



# LAWS OF MALAYSIA

REPRINT

**Act 571**

## **BANK SIMPANAN NASIONAL BERHAD ACT 1997**

*Incorporating all amendments up to 1 January 2006*

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# LAWS OF MALAYSIA

## Act 571

### BANK SIMPANAN NASIONAL BERHAD ACT 1997

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**LAWS OF MALAYSIA****Act 571****\*BANK SIMPANAN NASIONAL BERHAD ACT 1997**

An Act to provide for the transfer to and for the vesting of property, rights and liabilities of Bank Simpanan Nasional in a company by the name of Bank Simpanan Nasional Berhad, and its regulation; and to make provisions for other matters relating thereto.

[ ]

**BE IT ENACTED** by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

**PART I****PRELIMINARY****Short title and commencement**

**1.** This Act may be cited as the Bank Simpanan Nasional Berhad Act 1997 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.

**Interpretation**

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

“advertisement” means the disseminating or conveying of information, invitation or solicitation by any means or in any form, including by means of—

- (a) publication in a newspaper, magazine, journal or other periodical;
- (b) display of posters or notices;
- (c) circulars, handbills, brochures, pamphlets, books or other documents;

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\*NOTE—This Act is not yet in force.

- (d) letters addressed to individuals or bodies;
- (e) photographs or cinematograph films; and
- (f) sound broadcasting, television or other electronic media;

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

“appointed date” means the date appointed under section 1;

“approved company auditor” has the meaning assigned to it by subsection 4(1) of the Companies Act 1965 [*Act 125*];

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

“associate corporation” means a corporation where not less than twenty per centum and not more than fifty per centum of that corporation’s shares are held by another corporation, the first-mentioned corporation thereby being an associate corporation of the other corporation;

“Bank” means a company under the name of Bank Simpanan Nasional Berhad incorporated under the Companies Act 1965 pursuant to section 3 and includes its offices;

“Bank Simpanan Nasional” means a body corporate established under section 3 of the Bank Simpanan Nasional Act 1974 [*Act 146*];

“Board” means the board of directors of the Bank;

“business associate” of a person includes—

- (a) any banker, accountant, auditor, advocate, nominee or other person employed or appointed by such person at any time before or after the appointed date;
- (b) any institution of which such person is a director, and any other director of the institution;
- (c) if such person is a corporation—
  - (i) any director of such corporation;
  - (ii) any associate or related corporation of such corporation; and

- (iii) any business associate of such associate or related corporation as is referred to in subparagraph (ii);
- (d) any person having possession of any property belonging to such person;
- (e) any person indebted to such person;
- (f) any person having any knowledge or information relating to the business, dealings, affairs or property of such person;  
and
- (g) any person acting in concert with such person;

“capital funds” means paid-up capital and reserves, and includes any other sources of capital as may be specified by the Minister;

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

“chief executive”, in relation to the Bank, means a person, by whatever name called, who, either individually or jointly with one or more other persons, is responsible, subject to the authority of the directors, for the conduct of the business and the administration of the Bank;

“child” includes a step-child and a person adopted as a child under any written law of Malaysia or of any country, territory or place outside Malaysia, or under any custom recognized by any class or category of persons in Malaysia or in any country, territory or place outside Malaysia;

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

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

“controller”, in relation to the Bank, means a person who—

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

- (b) has the power to appoint or cause to be appointed a majority of the directors of the Bank; or
- (c) has the power to make or cause to be made, decisions in respect of the business or administration of the Bank, and to give effect to such decisions or cause them to be given effect to,

and the word “control” shall be construed accordingly;

“Corporation” means the Minister of Finance incorporated by the Minister of Finance (Incorporation) Act 1957 [*Act 375*];

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

“credit facility” means—

- (a) the giving of any advance, loan or other facility in whatever form or by whatever name called whereby the person to whom such advance, loan or facility is given has access, directly or indirectly, to the funds of the person giving the same;
- (b) the giving of a guarantee in relation to the obligation of any person; or
- (c) any other dealing or transaction as may be prescribed by the Minister;

“derivative instrument” has the meaning assigned to it by section 2 of the Banking and Financial Institutions Act 1989 [*Act 372*];

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

- (a) a corporation, has the meaning assigned to it by the Companies Act 1965;
- (b) a co-operative society, means a member of the board, or other governing body, by whatever name called, of the co-operative society;
- (c) a statutory body, means a member of the board, committee, council or other governing body, by whatever name called, of the statutory body;

- (d) a partnership, means a partner;
- (e) a sole proprietorship, means the sole proprietor; and
- (f) 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” includes—

- (a) any letters, figures, marks, symbols, signals, inscriptions, writing, sign, caricature, picture, drawing, or other representation in any form; and
- (b) any visual recording (whether of still or moving images), any sound recording, or any electronic, magnetic, mechanical or other recording,

on any substance, material, thing or article;

“giro service” means a current account service which permits account holders to issue payment instructions to the Bank for payment to any party or which permits the Bank to accept payments into the account of an account holder from any party;

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

“interest in a share” shall be construed as provided under subsections 6A(2) to 6A(10), inclusive, of the Companies Act 1965;

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

“licensed institution” means any institution licensed under subsection 6(4) of the Banking and Financial Institutions Act 1989;

“manager”, in relation to the Bank, means an officer of the Bank, by whatever name called, responsible for an office of the Bank, or for a department or a division of the Bank or of its office;

“member”, in relation to the Bank, means a shareholder of the Bank;

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

“office”, in relation to the Bank, includes the principal place of business, a branch, an agency, a mobile place of business, a place of business set up and maintained for a limited period only, an electronic terminal and any other place of business;

“officer”, in relation to the Bank, includes any employee and the chief executive of the Bank;

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

“person responsible for the Bank” means any person who is a director or officer of the Bank or who purports to act in any such capacity or who is in any manner or to any extent responsible for the management of the affairs of the Bank, or was assisting in such management;

“premium savings certificate” means a numbered savings certificate which is redeemable either on demand or otherwise issued by the Bank for a deposit account on which dividends may or may not be payable and which may or may not participate in periodical draws held by the Bank for the award of bonus payments by way of cash or otherwise to the holders thereof;

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

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

- (a) any right, interest, title, claim, chose in action, power or privilege, whether present or future, or whether vested or contingent, in relation to any property, or which is otherwise of value;
- (b) any conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of immovable property whereof the person executing the conveyance is proprietor or possessor or wherein he is entitled to a contingent right, either for the whole interest or for any lesser 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;
- (e) any mortgage or charge, whether legal or equitable, guarantee, lien or pledge, whether actual or constructive, letter of hypothecation or 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; and
- (f) any other tangible or intangible property;

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

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

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

- (a) the spouse of the person;
- (b) the brother or sister of the person;
- (c) the brother or sister of the spouse of the person;
- (d) any lineal ascendant or descendant of the person;
- (e) any lineal ascendant or descendant of the spouse of the person;
- (f) the spouse of any person referred to in paragraph (b), (c), (d) or (e);
- (g) any lineal descendant of a person referred to in paragraph (b), (c) or (f);
- (h) any uncle, aunt or cousin of the person, or of the spouse of the person; or
- (i) any spouse, or any lineal ascendant or descendant, of the person referred to in paragraph (h);

“securities” has the meaning assigned to it by subsection 2(1) of the Securities Industry Act 1983 [Act 280];

“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 specify from time to time in writing;

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

“vesting date” means the date on which all property, rights and liabilities of the Bank Simpanan Nasional are transferred to and vested in the Bank as specified by the Minister in the order under subsection 4(1).

(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 thereto shall be determined accordingly; and

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

(3) For the purposes of this Act—

(a) “persons acting in concert” means persons who have entered into an agreement or arrangement to—

(i) acquire jointly or severally interests in 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 by means of interests in shares of that corporation already held by them jointly or severally; and



- (b) without prejudice to the generality of paragraph (a), the following persons shall be presumed to be persons acting in concert, unless the contrary is established:
- (i) a corporation and its related and associate corporations;
  - (ii) a corporation and any of its directors, or the 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 or other fund whose investments such person manages on a discretionary basis; or
  - (v) a financial adviser and its client which is a corporation, where the financial adviser manages on a discretionary basis the client's funds and has ten per centum or more interest in the shares of the client.

(4) Where under any provision of this Act power is given to the Minister to require any person, or where any person is required under any provision of this Act, to submit, produce or provide to the Minister any information, statement, statistics, return or document—

- (a) the Minister may specify that the information, statement, statistics, return or document shall be submitted, produced or provided within such period, at such intervals, in such manner, in such form, and in writing or by means of any visual recording (whether of still or moving images) or any sound recording, or any electronic, magnetic, mechanical, or other recording, on any substance, material, thing or article, as the Minister may set out in the specification; and
- (b) such person shall not submit, produce or provide any information, statement, statistics, return or document which he knows, or has reason to believe, to be false or misleading.

## PART II

FORMATION AND OWNERSHIP OF THE BANK AND  
VESTING PROVISIONS**The Bank**

3. There shall be a company incorporated under the Companies Act 1965 under the name “Bank Simpanan Nasional Berhad”.

**Vesting provisions**

4. (1) The Minister may, by order published in the *Gazette*, appoint a vesting date and on that date, all property, rights and liabilities of the Bank Simpanan Nasional shall by virtue of this Act be transferred to and vested in the Bank without any conveyance, assignment or transfer.

(2) Every property vested in the Bank by virtue of subsection (1) shall be so vested in the Bank for the like title, estate or interest and on the like tenure as it was vested or held immediately before the vesting date.

(3) Every chose in action vested by virtue of subsection (1) in the Bank may, after the vesting date, be sued on, recovered or enforced by the Bank in its own name, and it shall not be necessary for the Bank or the Bank Simpanan Nasional to give notice to the person bound by the chose in action of the vesting effected by subsection (1).

(4) Every right and liability vested by virtue of subsection (1) in the Bank may, on and after the vesting date, be sued on, recovered or enforced by or against the Bank in its own name, and it shall not be necessary for the Bank or the Bank Simpanan Nasional to give notice to the person whose right or liability is affected by the vesting under subsection (1).

(5) Any pending legal proceedings by or against the Bank Simpanan Nasional which relate to any property, right or liability transferred to and vested in the Bank by virtue of subsection (1) may, on and after the vesting date, be continued by or against the Bank.

(6) In the case of rights and liabilities arising under any loans which vest in the Bank on the vesting date, the Bank may enter into such arrangements or agreements over such rights and liabilities with the Government or any third party.

(7) Where by virtue of subsection (1), any property is transferred to and vested in the Bank, the provisions in Part Thirty of the National Land Code [*Act 56 of 1965*] shall, for the purpose of effecting the registration of such vesting, apply to the Bank as if it were a public authority.

(8) On and after the vesting date, any agreement relating to any property, rights and liabilities transferred to and vested in the Bank under subsection (1) to which the Bank Simpanan Nasional was a party immediately before the vesting date, whether in writing or not, and whether or not of such a nature that rights and liabilities thereunder could be assigned by the Bank Simpanan Nasional, shall have effect as if the Bank had been a party to the agreement.

### **Initial Government holding in the Bank**

**5.** (1) As a consequence of the vesting in the Bank of the property, rights and liabilities under section 4, the Bank shall issue such securities of the Bank as the Minister may, from time to time direct, to the Corporation.

(2) Securities required to be issued in pursuance of this section shall—

- (a) be issued or allotted at such times and on such terms, as to allotment, as the Minister may direct;
- (b) be of such nominal value as the Minister may direct; and
- (c) be issued as fully paid and treated for the purposes of the Companies Act 1965 as if they had been paid up by virtue of the payment to the Bank of their nominal value.

(3) The Minister may dispose of any securities issued or any rights to securities initially allotted to the Corporation in pursuance of this section.

(4) Any dividends or other sums received by the Corporation in right of, on the disposal of or otherwise in connection with, any securities or rights acquired by virtue of this section shall be paid into the Consolidated Fund.

**Government investment in securities of the Bank**

**6.** (1) The Minister may, through the Corporation, at any time, acquire—

- (a) securities of the Bank or of any subsidiary of the Bank;  
or
- (b) rights to subscribe to any such securities.

(2) The Minister may dispose of any securities or rights acquired by the Corporation under this section.

(3) Any expenses incurred by the Corporation in consequence of the provisions of this section shall be treated as investments and be authorized under subparagraph 8(3)(a)(iv) of the Financial Procedure Act 1957 [Act 61].

(4) Any dividends or other sums received by the Corporation in right of, on the disposal of or otherwise in connection with, any securities or rights acquired under this section shall be paid into the Consolidated Fund.

(5) Stamp duty shall not be chargeable in respect of any increase in the capital of the Bank which—

- (a) is effected by the issue of shares allotted at a time when the Bank is wholly owned by the Government; and
- (b) is certified by the Treasury as having been effected by the issue of shares subscribed for by the Minister under paragraph (1)(a).

**Exercise of the functions of the Minister through nominees**

**7.** (1) The Minister may appoint such persons as he thinks fit to act as his nominees for the purposes of section 5 or 6 and—

- (a) securities of the Bank may be assigned under section 5 to any nominee of the Minister appointed for the purposes of that section or to any person entitled to require the issue of the securities following their initial allotment to any such nominee; and
- (b) any such nominee appointed for the purposes of section 6 may acquire securities or rights in accordance with that section.

(2) Any person holding any securities or rights as a nominee of the Minister by virtue of subsection (1) shall hold and deal with them on such terms and in such manner as the Minister may direct.

### PART III

#### PROVISIONS RELATING TO STAFF

##### **Staff**

**8.** (1) The Bank shall accept into its employment on the appointed date every person who immediately before that date is a member of the staff of the Bank Simpanan Nasional and who was given an option by the Bank Simpanan Nasional and has opted to serve as an employee of the Bank.

(2) Every person who opts to serve as an employee of the Bank shall be employed by the Bank on terms and conditions of service not less favourable than the terms and conditions of service to which he was entitled immediately before the appointed date.

### PART IV

#### OBJECTS AND POWERS OF THE BANK

##### **Objects and powers of the Bank**

**9.** (1) Without prejudice to its powers under the Companies Act 1965, the objects and powers of the Bank shall include—

- (a) promoting and mobilizing savings from the general public, particularly small savers, and fostering sound financial management of their resources so as to improve and advance their economic well-being;
- (b) providing the means, facilities and infrastructure for achieving the objectives of the Bank and encouraging their effective utilization by customers for their benefit; and
- (c) carrying on the general business of a modern and progressive financial services institution catering for the total financial needs of its customers.

(2) For the purposes of carrying out the objects set out in subsection (1), the Bank may—

- (a) provide all types of deposit accounts including savings account, time deposit account and other similar accounts;
- (b) receive and repay deposits from its customers;
- (c) operate schemes for the issue and promotion of premium savings certificates and, notwithstanding any other written law to the contrary, hold, promote, organize and administer draws in respect of such premium savings certificates;
- (d) grant all types of advances, loans and credit facilities to its customers;
- (e) provide unit trust schemes;
- (f) issue, purchase, sell and redeem securities, in its own name or on behalf of the Government; and the issue, holding and sale of such securities shall be subject to such terms and conditions as the Minister may determine at the time of the issue of such securities;
- (g) deal with stocks, funds, shares, debentures, debenture stocks, bonds, obligations, securities and investments of all kinds;
- (h) utilize the funds of the Bank for investments;
- (i) pay interest on deposits by customers and determine the rate or rates of such interest;
- (j) charge interest on loans and advances made to customers and determine the rate or rates of such interest;
- (k) impose charges for any services rendered by it;
- (l) collect cheques drawn by or paid by customers;
- (m) provide all types of payment and collection services, including giro services, automated teller machines, debit cards, credit cards and prepaid cards;
- (n) issue or pay local drafts, travellers cheques and effect transfers of moneys within Malaysia;
- (o) accept from customers for safe custody securities and other articles of value;

- (p) give any guarantee for the payment of money or the performance of any obligation or undertaking;
- (q) provide financial services based on Islamic principles;
- (r) maintain accounts with banks and other financial institutions;
- (s) open branches and appoint agents or correspondents within or outside Malaysia;
- (t) act as agents for the Government or any State Government or other authority and for public or private bodies or persons;
- (u) promote the formation of a company or participate in the promotion of a company or acquire an undertaking or part thereof;
- (v) acquire or hold property for or in connection with the exercise of its powers, and develop such property;
- (w) dispose of or lease or otherwise deal with the whole or any part of its undertaking or property;
- (x) subject to the Minister's approval on the recommendation of the Central Bank—
  - (i) provide current account;
  - (ii) carry out treasury operations including money market operations and deal in foreign currency;
  - (iii) issue or pay foreign drafts, and effect transfers of moneys outside Malaysia;
  - (iv) provide investment, advisory and underwriting services to customers;
  - (v) provide trade finance facilities;
  - (vi) deal in derivative instruments; and
  - (vii) carry out insurance business; and
- (y) do such other business as the Minister may prescribe and do all such other things as are incidental or conducive to the attainment of its objects.

## PART V

## SUBSIDIARIES AND OFFICES OF THE BANK

**Control of establishment or acquisition of subsidiaries**

**10.** (1) The Bank shall not establish or acquire any subsidiary in or outside Malaysia without the prior written consent of the Minister.

(2) Where the Bank fails to comply with subsection (1), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five million ringgit.

(3) Where the Bank is guilty of an offence under subsection (2), any person who at the time of the commission of the offence was a person responsible for the Bank shall also be guilty of that offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

**Restriction on establishment of offices of the Bank**

**11.** (1) The Bank shall not open any office outside Malaysia without the prior written consent of the Minister.

(2) Where the Bank fails to comply with subsection (1), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit.

## PART VI

FINANCIAL REQUIREMENTS AND DUTIES OF  
THE BANK**Maintenance of reserve fund**

**12.** (1) The Bank shall—

(a) maintain a reserve fund; and



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

(2) Notwithstanding subsection (1), the Minister may specify a different portion of the net profits of each year, being either lesser or greater than the portions specified in subsection (1), to be transferred to the reserve fund of the Bank for the purpose of ensuring that the amount of the reserve fund of the Bank is sufficient for the purpose of its business and adequate in relation to its liabilities.

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

(4) Nothing in this section shall authorize the Bank to pay dividends out of the reserve fund.

(5) Where the Bank fails to comply with subsection (1), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

### **Maintenance of capital funds**

**13.** (1) The Minister may require the Bank to maintain, at all times, capital funds unimpaired by losses, in such ratio to all or any assets or to all or any liabilities, or to both such assets or liabilities, of the Bank and all its offices in and outside Malaysia as may be specified by the Minister.

(2) Where the Bank fails to comply with subsection (1), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

### **Maintenance of liquid assets**

**14.** (1) The Minister may specify that the Bank shall hold such minimum amount of liquid assets, or such minimum average amount of liquid assets, in Malaysia at all times or over such period of time as may be set out in the specification.

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

(3) In a specification under subsection (1), the Minister may specify—

- (a) the minimum amount of liquid assets, or minimum average amount of liquid assets;
- (b) the types of assets to be classified as liquid assets; or
- (c) the types of liabilities as mentioned in subsection (2) to be classified as liabilities for the Bank.

(4) In a specification under subsection (1), the Minister shall specify the period, being in any case not less than seven days, within which the Bank shall comply with the specification.

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

(6) Where the Bank fails to comply with subsection (1) or (5), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one per centum of the shortfall for the day or each of the days to which the charge relates.

### **Maintenance of assets in Malaysia**

**15.** (1) The Minister may specify that the Bank shall hold at all times in Malaysia such minimum amount of assets as may be set out in the specification.

(2) The minimum amount of assets to be held in Malaysia specified under subsection (1) shall be expressed as a percentage of all or such of the liabilities of the Bank in Malaysia as may be set out in the specification.

(3) In a specification under subsection (1), the Minister may specify—

- (a) a minimum amount of assets to be held in Malaysia by the Bank;
- (b) the types of assets to be classified as assets to be held in Malaysia by the Bank; or
- (c) the types of liabilities to be classified as liabilities for the Bank.

(4) The provisions of subsection 14(4) shall apply *mutatis mutandis* in relation to a specification under subsection (1).

(5) Where the Bank fails to comply with subsection (1), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one per centum of the shortfall for the day or each of the days to which the charge relates.

### **Investment of funds**

**16.** (1) Subject to such directions or guidelines as the Minister may specify, the Bank shall, as far as practicable and except for such sums as may be assigned to be kept in hand for the general purposes of the Bank, invest in—

- (a) securities of the Government and public authorities;
- (b) other investment authorized by or under the Trustee Act 1949 [Act 208];
- (c) loans and advances to customers for such purposes as may be approved by the Board; and

(d) other securities and investments as the Board may, from time to time, decide.

(2) The Bank may, with the prior written approval of the Minister, invest outside Malaysia.

### **Appointment of auditor**

**17.** (1) Notwithstanding anything in any other written law, the Bank shall appoint each year before a date to be specified by the Minister an auditor approved by the Minister.

(2) Where the Bank fails to appoint an auditor under subsection (1) before the date specified thereunder, the Minister may appoint for the Bank an auditor and specify his remuneration and expenses, and the same shall be paid to such auditor by the Bank.

(3) If the Minister at any time considers it desirable that another auditor should act with the auditor appointed under subsection (1) or (2), he may appoint another auditor and specify his remuneration and expenses, and the same shall be paid to such auditor by the Bank.

(4) The Bank shall not knowingly appoint as its auditor any person, and no person shall knowingly consent to be appointed as an auditor of the Bank by the Bank or by the Minister; if such person—

- (a) is not an approved company auditor;
- (b) has any interest in any form or of any description in the Bank, including an interest in the shares of the Bank;
- (c) is a director, controller or officer of the Bank;
- (d) is indebted to the Bank or to any related corporation of the Bank;
- (e) is a partner, employer or employee of a director, controller or officer, of the Bank;
- (f) is a partner or employee of an employee of a director, controller or officer, of the Bank;
- (g) is a shareholder, or his spouse is a shareholder, of a corporation whose employee is an officer of the Bank;

- (h) is responsible, or is the partner, employer, or employee of a person responsible, for the keeping of the register of members or the register of holders of debentures of the Bank; or
- (i) has been convicted of any offence under the Companies Act 1965, or of any offence under any written law involving fraud or dishonesty:

Provided that the Minister may remove the disqualification under this paragraph which any auditor is subject to if the Minister is satisfied that it would not be contrary to the public interest to do so.

(5) For the purposes of subsection (4), a person shall be deemed to be an officer of the Bank—

- (a) if he is an officer of a related corporation of the Bank; or
- (b) except where the Minister, in the circumstances of the case, otherwise directs, if he has, at any time within the preceding period of twelve months, been an officer or promoter of the Bank or such related corporation.

(6) A firm shall not knowingly consent to be appointed, and shall not knowingly act, as auditor for the Bank and shall not prepare, for or on behalf of the Bank, any report required by this Act to be prepared by an auditor unless—

- (a) all the partners of the firm resident in Malaysia are approved company auditors and, where the firm is not registered as a firm under any law for the time being in force, a return showing the full names and addresses of all the partners of the firm has been lodged with the Central Bank; and
- (b) no partner is disqualified under paragraphs (4)(b) to (4)(i), inclusive, from acting as the auditor of the Bank.

(7) No person shall be appointed as auditor under this section unless he has prior to his appointment consented in writing to act as such auditor, and no firm shall be appointed as auditor under this section unless the firm has prior to the appointment consented in writing under the hand of at least one partner of the firm to act as such auditor.

(8) The appointment of a firm in the name of the firm as auditor under this section shall take effect and operate as an appointment as auditor of the Bank of the persons who are members of that firm at the time of the appointment.

(9) For the purposes of this section, a person shall not be deemed to be an officer of the Bank or its related corporation by reason only of his having been appointed an auditor of the Bank or its related corporation.

(10) Any person or firm appointed as an auditor for the Bank who, at any time after such appointment, becomes subject to any of the disqualifications mentioned in this section or in section 9 of the Companies Act 1965, shall immediately thereupon cease to be the auditor of the Bank and shall not thereafter act as its auditor or be required or permitted by the Bank to act as such.

(11) Where the Bank fails to comply with subsection (1), (2) or (3), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(12) Where the Bank is guilty of an offence under subsection (11), any person who at the time of the commission of the offence was a person responsible for the Bank shall also be guilty of that offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(13) Any person who fails to comply with subsection (4) or (6) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both.

(14) Any person or firm who fails to comply with subsection (7) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(15) Any person who fails to comply with subsection (10) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

### **Duties of auditor**

**18.** (1) The duties of an auditor appointed under subsection 17(1) or 17(2) shall be—

- (a) to carry out an audit of the accounts of the Bank; and
- (b) subject to subsection 19(4), to submit a report of such audit to the members of the Bank.

(2) The report of the auditor referred to under paragraph (1)(b) shall be made in accordance with section 174 of the Companies Act 1965.

(3) The Minister may, at any time, require an auditor appointed under section 17 to—

- (a) submit such additional information in relation to his audit as the Minister may specify;
- (b) enlarge or extend the scope of his audit of the business and affairs of the Bank in such manner or to such extent as the Minister may specify;
- (c) carry out any specific examination or establish any procedure in any particular case; or
- (d) submit a report on any of the matters referred to in paragraphs (a), (b) and (c),

and the Minister may specify the time within which any of such requirements shall be complied with by the auditor and specify the remuneration which the Bank shall pay to the auditor in respect thereof.

(4) The auditor shall comply with any requirement of the Minister under subsection (3) and the Bank shall pay to the auditor the remuneration of the auditor referred to therein.

(5) If an auditor appointed under this section, in the course of his duties as an auditor of the Bank, is satisfied that—

- (a) there has been a contravention of any provision of this Act or that any offence which relates to dishonesty or fraud under any other law has been committed by the Bank or by any other person;
- (b) losses have been incurred by the Bank which reduce its capital funds to an extent that the Bank is no longer able to comply with the requirements of the Minister under subsection 13(1);
- (c) any irregularity which jeopardizes the interests of depositors or creditors of the Bank, or any other serious irregularity, has occurred; or
- (d) he is unable to confirm that the claims of depositors or creditors are covered by the assets of the Bank,

he shall immediately report the matter to the Minister.

(6) The Bank, and any director, controller or officer of the Bank, shall—

- (a) furnish to an auditor appointed under this section—
  - (i) all information within its or his knowledge or capable of being obtained by it or by him; or
  - (ii) any information which the auditor requires,to enable him to carry out his duties; and
- (b) ensure that all information which is furnished to the auditor, including information furnished under paragraph (a), is not false or misleading in any material particular.

(7) The Minister may at any time examine the books, other documents, accounts and transactions of any person which was at any time, or is, an auditor of the Bank and for the purposes of such examination, the Minister shall have and may exercise all such powers as he has or may exercise in relation to an examination of the Bank under this Act.

(8) Any person who fails to comply with subsection (4), (5) or (6) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment



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

**Financial statements to be submitted to Minister**

**19.** (1) Within three months after the close of each financial year of the Bank, or such further period as the Minister may approve, the Bank shall submit to the Minister in respect of its entire operations in Malaysia two copies each of the following documents:

- (a) its latest audited annual balance sheet, profit and loss account and statement setting out the sources of its funds, the purposes for which, and the manner in which, such funds have been utilized; and
- (b) the report of—
  - (i) the auditor under paragraph 18(1)(b); and
  - (ii) the directors under subsection 169(5) of the Companies Act 1965.

(2) Within the time stipulated in subsection (1), the Bank shall, in addition to the requirements under subsection (1), submit to the Minister where the Bank has offices or subsidiaries outside Malaysia, all the documents referred to under subsection (1) in respect of—

- (a) its operations in each country outside Malaysia; and
- (b) its entire operations both in and outside Malaysia on a consolidated basis.

(3) The Minister may, either before or after the Bank has complied with the requirements of subsection (1) or (2), require the Bank to submit further or additional information as he may deem necessary either by way of explanation, amplification or otherwise with regard to any documents submitted under subsection (1) or (2), as the case may be, or to amend or modify the documents as to form or content as the Minister may deem appropriate.

(4) Unless and until the Minister has informed the Bank in writing that—

- (a) the Minister is satisfied that the Bank has complied with the provisions of subsections (1) and (3); and

- (b) the documents and information supplied thereunder are in such form and contain such information as is acceptable to the Minister,

the Bank shall not—

- (aa) lay its accounts before its general meeting;  
(bb) publish the account under section 20; or  
(cc) take such other action in relation thereto as the Minister may specify,

except where the Minister otherwise approves in writing, and any such approval may be made subject to such terms and conditions as may be set out therein.

(5) Subject to subsection (4), the Bank shall within six months after the close of its financial year, or such further period as the Minister may approve, submit to the Minister four copies each of the documents mentioned in subsection (1) together with the approval or other decision of the annual general meeting of the Bank in respect thereof.

(6) Where the Bank fails to comply with subsection (1), (2), (3) or (5), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(7) Where the Bank fails to comply with subsection (4), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit.

### **Publication and exhibition of audited balance sheet, etc.**

**20.** (1) The Bank shall within fourteen days of the laying of its accounts at its annual general meeting, or within such further period as the Minister may approve, publish in not less than two daily newspapers published in Malaysia and approved by the Minister, one of which shall be in the national language and the other in English, and exhibit thereafter throughout the year in a conspicuous position at every office in Malaysia of the Bank, a copy each of its balance sheet and such other documents as the Minister may specify; and the Minister may specify differently in respect of the documents to be published in the newspapers and the documents to be exhibited.

(2) Where the Bank fails to comply with subsection (1), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

**Statistics and information to be submitted**

**21.** (1) The Bank shall submit to the Minister—

- (a) a statement showing the assets and liabilities of the Bank in Malaysia; and
- (b) such further information, documents, statistics or returns as the Minister may specify.

(2) Where the Bank operates any office outside Malaysia, the Bank shall submit to the Minister such information relating to the operations of such office as may be specified by the Minister.

(3) Any information received from the Bank under this section shall be regarded as secret.

(4) Where the Bank fails to comply with subsection (1) or (2), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

PART VII

OWNERSHIP, CONTROL AND MANAGEMENT  
OF THE BANK

**Acquisition or disposal of aggregate of five per centum holding**

**22.** (1) Without prejudice to section 24, and subject to section 23, no person shall enter into any agreement or arrangement to acquire or dispose of any interest in the shares of the Bank by which, if the agreement or arrangement is carried out, he would—

- (a) acquire, together with any interests in the shares of the Bank which were then already held by him, or by him and by persons acting in concert with him; or

- (b) dispose, together with the interests in the shares previously disposed by him to any single person or any persons acting in concert, to such single person or such persons acting in concert,

an aggregate interest in shares of not less than five per centum of the shares of the Bank, without obtaining the prior written approval of the Minister to enter into such agreement or arrangement:

Provided that no such approval shall be granted in respect of any acquisition or disposal which would result in a contravention of section 24.

(2) An application for approval under subsection (1) shall be made by the person intending to acquire or dispose of any interest in shares referred to therein and shall be submitted to the Minister.

(3) No person who has obtained the approval of the Minister under subsection (1) to enter into an agreement or arrangement—

- (a) for the acquisition of any interest in the shares of the Bank, shall enter into any subsequent agreement or arrangement to acquire any interest in the shares of the Bank; or
- (b) for the disposal of any interest in the shares of the Bank to a single person or to persons acting in concert, shall enter into any subsequent agreement or arrangement with such single person or with one or more of such persons acting in concert, to dispose to him or to them, any interest in the shares of the Bank,

regardless of the percentage of the shares of the Bank which such interest in the shares represents, without obtaining the prior written approval of the Minister to enter into such subsequent agreement or arrangement, and the provisions of subsection (2) shall apply to an application for approval under this subsection.

(4) Any person who fails to comply with subsection (1) or (3) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

**Maximum permissible holdings**

**23.** (1) No person shall hold more than the following percentages of interests in the shares of the Bank:

- (a) in the case of an individual, ten per centum; and
- (b) in the case of a person other than an individual, twenty per centum,

except where the Minister, on being satisfied that it would not be—

- (aa) prejudicial to the promotion of a sound financial structure in Malaysia; and
- (bb) contrary to public interest to do so, otherwise approves.

(2) For the purpose of paragraph (1)(a), where the person holding interests in the shares of the Bank is a corporation in which—

- (a) an 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 not less than seventy-five per centum of the shares of that corporation, such corporation shall be deemed to be an individual.

(3) For the purposes of this section, in computing the holding of a person, the following shall be deemed to be the holding of such person and added on to his own holding:

- (a) where a person is an individual, the holding of his or her spouse, child or family corporation;
- (b) where a person is a corporation, the holding of its related or associate corporations;
- (c) where a person is a co-operative society, the holding of its subsidiaries as defined in section 2 of the Co-operative Societies Act 1993 [Act 502], and of related or associate corporations of such subsidiaries; and
- (d) the holding of persons acting in concert with such person.

(4) For the purposes of paragraph (3)(a), a “family corporation” means a corporation in which—

- (a) an 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 the shares of more than fifty per centum of the shares of the corporation.

(5) Any individual who holds ten or more than ten per centum interest in the shares of the Bank, or any person other than an individual who holds twenty or more than twenty per centum interest in the shares of the Bank, shall, prior to disposing of any interest in the shares of the Bank, notify the Minister in writing of such intended disposal and shall continue to notify the Minister of any further intended disposal so long as such individual or other person holds not less than five per centum interest in the shares of the Bank.

(6) The Minister may, at any time by notice in writing, require any person to submit—

- (a) any information or particulars of any interest in the shares of the Bank acquired or held directly or indirectly either for his own benefit or for the benefit of any other person; or
- (b) a statement of his current holding of interest in the shares of the Bank.

(7) Any person who has been served with a notice under subsection (6) shall, within seven days of the receipt of such notice or such longer period as may be allowed by the Minister in any particular case, submit to the Minister all the necessary information or particulars, or the statement, as the case may be, as required by the Minister, duly verified by a statutory declaration.

(8) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both and, in the case of a continuing offence, to a further fine not exceeding fifty thousand ringgit for each day during which the offence continues after conviction.

**Sanction required for reconstruction, etc., of the Bank**

- 24.** (1) No person shall enter into an agreement or arrangement—
- (a) which will result in a change in the control of the Bank or its holding company;
  - (b) for the sale, disposal, or transfer of the whole or any part of the business of the Bank;
  - (c) for the amalgamation or merger of the Bank with any other person; or
  - (d) for the reconstruction of the Bank, unless—
    - (i) the proposed agreement or arrangement is in writing; and
    - (ii) all the parties thereto have first made an application in writing to the Minister for his approval of such agreement or arrangement and have obtained the Minister's approval thereto.

(2) For the purposes of this section, “business” means any activity carried on for the purpose of gain or profit and includes all property derived from, or used in or for the purpose of, carrying on such activity and all rights and liabilities arising from such activity.

(3) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

**Bank to report acquisition or disposal of aggregate of five per centum holding to Minister**

**25.** (1) Where it comes to the knowledge of the Bank that any agreement or arrangement as is referred to in section 22 has been effected or is about to be effected in respect of itself, the Bank shall immediately thereupon report the same to the Minister setting out in its report all relevant particulars and details which are then within its knowledge.

(2) Where the Bank fails to comply with subsection (1), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five million ringgit and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction.

(3) Where the Bank is guilty of an offence under subsection (2), any person who at the time of the commission of the offence was a person responsible for the Bank shall also be guilty of that offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction.

### **Credit facilities on security of Bank's property to be reported to Minister**

**26.** (1) Where any person proposes to give any credit facility to any person on the security of any property of the Bank, he shall, before giving such credit facility, submit a report on the proposed credit facility to the Minister if the property to be provided as security for the proposed credit facility, by itself, or together with any other property of the Bank already held as security for any other credit facilities given by him, would constitute five per centum or more of the properties of the Bank.

(2) Where the Bank proposes to provide its property as security in respect of a credit facility to be given by any person to the Bank or to any other person, it shall, before doing so, submit a report on the matter to the Minister.

(3) The report required to be submitted under subsection (1) or (2) shall contain all relevant details and particulars of the transaction and shall, in any case, include the following:

- (a) the names and addresses of the persons to whom the credit facility is proposed to be given;
- (b) details of the property to be provided as security for the proposed credit facility; and
- (c) the amount of the proposed credit facility.

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



**Defence relating to contravention of provisions of this Part**

**27.** It shall be a defence to a charge for an offence relating to a contravention of section 22, 23, 24 or 26 for the accused to prove that he had no knowledge of the acts, omissions, facts or circumstances constituting the contravention, provided he had reported the contravention to the Minister within seven days of becoming aware of such acts, omissions, facts or circumstances which constituted such contravention.

**Prohibitions in the event of contravention**

**28.** (1) Where the Minister is satisfied that any person has contravened the provisions of section 22, 23, 24 or 26 (in this section referred to as the “defaulting person”), he may make a preliminary order in writing imposing one or more of the following prohibitions as may be applicable or appropriate in the circumstances of the contravention:

- (a) in respect of any shares which are the subject of the contravention, a prohibition on—
  - (i) the transfer of, or the carrying out of the agreement to transfer, such shares, or, in the case of unissued shares, the transfer of, or the carrying out of the agreement to transfer, the right to be issued with them;
  - (ii) the exercise of any voting rights in respect of such shares;
  - (iii) the issue of any further shares in right of such shares or in pursuance of any offer made to their holder; or
  - (iv) except in a liquidation, the payment of any sums due from the Bank on such shares, whether in respect of capital or otherwise; or
- (b) in respect of a contravention of section 26, a prohibition on the exercise of any right under any security, or right to transfer any property constituting such security.

(2) A preliminary order under subsection (1) shall be served on the defaulting person as soon as practicable, and may be publicized in such manner as the Minister deems fit, if, in the opinion of the Minister, it needs to be publicized.

(3) A preliminary order shall be binding on the defaulting person, on any person for the time being holding any shares to which such order applies, and on any other person specified in the order or to whom the order is directed.

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

(5) No person shall be given an opportunity of being heard before the Minister makes a preliminary order under subsection (1) against him or which affects him in any manner.

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

(7) The Minister may, after considering the representations made under subsection (6), either confirm the preliminary order, or revoke it, or vary it in such manner as he deems fit.

(8) Where the Minister confirms a preliminary order, he may dispose of the shares surrendered to him under subsection (4) to such persons and to such extent as shall be consistent with the shares being held lawfully by the purchaser under this Act.

(9) The proceeds of the disposal of the shares under subsection (8) shall be paid into the High Court, and any person claiming to be beneficially entitled to the whole or any part of such proceeds may, within thirty days of such payment into the High Court, apply to a judge of the High Court in chambers for payment out of the proceeds to him.

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

(11) Any transaction, including any agreement or arrangement in relation to any shares, or interest in shares, or security, which is in contravention of any preliminary order, or of any order confirmed under subsection (7), or of any instruction or direction given by the Minister under subsection (10), shall be void and of no effect.

(12) The satisfaction of the Minister under subsection (1) that any of the provisions of this Act referred to therein have been contravened by any person may be arrived at regardless as to whether or not there is any prosecution of any person for such contravention.

(13) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

(14) Any person who fails to comply with subsection (5) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction.

(15) Any person who fails to comply with subsection (10) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

**Director, controller or manager of the Bank to be fit and proper person**

**29.** (1) Every person who is, or is to be, a director, controller or manager of the Bank shall be a fit and proper person to hold the particular position which he holds or is to hold.

(2) In determining whether a person is a fit and proper person to hold any particular position, the Bank shall have regard to his probity, competence and soundness of judgment for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfil those responsibilities and as to whether the interests of depositors or potential depositors, if any, of the Bank are, or are likely to be, in any way threatened by his holding that position.

(3) Without prejudice to the generality of subsection (2), the Bank may have regard to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that—

- (a) he has committed an offence involving fraud or other dishonesty or violence;
- (b) he has contravened any provision made by or under any written law appearing to the Minister to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision for banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
- (c) he has engaged in any business practices appearing to the Minister to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business; or
- (d) he has engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

### **Minister's consent required to be director of the Bank**

**30.** (1) No person shall accept appointment or election as a director of the Bank unless he has, prior to such acceptance, obtained the written consent of the Minister to accept the appointment or election.

(2) Where the Minister refuses to give his consent under subsection (1), he shall notify the applicant in writing of his refusal.

(3) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both.

**Disqualifications of director or officer of the Bank**

**31.** (1) No person shall be appointed or elected, or accept appointment or election, as a director, manager, secretary, or other officer concerned in the management of the Bank—

- (a) if he is a bankrupt, has suspended payments, or has compounded with his creditors, whether within or outside Malaysia;
- (b) without prejudice to paragraph (c), if a charge for a criminal offence relating to dishonesty, fraud or violence under any written law punishable with imprisonment for one year or more, whether by itself, or in lieu of, or in addition to, a fine, has been proved against him in any court within or outside Malaysia;
- (c) if a charge for any offence under this Act has been proved against him;
- (d) if there has been made against him any order of detention, supervision, restricted residence, banishment or deportation, or if there has been imposed on him any form of restriction or supervision by bond or otherwise, under any law relating to prevention of crime, or to preventive detention for prevention of crime or drug trafficking, or to restricted residence, or to banishment or immigration; or
- (e) if he has been a director of, or directly concerned in the management of any corporation which is being or has been wound up by a court or other authority competent to do so within or outside Malaysia, or of any licensed institution, the licence of which has been revoked under the Banking and Financial Institutions Act 1989.

(2) Where a person is subject to the disqualification under paragraph (1)(e), he may—

- (a) be appointed or elected, or accept appointment or election; or
- (b) notwithstanding anything in subsection (4), continue in his office,

as a director, manager, secretary, or other officer concerned in the management of the Bank if the Minister is satisfied that the criteria set out in section 29 are fulfilled with respect to him.

(3) Where a person who is a director, manager, secretary, or an officer concerned in the management of the Bank, becomes subject to any of the disqualifications mentioned in subsection (1), he shall immediately thereupon cease to hold office and act as such, and the Bank shall immediately thereupon terminate his appointment in such capacity.

(4) During the pendency of any criminal proceedings in any court for any offence as is referred to in paragraph (1)(b) or (1)(c) against any person who is a director, manager, secretary, or other officer concerned in the management of the Bank, such person shall not act in such capacity, or hold any other office, or act in any other capacity, in the Bank, or in any manner, whether directly or indirectly, be concerned with, or take part or engage, in any activity, affairs or business of or in relation to the Bank, except as may be authorized by the Minister, subject to such conditions as the Minister may impose.

(5) For the purpose of subsection (4), criminal proceedings referred to therein 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.

(6) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both.

(7) Any person who fails to comply with subsection (3) or (4) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

### **Appointment of chief executive**

**32.** (1) Subject to subsection (2), the Bank shall appoint a chief executive of the Bank who shall be—

(a) an individual; and

(b) resident in Malaysia during the period of his appointment.

(2) Without prejudice to any appointment made before the appointed date, the Bank shall, before appointing a chief executive pursuant to subsection (1), seek and obtain the Minister's written approval for the proposed appointment.

(3) Where the Bank fails to comply with subsection (1) or (2), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three million ringgit.

(4) Where the Bank is guilty of an offence—

(a) under subsection (1), any person who at the time of the commission of the offence was a person responsible for the Bank shall also be guilty of that offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both;

(b) under subsection (2), any person who at the time of the commission of the offence was a person responsible for the Bank shall also be guilty of that offence and shall on conviction be liable to a fine not exceeding three million ringgit.

## PART VIII

### RESTRICTIONS ON BUSINESS OF THE BANK

#### **Restrictions on payments of dividends**

**33.** (1) The Bank shall not pay any dividend on its shares until all its capitalized expenditure (including preliminary expenses, organization expenses, shares selling commission, brokerage, amount of losses incurred, and any other item of expenditure not represented by tangible assets) has been completely written off.

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

(3) Where the Bank fails to comply with subsection (1) or (2), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit.

(4) Where the Bank is guilty of an offence under subsection (3), any person who at the time of the commission of the offence was a person responsible for the Bank shall also be guilty of that offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both.

### **Advance against security of own shares or shares of holding company**

**34.** (1) The Bank shall not give any credit facility, or enter into any other transaction, against the security of its own shares or the shares of its holding company.

(2) Where the Bank fails to comply with subsection (1), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three million ringgit.

(3) Where the Bank is guilty of an offence under subsection (2), any person who at the time of the commission of the offence was a person responsible for the Bank shall also be guilty of that offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both.

### **Grant of secured and unsecured credit facilities**

**35.** (1) Subject to the prior written approval of the Minister, the Bank shall not give to any person any unsecured credit facility which, together with any other credit facility earlier given to him, exceeds an aggregate amount as may be determined by the Minister.

(2) Subsection (1) shall not apply to any credit facility given—

(a) to a licensed institution; or

(b) to any other person engaged in the provision of finance who is approved in writing by the Minister.

(3) A security in respect of a credit facility given to any person by the Bank shall consist of property of a value which is not less than the amount of the credit facility given to such person.



(4) Where a security provided in respect of a credit facility given by the Bank is, during the currency of the credit facility, by agreement between the Bank and the person providing the security, substituted by a different security, the Bank shall ensure that the new security shall be of a value which is not less than the amount of the credit facility which is outstanding at the time of that substitution.

(5) Where at any time during the currency of a credit facility, any security provided under subsection (3) or substituted under subsection (4) in respect of such credit facility decreases in value to a value which is less than the amount of the credit facility then outstanding, the Bank shall require the person to whom such credit facility is given to provide additional security so as to increase the value of the security to an amount which is not less than the amount of the credit facility then outstanding within a period not exceeding fourteen days, and if such additional security is not provided within such period, the person liable for the credit facility shall immediately thereupon be deemed to be in breach of the terms of the contract relating to the credit facility, and the Bank shall be entitled to enforce its rights under the contract in respect of a breach thereof.

(6) Nothing contained in this section shall affect the right of the parties to the contract relating to the credit facility from including in such contract at the time at which it is entered into, or at any time thereafter, any provision relating to the security to be provided for the credit facility which is intended to ensure the sufficiency of the security throughout the currency of the credit facility.

(7) For the purposes of this section, the value of any property which is provided as security shall be—

- (a) the market value thereof; or
- (b) where for any reason it is not possible to determine the market value thereof, the value approved by the Minister on an application by the Bank, which should set out the value arrived at by the Bank and the basis for it.

(8) For the purposes of this section, the Minister may prescribe—

- (a) any limitations, restrictions and conditions subject to which any particular property, or any class, category or description of properties, may be provided or accepted as security; or

(b) any particular property, or any class, category or description of properties, to be prohibited from being provided or accepted as security.

(9) Where the Bank fails to comply with subsection (1), (4), (5) or (8), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five million ringgit.

(10) Where the Bank is guilty of an offence under subsection (9), any person who at the time of the commission of the offence was a person responsible for the Bank shall also be guilty of that offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

### **Restriction of credit facility to single customer**

**36.** (1) The Bank shall not give to any single person any credit facility, or incur any liability on behalf of any single person, which, together with any credit facility given earlier to such single person, and any liability incurred earlier on his behalf, by the Bank, is in excess of such percentage as may be prescribed for the Bank by the Minister in relation to the Bank's capital funds, unimpaired by losses or otherwise.

(2) The provisions of subsection (1) shall not apply—

- (a) where the single person referred to therein is a licensed institution or any person specified by the Minister which is engaged in the provision of finance;
- (b) to any credit facility given to, or liability incurred on behalf of, any person by the Bank in respect of imports into or exports from Malaysia or trade within Malaysia against letters of credit or bills of exchange; or
- (c) to any transactions specified by the Minister which are entered into with any particular person, or any class, category or description of persons, as may be specified by the Minister.

(3) For the purposes of this section, in computing the amount of any credit facility given to a single person, or any liability incurred on behalf of a single person, any credit facility given to, or any liability incurred on behalf of, the following persons, shall

be deemed to be a credit facility given to, or a liability incurred on behalf of, such single person:

- (a) where such single person is an individual, his or her spouse, child or family corporation;
- (b) where such single person is a corporation, its related or associate corporations;
- (c) where such single person is a society registered under the Co-operative Societies Act 1993, its subsidiaries as defined in section 2 of that Act and the related or associate corporations of such subsidiaries; or
- (d) persons acting in concert with such single person:

Provided that the Minister may specify that all or any of the persons, or any particular person, or any class, category or description of persons, mentioned in paragraphs (a) to (d) shall be excluded in the application of this subsection in relation to any particular single person, or any class, category or description of single persons, to whom a credit facility is to be given, and at the same time specify the criteria or the basis on which such person or persons are to be so excluded.

(4) For the purposes of paragraph (3)(a), “family corporation” has the meaning assigned to it in subsection 23(4).

(5) Where the Bank fails to comply with subsection (1), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five million ringgit.

(6) Where the Bank is guilty of an offence under subsection (5), any person who at the time of the commission of the offence was a person responsible for the Bank shall also be guilty of that offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

### **Prohibition of credit facilities to director and officer**

**37.** (1) Unless exempted by the Minister in writing with or without conditions, or except as provided for under subsection (2) or (3), the Bank shall not give any credit facility to—

- (a) any of the Bank’s directors or officers or any other person receiving remuneration from it (other than any accountant,

advocate and solicitor, architect, estate agent, doctor and any other person receiving remuneration from it in respect of his professional services);

- (b) any body corporate or unincorporate, or any sole proprietorship, in which any of the Bank's directors or officers is a director or manager, or for which any of its directors or officers is a guarantor or an agent;
- (c) any corporation in which any of the Bank's directors or officers has any interest in the shares of that corporation; and
- (d) any person for whom any of the Bank's directors or officers has given any guarantee or other undertaking involving financial liability.

(2) The Bank may give to any of its officers, or its executive director—

- (a) any credit facility which is provided for under his scheme of service; or
- (b) where there is no such provision and the Bank is satisfied that special or compassionate circumstances exist, a loan not exceeding at any one time—
  - (i) six months' remuneration of that officer or executive director; or
  - (ii) his remuneration for such longer period as may be approved by the Minister,

and subject to such other terms and conditions as the Minister thinks fit.

(3) The provisions of—

- (a) paragraph (1)(a) shall not apply to the giving of any credit facility to the spouse, child or parent of an officer, including an executive director of the Bank, for the purchase of a house; and
- (b) paragraph (1)(c) shall not apply to the giving of any credit facility by the Bank to a corporation in which none of the directors or officers of the Bank has any material interest in the shares of that corporation.

(4) For the purposes of this section—

- (a) “director” or “officer” includes a spouse, child or parent of a director or officer; and
- (b) the Minister shall from time to time specify what constitutes a material interest in the shares of a corporation.

(5) Where the Bank fails to comply with subsection (1), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five million ringgit.

(6) Where the Bank is guilty of an offence under subsection (5), any person who at the time of the commission of the offence was a person responsible for the Bank shall also be guilty of that offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

### **Restriction on giving of credit facilities**

**38.** (1) The Bank shall not give any credit facility under any exemption by the Minister referred to in subsection 37(1) or give any credit facility under subsection 37(3) unless the following conditions are satisfied:

- (a) the person to whom the credit facility is given has creditworthiness which is not less than that normally required by the Bank of other persons to whom credit facilities are given;
- (b) the terms of the credit facility are not less favourable to the Bank than those normally offered to other persons;
- (c) the giving of the credit facility will be in the interests of the Bank; and
- (d) the credit facility is approved by all other directors of the Bank at a duly constituted meeting of the directors where not less than three quarters of all the directors of the Bank are present and such approval has been recorded in the minutes of that meeting.

(2) Where the Bank fails to comply with subsection (1), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five million ringgit.

(3) Where the Bank is guilty of an offence under subsection (2), any person who at the time of the commission of the offence was a person responsible for the Bank shall be guilty of that offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

### **Disclosure of interest by director**

**39.** (1) Every director of the Bank who has in any manner, whether directly or indirectly, any interest in a proposed credit facility to be given to any person by the Bank shall as soon as practicable declare in writing the nature of his interest, to a duly constituted meeting of directors, and the secretary of the Bank, or other officer appointed by the Bank for the purpose, shall cause a copy of such declaration to be circulated immediately to every director of the Bank regardless whether he was present or not at such meeting.

(2) For the purposes of subsection (1), a general notice in writing served on each of the directors of the Bank referred to in that subsection by a director to the effect that he is a director, officer or member of the body corporate or unincorporate, or a director or officer of the sole proprietorship, to which the credit facility is proposed to be given shall be deemed to be sufficient declaration of interest in relation to such proposed credit facility if the provisions of subsection (3) are also complied with.

(3) A notice under subsection (2) shall—

- (a) specify the nature and extent of the director's interest in the body or sole proprietorship referred to in that subsection; and
- (b) be brought up and read at the meeting of the directors of the Bank at which it is served or, if it is not served at a meeting of directors, at the next meeting of directors after it has been served on each of the directors.

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

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

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

as the case may be.

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

(7) Any director who fails to comply with subsection (1) or (4) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

(8) Any director who fails to comply with subsection (3) or (5), shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both.

(9) Any person who fails to comply with subsection (6) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both.

### **Control of credit limit**

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

(2) The Minister may by written notice direct the Bank to—

- (a) submit any information relating to its policy and procedure for the giving of any credit facility;

- (b) submit a report on the limit or the terms and conditions imposed, the directions given, and the agreements made, in relation to the authority of every director or officer of the Bank authorized to give credit facilities or exercise any power in respect thereof; or
- (c) make such amendments to the policies or procedures referred to in paragraph (a), or to make such variations in the matters mentioned in paragraph (b), as the Minister deems to be fit and proper, either generally, or in relation to any class of directors or officers, or in relation to any particular director or officer, and such amendments and variations shall be binding on the Bank and its directors and officers.

(3) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

(4) Where the Bank fails to comply with subsection (2), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three million ringgit and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

(5) Where the Bank is guilty of an offence under subsection (4), any person who at the time of the commission of the offence was a person responsible for the Bank shall also be guilty of that offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

### **Restrictions on investments**

**41.** (1) Except as otherwise permitted by section 16, the Bank shall not acquire or hold—

- (a) any shares of, or otherwise have an interest in the shares in, any corporation; or



- (b) any immovable property or any right or interest therein, except such as may be reasonably necessary for the purpose of conducting its business, or of providing housing or other amenities for its staff, and as may in either case be approved by the Minister.

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

- (a) any share or interest in shares, or any immovable property or any right or interest in immovable property, acquired by the Bank—
  - (i) by way of security for giving any credit facility to any person or for incurring any liability on behalf of any person;
  - (ii) in the course of the realization of any security given to or held by the Bank; or
  - (iii) before the appointed date, where such acquisition was lawful immediately before such date;
- (b) any shares acquired or held by the Bank consequent upon its establishment or acquisition of a subsidiary with the prior written consent of the Minister under section 10; or
- (c) any shares or interest in shares acquired or held by the Bank in connection with its business as an exempt dealer under the Securities Industry Act 1983.

(3) Any immovable property or share, or any right or interest therein, acquired pursuant to subparagraph (2)(a)(ii) or paragraph (2)(c) by the Bank shall be disposed of as soon as practicable but not later than twelve months, or such longer period as the Minister may allow in any particular case, commencing on the date on which it was acquired.

(4) Any acquisition, holding or disposal of shares or interest in shares for the purposes or in the circumstances referred to in paragraph (2)(a), (2)(b) or (2)(c) or in subsection (3) shall not be regarded as “dealing in securities” for the purposes of the Securities Industry Act 1983.

(5) Where the Bank fails to comply with subsection (1) or (3), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a

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

### **Limitations, terms and conditions in respect of giving of credit facility**

**42.** (1) The Minister may specify limitations, terms and conditions in respect of the giving of any class, category or description of credit facilities to be given by the Bank, including the giving of any credit facilities to any person—

(a) for the purposes of financing—

- (i) the purchase of securities or the making of any payment that may be due on securities already purchased;
- (ii) the purchase or development of immovable property;
- (iii) the purchase or holding of any interest in the shares of any corporation;
- (iv) the purchase or holding of any derivative instrument;  
or
- (v) the purchase or holding of any other property as may be prescribed by the Minister; or

(b) on the security of any securities, immovable property, interest in shares, derivative instrument or any other property.

(2) Where the Bank fails to comply with subsection (1), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five million ringgit.

(3) Where the Bank is guilty of an offence under subsection (2), any person who at the time of the commission of the offence was a person responsible for the Bank shall also be guilty of that offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

### **Proof of compliance**

**43.** (1) The Bank shall, at any time if called upon in writing by the Minister to do so, produce to the Minister all such evidence and provide all such information as the Bank may have relating to its compliance with any of the provisions of this Part, as the Minister may generally, or in relation to any particular case, require.

(2) Subsection (1) shall be without prejudice to, and shall not in any manner derogate from, any other power conferred on the Minister or an investigating officer under this Act.

(3) Where the Bank fails to comply with subsection (1), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three million ringgit and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

(4) Where the Bank is guilty of an offence under subsection (3), any person who at the time of the commission of the offence was a person responsible for the Bank shall also be guilty of that offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

## **PART IX**

### **POWERS OF SUPERVISION AND CONTROL OVER THE BANK**

#### **The Bank under Minister's supervision**

**44.** The Bank shall be under the general supervision of the Minister and, subject to the provisions of this Act, the Minister may, from time to time, give directions of a general character not inconsistent with the provisions of this Act as to the performance of the functions or duties and the exercise of the powers of the Bank.

**Examination of the Bank**

**45.** The Minister may, from time to time, examine, without any prior notice, the books or other documents, accounts, and transactions of the Bank and its offices within and outside Malaysia.

**Power of Minister to direct examination to be made**

**46.** The Minister may at any time direct any person to make an examination of the books or other documents, accounts and transactions of the Bank and its offices within and outside Malaysia if he suspects that the Bank is carrying on its business in a manner which is, or which is likely to be, detrimental to the interests of its depositors or creditors, or has insufficient assets to cover its liabilities to the public, or is contravening any provision of this Act or any other written law.

**Production of Bank's books, etc.**

**47.** (1) For the purpose of an examination under section 45 or 46, the Bank and its directors and officers shall afford any person carrying out the examination access to all its books or other documents and accounts, including documents of title to its assets, all securities held by it in respect of its customers' transactions, all its cash, and all such documents, information and facilities as may be required by that person for the purpose of the examination, and shall produce to that person all such books or other documents, accounts, titles, securities or cash, and give all such information, as he may require:

Provided that, so far as it is consistent with the conduct of the examination, such books or documents, accounts, titles, securities and cash shall not be required to be produced at such times or at such places as may interfere with the proper conduct of the normal daily business of the Bank.

(2) Notwithstanding anything in subsection (1), any person authorized by the Minister in writing for this purpose may take possession of any books or other documents, accounts, titles, securities or cash to which he has access under subsection (1) where in his opinion—

- (a) the inspection of them, the copying of them, or the making of extracts from them, cannot reasonably be undertaken without taking possession of them;

- (b) they may be interfered with or destroyed unless he takes possession of them; or
- (c) they may be needed as evidence in any legal proceedings, whether civil or criminal, which may be instituted under or in connection with this Act or any other written law.

(3) Where the Bank fails to comply with subsection (1), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three million ringgit and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

(4) Where the Bank is guilty of an offence under subsection (3), any person who at the time of the commission of the offence was a person responsible for the Bank shall also be guilty of that offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

### **Bank unable to meet obligations to inform the Minister**

**48.** (1) In the event the Bank is insolvent, or is likely to become unable to meet all or any of its obligations, or that it is about to suspend payment to any extent, the Bank shall immediately inform the Minister of that fact.

(2) Where the Bank fails to comply with subsection (1), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three million ringgit and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

(3) Where the Bank is guilty of an offence under subsection (2), any person who at the time of the commission of the offence was a person responsible for the Bank shall also be guilty of that offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction.

**Action by the Minister in respect of the Bank in certain circumstances****49. (1) Where—**

(a) the Bank informs the Minister—

- (i) that it is insolvent;
- (ii) that it is likely to become unable to meet all or any of its obligations; or
- (iii) that it is about to suspend payment to any extent; or

(b) whether after an examination is made under section 45 or 46 or otherwise, the Minister is satisfied that the Bank—

- (i) is carrying on its business in a manner detrimental to the interest of its depositors, or its creditors, or the public generally;
- (ii) is insolvent, or has become or is likely to become unable to meet all or any of its obligations, or is about to suspend payment to any extent; or
- (iii) has contravened any provision of this Act or any provision of any written law, regardless that there has been no criminal prosecution in respect thereof,

the Minister may, by order in writing, exercise any one or more of the following powers, as he deems necessary:

- (aa) require the Bank to take any steps, or any action, or to do or not to do any act or thing, in relation to the Bank, or its business, or its directors or officers, which the Minister may consider necessary and which he sets out in the order, within such time as may be set out therein;
- (bb) prohibit the Bank from extending any further credit facility for such period as may be set out in the order and make the prohibition subject to such exceptions, and impose such conditions in relation to the exceptions, as may be set out in the order, and, from time to time, by further order similarly made, extend the aforesaid period;
- (cc) notwithstanding anything in any written law, or any limitations contained in the constituent documents of the Bank, for reasons to be recorded by him in writing, remove from office, with effect from such date as may be set out in the order, any officer of the Bank;

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

(2) Where any of the circumstances set out in paragraphs (1)(*a*) and (1)(*b*) exist in respect of the Bank, the Minister may, whether or not he had exercised any of his powers under paragraph (1)(*aa*), (1)(*bb*), (1)(*cc*), (1)(*dd*), or (1)(*ee*)—

- (*a*) assume control of the whole of the property, business and affairs of the Bank, or assume control of such part of its property, business and affairs, or by order published in the *Gazette* appoint any person to do so on his behalf;
- (*b*) appoint any person to carry on the whole or any part of the business and affairs of the Bank for which control has been assumed by the Minister;
- (*c*) apply, or authorize any person by order published in the *Gazette* to apply, to the High Court to appoint a receiver or manager to manage the whole of the business, affairs and property of the Bank, or such part thereof as may be set out in the order, and for all such incidental, ancillary or consequential orders or directions of the High Court in relation to such appointment as may, in the opinion of the Minister, be necessary or expedient; or
- (*d*) present, or authorize any person by order published in the *Gazette* to present, a petition to the High Court for the winding up of the Bank.

(3) The costs and expenses incurred in relation to the assumption of control under paragraph (2)(a) or the remuneration of the person appointed under that paragraph or paragraph (2)(b), as the case may be, shall be payable out of the funds and properties of the Bank as a first charge thereon.

(4) An order of the Minister under subsection (1) or (2), may, from time to time, be modified, amended, altered, varied or replaced either prospectively, or where it is not impracticable or unjust to do so, retrospectively, by a further order under subsection (1) or (2), as the case may be.

(5) No order under subsection (1) or (2), or by virtue of subsection (4), shall be made unless the Bank, and in the case of an order under paragraph (1)(cc) or subparagraph (1)(dd)(i), also the officer or director who is to be removed from office, has been given a reasonable opportunity of making representations against, or otherwise in respect of, the proposed order:

Provided that if in the opinion of the Minister, in the case of an order to be made by the Minister under subsection (1) or (2), or by virtue of subsection (4), any delay would be detrimental to the interests of the Bank, or its depositors or creditors, or the public generally, the order may be made first and the opportunity to make representations against or otherwise in relation to the order shall, in such case, be given immediately after the order has been made, and the order may, in consequence of such representations either be confirmed, or be modified, amended, altered, varied or replaced under subsection (4), or be revoked under subsection (6), subject to such conditions, if any, as the Minister thinks fit to impose.

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

(7) Where the Bank fails to comply with—

(a) paragraph (1)(aa) or (1)(bb), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding ten million ringgit and, in the case of a continuing



offence, to a further fine not exceeding ten thousand ringgit for each day during which the offence continues after conviction;

- (b) subparagraph (1)(dd)(ii) or paragraph (1)(ee), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

(8) Where the Bank is guilty of an offence under paragraph (1)(aa) or (1)(bb), any person who at the time of the commission of the offence was a person responsible for the Bank shall also be guilty of that offence and shall on conviction be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both and, in the case of a continuing offence, to a further fine not exceeding ten thousand ringgit for each day during which the offence continues after conviction.

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

#### **Provisions in relation to an appointment under section 49**

**50.** (1) A person appointed by the Minister under subparagraph 49(1)(dd)(ii), paragraph 49(1)(ee), or paragraph 49(2)(a) or (b) shall be appointed for such period as may be determined by the Minister, not exceeding, in any case, two years, but may be reappointed for three further consecutive periods not exceeding one year each, and shall, during such period of appointment or reappointment, hold his appointment at the pleasure of the Minister.

(2) The terms and conditions of an appointment referred to in subsection (1), shall, subject to the order under which the appointment is made, and to subsection (1), be determined by the Minister and shall be binding on the Bank.

(3) The appointment of a director or directors under subparagraph 49(1)(dd)(ii) shall not affect any provision of the constituent documents enabling the Bank to have further directors where the

maximum number of directors allowed under the constituent documents has not already been reached or exceeded by the appointment or appointments under subparagraph 49(1)(dd)(ii).

(4) A person holding any appointment as referred to in subsection (1) shall not incur any obligation or liability solely by reason of his holding such appointment.

(5) Where a receiver or manager has been appointed in respect of the Bank by the High Court under paragraph 49(2)(c), all proper costs, charges and expenses, including the remuneration, of such receiver or manager shall be payable out of the assets of the Bank in priority to all other claims.

(6) Where the Bank fails to comply with subparagraph 49(1)(dd)(ii) or paragraph 49(1)(ee), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

**Provisions in relation to removal from office under paragraph 49(1)(cc) or subparagraph 49(1)(dd)(i)**

**51.** (1) Any officer or director removed from office in the Bank under paragraph 49(1)(cc) or subparagraph 49(1)(dd)(i) shall cease to hold the office from which he is removed with effect from the date set out in the order, and shall not thereafter hold any other office in the Bank or, in any manner, whether directly or indirectly, be concerned with, or take part, or engage in, any activity, affairs or business of or in relation to the Bank.

(2) The removal of an officer or director under paragraph 49(1)(cc) or subparagraph 49(1)(dd)(i) shall be lawful and valid notwithstanding anything contained in any contract of service or other contract or agreement, whether express or implied, whether individual or collective, and whether or not made or provided for under any written law, and a person so removed from office shall not be entitled to claim any compensation for the loss or termination of office.

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

**Provisions relating to assumption of control under paragraph 49(2)(a)**

**52.** (1) Where control of the Bank has been assumed by the Minister or by a person appointed by the Minister (hereinafter in this Part referred to as the “appointed person”) under paragraph 49(2)(a), the Bank and its directors and officers shall submit its property, business and affairs to such control, and shall provide the Minister or the appointed person or the person appointed under paragraph 49(2)(b) all such facilities as may be required to carry on the business and affairs of the Bank.

(2) Where control of the Bank has been assumed by the Minister or by the appointed person by order made under paragraph 49(2)(a)—

- (a) the Minister shall remain in control of the property, business and affairs of the Bank, and any person appointed by him under paragraph 49(2)(b) shall carry on such business and affairs in the name and on behalf of the Bank until such time as the appointment is revoked;
- (b) the appointed person shall remain in control of the property, business and affairs of the Bank and shall carry on the business and affairs of the Bank in the name and on behalf of the Bank as provided in the order appointing him until such time as the order is revoked under subsection 49(6).

(3) Throughout the period of control of the Bank under paragraph 49(2)(a), there shall be vested in the Minister, or in the appointed person, as the case may be, all the powers of the Bank, and of its directors, under the constituent documents of the Bank, or exercisable by the Bank or its directors under any written law, or otherwise, regardless whether such powers are exercisable by the resolution, special resolution, or in any other manner, and any difficulty arising in relation thereto may be resolved by the Minister by a direction in writing.

(4) During the period of control by the Minister or the appointed person, as the case may be, under paragraph 49(2)(a), no director of the Bank shall, either directly or indirectly, engage in any activity in relation to the Bank, except as may be required or authorized by the Minister, or the appointed person, as the case may be, and no remuneration of whatever nature shall accrue or be payable to any director of the Bank, except such as may be approved in writing by the Minister, or the appointed person, as the case may be, in relation to any activity required as aforesaid by the Minister, or the appointed person, as the case may be.

(5) For the avoidance of doubt, it is hereby declared that the assumption of control under paragraph 49(2)(a) shall not have the effect of conferring on, or vesting in, the Minister, or the appointed person, as the case may be, any title to, or any beneficial interest in, any property of the Bank to which the order relates.

(6) Any person who contravenes subsection (1) or (4) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction.

**Power to reduce share capital and to cancel shares of the Bank when subject to an order under paragraph 49(2)(a)**

**53.** (1) Notwithstanding anything in any written law or the constituent documents of the Bank, where the Minister, or an appointed person, has, under paragraph 49(2)(a), assumed control of the Bank and the paid-up capital of the Bank is lost or unrepresented by available assets, the Minister or the appointed person, as the case may be, may apply to the High Court for an order to reduce the share capital of the Bank by cancelling any portion of its paid-up capital which is lost or unrepresented by available assets.

(2) Where the High Court makes an order under subsection (1) to reduce the share capital of the Bank, the Court may—

(a) on an application by the Minister, or the appointed person, as the case may be; and

- (b) if, on the expiry of thirty days from the date of any call made by the Bank on its members to pay on their respective shares, payment on any shares has not been made,

also order that such shares for which payment has not been made be cancelled accordingly.

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

(4) The powers conferred on the Minister and the appointed person under subsections (1), (2) and (3) shall be in addition to any powers exercisable under subsection 64(1) of the Companies Act 1965, and where an application is made to the High Court under subsection (1)—

- (a) the High Court may exercise any of the powers conferred on it under section 64 of the Companies Act 1965 in relation to an application for confirmation referred to therein; and
- (b) subsections 64(9) and 64(10) of the Companies Act 1965 shall apply in relation thereto.

### **Loans to the Bank and acquisition of its shares**

**54.** (1) Where the Minister considers that the Bank—

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

the Minister may—

- (aa) grant loans to the Bank against the security of the Bank's own shares, or any other shares, or any other sufficient security;
- (bb) purchase any shares of the Bank for the purpose of controlling the business of the Bank; or
- (cc) grant loans to a licensed institution to purchase any shares, or the whole or any part of the properties and liabilities of the Bank.

(2) The Minister, or the licensed institution to which the Minister granted loans to under paragraph (1)(cc), shall dispose of any shares purchased by it in pursuance of subsection (1) at such time when the Minister is satisfied that the reasons for which the shares were purchased have ceased to exist.

### **Extension of jurisdiction under this Part to related companies of the Bank**

**55.** Any reference in this Part to the Bank shall be read as including a reference to—

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

### **Moratorium**

**56.** (1) The Minister may, if he considers it to be in the interest of the depositors of the Bank, by order published in the *Gazette*—

- (a) prohibit the Bank from carrying on all its business, or such part of it as may be set out in the order;
- (b) prohibit the Bank from doing or performing any act or function connected with all its business or any part of it as may be set out in the order;
- (c) authorize any person to apply to the High Court for an order staying for a period not exceeding six months the commencement or continuance of all, or any class, category or description of, actions and proceedings of a civil nature by or against the Bank with respect to all business, or any class, category or description of business, of the Bank; or
- (d) provide for all such matters of an incidental, ancillary or consequential nature, or for which it may be otherwise necessary or expedient to provide, in order to give effect to the matters under paragraphs (a), (b) and (c), including provisions for the taking into the custody or control of the Minister of property, books, documents or effects of the Bank.

(2) An order under subsection (1) may, from time to time, be modified, amended, altered, varied or replaced either prospectively, or where it is not impracticable or unjust to do so, retrospectively, by a further order under subsection (1).

(3) An order under subsection (1) shall not be made unless the Bank has been given a reasonable opportunity of making representations against, or in relation to, the proposed order, provided that where any delay would be detrimental to the interests of the depositors, the order may be made first, and the opportunity to make representations shall be given immediately after the order has been made, and in consequence of such representations, the order may, either be confirmed, or be modified, amended, varied, altered or replaced under subsection (2), or be revoked under subsection (4), by the Minister.

(4) An order made under subsection (1), or by virtue of subsection (2), may at any time be revoked by the Minister by an order, and any such order may contain all such orders, directions or provisions of an incidental, ancillary or consequential nature as may be deemed necessary by the Minister.

### **Priority of payments in the event of insolvency of the Bank**

**57.** (1) Where the Bank becomes unable to meet all or any of its obligations, or suspends payment to any extent, the properties of the Bank in Malaysia shall be available to meet all liabilities of the Bank in respect of deposits in Malaysia in priority over all other liabilities of the Bank in Malaysia.

(2) In determining the total liabilities of the Bank to a person under subsection (1), no account shall be taken in respect of a deposit if it was made with the Bank, or received by the Bank, in contravention of this Act after the appointed date, or if it was otherwise unlawfully made or received whether before or after the appointed date.

(3) In determining the total liabilities of the Bank to a person under subsection (1), there shall be deducted any right of set-off which existed immediately before the provisions of subsection (1) became applicable to it.

(4) The provisions of this section shall have effect notwithstanding anything inconsistent therewith or contrary thereto in any written law other than this Act, or in any rule of law.

## PART X

### INVESTIGATION, SEARCH AND SEIZURE

#### **Appointment and functions of investigating officers**

**58.** (1) For the purposes of this Part, the Minister may appoint any person to be an investigating officer.

(2) Subject to subsection (3), an investigating officer appointed under subsection (1) shall have all the powers, functions, and duties conferred on an investigating officer under this Act.

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

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

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

#### **Power to search and seize**

**59.** (1) If it appears to a Magistrate upon written information on oath and after such enquiry as he considers necessary that there is a reasonable cause to believe that—

- (a) any premises have been used or are about to be used for;
- or



(b) there is in any premises evidence necessary to establish,

the commission of an offence under this Act, the Magistrate may issue a warrant authorizing an investigating officer, at any reasonable time by day or by night and with or without assistance—

(aa) to enter any premises and there search for, seize and detain any property, book or other document;

(bb) to inspect, make copies of, or take extracts from, any book or other document so seized and detained;

(cc) to take possession of, and remove from the premises, any property, book or other document so seized and detained;

(dd) to search any person who is in, or on, such premises, and for the purpose of such search detain such person and remove him to such place as may be necessary to facilitate such search, and seize and detain any property, book or other document found on such person;

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

(ff) to stop, detain or search any conveyance.

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

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

(b) forcibly enter such premises and every part thereof;

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

(d) detain all or any person found on any premises, or in any conveyance, searched under subsection (1) until such premises or conveyance have been searched.

(3) Notwithstanding subsection (1), if an investigating officer has reasonable cause to believe that by reason of delay in obtaining a search warrant—

(a) the investigation would be adversely affected;

(b) the object of the entry is likely to be frustrated;

- (c) the book, minute book, register, document, material or any other thing sought may be removed or interfered with; or
- (d) the evidence sought may be tampered with or destroyed,

he may exercise in, and in respect of, the premises all the powers referred to in subsection (1) in as full and ample a manner as if he were authorized to do so by a warrant issued under subsection (1).

(4) A list of all things seized in the course of a search made under this section and of the premises in which they are respectively found shall be prepared by the investigating officer conducting the search and signed by him.

(5) The occupant of the premises entered under subsection (1), or some person on his behalf, shall in every instance be permitted to attend during the search, and a copy of the list prepared and signed under this section shall be delivered to such occupant or person at his request.

(6) An investigating officer shall, unless otherwise ordered by any court—

- (a) on the close of investigations or any proceedings arising therefrom; or
- (b) with the prior written consent of any officer of the Bank authorized by the Minister to act on his behalf for this purpose, or of any investigating officer superior to him in rank, at any time before the close of investigations, release any property, book or other document seized, detained or removed by him or any other investigating officer, to such person as he determines to be lawfully entitled to the property, book or other document if he is satisfied that it is not required for the purpose of any prosecution or proceedings under this Act, or for the purpose of any prosecution or proceedings under this Act, or for the purpose of any prosecution under any other written law.

(7) A record in writing shall be made by the officer effecting any release of any property, book or other document under subsection (6) in respect of such release specifying therein in detail the circumstances of, and the reason for, such release.

(8) Where the investigating officer is unable to determine the person who is lawfully entitled to the property, book or other document or where there is more than one claimant to such property, book or other document, the investigating officer shall report the matter to a Magistrate who shall then deal with the property, book or other document as provided for in subsections 413(2), (3) and (4) and sections 414, 415 and 416 of the Criminal Procedure Code [Act 593].

### **Search of person**

**60.** (1) An investigating officer may search any person whom he has reason to believe has on his person any property, book or other document, or other article necessary, in his opinion, for the purpose of investigating into any offence under this Act, and for the purpose of such search may detain such person for such period as may be necessary to have the search carried out, which shall not in any case exceed twenty-four hours without the authorization of a Magistrate, and may remove him in custody to such place as may be necessary to facilitate such search.

(2) An investigating officer making a search of a person under subsection (1) may seize, detain, or take possession of any property, book or other document, or article, found upon such person for the purpose of the investigation being carried out by him.

(3) No female person shall be searched under this section or under section 59 except by another female.

### **Obstruction to exercise of powers by an investigating officer**

**61.** (1) No person shall—

- (a) refuse any investigating officer exercising his powers under section 59 or 60, access to any premises or part thereof, or fail to submit to the search of his person;
- (b) assault, obstruct, hinder or delay such investigating officer in effecting any entrance which he is entitled to effect;
- (c) fail to comply with any lawful demands of any investigating officer in the execution of his duties under section 59 or 60;
- (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, book, other document, or article in relation to which the investigating officer has reasonable grounds for suspecting that an offence has been or is being committed under this Act;
- (f) rescue or endeavour to rescue anything 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; or
- (h) before or after any seizure, break or otherwise destroy any thing to prevent the seizure thereof, or the securing of the thing.

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

### **Requirement to provide translation**

**62.** (1) Where an investigating officer finds, seizes, detains, or takes possession of, any book or other document in the exercise of any power under this Part, and such book or other document 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 book or other document, to furnish to the investigating officer a translation in the national language of such book or other document within such period as, in the opinion of the investigating officer, would be reasonable having regard to the length of the book or other document, or other circumstances relating to it.

(2) No person shall knowingly furnish a translation under subsection (1) which is not an accurate translation, or knowingly make a translation under that subsection which is not accurate.

(3) Where the person required to furnish a translation under subsection (1) is not the person who is suspected to have committed the offence under investigation, the Minister shall pay to him reasonable fees for the translation.

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

### **Power to examine persons**

**63.** (1) Where an investigating officer suspects any person to have committed an offence under this Act, he may, if in his opinion it is reasonably necessary to do so for the purposes of investigation into such offence—

- (a) order any person orally or in writing to attend before him for the purpose of being examined orally by the investigating officer in relation to any matter which may, in the opinion of the investigating officer, assist in the investigation into the offence;
- (b) order any person orally or in writing to produce before the investigating officer books, other documents, property, articles, or things which may, in the opinion of the investigating officer, assist in the investigation into the offence; or
- (c) by written notice 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, in the opinion of the investigating officer, would be of assistance in the investigation into the offence.

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

- (a) a person to whom an order under paragraph (1)(a) has been given shall attend in accordance with the terms of the order to be examined, and shall continue to so attend from day to day as directed by the investigating officer until the examination is completed, and shall during such examination disclose all information which is within his knowledge, or which is available to him, or which is capable of being obtained by him, in respect of the matter

in relation to which he is being examined, whether or not any question is put to him with regard thereto, and where any question is put to him he shall answer the same truthfully and to the best of his knowledge and belief, and shall not refuse to answer any question on the ground that it tends to incriminate him or his spouse;

- (b) a person to whom an order has been given under paragraph (1)(b) shall not conceal, hide, destroy, alter, remove from or send out of Malaysia, or deal with, expend, or dispose of, any book, other document, property, article, or thing specified in the order, or alter or deface any entry in any such book or other document, or cause the same to be done, or assist or conspire to do the same; and
- (c) a person to whom a written notice has been given under paragraph (1)(c) shall, in his statement made on oath or affirmation, furnish and disclose truthfully all information required under the notice which is within his knowledge, or which is available to him, or which is capable of being obtained by him, and shall not fail to furnish or disclose the same on the ground that it tends to incriminate him or his spouse.

(3) A person to whom an order or a notice is given under subsection (1) shall comply with such notice or order and with the provisions of subsection (2) in relation thereto, notwithstanding the provisions of any written law, whether enacted before or after the commencement of this Act, or of any oath, undertaking or requirement of secrecy, to the contrary, or of any obligation under any contract, agreement, whether express or implied, to the contrary.

(4) Where any person discloses any information or produces any property, book, other document, article, or thing, pursuant to subsections (1) and (2), neither the first mentioned person, nor any other person on whose behalf or direction or as whose agent or employee, the first mentioned person may be acting, shall, on account of such disclosure or production, be liable to any prosecution for any offence under or by virtue of any law, or to any 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, book, other document, 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 the purpose of ascertaining whether anything relevant to the investigation is upon such person, whether concealed or otherwise.

(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, and where such person refuses to sign the record, the investigating officer shall endorse thereon under his hand the fact of such refusal and the reason 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, book, other document, article or thing produced under paragraph (1)(b) or otherwise in the course of an examination under paragraph (1)(a) or under a written statement on oath or affirmation made pursuant to paragraph (1)(c), shall, notwithstanding any written law or rule of law to the contrary, be admissible in evidence in any proceedings in any court—

- (a) for, or in relation to, an offence under this Act;
- (b) for, or in relation to, any other matter under this Act; or
- (c) for, or in relation to, any offence under any other written law,

regardless whether such proceedings are against the person who was examined, or who produced the property, book, other document, article or thing, or who made the written statement on oath or affirmation, or against any other person.

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

**Specific persons in respect of whom powers of investigation may be exercised**

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

(a) any person—

- (i) who is a past or present business associate;
- (ii) who is or was a relative;
- (iii) who has or had made a deposit with, or who is or was a creditor;
- (iv) who is or was concerned with the control or management, in whole or in part of the affairs; or
- (v) who has or had an interest in the shares, or otherwise has or had an interest in the property,

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

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

(c) any body corporate or unincorporate in which any person referred to in paragraph (a) is a director or officer or, where such body is a corporation, has an interest in the shares of the corporation.

**Assistance to police or other public officer**

**65.** The Minister may on his 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 book or other document seized, detained or taken possession of under section 59 or 60, or of any record of examination under paragraph 63(1)(a), or of any written statement on oath or affirmation made under paragraph 63(1)(c), or of any book or other document produced under paragraph 63(1)(b), or otherwise in the course of any examination under paragraph 63(1)(a), or under any written statement on oath or affirmation made pursuant to paragraph 63(1)(c), and such police officer



or other public officer may make such use of such copy of such record, statement, book or other document 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, book, other document, 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**

**66.** 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 or any other written law which the Minister may prescribe.

PART XI

INFORMATION AND SECRECY

**Restriction on inquiring specifically into affairs of particular customer**

**67.** Without prejudice to the powers of inspection, examination, investigation or inquiry conferred on the Minister or on an investigating officer under this Act, nothing in this Act shall authorize the Minister to inquire specifically into the affairs of any individual customer of the Bank.

**Secrecy**

**68.** (1) No director or officer of the Bank or any agent appointed by the Bank to undertake any part of its business, whether during his tenure of office, or during his employment, or thereafter, and no person who for any reason, has by any means access to any

record, book, register, correspondence, or other document, or material, relating to the affairs or, in particular, the account, of any particular customer of the Bank, shall give, produce, publish or otherwise disclose, to any person, or make a record for any person, of any information or document relating to the affairs or account of such customer.

(2) This section shall not apply to any information or document which at the time of the disclosure is, or has already been made, lawfully available to the public from any source other than the Bank, or to any information which is in the form of a summary or collection of information set out in such manner as does not enable information relating to the Bank or any particular customer of the Bank to be ascertained from it.

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

(4) Any person who fails to comply with subsection (1) or (3) shall be guilty of an offence and shall, on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both.

### **Disclosure for facilitating performance of functions of Minister**

**69.** The provisions of section 68 shall not apply to the disclosure of any information or document—

- (a) to the Minister or to any officer of the Government or to any person appointed by the Minister under section 88, where the disclosure is for the purpose of the exercise of powers, the performance of functions or the discharge of duties of the Minister, or of the officer of the Government or of the person appointed under section 88; or
- (b) to any person rendering professional services to the Minister in relation to any matter of law, accountancy, valuation, or any other matter requiring professional knowledge, where he is authorized in writing by the Minister to obtain information from the Bank for the purpose of his services to the Minister.

**Other permitted disclosures**

**70.** (1) The provisions of section 68 shall not apply to the disclosure of any information or document—

- (a) which the customer, or his personal representative, has given permission in writing to be disclosed;
- (b) in a case where the customer is declared bankrupt, or, if the customer is a corporation, the corporation is being or has been wound up, in Malaysia or in any country, territory or place outside Malaysia;
- (c) where the information is required by a party to a *bona fide* commercial transaction, or to a prospective *bona fide* commercial transaction, to which the customer is also a party, to assess the creditworthiness of the customer relating to such transaction, provided that the information required is of a general nature and does not enable the details of the customer's account or affairs to be ascertained;
- (d) for the purposes of any criminal proceedings or in respect of any civil proceedings—
  - (i) between the Bank and its customer or his guarantor relating to the customer's transaction with the Bank; or
  - (ii) between the Bank and two or more parties making adverse claims to money in a customer's account where the Bank seeks relief by way of interpleader;
- (e) where the Bank has been served a garnishee order attaching moneys in the account of the customer;
- (f) to an agent appointed by the Bank with the prior written consent of the Minister;
- (g) where such disclosure is required or authorized under any other provision of this Act;
- (h) where such disclosure is authorized under any Federal law to be made to a police officer investigating into any offence under such law and such disclosure to the police officer being, in any case, limited to the accounts and affairs of the person suspected of the offence; or
- (i) where such disclosure is authorized in writing by the Minister.

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

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

(4) Any person who fails to comply with subsection (2) or (3) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both.

### **Disclosure under Banker's Books (Evidence) Act 1949**

**71.** Nothing in this Part shall limit any powers conferred upon the High Court or a judge thereof by the Banker's Books (Evidence) Act 1949 [Act 33] or to prohibit obedience to an order made under that Act.

## PART XII

### OFFENCES

#### **Offences in relation to entries in books, documents, etc.**

**72.** (1) No person shall, with intent to deceive—

- (a) make or cause to be made a false entry;
- (b) omit to make, or cause to be omitted, any entry; or
- (c) alter, abstract, conceal or destroy, or cause to be altered, abstracted, concealed or destroyed, any entry,

in any book or record, or in any report, slip, statement or other document, relating to the business, affairs, transactions, condition, property, assets, liabilities or accounts, of the Bank.

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

### **Offences by persons responsible for the Bank**

**73.** (1) Without prejudice to subsections 10(2), 17(11), 25(2), 32(3), 33(3), 34(2), 35(9), 36(5), 37(5), 38(2), 40(4), 42(2), 43(3), 47(3), 48(2), 49(6) and 90(6), where any offence against any provision of this Act has been committed by the Bank, any person who at the time of the commission of the offence was a person responsible for the Bank shall be guilty of that offence.

(2) Where any person (hereinafter in this subsection referred to as the “principal”) would be liable under this Act to any punishment or penalty for any act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any clerk, servant or agent of his or of the clerk or servant of such agent:

Provided that such act, omission, neglect or default was committed by the principal’s clerk or servant in the course of his employment, or by the agent when acting on behalf of the principal, or by the clerk or servant of such agent in the course of his employment by such agent or otherwise on behalf of the agent.

### **Defence**

**74.** It shall be a defence for any person who is charged with an offence by virtue of being a person responsible for the Bank to prove that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in the post held and to all the circumstances.

### **Joinder of offences**

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

**Power of Minister to compound offences**

**76.** (1) The Minister may, in a case where he deems it fit and proper to do so and subject to the prior written consent of the Public Prosecutor, compound any offence committed by any person which is punishable under any provision of this Act, by making a written offer to such person to compound the offence by paying to the Minister within such time as may be specified in the offer such sum of money as may be specified in the offer which shall not exceed fifty per centum of the amount of the maximum fine (including the daily fine, if any, in the case of a continuing offence) to which that person would have been liable if he had been convicted of the offence.

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

(3) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer, or any extension of it which the Minister may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

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

**Prosecution**

**77.** No prosecution shall be instituted in respect of any offence under this Act or any regulation made thereunder without the sanction in writing of the Public Prosecutor.

**Offences to be seizable offences**

**78.** 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 subsection 58(1) may arrest without warrant any person whom he reasonably suspects to have committed or to be committing any such offence.

**Duty of investigating officer to make over arrested person to police**

**79.** An investigating officer appointed under subsection 58(1) making an arrest under section 78 shall without unnecessary delay make over the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and thereafter the person so arrested shall be dealt with as provided by the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

**Attempts, preparations, abetments and conspiracies punishable as offences**

**80.** (1) Any person who—

- (a) attempts to commit any offence under this Act;
- (b) does any act preparatory to or in furtherance of the commission of any 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) any offence under this Act, whether or not the offence is committed in consequence thereof,

shall be guilty of such offence and shall be liable to the penalty provided for such offence.

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

**General penalty**

**81.** Any person who contravenes—

- (a) any provision of this Act; or
- (b) any specification or requirement made, or any order in writing, direction, instruction, or notice given, or any limit, term, condition or restriction imposed, or any other thing done, in the exercise of any power conferred under, pursuant to, or by virtue of, any provision of this Act,

shall be guilty of an offence under such provision, and if no penalty is expressly provided for the offence in this Act, shall on conviction be liable to a fine not exceeding five hundred thousand

ringgit and, in the case of a continuing offence, shall, in addition, be liable to a daily fine not exceeding one thousand ringgit for each day during which the offence continues.

## PART XIII

### GENERAL PROVISIONS

#### **Submission to Minister of information required by him**

**82.** (1) If, for the purpose of the exercise of any of his powers, the performance of any of his functions, or the discharge of any of his duties, under this Act, or under any other written law, the Minister requires any information from the Bank or from any corporation related to the Bank, on any matter relating to the affairs or business of the Bank or such corporation, the Bank or such corporation, shall submit such information to the Minister.

(2) Where the information obtained by the Minister under subsection (1) relates to the account or affairs of any customer of the Bank or corporation supplying the information, that information shall be secret as between the Minister and the Bank or corporation supplying it, except where it is to be used for the purpose of prosecuting any person for any offence under any written law.

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

#### **Indemnity**

**83.** (1) No action, suit, prosecution or other proceeding shall lie or be brought, instituted, or maintained in any court or before any other authority against—

- (a) the Government or a State Government;
- (b) the Minister;
- (c) any officer or employee of any such Government, either personally or in his official capacity; or



- (d) any person lawfully acting on behalf of any such Government, or on behalf of the Minister or on behalf of any such officer or employee, either personally or in his capacity as a person acting on such behalf,

for or on account, or in respect of, any act done or statement made or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance or in execution of, or intended pursuance or execution of, this Act, or any order in writing, direction, instruction, notice or other thing issued under this Act:

Provided that such act or such statement was done or made, or was omitted to be done or made, in good faith.

(2) For the purposes of this section—

- (a) any member of the administration of the Government or a State Government shall be deemed to be an officer of the respective Government; and
- (b) any person appointed by the Minister under this Act shall be deemed to be an officer of the Government.

(3) In subsection (2) “member of the administration” has the meaning assigned to it in Clause (2) of Article 160 of the Federal Constitution.

### **Control of advertisements issued by the Bank**

**84.** (1) If the Minister is of the opinion that any statement made in an advertisement issued by the Bank is false, deceptive, offensive or misleading, the Minister may by notice in writing direct the Bank to do all or any of the following:

- (a) cease the continued issue of the advertisement;
- (b) modify the advertisement in such manner as may be specified by the Minister;
- (c) cease the issue of any advertisement which is, wholly or substantially, a repetition of such advertisement;
- (d) take all practical steps to withdraw the advertisement from every and all publication or display of it; or
- (e) publish a statement in like manner as the advertisement issued earlier to retract or modify such advertisement.

(2) The Minister may revoke or amend any directions issued under subsection (1) by a notice in writing to the Bank.

(3) Where the Bank fails to comply with subsection (1), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit and, in the case of a continuing offence to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

### **Prohibition on receipt of gifts, commissions, etc.**

**85.** (1) No director, officer or agent of the Bank or any other person being a person receiving any payment or remuneration in any capacity, professional or otherwise, from the Bank, shall directly or indirectly, ask for or receive, or consent or agree to receive, any gift, commission, emolument, gratuity, money, property, token or thing of value, or any service, facility or other intangible benefit, whether for his own personal benefit or advantage or for the benefit or advantage of any other person, from any person other than from the Bank, for procuring or endeavouring to procure for any person—

- (a) any credit facility from the Bank;
- (b) the purchase or discount of any draft, note, cheque, bill of exchange or other obligation by the Bank;
- (c) permission to overdraw any account with the Bank; or
- (d) any other thing relating to the business or affairs of the Bank.

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

(3) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both.

### **Islamic banking or financial business**

**86.** (1) The Bank shall consult the Minister before carrying on Islamic banking business or Islamic financial business.

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

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

(4) For the purposes of this section—

(a) “Islamic banking business” has the meaning assigned to it by the Islamic Banking Act 1983 [*Act 276*]; and

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

## **Regulations**

**87.** The Minister may, from time to time, make such regulations as may be necessary or expedient for giving full effect to the provisions of this Act, for carrying out or achieving the objects and purposes of this Act or any provisions thereof, or for the further, better or more convenient implementation of the provisions of this Act.

## **Appointment of persons**

**88.** The Minister may, either generally or in any particular case, appoint any person who is not an officer of the Government, to render such assistance as he may specify in the exercise of his powers, the performance of his functions, or the discharge of his duties, under this Act.

## **Protection under the Bills of Exchange Act 1949**

**89.** In the performance of its functions under this Act, the Bank shall be accorded the protection of a banker under the Bills of Exchange Act 1949 [*Act 204*].

**Declaration of holidays**

**90.** (1) The Minister may, at any time by notice in the *Gazette*, declare any day or days to be a holiday or holidays for the Bank.

(2) The Bank shall not do any business with the public on any day declared as holiday for the Bank under the provisions of subsection (1).

(3) A day declared as holiday under subsection (1) shall not necessarily be a public holiday and nothing in this section shall affect the provisions of any written law relating to public holidays.

(4) Any reference to a holiday for the Bank, in any written law shall include—

(a) any day declared to be a holiday under subsection (1);  
and

(b) any day which is a public holiday within the meaning of any written law relating to public holidays.

(5) Where the Bank fails to comply with subsection (1), it shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million ringgit.

(6) Where the Bank is guilty of an offence under subsection (5), any person who at the time of the commission of the offence was a person responsible for the Bank shall also be guilty of that offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both.

**Application of Companies Act 1965**

**91.** The Bank, which is incorporated under the Companies Act 1965, shall be subject to the provisions of that Act as well as to provisions of this Act, 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 Bank, the provisions of this Act shall prevail.

### **Exemptions**

**92.** The Islamic Banking Act 1983 and sections 25, 26, 27 and 28 of the Banking and Financial Institutions Act 1989 shall not apply to the Bank so long as the Bank is wholly owned by the Government.

### **Contracts not affected**

**93.** Except as otherwise provided in this Act, no contract, agreement or arrangement entered into by or with Bank Simpanan Nasional before the coming into force of this Act but which is now in contravention of this Act shall be void solely by reason of such contravention.

### **Repeal and transitional provisions**

**94.** (1) The Bank Simpanan Nasional Act 1974 is repealed.

(2) Notwithstanding subsection (1), any regulations made under or in accordance with the repealed Act shall in so far as they are not inconsistent with this Act, continue in force until repealed, revoked or replaced by new regulations made under this Act.

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**LAWS OF MALAYSIA**

**Act 571**

**BANK SIMPANAN NASIONAL BERHAD ACT 1997**

LIST OF AMENDMENTS

Amending law

Short title

In force from

– NIL –

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**LAWS OF MALAYSIA****Act 571****BANK SIMPANAN NASIONAL BERHAD ACT 1997**

## LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
	- NIL -	

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