalf of that institution until the order is revoked by the Bank in writing.

(2) During the period an order under this Subdivision is in force, the functions, rights and privileges of—

(a) the directors and chief executive officer of the institution shall be suspended unless the Bank gives its approval in writing for any director to remain as director or the chief executive officer to continue in the employment of the institution on such terms and conditions as the Bank may determine; and

(b) such senior officers of the institution as may be specified by the Bank, shall be suspended.

(3) The Bank or the appointed person shall be vested with such powers and functions of the institution and its board of directors, under its constituent documents or exercisable by the institution or its directors under any written law regardless whether the powers are exercisable by resolution or in any other manner whatsoever.

(4) The Bank or the appointed person, in effecting any action under this Subdivision, shall not be required to notify or obtain the approval of the members or creditors of the institution in a

general meeting or otherwise notwithstanding any contract or law including without limitation to sections 132C, 132D and 132E of the Companies Act 1965 or anything in its constituent documents.

(5) The Bank or the appointed person may alter the constituent documents of the institution or other arrangements for governance if the alteration is necessary to facilitate the exercise of powers or performance of functions of the Bank or the appointed person under this Subdivision, in relation to the institution.

(6) The Bank or the appointed person may sell or otherwise dispose of the whole or part of the business or property of the institution, on any terms and conditions determined by the Bank.

(7) Sections 99, 100 and 101 shall not apply to any sale or disposal of the whole or part of the business or property under subsection (6).

Information and facilities

169. (1) Where control of the whole or part of the business, affairs or property of an institution has been assumed pursuant to an order under this Subdivision—

- (a) the institution, its directors, chief executive officer and officers shall submit the whole or part of the business, affairs or property to such control and provide the Bank or the appointed person with such facilities, documents or information as may be required to facilitate the exercise of powers or performance of functions of the Bank or the appointed person under this Subdivision; and
- (b) the Bank or the appointed person may require a person who has, at any time, been a director, chief executive officer or an officer of the institution to give the Bank or the appointed person any information relating to the business, affairs or property of the institution that the Bank or the appointed person requires.

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

Additional provisions relating to assumption of control

170. (1) Upon assuming control of the whole or part of the business, affairs or property of the institution, where the Bank gives its approval in writing for the director or chief executive officer to remain in his appointment pursuant to paragraph 168(2)(a), any remuneration payable to the director or chief executive officer of the institution shall be determined by the Bank, in relation to the activity required or authorized by the Bank or the appointed person.

(2) Notwithstanding anything contained in any contract of service or any other agreement relating to his appointment, the suspension of the director or chief executive officer under paragraph 168(2)(a) shall not entitle him to claim any compensation for such suspension.

(3) An order under this Subdivision shall not have the effect of—

- (a) conferring on, or vesting in, the Bank or the appointed person, any title to, or any beneficial interest in, any property of the institution to which the order relates; or
- (b) rendering the Bank or the appointed person liable for any obligation or liability of the institution, whether incurred before or after the order comes into force.

(4) Where the Bank or the appointed person sells or disposes of the whole or part of the business or property of the institution pursuant to subsection 168(6), any person aggrieved by the transacted price may appeal on the transacted price to the Assessor Committee and section 210 shall apply.

Subdivision 3 - Power to appoint receiver and manager

Interpretation

171. For the purposes of this Subdivision, “institution” refers to a licensed person, an approved issuer of a designated payment instrument or operator of a designated payment system.

Appointment of receiver and manager by Bank

172. (1) Subject to section 262, where any of the circumstances described in section 165 exist in respect of an institution, the Bank may make an application to the High Court for an order—

- (a) to appoint a receiver and manager to manage the whole or part of the business, affairs or property of the institution; and
- (b) for all such incidental, ancillary or consequential orders or directions of the High Court in relation to such appointment as may, in the opinion of the Bank, be necessary or expedient.

(2) On an application by the Bank, the High Court shall appoint as receiver and manager such person as may be specified by the Bank in its application including such person as may be specified by the Bank to fill a vacancy or to remove and replace a receiver and manager appointed under this Subdivision.

(3) All costs and expenses of the Bank, including the remuneration of such receiver and manager shall be payable out of the funds and properties of the institution, as a first charge on the funds and properties of the institution.

(4) A receiver and manager appointed under this Subdivision may apply to the High Court for directions in relation to any particular matter arising under the appointment.

(5) Order 30 of the Rules of Court 2012 [*P.U. (A) 205/2012*] shall not apply to an application for the appointment of a receiver and manager under this Subdivision.

(6) An application for the appointment of a receiver and manager under this Subdivision may be made by way of an *ex parte* originating summons.

Appointment of receiver and manager by persons other than Bank

173. (1) Any person may make an application to the High Court for the appointment of a receiver and manager to manage the whole or part of the business, affairs or property of a licensed person, an approved person, a registered person or an operator of a designated payment system, as the case may be, by giving prior written notice of thirty days to the Bank of its intention to do so.

(2) Where an application is made to the High Court for an order to appoint a receiver and manager to manage the whole or part of the business, affairs or property of a licensed person, an approved person, a registered person or an operator of a designated payment system, as the case may be, that person shall, as soon as practicable, deliver a sealed copy of the application to the Bank.

(3) Where, pursuant to a debenture or any other instrument, a receiver and manager is appointed over the whole or part of the business, affairs or property of a licensed person, an approved person, a registered person or an operator of a designated payment system, as the case may be, by a person other than the Bank, that person shall immediately notify the Bank of the appointment.

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

Provisions in relation to appointment of receiver and manager

174. Where a receiver and manager has been appointed by the Bank to manage the whole or part of the business, affairs or property of an institution pursuant to section 172, the receiver and manager shall have the power—

- (a) to enter into any premises of the institution and take possession and control of the whole or part of the business, affairs or property of the institution and require any person in the premises to account for and deliver

up to the Bank or the receiver and manager, possession and control of the whole or such part of the business or property;

- (b) subject to paragraph (c), to sell or otherwise dispose of the whole or part of the business or property of the institution on such terms and conditions as determined by the Bank;
- (c) to sell or otherwise dispose of any property of the institution that is subject to an agreement creating a security interest to any person who agrees to assume the obligation secured by the security interest;
- (d) to arrange for the assumption of all or any part of the liabilities of the institution by any person;
- (e) to carry on the whole or such part of the business of the institution to the extent that the receiver and manager deems it necessary or beneficial;
- (f) to sue for, defend, compromise and settle, in the name of the institution, any claim made by or against it;
- (g) in the name of the institution, to do all acts and execute all receipts and other documents and for that purpose, when necessary, use its common seal; and
- (h) to do all such other things as may be necessary or incidental to the exercise of the rights and powers of the receiver and manager.

Subdivision 4 - Compulsory transfer of business, assets or liabilities

Interpretation

175. For the purposes of this Subdivision—

“residual institution” means a licensed person whose business, assets or liabilities have been vested in the transferee in accordance with section 176;

“transacted price” means the price at which the whole or part of the business, assets or liabilities of a licensed person referred to in section 176 is vested in the transferee;

“transferee” means a bridge institution or any other person, as the case may be, in which is vested under this Subdivision the whole or part of the business, assets or liabilities of the licensed person referred to in section 176;

“transferor” means the licensed person under this Subdivision referred to in section 176;

“transferred business” means the whole or part of the business, assets or liabilities of the licensed person that has been vested in the transferee.

Order for compulsory transfer of business, assets or liabilities

176. (1) The Minister shall, on the recommendation of the Bank, designate in writing a body corporate established or acquired by the Bank under paragraph 48(1)(*da*) of the Central Bank of Malaysia Act 2009 as a bridge institution for the purposes of vesting in such body corporate the business, assets or liabilities of a licensed person referred to in subsection (2).

(2) Where any of the circumstances set out in section 165 exist in respect of a licensed person, the Bank may, with the prior approval of the Minister, by an order in writing, vest in a bridge institution or any other person, the whole or part of the business, assets or liabilities of such licensed person.

(3) For purposes of subsection (2), the Third Schedule of the Central Bank of Malaysia Act 2009 shall apply in relation to an order of the Bank under this Subdivision and such order shall be binding on all persons to whom the order is made or who are affected by the order.

Additional provisions relating to compulsory transfer

177. (1) The Third Schedule of the Central Bank of Malaysia Act 2009 shall apply in relation to an order of the Bank under this Subdivision, with modifications, as provided in Schedule 13 and the Minister may prescribe any other modification as may be necessary to give effect to such order.

(2) Where the Bank makes an order under this Subdivision to a licensed person, the Bank shall—

- (a) notify that fact in the *Gazette*; and
- (b) give notice of such order as soon as is practicable by publication in at least two daily newspapers published in Malaysia, one of which shall be in the national language.

(3) The notice under paragraph (2)(b) shall include the transacted price of the transfer and the right of any aggrieved person to appeal on the transacted price to the Assessor Committee.

(4) The transacted price referred to in subsection (3) shall be determined by an independent valuer.

(5) Subject to subsection (9), the transferee and the transferor shall mutually agree on the person to be appointed by the Bank as the independent valuer referred to in subsection (4).

(6) Where an agreement under subsection (5) cannot be reached between the transferee and the transferor within a period the Bank determines to be reasonable, the Bank shall refer the matter to the Minister and the appointment of an independent valuer shall be made by the Minister.

(7) The remuneration of the independent valuer appointed under subsection (5) or (6) shall be payable out of the transacted price unless otherwise determined by the Bank.

(8) In determining the transacted price under subsection (4) for the business, assets or liabilities of the transferor, the independent valuer shall—

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

(9) Where the vesting under this Subdivision is to be in a bridge institution, the independent valuer referred to in subsection (4) shall be appointed by the Minister.

(10) Where any person aggrieved by the transacted price appeals on the transacted price to the Assessor Committee, section 210 shall apply.

Continuity obligations

178. (1) The Bank may direct the residual institution and any person who has been providing services and facilities to the transferor for the operation of its business, to continue to provide to the transferee, such services and facilities as may be required to enable a transferee to operate the transferred business effectively.

(2) The duty to provide services and facilities in pursuance of the direction of the Bank in subsection (1) is subject to a right to receive reasonable consideration from the transferee.

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

Subdivision 5 - Provisions relating to bridge institution

Designation of bridge institution

179. (1) Where the Minister designates a bridge institution under section 176—

(a) the designation shall expire two years after it is made, unless the designation is—

(i) extended under paragraph (b); or

(ii) terminated under paragraph (c);

(b) the Minister may, on the recommendation of the Bank, extend the designation for one or more periods, each of which may not exceed one year; and

- (c) the designation shall terminate on the earlier of the date of occurrence of any one of the following events:
- (i) the Bank ceases to hold shares in the bridge institution;
 - (ii) all or a substantial amount of the assets of the bridge institution are acquired, or all or a substantial amount of the liabilities of the bridge institution are assumed, or both, by a person that is not a bridge institution; or
 - (iii) the Minister, on the recommendation of the Bank, decides that the designation shall be terminated.

(2) Where a bridge institution changes its company name within twelve months before or after such designation, the bridge institution shall be exempt from stating or otherwise showing the former name on any seal, document or instrument whatsoever.

Publication of notice

180. Upon the designation of a bridge institution or where such designation is extended under paragraph 179(1)(b) or terminated under paragraph 179(1)(c), the Bank shall as soon as practicable publish a notice, specifying the date on which that event occurred in at least two daily newspapers in Malaysia, one of which shall be in the national language.

Bridge institution authorized to carry on business

181. (1) Upon its designation as such, and for so long as the designation continues, a bridge institution shall be deemed to be licensed to carry on the business of the licensed person whose business, assets or liabilities have been vested in the bridge institution.

(2) The Bank may exempt the bridge institution from such requirements, or grant such approvals, under this Act as may be necessary to facilitate the carrying on of its licensed business.

Bridge institution not liable for past obligations in respect of officers

182. Where a bridge institution becomes the employer of any individual who is an officer or a former officer of a licensed person, the bridge institution shall not—

- (a) be liable for any obligation of the licensed person or its predecessor in respect of such individual existing prior to the bridge institution becoming the employer of the individual or in respect of any pension plan or other post-employment benefit plan for such individual or his survivors, or in respect of any collective agreement with a trade union or a council of trade unions; or
- (b) be liable for any wages or salary calculated by reference to a period of time prior to the bridge institution becoming the employer of the individual in question.

Stay in respect of bridge institution

183. During the period of ninety days following the designation of a bridge institution—

- (a) no action, suit or proceeding in any court or tribunal, may be commenced or continued against the bridge institution or in respect of its assets;
- (b) no attachment, garnishment, execution or other method of enforcement of a judgement, award or order against the bridge institution or its assets may take place or continue; and
- (c) no creditor of the bridge institution has any remedy against the bridge institution or its assets.

Financial assistance to bridge institution

184. Notwithstanding section 76 of the Central Bank of Malaysia Act 2009, the Bank may provide a bridge institution with such financial assistance as the Bank thinks appropriate and the bridge institution shall, on demand or at such other time as the Bank specifies, repay or reimburse to the Bank, the financial assistance on such terms and conditions as determined by the Bank.

*Subdivision 6 - Restructuring of share capital***Interpretation**

185. For the purposes of this Subdivision, “institution” refers to a licensed person or an operator of a designated payment system.

Power to reduce share capital of institution

186. (1) Notwithstanding any constituent documents of an institution, the Bank may apply to the High Court for an order—

- (a) where the paid-up capital of the institution is lost or unrepresented by available assets, to cancel such paid-up capital of the institution which is lost or unrepresented by available assets; or
- (b) where a call has been made by the institution on its members to pay on the unpaid portion of their respective shares, if any, and payment has not been made within the time specified in the call, to consolidate the paid up portion of the shares as fully paid up and to cancel any shares which remain unpaid.

(2) Where the Bank applies for the cancellation of share capital under subsection (1), the institution shall not be required to notify or obtain the approval of its members or creditors in a general meeting or otherwise.

(3) Subject to subsections (1) and (2), the provisions of section 64 of the Companies Act 1965 shall apply.

*Subdivision 7 - Financial assistance***Interpretation**

187. For the purposes of this Subdivision, “institution” refers to a licensed person or an operator of a designated payment system.

Liquidity or financial assistance to institution

188. Notwithstanding section 76 of the Central Bank of Malaysia Act 2009 and subject to subsection 160(1)—

- (a) the Bank may provide liquidity assistance upon such terms and conditions as the Bank deems fit, to an institution which in the opinion of the Bank is about to or is likely to suspend payment to any extent; or
- (b) where any of the circumstances set out in section 165 exist in respect of an institution, the Bank may, with the prior approval of the Minister, provide financial assistance to another institution or any other person to purchase any shares, or the whole or any part of the business, assets or liabilities, of the first-mentioned institution.

*Subdivision 8 - Moratorium***Interpretation**

189. For the purposes of this Subdivision, “institution” refers to a licensed person or an operator of a designated payment system.

Application for moratorium

190. (1) Where the Bank, in the interests of the depositors, policy owners or participants of an institution, has issued a direction prohibiting an institution from carrying on all or part of its business under this Act, the Bank may apply to the High Court and the High Court may, on the application of the Bank, make an order staying for a period not exceeding six months, the commencement or continuance of any proceedings of a civil nature by or against the institution with respect to any of its business and the High Court may, upon hearing an *ex-parte* originating summons filed by the Bank, make the order.

(2) Where an order has been made under subsection (1), the Bank shall notify that fact in the *Gazette*.

Division 3

Winding up

*Subdivision 1 - General provisions on winding up***Interpretation**

191. For the purposes of this Division—

“institution” refers to a licensed person or an operator of a designated payment system;

“liquidator” includes a provisional liquidator, wherever applicable.

Application of Companies Act 1965 in relation to winding up of institution

192. The provisions of the Companies Act 1965 in relation to the winding up of companies shall apply to the winding up of an institution, unless specifically provided otherwise in this Division.

Bank to apply for winding up

193. Subject to section 262, where any of the circumstances specified in section 165 exist in respect of an institution, the Bank may recommend to the Minister and the Minister may on such recommendation, authorize the Bank to file an application to the High Court for the winding up of an institution and the High Court may order the winding up of an institution pursuant to the application filed by the Bank under this Division.

Restriction on voluntary winding up

194. (1) An institution, whether or not its licence or designation has been revoked, or an approved person, shall not be wound up voluntarily without the prior written approval of the Bank.

(2) A registered person shall not be wound up voluntarily without giving prior written notice to the Bank.

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

Winding up by High Court on application by persons other than Bank

195. (1) No application for the winding up of an institution or approved person may be presented to the High Court by any person without the prior written approval of the Bank.

(2) Subject to subsection (1), where an application for the winding up of an institution or approved person is presented to the High Court by a person other than the Bank—

(a) that person shall deliver a copy of the application to the Bank at the same time as it is presented; and

(b) the Bank shall be party to the winding up proceedings and shall be entitled to appear and be heard in all proceedings relating to the application and to call, examine and cross-examine any witness.

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

Appointment and remuneration of liquidator

196. (1) The High Court, where a winding up order is made in respect of an institution pursuant to section 193, shall appoint as liquidator such person as the Bank may specify in its application and shall specify that the remuneration of the liquidator shall be determined by the Bank.

(2) On an application by the Bank, the High Court shall appoint as liquidator such person as the Bank may specify in its application—

(a) to fill a vacancy; or

(b) to remove and replace a liquidator appointed under subsection (1).

Control of liquidator

197. Subject to an order of the High Court, a liquidator, other than the Official Receiver, appointed under section 196 shall carry out his functions under the direction and supervision of the Bank.

Statement of affairs

198. The statement of affairs of an institution as at the date of the winding up order made pursuant to section 234 of the Companies Act 1965 shall be submitted to the Bank at the same time as it is submitted to the Official Receiver.

Offences by officers of institution

199. Section 300 of the Companies Act 1965 shall apply to an institution as if references in that section to an “officer or a contributory” are references to a director, officer, agent or contributory of an institution.

*Subdivision 2 - Provisions specific to licensed insurers***Valuation of assets and liabilities**

200. In the winding up of a licensed insurer, whether or not its licence is revoked and whether it is insolvent or not, the value of its assets and liabilities, including liabilities in respect of policies, shall be ascertained on such basis as the Bank may determine and the law relating to bankruptcy or insolvency shall not apply to the valuation of its liabilities.

Termination of insurance policy

201. (1) A policy of a licensed insurer shall cease to remain in force with effect from the date a winding up order has been made in respect of the licensed insurer.

(2) Where a policy ceases to be in force under subsection (1), the policy owner shall only be eligible to claim as a debt due to him—

- (a) in the case of a general policy, a refund of a portion of the premium that is commensurate with the remaining period of the policy;
- (b) in the case of a life policy, the value of that life policy;
- (c) the value of the investments or savings held separately in respect of the policy; or
- (d) any other refund or amount,

which shall be ascertained on such basis as may be prescribed by the Bank.

(3) The liquidator shall notify each policy owner and, in the case of a group policy, the group policy owner, about the cessation of an insurance policy by registered post to his last known address of residence or office and by publication in such newspapers as may be specified by the Bank.

Waiver of strict proof of debt

202. Where it appears to the liquidator that by reason of the inadequacy of its documents, or any other circumstances, hardship would be caused if he requires strict proof of debt, he may act on such evidence as he thinks fit and payment of a debt made by the liquidator in good faith to any person as being the person entitled to it shall discharge the liquidator from all liabilities in respect of that debt.

Prohibition against issuance of policy

203. No director, officer, agent or contributory, past or present, of a licensed insurer which is being wound up after its cessation of insurance business, shall continue to issue a policy.

Continuation of life business

204. (1) Notwithstanding paragraph 236(1)(a) of the Companies Act 1965, the liquidator of a licensed life insurer—

- (a) may carry on its life business with a view to it being transferred as a going concern to another licensed insurer but shall not effect a new policy; and
- (b) subject to subsection (2), may transfer its assets and liabilities to another licensed insurer, including liabilities under life policies and Division 4 of Part VI shall apply to the transfer.

(2) The liquidator may, for the purpose of a transfer under paragraph (1)(b), apply to the High Court for an order to reduce—

- (a) the amount of liabilities under life policies of the licensed insurer; or
- (b) the amount of its other liabilities,

and the High Court may reduce the liabilities to the extent necessary taking into consideration the value of its available assets subject to such condition as it considers fit.

Subdivision 3 - Priority of payments in winding up

Priority of payments in winding up of licensed investment bank

205. In the winding up of a licensed investment bank, the assets of the licensed investment bank shall be available to meet all liabilities of that licensed investment bank in respect of all deposits in Malaysia in priority over all other unsecured liabilities of that licensed investment bank in Malaysia other than the preferential debts set out in subsection 292(1) of the Companies Act 1965 in the order set out in that subsection and debts due and claims owing to the Government under section 10 of the Government Proceedings Act 1956 [Act 359].

Priority of payments in winding up of licensed investment bank carrying on Islamic banking business

206. (1) For the purposes of this section, “Islamic deposit” has the same meaning assigned to it in subsection 2(1) of the Islamic Financial Services Act 2012.

(2) Without prejudice to section 205, in the winding up of a licensed investment bank which has been approved under paragraph 15(1)(a) to carry on Islamic banking business—

- (a) the assets of the licensed investment bank acquired in the course of its business other than its Islamic banking business, shall be applied to meet the liabilities incurred in the course of its business other than the Islamic banking business, in the order set out in section 205; and
- (b) where the assets of the licensed investment bank referred to in paragraph (a) is in surplus after payment has been made to meet its liabilities under paragraph (a), such surplus assets of the licensed investment bank shall be applied to meet the liabilities of the licensed investment bank under subsection (3).

(3) Without prejudice to section 205, in the winding up of a licensed investment bank—

- (a) the assets acquired by the licensed investment bank in the course of its Islamic banking business including the Islamic banking funds or any accounts established under subsection 15(3), subject to paragraph (b)—
 - (i) shall not be subject to the debts of the licensed investment bank except in respect of its Islamic banking business or as provided in paragraph (c); and
 - (ii) shall be available to meet all liabilities of that licensed investment bank in respect of its Islamic deposits in Malaysia in priority to all other unsecured liabilities incurred in the course of its Islamic banking business, other than the preferential debts set out in subsection 292(1) of the Companies Act 1965 in the order set out in that subsection and

the debts due and claims owing to the Government under section 10 of the Government Proceedings Act 1956, which is attributable to its Islamic banking business as may be specified by the Bank;

(b) notwithstanding subsection 292(1) of the Companies Act 1965, but subject to any costs and expenses of the winding up set out in paragraph 292(1)(a) of the Companies Act 1965 directly incurred in realising the assets of the investment accounts and any tax set out in paragraph 292(1)(f) of the Companies Act 1965 which is attributable to the investment accounts, the assets of the investment accounts managed by the licensed investment bank in Malaysia, shall be available, in the order set out as follows:

- (i) to pay outstanding costs or expenses of the investment accounts;
- (ii) to pay any profit, fees, gains or other remuneration due to the licensed investment bank; and
- (iii) to meet the liabilities to the investment account holders; and

(c) where the assets of the licensed investment bank referred to in paragraph (a) is in surplus after payment has been made to meet its liabilities under subparagraph (a)(ii), such surplus assets of the licensed investment bank shall be applied to meet the liabilities of the licensed investment bank including the liabilities of the licensed investment bank under section 205 in the order of priority stated therein.

(4) For purposes of subparagraph (3)(a)(ii), regulations may be made under section 260 to prescribe the order of priority for payments of different categories of Islamic deposits.

Application of insurance fund in winding up

207. (1) In the winding up of a licensed insurer, the assets of an insurance fund shall be applied to meet its liabilities to policy owners and claimants under policies of that fund and these liabilities shall have priority over unsecured liabilities of that

fund, other than preferential debts set out in subsection 292(1) of the Companies Act 1965 and debts due and claims owing to the Government under section 10 of the Government Proceedings Act 1956, to the extent that they are apportioned to the insurance fund.

(2) Subject to subsection (1)—

- (a) the assets of an insurance fund as established under section 81 shall first be applied to meet the liabilities of that fund;
- (b) where the assets of an insurance fund, other than a life fund relating to participating life policies, exceed its liabilities, the surplus assets may be applied to meet the liabilities of its other insurance funds which are in deficit and if the surplus assets of two or more insurance funds are applied, they shall be applied proportionately to the amounts of the surpluses and if the surplus assets are applied to meet the liabilities of two or more insurance funds which are in deficit, they shall be applied proportionately to the amounts of the deficits;
- (c) any deficit subsisting after application of the assets of the insurance funds under paragraphs (a) and (b) shall be met out of the assets of the shareholders' funds, and unsatisfied liabilities to a policy owner and claimant under a policy shall have priority over other unsecured liabilities other than preferential debts specified under subsection 292(1) of the Companies Act 1965 and debts due and claims owing to the Government under section 10 of the Government Proceedings Act 1956; and
- (d) any other assets held by the licensed insurer, including surplus assets in a life fund relating to participating life policies, shall be used in a manner as may be prescribed by the Bank.

(3) Without limiting the generality of subsection (2), where the Bank under subsection 81(1) has specified that a licensed foreign insurer shall establish and maintain separate insurance funds for its Malaysian policies, in the winding up of the licensed foreign insurer, the assets of these funds—

- (a) shall only be applied to meet the liabilities of those funds; and

- (b) with effect from the date of the winding up of the licensed foreign insurer, shall not be sold, removed, dissipated, alienated, transferred, assigned, encumbered, distributed or otherwise dealt with in any manner whatsoever without the prior written approval of the Bank.

(4) Notwithstanding anything to the contrary in section 340 of the Companies Act 1965 or the winding up order for a licensed foreign insurer, the provisions of this section shall prevail and have full force and effect.

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

Division 4

General provisions in relation to actions taken by Bank

Power of Bank to take action under this Part

208. Nothing in this Part shall preclude the Bank from taking any one or more actions that it is empowered to take under this Part.

Qualified financial agreement

209. (1) For the purposes of this section, “institution” refers to a licensed person, an approved issuer of a designated payment instrument or operator of a designated payment system.

(2) The parties under a qualified financial agreement may continue to enforce their rights under the qualified financial agreement and shall not be affected by—

- (a) the assumption of control of a licensed person or an operator of a designated payment system pursuant to section 167;
- (b) the appointment of a receiver and manager of the business, affairs or property of any institution pursuant to section 172; or

- (c) the making of an order for the compulsory transfer of the business, assets or liabilities of a licensed person pursuant to section 176,

except during such period as may be prescribed in regulations made under section 260 upon the commencement of the assumption of control or the appointment of a receiver and manager.

(3) Where a qualified financial agreement is transferred to any person pursuant to the exercise of the powers under subsection 168(6) or section 174 or to a bridge institution or any other person under section 176—

- (a) the acquiring person or bridge institution shall assume all the rights and obligations under such qualified financial agreement of the institution from which such agreement was transferred; and
- (b) the enforcement by the parties of their rights under such qualified financial agreement shall be in accordance with the terms of such agreement as if the acquiring person or bridge institution had always been a party to such agreement.

(4) If the qualified financial agreement is not transferred to a bridge institution or another person, the parties to such qualified financial agreement shall be entitled to enforce their rights under such agreement at the expiry of the period referred to in subsection (2).

(5) Where the qualified financial agreement of an institution is transferred to an acquiring person or a bridge institution during the period prescribed by the Bank under subsection (2), and where a person is a counterparty to two or more qualified financial transactions under that agreement with the same institution, all or none of such qualified financial transactions shall be transferred to the acquiring person or bridge institution.

(6) If a qualified financial agreement relating to financial collateral that applies to any property of the institution is transferred, that property shall also be transferred to the acquiring person or bridge institution.

Assessor Committee

210. (1) Any person aggrieved by the transacted price as a result of—

- (a) a sale or disposal of the whole or part of the business or property of a licensed person or an operator of a designated payment system by the Bank or the appointed person under subsection 168(6); or
- (b) a compulsory transfer of the whole or part of the business, assets or liabilities of a licensed person pursuant to section 176,

may, within twenty-one days from the date of such sale, disposal or transfer, appeal on the transacted price to the Assessor Committee by submitting an appeal in writing to the Bank.

(2) Where any person appeals under subsection (1), the Bank shall constitute an Assessor Committee consisting of three independent persons as members of the Assessor Committee, drawn from a panel of ten persons appointed by the Minister on the recommendation of the Bank and refer the appeal to the Assessor Committee to assess the reasonableness of the transacted price.

(3) The Assessor Committee constituted under subsection (2) may determine its own procedures.

(4) In assessing the reasonableness of the transacted price, the Assessor Committee shall have regard to such matters it considers relevant including the prevailing market conditions for the sale or transfer of similar property, business, assets or liabilities of the licensed person or operator of a designated payment system.

(5) Where the Assessor Committee decides that—

- (a) the transacted price is less than the price that in its opinion is the reasonable price for the property, business, assets or liabilities, it shall advise the Bank to pay the difference between the transacted price and the reasonable price; or
- (b) the transacted price is in its opinion the reasonable price, it shall advise the Bank accordingly.

(6) The Bank shall notify the aggrieved person in writing of the Assessor Committee's decision under subsection (5).

(7) Notwithstanding subsection (5), where the institution is insolvent and the whole of the property, business, assets or liabilities of the licensed person or operator of a designated payment system is sold or disposed of by the Bank or the appointed person under subsection 168(6), or transferred by the Bank under section 176, a consideration of one ringgit shall be deemed to be reasonable as the transacted price.

(8) The sale or disposal of the whole or part of the business or property under subsection 168(6) or the transfer of the whole or part of the business, assets or liabilities under section 176 shall take effect despite any appeal to or any decision made by, the Assessor Committee.

(9) A decision of the Assessor Committee is final and binding on the parties to the appeal.

PART XIV

OTHER POWERS OF BANK

Division 1

Regulation of prescribed financial institutions

Interpretation

211. For the purposes of this Division, "financial intermediation activities" includes—

- (a) the accepting of deposits;
- (b) the giving of any advance, loan or other facility in whatever form or by whatever name called;
- (c) leasing business;
- (d) factoring business;
- (e) the purchase of bills of exchange, promissory notes, certificates of deposit, debentures or other negotiable instruments;

- (f) the acceptance of, or the giving of any guarantee in relation to, liability, obligation or duty of any person;
- (g) hire-purchase, including hire-purchase transactions pursuant to the Hire-Purchase Act 1967;
- (h) acquiring rights or interests in a hire-purchase, leasing or other similar transaction;
- (i) any activity that is incidental, ancillary or otherwise facilitates or is closely related to the activities referred to in paragraphs (a) to (h) above; and
- (j) such other business or activity as prescribed under section 3.

Power of Minister to prescribe financial institutions

212. (1) The Minister may prescribe any person which is not under the supervision or oversight of the Bank and engaging in financial intermediation activities as a prescribed financial institution—

- (a) on the joint recommendation by the Bank and the relevant authority which is responsible for the regulation and supervision of such person; or
- (b) on the recommendation by the Bank, in any other case,

if such person, in the opinion of the Bank, poses or is likely to pose a risk to financial stability arising from—

- (i) its financial intermediation activities which may include the generation of maturity or liquidity transformation, involve imperfect credit risk transfers, create or facilitate excessive leverage or raise concerns of regulatory arbitrage;
- (ii) the nature, scope, size, scale or concentration of its financial intermediation activities; or
- (iii) its interconnectedness with an authorized person or any other person regulated by the Bank under any written law enforced by the Bank.

(2) For the purpose of making a recommendation under subsection (1), the Bank may, with the approval of the Minister, exercise its examination powers under Part XI on a person referred to in subsection (1) as if the references in such provisions to an “authorized person” is a reference to the person referred to in subsection (1).

(3) The Minister may, on the recommendation of the Bank, apply all or any provisions of this Act to a prescribed financial institution from a date specified in the order under subsection (1) and with such amendments as the Minister, on the recommendation of the Bank, deems necessary, as if the references in such provisions to an “authorized person”, a “licensed person”, “licensed bank”, “licensed insurer”, “licensed investment bank”, an “institution” and a “financial service provider”, as the case may be, is a reference to such prescribed financial institution.

(4) With effect from the date specified in the order made under subsection (1), the prescribed financial institution concerned shall comply with, and be subject to, the provisions of this Act as specified in the order notwithstanding anything to the contrary in any written law.

(5) The Minister may, at any time, amend or revoke an order made under subsection (1)—

(a) on the joint recommendation by the Bank and the relevant authority, in the case of an order made under paragraph (1)(a); or

(b) on the recommendation by the Bank, in any other case.

(6) A prescribed financial institution which contravenes any provision of this Act or any standards, notice, direction, condition, specification or requirement specified or issued by the Bank under any provision of this Act applied to it under subsection (1) commits an offence under such provision and shall be liable to the same penalty applicable to a licensed person convicted of an offence under such provision and if no offence is provided for such contravention, the prescribed financial institution commits a breach and the Bank may take an action under paragraph 234(3) (b) in addition to other enforcement actions that the Bank is empowered to take under this Act.

(7) This section shall not apply to—

- (a) a person licensed, approved or recognized by the Securities Commission under securities laws; or
- (b) a licensed entity under the Labuan Financial Services and Securities Act 2010 [*Act 704*].

(8) For the purposes of this section, in the case of a registered person under the Capital Markets and Services Act 2007, the Bank shall—

- (a) consult with the Securities Commission in forming an opinion under subsection (1);
- (b) notify the Securities Commission before conducting an examination under subsection (2); and
- (c) regularly review the status of such prescribed financial institution, together with the Securities Commission, to determine whether the circumstances under subsection (1) no longer applies.

Division 2

International and domestic transactions

Interpretation

213. (1) For the purposes of section 214, unless the context otherwise requires—

“designated account” means an account opened in favour of any person by a financial institution as determined by the Bank;

“financial instrument” includes derivatives;

“foreign currency” includes—

- (a) currency notes or coins which are legal tender in any country, territory or place outside Malaysia;
- (b) any right to receive foreign currency—
 - (i) in respect of any credit or balance at a licensed bank or any other similar institution in or outside Malaysia; or

- (ii) from any person in or outside Malaysia; or
- (c) any document or device of a kind intended to enable the person to whom the document or device is issued to obtain foreign currency from another person on the credit of the person issuing it, and in particular, any traveller's cheque or other draft or letter of credit so intended;

“giving or obtaining of guarantee” includes a renewal or extension of such guarantee;

“gold” means—

- (a) gold in whatever state or form other than gold which has been materially increased in value by skilled craftsmanship; or
- (b) any right to receive gold—
 - (i) in respect of any credit or balance at a licensed bank or any other similar institution in or outside Malaysia; or
 - (ii) from any person in or outside Malaysia;

“guarantee” includes the pledging of any security issued or registered in Malaysia or any other property in Malaysia to secure the repayment of a debt, obligation or liability;

“issue” in relation to securities or financial instrument means to bring or cause to be brought into existence those securities or financial instrument, and the word “issued” or “issuance” shall be construed accordingly;

“non-resident” means—

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

“payment” includes the act of transferring to, or placing to the credit of, a person, ringgit, foreign currency, financial instrument, gold, other precious metals or other valuable consideration, as the case may be, whether under an obligation or otherwise;

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

“resident” means—

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

“ringgit” means currency notes or coins which are legal tender in Malaysia and includes any right to receive ringgit in such form as may be specified by the Bank;

“securities” means shares, stock, bonds, notes (other than promissory notes), debentures, debentures stock, units under a unit trust scheme, shares in an oil royalty, a secondary security and coupons, whether in scripless form or in bearer certificates, including certificates of title to securities or any letter of allotment which may be renounced, any letter of rights, any warrants conferring an option to acquire a security, any deposit certificate in respect of securities and such other documents conferring, or containing evidence of, rights to securities as may be specified by the Bank;

“settlement of a property” includes the making of any disposition, covenant, agreement or arrangement whereby the property becomes subject to a trust;

“transfer of securities” includes the buying, selling, borrowing or lending of securities.

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

(a) the Bank may specify that the document or information shall be submitted, within a period, at such intervals, in the manner or form as may be specified by the Bank; and

(b) such person shall not submit any document or information—

(i) which he knows, or has reason to believe to be false or misleading in a material particular; or

(ii) which is inaccurate or incomplete in respect of which there is a material error or omission, or any recurring error or omission.

Measures relating to international and domestic transactions

214. (1) The Bank is empowered under this section to safeguard the balance of payments position and the value of the currency of Malaysia.

(2) No person shall undertake or engage in any transaction set out in Schedule 14 except with the written approval of the Bank.

(3) Subject to any direction issued by the Bank under paragraph (6)(e), the prohibition in subsection (2) in respect of the transactions in paragraph 1 of Schedule 14 shall not apply to any licensed bank.

(4) Unless otherwise expressly provided in this section and Schedule 14, subsection (2) shall apply to—

- (a) all persons, classes, categories or descriptions of persons including their nominees or any person acting on their behalf notwithstanding that they are not in Malaysia; and
- (b) all acts that are committed in or outside Malaysia including any act which involves, is in association with, or is preparatory to, the transactions set out in Schedule 14.

(5) The Bank in granting any written approval under subsection (2) may impose any requirement, restriction or condition in respect of the transactions in Schedule 14.

(6) The Bank may issue direction to—

- (a) declare that a person is to be treated as a resident or a non-resident notwithstanding the definition of “resident” or “non-resident” in section 213;
- (b) require any person to submit any document or information to the Bank or any person as may be specified by the Bank;
- (c) require any payment to be made into a designated account and direct the use of such fund in the designated account as may be specified by the Bank;
- (d) require any person who is entitled to sell, or to procure the sale of, any foreign currency, gold or other precious metals, to offer it, or cause it to be offered, for sale to a licensed bank or any person as may be specified by the Bank;
- (e) require a licensed bank to undertake or engage in the transactions in paragraph 1 of Schedule 14 on such terms as may be specified by the Bank;
- (f) require a licensed bank, or any other person to administer or ensure compliance with this section on such terms as may be specified by the Bank; or
- (g) require any person to do or refrain from doing any act for the purpose of securing compliance with this section.

(7) Any written approval granted under subsection (2) and any direction issued under subsection (6) shall apply to such persons, classes, categories or descriptions of persons as may be specified by the Bank in that written approval and direction, as the case may be.

(8) Subsection (2) shall not affect the enforcement by the parties of their rights under a qualified financial agreement.

(9) Except for paragraph 7 in Schedule 14, any person who contravenes subsection (2) or fails to comply with any requirement, restriction or condition imposed under a written approval granted under subsection (2) or any direction issued under subsection (6) commits an offence under this Act and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding fifty million ringgit or to both.

(10) Any ringgit, foreign currency, gold, other precious metals, security or financial instrument or any other article which is subject to a prohibition under subsection (2) in respect of the transactions in paragraph 7 of Schedule 14 shall be deemed to be prohibited goods under the Customs Act 1967 [Act 235] and any person who fails to comply with such prohibition or any requirement, restriction or condition imposed under a written approval granted under subsection (2) commits an offence under that Act and shall, on conviction, be liable to the penalty provided in that Act.

Power of Bank to impose levies or charges

215. (1) For the purposes of safeguarding the balance of payments position or the value of the currency of Malaysia, regulations may be made under section 260 to impose levies or charges in respect of any transaction specified in Schedule 14, either generally or with conditions or in circumstances set out in the regulations.

(2) Levies or charges imposed pursuant to the regulations referred to in subsection (1) may be—

(a) specific;

(b) a minimum or maximum amount; or

(c) a percentage or proportion of the amount which is the subject matter of the transaction in Schedule 14.

Power of Bank, with approval of Minister, to issue directions

216. (1) The Bank may, with the approval of the Minister, in the national interest, issue directions to any person in Malaysia, to prohibit, restrict or require the doing of any act as may be specified by the Bank, with or without conditions, in relation to dealings or transactions, with any person resident in a country or territory, or in any currency, as may be specified by the Bank.

(2) Any person for whom the directions are issued under subsection (1) shall comply with the directions notwithstanding any other duty imposed on that person by any contract or international agreement.

(3) No person shall, in carrying out any act in compliance with the directions made under subsection (1), be treated as being in breach of any such contract or international agreement.

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

Division 3*Holidays for licensed person***Power of Minister to declare holiday for licensed person**

217. (1) The Minister may, on the recommendation of the Bank, by notice in the *Gazette*, declare any day to be a holiday for all licensed persons, or for any class, category or description of licensed persons, or for such offices of such licensed persons, throughout, or in any part of, Malaysia, as may be specified in the notice.

(2) No licensed person, or the office of the licensed person specified in the notice, shall carry on any business on any day declared as a holiday for such licensed person under subsection (1) unless the Minister, on the recommendation of the Bank, otherwise approves.

(3) Where a day is declared to be a holiday under subsection (1)—

- (a) the licensed person or its office specified in the notice is not compellable on such holiday to make a payment or to do any other act that it would not be compellable to do on any day which is public holiday within the meaning of any law relating to public holidays; and
- (b) no person shall be compellable to make any payment on such holiday in or at a licensed person or its office specified in the notice, or to do in or at a licensed person or its office specified in the notice any act requiring the services of such licensed person,

and the obligation to make the payment or to do the act shall be deemed to be an obligation to make the payment or to do the act on the next day which is not a public holiday within the meaning of any law relating to public holidays.

(4) A day declared as a holiday for a licensed person or its office under subsection (1) shall not necessarily be a public holiday and nothing in this section shall affect the operation of any law relating to public holidays.

(5) Any declaration of a holiday made under subsection (1) shall not—

- (a) invalidate any contract, agreement, transaction or arrangement entered into by the licensed person with any person; and
- (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

PART XV

ENFORCEMENT AND PENALTIES

Division 1

Investigation powers

Investigation by Bank

218. Where the Bank is satisfied or has any reason to believe that any person has committed an offence under this Act, the

Bank may cause an investigation to be made and for such purpose may exercise all the powers of investigation provided under this Act.

Appointment of investigating officer

219. The Bank may appoint an officer of the Bank or any other person appointed under subsection 7(6) to be an investigating officer to conduct an investigation under this Division.

Powers of investigating officer

220. (1) An investigating officer appointed under section 219 shall have all the powers and functions conferred on the Bank under this Part, and where such investigating officer is not an officer of the Bank, he shall, in relation to such powers and functions—

(a) be subject to; and

(b) enjoy such rights, privileges, protection, immunities and indemnities as may be specified in,

the provisions of this Act, the Central Bank of Malaysia Act 2009 or any other written law applicable to an officer of the Bank as if he was an officer of the Bank.

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

(3) The Governor shall have all the powers and functions of an investigating officer.

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

Powers of entry, search and seizure with warrant

221. (1) Act it appears to a magistrate, upon written information, on oath and after such inquiry as he considers necessary that there is reasonable cause to believe that—

- (a) any premises have been used or are about to be used for;
or
- (b) there is any premises evidenced necessary to the conduct of an investigation into,

the commission of an offence under this Act, the magistrate may issue a warrant authorizing an investigating officer named in the warrant, at any reasonable time, by day or by night and with or without assistance to enter the premises and if need be by force.

(2) A warrant under subsection (1) may authorize the investigating officer to—

- (a) enter any premises and search for, seize and detain any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information;
- (b) have access to, inspect, make copies of, or take extracts from, any computer, computer output, system, data, books, document or information so seized and detained, including access to any program or data held in any computer or have access to, inspect or check the operation of any computer and any associated apparatus or material;
- (c) take possession of, and remove from the premises, any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information so seized and detained;
- (d) search any person who is in, or on, such premises, and for the purpose of such search, detain such person, subject to section 225, and remove him to such place as may be necessary to facilitate the search, and seize and detain any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information found on such person;

(e) break open, examine, and search, any article, container or receptacle, including assessing into a computer; or

(f) stop, detain or search any conveyance.

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

(a) break open any outer or inner door of such premises or other obstruction to the premises, in order to effect entry into the premises;

(b) forcibly enter the premises and every part of the premises;

(c) remove by force any obstruction to entry, search, seizure, detention or removal as he is empowered to effect under this section; or

(d) detain, subject to section 225, any person found in any premises, or in any conveyance, searched under subsection (1) until such premises or conveyance have been searched.

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

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

Powers of entry, search and seizure without warrant

222. If an investigating officer is satisfied upon information received that he has reasonable cause to believe that by reason of delay in obtaining a search warrant under section 221 the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or

destroyed, the investigating officer may enter the premises and exercise in, upon and in respect of the premises all the powers referred to in section 221 in as full and ample a manner as if he was authorized to do so by a warrant issued under that section.

List of seized property, etc.

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

- (a) prepare and sign a list of all property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information seized; and
- (b) state in the list the location in which, or the person on whom, the property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information is found or obtained.

(2) The occupant of the premises entered under subsection 221(1) or section 222 in the course of investigation, or any person on his behalf, shall in every instance be permitted to attend during the search, sign the search list or affix his thumb print thereon, and be given a copy of the search list prepared and signed or affixed thumb print under this section.

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

Release of seized property, etc.

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

- (a) on the close of investigations or any proceedings arising from such investigations; or
- (b) with the prior written consent of the Bank at any time before the close of investigations,

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

(2) A record in writing shall be made by the investigating officer effecting any release of any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information under subsection (1) in respect of such release specifying therein in detail the circumstances of, and the reason for, such release.

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

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

(5) The court upon receiving the application under subsection (4) and being satisfied that the person under subsection (1) who is lawfully entitled to the property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information cannot be located shall order the same to be forfeited or disposed of by the Bank in accordance with the order made by the court.

Search of person

225. (1) An investigating officer may search any person whom he has reason to believe has on his person any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information, or other article necessary, in his opinion, for the purpose of investigation into any offence under this Act.

(2) For the purpose of a search of a person under subsection (1), section 221 or 222, an investigating officer may, subject to the provisions of the Criminal Procedure Code [*Act 593*], detain such person as may be necessary to have the search carried out, and may remove him in custody to such place as may be necessary to facilitate such search.

(3) An investigating officer making a search of a person under subsection (1) may seize, detain or take possession of any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document, information or article, found upon such person for the purpose of the investigation being carried out by him.

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

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

Obstruction to exercise of powers by investigating officer

226. (1) No person shall—

(a) refuse any investigating officer exercising his powers under section 221, 222 or 225, access to any premises or any part of such premises, or fail to submit to the search of his person;

(b) assault, obstruct, hinder or delay any investigating officer in the exercise of his powers under this Part;

- (c) fail to comply with any lawful demand of any investigating officer in the execution of his duties under section 221, 222 or 225;
- (d) refuse to give to an investigating officer any information which may reasonably be required of him and which he has it in his power to give;
- (e) fail to produce to, or conceal or attempt to conceal from, an investigating officer any property, books, other document or article in relation to which the investigating officer has reasonable grounds for suspecting that an offence or breach has been or is being committed under this Act;
- (f) retrieve or endeavour to retrieve any thing which has been duly seized;
- (g) furnish to an investigating officer as true, information which he knows or has reason to believe to be false, misleading, inaccurate or incomplete; or
- (h) before or after any seizure, break or otherwise destroy any thing to prevent the seizure thereof, or the securing of such thing.

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

Requirement to provide translation

227. (1) Where an investigating officer finds, seizes, detains or takes possession of any computer, computer output, system, data, books, document or information, in the exercise of any power under this Part, and such books, other document or information or any part thereof is in a language other than the national language or the English language, or in any sign or code, the investigating officer may, orally or in writing, require the person who had the possession, custody or control of such computer, computer output, system, data, books, document or information, to furnish to the investigating officer a translation in the national language or the English language of such computer output, system, data,

books, document or information within such reasonable period as the investigating officer may specify, having regard to the length of the computer output, system, data, books, document or information, or other circumstances relating to it.

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

(3) Where the person required to furnish a translation under subsection (1) is not the person who is suspected to have committed the offence or breach under investigation, the Bank shall pay him reasonable fees for the translation.

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

Power to examine persons

228. (1) Where an investigating officer suspects any person to have committed an offence or a breach under this Act, he may, if in his opinion it is reasonably necessary to do so for the purposes of an investigation into such offence—

- (a) order any person in writing to attend before him for the purpose of being examined orally in relation to any matter which may assist in the investigation into the offence or breach;
- (b) order any person in writing to produce before him, within the time specified by such officer, any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document, information, article or thing which may assist in the investigation into the offence or breach; or
- (c) by notice in writing require any person to furnish a statement in writing made on oath or affirmation setting out therein all such information which may be required under the notice, being information which would be of assistance in the investigation into the offence or breach.

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

(a) a person to whom an order under paragraph (1)(a) has been given shall—

(i) attend in accordance with the terms of the order to be examined, and shall continue to so attend from day to day as directed by the investigating officer until the examination is completed; and

(ii) during such examination disclose all information which is within his knowledge, or which is available to him, or which is capable of being obtained by him, in respect of the matter in relation to which he is being examined, whether or not any question is put to him with regard thereto, and where any question is put to him he shall answer the question truthfully and to the best of his knowledge and belief, and shall not refuse to answer any question on the ground that it tends to incriminate him or his spouse;

(b) a person to whom an order has been given under paragraph (1)(b) shall not conceal, hide, destroy, alter, remove from or send out of Malaysia, or deal with, expend, or dispose of, any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document, information, article or thing specified in the order, or alter or deface any entry in any such computer output, system, data, books, document or information, or cause such acts to be done, or assist or conspire to do such acts; and

(c) a person to whom a notice has been given under paragraph (1)(c) shall, in his statement made on oath or affirmation, furnish and disclose truthfully all information required under the notice which is within his knowledge, or which is available to him, or which is capable of being obtained by him, and shall not fail to furnish or disclose the same on the ground that it tends to incriminate him or his spouse.

(3) A person to whom an order or a notice is given under subsection (1) shall comply with such order or notice and with the provisions of subsection (2) in relation thereto, notwithstanding any law, whether enacted before or after the commencement of this Act, or of any oath, undertaking or requirement of secrecy, or of any obligation under any contract, agreement or arrangement, whether express or implied, to the contrary.

(4) Where any person discloses any information or produces any property, equipment, apparatus, machinery, computer, computer output, system, data, books, document, information, article or thing, pursuant to subsections (1) and (2), neither the first-mentioned person, nor any other person on whose behalf or direction or as whose agent or officer the first-mentioned person may be acting, shall, on account of such disclosure or production, be liable to any prosecution for any offence under or by virtue of any law, or to any proceeding or claim in any form or of any description by any person under or by virtue of any agreement or arrangement, or otherwise.

(5) An investigating officer may seize, take possession of and retain for such duration as he deems necessary, any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document, information, article or thing produced before him in the course of an investigation under subsection (1), or search the person who is being examined by him under paragraph (1)(a), or who is producing anything to him under paragraph (1)(b), for ascertaining whether anything relevant to the investigation is concealed, or is otherwise upon such person.

(6) An examination under paragraph (1)(a) shall be reduced into writing by the investigating officer and shall be read to and signed by the person being examined or affixed with his thumb print, and where such person refuses to sign the record or affix his thumb print, the investigating officer shall endorse thereon under his hand the fact of such refusal and the reasons thereof, if any, stated by the person examined.

(7) The record of an examination under paragraph (1)(a), or a written statement on oath or affirmation made pursuant to paragraph (1)(c), or any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document, information, article or thing produced under paragraph (1)(b) or

otherwise in the course of an examination under paragraph (1)(a) or under a written statement on oath or affirmation made pursuant to paragraph (1)(c) shall be admissible in evidence in any proceedings in any court for, or in relation to—

- (a) an offence or breach under this Act;
- (b) any other matter under this Act; or
- (c) any offence under any other written law,

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

(8) Any person who contravenes subsection (1) or (2) or furnishes to an investigating officer any information or statement that is false or misleading in any material particular, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.

Service of orders or notices generally, etc.

229. (1) Any order or notice that is given under this Part, shall, where it is required to be served on an individual, be served by—

- (a) delivering it personally to the person for whom it is intended;
- (b) delivering it to an adult person at the last-known place of residence, occupation or business of the person for whom it is intended; or
- (c) sending it by registered post to the person for whom it is intended.

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

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

- (a) in which the individual for whom the order or notice is intended is known to have last resided, to have been last employed or to have last carried on business; or
- (b) at the last known registered address or business address of the body corporate or unincorporate for whom the order or notice is intended,

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

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

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

Surrender of travel documents

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

(2) A notice under subsection (1) shall be served personally to the person to whom it is addressed in accordance with section 229.

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

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

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

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

whichever occurs earlier.

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

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

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

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

Agent provocateur

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

- (a) no *agent provocateur*, whether he is an officer of the Bank or not, shall be presumed to be an accomplice or be unworthy of credit by reason only of his having attempted to commit or to abet, or having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of such attempt, abetment or engagement was to secure evidence against such person;
- (b) any statement whether oral or in writing made to an *agent provocateur* by any person, including any person who is subsequently charged with an offence under this Act, shall be admissible in evidence and given due weight and consideration at any trial for an offence under this Act; and
- (c) a conviction for any offence under this Act solely on the uncorroborated evidence of any *agent provocateur* shall not be illegal and no such conviction shall be set aside merely because the court which tried the case has failed to refer in the grounds of its judgment to the need to warn itself against the danger of convicting on such evidence.

Assistance to police or other public officer

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

- (a) supply to a police officer or any other public officer a copy of any books, computer output, data, document or information seized, detained or taken possession of under section 221, 222 or 225, or of any record of examination under paragraph 228(1)(a), or of any written statement on oath or affirmation made under paragraph 228(1)(c) or of any books, computer output, data, document or information produced under paragraph 228(1)(b), or otherwise in the course of any examination under paragraph 228(1)(a), or under any written statement on

oath or affirmation made pursuant to paragraph 228(1) (c), and such police officer or other public officer may make such use of such copy of such record, statement, books, computer output, data, document or information as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person; or

- (b) allow a police officer or any other public officer to have access to and inspect any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document, information, article or thing which had been produced before, or seized, detained or taken possession of, by an investigating officer under this Part, and such police or other public officer may make such use of any knowledge gained by such access or inspection as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person.

Investigating officer deemed to be public servant and public officer

233. An investigating officer shall be deemed to be a public servant for the purposes of the Penal Code [*Act 574*], and to be a public officer for the purposes of the Criminal Procedure Code and the Evidence Act 1950 or any other written law which the Minister may, on the recommendation of the Bank, prescribe.

Division 2

Administrative actions

Power of Bank to take action

234. (1) A person has committed a breach under this Act if the person fails to comply with or give effect to—

- (a) any provision of this Act;
- (b) any regulations made under this Act;

- (c) any order made or any direction issued under this Act by the Bank including an order made under section 94 or a direction issued under section 116 or 156, subsection 214(6) or section 216; or
- (d) any standards, condition, restriction, specification, requirement or code under this Act.

(2) The Bank shall have regard to the following matters in determining the appropriate action to be taken in each case:

- (a) the effectiveness of the enforcement action to be taken under this Act;
- (b) the proportionality of the action to be taken with the breach committed;
- (c) deterrence of future breaches of similar nature by other persons; and
- (d) any other matter that is considered as relevant in the opinion of the Bank.

(3) If the Bank is of the opinion that a person has committed a breach and it is appropriate to take action against that person, the Bank may, subject to section 262, take any one or more of the following actions:

- (a) make an order in writing requiring the person in breach—
 - (i) to comply with or give effect to; or
 - (ii) to do or not to do any act in order to ensure compliance with,

such provisions, regulations, order, direction, standards, condition, restriction, specification, requirement or code referred to in subsection (1);

- (b) subject to subsection (4), impose a monetary penalty—
 - (i) in accordance with the order published in the *Gazette* made under section 236 or if no such order has been made, such amount as the Bank considers appropriate, but in any event not exceeding five million ringgit in the case of a breach that is

committed by a body corporate or unincorporate or one million ringgit in the case of a breach that is committed by any individual, as the case may be;

- (ii) which shall not exceed three times the gross amount of pecuniary gain made or loss avoided by such person as a result of the breach; or
- (iii) which shall not exceed three times the amount of money which is the subject matter of the breach,

whichever is greater for each breach or failure to comply;

- (c) reprimand in writing the person in breach or require the person in breach to issue a public statement in relation to such breach, if it is in the opinion of the Bank that such breach is relevant for the information of the general public;
 - (d) make an order in writing requiring the person in breach to take such steps as the Bank may direct to mitigate the effect of such breach; or
 - (e) make an order in writing requiring an authorized person, an operator of a designated payment system, a registered person or a market participant to remedy the breach including making restitution to any other person aggrieved by such breach.
- (4) The Bank may impose a monetary penalty under paragraph (3)(b) only in respect of the following:
- (a) breach of any provision set out in Schedule 15;
 - (b) breach of any requirement under any other provision of this Act where no offence is provided for non-compliance of that requirement;
 - (c) failure to comply with any requirement imposed under regulations made under this Act where no provision for imposition of penalty is provided for in accordance with paragraph 260(2)(d); or

- (d) failure to comply with any standards, code, order, direction, requirement, condition, specification, restriction or otherwise made or imposed pursuant to any provision set out in Schedule 15.

(5) If a breach is committed by a body corporate or unincorporate, any action under subsection (3) can be taken against a person—

- (a) who is its director, controller, officer or partner, or was purporting to act in any such capacity; or
- (b) who is concerned in the management of its affairs,

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

(6) If a breach is committed by a person—

- (a) who is a director, controller, officer or partner of a body corporate or unincorporate, or was purporting to act in any such capacity; or
- (b) who is concerned in the management of the affairs of a body corporate or unincorporate,

an action under subsection (3) can be taken against the body corporate or unincorporate.

(7) For the purposes of paragraph (3)(e), in determining whether or not any amount is to be paid by a person in breach, the Bank shall have regard to—

- (a) whether or not one or more persons have suffered loss or been otherwise adversely affected as a result of the breach; or
- (b) the profits that have accrued to such person in breach.

(8) Any monetary penalty paid by a person in accordance with paragraph (3)(b) shall be paid into and form part of the Federal Consolidated Fund.

(9) Where a person fails to pay a monetary penalty imposed by the Bank under paragraph (3)(b) within the period specified by the Bank, the penalty imposed by the Bank may be sued for and recovered as a civil debt due to the Government.

(10) Where a person fails to remedy the breach including making restitution to any other person aggrieved by the breach under paragraph (3)(e), notwithstanding any other written law, the Bank may sue for and recover such sum as a civil debt due to the person aggrieved by the breach.

(11) Nothing in this section shall preclude the Bank from taking any of the actions that it is empowered to take under this Act, in particular, section 94, 116 or 156, or any written law.

Lodgment of amount not distributed with Registrar of Unclaimed Moneys

235. To the extent that any of the amount paid under paragraph 234(3)(e) or subsection 234(10) has not been distributed by the person in breach after reasonable efforts to notify the aggrieved persons have failed due to the difficulty of notifying the aggrieved persons, such amount shall be lodged with the Registrar of Unclaimed Moneys in accordance with the provisions of the Unclaimed Moneys Act 1965 [Act 370].

Power of Bank to prescribe monetary penalty

236. The Bank may, for giving full effect to or for convenient implementation of subparagraph 234(3)(b)(i), or for the purposes of regulatory objectives of this Act, prescribe the following matters as it deems necessary:

- (a) classify or designate the breaches under this Act into different categories of breaches; and
- (b) fix, in accordance with paragraph (a), a monetary penalty, or a range of monetary penalties, in respect of each category.

Application for appeal of decisions

237. (1) Any person who is aggrieved by a decision of the Bank under paragraph 234(3)(b) or (e) may within twenty-one days after the person has been notified of the decision, appeal by filing a notice in writing to the Monetary Penalty Review Committee.

(2) The decision of the Bank under paragraph 234(3)(b) or (e), as the case may be, shall not take effect until the appeal is disposed of.

(3) The Monetary Penalty Review Committee may decide to confirm the decision of the Bank or require the Bank to reconsider and reach a decision in accordance with the findings of the Committee.

Monetary Penalty Review Committee

238. (1) There shall be established a committee to be known as the Monetary Penalty Review Committee for the purposes of section 237.

(2) The Monetary Penalty Review Committee shall consist of not less than three but not more than five members appointed by the Minister from amongst non-executive directors of the Bank or other persons.

(3) The Monetary Penalty Review Committee may determine its own procedures.

Division 3

Civil actions

Civil action by Bank

239. Where it appears to the Bank that there is a reasonable likelihood that any person will contravene or has contravened or will breach or has breached or is likely to fail to comply with or has failed to comply with any—

(a) provisions of this Act;

- (b) provisions of any regulations made pursuant to this Act;
- (c) order made or direction issued by the Bank under this Act including an order made under section 94 or a direction issued under section 116 or 156, subsection 214(6) or section 216;
- (d) standards, condition, restriction, specification, requirement or code made or issued pursuant to any provision of this Act; or
- (e) action taken by the Bank under subsection 234(3),

the Bank may institute civil proceedings in the court seeking any order specified under subsection 240(1) against that person whether or not that person has been charged with an offence in respect of the contravention or breach or whether or not a contravention or breach has been proved in a prosecution.

Orders by court

240. (1) The court may, on an application by the Bank under section 239, make one or more of the following orders:

- (a) an order requiring the person to pay an amount which shall not exceed three times—
 - (i) the gross amount of pecuniary gain made or loss avoided by such person as a result of the contravention, breach or non-compliance; or
 - (ii) the amount of money which is the subject matter of the contravention, breach or non-compliance,as the case may be;
- (b) an order requiring the person to pay a civil penalty in such amount as the court considers appropriate having regard to the severity or gravity of the contravention, breach or non-compliance, but in any event not exceeding twenty-five million ringgit;
- (c) an order—
 - (i) restraining the person from engaging in any specific conduct; or

- (ii) requiring the cessation of the contravention, breach or non-compliance;
 - (d) an order directing a person to do a certain act;
 - (e) an order directing the person, or any other person who appears to have been involved in the contravention, breach or non-compliance to take such steps as the court may direct to mitigate the effect of such contravention breach or non-compliance;
 - (f) an order directing the authorized person, operator of a designated payment system, registered person or market participant to remedy the contravention, breach or non-compliance including making restitution to any other person aggrieved by such contravention, breach or non-compliance;
 - (g) where a person has refused or failed to comply with any action taken by the Bank under subsection 234(3), an order directing the person to comply with such action that is taken by the Bank; and
 - (h) any other order deemed appropriate by the court including any ancillary order deemed desirable in consequence of the making of an order under any provision in this subsection.
- (2) The court may make an order under subsection (1) against a person—
- (a) who is the director, controller, officer or partner, or was purporting to act in any such capacity; or
 - (b) who is concerned in the management of the affairs,

of a body corporate or unincorporate in the event where the contravention, breach or non-compliance has been committed by the body corporate or unincorporate unless that person proves that the contravention, breach or non-compliance was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the contravention, breach or non-compliance as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.

(3) If a contravention, breach or non-compliance is committed by a person—

- (a) who is a director, controller, officer or partner of a body corporate or unincorporate, or was purporting to act in any such capacity; or
- (b) who is concerned in the management of the affairs of a body corporate or unincorporate,

an order under subsection (1) can be made against the body corporate or unincorporate.

(4) Any sum ordered by the court under subsection (1), shall be applied—

- (a) firstly, to reimburse the Bank for all costs of the proceedings in respect of the contravention, breach or non-compliance; and
- (b) secondly, to pay persons aggrieved by the contravention, breach or non-compliance in the case of an order under paragraph (1)(f); or
- (c) thirdly, to pay into and form part of the Federal Consolidated Fund unless the court orders for such sums or part thereof to be used to compensate persons who have suffered loss as a result of the contravention, breach or non-compliance.

(5) If the authorized person, operator of a designated payment system, registered person or market participant considers that it is not practicable to provide a remedy to the persons referred to in paragraph (1)(f), in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the person whom it is appropriate to provide a remedy, the authorized person, operator of a designated payment system, registered person or market participant shall lodge such amount with the Registrar of Unclaimed Moneys in accordance with the provisions of the Unclaimed Moneys Act 1965.

(6) The court may revoke or vary an order made by it under this section or suspend the operation of such an order.

(7) The powers conferred on the court under this section are in addition to any of its other powers, and do not derogate from its other powers provided under any other written law.

(8) Applications under this section may be commenced at any time within six years from the date on which the Bank discovered the contravention, breach or non-compliance.

Civil action to seek compensation

241. (1) Where any person—

- (a) has been convicted of an offence under this Act or under any other written law; or
- (b) has had any offence committed by him compounded under section 253,

and such offence has resulted in, or caused, or subsequent to its commission, results in, or causes, any loss or damage of any nature or in any form to a licensed person, the Bank may institute civil proceedings in court for the purposes of seeking indemnity from the persons referred to in subsection (2).

(2) The following persons shall be jointly and severally liable to indemnify the licensed person in full for any loss or damage to the licensed person:

- (a) the person convicted of the offence, or the person whose offence has been compounded under section 253; and
- (b) any director, officer or controller of the licensed person, any other person purporting to act in any such capacity, or any person who is in any manner or to any extent responsible for the management of the affairs of the licensed person, or any person who is assisting in such management.

(3) The court may, upon reviewing an application by the Bank, make an order specifying the amount of moneys the persons referred to in subsection (2) are liable to indemnify the licensed person.

(4) The persons referred to in subsection (2) shall not be liable to so indemnify the licensed person if—

- (a) the offence was committed without his knowledge, consent or connivance; and
- (b) he took all reasonable precautions and had exercised due diligence to prevent the commission of the offence as he ought to have taken precautions or to have exercised, having regard to the nature of his functions and to all the circumstances in which the offence was committed.

(5) An amount ordered by the court under subsection (3) shall be applied—

- (a) firstly, to reimburse the Bank for all costs of the proceedings to seek the indemnity; and
- (b) secondly, to compensate the licensed person.

(6) Civil proceedings under subsection (1) may be commenced at any time within six years from the date on which the person has been convicted of the offence under this Act or other written law or compounded under section 253.

Interim orders

242. If an application is made to a court for an order under subsection 240(1) or 241(1), the court may, if it deems appropriate, before considering the application, make an interim order of the kind applied for and such order shall be expressed to have effect pending the determination of the application.

Contravention of court order

243. (1) Any person who contravenes an order of the court under subsection 240(1) or 241(3) or section 242 commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.

(2) Subsection (1) does not affect the powers of the court in relation to the punishment of contempt of court.

No undertaking as to damages

244. Where the Bank makes an application for an order under subsection 240(1) or 241(1), the court shall not, as a condition of the grant of the order, require any undertaking as to damages to be given by or on behalf of the Bank.

Other actions

245. An application made pursuant to subsection 240(1) or 241(1) shall not prejudice any other action that may be taken by the Bank, aggrieved person or licensed person, as the case may be, under this Act or any other law.

Evidence obtained in investigations may be used in civil proceedings

246. (1) Notwithstanding any law, any document or information obtained by the Bank in the exercise of its investigation powers against—

- (a) an authorized person, operator of a designated payment system, a registered person or market participant;
- (b) any director or officer of the persons referred to in paragraph (a);
- (c) any agent of the persons referred to in paragraph (a);
or
- (d) any other person,

may be used by the Bank in a civil action instituted by the Bank.

(2) For the avoidance of doubt, any document or information referred to in subsection (1) shall not be inadmissible in any civil proceedings under this Part to which the Bank is a party by reason only that it was obtained by the Bank in the exercise of its investigation powers and the admissibility thereof shall be determined in accordance with the rules of evidence under any law.

Division 4

*Criminal offences***Imprisonment**

247. Where the penalty of imprisonment has been provided for an offence under this Act, such penalty shall not apply to a body corporate convicted of the offence.

Offences in relation to entries in documents

248.(1) No person shall—

- (a) make or cause to be made a false entry;
- (b) omit to make, or cause to be omitted, any entry; or
- (c) alter, extract, conceal or destroy, or cause to be altered, extracted, concealed or destroyed, any entry,

in any book or record, or in any report, slip, statement or other document whatsoever, relating to the business, affairs, transactions, condition, property, assets, liabilities or accounts, of an authorized person, a registered person or an operator of a designated payment system.

(2) No person shall evade the provisions of this Act by altering, forging, destroying, mutilating, defacing, concealing or removing any document.

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

Offence committed by any person acting in official capacity

249.(1) Where an offence is committed by a body corporate or unincorporate, a person—

- (a) who is its director, controller, officer or partner, or was purporting to act in any such capacity; or

(b) who is concerned in the management of its affairs,

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

(2) An individual may be prosecuted for an offence under subsection (1) notwithstanding that the body corporate or unincorporate has not been convicted of the offence whether or not a prosecution has been initiated or a conviction has been obtained against the body corporate or unincorporate.

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

(4) The penalty of imprisonment for an offence applies to an individual convicted of an offence by virtue of subsection (1), notwithstanding that the imprisonment does not apply to the body corporate or unincorporate by virtue of section 247.

Offence by employees, etc.

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

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

Seizable offence

251. Every offence punishable under this Act shall be a seizable offence, and a police officer not below the rank of Inspector, or an investigating officer appointed under section 219 may arrest without warrant a person whom he reasonably suspects to have committed or is committing the offence.

Duty of investigating officer to make over arrested person to police

252. An investigating officer who makes an arrest under section 251 shall make over the arrested person to a police officer without unnecessary delay and the arrested person shall be dealt with according to the law relating to criminal procedure as if he had been arrested by a police officer.

Power to compound

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

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Governor may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

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

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

Attempts, abetments and conspiracies

254. (1) Any person who—

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

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

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

Prosecution

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

Division 5

General matters

Protection in relation to disclosure of information to Bank

256. (1) Where a person discloses in good faith to the Bank, his knowledge or belief or any document or information that a breach or contravention has been committed or is about to be committed under this Act—

- (a) such person shall not be liable for a breach of a duty of confidentiality imposed by any law, contract or rules of professional conduct;

- (b) it shall be a defence in an action, a suit, prosecution or proceeding that is brought, instituted or maintained in any court or before any other authority against the person who made the disclosure to the Bank that in his belief the disclosure was necessary for the carrying into effect the provisions of this Act; or
- (c) no contractual or other rights or remedy may be enforced against the person on the basis of disclosure.

(2) Any document or information disclosed to the Bank under subsection (1) and the information and identity of the person making the disclosure shall be secret between the Bank and the person who made the disclosure.

Evidential provision

257. In any criminal or civil proceedings under this Act—

- (a) any statement purporting to be signed by the Governor or any other person authorized to perform the functions of the Bank on its behalf, which forms part of or is annexed to any letter, register, record or document, however expressed, described or represented; or
- (b) the production of a printed copy of a standard, specification, order in writing, direction, instruction, notice, requirement, condition or restriction, letter, register, record, document or any other instrument specified or issued pursuant to this Act,

shall, until the contrary is proved, be evidence of any fact stated therein.

Power of Bank to publish information

258. The Bank may, where it thinks necessary, publish in such form and manner as it thinks fit, any information in relation to—

- (a) any enforcement action taken under this Act including criminal proceedings, compounding, civil actions and administrative actions; and

- (b) the outcome of actions referred to in paragraph (a) including the outcome of any proceedings, settlement in or out of court in relation to any breach or contravention of provisions of this Act.

PART XVI

GENERAL PROVISIONS

Enforceable undertakings

259. (1) The Minister or the Bank may accept a written undertaking given by a person in connection with a matter in relation to which the Minister or the Bank, as the case may be, has a power or function under this Act.

(2) The written undertaking accepted under subsection (1) may be varied or withdrawn by the person giving the undertaking with the consent of the Minister or the Bank, as the case may be.

(3) If the Bank considers that a person who has given a written undertaking has breached any of the terms of the undertaking—

(a) given to the Bank, the Bank may apply; or

(b) given to the Minister, the Bank may recommend to the Minister to apply,

to the High Court for an order under subsection (4) by way of originating summons.

(4) If the High Court is satisfied that a person has breached a term of the undertaking, the High Court may make any or all of the following orders:

(a) an order directing the person to comply with the undertaking;

(b) an order directing the person to pay to the Federal Consolidated Fund an amount up to the amount of any financial benefit that the person obtained (whether directly or indirectly) and that is reasonably attributable to the breach;

- (c) any order that the High Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach; or
- (d) any other order that the High Court considers appropriate.

(5) The Bank shall be entitled to be heard in proceedings relating to an application made to the High Court in respect of a breach of undertaking given to the Minister.

Regulations

260. (1) The Minister may, on the recommendation of the Bank, make such regulations as may be necessary or expedient for—

- (a) giving full effect to the provisions of this Act;
- (b) carrying out or achieving the regulatory objectives and purposes of this Act;
- (c) the further, better or more convenient implementation of the provisions of this Act; or
- (d) providing for any supplemental, incidental or consequential matters in relation to this Act.

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

- (a) to provide for control by the Bank by supervision, regulation, restriction, prohibition, or otherwise howsoever, with respect to the provision of finance, financial intermediation activities as defined in section 211, banking services, insurance services supplied or carried on by persons other than an authorized person or registered person;
- (b) to provide for forms in respect of any matter under this Act, or under any regulations made under this section;
- (c) to provide for fees to be paid to the Bank in respect of any matter under this Act or under any regulations made under this section; and

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

(3) Regulations made under this section may relate to all or any class, category or description of persons, and may make different provisions for different classes, categories or descriptions of persons.

Provisions relating to approvals, consents, specifications, notices, requirements, directions, standards, codes or measures

261. (1) Unless otherwise expressly provided, any approval or consent granted, or any standards, code, specification, notice, requirement, direction or measures specified or issued, under this Act—

- (a) may be either general or specific;
- (b) may be amended or revoked by the Bank or the Minister, as the case may be; or
- (c) shall be issued or communicated in such manner as the Bank thinks appropriate and shall be valid for all purposes.

(2) Any approval or consent under subsection (1) may be—

- (a) absolute or conditional; or
- (b) limited so as to expire on a specified date, unless renewed.

Opportunity to make representations

262. (1) Where—

- (a) the Minister, on the recommendation of the Bank, proposes to take any action against any person under subsection 13(1), 20(1) or (2) or 30(3) or section 193; or
- (b) the Bank proposes to take any action against any person under subsection 13(1), 20(1), (2) or (3), section 21, subsection 30(3), section 34 or 39, subsection 94(2),

116(2) or (3), 120(1), 140(5) or 156(1), section 162, subsection 167(1) or 172(1) or against any person in breach referred to in subsection 234(1),

the Bank shall serve on such person a written notice of the proposed action.

- (2) The written notice under subsection (1) shall set out—
- (a) the action that the Minister or the Bank, as the case may be, proposes to take and the grounds for such action;
 - (b) the period within which the person referred to in subsection (1) may make a written representation to the Minister or the Bank, as the case may be;
 - (c) in the case of any proposed action under subsection 94(2), 140(5) or 234(3), the non-compliance or breach committed by the person; and
 - (d) where the Bank proposes to impose a monetary penalty under paragraph 234(3)(b), the right of the person in breach to pay, within a period specified in the notice, the monetary penalty stated in such notice.

(3) The person referred to in subsection (1) shall be given a reasonable opportunity to make a written representation to the Minister or the Bank, as the case may be, by submitting such representation to the Bank within fourteen days from the date of the notice by the Bank.

(4) After the expiry of the period of fourteen days from the date of the notice by the Bank and considering any written representation under subsection (3), the Minister, on the recommendation of the Bank, or the Bank, as the case may be, shall decide whether to—

- (a) proceed with the proposed action or a variation of such action; or
- (b) take no further action.

(5) The Minister or the Bank, as the case may be, shall give the person referred to in subsection (1) a written notice of the decision under subsection (4) and the decision shall take effect from the date specified in the notice.

(6) Notwithstanding subsection (1), the Minister or the Bank may, as the case may be, first take the proposed action and the opportunity to make representations shall be given immediately after the action has been taken if any delay in taking the proposed action would be detrimental to the interests of any authorized person, registered person, operator of a designated payment system, depositors, policy owners, participants, creditors, the financial system or the public generally.

(7) The Minister or the Bank may, as the case may be, confirm, amend or revoke the exercise of action taken under subsection (6) in consequence of representations made under that subsection.

(8) Subsection (6) shall not apply to any action taken under section 234.

(9) This section shall not apply to—

- (a) a proposed action under subsection 13(1) unless the proposed action is likely to prejudice the interest of the person referred to in subsection (1); and
- (b) a revocation of a licence under paragraph 20(1)(e), (f) or (g).

Exemptions

263. The Minister may, on the recommendation of the Bank and provided that it is consistent with the objects and functions of the Bank under the Central Bank of Malaysia Act 2009 or the regulatory objectives of this Act, by an order published in the *Gazette*, exempt any particular person or any class, category or description of persons, from all or any of the provisions of this Act, for such duration, and subject to such conditions, as may be specified by the Minister in the order.

Power of Minister to amend Schedule

264. The Minister may, on the recommendation of the Bank, from time to time, by an order published in the *Gazette*, amend any provision in Schedules 1, 2, 4, 5, 6, 7, 9, 11, 12 and 13 of this Act and upon such publication, such provision as amended

shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication or from such later date as may be specified in the order.

Decision of Minister to be final

265. Any decision made by the Minister under this Act shall be final.

Power of Bank to issue guidance

266. The Bank may issue guidance in writing to any person or to any class, category or description of persons consisting of such information, advice or recommendation as it considers appropriate—

- (a) with respect to the provisions of this Act;
- (b) for the purpose of carrying out or achieving the regulatory objectives of this Act; or
- (c) with respect to any other matter which, in the opinion of the Bank, is desirable to give information, advice or recommendation.

Protection against suits and legal proceedings

267. No action, suit, prosecution or other proceeding shall lie or be brought, instituted, or maintained in any court or before any other authority against—

- (a) the Minister;
- (b) the Bank;
- (c) the Governor;
- (d) the Deputy Governor; or
- (e) any of its director, officers or employees or any person acting on behalf of the Bank,

for or on account of, or in respect of, any act done or statement made or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance or in execution of, or intended pursuance or execution of, this Act, any order in writing, direction, instruction, notice or other thing issued under this Act if such act or such statement was done or made, or was omitted to be done or made, in good faith.

Application of Companies Act 1965

268. Where an authorized person, a registered person, an operator of a designated payment system or a person prescribed as a prescribed financial institution under section 212 is a corporation to which all or any of the provisions of the Companies Act 1965 apply, such provisions shall be in addition to the provisions of this Act and not in derogation thereof, but where there is any conflict or inconsistency between the provisions of the Companies Act 1965 and this Act in their respective application to the person or operator, the provisions of this Act shall prevail.

(2) Where any difficulty or doubt arises in the application of subsection (1) in relation to any particular authorized person, registered person or operator of a designated payment system, or any particular matter or circumstance, or generally, the Minister may on the reference of the difficulty or doubt to him by the Bank, resolve the same by a direction in writing.

Application of certain provisions of Act to Labuan entities

269. (1) For the purpose of this section, “Labuan Financial Services Authority” means Labuan Financial Services Authority established under section 3 of the Labuan Financial Services Authority Act 1996 [Act 545].

(2) Without prejudice to the generality of Division 2 of Part XIV, the provisions in such Division shall apply to any person who is under the supervision or oversight of the Labuan Financial Services Authority and the Bank may exercise such powers and perform such functions under this Act to ensure compliance with Division 2 of Part XIV by such person.

(3) For the purposes of the Bank exercising oversight over a financial group, a reference to—

(a) “subsidiary” in sections 115 and 116; and

(b) “related corporation” in Parts X and XI,

shall be deemed to include a person who is under the supervision or oversight of the Labuan Financial Services Authority where such person is within the financial group.

(4) Sections 178 and 185 of the Labuan Financial Services and Securities Act 2010 and sections 139 and 146 of the Labuan Islamic Financial Services and Securities Act 2010 shall not restrict the Bank in the exercise of powers or performance of functions under section 115 or 116, or Part X or XI, and the Bank may exercise such powers and perform such functions under this Act to ensure compliance with section 115 or 116, or Part X or XI.

(5) Section 185 of the Labuan Financial Services and Securities Act 2010 shall not restrict the application of this Act to any person under the supervision or oversight of the Labuan Financial Services Authority who, under this Act—

(a) operates a payment system, is a participant, or issues a payment instrument; or

(b) is a market participant.

Breach or contravention not to affect contract, agreement or arrangement

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

Provided that nothing contained in this section shall affect any liability of any person for any administrative, civil or criminal actions under this Act in respect of such breach or contravention.

PART XVII

REPEAL, SAVINGS AND TRANSITIONAL

Repeal

271. The Banking and Financial Institutions Act 1989, the Exchange Control Act 1953, the Insurance Act 1996 and the Payment Systems Act 2003 are repealed.

Savings and transitional

272. Notwithstanding section 271—

- (a) any rule, regulation, order, notification or other subsidiary legislation made and any approval, authority, consent, decision, direction, exemption, notice, order, permission, recommendation, requirement, specification or other executive act granted or done under the repealed Acts and in force or having effect before the appointed date, shall be deemed to have been made, granted or done under a corresponding provision in this Act or a corresponding provision in any direction issued pursuant to section 156, subsection 214(6) or section 216, and shall continue to remain in full force and effect in relation to the person to whom it applied until amended or revoked, except those subsidiary legislation set out in Schedule 16 which are deemed to have been revoked;
- (b) every guideline, direction, circular or notice under the repealed Acts in relation to any matter which corresponds with any provision of this Act, issued before the appointed date and in force immediately before the appointed date, shall be deemed to be standards which have been lawfully specified under such provisions of this Act and shall remain in full force and effect in relation to the person to whom it applied until amended or revoked;
- (c) any application for a licence, approval, authorization, notification, acknowledgment, consent, permission or for any other purpose whatsoever made by any person under the repealed Acts before the appointed date and pending before the appointed date, shall—
 - (i) if there is a corresponding provision in this Act or in any direction issued under subsection 214(6) or

section 216, be dealt with as if it was made under that provision;

- (ii) if a different provision has been made for the application under this Act or in any direction issued under subsection 214(6) or section 216, be dealt with in accordance with such provision; and
 - (iii) if there is no corresponding provision in this Act or a different provision has been made for the application under this Act or in any direction issued under subsection 214(6) or section 216, lapse on the appointed date and any fees or other payment received with the application shall be refunded to such person;
- (d) all transactions, credit facilities, dealings, contracts, powers of attorney or arrangements lawfully executed or entered into and all business lawfully done under the repealed Acts with any person shall be deemed to have been lawfully and validly executed, entered into or done under this Act, and accordingly, any right or liability under such transaction, dealing, business existing before the appointed date shall be deemed to continue to be lawful and valid under this Act;
- (e) without limiting the generality of paragraph (d), all insurance policies issued, all transactions or dealings lawfully executed or entered into, and all business lawfully done under the repealed Insurance Act 1996 by a person who was licensed under that repealed Act and who is authorized or registered or deemed to be authorized or registered under this Act with any policy owner, customer, creditor, debtor or other person shall be deemed to have been lawfully and validly executed, entered into, or done, under and in accordance with this Act, and any right or liability under the transaction, dealing or business existing before the appointed date shall be deemed to continue to be lawful and valid under this Act;
- (f) nothing shall affect any person's liability to be investigated, prosecuted or punished for offences committed under the repealed Acts before the appointed date;

- (g) any pending legal proceedings, criminal prosecution or investigation under the repealed Acts shall be continued under the repealed Acts as if the repealed Acts are in force;
- (h) subject to paragraph (i), any reference to the repealed Acts in any written law shall be construed as a reference to this Act and any reference to any specific provision of the repealed Acts in any written law shall be construed as a reference to a provision of this Act which corresponds closely to such specific provision;
- (i) any reference to the Exchange Control Act 1953 or exchange control or any specific provision, or generally to the provisions, of the repealed Exchange Control Act 1953 in any written law shall be construed as a reference to section 214 or 216 of this Act or a corresponding provision in any direction issued under subsection 214(6) or section 216;
- (j) any reference to the Controller of Foreign Exchange in any written law shall accordingly be construed as a reference to the Bank;
- (k) any reference to an “authorized dealer” in subsection 1(3) of the Money Services Business Act 2011 [*Act 731*] shall be construed as a reference to a licensed bank under this Act and the interpretation of an “authorized dealer” in section 2 of that Act shall be construed accordingly;
- (l) any right, benefit, privilege, obligation or liability acquired, accrued or incurred under the repealed Acts, shall continue to remain in force under this Act; and
- (m) all other acts or things done under the repealed Acts shall be deemed to have been done under this Act and accordingly, shall continue to be valid and lawful under this Act.

Savings in respect of licences granted under repealed Acts

273. (1) Subject to the provisions of subsection (2)—

(a) a licence granted to a person by the Minister—

(i) under subsection 6(4) of the repealed Banking and Financial Institutions Act 1989 to carry on banking

business or merchant banking business, as the case may be, under that Act; and

- (ii) under section 16 of the repealed Insurance Act 1996 to carry on insurance business under that Act,

shall be deemed to be a licence granted under section 10 authorizing such person to carry on banking business, investment banking business or insurance business, as the case may be;

(b) a licence granted to a person—

- (i) by the Minister under subsection 6(4) of the repealed Banking and Financial Institutions Act 1989 to carry on money-broking business;
- (ii) by the Bank under section 17 of the repealed Insurance Act 1996 to carry on insurance broking business or financial advisory business,

shall be deemed to be an approval granted under section 11 authorizing such person to carry on money-broking business, insurance broking business and financial advisory business, as the case may be; and

- (c) an adjuster licensed by the Bank under section 17 of the repealed Insurance Act 1996 to carry on adjusting business shall be deemed to be a registered person under subsection 18(1).

(2) The persons referred to in subsection (1) shall continue to be subject to the conditions applicable to it before the appointed date as if such conditions were imposed under this Act.

(3) Where in any written law, any reference is made to a merchant bank licensed under subsection 6(4) of the repealed Banking and Financial Institutions Act 1989, it shall be construed as a reference to a licensed investment bank.

Savings in respect of Islamic financial business

274. The following persons shall be deemed to be approved under subsection 15(1):

- (a) a licensed bank or licensed investment bank which has consulted the Bank under section 124 of the repealed

Banking and Financial Institutions Act 1989, and has obtained the approval of the Bank to carry on Islamic banking business;

- (b) an approved issuer of a designated payment instrument which has obtained a written approval under subsection 25(1) of the repealed Payment Systems Act 2003 for the issuance of Islamic designated payment instruments; and
- (c) an operator of—
 - (i) a payment system which has been notified under subsection 5(1) of the repealed Payment Systems Act 2003 provided that the business of the operator of that payment system corresponds to a payment system set out in Part 1 of Schedule 1 of the Islamic Financial Services Act 2012; or
 - (ii) a designated payment system that facilitates participants engaged in Islamic financial business to transfer, clear or settle funds or securities,

and any conditions imposed on such persons under the repealed Acts referred to in paragraphs (a), (b) and (c) before the appointed date shall be deemed to be imposed under subsection 15(1).

Savings and transitional provision in respect of specific provisions of repealed Insurance Act 1996

275. Notwithstanding the repeal of the Insurance Act 1996 under section 271—

- (a) subsections 147(4) and (5), and sections 150 and 151 of the repealed Insurance Act 1996 shall continue to remain in full force and effect until such date to be appointed by the Minister in accordance with subsection 1(2) for the coming into operation of section 129 and Schedule 9;
- (b) sections 144 and 224 of the repealed Insurance Act 1996 shall continue to remain in full force and effect until such sections are repealed by the Minister by notification in the *Gazette*; and

- (c) an insurance fund established and maintained under section 38 of the repealed Insurance Act 1996 shall be deemed to have been established and maintained under section 81.

Conversion to single insurance business

276. A licensed insurer, other than a licensed professional reinsurer, lawfully carrying on both life business and general business under the repealed Insurance Act 1996 shall comply with subsection 16(1) within five years of the appointed date or such longer period as may be specified by the Minister, on the recommendation of the Bank, by notice in writing to the insurer upon its written application before the expiry of the five years.

Designated payment systems deemed certified

277. The Real Time Electronic Transfer of Funds and Securities System or RENTAS and the Sistem Penjelasan Informasi Cek Kebangsaan secara Elektronik or eSPICK, which were prescribed as designated payment systems under the Payment Systems (Designated Payment Systems) Order 2009 [*P.U. (A) 3/2009*] in force before the appointed date shall be deemed to be certified designated payment systems under this Act.

Savings in respect of approvals granted, notification given and prescription made under repealed Payment Systems Act 2003

278. (1) An operator of a payment system who has received a written notification under subsection 5(1) of the repealed Payment Systems Act 2003 shall be deemed to have been approved under section 11 or deemed to be registered under subsection 18(1) respectively, provided that the business of the operator of that payment system corresponds to either a payment system set out in Division 1 of Part 1 of Schedule 1 or a payment system set out in Part 2 of Schedule 1.

(2) An issuer of a designated payment instrument who has obtained a written approval under subsection 25(1) of the repealed Payment Systems Act 2003 shall be deemed to have been approved under section 11 in respect of the issuance of that designated payment instrument.

Savings in respect of interest in shares

279. (1) Where a person holds five per cent or more of interest in shares of a licensed person on the appointed date, but was not required to obtain an approval under section 45 of the repealed Banking and Financial Institutions Act 1989 or section 67 of the repealed Insurance Act 1996, as the case may be, such person shall be deemed to be approved under paragraph 90(3)(a) provided that he submits such documents or information as may be specified by the Bank within six months after the appointed date.

(2) Where an individual has been approved by the Minister under section 67 of the repealed Insurance Act 1996 to hold interest in shares of a licensed person of more than the percentage specified in section 92, such holding shall be deemed to be lawful and valid for a period of five years after the appointed date and such individual shall, before the expiry of such period, take necessary actions to comply with section 92.

Savings in respect of financial holding company

280. (1) A company which has been approved by the Minister under section 45 or 46 of the repealed Banking and Financial Institutions Act 1989 to hold more than fifty per cent of interest in shares of a licensed bank or licensed merchant bank as defined in subsection 2(1) of that Act and has been designated by the Bank as a financial holding company or bank holding company, as the case may be, shall be deemed to be approved as a financial holding company under subsection 112(3).

(2) Where the Bank has not designated a financial holding company or bank holding company for a licensed bank or licensed merchant bank before the appointed date, a company which holds more than fifty per cent of interest in shares of such licensed bank or licensed merchant bank shall submit an application to

the Bank for it to be approved as a financial holding company within a period of twelve months from the appointed date or such longer period as may be specified by the Bank.

(3) A company which has been approved by the Minister under section 67 of the repealed Insurance Act 1996 to hold more than fifty per cent of interest in shares of a licensed insurer, shall submit an application to the Bank for it to be approved as a financial holding company within a period of twelve months from the appointed date or such longer period as may be specified by the Bank.

(4) An application referred to in subsection (2) or (3) shall be dealt with as if it was made under section 110 and a company referred to in subsection (2) or (3) which fails to submit an application after the expiry of the twelve months or such longer period specified by the Bank under subsection (2) or (3) commits a breach and the Bank may take any action under subsection 234(3).

Savings in respect of deposits accepted by co-operative societies

281. (1) Subject to the provision of this section, nothing contained in sections 137 and 138 shall render invalid any deposit accepted lawfully by a co-operative society from a person who is not a member of such co-operative society before the appointed date provided that such co-operative society shall, within six months from the appointed date or such longer period as may be specified by the Bank, submit an application to the Bank together with such documents or information as may be specified by the Bank for it to continue accepting deposits from non-members.

(2) The Bank may approve, with or without conditions, or reject the application referred to in subsection (1) and a co-operative society so approved shall comply with any condition imposed on it by the Bank.

(3) The Bank may grant an approval under subsection (2) if the Bank is satisfied that such co-operative society has given a written undertaking that it will comply with such conditions as may be imposed by the Bank under subsection (2).

(4) Section 259 shall apply to a written undertaking given under this section.

(5) The Bank may, at any time, in writing amend or revoke any existing condition imposed on such approval under subsection (2) or impose any new condition thereto.

SCHEDULE 1

[Subsection 2(1), sections 10 and 11]

APPROVED AND REGISTERED BUSINESSES

PART 1

Approved business

Division 1

Businesses which require approval

1. Operation of a payment system which—
 - (a) enables the transfer of funds from one banking account to another, which includes any debit transfer, credit transfer or standing instructions but does not include the operation of a remittance system approved under section 40 of the Money Services Business Act 2011; or
 - (b) provides payment instrument network operation which enables payments to be made through the use of a payment instrument.
2. Issuance of a designated payment instrument.
3. Insurance broking business.
4. Money-broking business.
5. Financial advisory business.

Division 2

Persons who do not require approval for financial advisory business

6. A licensed person or an approved insurance broker under this Act.
7. An insurance agent.
8. A company registered under the Trust Companies Act 1949 [*Act 100*].

PART 2

Registered business

9. Merchant acquiring services.
10. Adjusting business.

SCHEDULE 2

[Paragraphs 2(1)(d) and 136(d)]

OTHER EXCLUSIONS FROM DEFINITION OF “DEPOSIT”

PART 1

Money paid by any person to—

- (a) the Government or any State Government;
- (b) the Bank;
- (c) a statutory body or local authority which is authorized to accept, receive or take the same under any written law;
- (d) a co-operative society which is authorized under the Co-operative Societies Act 1993 to accept deposits, provided that, where such person is not a member of the co-operative society as defined in the Co-operative Societies Act 1993, the co-operative society has obtained both—
 - (i) the approval of the Bank and complies with such conditions as may be imposed by the Bank; and
 - (ii) the approval of the Malaysia Co-operative Societies Commission under the Co-operative Societies Act 1993;
- (e) a farmers’ organization registered under the Farmers’ Organization Act 1973 [*Act 109*] or a fishermen’s association registered under the Fishermen’s Association Act 1971 [*Act 44*];
- (f) its related or associate corporation;
- (g) another person, in relation to any instrument or transaction falling within paragraphs (a) to (e) of the definition of “debenture” under subsection 2(1) of the Capital Markets and Services Act 2007 provided that such other person obtains the approval of the Bank and complies with such conditions as may be imposed by the Bank;
- (h) another person, in relation to any issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities as defined in subsection 2(1) of the Capital Markets and Services Act 2007;

- (i) another person who issues or offers to the public for subscription or purchase, or invites the public to subscribe for or purchase, any interest under an approved deed in accordance with Division 5 of Part IV of the Companies Act 1965;
- (j) an approved issuer of a designated payment instrument issuing electronic money in the course of carrying on its authorized business; or
- (k) another person, where both persons are individuals, in the course of customary, social, friendly or family relationship and the total number of such individuals who make the payments to the other person does not at any time exceed ten.

PART 2

Money paid to any person, other than a licensed bank or licensed investment bank, by—

- (a) the Government or any State Government;
- (b) the Bank;
- (c) a statutory body, local authority or any other person which is authorized to make such payment under any written law;
- (d) a co-operative society which is authorized under the Co-operative Societies Act 1993;
- (e) a licensed person, an approved money-broker or an approved issuer of a designated payment instrument issuing electronic money, in the course of carrying on its authorized business;
- (f) a prescribed institution as defined in subsection 3(1) of the Development Financial Institutions Act 2002 [*Act 618*], in the course of its lawful business;
- (g) a pawnbroker licensed under the Pawnbrokers Act 1972 [*Act 81*], in the ordinary course of its lawful business;
- (h) a moneylender licensed under the Moneylenders Act 1951 [*Act 400*], in the ordinary course of its lawful business;
- (i) any person lawfully carrying on any financial intermediation activity as defined in section 211 in the course of its ordinary business; or
- (j) its related or associate corporations.

PART 3

Money paid by a licensed bank and licensed investment bank, to any person in the course of buying or borrowing securities from that person where the securities will be repurchased or returned as part of the same transaction.

SCHEDULE 3
[Subsection 2(1)]

INTEREST IN SHARES

Direct interest in shares

1. Where a person holds shares or has entered into a contract to acquire shares in a body corporate or has a right to have the shares in a body corporate to be transferred to him or otherwise has any legal or beneficial interest in the shares of the body corporate, he shall be taken to have a direct interest in shares of the body corporate.

Effective interest in shares

2. Where a series of body corporates hold shares in succession in the subsequent level body corporate one after the other, and if a person has a direct interest in shares of a body corporate in that series (hereinafter referred to as “first level body corporate”)—

- (a) such person shall be taken to have an effective interest in shares of any other body corporate (hereinafter referred to as “second level body corporate”) in which the first level body corporate has a direct interest in shares; and
- (b) such person shall be taken to have an effective interest in shares in each subsequent level body corporate in that series following the second level body corporate, provided each preceding level body corporate in the series has a direct interest in shares of each subsequent level body corporate in that series.

Computation of effective interest in shares

3. The effective interest in shares of a person in a body corporate X in the series of body corporates referred to in paragraph 2 shall be derived by multiplying the percentage of his direct interest in the first level body corporate in the series and the direct interest of each subsequent level body corporate down to the direct interest in shares held by the preceding body corporate, in that body corporate X as follows:

$$EF^x = DI^1 \times DI^2 \times DI^3 \dots \times DI^x$$

Where—

- EF^x represents the effective interest in shares of the person in the body corporate X;
- DI^1 represents the percentage of direct interest in shares of the person in the first level body corporate;
- DI^2 represents the percentage of direct interest in shares of the first level body corporate in the second level body corporate;

- DI^3 represents the percentage of direct interest in shares of the second level body corporate in the third level body corporate; and
- DI^x represents the percentage of direct interest in shares of the preceding level body corporate in the series in body corporate X.

Aggregate interest in shares

4. Where in this Act, a reference is made to an aggregate interest in shares held by any person in a body corporate, the aggregate interest shall be computed by adding the legal, beneficial, direct and effective interest held by the person in that body corporate.
5. In computing the aggregate interest in shares held by a person in a body corporate, the holding of his spouse, child, family corporation or persons acting in concert with him shall be added to his holding.

Family corporation

6. For the purpose of paragraph 5, “family corporation” means a corporation in which—
 - (a) the individual;
 - (b) that individual’s spouse; or
 - (c) that individual’s child,

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

Legal and beneficial interest in shares

7. A person shall be taken to have an interest in shares of a body corporate if the person has any legal or beneficial interest in those shares.
8. A person is taken to have an interest in shares if—
 - (a) the person has entered into a contract or arrangement to acquire the share; or
 - (b) the person has a right (otherwise than because of having an interest under a trust) to have the share transferred to the person or to the person’s order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition).
9. A person is taken to have an interest in shares if the person holds the interest in the share jointly with another person.
10. For the purpose of determining whether a person holds an interest in shares, it is immaterial that the interest cannot be related to a particular share.

11. An interest in shares is not to be disregarded only because of—
- (a) its remoteness;
 - (b) the manner in which it arose; or
 - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

Certain interest to be disregarded

12. There shall be disregarded—
- (a) an interest in shares held by a person whose ordinary business includes the provision of finance if the person holds the interest as security;
 - (b) an interest in shares if the interest is that of a person who holds the shares as bare trustee;
 - (c) an interest in shares held by a person, being an interest held by the person because the person holds an office as may be prescribed by the Bank; and
 - (d) an interest of a prescribed kind in a share, being an interest held by such persons as may be prescribed by the Bank.
13. Paragraphs 8 to 12 shall not by any implication limit the generality of paragraph 7.

SCHEDULE 4

[Paragraph 5(5)(c)]

BUSINESS WHICH IS NOT INSURANCE BUSINESS

1. The operation by an employer, otherwise than for profit, of a scheme or arrangement making financial provision for his employees' retirement, or future termination of service through death or disability.
2. The business carried on in accordance with Part II of the Societies Act 1966 by a mutual benefit society as defined in section 2 of that Act.
3. Export credit or other credit guarantee insurance business carried on by Export-Import Bank of Malaysia Berhad.
4. Business in relation to a scheme or an arrangement for the provision of benefits consisting of the supply of funeral, burial or cremation services, with or without the supply of goods connected with any such service or the payment of money, upon the death of a person for the purpose of meeting the whole or a part of the expenses of, and incidental to the funeral, burial or cremation of that person, but no other benefits except benefits incidental to the scheme or arrangement.

5. A scheme for members under which assistance for an accident to or breakdown of a vehicle is provided whereby such assistance is in the form of—
- (a) repairs to the vehicle at the place where the accident or breakdown has occurred and may include the delivery of parts, fuel, oil, water or keys to that vehicle; or
 - (b) removal of the vehicle to the nearest or most appropriate place at which repairs may be carried out or to the home or point of departure or original destination of the driver and passengers.

SCHEDULE 5

[Sections 10 and 11]

FACTORS FOR CONSIDERATION IN ASSESSING APPLICATION FOR LICENCE
UNDER SECTION 10 OR APPROVAL UNDER SECTION 11

PART 1

1. The character and integrity of the applicant or, if the applicant is a body corporate, its reputation for being operated in a manner that is consistent with the standards of good governance and integrity.
2. The business of the person to be authorized is not detrimental to the interests of its future depositors, policy owners, participants, users or the public generally.
3. The soundness and feasibility of the plans of the applicant for the future conduct and development of the business of the person to be authorized.
4. The nature and sufficiency of the financial resources of the applicant as a source of continuing financial support for the person to be authorized.
5. The business record and experience of the applicant.
6. The person to be authorized will be operated responsibly by persons with the competence and experience suitable for involvement in the operation of the person to be authorized.
7. Whether the application will be in the best interest of Malaysia, having regard to—
 - (a) the effect of the investment on the level and nature of economic activity in Malaysia, including the effect on productivity, efficiency and quality of financial services;
 - (b) the contribution towards enhancing international trade and investment linkages between Malaysia and other countries;

- (c) the effect of the investment on the stability of the financial system, including on conduct and behaviours that could pose a risk to the financial system; or
- (d) the degree and significance of participation of Malaysians in the financial sector.

PART 2

8. Whether the nature, scale and activities of the corporate group of the applicant applying for a licence will impede the effective regulation and supervision of the person to be licensed, including having regard to the nature and degree of regulation and supervision of any financial institution within that corporate group.

SCHEDULE 6

[Subsections 90(2), 91(1) and 112(2)]

FACTORS FOR CONSIDERATION IN ASSESSING SHAREHOLDER SUITABILITY

1. The character and integrity of the applicant, or if the applicant is a body corporate, its reputation for being operated in a manner that is consistent with the standards of good governance and integrity.
2. The soundness and feasibility of the plans of the applicant for the future conduct and development of the business of the licensed person.
3. The nature and sufficiency of the financial resources of the applicant as a source of continuing financial support to the licensed person.
4. The business record and experience of the applicant.
5. Whether the nature, scale and activities of the corporate group of the applicant will impede the effective regulation and supervision of the licensed person, including having regard to the nature and degree of regulation and supervision of any financial institution within that corporate group.
6. Whether the application will be in the best interest of Malaysia, having regard to—
 - (a) the effect of the investment on the level and nature of economic activity in Malaysia, including the effect on productivity, efficiency and quality of financial services;
 - (b) the contribution towards enhancing international trade and investment linkages between Malaysia and other countries;

- (c) the effect of the investment on the stability of the financial system, including on conduct and behaviours that could pose a risk to the financial system; or
- (d) the degree and significance of participation of Malaysians in the financial sector.

SCHEDULE 7

[Subsection 124(1)]

LIST OF PROHIBITED BUSINESS CONDUCT

1. Engaging in conduct that is misleading or deceptive, or is likely to mislead or deceive in relation to the nature, features, terms or price of any financial service or product.
2. Inducing or attempting to induce a financial consumer to do an act or omit to do an act in relation to any financial service or product by—
 - (a) making a statement, illustration, promise, forecast or comparison which is misleading, false or deceptive;
 - (b) dishonestly concealing, omitting or providing material facts in a manner which is ambiguous; or
 - (c) recklessly making any statement, illustration, promise, forecast or comparison which is misleading, false or deceptive.
3. Exerting undue pressure, influence or using or threatening to use harassment, coercion, or physical force in relation to the provision of any financial service or product to a financial consumer, or the payment for any financial service or product by a financial consumer.
4. Demanding payments from a financial consumer in any manner for unsolicited financial services or products including threatening to bring legal proceedings unless the financial consumer has communicated his acceptance of the offer for such financial services or products either orally or in writing.
5. Exerting undue pressure on, or coercing, a financial consumer to acquire any financial service or product as a condition for acquiring another financial service or product.
6. Colluding with any other person to fix or control the features or terms of any financial service or product to the detriment of any financial consumer, except for any tariff or premium rates or policy terms which have been approved by the Bank.

SCHEDULE 8

[Section 128]

PROVISIONS RELATING TO POLICIES

Paragraph

1. Misstatement of age
2. Objection to life policy
3. Insurable interest
4. Capacity of minor to insure
5. Life policy moneys to be paid without deduction
6. Surrender of life policy
7. Non-payment of life policy premiums
8. Election for paid-up policy
9. Additional rights conferred by paragraphs 6, 7 and 8
10. Disclosure requirements
11. Requirements relating to group policies
12. Refund of premium

Misstatement of age

1. (1) A licensed life insurer shall not avoid a life policy or refuse a claim under a life policy by reason only of a misstatement of the age of the life insured.

(2) Where the true age as shown by the proof is greater than that on which a life policy is based, the licensed life insurer may vary the sum insured by, and the bonuses allotted to, the life policy so that, as varied, they bear the same proportion to the sum insured by, and the bonuses allotted to, the life policy before variation as the amount of the premium that has been paid under the life policy as issued bears to the amount of the premium that would have become payable if the life policy had been based on the true age.

(3) Where the true age as shown by the proof is less than that on which the life policy is based, the licensed life insurer shall either—

- (a) vary the sum insured by, and the bonuses allotted to, the life policy so that, as varied, it bears the same proportion to the sum insured by, and the bonuses allotted to, the life policy before variation as the amount of the premium that has been paid under the life policy as issued bears to the amount of the premium that would have become payable if the life policy had been based on the true age; or

- (b) reduce the premium as from the date of issue of the life policy, to the amount that would have been payable if the life policy had been based on the true age and repay the policy owner the amount of over-payments of premium less any amount that has been paid as the cash value of bonuses in excess of the cash value that would have been paid if the life policy had been based on the true age.

(4) Where the period of coverage of a life policy is calculated by reference to the age of the life insured, and such age is not the true age of the life insured as shown by the proof, the licensed life insurer may instead of, or in addition to, effecting subparagraph (2) or (3) as the case may be, vary the life policy by changing its period of coverage to the period that would have been the period of coverage if the life policy had been based on the true age of the life insured.

(5) Nothing in this paragraph shall prevent the licensed life insurer from calling for proof of age at any time and no life policy shall be deemed to be disputed merely because the terms of the life policy are adjusted in accordance with subparagraph (2), (3) or (4).

Objection to life policy

2. (1) A policy owner may, within fifteen days or such longer period as may be specified by the Bank after the delivery of a life policy of any description to him, return the life policy to the licensed life insurer and it shall immediately refund any premium which has been paid in respect of the life policy subject only to the deduction of expenses incurred for the medical examination of the life insured.

(2) Upon refund of premium under subparagraph (1), the life policy shall be deemed cancelled and the liability of the licensed life insurer shall cease.

(3) For the purposes of subparagraph (1), in respect of a life policy which is an investment-linked policy, the licensed life insurer shall refund—

- (a) any unallocated premium;
- (b) the value of any units allocated at the unit price at the next valuation date; and
- (c) any insurance charges and fees which have been deducted,

less any expenses incurred for the medical examination of the life insured.

(4) For the purposes of subparagraph (1)—

- (a) a life policy is deemed to be delivered to the policy owner on the date he received it, if personally delivered;
- (b) where a life policy is delivered to the policy owner in such manner other than by personal delivery, the licensed life insurer shall take reasonable steps to ensure that the life policy is delivered to the policy owner; and

(c) a life policy shall be deemed to be returned to a licensed life insurer by the policy owner on the date the life policy is received by the insurer or on the date of posting if it is sent by registered post or on the date of transmission if it is electronically transmitted.

(5) In respect of a group life policy insuring the lives of three or more persons from whom premium is payable—

(a) a person insured under the policy may notify the group policy owner to cancel his cover within fifteen days or such longer period as may be specified by the Bank after the delivery of his certificate of insurance; and

(b) the group policy owner shall immediately inform the licensed life insurer to cancel the cover for that person insured referred to in subparagraph (a), and the insurer shall immediately refund any premium paid by that person insured subject only to the deduction of expenses incurred for the medical examination of that person insured directly to him and upon the refund of premium, the liability of the insurer shall cease only in respect of the cover for that person insured.

(6) For the purposes of subparagraph (5), where a group policy is an investment-linked policy, the licensed life insurer shall refund—

(a) any unallocated premium;

(b) the value of any units allocated at the unit price at the next valuation date; and

(c) any insurance charges and fees which have been deducted,

less any expenses incurred for the medical examination of the person insured.

Insurable interest

3. (1) A life policy insuring the life of anyone other than the person effecting the insurance or a person mentioned in subparagraph (3) shall be void unless the person effecting the insurance has an insurable interest in that life at the time the insurance is effected.

(2) A group life policy shall not be void by reason only that the group policy owner did not have, at the time when the insurance was effected, an insurable interest in the lives of the persons insured under the policy.

(3) A person shall be deemed to have an insurable interest in the life of another person if that other person is—

(a) his spouse or child;

(b) his ward under the age of majority at the time the insurance is effected;

- (c) his employee; or
- (d) a person on whom he is wholly or partly, dependent for maintenance or education at the time the insurance is effected.

(4) In this paragraph, “insuring the life of a person” means insuring the payment of moneys on a person’s death or on the happening of any contingency dependent on his death or survival and includes granting an annuity to commence on his death or at a time referred to in the annuity.

Capacity of minor to insure

4. (1) Notwithstanding any law to the contrary, a minor who has attained the age of ten years but has not attained the age of sixteen years, with the consent in writing of his parent or guardian—

- (a) may effect a life policy upon his own life or upon another life in which he has an insurable interest; or
- (b) may assign the life policy on his own life or take an assignment of a life policy.

(2) A minor who has attained the age of sixteen years—

- (a) may effect a life policy upon his own life or upon another life in which he has an insurable interest; or
- (b) may assign the life policy on his own life or take an assignment of a life policy,

and is as competent in all respects to have and exercise the powers and privileges of a policy owner in relation to a life policy of which he is the owner as he would be if he had attained the age of majority.

(3) A minor who has attained the age of sixteen years shall obtain the consent in writing of his parent or guardian to assign a life policy on his own life under subparagraph (2)(b).

Life policy moneys to be paid without deduction

5. (1) Policy moneys payable under a life policy, or moneys payable on the surrender of a life policy, shall be paid without any deduction for moneys not due under the life policy or under an assignment of the life policy, unless the deduction is made with the consent of the person entitled to the policy moneys.

(2) A provision contained in a life policy or an agreement relating to deduction of moneys not due under the life policy shall be void to the extent it entitles the licensed life insurer to deduct the moneys from policy moneys payable under, or moneys payable on the surrender of the life policy without the consent of the person entitled to the policy moneys.

(3) Subparagraphs (1) and (2) apply to a Malaysian life policy but shall not apply to a life policy issued before 21 January 1963.

(4) In any proceedings for the recovery of policy moneys due under, or payable on the surrender of, a life policy, no set-off or counter-claim shall be allowed except for moneys due under the life policy or under an agreement charging the moneys on the life policy.

Surrender of life policy

6. (1) At any time after inception of a life policy which provides for surrender value, the policy owner may, by notice in writing to the licensed life insurer, surrender the life policy, and he shall be entitled to receive the surrender value of the life policy, which shall be determined—

- (a) in accordance with generally accepted actuarial principles;
- (b) in a manner ensuring the fair treatment of policy owners; and
- (c) in compliance with standards on business conduct or fair treatment of policy owners specified by the Bank.

(2) A licensed life insurer shall disclose to a proposer for a life policy, at the time of sale, the surrender value payable under the life policy including the cost of any applicable surrender charge, and where no surrender value is payable, the insurer shall provide a written statement to that effect.

(3) The surrender value of any life policy issued on or before 31 December 2008 shall be determined in accordance with the terms set out on surrender value in that life policy.

(4) Where the Bank is of the opinion that a licensed life insurer has not determined the surrender value of a life policy as required under subparagraphs (1)(a), (b) and (c), the Bank may—

- (a) require the insurer to determine the surrender value of the life policy on a basis approved by the Bank; and
- (b) require the basis under subparagraph (a) or a different basis approved by the Bank to be applied retrospectively to a life policy already issued.

(5) A life policy shall remain in force until the licensed life insurer has effected payment of the surrender value of the life policy.

Non-payment of life policy premiums

7. (1) Where a life policy provides for surrender value, it shall not lapse or be forfeited by reason of non-payment of premiums but shall have effect subject to such modification as to the period for which it is to be in force, or of the benefits receivable under it, or both.

(2) A modification made under subparagraph (1) shall be determined in accordance with the established policies of the licensed life insurer applicable to the life policy.

Election for paid-up policy

8. (1) Where a life policy provides for surrender value may, the policy owner, by notice in writing to the licensed life insurer, elect to exchange the life policy for a paid-up life policy for a sum insured which shall be determined—

- (a) in accordance with generally accepted actuarial principles;
- (b) in a manner ensuring the fair treatment of policy owners;
- (c) in a manner consistent with the surrender value payable under paragraph 6; and
- (d) in compliance with standards on business conduct or fair treatment of policy owners specified by the Bank.

(2) Where the Bank is of the opinion that a licensed life insurer has not determined the paid-up value of a life policy as required under subsubparagraphs (1)(a), (b), (c) and (d), the Bank may—

- (a) require the insurer to determine the paid-up value of the life policy on a basis approved by the Bank; and
- (b) require the basis under subsubparagraph (a) or a different basis approved by the Bank to be applied retrospectively to a life policy already issued.

(3) A life policy shall be deemed to remain in force, in the event of an election for conversion to a paid-up life policy, until the date on which the next premium for the original policy is due.

(4) A life policy issued in place of an earlier life policy shall be treated as having come into force on the date the earlier life policy came into force.

Additional rights conferred by paragraphs 6, 7 and 8

9. The rights conferred by paragraphs 6, 7 and 8 shall be in addition to, and not in derogation of, any other rights available to the policy owner under the terms of the life policy or otherwise.

Disclosure requirements

10. (1) No person shall invite any person to make an offer or proposal to enter into a contract of insurance without disclosing—

- (a) the name of the licensed insurer;
- (b) his relationship with the licensed insurer; and
- (c) the premium charged by the licensed insurer.

(2) No person shall arrange a group policy for persons in relation to whom he has no insurable interest without disclosing to that person—

- (a) the name of the licensed insurer;
- (b) his relationship with the licensed insurer;
- (c) the conditions of the group policy, including the remuneration payable to him; and
- (d) the premium charged by the licensed insurer.

Requirements relating to group policies

11. (1) A licensed insurer shall be liable to a person insured under a group policy if the group policy owner has no insurable interest in the life of that person and if that person has paid the premium to the group policy owner regardless that the insurer has not received the premium from the group policy owner.

(2) The licensed insurer of a group policy, where the group policy owner has no insurable interest in the life of a person insured, shall pay the moneys due under the policy to that person insured or any person entitled through him.

(3) Where the premium is paid by a person insured under a group policy, such person insured or any person entitled through him may, upon written notification to the group policy owner, take all necessary steps to recover moneys due under the policy from the licensed insurer in either of their own names, as the case may be, or adding the group policy owner as a party to a recovery action or proceedings in which event—

- (a) if the group policy owner is added as a party to the recovery action or proceedings, the person insured or any person entitled through him shall indemnify the group policy owner in respect of all legal costs and expenses including party and party costs incurred in the conduct of the recovery action or proceedings;
- (b) upon receipt of the notice by the person insured or any person entitled through him, the group policy owner may notify the insurer of any indebtedness due and owing by the person insured to the group policy owner;
- (c) if the insurer agrees to pay the moneys due under the policy or is required to pay such moneys by a court of law or dispute resolution body, the insurer shall deduct moneys due and owing under subparagraph (b) to the group policy owner and pay any balance directly to the person insured or any person entitled through him; and
- (d) for purposes of subparagraphs (a), (b) and (c), any person entitled through the person insured shall include a trustee, assignee, nominee or lawful executor or administrator, as the case may be.

Refund of premium

12. A licensed general insurer shall pay directly to a policy owner any refund of premium in relation to a policy which may become due to the policy owner for any reason including the cancellation of the policy or alteration in its terms and conditions and such refund shall under no circumstances be paid or credited to any insurance agent.

SCHEDULE 9

[Section 129]

PRE-CONTRACTUAL DISCLOSURE AND REPRESENTATIONS, AND REMEDIES
FOR MISREPRESENTATIONS

PART 1

Preliminary

Paragraph

1. Application of Schedule and other laws
2. Interpretation
3. Contracting out

PART 2

Pre-contractual disclosure and representations

4. Pre-contractual duty of disclosure for insurance contracts other than consumer insurance contracts
5. Pre-contractual duty of disclosure for consumer insurance contracts
6. Duty to take reasonable care
7. Misrepresentation in respect of insurance contracts
8. Group policies
9. Insurance on life of another
10. Warranties and representations
11. Insurer's, *etc.*, pre-contractual duty of disclosure
12. Knowledge of, and statement by insurance agent

PART 3

Non-contestability and remedies for misrepresentations

Division 1

Non-contestability

Paragraph

13. Non-contestability for life insurance contracts

Division 2 – Remedies for misrepresentation

14. Application of Division
15. Remedies for deliberate or reckless misrepresentation
16. Remedies for careless or innocent misrepresentation
17. Future treatment of contract
18. Variations

Division 3 – Modifications for group policies

19. Modifications for group policies

PART 1

Preliminary

Application of Schedule and other laws

1. (1) This Schedule shall not affect a contract of insurance entered into, varied or renewed before the date on which section 129 and this Schedule come into operation.

(2) Where there is a conflict or inconsistency between a provision of this Schedule and the Contracts Act 1950 [*Act 136*], the provision of this Schedule shall prevail.

(3) For the purposes of obtaining a declaration under subsection 96(3) of the Road Transport Act 1987 [*Act 333*], this Schedule shall apply to determine if a consumer insurance contract which provides cover for third party risks may be avoided by a licensed insurer for misrepresentation.

Interpretation

2. In this Schedule—

“consumer” means the individual who enters into, varies or renews a consumer insurance contract, or proposes to do so with a licensed insurer;

“consumer insurance contract” means a contract of insurance entered into, varied or renewed by an individual wholly for purposes unrelated to the individual’s trade, business or profession.

Contracting out

3. (1) A term of a consumer insurance contract, or of any other contract, is rendered void to the extent that it would put the consumer in a worse position in respect of the matters mentioned in subparagraph (2) than he would be in by virtue of the provisions of this Schedule.

(2) The matters referred to in subparagraph (1) are—

- (a) disclosure and representations by the consumer to the licensed insurer before the contract is entered into, varied or renewed; and
- (b) the non-contestability of contracts of life insurance and any of the remedies for consumer insurance contracts provided in Part 3 of this Schedule.

(3) This paragraph does not apply in relation to a contract for the settlement of a claim arising under a consumer insurance contract.

Part 2

Pre-contractual disclosure and representations

Pre-contractual duty of disclosure for insurance contracts other than consumer insurance contracts

4. (1) Before a contract of insurance other than a consumer insurance contract is entered into, varied or renewed, a proposer shall disclose to the licensed insurer a matter that—

- (a) he knows to be relevant to the decision of the insurer on whether to accept the risk or not and the rates and terms to be applied; or
- (b) a reasonable person in the circumstances could be expected to know to be relevant.

(2) The duty of disclosure shall not require the disclosure of a matter that—

- (a) diminishes the risk to the licensed insurer;
- (b) is of common knowledge;
- (c) the licensed insurer knows or in the ordinary course of his business ought to know; or
- (d) in respect of which the licensed insurer has waived any requirement for disclosure.

(3) Where a proposer fails to answer or gives an incomplete or irrelevant answer to a question contained in the proposal form or asked by the licensed insurer and the matter was not pursued further by the insurer, compliance with the proposer's duty of disclosure in respect of the matter shall be deemed to have been waived by the insurer.

(4) A licensed insurer shall, before a contract of insurance is entered into, varied or renewed, clearly inform a proposer in writing of the proposer's pre-contractual duty of disclosure under this paragraph, and that this duty of disclosure shall continue until the time the contract is entered into, varied or renewed.

Pre-contractual duty of disclosure for consumer insurance contracts

5. (1) Before a consumer insurance contract is entered into or varied, a licensed insurer may request a proposer who is a consumer to answer any specific questions that are relevant to the decision of the insurer whether to accept the risk or not and the rates and terms to be applied.

(2) It is the duty of the consumer to take reasonable care not to make a misrepresentation to the licensed insurer when answering any questions under subparagraph (1).

(3) Before a consumer insurance contract is renewed, a licensed insurer may either—

(a) request a consumer to answer one or more specific questions in accordance with subparagraph (1); or

(b) give the consumer a copy of any matter previously disclosed by the consumer in relation to the contract and request the consumer to confirm or amend any change to that matter.

(4) It is the duty of the consumer to take reasonable care not to make a misrepresentation to the licensed insurer when answering any questions under subparagraph (3)(a), or confirming or amending any matter under subparagraph (3)(b).

(5) If the licensed insurer does not make a request in accordance with subparagraph (1) or (3) as the case may be, compliance with the consumer's duty of disclosure in respect of those subparagraphs, shall be deemed to have been waived by the insurer.

(6) Where the consumer fails to answer or gives an incomplete or irrelevant answer to any request by the licensed insurer under subparagraph (1) or subparagraph (3)(a), or fails to confirm or amend any matter under subparagraph (3)(b), or does so incompletely or provides irrelevant information, as the case may be, and the answer or matter was not pursued further by the insurer, compliance with the consumer's duty of disclosure in respect of the answer or matter shall be deemed to have been waived by the insurer.

(7) A licensed insurer shall, before a consumer insurance contract is entered into, varied or renewed, clearly inform the consumer in writing of the consumer's pre-contractual duty of disclosure under this paragraph, and that this duty of disclosure shall continue until the time the contract is entered into, varied or renewed.

(8) Subject to subparagraphs (1) and (3), a consumer shall take reasonable care to disclose to the licensed insurer any matter, other than that in relation to subparagraph (1) or (3), that he knows to be relevant to the decision of the insurer on whether to accept the risk or not and the rates and terms to be applied.

(9) Nothing in this Schedule shall affect the duty of utmost good faith to be exercised by a consumer and licensed insurer in their dealings with each other, including the making and paying of a claim, after a contract of insurance has been entered into, varied or renewed.

Duty to take reasonable care

6. (1) In determining whether a consumer has taken reasonable care not to make a misrepresentation under subparagraph 5(2) or (4), the relevant circumstances may be taken into account including—

- (a) the consumer insurance contract in question and the manner in which the contract was sold to the consumer;
- (b) any relevant explanatory material or publicity produced or authorized by the licensed insurer; and
- (c) how clear and specific, the licensed insurer's questions were.

(2) Subject to subparagraph (3), the standard of care required of the consumer under subparagraphs 5(2) and (4) shall be what a reasonable consumer in the circumstances would have known.

(3) If the licensed insurer was, or ought to have been, aware of any particular characteristics or circumstances of the consumer, the insurer shall take into account such characteristics or circumstances.

Misrepresentation in respect of insurance contracts

7. (1) Part 3 of this Schedule—

- (a) in Division 1, makes provision for a misrepresentation made in relation to a contract of life insurance, whether or not a consumer insurance contract, which has been effected for a period of more than two years; and
- (b) in Division 2, sets out the remedies available to a licensed insurer for a misrepresentation made in respect of—
 - (i) a consumer insurance contract of life insurance which has been effected for a period of two years or less; and
 - (ii) a consumer insurance contract of general insurance.

(2) The remedies set out in Division 2 shall be available to a licensed insurer for misrepresentation made by a consumer before a consumer insurance contract referred to in subparagraph (1)(b) was entered into, varied or renewed if—

- (a) the consumer has made a misrepresentation in breach of his duty under subparagraph 5(2) or (4); and
- (b) the licensed insurer shows that had it known the true facts, it would not have entered into the contract, or agreed to the variation or renewal, or would only have done so on different terms.

(3) For the purposes of this Schedule, a misrepresentation for which a licensed insurer has a remedy in Division 2 against a consumer may be classified as—

- (a) deliberate or reckless;
- (b) careless; or
- (c) innocent.

(4) A misrepresentation is deliberate or reckless if the consumer knew that—

- (a) it was untrue or misleading, or did not care whether or not it was untrue or misleading; and
- (b) the matter to which the misrepresentation related was relevant to the licensed insurer, or did not care whether or not it was relevant to the insurer.

(5) A misrepresentation made dishonestly is to be regarded as having being made deliberately or recklessly.

(6) A misrepresentation is careless or innocent, as the case may be, if it is not deliberate or reckless.

(7) It is for the licensed insurer to show that a misrepresentation was deliberate or reckless on a balance of probability.

(8) Unless the contrary is shown, it is to be presumed that the consumer knew that a matter about which the licensed insurer asked a clear and specific question was relevant to the insurer.

Group policies

8. (1) This paragraph shall apply to a group policy which so far as the cover for a person insured under that group policy is concerned, such policy, if entered into, varied or renewed by the person insured instead of the group policy owner, would have been a consumer insurance contract referred to in subparagraph 7(1)(b).

(2) So far as the cover for the person insured referred to in subparagraph (1) is concerned—

(a) paragraph 5 shall apply in relation to any disclosure, answer or representation made by the person insured to the licensed insurer as if the person insured was proposing to enter into, vary or renew a consumer insurance contract for the relevant cover with the insurer; and

(b) subject to subparagraphs (3) and (4) and the modifications set out in Division 3 of Part 3 of this Schedule to the insurer's remedies in Division 2 of Part 3 of this Schedule, the remaining provisions of this Schedule shall apply in relation to the cover for the person insured as if the person insured had entered into, varied or renewed a consumer insurance contract for that cover with the insurer.

(3) Subsubparagraph 7(2)(b) shall apply to a group policy as if it reads as follows:

“the licensed insurer shows that had it known the true facts, it would not have provided cover for the person insured, agreed to the variation or renewal or would only have done so on different terms.”

(4) A breach of the duty to take reasonable care not to make a misrepresentation under paragraph 5 on the part of one of any of the persons insured under a group policy shall not affect the policy so far as it relates to the other persons insured under that policy.

(5) Nothing in this paragraph shall affect any duty owed by the group policy owner to the licensed insurer, or any remedy which the insurer may have against the group policy owner for breach of such a duty.

Insurance on life of another

9. Where a consumer takes out a consumer insurance contract on the life of another individual who is not a party to the contract, any information provided to the licensed insurer by the life insured, whether requested or otherwise, is to be treated for purposes of this Schedule as if it was provided by the consumer and shall be subject to paragraph 5.

Warranties and representations

10. Any representation made before a consumer insurance contract was entered into, varied or renewed shall not be converted into a warranty by means of any provision of the consumer insurance contract or of any terms of the variation or of any other contract, whether by declaring the representation to form the basis of the contract or otherwise.

Insurer's, etc., pre-contractual duty of disclosure

11. (1) No licensed insurer, insurance agent, approved insurance broker, approved financial adviser or financial adviser's representative in order to induce a person to enter into, vary or renew, or offer to enter into, vary or renew, a contract of insurance, whether or not a consumer insurance contract, with it or through him—

- (a) shall make a statement which is misleading, false or deceptive, whether fraudulently or otherwise;
- (b) shall fraudulently conceal a material fact; or
- (c) in the case of an insurance agent, use any sales brochure or sales illustration not authorized by the licensed insurer.

(2) Where a person is induced to enter into, vary or renew a contract of insurance in a manner described in subparagraph (1), the contract of insurance shall be voidable and the person shall be entitled to rescind it.

Knowledge of, and statement by insurance agent

12. (1) A person who is authorized by a licensed insurer to be its insurance agent and who solicits or negotiates a contract of insurance in that capacity shall be deemed, for the purpose of the formation or variation of the contract of insurance, to be the agent of the insurer and the knowledge of that insurance agent shall be deemed to be the knowledge of the insurer.

(2) A statement made, or an act done, by the insurance agent shall be deemed, for the purpose of the formation or variation of the contract of insurance, to be a statement made, or act done, by the licensed insurer notwithstanding the insurance agent's contravention of subparagraph 11(1) or any other provision of this Act.

(3) Subparagraph (1) shall not apply—

- (a) where there is collusion or connivance between the insurance agent and the proposer in the formation or variation of the contract of insurance; or
- (b) where a person has ceased to be an insurance agent of a licensed insurer and the insurer has taken all reasonable steps to inform, or bring to the knowledge of policy owners of the fact of such cessation.

PART 3

Non-contestability and remedies for misrepresentations

Division 1

Non-contestability

Non-contestability for life insurance contracts

13. (1) This paragraph shall apply to contracts of life insurance, whether or not consumer insurance contracts.

(2) Where a contract of life insurance has been in effect for a period of more than two years during the lifetime of the insured, such a contract shall not be avoided by a licensed life insurer on the ground that a statement made or omitted to be made in the proposal for insurance or in a report of a doctor, referee, or any other person, or in a document leading to the issue of the life policy, was inaccurate or false or misleading unless the insurer shows that the statement was on a material matter or suppressed a material fact and that it was fraudulently made or omitted to be made by the policy owner or the insured.

(3) For the purposes of subparagraph (2), “material matter” or “material fact” means a matter or fact which, if known by the licensed life insurer, would have led to its refusal to issue a life policy to the policy owner or would have led it to impose terms less favourable to the policy owner than those imposed in the life policy.

Division 2

Remedies for misrepresentation

Application of Division

14. This Division sets out the remedies available to a licensed insurer for a misrepresentation by a consumer made in respect of—

- (a) a consumer insurance contract of life insurance which has been effected for a period of two years or less; and
- (b) a consumer insurance contract of general insurance.

Remedies for deliberate or reckless misrepresentation

15. If a misrepresentation was deliberate or reckless, a licensed insurer may avoid the consumer insurance contract and refuse all claims.

Remedies for careless or innocent misrepresentation

16. (1) If a misrepresentation was careless or innocent, the licensed insurer’s remedies shall be based on what it would have done if the consumer had complied with the duty set out in paragraph 5 and subparagraphs (2) to (4) are to be read accordingly.

(2) If the licensed insurer would not have entered into or renewed the consumer insurance contract on any terms, the insurer may avoid the contract and refuse all claims, but shall return to the consumer any premium paid by him.

(3) If the licensed insurer would have entered into or renewed the consumer insurance contract, but on different terms excluding terms relating to the premium, the contract is to be treated as if it had been entered into or renewed on those different terms if the insurer so requires.

(4) In addition, if the licensed insurer would have entered into or renewed the consumer insurance contract, whether the terms relating to matters other than the premium would have been the same or different, but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim as may be specified by the Bank.

Future treatment of contract

17. (1) This paragraph shall apply if a misrepresentation was careless or innocent but does not relate to any outstanding claim.

(2) Where a licensed insurer discovers a misrepresentation that was careless or innocent and if the insurer would not have entered into or renewed the consumer insurance contract on any terms, subparagraph 16(2) will apply.

(3) If the licensed insurer would have entered into or renewed the consumer insurance contract, but on different terms or for a higher premium or both, the insurer shall either notify the consumer that it intends to treat the contract as subsisting on different terms or it may terminate the contract by giving reasonable notice to the consumer.

(4) Where the consumer receives notice that the licensed insurer intends to continue the consumer insurance contract on different terms, the consumer has a choice of either continuing with the contract on those amended terms or terminating the contract by giving reasonable notice to the insurer.

(5) Where either the licensed insurer or the consumer terminates the contract under this paragraph, the insurer shall refund any premium paid for the terminated cover in respect of the balance of the contract term.

(6) Termination of a consumer insurance contract under this paragraph does not affect the treatment of any claim arising under the contract in the period before termination and any such claim arising shall be dealt with accordingly under paragraph 16.

(7) Nothing in this paragraph shall affect any contractual right of the parties to terminate the consumer insurance contract.

Variations

18. (1) Where a misrepresentation is made by a consumer in respect of a variation to an existing consumer insurance contract, it is necessary to ascertain whether the subject matter of the variation can reasonably be treated separately from the subject matter of the rest of the contract.

(2) If the subject matter of the variation can reasonably be treated separately from the subject matter of the rest of the consumer insurance contract, the remedies set out in this Division shall apply only in relation to that variation as it applies in relation to a contract.

(3) If the subject matter of the variation cannot be treated separately from the subject matter of the rest of the consumer insurance contract, the misrepresentation shall be treated as if it had been made in relation to the whole contract and the remedies set out in this Division shall apply in relation to the whole of the contract rather than merely in relation to the variation.

Division 3

Modifications for group policies

Modifications for group policies

19. This Division provides for the application of Division 2 of this Part to a group policy in accordance with the following modifications—

- (a) reference to consumer insurance contract, however described in Division 2, shall be references to that part of the group policy which provides for cover for the person insured who made the misrepresentation;
- (b) reference to claims and premium shall be references to claims and premium in relation to the cover for the person insured who made the misrepresentation;
- (c) any refund of premium under subparagraph 16(2) or 17(5) shall be made to the person insured if he had paid the premium for his cover; and
- (d) in respect of the cover for the person insured, the right to terminate his cover wherever referred to in Division 2, shall be that of the group policy owner.

SCHEDULE 10

[Section 130]

PAYMENT OF POLICY MONEYS UNDER LIFE POLICY OR PERSONAL
ACCIDENT POLICY

Paragraph

1. Application of Schedule
2. Power to make nomination
3. Revocation of nomination
4. Payment of policy moneys where there is nomination
5. Trust of policy moneys
6. Nominee other than nominee under subparagraph 5(1)
7. Assigned or pledged policy moneys

Paragraph

8. Payment of policy moneys where there is no nomination
9. Payment to person incompetent to contract
10. Distribution of policy moneys in due course of administration
11. Licensed insurer not bound to see application of policy moneys
12. Interest on claim amount
13. Schedule to prevail over policy and any other written law

Application of Schedule

1. In this Schedule, a reference to a policy is a reference to a life policy, including a life policy under section 23 of the Civil Law Act 1956, and a personal accident policy, effected by a policy owner upon his own life providing for payment of policy moneys on his death.

Power to make nomination

2. (1) A policy owner who has attained the age of sixteen years may nominate an individual to receive policy moneys payable upon his death under the policy by notifying the licensed insurer in writing the name, date of birth, national registration identity card number or birth certificate number and address of the nominee.

(2) A nomination under subparagraph (1) may be made—

- (a) at the time the policy is issued; or
- (b) if the policy has already been issued, by notifying the licensed insurer in writing or by submitting the policy for an endorsement of the nomination by the insurer.

(3) A nomination made under subparagraph (1) shall be witnessed by a person of sound mind who has attained the age of eighteen years and who is not a nominee named under that subparagraph.

(4) The licensed insurer—

- (a) shall prominently display in the nomination form that the policy owner has to assign the policy benefits to his nominee if his intention is for his nominee, other than his spouse, child or parent, to receive the policy benefits beneficially and not as an executor;
- (b) shall record the nomination and the particulars of the nominee in its register of policies; and
- (c) shall return the policy to the policy owner after endorsing the nomination on the policy or by issuing an endorsement to the original policy by registered mail to the policy owner and the nomination shall take effect from the date the nomination is registered by the insurer.

(5) A failure to comply with subparagraph (4) shall not affect the validity of the nomination if it is otherwise proved that the nomination was made by the policy owner and given to the licensed insurer.

(6) A nomination made under subparagraph (1) may be in favour of one person or several persons and where there is more than one nominee, the policy owner may direct that specified shares be paid to the nominees and in the absence of such direction by the policy owner, the licensed insurer shall pay the nominees in equal shares.

Revocation of nomination

3. (1) A nomination, including a nomination to which paragraph 5 applies, shall be revoked—

- (a) upon the death of the nominee, or where there is more than one nominee, upon the death of all the nominees, during the lifetime of the policy owner;
- (b) by a notice in writing given by the policy owner to the licensed insurer; or
- (c) by any subsequent nomination.

(2) Subject to subparagraph (1), a nomination shall not be revoked by a will or by any other act, event or means.

(3) Where there is more than one nominee and one of the nominees predeceases the policy owner, in the absence of any subsequent nomination by the policy owner disposing of the share of the deceased nominee, the licensed insurer shall pay the share to the remaining nominees in proportion to their respective shares.

Payment of policy moneys where there is nomination

4. (1) Subject to subparagraph (2), where a policy owner dies having made a nomination, the licensed insurer shall pay the policy moneys according to the direction of the nomination upon receipt of a claim by the nominee together with proof of death of the policy owner.

(2) Where a nominee fails to claim the policy moneys within sixty days of the licensed insurer becoming aware of the death of the policy owner, the insurer shall immediately notify the nominee in writing at his last known address of his entitlement to claim the policy moneys.

(3) Where a nominee fails to claim the policy moneys within twelve months of the licensed insurer becoming aware of the death of the policy owner despite notification under subparagraph (2), paragraph 8 shall apply as though no nomination was made.

(4) Where a nominee, other than a nominee under paragraph 5, dies after the death of the policy owner but before any policy moneys has been paid to him as nominee, paragraph 3 or 8 shall apply to the policy, as the case may be.

Trust of policy moneys

5. (1) A nomination by a policy owner, other than a Muslim policy owner, shall create a trust in favour of the nominee of the policy moneys payable upon the death of the policy owner, if—

- (a) the nominee is his spouse or child; or
- (b) where there is no spouse or child living at the time of nomination, the nominee is his parent.

(2) Notwithstanding any written law to the contrary, a payment under subparagraph (1) shall not form part of the estate of the deceased policy owner or be subject to his debts.

(3) The policy owner may, by the policy, or by a notice in writing to the licensed insurer, appoint any person other than himself to be trustee of the policy moneys and where there is no trustee appointed—

- (a) the nominee who is competent to contract; or
- (b) where the nominee is incompetent to contract, the parent of the incompetent nominee other than the policy owner and where there is no surviving parent, the Public Trustee or a trust company nominated by the policy owner,

shall be the trustee of the policy moneys and the receipt of a trustee shall be a discharge to the insurer for all liability in respect of the policy moneys paid to the trustee.

(4) If there is more than one nominee who is competent to contract, the nominees shall be joint trustees and the consent for the purposes of this paragraph shall be given by all such trustees.

(5) A policy owner shall not deal with a policy to which subparagraph (1) applies by revoking a nomination or adding a nominee other than his spouse, child or parent under the policy, by varying or surrendering the policy, or by assigning or pledging the policy as security, without the written consent of the trustee.

(6) If it is proved that the policy was effected and the premiums paid with intent to defraud a creditor of the policy owner, the creditor shall be entitled to receive from the policy moneys payable under the policy a sum equal to the premiums paid under that policy.

Nominee other than nominee under subparagraph 5(1)

6. (1) A nominee, other than a nominee under subparagraph 5(1), shall receive the policy moneys payable on the death of the policy owner as an executor and not solely as a beneficiary and any payment to the nominee shall form part of the estate of the deceased policy owner and be subject to his debts and the licensed insurer shall be discharged from liability in respect of the policy moneys paid.

(2) The nominee referred to in subparagraph (1) shall distribute the policy moneys in due course of administration of the estate of the deceased policy owner in accordance with the will of that policy owner or the law relating to the distribution of the estate of deceased persons as applicable to that policy owner.

(3) Notwithstanding subparagraph (1), a nominee to whom policy moneys have been assigned under subparagraph 2(4)(a) shall receive the policy moneys solely as a beneficiary and not as an executor.

Assigned or pledged policy moneys

7. (1) Notwithstanding a nomination under paragraph 2 or the creation of a trust under subparagraph 5(1), where the policy moneys, wholly or partly, have been pledged as security or assigned to a person, the claim of the person entitled under the security or the assignee shall have priority over the claim of the nominee and subject to the rights under the security or the assignment being preserved, the licensed insurer shall pay the balance of the policy moneys to the nominee.

(2) Where more than one person is entitled under the security or the assignment, the respective rights of the persons entitled under the security or the assignment shall be in the order of priority according to the priority of the date on which written notification of the security or the assignment was given to the licensed insurer, both security and assignment being treated as one class for this purpose.

Payment of policy moneys where there is no nomination

8. (1) Where a policy owner dies without having made a nomination, subject to paragraph 7, the licensed insurer shall pay the policy moneys of the deceased policy owner to the lawful executor or administrator of his estate.

(2) Where the licensed insurer is satisfied that there is no lawful executor or administrator of the estate of the deceased policy owner at the time of payment of policy moneys, the insurer may pay the policy moneys to the deceased policy owner's spouse, child or parent in accordance with section 6 of the Distribution Act 1958 [Act 300] and where there is no spouse, child or parent and—

(a) where the policy moneys do not exceed one hundred thousand ringgit or such greater amount as may be prescribed by the Bank, the insurer may pay all such policy moneys without requiring a grant of

probate or letters of administration or distribution order to a person who satisfies the insurer that he is entitled to the property of the deceased policy owner under his will or under the law relating to the disposition of property or that he is named as an executor in the will or has the consent of all the lawful beneficiaries to be the administrator of the estate of the deceased policy owner; or

- (b) where the policy moneys exceed one hundred thousand ringgit, or such greater amount as may be prescribed by the Bank, the insurer may pay to the person referred to in subparagraph (a) the amount referred to in that subparagraph and pay the balance of the policy moneys to the lawful executor or administrator of the estate of the deceased policy owner.

(3) In this paragraph, a reference to policy moneys is a reference to the aggregate amount of policy moneys in respect of all policies of the policy owner with that licensed insurer where the policy owner has not made any nomination.

(4) The grant of probate or letters of administration or distribution order in respect of a personal estate comprising policy moneys, by a court in Malaysia or a competent authority outside Malaysia, or its court certified copy shall be sufficient proof to the licensed insurer to pay the policy moneys to the person named therein as the lawful executor or administrator provided that the same have been duly registered with the court in Malaysia and sealed in accordance with the Probate and Administration Act 1959 [Act 97].

(5) Policy moneys paid under this paragraph shall be deemed to have been duly paid and the licensed insurer shall be discharged from liability in respect of the policy moneys so paid notwithstanding the absence or invalidity of, or any defect in the grant of probate or letters of administration or distribution order or any other document having the same effect.

(6) A person to whom a payment is made under this paragraph shall give a receipt which shall be deemed to be a valid receipt.

Payment to person incompetent to contract

9. Where a person has not attained the age of eighteen years, or who is certified by a medical practitioner fully registered under the Medical Act 1971 [Act 50] to be of unsound mind and no committee of his estate has been appointed, or to be incapable, by reason of infirmity of mind or body, of managing himself and his property and affairs, the licensed insurer—

- (a) in the case of a nominee under subparagraph 5(1), shall pay the policy moneys to the trustee appointed under subparagraph 5(3), or where no such trustee has been appointed, to the parent of the incompetent nominee, and where there is no surviving parent of the incompetent nominee—
- (i) if the policy moneys do not exceed fifty thousand ringgit, may pay the policy moneys to a person who satisfies the insurer that he will apply the policy moneys for the maintenance and

benefit of the nominee under subparagraph 5(1), as the case may be, or a person to whom policy moneys are payable under subparagraph 8(2), subject to the execution of an undertaking by that person that policy moneys will be applied solely for the maintenance and benefit of the nominee; and

- (ii) if the policy moneys exceed fifty thousand ringgit, shall pay the policy moneys to the Public Trustee or a trust company nominated by the policy owner; or
- (b) in the case of a person to whom policy moneys are payable under subparagraph 8(2), pay to the Public Trustee or a trust company nominated by the policy owner.

Distribution of policy moneys in due course of administration

10. A person to whom policy moneys may be paid under subsubparagraphs 8(2)(a) and (b) shall receive the policy moneys as an executor and not solely as a beneficiary and shall distribute the policy moneys in due course of administration of the estate of the deceased person in accordance with the terms of a will of the deceased person, and if there is no such will, in accordance with the law applicable to the administration, distribution and disposition of his estate upon his intestacy.

Licensed insurer not bound to see application of policy moneys

11. A licensed insurer shall not in any circumstances be bound or concerned to ensure the application of any policy moneys which it has paid in respect of any person under this Schedule.

Interest on claim amount

12. (1) Where a claim or a part of a claim made under a life policy, or under a personal accident policy upon the death of the policy owner is not paid by the licensed insurer within sixty days of notification of the claim, the insurer shall pay a minimum compound interest at the average fixed deposit rate applicable for the period of twelve months for licensed banks as published by the Bank plus one per cent or such other rate as may be specified by the Bank, on the amount of policy moneys upon expiry of the sixty days until the date of payment.

(2) Where the balance of policy moneys are to be paid by a licensed insurer to the lawful executor or administrator of the estate of the deceased policy owner under subsubparagraph 8(2)(b), interest payable under subparagraph (1) shall only apply to the balance of policy moneys upon expiry of sixty days from the time that the lawful executor or administrator produces the grant of probate or letters of administration or distribution order until the date of payment.

Schedule to prevail over policy and any other written law

13. (1) This Schedule shall have effect in relation to a policy which is in force on or after the appointed date, and in relation to a nomination made before, on or after the appointed date, notwithstanding anything contained in the policy, and nothing contained in a policy shall derogate from, or be construed as derogating in any manner or to any extent from, this Schedule.

(2) This Schedule shall have full force and effect notwithstanding anything inconsistent with or contrary to any other written law relating to probate, administration, distribution, or disposition, of the estates of deceased persons, or in any practice or custom in relation to these matters.

SCHEDULE 11
[Subsection 134(1)]

PERMITTED DISCLOSURES

<i>First column</i>	<i>Second column</i>
Purposes for or circumstances in which customer documents or information may be disclosed	Persons to whom documents or information may be disclosed
1. Documents or information which is permitted in writing by the customer, the executor or administrator of the customer, or in the case of a customer who is incapacitated, any other legal personal representative.	Any person permitted by the customer or, as the case may be, the executor, administrator or legal personal representative.
2. In connection with an application for a Faraid certificate, grant of probate, letters of administration or a distribution order under the Small Estates (Distribution) Act 1955 [Act 98] in respect of a deceased customer's estate.	Any person whom a financial institution in good faith believes is entitled to obtain a Faraid certificate, the grant of probate, letters of administration or a distribution order.
3. In a case where the customer is declared bankrupt, is being or has been wound up or dissolved in Malaysia or in any country, territory or place outside Malaysia.	All persons to whom the disclosure is necessary in connection with the bankruptcy or winding up or dissolution.

<i>First column</i>	<i>Second column</i>
Purposes for or circumstances in which customer documents or information may be disclosed	Persons to whom documents or information may be disclosed
<p>4. Any criminal proceedings or civil proceedings between a financial institution and—</p> <p>(a) its customer, his surety or guarantor relating to the customer's transaction;</p> <p>(b) two or more parties making adverse claims to money in a customer's account where the financial institution seeks relief by way of interpleader; or</p> <p>(c) one or more parties in respect of property in or over which some right or interest has been conferred on the financial institution.</p>	All persons to whom the disclosure is necessary for the purpose of the criminal proceedings or civil proceedings.
5. Compliance by a licensed bank or licensed investment bank which has been served a garnishee order attaching moneys in the account of a customer.	All persons to whom the disclosure is required to be made under the garnishee order.
6. Compliance with a court order made by a court not lower than a Sessions Court.	All persons to whom the disclosure is required to be made under the court order.
7. Compliance with an order or request made by an enforcement agency in Malaysia under any written law for the purposes of an investigation or prosecution of an offence under any written law.	An investigating officer authorized under the written law to investigate or any officer authorized to carry out prosecution or any court.
8. Performance of functions of the Malaysia Deposit Insurance Corporation.	Any director or officer of the Malaysia Deposit Insurance Corporation or any other person, authorized by the Malaysia Deposit Insurance Corporation to receive the documents or information.

<i>First column</i>	<i>Second column</i>
Purposes for or circumstances in which customer documents or information may be disclosed	Persons to whom documents or information may be disclosed
<p>9. Disclosure by a licensed investment bank for the purpose of performance of relevant functions of—</p> <p>(a) the Securities Commission under the securities laws as defined in the Securities Commission Act 1993;</p> <p>(b) the stock exchange or derivatives exchange approved under the Capital Markets and Services Act 2007;</p> <p>(c) the clearing house approved under the Capital Markets and Services Act 2007; or</p> <p>(d) the central depository approved under the Securities Industry (Central Depositories) Act 1991 [Act 453].</p>	Any officer of the Securities Commission, approved stock exchange or derivatives exchange, approved clearing house under the Capital Markets and Services Act 2007 or approved central depository under the Securities Industry (Central Depositories) Act 1991 authorized to receive the documents or information.
<p>10. Disclosure by a licensed bank or licensed investment bank for the purpose of performance of functions of an approved trade repository under the Capital Markets and Services Act 2007.</p>	Any officer of the approved trade repository authorized to receive the documents or information.
<p>11. Documents or information is required by the Inland Revenue Board of Malaysia under section 81 of the Income Tax Act 1967 for purposes of facilitating exchange of information pursuant to taxation arrangements or agreements having effect under section 132 or 132A of the Income Tax Act 1967.</p>	Any officer of the Inland Revenue Board of Malaysia authorized to receive the documents or information.
<p>12. Disclosure of credit information of a customer to a credit reporting agency registered under the Credit Reporting Agencies Act 2010 [Act 710] for purposes of carrying on credit reporting business as defined in the Credit Reporting Agencies Act 2010.</p>	Any officer of the credit reporting agency authorized to receive the documents or information.

<i>First column</i>	<i>Second column</i>
Purposes for or circumstances in which customer documents or information may be disclosed	Persons to whom documents or information may be disclosed
13. Performance of any supervisory functions, exercise any of supervisory powers or discharge any of supervisory duties by a relevant authority outside Malaysia which exercises functions corresponding to those of the Bank under this Act.	Any officer of the relevant authority authorized to receive the documents or information.
14. Conduct of centralized functions, which include audit, risk management, finance or information technology or any other centralized function within the financial group.	The head office or holding company of a financial institution whether in or outside Malaysia or any other person designated by the head office or holding company to perform such functions.
15. Due diligence exercise approved by the board of directors of the financial institution in connection with— (a) merger and acquisition; (b) capital raising exercise; or (c) sale of assets or whole or part of business.	Any person participating or otherwise involved in the due diligence exercise approved by the board of the financial institution.
16. Performance of functions of the financial institution which are outsourced.	Any person engaged by the financial institution to perform the outsourced function.
17. Disclosure to a consultant or adjuster engaged by the financial institution.	Consultant or adjuster engaged by the financial institution.
18. A financial institution has reason to suspect that an offence under any written law has been, is being or may be committed.	Any officer of another financial institution or the relevant associations of financial institutions authorized to receive the documents or information.

SCHEDULE 12

[Subsection 139(2)]

RESTRICTION ON USE OF CERTAIN WORDS

PART 1

Bank

1. An association of licensed banks or licensed investment banks, or association of employees of any such licensed persons.

PART 2

Insurance or Assurance

2. A person who appends to his name an insurance qualification conferred on him by a prescribed body, where the qualification so appended is followed with the initials of the name of that body.

3. An association of licensed insurers, approved insurance brokers, approved financial advisers, registered adjusters or association of employees of any such persons.

4. An insurance agent registered with any association of licensed insurers.

PART 3

Financial Adviser

5. A licensed insurer.

6. An approved insurance broker.

7. A licensed bank.

8. A licensed investment bank.

9. A licensed takaful operator or approved takaful broker under the Islamic Financial Services Act 2012.

10. A person who appends to his name an insurance qualification conferred on him by a prescribed body, where the qualification so appended is followed with the initials of the name of that body.

11. An association of approved financial advisers or association of employees of any such approved persons.

SCHEDULE 13

[Subsection 177(1)]

ADDITIONAL PROVISIONS RELATING TO COMPULSORY TRANSFER

The Third Schedule of the Central Bank of Malaysia Act 2009 shall apply in relation to an order of the Bank under Subdivision 4, Division 2, Part XIII with the following modifications:

1. A reference to subsection 36(18) in paragraph 1 of the Third Schedule is a reference to section 175 of this Act.
2. A reference to subparagraph 32(1)(c)(iii) in the Third Schedule is a reference to section 176 of this Act.
3. A reference to subsection 32(1A) in subparagraph 2(5) of the Third Schedule is a reference to section 209 of this Act.
4. A reference to section 94 in subparagraph 4(7)(j) of the Third Schedule is a reference to section 260 of this Act.
5. A reference to “shares or other capital instruments” in the Third Schedule is not applicable for the purposes of this Subdivision.
6. Paragraph 5 of the Third Schedule is not applicable for the purposes of this Subdivision.

SCHEDULE 14

[Subsection 214(2)]

LIST OF TRANSACTIONS

1. The act of—
 - (a) buying, selling, exchanging, borrowing or lending;
 - (b) issuing, publishing or disseminating information in any form or advertisements which may lead, directly or indirectly, to the buying, selling, exchanging, borrowing or lending; or
 - (c) retaining or using,
of foreign currency, gold or other precious metals;
2. The act of—
 - (a) borrowing or lending; or

- (b) issuing, publishing or disseminating information in any form or advertisements which may lead, directly or indirectly, to the borrowing or lending,
 - of ringgit between non-residents or between a resident and a non-resident; or
 - (c) retaining or using of ringgit by a non-resident;
3. The making of any payment by a person to another person including a payment—
- (a) to or for the credit of a non-resident;
 - (b) by a resident or a non-resident;
 - (c) as consideration for or in association with—
 - (i) the receipt of a payment or the acquisition of a property, outside Malaysia, by any person; or
 - (ii) the creation in favour of, or the transfer to, any person, of a right to receive a payment or to acquire a property, outside Malaysia;
 - (d) under a judgment or order of any court or an award of any arbitrator or under any written law in favour of a non-resident, or a resident outside Malaysia; or
 - (e) for settlement of property in favour of a non-resident, or a resident outside Malaysia,
- other than—
- (aa) payment in ringgit between residents in Malaysia; and
 - (bb) payment in foreign currency between non-residents outside Malaysia;
4. The receiving of any payment in paragraph 3;
5. The giving or obtaining of any guarantee, indemnity or undertaking in respect of any debt, obligation or liability;
6. The issuance, transfer or substitution or the doing of any act in relation to a security or a financial instrument other than—
- (a) the issuance or transfer of any ringgit-denominated security between residents in Malaysia; or
 - (b) the substitution of any ringgit-denominated security for other ringgit-denominated security between residents in Malaysia;
7. The importing into, or exporting from, Malaysia, any ringgit, foreign currency, gold, other precious metals, security, financial instrument or any other article as may be specified by the Bank;

8. The act of—
- (a) receiving export proceeds by any person in Malaysia—
 - (i) for an amount that is less than the full value of the subject matter exported; or
 - (ii) in a manner or within a period other than those as may be specified by the Bank; or
 - (b) doing or refraining from doing any act by any person in Malaysia which would lead to or result in the non-receipt of export proceeds, in whole or in part;
9. The doing or refraining from doing any act by any person in Malaysia, who has a right to receive an amount of ringgit or foreign currency, which would lead to or result in the delay or the non-receipt of the amount, in whole or in part.

SCHEDULE 15

[Paragraph 234(3)(b)]

IMPOSITION OF MONETARY PENALTY

A monetary penalty may be imposed in respect of a breach or non-compliance with the following provisions or standards, requirements, conditions, specifications, restrictions or otherwise made or imposed pursuant to such provisions:

1. subsection 15(3), (4), (5), (6) or (7);
2. subsection 16(2);
3. subsection 18(2);
4. subsection 25(1) or (2);
5. subsection 33(2);
6. section 34;
7. subsection 35(1), (2) or (3);
8. subsection 48(1) or (2);
9. section 49;
10. subsection 50(1);
11. subsection 51(1);
12. section 52;
13. subsection 54(1), (2), (3) or (4);
14. subsection 55(1), (2) or (3);
15. subsection 56(1), (2) or (3);
16. paragraph 57(1)(a), (b) or (d);

17. subsection 58(1), (2), (3) or (4);
18. subsection 59(2);
19. subsection 60(1);
20. subsection 61(1) or (2);
21. section 62;
22. section 64;
23. section 65;
24. subsection 66(1) or (2);
25. subsection 67(1), (2) or (3);
26. subsection 69(1) or (3);
27. section 70;
28. section 71;
29. section 72;
30. subsection 74(1), (2), (3) or (4);
31. section 76;
32. paragraph 77(c);
33. subsection 78(1) or (2);
34. section 79;
35. subsection 81(1), (2) or (3);
36. subsection 82(1) or (3);
37. section 83;
38. subsection 84(1);
39. subsection 85(1);
40. subsection 87(1) or (2);
41. subsection 88(1);
42. section 89;
43. subsection 90(3), (7) or (10);
44. subsection 91(2);
45. section 92;
46. subsection 93(1);
47. subsection 94(6);
48. subsection 97(1), (2), (4), (5) or (6);
49. section 99;
50. subsection 100(1), (2), (3) or (6);
51. subsection 101(1) or (2);
52. subsection 103(1);

53. subsection 105(1) or (2);
54. section 107;
55. subsection 110(1) or (3);
56. section 111;
57. subsection 112(1), (3) or (4);
58. subsection 114(1) or (2);
59. subsection 115(4);
60. subsection 123(1);
61. subsection 125(1);
62. subsection 126(4);
63. subsection 127(1) or (3);
64. subsection 140(4);
65. subsection 143(1) or (2), paragraph 143(3)(b), subsection 143(4) or (6);
66. subsection 144(1);
67. subsection 150(1);
68. subsection 217(2);
69. subsection 280(4);
70. subsection 281(2);
71. paragraph 10 of Schedule 8; or
72. any requirement imposed on a licensed insurer in Schedules 8, 9 and 10, except for paragraph 11 of Schedule 9.

SCHEDULE 16

[Section 272]

LIST OF SUBSIDIARY LEGISLATION REVOKED

1. Banking and Financial Institutions (Single Customer Credit Limit) Order 2000 [*P.U. (A) 352/2000*]
2. Banking and Financial Institutions (Minimum Amount of Capital Funds) (Licensed Discount Houses and Licensed Money-Brokers) Order 2001 [*P.U. (A) 63/2001*]
3. Banking and Financial Institutions (Scheduled Institutions) (Regulation of Credit Token Institutions) Order 1999 [*P.U. (A) 327/1999*]
4. Banking and Financial Institutions (Acquisition and Holding of Shares and Interests in Shares) (Licensed Banks, Licensed Finance Companies and Licensed Merchant Banks) Regulations 1991 [*P.U. (A) 189/1991*]

5. Exchange Control (Scheduled Territories) Order 1973 [*P.U. (A) 119/1973*]
6. Authorisation to Compound Offences [*P.U. (B) 163/1979*]
7. Exchange Control (Specified Currency) Order 1986 [*P.U. (A) 463/1986*]
8. Appointment under Subsection 3(2) [*P.U. (B) 504/1998*]
9. Exchange Control (Money-Changing Business) (Exemption) Order 2000 [*P.U. (A) 186/2000*]
10. Authorization under subparagraph 8(1) of Part II of the Fifth Schedule [*P.U. (B) 58/2001*]
11. Appointment under subsection 3(2) [*P.U. (B) 206/2007*]
12. Payment Systems (Remittance System Approved under the Money Services Business Act 2011) (Exclusion) Order 2011 [*P.U. (A) 399/2011*]
13. Insurance Guarantee Scheme (General Insurance Business) Fund Regulations 1990 [*P.U. (A) 8/1990*]
14. Insurance Guarantee Scheme Fund (General Insurance Business) (Restriction on Payment) Regulations 1994 [*P.U. (A) 377/1994*]
15. Insurance Guarantee Scheme (General Insurance Business) Fund (Amendment) Regulations 1990 [*P.U. (A) 278/1994*]

EXPLANATORY STATEMENT

This Bill (“the proposed Act”) seeks to consolidate the Banking and Financial Institutions Act 1989 [*Act 372*], the Insurance Act 1996 [*Act 553*], the Payment Systems Act 2003 [*Act 627*] and the Exchange Control Act 1953 [*Act 17*] and to provide for matters incidental thereto and connected therewith.

PART I

2. Part I seeks to provide for preliminary matters.

Clause 1 contains the short title of the proposed Act and seeks to empower the Minister to appoint a date for the commencement of the proposed Act.

Clause 2 contains the definition of certain words and expressions used in the proposed Act.

Clause 3 seeks to empower the Minister, on the recommendation of the Bank, to prescribe any business, service or activity as an addition to the definition of certain businesses or activities.

Clause 4 seeks to empower the Bank, with the concurrence of the Minister, to prescribe any agreement in respect of a financial transaction in the financial markets as a qualified financial agreement, any dealing or transaction as a credit facility or any other person as a market participant.

Clause 5 seeks to provide for the classification of insurance business into life business and general business. This *clause* also seeks to provide what would constitute the carrying on of insurance business as well as empowers the Minister, on the recommendation of the Bank, to prescribe a business or activity as insurance business and that the businesses set out in Schedule 4 are not to be treated as insurance business for the purposes of the proposed Act.

PART II

3. Part II contains provisions relating to the regulatory objectives of the proposed Act.

Clause 6 seeks to state the principal regulatory objective of the proposed Act as to promote financial stability. In pursuit of such objective, the Bank is required to foster the safety and soundness of financial institutions, the integrity and orderly functioning of the money market and foreign exchange market, safe, efficient and reliable payment systems and payment instruments and fair, responsible and professional business conduct of financial institutions. Additionally, the Bank has to strive to protect the rights and interests of consumers of financial services and products.

Clause 7 seeks to provide that the Bank shall exercise its powers and perform its functions in a way which it considers most appropriate provided for it by the proposed Act. This *clause* also seeks to empower the Bank to authorize its Deputy Governor, an officer of the Bank or any other person to exercise its powers or perform its functions under the proposed Act. Additionally, the Bank shall keep the Minister informed on matters relating to the exercise of its powers and performance of its functions under the proposed Act.

PART III

4. Part III contains provisions relating to the authorization of licensed and approved businesses and registration of registered businesses.

Division 1

Clause 8 seeks to prohibit any person from carrying on authorized business unless it is licensed by the Minister or approved by the Bank. This *clause* further seeks to clarify that persons set out in Division 2 of Part 1 of Schedule 1 are not subject to paragraph (1)(b).

Clause 9 contains procedures for an application for a licence or an approval to carry on an authorized business.

Clause 10 seeks to require the Bank to have regard to all the factors set out in Parts 1 and 2 of Schedule 5 and such other matters that the Bank considers relevant when assessing an application for a licence. This *clause* also seeks to require the Bank to make a recommendation to the Minister to grant a licence, with or without conditions, if these matters are fulfilled by the applicant. This *clause* provides the Minister with the discretion to grant a licence, with or without conditions to the applicant.

Clause 11 seeks to require the Bank to have regard to all the factors set out in Part 1 of Schedule 5 and such other matters that the Bank considers relevant when assessing an application for an approval. This *clause* also provides the Bank with the discretion to approve or reject the application. This *clause* sets out that a person approved to carry on insurance broking business or financial advisory business shall have in force a professional indemnity insurance or takaful of such amount as may be specified by the Bank.

Clause 12 provides that a person will not be granted a licence or an approval if in the case of a company, its capital funds are less than the minimum amount or in the case of a branch established by a foreign institution, its surplus of assets over liabilities is less than the minimum amount. This *clause* further sets out that an authorized person is required to maintain at all times such minimum amount applicable to it.

Clause 13 seeks to empower the Minister or the Bank to amend or revoke any condition imposed on a licence or an approval, as the case may be. This *clause* further seeks to empower the Minister or the Bank to impose new conditions on such licence or approval.

Division 2

Clause 14 provides that an authorized person is prohibited from carrying on any business or activity in or outside Malaysia except where the Bank specifies otherwise, or where such business or activity is in connection with its authorized business or as provided in *clause 15*. In addition, this *clause* provides that a licensed insurer and a licensed investment bank are prohibited from carrying certain businesses except with the prior written approval of the Bank.

Clause 15 seeks to require an authorized person and an operator of a designated payment system to obtain an approval from the Bank before carrying on certain Islamic financial business. The *clause* further provides that a person approved under this *clause* is subject to the provisions as well as any standards, notices, directions, condition, specifications or requirements made under the Islamic Financial Services Act 2012. In addition, a licensed bank or licensed investment bank approved under this *clause* is required to establish and maintain an Islamic banking fund in which the fund shall comply with the requirements stipulated under this *clause*. Further, the *clause* requires that in relation to its Islamic financial business, the board of directors of a licensed bank, licensed investment bank, approved person or operator of a designated payment system shall have due regard to the advice of its Shariah Committee.

Clause 16 prohibits a licensed insurer, other than a licensed professional reinsurer from carrying on both life business and general business. However, licensed life insurers are permitted to carry on health insurance business subject to any requirements or conditions as may be specified by the Bank.

Division 3

Clause 17 prohibits any person from carrying on registered business unless certain requirements have been fulfilled and certain documents and information have been submitted by such person and that the person has notified the Bank of the date of the commencement of its business. This *clause* sets out that this prohibition does not apply to the specified persons whose business may be construed as adjusting business.

Clause 18 states that a person who has commenced business and complied with *subclause 17(1)* is a registered person and thus, required to comply with any standards specified by the Bank.

Division 4

Clause 19 prohibits any foreign institution from establishing a representative office in Malaysia without the written approval of the Bank or from carrying on through its approved representative office any authorized or registered business in Malaysia. However, a foreign institution is permitted, through its representative office, to carry on certain activities as specified by the Bank. This *clause* requires a foreign institution to submit an application to establish a representative office to the Bank and the Bank has the discretion on whether to approve or reject such application. In addition, this *clause* also seeks to empower the Bank to revoke an approval granted under this *clause* if any of the grounds for revocation set out under *subclause (6)* or *(7)* is fulfilled.

Division 5

Clause 20 seeks to empower the Minister or the Bank, as the case may be, to revoke an authorization if any of the grounds for revocation set out under *subclause (1)* or *(2)* is fulfilled. *Subclause (3)* sets out further grounds on which the Bank may revoke an approval. This *clause* also seeks to require the Bank to publish in the *Gazette* a notice of a revocation of licence and in the case of a revocation of an approval, to publish the revocation in such manner as the Bank deems appropriate.

Clause 21 seeks to empower the Bank to deregister a registered person if any of the grounds for deregistration set out under this *clause* is fulfilled.

Clause 22 sets out the procedures for the surrender of a licence or cessation of business or operations by a licensed person, an approved person or approved representative office, as the case may be. Any notice of surrender or cessation of business or operations will come into effect on the date Bank receives the notice or on such later date specified in the notice. The *clause* also requires

the Bank to publish in the *Gazette* a notice of a surrender of a licence and seeks to empower the Bank to publish a notice of cessation of business or operations in such form as the Bank deems appropriate.

Clause 23 contains provisions on the effect of revocation, deregistration, surrender, notification on cessation of business or operations, and expiry.

Division 6

Clause 24 seeks to require a person who is to be licensed to carry on either banking business, insurance business or investment banking business to be established as a public company. This requirement does not apply to a person who is to be licensed as a professional reinsurer. This *clause* further seeks to empower the Bank to specify the form of establishment of a person who is to be licensed as a professional reinsurer or approved under *clause 11*.

Clause 25 seeks to prohibit a licensed person from establishing or relocating an office in or outside Malaysia without the approval of the Bank or unless the Bank specifies otherwise. An approved person is required to notify the Bank in writing if it establishes or relocates an office in or outside Malaysia within the period specified by the Bank.

Clause 26 seeks to empower the Bank to make regulations in relation to fees payable to the Bank under this *clause*. The *clause* further states that any fee received by the Bank under this *clause* would be paid into the Federal Consolidated Fund. This *clause* also states that any unpaid fees may be recovered as a civil debt due to the Government and that the court may order for a late payment penalty up to any amount equivalent to twice the amount of the fees unpaid and recovery costs to be paid by an authorized person, registered person or an applicant.

Clause 27 seeks to require the Bank to publish in the *Gazette* a list of all licensed persons and any addition or deletions to the list. In addition, this *clause* seeks to empower the Bank to publish a list of all approved persons and registered persons in such form as the Bank deems appropriate.

Clause 28 seeks to prohibit any person from holding himself out as an authorized or registered person unless he is authorized or registered under the proposed Act.

Clause 29 seeks to prohibit any person from acting on behalf of a foreign institution or any unlicensed person in relation to carrying on of any licensed businesses or acceptance of deposits unless the Bank approves otherwise.

PART IV

5. Part IV contains provisions relating to payment systems.

Division 1

Clause 30 seeks to empower the Minister, on the recommendation of the Bank and the supervisory authority, to designate, by an order published in the *Gazette*, an operator of a payment system who is subject to the supervision or oversight of another supervisory authority in Malaysia to be designated by the Minister. In the case of any other payment system, this *clause* seeks to empower the Bank, with the concurrence of the Minister, to designate that payment system. This *clause* further seeks to allow the Minister, on the recommendation of the Bank and the supervisory authority, or the Bank, to revoke the designation of a payment system.

Clause 31 seeks to empower the Bank, with the concurrence of the Minister, to designate a payment instrument as a designated payment instrument if it is of the opinion that the payment instrument may be of widespread use as a means of making payment and may affect the payment systems of Malaysia and it is necessary to maintain the integrity, efficiency and reliability of a payment instrument.

Division 2

Clause 32 seeks to provide that the proposed Act shall apply to a person outside Malaysia who is an operator of a payment system which accepts payment instructions or settlement instructions from participants in Malaysia.

Clause 33 seeks to empower the Bank to specify payment systems standards on an operator of a designated payment system, approved operator of a payment system, a registered operator of a payment system or an approved issuer of a designated payment instrument for the purposes of promoting the safety, integrity, efficiency or reliability of such payment systems or such payment instrument including facilitating interoperability, technical specifications and security standards or in the interest of current or prospective participants of such payment systems or users of payment instruments.

Clause 34 seeks to empower the Bank to issue directions in writing to any participant of a designated payment system if the Bank is of the opinion that it is necessary for ensuring the integrity and proper management of the designated payment system or it is in the interest of the public to do so.

Clause 35 seeks to require an operator of a designated payment system, approved operator of a payment system or approved issuer of a designated payment instrument to establish operational arrangements of the payment system or the payment instrument as set out in this *clause*.

Clause 36 seeks to empower the Bank to inspect the premises, apparatus, equipment, machinery, documents and transactions of an operator of a payment system or issuer of a payment instrument, in considering whether—

- (a) to designate or recommend to the Minister to designate a payment system under *clause 30*;

- (b) to designate a payment instrument under *clause 31*; or
- (c) to recommend to the Minister to include an operation of a payment system into Division 1 of Part 1 or Part 2 of Schedule 1 under *clause 264*.

Division 3

Clause 37 contains the definitions of specific expressions used in this Division, including the definition of “certified designated payment system” and “transfer order”.

Clause 38 seeks to empower the Bank, with the concurrence of the Minister, to issue a certificate of finality, by an order published in the *Gazette*, to a designated payment system.

Clause 39 seeks to empower Bank, with the concurrence of the Minister, to revoke a certificate of finality issued under *clause 38*.

Clause 40 provides that this Division applies to any transfer order sent through a designated payment system and any netting arrangement and where there is any inconsistency between this Division and any written law relating to bankruptcy and insolvency, this Division shall apply.

Clause 41 provides that this Division shall not apply in relation to any transfer order sent through a certified designated payment system after the expiry of the day on which an insolvency administrator is appointed in respect of an operator or a participant of a certified designated payment system.

Clause 42 seeks to ensure that a transfer order shall be valid and enforceable by and against an operator or participant of a certified designated payment system and shall not be revoked once the transfer order is determined to be final under the rules of the certified designated payment system. Any netting arrangement shall also be valid and enforceable and an operator or participant of a certified designated payment system shall do whatever is permitted or required to give effect to a netting arrangement. Any transfer order that is final and netting arrangement that is valid shall be given effect regardless of the laws relating to bankruptcy and insolvency contained in the Companies Act 1965 [*Act 125*], the Bankruptcy Act 1967 [*Act 360*] and the Pengurusan Danaharta Nasional Berhad Act 1998 [*Act 587*].

Clause 43 seeks to clarify that this Division does not restrict or preclude any person from enforcing his rights under the law in so far as it does not affect the finality of the transfer order or enforceability of netting arrangements under this Division.

Clause 44 seeks to prevent a court from giving effect to an insolvency order of a court exercising foreign jurisdiction under the law of insolvency outside Malaysia if the making of that order would be contrary to or inconsistent with the provisions of this Division.

Clause 45 seeks to require an operator of a certified designated payment system to notify the participants of the certified designated payment system if it is insolvent, likely to become insolvent, has become or is likely to become unable to meet any or all of his obligations or has suspended payments or compounded with his creditors. This *clause* also seeks to require a participant of a certified designated payment system to notify the operator of the certified designated payment system if he is insolvent, likely to become insolvent, has become or is likely to become unable to meet any or all of his obligations or has suspended payments or compounded with his creditors and the operator shall notify the other participants.

PART V

6. Part V contains provisions relating to prudential requirements, appointment of auditors and actuaries and establishment of subsidiaries.

Clause 46 provides that the term “institution” for the purposes of Divisions 1, 2, 3 and 4 of this Part refers to an authorized person and operator of a designated payment system.

Division 1

Clause 47 seeks to empower the Bank to specify prudential standards on an institution for the purposes of promoting the safety and soundness of such institution or the integrity, professionalism and expertise in the conduct of the business, affairs and activities of the institution. The prudential standards may relate to among others, capital adequacy, liquidity, corporate governance, risk management, related party transactions, reserve funds maintenance, insurance funds and prevention of the institution from being used, intentionally or unintentionally, for criminal activities.

Clause 48 requires an institution to comply with the prudential standards specified by the Bank and to ensure that its internal policies and procedures are consistent with the prudential standards. Such institution is also required to manage its business, affairs and activities in a manner consistent with sound risk management and governance practices which are effective, accountable and transparent. This *clause* also requires any director and officer of an institution to comply with the internal policies and procedures of the institution.

Clause 49 seeks to empower the Bank to require a registered operator of a payment system to comply with the prudential standards if the Bank is of the opinion that it is necessary to promote public confidence in, or for the safety, reliability and efficiency of, the payment systems of Malaysia.

Clause 50 seeks to restrict a licensed person from having an exposure to a single counterparty including the exposure to any group connected to such single counterparty, which exceeds the limit as specified by the Bank in the prudential standards. This *clause* exempts any exposure to, and any exposure explicitly guaranteed by, the Bank or the Government from such prohibition. The *clause* further seeks to empower the Bank to specify what constitutes “connected”, “counterparty” or “exposure”.

Clause 51 seeks to prohibit a licensed person from declaring or paying any dividend on its shares unless it has obtained the prior written approval of the Bank or if the Bank has, in the prudential standards permitted for such payment to be made. When considering on whether to provide its approval under this *clause*, the Bank is required to have regard to the prevailing and prospective financial condition of the licensed person including its ability to comply with the prudential standards on capital adequacy.

Clause 52 seeks to empower the Bank to require a licensed person to hold assets in Malaysia according to any specification made by the Bank.

Division 2

Clause 53 contains the definition of the term “chairman” used in this Division.

Clause 54 requires an institution to have a chief executive officer at all times. This *clause* prohibits any appointment, reappointment, election or reelection of a chairman, director or chief executive officer of a licensed person unless the licensed person and any potential candidate for such position have first obtained the prior written approval of the Bank by an application made in writing to the Bank. This *clause* further requires an approved person or operator of a designated payment system to notify the Bank within seven days or any longer period of any appointment or reappointment of its chairman, director, chief executive officer or financial adviser’s representative.

Clause 55 prohibits any institution from appointing, reappointing, electing or re-electing any person, or any person from accepting any appointment, reappointment, election or re-election as a chairman, director, chief executive officer or senior officer of an institution unless the requirements set out in this clause have been complied with. This *clause* further requires that a chief executive officer shall have his principal or only place of residence within Malaysia and shall devote the whole of his professional time to the service of the institution.

Clause 56 sets out the functions and duties of a board of directors of an institution.

Clause 57 sets out the duties of a director of an institution which will be in addition to, and not in derogation of, any written law or rule of law relating to the duty or liability of a director.

Clause 58 requires every director of an institution to disclose any direct or indirect interest he may have in a material transaction or material arrangement with the institution. Any director with such interest shall not be present during the deliberation of the material transaction or material arrangement at the board meeting. This *clause* seeks to empower the Bank to specify the time, form, manner, procedures or any other incidental or ancillary matters relating to the disclosure and also on what constitutes “material transaction” or “material arrangement”.

Clause 59 sets out the disqualification criteria which would apply to any person who is being appointed or elected, reappointed or re-elected or holding office as a chairman, director, chief executive officer or senior officer of an institution.

Clause 60 seeks to empower the Bank to specify fit and proper requirements to be complied with by a chairman, director, chief executive officer, senior officer or financial adviser's representative of an institution. Such requirements may require the chairman, director, chief executive officer, senior officer or financial adviser's representative to be a fit and proper person based on the minimum criteria which may include criteria on probity, personal integrity, reputation, competency, capability and financial integrity. This *clause* seeks to empower the Bank to have full discretion to determine that a chairman, director, chief executive officer, senior officer or financial adviser's representative has complied with the fit and proper requirements after any due fit and proper assessment has been made by the institution.

Clause 61 requires any chairman, director, chief executive officer, senior officer or financial adviser's representative of an institution to immediately cease to hold office and act in such capacity once he is disqualified under *subclause 59(1)* or no longer complies with any of the standards on fit and proper requirements. This *clause* requires an institution to terminate the appointment of such person under the respective circumstances. This *clause* further disentitles the chairman, director, chief executive officer, senior officer or financial adviser's representative who is terminated by the institution from claiming any compensation from his termination.

Clause 62 requires an institution to notify the Bank in writing of the fact that its chairman, director, chief executive officer, senior officer or financial adviser's representative has ceased from his office and the reasons for such cessation.

Division 3

Clause 63 contains the definitions of specific words used in this Division.

Clause 64 requires an institution to maintain or cause to be maintained proper accounting records and information in such manner as will sufficiently enable the institution to prepare its financial statements under *clause 65*. This *clause* further requires the institution to keep those records to be kept in such manner as to enable them to be conveniently and properly audited.

Clause 65 requires an institution to prepare its financial statements in accordance with the approved accounting standards subject to any modifications set out in the standards as may be specified by the Bank. In the absence of any accounting standards, the institution is required to apply any standards as may be specified by the Bank.

Clause 66 requires an institution to publish its financial statements from time to time subject to the standards as may be specified by the Bank. This *clause* also seeks to empower the Bank to require that such financial statement be audited prior to its publication.

Division 4

Clause 67 contains provisions on the appointment or reappointment of an auditor of an institution. Such auditor shall be appointed for each financial year and shall be a person who has been approved under the Companies Act 1965 and meets the requirements and has the qualifications as may be specified by the Bank in the prudential standards. Any appointment or reappointment of an auditor of a licensed person shall first be approved by the Bank whereas an approved person is required to notify the Bank of any appointment or reappointment of its auditor within the time frame as may be specified by the Bank.

Clause 68 seeks to empower the Bank to appoint an auditor if an institution fails to appoint an auditor as required under *subclause 67(1)* or the additional auditor is required to act with the existing auditor. The remuneration and expenses of the auditor appointed under this *clause* shall be borne by the institution.

Clause 69 sets out the duties of an auditor which include the submission of an audit report to the members of the institution as well as the Bank. This *clause* seeks to empower the Bank to require an auditor appointed under *subclause 67(1)* to carry out additional work and additional remuneration to be borne by the institution. Any auditing work carried out by the auditor shall be pursuant to the generally accepted auditing standards which are applicable in Malaysia.

Clause 70 requires a person which has ceased to be an auditor of an institution to notify the Bank of that fact and the reasons for such cessation.

Clause 71 requires an institution and its director, officer or controller to provide information which is accurate, complete, not false or misleading, in any material particular to the auditor.

Clause 72 requires an auditor, in the course of its duties as an auditor of the institution, to report to the Bank on certain matters such as breach or contravention of any provision of the proposed Act or any material non-compliance of any standards as may be specified by the Bank under the proposed Act.

Clause 73 provides that *subclause 133(1)* does not apply to any documents or information relating to the accounts or affairs of a customer of a financial institution which is disclosed by an auditor of a financial institution to the Audit Oversight Board established under the Securities Commission Act 1993 [Act 498] or a person authorized by such Board. The *clause* further provides that an auditor is not liable to the institution for a breach of the duty of confidentiality for reporting to the Bank under this Division and is not liable to be sued for defamation in any court for any statement made by the auditor without malice in discharging his duties under the proposed Act.

Division 5

Clause 74 requires a licensed insurer to appoint an actuary in respect of its life or general business subject to the prudential standards as may be specified by the Bank. The prospective actuary has to meet the requirements or have the qualifications as set out in the standards specified by the Bank. Any appointment or reappointment of an actuary by a licensed insurer shall first be approved by the Bank for each financial year or other longer period as may be specified by the Bank.

Clause 75 seeks to empower the Bank to appoint an actuary if a licensed insurer fails to appoint an actuary as required under *subclause 74(1)* and the remuneration and expenses of the actuary appointed under this *clause* shall be borne by the licensed insurer.

Clause 76 provides that the duties and functions of an appointed actuary shall be as set out in the prudential standards as specified by the Bank.

Clause 77 sets out the circumstances under which a person would cease to be an appointed actuary.

Clause 78 requires a person which has ceased to be an appointed actuary of a licensed insurer to notify the Bank of its cessation and the reason for such cessation not later than seven days from the date of the cessation. This *clause* further requires a licensed insurer to appoint a new actuary after the cessation of its existing appointed actuary within the time frame as may be specified by the Bank.

Clause 79 requires a licensed insurer and its director, officer or controller to provide information which is accurate, complete, not false or misleading, in any material particular to the appointed actuary.

Clause 80 provides that an appointed actuary is not liable to the licensed insurer for a breach of the duty of confidentiality for reporting to the Bank in carrying out his duties and functions under *clause 76* pursuant to any standards specified under the proposed Act. The *clause* further provides that an appointed actuary is not liable to be sued for defamation in any court for any statement made by the appointed actuary without malice in discharging his duties under the proposed Act.

Division 6

Clause 81 requires a licensed insurer to establish and maintain one or more insurance funds for any class or description of its insurance business as may be specified by the Bank. This *clause* further provides that a licensed life insurer shall establish and maintain a separate insurance fund for its life insurance business relating to participating life policies, or more than one such insurance fund as may be specified by the Bank.

Clause 82 sets out the obligations of a licensed insurer in relation to insurance funds such as to credit all receipts in respect of policies to the relevant insurance fund to which the receipts relate to, maintain at all times assets in an insurance fund of a value equivalent to or higher than the liabilities of that insurance fund, apply the assets of an insurance fund only to meet the liabilities and expenses properly incurred by that insurance fund and comply with such other requirements as may be specified by the Bank for an insurance fund. The *clause* seeks to empower the Bank to specify what constitutes “receipts”, “income”, “liabilities” or “expenses” and the manner to determine or value the receipts, income, assets, liabilities or expenses. The *clause* also requires a licensed insurer to maintain an insurance fund established under *clause 81* so long as it is under liability in respect of any policy or insurance claim relating to that insurance fund.

Clause 83 prohibits a licensed insurer from making any withdrawal from an insurance fund, whether from the surplus, or otherwise, of that insurance fund unless all the conditions set out in this *clause* are fulfilled.

Clause 84 prohibits a licensed insurer from assuming any risk in respect of such description of policy as prescribed by the Bank unless and until the premium payable for such policy is received by the licensed insurer in such manner and within such time as may be prescribed by the Bank. Once a person acting on behalf of a licensed insurer receives the premium, such premium is deemed to have been received by the licensed insurer and the burden to prove that such receipt was received by an unauthorized person lies with the licensed insurer.

Division 7

Clause 85 prohibits an authorized person from establishing or acquiring any subsidiary in or outside Malaysia or from acquiring or holding any material interest in any corporation unless such person has obtained the prior written approval of the Bank. The Bank is empowered to specify what constitutes “material interest” for the purpose of this *clause*.

PART VI

7. Part VI deals with ownership, control and business transfer scheme of a licensed person and certain approved person.

Clause 86 provides for the application and non-application of this Part.

Division 1

Clause 87 prohibits a person from entering into an agreement or arrangement, to acquire any interest in shares of a licensed person which will result in such person holding (together with any interest in shares of that licensed person which were then already held by such person) an aggregate interest of five per cent or more in the shares of the licensed person or entering into a

subsequent agreement or arrangement to acquire interest in shares which will result in such person holding an interest in shares of or exceeding, any multiple of five per cent or the percentage holding for the mandatory offer under the Malaysian Code on Take-Over and Mergers prescribed under section 217 of the Capital Markets and Services Act 2007, unless the approval of the Bank is obtained. In addition, *subclause 87(3)* prohibits a person from entering into an agreement or arrangement, to acquire any interest in shares of a licensed person which will result in such person holding more than fifty per cent of interest in shares of a licensed person unless the approval of the Minister, on the recommendation of the Bank is obtained.

Clause 88 prohibits a person from exercising control over a licensed person, unless the approval of the Minister, on the recommendation of the Bank is obtained. However, the prohibition in this *clause* would not be applicable to—

- (a) any director or chief executive office of a licensed person in respect of carrying out his duties and functions in the management of the licensed person; and
- (b) a person who has obtained an approval of the Minister, under *subclause 90(6)* to hold more than fifty per cent of the interest in shares of the licensed person.

Clause 89 requires a person who has an aggregate interest in shares in shares of a licensed person of—

- (a) more than fifty per cent; or
- (b) fifty per cent or less but has control over the licensed person,

to obtain the prior written approval of the Minister if he disposes his interest in shares in, or ceases to have control over, a licensed person.

Clause 90 lists out the procedures and factors to be considered by the Bank in assessing an application made by a person in respect of an approval under *clause 87, 88 or 89*. This *clause* seeks to empower the Bank to require submission of information from a person who has obtained the approval of the Bank under paragraph 90(3)(a) or the Minister under *subclause 90(6)* in respect of *subclause 87(2) or 88(1)*.

Clause 91 seeks to empower the Bank to specify standard on shareholder suitability which shall be complied with at all times by a person who has been approved by the Bank under paragraph 90(3)(a) or the Minister under *subclause 90(6)* in respect of *subclause 87(2) or 88(1)*.

Clause 92 sets ten per cent as a maximum permissible holding of interest in shares of an individual shareholder in a licensed person.

Clause 93 requires a director or an officer of a licensed person or a financial holding company to notify the Bank any information relating to the—

- (a) agreement or arrangement referred to in *clause 87 or 89* which has been or about to be effected; or

- (b) non-compliance with shareholder suitability standards by a person who has been approved by the Bank under paragraph 90(3)(a) or the Minister under *subclause 90(6)* in respect of *subclause 87(2)* or *88(1)*.

Division 2

Clause 94 seeks to empower the Bank to issue an order in the event of a breach of *clause 87, 88, 89* or *92*, failure to comply with conditions imposed therein or failure to comply with shareholder suitability standards specified under *subclause 91(2)*. This *clause* also provides for the binding effect of the order and procedures to be adopted by the Bank before the order is issued.

Clause 95 provides for the additional provisions relating to the order issued by the Bank under subparagraph 94(2)(a)(v).

Division 3

Clause 96 provides that the words “approved person” in this Division does not include an approved operator of a payment system and approved issuer of a designated payment instrument.

Clause 97 requires a person who—

- (a) enters into a agreement or arrangement to acquire an interest in the shares of an approved person not less than five per cent to notify the Bank of such fact; or
- (b) acquires an interest in shares in the approved person which result in a change of control of such approved person to obtain the approval of the Bank.

This *clause* also empowers the Bank to specify standards on shareholder suitability and the person who has notified the Bank under *subclause 97(1)* or who has obtained the approval of the Bank under *subclause 97(2)* shall comply with the standards.

Division 4

Clause 98 contains the definitions of specific words used in this Division.

Clause 99 prohibits a person from entering into an agreement or arrangement for reconstruction or amalgamation under the Companies Act 1965 of a licensed person unless the approval of the Minister, with the recommendation of the Bank is obtained.

Clause 100 prohibits a person from entering into an agreement or arrangement for a business transfer scheme unless the approval of the Bank is obtained. Additionally, the *clause* provides that if the proposed agreement or arrangement provides to transfer the whole or material part of the business of a licensed person, the Bank shall—

- (a) be satisfied that the proposed agreement or arrangement is not prejudicial to the interests of any person likely to be effected by the scheme and the safety and soundness of such licensed person; and
- (b) obtain the concurrence of the Minister for the proposed agreement or arrangement.

Clause 101 requires a transferor to publish a notice in the *Gazette*, stating its intention to apply to the High Court for confirmation of the business transfer scheme. Also, this clause empowers the Bank to—

- (a) require the transferor to give such other notice in respect of the business transfer scheme; and
- (b) specify requirements relating to such notice.

Clause 102 provides for the parties to make an application to the High Court for confirmation of the business transfer scheme, once it has been approved by the Bank, and the High Court's power to confirm the scheme by granting an order in terms applied for or with such modification to the terms applied or refuse to confirm the scheme. This *clause* also seeks to provide for a person who, in the opinion of the High Court, is likely to be affected by the business transfer scheme, to make an application to the court regarding the scheme.

Clause 103 seeks to provide for the Bank to be a party likely to be affected to proceedings relating to the business transfer scheme made by a person likely to be affected under *subclause 102(2)* and requires such person to notify the Bank of all such proceedings and to submit documents relating to the proceedings to the Bank. This *clause* also seeks to provide for the Bank to be heard in proceedings brought by the person likely to be affected.

Clause 104 lists out the orders that may be sought by the transferor and transferee relating to the business transfer scheme. This *clause* also provides for the binding effect of an order made by the High Court under *subclause 102(3)*.

Clause 105 requires a transferee to publish the order made by the High Court under *subclause 102(3)* in two daily newspapers in Malaysia and to lodge certain documents and information relating to the business transfer scheme, with the Bank, Registrar of Companies and other appropriate authority.

Clause 106 provides that the transferor and transferee shall be jointly and severally liable to reimburse any expenses of the Bank incurred under this Division.

Clause 107 prohibits a licensed insurer from paying any remuneration to any person out of the assets of an insurance fund in relation to a business transfer scheme unless otherwise approved by the Bank.

PART VII

8. Part VII deals with the regulation and supervision of financial groups.

Clause 108 provides for the purpose of this Part.

Clause 109 provides that *clauses 110* and *111* are not applicable to licensed persons.

Clause 110 requires a company which has to obtain the approval of the Minister under *clause 87* to hold more than fifty per cent of interest in shares in a licensed person to submit an application to be approved as a financial holding company, or such company may propose another company within its corporate group to be approved as a financial holding company.

Clause 111 seeks to empower the Bank to require a company—

- (a) other than the company referred to in *clause 110*; or
- (b) which holds fifty per cent or less of interest in shares in a licensed person, but has control over the licensed person,

to submit application to be approved as a financial holding company.

Clause 112 provides for procedures and factors to be considered by the Bank in assessing an application made by a person under *clause 110* or *111*.

Clause 113 seeks to empower the Bank to approve more than one financial holding company within a corporate group.

Clause 114 provides for the business of a financial holding company and this *clause* also seeks to empower the Bank to specify standards relating to such business.

Clause 115 provides that Part V of the proposed Act will be applicable to a financial holding company and the Minister may, on the recommendation of the Bank, make an order which will be published in the *Gazette* that all or any provision of Part V shall not apply to a financial holding company or apply to such financial holding company with some modification. In addition, this *clause* seeks to empower the Bank to specify standards on prudential matters on a subsidiary of a financial holding company in the event that such subsidiary poses a risk to a licensed person or its financial group and the subsidiary is required to comply with such standards.

Clause 116 seeks to empower the Bank to issue directions to a financial holding company, any of its subsidiaries or a director or chief executive officer of such financial holding company or such subsidiary if certain circumstances are triggered.

Clause 117 makes general provisions relating to the directions of compliance to a financial holding company, any of its subsidiaries or a director or chief executive officer of such financial holding company or such subsidiary.

Clause 118 provides for the penalty to be imposed on a financial holding company, any of its subsidiaries, a director or chief executive officer of such financial holding company or such subsidiary.

Clause 119 are additional provisions flowing from paragraph 116(3)(e) which set out the procedures in relation to a direction issued to a financial holding company to increase its capital.

Clause 120 seeks to empower the Bank to remove a director or chief executive officer of a financial holding company if certain circumstances are triggered.

PART VIII

9. Part VIII deals with requirements and prohibitions in relation to business conduct and consumer protection.

Division 1

Clause 121 contains the definitions of certain words and expressions used in Divisions 1 and 2 and Schedule 7 of the proposed Act.

Division 2

Clause 122 states that *clauses* 123 and 124 are applicable without prejudice to the provisions of the Capital Markets and Services Act 2007 [*Act 671*] so long as such provisions relate to capital market products or capital market services as defined in *Act 671*, developed, offered or marketed by a licensed bank, licensed insurer or licensed investment bank.

Clause 123 seeks to empower the Bank to specify business conduct standards to a financial service provider for purposes of ensuring that a financial service provider is fair, responsible and professional when dealing with financial consumers.

Clause 124 prohibits a financial service provider from engaging in any prohibited business conduct as set out in Schedule 7 and seeks to empower the Bank to issue guidance on whether a financial service provider has engaged in any prohibited business conduct set out in Schedule 7.

Clause 125 sets out the requirement for an approved insurance broker, approved financial adviser and approved issuer of designated payment instrument to establish an account for its customer separate from its own account.

Clause 126 seeks to provide that regulations may be made to require a financial service provider to be a member of an approved financial ombudsman scheme and to set out among others, functions, duties of, or other requirements to be complied with by an operator of the approved financial ombudsman scheme.

Division 3

Clause 127 seeks to prohibit a person from obtaining certain types of general insurance as may be prescribed by the Bank from general insurers who are not licensed under the proposed Act unless otherwise approved by the Bank, after consultation with the Minister. This *clause* also seeks to empower the Bank to require a person to furnish to the Bank such information as the Bank may require on the placement of such insurances with those insurers not licensed under the proposed Act.

Clause 128 provides for Schedule 8 to set out certain provisions relating to policies.

Clause 129 provides for Schedule 9 to set out the pre-contractual duty of disclosure and representations and the remedies for misrepresentation relating to contracts of insurance.

Clause 130 provides for Schedule 10 to set out certain provisions for the payment of policy moneys upon death of a policy owner under a life policy, including a life policy under section 23 of the Civil Law Act 1956, or personal accident policy effected by the policy owner upon his own life.

Division 4

Clause 131 contains the definition of “financial institution” used in this Division.

Clause 132 provides that nothing contained in the proposed Act authorizes the Minister to direct the Bank, or authorizes the Bank itself, to inquire specifically into the affairs of any individual customer of any authorized person. These prohibitions are, however, without prejudice to the power of the Bank to inquire into the affairs or account of a customer of an authorized person for the purposes of exercising its powers under the proposed Act, the Islamic Financial Services Act 2012 or section 47 of the Central Bank of Malaysia Act 2009 [Act 701].

Clause 133 prohibits a person who has access to any document or information relating to the affairs or account of any customer of the relevant institutions (a licensed bank, a licensed investment bank, an approved operator of a payment system, a registered operator of a payment system, an operator of a designated payment system or an approved issuer of a designated payment instrument) including the institution itself and a director, officer or agent of the institution, whether during his tenure of office or during his employment or after that disclose to another person any information or document relating to the affairs or account of any customer of an institution. This *clause* also prohibits any person from disclosing in any manner any information or document which to his knowledge has been disclosed in contravention of the duty to preserve secrecy.

Clause 134 contains exceptions to *clause 133*. These include the permitted disclosures set out in Schedule 11 of the proposed Act and a disclosure which is approved in writing by the Bank.

Division 5

Clause 135 sets out the non-application of this Division to a licensed Islamic bank under the proposed Islamic Financial Services Act 2012.

Clause 136 contains the definition of “deposit” for the purposes of *clauses 137* and *138*.

Clause 137 seeks to restrict any person from accepting deposit unless it is under a licence granted under *clause 10*.

Clause 138 seeks to restrict any person, except for a licensed bank or licensed investment bank, to issue or facilitate any person to issue an advertisement in relation to making a deposit.

Clause 139 seeks to restrict any person from using certain words such as “bank”, “insurance”, *etc.* or any derivative of these words or any words in any language, where the use of such words are capable of being construed as indicating the carrying on of an authorized or registered business, or making any representation to such effect except with the prior written approval of the Bank. This *clause* also provides for the restriction not to apply in certain cases.

PART IX

10. Part IX deals with requirements and prohibited conduct in the money market and foreign exchange market.

Clause 140 seeks to empower the Bank to specify standards or issue codes for the purposes of developing or maintaining orderly conditions or the integrity of the money market and foreign exchange market.

Clause 141 seeks to prohibit any person from engaging in prohibited conduct such as false trading, market rigging, providing false or misleading information and insider dealing in the money market and foreign exchange market and to empower the Bank to issue guidance on whether a person is engaging in prohibited conduct set out in this *clause*.

Clause 142 seeks to empower the Bank to enter into arrangements with relevant supervisory authorities to coordinate regulation of financial instrument in the money market.

PART X

11. Part X seeks to make provisions on the submission of documents or information to the Bank.

Clause 143 imposes an obligation on any person, including those listed in the *clause*, who is required under the proposed Act or any written law to submit to the Bank any document or information, to submit such document

or information to the Bank. This *clause* also empowers the Bank to require any person, including those listed in the *clause*, to submit to it any document or information which the Bank requires for the exercise of its powers or performance of its functions under the proposed Act or any written law.

Clause 144 empowers the Bank to require any person to submit to it any document or information to collate statistical or other information on financial intermediation or financial inclusion in Malaysia or for other purposes related to the regulatory objectives of the proposed Act.

Clause 145 sets out certain exceptions to the secrecy requirements stipulated in *subclauses 143(8)* and *144(2)*.

PART XI

12. Part XI seeks to make provisions with regard to the examination of authorized persons, registered persons, operators of a designated payment system and others.

Clause 146 empowers the Bank to examine, without giving prior notice, the business and affairs of an authorized person, registered person, operator of a designated payment system and others as well as to examine any director, officer or controller of such persons.

Clause 147 imposes an obligation on a person who is being examined under *clause 146* and its director, officer or controller to give the Bank access to that person's documents, cash, premises, apparatus, equipment or machinery, and to produce to the Bank all such documents or cash. This *clause* further empowers the Bank to copy or make extracts of the documents, and to take possession of any documents, cash, apparatus, equipment or machinery to which the Bank has access if it is of the opinion that these may be interfered with, destroyed, concealed, removed, or needed as evidence in any legal proceedings.

Clause 148 empowers the Bank to also examine certain persons who may have, or had a connection with a person being examined under *clause 146*. Such persons that the Bank may examine are former directors or officers of the person being examined, those who are having or have had dealings with the person being examined and persons whom the Bank believes to be acquainted with the facts and circumstance of the case, including any auditor.

Clause 149 imposes an obligation on the person being examined under *clauses 146* and *148* to appear for examination before the Bank as it may specify.

Clause 150 empowers the Bank to require an authorized person, operator of a designated payment system or financial holding company to appoint an auditor or actuary to carry out a specific examination or assessment of its business or affairs as specified by the Bank and to submit a report of the examination or assessment to the Bank.

Clause 151 prohibits an authorized person, operator of a designated system or financial holding company, or any such person's directors, officers, auditors or actuaries from disclosing to any other person any document or information produced by the Bank as set out in *subclause (2)* which has resulted from the administration or enforcement of the proposed Act, the Central Bank of Malaysia Act 2009 or any other written law administered by the Bank, or produced from an examination by a relevant supervisory authority under *clause 152*, except in such circumstances as may be specified by the Bank.

Clause 152 provides for a relevant supervisory authority outside Malaysia to examine solely for its supervisory functions, with the approval of the Bank, the books and transactions of an approved representative office in Malaysia of a foreign institution, an authorized person which operates in Malaysia as a branch of a foreign institution or an authorized person, registered person or operator of a designated payment system or financial holding company, which is a subsidiary of a foreign institution, all of which have been established in that country, territory or place.

Clause 153 empowers the Bank to provide to a relevant supervisory authority outside Malaysia documents or information relating to the affairs of an authorized person, registered person or operator of a designated payment system or financial holding company, which is a subsidiary or associate of a foreign institution, or documents or information relating to any office of an authorized person, registered person, operator of a designated payment system or financial holding company, or any authorized person, registered person, operator of a designated payment system or financial holding company for the purposes of assessing a proposed establishment of any office by such persons.

Part XII

13. Part XII makes provisions with regard to the Bank's power to issue directions of compliance.

Clause 154 provides that the term "institution" for the purposes of Part XII refers to an authorized person or operator of a designated payment system.

Clause 155 sets out the circumstances whereby the Bank may exercise its powers to issue directions of compliance to an institution.

Clause 156 seeks to empower the Bank to issue directions of compliance to an institution, its director, chief executive officer or senior officer, to cease or refrain from committing an act or pursuing a course of conduct or to do any act, in relation to its business, affairs or property.

Clause 157 makes general provisions relating to the directions of compliance.

Clause 158 provides for the penalty to be imposed on an institution, its director, chief executive officer or senior officer who fails to comply with a direction.

Clause 159 are additional provisions flowing from paragraph 156(2)(b) which set out the procedures in relation to a direction issued to a licensed person to increase its capital.

PART XIII

14. Part XIII sets out the intervention and remedial action that may be taken by the Bank.

Clause 160 clarifies the circumstances where Part XIII shall apply in respect of an institution that is a member institution under the Malaysia Deposit Insurance Corporation Act 2011 [Act 720].

Division 1

Clause 161 provides that the term “institution” for the purposes of this Division refers to a licensed person or an operator of a designated payment system.

Clause 162 seeks to empower the Bank to remove a director, chief executive officer or senior officer from office or employment in an institution.

Clause 163 seeks to make consequential provisions relating to the Bank’s power of removal including providing for the removal to be lawful and valid.

Division 2

Subdivision 1

Clause 164 provides that the term “institution” for the purposes of this Subdivision refers to a licensed person, an approved issuer of a designated payment instrument or operator of a designated payment system.

Clause 165 sets out the circumstances whereby the Bank may exercise its powers in this Division or Division 3 of this Part.

Subdivision 2

Clause 166 provides that the term “institution” for the purposes of this Subdivision refers to a licensed person or an operator of a designated payment system and defines “appointed person” for the purposes of this Subdivision.

Clause 167 seeks to empower the Bank, with the prior approval of the Minister, to assume control of the whole or part of the business, affairs or property of the institution and manage the whole or such part of its business and affairs, or appoint any person to do so on behalf of the Bank.

Clause 168 seeks to make consequential provisions as to the effect of the assumption of control including the power to suspend directors, chief executive officer and senior officers of the institution, the power to alter constituent documents and the power to sell or otherwise dispose of the business or property of the institution.

Clause 169 provides for information and facilities to be provided by the institution, its directors, chief executive officer and officers to the Bank or the appointed person where control has been assumed over the business, affairs or property of the institution.

Clause 170 seeks to make additional provisions relating to assumption of control including the power to determine the remuneration payable to a director or chief executive officer who is required to remain in his appointment and providing for any person aggrieved by the transacted price in relation to the sale or disposal of his business or property to appeal on the transacted price to the Assessor Committee.

Subdivision 3

Clause 171 provides that the term “institution” for the purposes of this Subdivision refers to a licensed person, an approved issuer of a designated payment instrument or operator of a designated payment system.

Clause 172 seeks to empower the Bank to make an application to the High Court for an order to appoint a receiver or manager to manage the whole or part of the business, affairs or property of the institution.

Clause 173 sets out the process whereby a person other than the Bank intends to appoint a receiver and manager to manage the whole or part of the business, affairs or property of a licensed person, approved person, registered person or operator of a designated payment system.

Clause 174 sets out the powers of the receiver and manager in relation to the institution over which he has been appointed.

Subdivision 4

Clause 175 contains the definition of certain words used in this Subdivision.

Clause 176 provides for the Minister to designate, on the recommendation of the Bank, a body corporate established or acquired by the Bank as a bridge institution and seeks to empower the Bank, with the prior approval of the Minister, to vest the business, assets or liabilities of a licensed person to the bridge institution or to any other person.

Clause 177 deals with consequential powers of the Bank pursuant to an order issued by the Bank to vest the business, assets or liabilities of a licensed person to a bridge institution or any other person.

Clause 178 seeks to empower the Bank to direct the residual institution to continue to provide services and facilities as may be required to enable a transferee to operate the transferred business effectively.

Subdivision 5

Clause 179 contains provisions relating to the duration and termination of the designation of a bridge institution.

Clause 180 provides for the Bank to give notice of the designation and termination of a bridge institution.

Clause 181 provides for a bridge institution to be deemed to be licensed to carry on the licensed business for so long as the designation continues as well as exemption from such requirements and approvals under the proposed Act as may be necessary.

Clause 182 seeks to protect a bridge institution from the past obligations of the licensed person in respect of officers prior to the bridge institution becoming the employer of the officers.

Clause 183 seeks to allow a stay of proceedings against a bridge institution or its assets for a period of ninety days.

Clause 184 seeks to empower the Bank to provide financial assistance to a bridge institution.

Subdivision 6

Clause 185 provides that the term “institution” for the purposes of this Subdivision refers to a licensed person or operator of a designated payment system.

Clause 186 seeks to empower the Bank to reduce the share capital, or to cancel any share capital of an institution by making an application to the High Court.

Subdivision 7

Clause 187 provides that the term “institution” for the purposes of this Subdivision refers to a licensed person or operator of a designated payment system.

Clause 188 seeks to empower the Bank to provide liquidity assistance upon such terms and conditions as the Bank deems fit to an institution which is about to or is likely to suspend payment. This *clause* also seeks to empower the Bank to provide, with the prior approval of the Minister, financial assistance to another institution to purchase any shares, business, assets and liabilities, of an institution which is affected by any of the circumstances in *clause 165*.

Subdivision 8

Clause 189 provides that the term “institution” for the purposes of this Subdivision refers to a licensed person or operator of a designated payment system.

Clause 190 seeks to empower the Bank, where it has issued a direction prohibiting an institution from carrying on all or part of its business under the proposed Act, to apply to the High Court for an order to stay the commencement or continuance of any proceedings of a civil nature by or against the institution with respect to any of its business.

*Division 3**Subdivision 1*

Clause 191 provides that the term “institution” for the purposes of this Division refers to a licensed person or operator of a designated payment system and defines “liquidator” for the purposes of this Division.

Clause 192 provides that the provisions of the Companies Act 1965 in relation to the winding up of companies shall apply to the winding up of an institution, unless specifically provided otherwise.

Clause 193 seeks to empower the Bank, upon authorization of the Minister, to file an application to the High Court for the winding up of an institution.

Clause 194 prohibits an institution from being wound up voluntarily without the prior written approval of the Bank and a registered person from being wound up voluntarily without giving prior written notice to the Bank.

Clause 195 sets out the process whereby a person other than the Bank intends to file an application to the High Court for the winding up of an institution.

Clause 196 contains provisions relating to the appointment and remuneration of a liquidator on the Bank’s application in respect of the winding up of an institution.

Clause 197 provides for a liquidator to carry out his functions under the supervision of the Bank.

Clause 198 requires the submission of an institution’s statement of affairs to the Bank at the time it is submitted to the Official Receiver.

Clause 199 states that section 300 of the Companies Act 1965 shall apply to an institution as if references in that section to an “officer or a contributory” are references to a director, officer, agent or contributory of an institution.

Subdivision 2

Clause 200 provides that in the winding up of a licensed insurer, the valuation of its assets and liabilities shall be on a basis determined by the Bank and excludes the application of the law relating to bankruptcy.

Clause 201 provides for the termination of all policies issued by a licensed insurer effective from the date of the winding up order and sets out the items which a policy owner can claim as a debt due to him.

Clause 202 enables a liquidator of a licensed insurer which is being wound up to pay in good faith to any of its claimants without requiring strict proof of debt of such claims to facilitate payment.

Clause 203 prohibits the issuance of a policy by a director, officer, agent or contributory, past or present, of a licensed insurer which is being wound up after its cessation of insurance business.

Clause 204 seeks to empower the liquidator of a life insurer to carry on its existing life business with a view to its transfer as a going concern to another insurer.

Subdivision 3

Clause 205 contains provisions relating to the priority of deposits in the winding up of a licensed investment bank.

Clause 206 contains provisions relating to the priority of payments in the winding up of a licensed investment bank carrying on Islamic banking business.

Clause 207 contains provisions relating to the application of insurance fund in a winding up.

Division 4

Clause 208 provides that the Bank is not precluded from taking any one or more actions that it is empowered to take under Part XIII.

Clause 209 sets out the situation where the rights of parties under qualified financial agreements are not to be affected. The *clause* also sets out the Bank's right to impose a temporary stay in respect of such rights.

Clause 210 sets out provisions relating to the Assessor Committee including when an appeal may be made to the Assessor Committee and the process of the appeal.

PART XIV

15. Part XIV deals with provisions relating to other powers of the Bank.

Division 1

Clause 211 seeks to provide for the interpretation of financial intermediation activities.

Clause 212 seeks to empower the Minister, on the recommendation of the Bank, or the joint recommendation of the Bank and the relevant authority, as the case may be, to prescribe any person which is not under the supervision or oversight of the Bank and engaging in financial intermediation activities, as a prescribed financial institution if such person, in the opinion of the Bank, poses or is likely to pose risk to financial stability. This *clause* shall not apply to a person licensed, approved or recognized by the Securities Commission under securities laws or a licensed entity under the Labuan Financial Services and Securities Act 2010 [Act 704].

Division 2

Clause 213 contains the definition of words used in *clause 214* of the proposed Act.

Clause 214 seeks to empower the Bank under this *clause* to safeguard the balance of payments position and the value of the currency of Malaysia. This *clause* prohibits any person from undertaking or engaging in any transaction set out in Schedule 14 except with the written approval of the Bank. In granting an approval or direction under this *clause*, the Bank may impose requirement, restriction or condition in respect of such approval or direction. Any contravention of the prohibition under this *clause* or non-compliance with any requirement, restriction or condition imposed under a written approval or any direction under this *clause* is an offence.

Clause 215 seeks to empower the Minister on the recommendation of the Bank, to make regulations to impose levies or charges in respect of any transactions specified in Schedule 14 for the purposes of safeguarding the balance of payments position or the value of the currency of Malaysia. This *clause* further sets out the scope and procedures in imposing levies or charges.

Clause 216 seeks to empower the Bank, with the approval of the Minister, in the national interest, to issue directions to any person in Malaysia to prohibit, restrict or require the doing of any act relating to dealings or transactions with any person resident in a country or territory, or in any currency, as may be specified by the Bank.

Division 3

Clause 217 seeks to empower the Minister, on the recommendation of the Bank, to declare any day to be a holiday for all or any class, category or description of licensed persons, including their offices, whether throughout or in any part of Malaysia.

PART XV

16. Part XV seeks to make provisions in relation to enforcement actions by the Bank, the Bank's investigation powers, the Bank's powers to take administrative and civil actions, criminal offences and general matters.

Division 1

Clause 218 seeks to empower the Bank to invoke its investigations powers in order to investigate into offences or breaches under the proposed Act if the Bank is satisfied or has reason to believe that any person has committed an offence or breach under the proposed Act.

Clause 219 provides for any officer of the Bank or any person appointed under *subclause 7(6)* to be appointed by the Bank to be an investigating officer for the purposes of this Division.

Clauses 220 provides that the appointed investigating officer shall have all the powers and functions conferred on the Bank under the proposed Act and where the investigating officer is not an officer of the Bank, he is to be subject to the provisions of the proposed Act and enjoy the rights, privileges, protections, immunities and indemnities specified in any provision of the proposed Act, or in the Central Bank of Malaysia Act 2009 or any other written law applicable to an officer of the Bank as if he was an officer of the Bank.

Clause 221 confers on a magistrate the power to issue warrant authorizing an investigating officer, to enter, search and seize if it appears to the magistrate that there is a reasonable cause to believe that any premises has been used or is about to be used for, or there is any premises evidenced necessary to the conduct of investigation into the commission of an offence. In exercising the powers under this *clause*, an investigating officer can enter any premises and search, seize and detain any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information or inspect or makes copies of, or take extracts of or take possession of, or remove the same from the premises. The investigating officer is also to search any person on such premises. The investigating officer's powers also include the power to break open, examine and search any article, container or receptacle. He is also empowered to break open any outer or inner door of the premises and remove any obstruction to the premises or to detain any person found on any premises or in any conveyance as may be necessary to facilitate the search.

Clause 222 provides that an investigating officer may enter into the premises and exercise in, upon and in respect of the premises all the powers referred to in *clause 221* as if he was authorized to do so by a warrant issued under that *clause* if he is satisfied upon information received that he has reasonable cause to believe any delay in obtaining a search warrant under *clause 221* the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed.

Clause 223 requires an investigating officer to prepare a list of any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information seized pursuant to the proposed Act.

Clause 224 deals with the release of property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information seized under the proposed Act.

Clause 225 seeks to empower an investigating officer to search any person whom he has reason to believe has on his person any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document or information or other article which are necessary, in his opinion, for the purpose of an investigation under the proposed Act. For the purpose of such search, the investigating officer is empowered to detain such person as may be necessary and remove him in custody to such place to facilitate the search to be carried out subject to the provisions of the Criminal Procedure Code [Act 593]. Such person may be removed in custody to such place as may be necessary to facilitate the search. In making the search of the person, the investigating officer may seize, detain, or take possession of any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document, information or article found upon him for the purpose of the investigation.

Clause 226 contains prohibitions against any obstruction to the exercise of any power by an investigating officer.

Clause 227 seeks to empower an investigating officer who found, seized, detained or has taken possession of any computer, computer output, system, data, books, document or information to require a translation of books, document or information which is in a language other than the national language or English language or in any sign or code. The translation can be required from the person who had the possession, custody, control of such computer, computer output, system, data, books, document or information.

Clause 228 seeks to empower an investigating officer to examine any person suspected to have committed an offence or breach under the proposed Act. For the purpose of such examination, if it is reasonably necessary in the opinion of the investigating officer, the person can be required by way of an order in writing to attend before the investigating officer or required by way of an order in writing to produce anything which may assist in the investigation into the offence or breach or required by way of a notice in writing to furnish information which would be of assistance in the investigation into the offence or breach.

Clause 229 provides for the manner in which orders or notices shall be served.

Clause 230 seeks to empower an investigating officer to require any person who is the subject of an investigation under the proposed Act, by written notice, to surrender his travel documents.

Clause 231 seeks to provide for the credibility of an *agent provocateur*'s evidence and admissibility of evidence given by an *agent provocateur*, whether he is an officer of the Bank or not. The *clause* further provides that a conviction based solely on the uncorroborated evidence of an *agent provocateur* shall not be illegal.

Clause 232 seeks to empower the Bank, whether at its own initiative or on the request of a public officer, to supply to a police officer or public officer a copy of any books, computer output, data, document or information seized, detained or taken possession under *clause 221, 222 or 225*, or of any record of examination under paragraph 228(1)(a), or any of written statement made on oath or affirmation under paragraph 228(1)(c), or any books, computer output, data, document or information produced under paragraph 228(1)(b), or otherwise in the course of any examination under paragraph 228(1)(a), or under any written statement on oath or affirmation made pursuant to paragraph 228(1)(c). The police officer or other public officer to whom the same is supplied may make use of the same as may be necessary or expedient in relation to his powers, performance of his functions, or discharge of his duties in respect of any person. The Bank may also allow the police officer or the public officer to have access to and inspect any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document, information, article or thing which had been produced before, or seized, detained, or taken possession of by an investigating officer, and such police officer or other public officer may make use of any knowledge gained by such access or inspection as may be necessary or expedient in relation to the exercise of his powers, performance of his functions or the discharge of his duties in respect of any person.

Clause 233 provides that an investigating officer shall be deemed to be a public servant for the purposes of the Penal Code, and to be a public officer for the purposes of the Criminal Procedure Code, the Evidence Act 1950 [Act 56] or any other written law which the Minister may, on the recommendation of the Bank, prescribe.

Division 2

Clause 234 seeks to empower the Bank to take administrative actions against any person for breach of any provision of the proposed Act or any regulation made pursuant to the proposed Act, failure to comply with any order or direction issued under the proposed Act including an order made under *clause 94* or a direction issued under *clause 116 or 156, subclause 214(6) or clause 217* by the Bank and failure to comply with or give effect to any standards, condition, restriction, specification, requirement or code made pursuant to the provisions of the proposed Act. This *clause* also sets out the matters that shall be taken into consideration by the Bank in determining the appropriate action to be taken in each case. The Bank may take various administrative actions against a person who has committed a breach. This *clause* also sets out the matters that shall be taken into consideration by the Bank in determining whether or not any amount is to be paid by the authorized person, operator of a designated payment system or market participant to remedy the breach including making restitution. Any monetary penalty paid by a person in accordance with

paragraph 234(3)(b) shall be paid into the Federal Consolidated Fund. If a person in breach fails to pay a monetary penalty imposed by the Bank, such sum may be sued for and recovered as a civil debt due to the Government. Where a person fails to remedy the breach including making restitution to any other person aggrieved by the breach, the Bank may sue for and recover such sum as a civil debt due to the person aggrieved by the breach. This *clause* also provides that the Bank is not precluded from taking any action under this proposed Act including *clause 94, 116 or 156* or any written law.

Clause 235 provides that any amount that paid under paragraph 234(3)(e) or *subclause 234(10)* which has not been distributed by the person in breach to aggrieved person after reasonable efforts to notify aggrieved persons have failed shall be lodged with the Registrar of Unclaimed Moneys in accordance with the provisions of the Unclaimed Moneys Act 1965 [*Act 370*].

Clause 236 seeks to empower the Bank to prescribe the matters relating to classification or designation of the breaches under the proposed Act into different categories of breaches and fix, in accordance with classification or designation, a monetary penalty or range of monetary penalties in respect of each category.

Clause 237 provides that any person who is aggrieved by a decision of the Bank on the imposition of monetary penalty or an order to remedy the breach including making restitution relating to a monetary sum to be paid by the person in breach, may appeal against such decision to the Monetary Penalty Review Committee. The decision of the Bank does not take effect until the appeal is disposed of. This *clause* also provides that the Monetary Penalty Review Committee may decide to confirm the decision of the Bank or require the Bank to reconsider and reach a decision in accordance with the findings of the Committee.

Clause 238 provides on the establishment of a Monetary Penalty Review Committee. The Committee consists of members who are appointed by the Minister from amongst non-executive directors of the Bank or other person.

Division 3

Clause 239 seeks to empower the Bank to institute civil proceedings in a court against a person if there is a reasonable likelihood that any person will contravene or has contravened, or will breach or has breached or is likely to fail to comply with or has failed to comply with any provisions of the proposed Act, provisions of any regulations made pursuant to the proposed Act, order or any direction issued by the Bank under *clause 116, 156, subclause 214(6)* or *clause 216* or standards, condition, restriction, specification, requirement or code made or issued pursuant to the provisions of the proposed Act or an action taken by the Bank under *subclause 234(3)* whether or not that person has been charged with an offence in respect of the contravention or breach or whether or not a contravention or breach has been proved in a prosecution.

Clause 240 seeks to empower the court to make various types of orders on the application by the Bank under *clause 239*. This *clause* also provides for the application of any sum ordered by the court. If the authorized person, operator of a designated payment system and market participant considers it is not practicable to provide a remedy to the aggrieved persons in view of any amount of potential distribution or the difficulty of ascertaining or notifying the person to whom it is appropriate to provide a remedy, the amount concerned shall be lodged with the Registrar of Unclaimed Moneys in accordance with the Unclaimed Moneys Act 1965.

Clause 241 seeks to empower the Bank to institute civil actions in court for purposes of seeking the persons responsible to indemnify licensed person for any loss or damage to a licensed person. The liability to indemnify arises where the loss or damage results from or is caused by an offence committed by any person who has been convicted of the offence or an offence which has been compounded under *clause 253* and the liability is placed on the person convicted of the offence or the person whose offence has been compounded. The liability to indemnify is also placed on director, officer or controller of the licensed person or any person who is acting in such capacity or any person who is in any manner or to any extent responsible for the management of the affairs of the institution or any person who is assisting in such management, except where the offence was committed without his knowledge, consent or connivance and he has taken precautions and exercised due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions and the circumstances in which the offence was committed. The liability placed on the person mentioned above is joint and several. This *clause* also provides for the application of any sum ordered by the court.

Clause 242 seeks to empower the court to make interim orders pending the determination of the application made by the Bank under *subclause 240(1)* or *241(1)*.

Clause 243 makes it an offence if any person who *clause* contravenes an order of the court under *subclause 240(1)*, or *241(3)* or *242*. This *clause* further provides that any action under *subclause (1)* of this *clause* does not affect the powers of the court in relation to the punishment of contempt of court.

Clause 244 provides that the court shall not as a condition of the grant of an order under *subclause 240(1)* or *241(1)*, require any undertaking as to damages to be given by or on behalf of the Bank.

Clause 245 seeks to clarify that an application under *subclause 240(1)* or *241(1)* shall not prejudice any action that may be taken by the Bank, aggrieved person or licensed person under the proposed Act or any other law.

Clause 246 seeks to empower the Bank to use any document or information that is obtained by the Bank in the exercise of its investigation powers against authorized person, operator of a designated payment system, registered person or market participant or any agent of the persons mentioned above or any other person in a civil action instituted by the Bank.

Division 4

Clause 247 provides that where the penalty of imprisonment has been provided for an offence under the proposed Act, such penalty of imprisonment shall not apply to a body corporate convicted of the offence.

Clause 248 provides for the offences in relation to entries in book, record, report, slip, statement or other document relating to the business, affairs, transactions, condition, property, assets, liabilities, or accounts of an authorized person, a registered person or an operator of a designated payment system. This *clause* also makes it an offence if a person evades the provisions of the proposed Act by altering, forging, destroying, mutilating, defacing, concealing or removing any document.

Clause 249 makes provision for a director, controller, officer, partner or any person purporting to act in any such capacity or a person who is concerned in the management, of a body corporate or unincorporate to be liable for an offence committed by the body corporate or unincorporate unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence as he ought to have exercised, having regard to the nature of his function in that capacity and to all the circumstances.

Clause 250 renders the principal liable for any act, omission, neglect or default of his employee, director, controller or agent in the course of his employment or in the course of carrying out his function, or by agent when acting on behalf of the principal.

Clause 251 provides that an offence punishable under the proposed Act is a seizable offence. A police officer not below the rank of inspector or an investigating officer appointed under *clause 219* may arrest without warrant any person whom he reasonably suspects to have committed or to be committing any such offence.

Clause 252 provides that an investigating officer who arrests any person under *clause 251* shall hand over the person who is arrested to a police officer without unnecessary delay and the arrested person is to be dealt with as provided by the law relating to criminal procedure as if he had been arrested by a police officer.

Clause 253 seeks to empower the Governor, with the written consent of the Public Prosecutor, to compound any offence committed by any person punishable under the proposed Act or any regulations made under the proposed Act.

Clause 254 makes it an offence to attempt to commit an offence, or to do any act preparatory to or in furtherance of the commission of an offence, or to abet or engage in any criminal conspiracy to commit an offence (whether or not the offence is committed in consequence thereof), being an offence under the proposed Act. The person guilty of an offence under this *clause* is rendered liable to the same penalty as that provided for the offence in relation to which the offence under this *clause* is committed.

Clause 255 provides that the prosecution for an offence under the proposed Act shall be instituted with the written consent of the Public Prosecutor.

Division 5

Clause 256 provides that when a person discloses in good faith to the Bank his knowledge, belief or any document or information that a breach or contravention has been or is about to be committed—

- (a) he shall not be liable for a breach of confidentiality;
- (b) it shall be a defence in any legal action that the disclosure was necessary for the carrying into effect of the provisions of the proposed Act; or
- (c) no contractual rights or remedy may be enforced against the person.

Clause 257 provides that in any criminal or civil proceedings under the proposed Act any statement purporting to be signed by the Governor or any person authorized to perform the functions of the Bank, which forms part of or annexed to any letter, register, record or document or the production of a printed copy of a standard, specification, order in writing, direction, instruction, notice, requirement, condition or restriction, letter, register, record, document or any other instrument specified or issued pursuant to the proposed Act shall be evidence of facts stated in the documents mentioned above until the contrary is proved.

Clause 258 seeks to empower the Bank to publish any information in relation to any enforcement action taken under the proposed Act including criminal proceedings, compounding, civil actions and administrative actions and the outcome of such actions.

PART XVI

17. Part XVI deals with general provisions.

Clause 259 seeks to empower the Minister or the Bank to accept a written undertaking given by a person in connection with a matter to which the Minister or the Bank, as the case may be, has a power or function under the proposed Act. This *clause* also provides that in the case of a person who has breached any of the terms of the undertaking, the Bank may apply or recommend to the Minister to apply, as the case may be, to the High Court for an order to be made in respect of such breach.

Clause 260 seeks to empower the Minister, on the recommendation of the Bank, to make regulations.

Clause 261 seeks to provide for matters relating to approvals, consents, specifications, notices, requirements, directions, standards, codes or measures made or issued under the proposed Act.

Clause 262 seeks to provide that the Minister or the Bank, as the case may be, shall not take any action against any person without giving such person a notice of the proposed action and a reasonable opportunity to make representations unless—

- (a) any delay in taking that action would be detrimental to the interests of any authorized person, registered person, operator of a designated payment system, depositors, policy owners, participants, creditors, the financial system or the public generally;
- (b) it is an action taken under *clause 234*;
- (c) it is a proposed action under *subclause 13(1)*; or
- (d) it relates to a revocation of a licence under paragraph 20(1)(e), (f) or (g).

Clause 263 seeks to empower the Minister, on the recommendation of the Bank, to exempt any particular person or any class, category or description of persons by an order published in the *Gazette*, from all or any of the provisions of the proposed Act, provided that it is consistent with the objects and functions of the Bank under the Central Bank of Malaysia Act 2009 or the regulatory objectives of the proposed Act.

Clause 264 seeks to empower the Minister, on the recommendation of the Bank, to amend any provision in Schedules 1, 2, 4, 5, 6, 7, 9, 11, 12 and 13 of the proposed Act.

Clause 265 seeks to provide that any decision made by the Minister under the proposed Act shall be final.

Clause 266 seeks to empower the Bank to issue guidance consisting of such information, advice or recommendation as the Bank considers appropriate to any person or any class, category or description of persons.

Clause 267 seeks to provide protection to the Minister, the Bank, the Governor, the Deputy Governor or any of its directors, officer or employees acting on behalf of the Bank, for any act done or statement made, or was omitted to be done or made, in good faith.

Clause 268 seeks to provide that the Companies Act 1965 shall apply to an authorized person, a registered person, an operator of a designated payment system or a person prescribed as a prescribed financial institution which is a corporation, in addition to the provisions of the proposed Act. If any difficulty or doubt arises in the application of the Companies Act 1965 in relation to the said persons, the Bank may refer the matter to the Minister who will resolve the matter by way of a direction in writing.

Clause 269 seeks to provide that the Bank may exercise its power under *clauses 115 and 116*, Parts X and XI, and Division 2 of Part XIV of the Act proposed on a Labuan entity licensed or registered by the Labuan Financial Services Authority.

Clause 270 seeks to provide that no contract, agreement or arrangement, entered into in breach or contravention of the proposed Act shall be void solely by reason of such breach or contravention. However, nothing contained in this *clause* shall affect any liability of any person for any administrative, civil or criminal actions under the proposed Act in respect of such breach or contravention.

PART XVII

18. Part XVII deals with provisions relating to repeal, savings and transitional provisions.

Clause 271 repeals the Banking and Financial Institutions Act 1989, the Insurance Act 1996, the Payment Systems Act 2003 and the Exchange Control Act 1953 (“the repealed Acts”).

Clause 272 sets out the savings and transitional provisions relating to all subsidiary legislation except for the subsidiary legislation set out in Schedule 16, all executive act or all pending applications made or granted under the repealed Acts or acts done or transactions entered into under the repealed Acts. The insertion of this *clause* is also necessary given the fact that all guidelines under the repealed Acts are now to be adopted as standards under the proposed Act.

Clause 273 relates to the preservation of the various licences that have been granted under the repealed Acts and those licences are deemed to be a licence, approval or registration under the proposed Act. This *clause* further preserves any condition, limitation or restriction that has been imposed under such licences and deems the condition, limitation or restriction to be a condition, limitation or restriction imposed under the proposed Act.

Clause 274 states that certain persons are to be deemed to be approved to carry on Islamic financial business under the proposed Act and any condition that has been imposed on such persons shall remain in force under the proposed Act and is deemed to be imposed under the proposed Act.

Clause 275 provides for certain provisions in the repealed Insurance Act 1996 to continue to remain in full force and effect until a date appointed by the Minister for certain provision under the proposed Act to come into force, or are repealed by the Minister by notification in the *Gazette*.

Clause 276 provides for a transition period of five years from the time the proposed Act comes into operation to enable a licensed insurer which is carrying on both life and general businesses to comply with *subclause 16(1)* so that the licensed insurer only carries on one of these businesses by the end of the five year period.

Clause 277 states that The Real Time Electronic Transfer of Funds and Securities System and the Sistem Penjelasan Cek Kebangsaan secara Elektronik which were prescribed as designated payment systems under the Payment Systems (Designation Payment Systems) Order 2009 shall be deemed to be certified designated payment systems for the purposes of the proposed Act.

Clause 278 seeks to save the approvals granted, notifications given and prescription made under the repealed Payment Systems Act 2003 to the various persons and preserves any condition, limitation or restriction that have been imposed under that repealed Act applicable to such persons.

Clause 279 seeks to save any acquisition or disposal of interest in shares completed, or any holding of interest in shares held, before the appointed date.

Clause 280 deems that a designated financial holding company or a bank holding company designated under the repealed Acts as being approved as a financial holding company under the proposed Act.

Clause 281 sets out savings and transitional provisions relating to deposits accepted by co-operative societies from a person who is not a member of the co-operative societies before the appointed date and provides for such co-operative societies to obtain approval from the Bank within the specified time after the appointed date for it to continue to accept deposits from non-members.

Schedule 1 sets out the list of approved and registered businesses.

Schedule 2 seeks to provide a list of circumstances or persons which are excluded from the definition of “deposit”.

Schedule 3 provides for the definition of “interest in shares” and the computation of effective interest in shares.

Schedule 4 seeks to provide businesses which are not insurance business.

Schedule 5 seeks to set out factors to be considered by the Bank in assessing an application for a licence or approval.

Schedule 6 seeks to set out the factors to be considered by the Bank in assessing shareholder suitability.

Schedule 7 seeks to provide a list of prohibited business conduct.

Schedule 8 sets out certain provisions relating to policies such as those dealing with misstatement of age of the life insured, the fifteen day cooling-off period for the return of a life policy by a policy owner, the payment of life policy moneys by a licensed insurer without any deductions made unless consent has been obtained, the payment of surrender value under a life policy, the effect of non-payment of premiums for a life policy and election by a policy owner to exchange his life policy for a paid-up life policy. This Schedule also provides for a person effecting insurance on the life of another to have an insurable interest in that life at the time the insurance is effected, failing which the insurance will be void. A person effecting insurance on the life of his spouse, child or a ward under the age of majority, employee or any person on whom he is wholly or partly dependent for maintenance or education, is deemed by the proposed Act to have an insurable interest in that life. On the capacity of minors, this Schedule makes provision for a minor aged ten years

but less than sixteen years with consent of a parent or guardian to effect a life policy on his own life or upon another life in which he has an insurable interest, or to assign a life policy on his own life or take an assignment of a life policy. A minor aged sixteen years and above may do the same without consent of a parent or guardian except when he assigns a life policy on his own life. The Schedule further sets out certain requirements on disclosure, group policies and refund of premium.

Schedule 9 sets out a new duty of disclosure and representations for a consumer to observe before a contract of insurance is entered into, varied or renewed with an insurer. This duty applies only to consumer insurance contracts which are defined as contracts of insurance that an individual enters into wholly for purposes unrelated to his trade, business or profession, and replaces the duty for a consumer to volunteer all relevant information to the insurer with a duty for the consumer to take reasonable care not to make a misrepresentation during the pre-contractual stage. In this respect, an insurer may ask a consumer to answer specific questions and the consumer will be required to take reasonable care that his answers to the questions are accurate and complete. This Schedule also sets out proportionate remedies which an insurer may rely on in the case of a misrepresentation made by a consumer during the pre-contractual stage depending on the type of misrepresentation made. Where a consumer has made a deliberate or reckless misrepresentation, the insurer may avoid the contract of insurance and refuse the payment of any claim. Where a consumer has made a careless or innocent misrepresentation, the insurer's remedy shall be based on what it would have done had the consumer not made any misrepresentation. Hence, if the insurer would not have entered into the contract of insurance at all, it may refuse all claims but shall return all premiums to the consumer. If the insurer would have entered into the contract on different terms, the contract of insurance may be taken to include those different terms. If the premium would have been higher, the insurer may reduce the claim amount proportionately. Apart from setting out the new duty of disclosure and representations for consumer insurance contracts, this Schedule retains the existing duty of utmost good faith to be observed by persons who enter, vary or renew a contract of insurance which is not a consumer insurance contract. This Schedule also continues to provide that all contracts of life insurance, whether consumer insurance contracts or not, are non-contestable in relation to any inaccurate, false or misleading statement leading to the issue of the life policy, if these contracts have been in force for more than two years from the date on which they were effected during the lifetime of the insured. Such contracts are only contestable if an insurer can show that a statement made was on a material matter or a material fact was suppressed and such statement was fraudulently made or omitted. Provisions relating to the duty of disclosure and representations for group policies and variations, insurer's duty of disclosure, prohibition on warranties in respect of any pre-contractual representations made by consumers, prohibition on contracting out and the application of the Schedule are also set out.

Schedule 10 provides for the payment of policy moneys upon death of a policy owner under a life policy or personal accident policy which has been effected by the policy owner upon his own life. The purpose of this Schedule is to expedite the payment of policy moneys upon death of the policy owner. The provisions of this Schedule empower a policy owner who

is aged sixteen and above to nominate an individual to receive the policy moneys payable on the policy owner's death, and to revoke such nomination in certain circumstances. Where a policy owner nominates his spouse, child or if there is no spouse or child at the time of nomination, his parent, to receive the policy moneys, a trust is created in favour of such a nominee, who will receive the policy moneys beneficially. Payment of policy moneys under such a trust are protected as the policy moneys will not form part of the policy owner's estate or be subject to his debts. All other persons nominated under a life policy do not receive the policy moneys beneficially but as executor, and the policy moneys will form part of the policy owner's estate and be subject to his debts. This Schedule also provides for the claim of an assignee and pledgee to have priority over the claim of any nominee, whether a trust nominee or otherwise. Where a policy owner has not made any nomination under his policy, this Schedule sets out to whom the policy moneys are to be paid, starting with the lawful executor or administrator of the policy owner, and where there are no such persons, then to the policy owner's spouse, child or parent according to the Distribution Act 1958 [Act 300]. In the event that there is no spouse, child or parent, the Schedule also provides for certain other persons to be able to receive the policy moneys. Further provision is made for the payment of policy moneys to persons who are incompetent to contract, whether they are nominees or not, as the case may be. Insurers are also required to pay interest on policy moneys that remain unpaid for sixty days from the date of notification of a claim.

Schedule 11 sets out the permitted disclosures where the duty to preserve secrecy imposed under *clause 133* does not apply.

Schedule 12 seeks to provide a list of persons excluded from the restrictions on use of certain words.

Schedule 13 seeks to modify provisions in the Third Schedule of the Central Bank of Malaysia Act 2009 for the purposes of a vesting order made by the Bank in respect of the vesting of businesses, assets or liabilities under *clause 176*.

Schedule 14 seeks to set out the list of transactions prohibited under *subclause 214(2)*.

Schedule 15 seeks to provide a list of provisions in respect of which the Bank may impose an administrative monetary penalty.

Schedule 16 sets out the list of subsidiary legislation which is to be revoked.

FINANCIAL IMPLICATION

This Bill will not involve the Government in any extra financial expenditure.

[PN(U²) 2835]