

A BILL

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An Act to amend the Development Financial Institutions Act 2002.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Development Financial Institutions (Amendment) Act 2014.

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

Amendment of section 3

3. The Development Financial Institutions Act 2002 [Act 618], which is referred to as the “principal Act” in this Act, is amended —

(a) in subsection (1):

(i) by substituting for the definition of “Bank” the following definition:

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

(ii) by inserting after the definition of “related”, the following definition:

‘ “books” has the same meaning as in subsection 4(1) of the Companies Act 1965;’;

(iii) by substituting for the definition of “specify” the following definition:

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

(iv) by substituting for the definition of “document” the following definition:

‘ “document” has the same meaning as in the Evidence Act 1950 [Act 56] and includes books;’;

- (v) by substituting for the definition of “Governor” the following definition:

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

- (vi) by substituting for the definition of “property” the following definition:

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

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

- (vii) by inserting after the definition of “prescribed institution”, the following definition:

‘ “Shariah committee” means the Shariah committee established pursuant to section 33F;’;

- (viii) by substituting for the definition of “credit facility” the following definition:

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

advance, loan, guarantee, credit insurance or other facility which is made in accordance with Shariah;”;

- (ix) by inserting after the definition of “Chief Executive Officer”, the following definition:

‘ “computer” has the same meaning as in section 3 of the Evidence Act 1950;”;

- (x) by inserting after the definition of “liabilities”, the following definition:

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

- (xi) by inserting after the definition of “Minister”, the following definitions:

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

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

(a) produced by a computer;

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

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

- (xii) by inserting after the definition of “officer”, the following definition:

‘ “senior officer” means a person, other than the Chief Executive Officer or a director, having authority and responsibility for planning, directing or controlling the activities of a prescribed institution including the chief operating officer, members of decision-making committees and other persons performing key functions such as risk management, compliance, internal audit or other functions as may be specified by the Bank, but shall not include a member of a Shariah committee;”;

- (xiii) by substituting for the definition of “office” the following definition:

‘ “office” includes the principal place of business, a branch, an agency, a mobile place of business, a place of business set up

and maintained for a limited period only, any other place of business or an electronic terminal;’;

- (xiv) by substituting for the definition of “director” the following definition:

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

- (a) a corporation, has the same meaning assigned to it in subsection 4(1) of the Companies Act 1965;
- (b) a co-operative society, means a member of the board, or other governing body, of the co-operative society;
- (c) a statutory body, means a member of the board, committee, council or other governing body 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 a person having the direction and control of the management of its business or affairs;’;

- (xv) by substituting for the definition of “controller” the following definition:

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

- (a) has an interest in more than fifty per cent of the shares of the institution;
- (b) has the power to appoint or cause to be appointed a majority of the directors of the institution;
- (c) has the power to make or cause to be made decisions in respect of the business or administration of the institution, and to give effect to such decisions or cause them to be given effect to; or
- (d) is a person in accordance with whose directions, instructions or wishes the directors, chief executive officer or senior officers of the institution are accustomed or under obligation, whether formal or informal, to act,

and the word “control” shall be construed accordingly;”;

- (xvi) by inserting after the definition of “controller”, the following definition:

‘ “chairman” means chairman of the board of directors;”;

- (xvii) by substituting for the definition of “relative” the following definition:

‘ “relative” in relation to an individual, subject to subsection (1A), means—

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

- (xviii) by inserting after the definition of “associate”, the following definition:

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

- (xix) by substituting for the definition of “capital funds” the following definition:

‘ “capital funds” means paid-up capital and reserves, and includes, for the purposes of sections 33A, 38 and 39, the whole or such proportion of any other class, category or description of capital as the Bank may specify;”;

- (b) by inserting after subsection (1) the following subsection:

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

- (a) the adoption of any person by another under any written law of Malaysia or any country, territory or place outside Malaysia, or under any custom recognized by any class of persons in Malaysia or in any country, territory or place outside Malaysia, shall be treated as creating between the adopter and the adopted person the same natural relationship as the adoptive relationship, and other relationships in relation to it shall be determined accordingly; and
 - (b) references therein to a relationship include, where relevant, a relationship by half-blood.”.
- (c) in subsection (2):
 - (i) by substituting for paragraph (a) for the following paragraph:

‘ “persons acting in concert” means persons who have entered into an agreement, arrangement or understanding, co-operate to acquire jointly or severally interests in shares of a corporation for the purpose of obtaining or consolidating control of that corporation or act jointly for the purpose of exercising control over a corporation by means of interests in shares of that corporation already held by them jointly or severally; and’;
 - (ii) in paragraph (b), by deleting the word “or” at the end of subparagraph (iv);
 - (iii) in subparagraph (b)(v), by substituting for the full stop the words “; or”; and
 - (iv) by inserting after subparagraph (b)(v) the following subparagraph:

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

Amendment of section 4

- 4. Section 4 of the principal Act is amended —
 - (a) in subsection (2) by inserting after the word “authorise” the words “a Deputy Governor or”;
 - (b) by inserting after subsection (2) the following subsection:

“(2A) The Bank may establish and authorize a committee consisting of members as the Bank may determine for the purpose of exercising any of the powers or performing any of the functions of the Bank under this Act.”; and

- (c) in subsection (3), by inserting after the word “functions” the words “ on behalf of and in the name of the Bank”.

Amendment of section 5

5. The principal Act is amended by substituting for section 5 the following section —

“Board of directors

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

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

- (a) ensure that the strategies pursued by the prescribed institution are consistent with its constituent documents and any specification made by the Bank pursuant to subsection 28(1), and that the prescribed institution has the capacity and capability to manage such strategies;
- (b) set and oversee the implementation of business and risk objectives and strategies and in doing so shall have regard to the long term viability of the prescribed institution and reasonable standards of fair dealing;
- (c) ensure and oversee the effective design and implementation of sound internal controls, compliance and risk management systems commensurate with the nature, scale and complexity of the business and structure of the prescribed institution;
- (d) oversee the performance of the senior management in managing the business and affairs of the prescribed institution;
- (e) ensure that there is a reliable and transparent financial reporting process within the prescribed institution; and
- (f) promote timely and effective communications between the prescribed institution and the Bank on matters affecting or that may affect the safety and soundness of the prescribed institution.

(3) In carrying out its functions or duties under this section, the board of directors of a prescribed institution shall have regard to the interests of the customers or depositors of the prescribed institution.”.

New section 5A

6. The principal Act is amended by inserting after section 5 the following section:

“Duties of directors

5A. (1) A director of a prescribed institution shall at all times—

- (a) act in good faith in the best interests of the prescribed institution;
- (b) exercise reasonable care, skill and diligence with—
 - (i) the knowledge, skill and experience which may reasonably be expected of a director having the same responsibilities; and
 - (ii) any additional knowledge, skill and experience which the director has;
- (c) only exercise powers conferred on him for the purposes for which such powers are conferred;
- (d) exercise sound and independent judgment; and
- (e) comply with any standards specified by the Bank under subsection 33D(2) which are applicable to a director.

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

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

Amendment of section 6

7. The principal Act is amended by substituting for section 6 the following section: —

“Appointment of Chief Executive Officer and directors

6. (1) Except with prior written approval of the Minister, no prescribed institution shall appoint or reappoint any person as its Chief Executive Officer or director.

(2) Notwithstanding subsection (1), a prescribed institution shall, prior to obtaining the written approval of the Minister for the appointment or reappointment of any person as its Chief Executive Officer or director, seek the Bank's verification that such person has complied with the criteria set out in the First Schedule.

(3) For the avoidance of doubt, the prescribed institution shall only submit for approval to the Minister, a candidate who has been verified by the Bank as having complied with the criteria set out in the First Schedule.

(4) No prescribed institution shall appoint or reappoint any person as its Chief Executive Officer or director and no person shall accept any appointment or reappointment as a Chief Executive Officer or director of a prescribed institution, unless such person has been verified by the Bank as having complied with the criteria set out in the First Schedule.

(5) A prescribed institution shall notify the Bank of the appointment or reappointment of its Chief Executive Officer or its directors within fourteen days from the date of the appointment.”.

New section 6A

8. The principal Act is amended by inserting after section 6 the following section:

“Compliance with the criteria in First Schedule

6A. A chairman, director, Chief Executive Officer or senior officer of a prescribed institution shall at all times comply with the criteria set out in the First Schedule.”.

Amendment of section 7

9. Section 7 of the principal Act is amended by deleting subsection (2).

Amendment of section 8

10. Section 8 of the principal Act is amended —

(a) by substituting for the shoulder note the following shoulder note:

“Cessation of office”;

(b) by substituting for subsection (1) the following subsection:

“(1) Where a—

(a) director or Chief Executive Officer of a prescribed institution becomes disqualified by virtue of subsection 7(1); or

- (b) chairman, director, Chief Executive Officer or senior officer of a prescribed institution no longer complies with any of the criteria set out in the First Schedule,

he shall immediately cease to hold office and act in such capacity.”;

- (c) by inserting after subsection (1), the following subsections:

“(1A) The prescribed institution shall immediately —

- (a) in the case of paragraph 1(a), terminate his appointment in such capacity; or
- (b) in the case of paragraph 1(b), remove him from such office.

(1B) Notwithstanding anything contained in any contract of service or any other agreement relating to his appointment, such director or Chief Executive Officer terminated under paragraph (1A)(a) shall not be entitled to claim any compensation for such termination.”;

- (d) by substituting for subsection (2) the following subsection:

“(2) Notwithstanding subsection (1), the Bank, with the concurrence of the Minister, may direct the prescribed institution —

- (a) to terminate the appointment of the director or Chief Executive Officer who becomes disqualified by virtue of subsection 7(1); or
- (b) to remove the director or Chief Executive Officer who no longer complies with any of the criteria as set out in the First Schedule,

and the prescribed institution shall comply with such direction to terminate the appointment of that person in such capacity or remove that person from such office, as the case may be, and notwithstanding anything contained in any contract of service or any other agreement relating to his appointment, the director or Chief Executive Officer terminated under paragraph (2)(a) shall not be entitled to claim any compensation for such termination.”; and

- (e) by deleting subsection (4).

Amendment of section 10

11. Section 10 of the principal Act is amended by deleting subsection (2).

Amendment of section 11

12. Section 11 of the principal Act is amended by deleting subsections (2), (4) and (6).

Amendment of section 12

13. Section 12 of the principal Act is amended by substituting for subsection (3) the following subsection:

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

Amendment of section 13

14. Section 13 of the principal Act is amended by deleting subsection (2).

Amendment of section 14

15. Section 14 of the principal Act is amended by substituting for subsection (2) the following subsection:

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

Amendment of section 15

16. Section 15 of the principal Act is amended by substituting for subsection (2) the following subsection:

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

Amendment of section 16

17. Section 16 of the principal Act is amended by deleting subsection (6).

Amendment of section 18

18. Section 18 of the principal Act is amended by substituting for subsection (3) the following subsection:

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

Amendment of section 19

19. Section 19 of the principal Act is amended —

(a) by substituting for subsection (6) the following subsection:

“(6) Any person who fails to comply with any modification or condition imposed by the Minister under subsection (5) commits an offence and shall on conviction be liable to a fine not exceeding ten million ringgit.”; and

(b) by substituting for subsection (8) the following subsection:

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

Amendment of section 21

20. Section 21 of the principal Act is amended—

(a) by substituting for subsection (2) the following subsection:

“(2) Any person who fails to comply with an order under subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding one year or to a fine not exceeding five million ringgit or to both.”; and

(b) by substituting for subsection (4) the following subsection:

“(4) Any person who fails to comply with an order under subsection (3) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding one year or to a fine not exceeding five million ringgit or to both.”.

Amendment of section 22

21. Section 22 of the principal Act is amended by substituting subsection (4) for the following subsection:

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

Amendment of section 24

22. Section 24 of the principal Act is amended by substituting for subsection (2) the following subsection:

“(2) Any person who fails to comply with the direction under subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding one year or to a fine not exceeding five million ringgit or to both.”.

Amendment of section 25

23. Section 25 of the principal Act is amended —

- (a) in the shoulder note, by inserting after the word “subsidiaries” the words **“and acquisition or holding of material interest in corporations”**;
- (b) in subsection (1), by inserting after the word “Malaysia” the words “, or acquire or hold any material interest in any corporations”;
- (c) by deleting subsection (2);
- (d) in subsection (3), by inserting after the word “subsidiary” the words “, or acquire or hold any material interest in any corporations,”;
- (e) by substituting for subsection (4) the following subsection:

“(4) Every prescribed institution shall at all times comply with any conditions as may be specified by the Bank under subsection (3).”;
and
- (f) by inserting after subsection (4) the following subsection:

“(5) The Bank may specify what constitutes “material interest” for the purposes of subsection (1).

Amendment of section 26

24. Section 26 of the principal Act is amended —

- (a) in the shoulder note, by inserting after the word “subsidiary” the words **“or material interest in corporations”**;
- (b) in subsection (1) —
 - (i) by deleting the word “or” at the end of subparagraph (b);
 - (ii) by substituting for the full stop at the end of paragraph (c) the word “; or” and inserting after that paragraph the following paragraph:

“(d) dispose of all or any of its interest in a corporation in which it holds a material interest, provided that the activities of that corporation —

- (i) is inconsistent with the business carried on by the prescribed institution; or
 - (ii) may directly or indirectly affect the safety and soundness of the prescribed institution.”;
- (c) in subsection (2), by inserting after the word “shall” the words “at all times”; and
- (d) by deleting subsection (3).

Amendment of section 27

25. Section 27 of the principal Act is amended —

- (a) by deleting subsection (2); and
- (b) by substituting for subsection (4) the following subsection;

“(4) Every prescribed institution shall at all times comply with the prohibition, direction or restriction as may be specified by the Bank under subsection (3).”

Amendment of section 28

26. Section 28 of the principal Act is amended—

- (a) by deleting subsection (2);
- (b) by substituting for subsection (3) the following subsection:

“(3) Unless specified by the Bank in writing, no prescribed institution shall grant any credit facility to—

- (a) any of its members, directors or officers or any other person receiving remuneration from it (other than any person receiving remuneration from it in respect of his professional services);
 - (b) any body corporate or unincorporate, or any sole proprietorship, in which any of its members, directors or officers is a director or manager, or for which any of its members, directors or officers is a guarantor or an agent; and
 - (c) any person for whom any of its members, directors or officers has given any guarantee or other undertaking involving financial liability.”;
- (c) by inserting after subsection (3) the following subsection:

“(3A) No prescribed institution shall grant any credit facility to any corporation in the shares of which any of its members, directors or

officers has any interest which, in aggregate, is of an amount that is in excess of such percentage as the Bank may specify.”;

- (d) in subsection (4), by substituting for paragraph (b) the following paragraph:

“(b) where there is no such provision and the prescribed institution is satisfied that special or compassionate circumstances exist, a loan not exceeding such period as may be specified by the Bank.” and

- (e) by substituting for subsection (5) the following subsection:

“(5) For the purposes of this section, “director” or “officer” includes a spouse, child or parent of a director or officer, or any other person as may be specified by the Bank.”.

Amendment of section 29

- 27. Section 29 of the principal Act is amended —

- (a) by substituting for the shoulder note the following shoulder note:

“Single counterparty exposure limit”;

- (b) by substituting for subsection (1) the following subsection:

“(1) Subject to subsection 28(1), no prescribed institution shall have an exposure to a single counterparty, whether in relation to its own funds or any trust fund it manages under section 43, which exceeds the limit as may be specified by the Bank.”;

- (c) by inserting after subsection (1) the following new subsections:

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

(1B) For the purposes of this section, the Bank may specify what constitutes “connected”, “counterparty” or “exposure.”; and

- (d) by deleting subsections (2), (4), (5) and (6).

Amendment of section 31

- 28. Section 31 of the principal Act is amended by deleting subsection (2) and (7).

Amendment of section 32

- 29. Section 32 of the principal Act is amended —

- (a) by deleting subsection (2); and
- (b) by substituting for subsection (5) the following subsection;
 - “(5) Every prescribed institution shall at all times comply with the direction as may be issued by the Bank under subsection (4).”.

Amendment of section 33

30. Section 33 of the principal Act is amended by substituting for subsection (3) the following subsection:

“(3) Every prescribed institution shall at all times comply with the direction as may be issued by the Bank under subsection (1) or (2).”.

New Part IIIA

31. The principal Act is amended by inserting after section 33 the following Part:

“PART IIIA
ISLAMIC FINANCIAL BUSINESS

Division 1
Islamic Financial Business

Prescribed institution permitted to carry on business or activity in accordance with Shariah

33A. (1) Nothing in this Act or Islamic Financial Services Act 2013 [Act 759] shall prohibit or restrict any prescribed institution from –

- (a) carrying on its entire business or activity in accordance with Shariah;
or
- (b) carrying on business or activity in accordance with Shariah in addition to its existing conventional business,

provided that the prescribed institution obtains the prior written approval of the Bank.

- (2) The Bank may, at any time –
 - (a) impose any condition on the approval granted by the Bank under subsection (1); or
 - (b) amend or revoke any existing condition on such approval.
- (3) For the avoidance of doubt –
 - (a) a prescribed institution which has obtained an approval of the Bank under paragraph (1)(b) shall not carry on its entire business or activity in accordance with Shariah unless such

prescribed institution obtains the prior written approval of the Bank under paragraph (1)(a); and

- (b) a prescribed institution shall, in respect of the business or activity in accordance with Shariah which it is approved to carry on under subsection (1), (hereinafter will be referred to as “Islamic financial business”) be subject to the provisions of this Act.
- (4) For the purpose of this Part –
- (a) “Islamic financial business” includes the business of –
 - (i) accepting Islamic deposits on current account, deposit account, savings account or other similar accounts, with or without the business of paying or collecting cheques drawn by or paid in by customers; and
 - (ii) accepting money under an investment account;
 to such extent as the Bank may approve under subsection (1);
 - (b) “Islamic deposit” and “investment account” shall have the meaning as defined in subsection 2(1) of the Islamic Financial Services Act 2013.

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

Requirement on prescribed institution approved under paragraph 33A(1)(b)

33B. (1) A prescribed institution which has obtained the approval of the Bank under paragraph 33A(1)(b) shall—

- (a) establish and maintain at all times a fund with such minimum amount as may be specified by the Bank to fund the operations of its Islamic financial business; and
 - (b) keep all assets and liabilities of its Islamic financial business separate from its other assets and liabilities in such manner as may be specified by the Bank.
- (2) The fund established under paragraph (1)(a) shall—
- (a) be funded from the capital funds of the prescribed institution and other sources of funds as may be specified by the Bank; and
 - (b) be segregated from the capital funds of the prescribed institution for the operations of its business or activity other than the Islamic financial business.

(3) Unless otherwise specified by the Bank, the assets of a prescribed institution which has obtained the approval of the Bank under paragraph 33A(1)(b) in relation to its Islamic financial business shall not be—

- (a) used to fund the operations of its conventional business; and
- (b) subject to the debts or other obligations of the prescribed institution in relation to its conventional business.

(4) The board of directors of a prescribed institution approved under subsection (1) shall, without prejudice to section 5, have due regard to the decision of its Shariah committee in respect of the Islamic financial business carried on by the prescribed institution.

Division 2 *Shariah compliance*

Interpretation and application

33C. (1) In Division 2 to Division 4 of this Part, “prescribed institution” refers to a prescribed institution which has obtained an approval of the Bank under subsection 33A(1) to carry on Islamic financial business.

(2) Notwithstanding subsection (1), in the case of a prescribed institution which has obtained the approval of the Bank under paragraph 33A(1)(b), Division 2 to Division 4 of this Part shall apply only to the business or activity of such prescribed institution is approved to carry on under that paragraph.

Duty to ensure compliance with Shariah

33D. (1) A prescribed institution shall at all times ensure that its business, affairs and activities are in compliance with Shariah.

(2) For the purposes of subsection (1), a compliance with any ruling of the Shariah Advisory Council in respect of any particular business, affair or activity shall be deemed to be in compliance with Shariah in respect of that business, affair or activity.

(3) Where a prescribed institution becomes aware that it is carrying on any of its business, affair or activity in a manner which is not in compliance with Shariah or the advice of its Shariah committee or the advice or ruling of the Shariah Advisory Council, the prescribed institution shall—

- (a) immediately notify the Bank and its Shariah committee of the fact;
- (b) immediately cease from carrying on such business, affair or activity and from taking on any other similar business, affair or activity; and

- (c) within thirty days of becoming aware of such non-compliance or such further period as may be specified by the Bank, submit to the Bank a plan on the rectification of the non-compliance.

(4) The Bank may carry out an assessment as it thinks necessary to determine whether the prescribed institution has rectified the non-compliance referred to in subsection (3).

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

Power of the Bank to specify standards on Shariah matters

33E. (1) The Bank may, in accordance with the advice or ruling of the Shariah Advisory Council, specify standards—

- (a) on Shariah matters in respect of the carrying on of business, affair or activity by a prescribed institution which requires the ascertainment of Islamic law by the Shariah Advisory Council; and
- (b) to give effect to the advice or rulings of the Shariah Advisory Council.

(2) In addition, the Bank may also specify standards relating to any of the following matters which does not require the ascertainment of Islamic law:

- (a) Shariah governance including—
 - (i) functions and duties of the board of directors, senior officers and members of the Shariah committee of a prescribed institution in relation to compliance with Shariah;
 - (ii) fit and proper requirements or disqualifications of a member of a Shariah committee; and
 - (iii) internal Shariah compliance functions; and
- (b) any other matter in relation to the business, affair and activity of a prescribed institution for the purposes of compliance with Shariah.

(3) Every prescribed institution, its director, Chief Executive Officer, senior officer or member of a Shariah committee shall at all times comply with the standards specified by the Bank under subsections (1) and (2) which are applicable to such person.

- (4) Every prescribed institution shall at all times—
 - (a) ensure that its internal policies and procedures on Shariah governance are consistent with the standards specified by the Bank under this section; and
 - (b) whether or not standards have been specified by the Bank under this section, manage its business, affairs and activities in a manner which is not contrary to Shariah.

(5) Every director, officer or a member of a Shariah committee of a prescribed institution shall at all times comply with the internal policies and procedures adopted by such institution to implement the standards specified by the Bank under subsection (1) or (2).

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

Division 3 *Shariah governance*

Establishment of Shariah committee

33F. A prescribed institution shall establish a Shariah committee for purposes of advising the prescribed institution in ensuring its business, affairs and activities comply with Shariah.

Appointment of Shariah committee member

33G. No person shall be appointed, reappointed or accept any appointment as a member of a Shariah committee unless such person meets the requirements as set out in any standards as may be specified by the Bank under subparagraph 33E(2)(a)(ii) and has obtained the prior written approval of the Bank.

Duties of Shariah committee and its members

33H. A Shariah committee and every member of the Shariah committee shall have such duties and functions set out in any standards as may be specified by the Bank under subparagraph 33E(2)(a)(i).

Cessation as member of Shariah committee

- 33I. (1) A member of a Shariah committee shall cease to be a member if—
- (a) such member resigns as a member;
 - (b) the prescribed institution, subject to the Bank's prior written approval under subsection (3), terminates the appointment of such member;
 - (c) such member is disqualified pursuant to any standards specified by the Bank under subparagraph 33E(2)(a)(ii); or
 - (d) such member no longer meets the fit and proper requirements as may be specified by the Bank under subparagraph 33E(2)(a)(ii) to the satisfaction of the Bank.

- (2) A member of a Shariah committee who—
 - (a) resigns as a member; or
 - (b) becomes aware that he is disqualified pursuant to any standards specified by the Bank under subparagraph 33E(2)(a)(ii) and as such, pursuant to paragraph (1)(c), cease to be a member,

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

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

(4) Subject to section 123A, the Bank may, by an order in writing, remove a member of a Shariah committee if the Bank is of the opinion that—

- (a) any of the circumstances set out in paragraph (1)(c) or (d) has occurred in relation to that member and such member remains to be a member of the Shariah committee; or
- (b) such member has contravened any provision of this Act or failed to comply with any standards applicable to him.

(5) The removal of a member of a Shariah committee under subsection (4) shall be lawful and valid notwithstanding anything contained in a contract of service or any other agreement relating to his appointment and whether or not made or provided for under any written law, and a person so removed from office shall not be entitled to claim compensation for the loss of office.

Notice of cessation as member of Shariah committee

33J. (1) Where a person ceases to be a member of a Shariah committee of a prescribed institution pursuant to—

- (a) paragraph 33I(1)(a), (b) or (d); or
- (b) paragraph 33I(1)(c) if such disqualification is within the prescribed institution's knowledge,

the prescribed institution shall notify the Bank in writing of that fact and the reasons of such cessation immediately or in any case not later than fourteen days from the date of such cessation.

(2) Where a person ceases to be a member of a Shariah committee under subsection 33I(1) or is removed by the Bank under subsection 33I(4), the prescribed institution shall appoint a new member of its Shariah committee in accordance with section 33G within such period as may be specified by the Bank.

Information to be provided to Shariah committee

33K. (1) A prescribed institution and any director, officer or controller of such institution shall—

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

to enable the Shariah committee to carry out its duties or perform its functions under this Act.

(2) Except as provided in section 33L, a member of a Shariah committee shall not disclose any document or information furnished under subsection (1) to any other person.

Qualified privilege and duty of confidentiality

33L. A member of a Shariah committee shall not be liable—

- (a) for a breach of a duty of confidentiality between such member and the prescribed institution in respect of—
 - (i) any reporting to the Bank; or
 - (ii) the discharge of his duties and performance of his functions,

pursuant to any standards specified by the Bank under subparagraph 33E(2)(a)(i) which was done or made in good faith; or

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

Division 4 *Audit on Shariah compliance*

Appointment of person by a prescribed institution to conduct audit on Shariah compliance

33M. (1) The Bank may require a prescribed institution to appoint any person as the Bank may approve, to carry out an audit on Shariah compliance by the prescribed institution.

(2) The person appointed under subsection (1) shall have such duties and functions as may be specified by the Bank and shall submit a report to the Bank on the audit carried out pursuant to this section.

(3) The remuneration and expenses of the person appointed under subsection (1) relating to any audit on Shariah compliance under this section shall be borne by the prescribed institution.

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

Appointment of person by Bank to conduct audit on Shariah compliance

33N. (1) Without prejudice to section 33M, the Bank may appoint for a prescribed institution any person to conduct an audit on Shariah compliance—

- (a) if the prescribed institution fails to appoint a person under subsection 33M(1);
- (b) in addition to the person appointed under subsection 33M(1);
or
- (c) under any other circumstances as the Bank deems appropriate for the purposes of compliance with Shariah by the prescribed institution,

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

(2) The person appointed under subsection (1) shall have such duties and functions as may be specified by the Bank and shall submit a report to the Bank on the audit carried out pursuant to this section.

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

Amendment of section 34

32. Section 34 of the principal Act is amended by deleting subsections (3), (4), (5) and (6).

Amendment of section 35

33. Section 35 of the principal Act is amended —

- (a) by substituting subsection (1) with the following subsection:

“(1) A prescribed institution shall, for each financial year, submit to the Bank, within such period, and in such form, as the Bank may specify, an annual funding requirement as may be approved by the Minister.”;

(b) by deleting subsections (2) and (3);

(c) by substituting subsection (4) with the following subsection:

“(4) Notwithstanding subsection (1), a prescribed institution shall submit to the Bank any additional funding requirement for its own account, an existing trust fund or new trust fund as may be approved by the Minister.”; and

(d) by deleting subsections (5) and (6).

Amendment of section 36

34. Section 36 of the principal Act is amended by deleting subsection (3).

Amendment of section 37

35. Section 37 of the principal Act is amended —

(a) by substituting for subsection (2) the following subsection:

“(2) Every prescribed institution shall at all times comply with the specification as may be issued by the Bank under subsection (1).”; and

(b) by substituting for subsection (5) the following subsection:

“(5) Every prescribed institution shall at all times comply with the specification as may be issued by the Bank under subsection (4).”.

Amendment of section 38

36. Section 38 of the principal Act is amended by substituting for subsection (2) the following subsection:

“(2) Every prescribed institution shall at all times comply with the requirement as may be specified by the Bank under subsection (1).”.

Amendment of section 39

37. Section 39 of the principal Act is amended by substituting for subsection (5) the following subsection:

“(5) Every prescribed institution shall at all times comply with the requirement or approval issued or specification made, by the Bank under this section.”.

Amendment of section 40

38. Section 40 of the principal Act is amended by substituting for subsection (3) the following subsection:

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

Amendment of section 41

39. The principal Act is amended by substituting for section 41 the following section —

“Power of Bank to specify other prudential requirements

41. (1) The Bank may specify standards for other prudential matters to promote —

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

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

- (a) corporate governance;
- (b) risk management; and
- (c) prevention of a prescribed institution from being used, intentionally or unintentionally, for criminal activities.]

(3) Every prescribed institution shall at all times —

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

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

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

Amendment of section 42

40. Section 42 of the principal Act is amended by deleting subsections (2) and (4).

New Part IVA

41. The principal Act is amended by inserting after section 42 the following Part:

“PART IVA
BUSINESS CONDUCT AND CONSUMER PROTECTION

Interpretation

42A. For the purposes of this Part and the Second Schedule-

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

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

- (a) for personal, domestic or household purposes;
- (b) in connection with a small business as may be specified by the Bank under section 42C; or
- (c) whether or not for the purposes set out in paragraph (a) or (b), if -
 - (i) the value of the financial services or products does not exceed an amount as may be specified by the Bank under section 42C; or
 - (ii) such person is of a class, category or description of persons as may be specified by the Bank under section 42C;

“Financial Ombudsman Scheme” means a scheme approved under subsection 126(2) of the Financial Services Act 2013[Act 758] or subsection 138(2) of the Islamic Financial Services Act 2013 for the resolution of disputes between an eligible complainant and a prescribed institution in respect of financial services or products;

“financial services or products” means financial services or financial products developed, offered or marketed, by a prescribed institution or for and on behalf of another person by a prescribed institution.

Application

42B. (1) Sections 42C and 42D shall apply without prejudice to the provisions of the Capital Markets and Services Act 2007 in so far as such provisions relate to any of the regulated activities carried on by a prescribed institution pursuant to that Act.

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

Standards on business conduct

42C. (1) The Bank may specify standards on business conduct for the purposes of ensuring that a prescribed institution is fair, responsible and professional when dealing with financial consumers.

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

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

(3) A prescribed institution shall at all times comply with standards specified by the Bank under subsection (1).

(4) The Bank may specify any class, category or description of persons for purposes of the definition of “financial consumer” under section 42A.

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

Prohibited business conduct

42D. (1) A prescribed institution shall not engage in any prohibited business conduct set out in the Second Schedule.

(2) Without limiting the generality of section 126, the Bank may issue guidance in writing on-

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

any prohibited business conduct set out in the Second Schedule.

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

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

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

Financial Ombudsman Scheme

42E. (1) For the purposes of ensuring effective and fair handling of complaints and for the resolution of disputes in connection with financial services or products, regulations may be made under section 123 -

- (a) to require any class, category or description of prescribed institutions to be a member of the Financial Ombudsman Scheme and to comply at all times with the terms of membership of such scheme; and
- (b) on the scope of the Financial Ombudsman Scheme including types of dispute that may be referred to it and its eligible complainants, and the fees that may be charged.

(2) A prescribed institution who is a member of the Financial Ombudsman Scheme shall-

- (a) provide documents or information as may be required for the purposes of the resolution of disputes referred to the Financial Ombudsman Scheme; and
- (b) comply with any award granted under the Financial Ombudsman Scheme, including a direction that requires the prescribed institution to take such steps in relation to a dispute."

(3) Where a dispute has been referred to the Financial Ombudsman Scheme by an eligible complainant, the eligible complainant is not entitled to lodge a claim on such dispute with the Tribunal for Consumer Claims established under the Consumer Protection Act 1999 [Act 599]."

Amendment of section 44

42. Section 44 of the principal Act is amended —

- (a) by substituting for subsection (2) the following subsection:

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

- (b) by substituting for subsection (5) the following subsection:

"(5) Every prescribed institution shall at all times comply with the direction as may be issued by the Bank under subsection (4)."

Amendment of section 46

43. Section 46 of the principal Act is amended by substituting for subsection (3) the following subsection:

"(3) Any prescribed institution that contravenes this section commits an offence and shall on conviction be liable to a fine not exceeding twenty-five million ringgit."

Amendment of section 47

44. Section 47 of the principal Act is amended by substituting for subsection (2) the following subsection:

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

Amendment of section 48

45. Section 48 of the principal Act is amended by deleting subsection (2).

Amendment of section 49

46. Section 49 of the principal Act is amended by substituting for subsection (3) the following subsection:

“(3) Any prescribed institution that fails to comply with the direction under subsection (1) or (2) commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit.”.

Amendment of section 50

47. Section 50 of the principal Act is amended by substituting for subsection (2) the following subsection:

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

Amendment of section 52

48. Section 52 of the principal Act is amended by substituting for subsection (3) the following subsection —

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

Amendment of section 53

49. Section 53 of the principal Act is amended by substituting subsection (2) for the following subsection —

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

Amendment of section 54

50. Section 54 of the principal Act is amended —

(a) in subsection (1) —

- (i) by substituting for the word “otherwise” the words “the Bank is of the opinion”;
- (ii) by deleting the word “or” at the end of paragraph (b); and
- (iii) by substituting for paragraph (c) the following paragraph:

“has contravened any provision of this Act, the Central Bank of Malaysia Act 2009 or any written law, other than securities laws as defined in the Securities Commission Act 1993 [Act 498], regardless that there has been no prosecution or other action in respect of the breach or contravention;”;
- (iv) by substituting for the comma at the end of paragraph (c) a semicolon “;” and inserting after that paragraph the following paragraphs:
 - “(d) has failed to comply with any standards, notice, condition, specification, requirement, restriction or direction specified, issued or made under this Act, regardless that there has been no prosecution or other action in respect of such non-compliance;
 - (e) is conducting an activity which is inconsistent with its constituent documents or with any specification made pursuant to subsection 28(1);
 - (f) is committing or is about to commit an act, or is pursuing or is about to pursue any course of conduct, that is unsafe or unsound or has failed to commit an act or pursue a course of conduct that is necessary to maintain the safety and soundness of the prescribed institution;
 - (g) has failed to manage its business or affairs in a manner that is consistent with sound risk management and good governance practices; or
 - (h) that has been approved to carry on Islamic financial business under section 33A, is carrying on or is about to carry on such part of its Islamic financial business or activity in a manner which is contrary to Shariah.”; and
- (b) by substituting for subsection (3) the following subsection:

“(3) Any prescribed institution that fails to comply with any requirement under paragraph (2)(a) or contravenes any prohibition under paragraph (2)(b), commits an offence and shall on conviction shall be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding fifty million ringgit or to both.”

Amendment of section 56

51. The principal Act is amended by deleting section 56.

Amendment of section 58

52. Section 58 of the principal Act is amended by substituting for subsection (2) the following subsection:

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

Amendment of section 59

53. Section 59 of the principal Act is amended —

- (a) by substituting for subsection (2) the following subsection:

“(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding twenty-five million ringgit.”; and

- (b) by substituting for subsection (6) the following subsection:

“(6) Any person who contravenes subsection (5) commits an offence and shall on conviction be liable to a fine not exceeding twenty-five million ringgit.”.

Amendment of section 62

54. Section 62 of the principal Act is amended by substituting for subsection (2) the following subsection:

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

Amendment of section 63

55. Section 63 of the principal Act is amended by deleting subsection (2).

Amendment of section 64

56. Section 64 of the principal Act is amended by deleting subsections (2) and (6).

Amendment of section 65

57. Section 65 of the principal Act is amended by deleting subsection (2).

Amendment of section 69

58. Section 69 of the principal Act is amended by deleting subsection (2).

Amendment of section 70

59. Section 70 of the principal Act is amended by substituting for subsection (2) the following subsection:

“(2) Every auditor and prescribed institution shall at all times comply with the requirements as may be specified by the Bank under subsection (1).”.

Amendment of section 71

60. Section 71 of the principal Act is amended —

- (a) by deleting the word “or” at the end of subparagraph (1)(d);
- (b) by substituting for the full stop at the end of paragraph (e) a semicolon “;” and inserting after that paragraph the following paragraphs:
 - “(f) there is any weakness in the internal controls which is relevant to the financial reporting process undertaken by the prescribed institution; or
 - (g) the financial position of the prescribed institution is likely to be or has been materially affected by any event, conduct of activity by the prescribed institution or any weakness in the internal controls of the prescribed institution.”; and
- (c) by deleting subsection (2).

Amendment of section 72

61. Section 72 of the principal Act is amended by deleting subsection (2).

New section 72A

62. The principal Act is amended by inserting after section 72 the following section:

“Qualified privilege and duty of confidentiality

72A. (1) Subsection 119(2) shall not apply to any documents or information relating to the affairs or account of any customer of a prescribed institution subject to such conditions as may be specified by the Bank, disclosed by an auditor of a prescribed institution to the Audit Oversight Board established under the Securities Commission Act 1993 [Act 498] or an officer or other

person authorized in writing by the Audit Oversight Board to perform the responsibilities of the Audit Oversight Board.

(2) An auditor of a prescribed institution shall not be liable-

- (a) for a breach of a duty of confidentiality between the auditor and the prescribed institution in respect of any reporting to the Bank done in good faith under this Part; or
- (b) to be sued in any court for defamation in respect of any statement made by the auditor without malice in the discharge of his duties under this Act.”.

Amendment of section 73

63. Section 73 of the principal Act is amended by deleting subsections (2) and (5).

Amendment of section 74

64. Section 74 of the principal Act is amended by deleting subsection (2).

Amendment of section 75

65. The principal Act is amended by substituting for section 75 the following section:

“Accounting standards

75.(1) For purposes of this section-

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

“approved accounting standards” has the same meaning as in section 2 of the Financial Reporting Act 1997 [Act 558].

(2) A prescribed institution shall prepare its financial statements in accordance with —

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

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

Amendment of section 76

66. Section 76 of the principal Act is amended —

(a) by substituting for subsection (2) the following subsection:

“(2) Every prescribed institution shall at all times comply with the requirement as may be specified by the Bank under subsection (1).”;
and

(b) by substituting for subsection (7) the following subsection:

“(7) Every prescribed institution shall at all times comply with the direction as may be issued by the Bank under subsection (6).”.

Amendment of section 77

67. Section 77 of the principal Act is amended by deleting subsection (2).

Amendment of section 78

68. Section 78 of the principal Act is amended by deleting subsection (2).

Amendment of section 80

69. The principal Act is amended by substituting for section 80 the following section:

“Liability where accounting records and information not kept

80.(1) For purposes of this section, “accounting records” has the same meaning as in subsection 4(1) of the Companies Act 1965.

(2) If accounting records or information necessary to exhibit and explain the transactions and true financial condition of a prescribed institution are not kept, a past and present employee of the prescribed institution responsible for keeping proper accounting records or information commits an offence unless he proves that the offence was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.

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

Amendment of section 82

70. The principal Act is amended by substituting for section 82 the following section:

“82. The Bank may, from time to time, examine, with or without any prior notice, the business and affairs of a prescribed institution, its offices and subsidiaries in or outside Malaysia.”

Amendment of section 83

71. Section 83 of the principal Act is amended by substituting for the words “books or other documents, accounts and transactions” the words “business and affairs”.

Amendment of section 84

72. Section 84 of the principal Act is amended —

(a) in subsection (1) —

(i) by substituting for paragraph(a) the following paragraph:

“(a) shall afford the Bank access to its documents, including documents of title to its assets, all securities held by it in respect of its customers’ transactions and investments held by it, cash, premises, apparatus, equipment or machinery, and produce to the Bank all such documents or cash, as the Bank may require within such time as it may specify”;

(ii) in paragraph (b), by substituting for the words “the examiner” the word “the Bank”;

(iii) in paragraph (c), by substituting for the words “the examiner” the word “the Bank”;

(b) by substituting for subsection (2) the following subsection:

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

(c) in subsection (3) —,

(i) by substituting for the words “An examiner” the words “The Bank”;

- (ii) by substituting for the words “a document or cash” the words “any documents, titles, securities, cash, apparatus, equipment or machinery”; and
- (iii) in paragraph (3)(c), by substituting for the year “1958”, the year “2009”; and
- (d) by inserting after subsection (3) the following subsection:

 “(4) Any person who refuses to allow the Bank to take possession of the documents, titles, securities, cash, apparatus, equipment or machinery under subsection (3), commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.”.

Amendment of section 85

73. Section 85 of the principal Act is amended —

- (a) in subsection (1) —
 - (i) by substituting for the words “The examiner” the words “The Bank”;
 - (ii) in paragraph (c) by inserting after the words “prescribed institution” the words “ or a member of the Shariah committee of a prescribed institution”; and
 - (iii) by substituting the paragraph after paragraph (c) with the following paragraph:

 “and that person shall give such document, information or explanation as the Bank may require within such time as it may specify”;
- (b) by substituting for subsection (2) the following subsection:

 “(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.”; and
- (c) by substituting for subsection (3) the following subsection:

 “(3) Any person falling under paragraph (1)(b), an auditor or a member of the Shariah committee referred to in paragraph (1)(c) shall not be liable for breach of a contract relating to, or duty of, confidentiality for giving a document, information or explanation under subsection (1).”.

Amendment of section 86

74. Section 86 of the principal Act is amended —

- (a) by substituting for the shoulder note the following shoulder note:
“Appearance before the Bank”;
- (b) by substituting for subsection (1) the following subsection:
“A person examined under section 82 or 83 or subsection 85(1) shall appear before the Bank at such place, and at such time, as may be specified by the Bank.”
- (c) by substituting for subsection (2) the following subsection:
“(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.”

New section 86A

75. The principal Act is amended by inserting after section 86 the following section:

“Confidential information

86A. (1) Any document or information produced by the Bank as provided in subsection (2) as a result of the administration or enforcement of this Act, the Central Bank of Malaysia Act 2009 or any other written law administered by the Bank, shall not be disclosed by any prescribed institution or any director, officer, auditor or a member of the Shariah committee of such prescribed institution, to any other person except in such circumstances as may be specified by the Bank.

(2) A document or information referred to in subsection (1) which shall not be disclosed, whether wholly or in part, shall include-

- (a) any rating assigned by the Bank to a prescribed institution;
- (b) any stage of intervention assigned to a prescribed institution;
- (c) any assessment of a prescribed institution as a result of an examination or other supervisory review of such prescribed institution including any report, correspondence or recommendation made to such prescribed institution;
- (d) any enforceable undertaking accepted by the Bank under section 107A;
- (e) any order made, or direction issued by the Bank under this Act to a prescribed institution; or
- (f) any other information as may be specified by the Bank.

(3) In any court proceedings, where any document or information referred to in this section is likely to be disclosed, the court, of its own motion, or at the application of a party to the proceedings or the Bank, may order for such proceedings to be held *in camera* and in such case, the document or information shall be secret as between the court and parties or the Bank thereto, and no such party shall disclose such document or information to any other person.

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

Amendment of section 87

76. Section 87 of the principal Act is amended —

- (a) by substituting for the word “shall” the word “may”; and
- (b) by substituting for the full-stop the words “and for such purpose may exercise all the powers of investigation provided under this Act.”.

Amendment of section 88

77. Section 88 of the principal Act is amended —

- (a) in subsection (1) by inserting after the word “person” the words “appointed under subsection 4(3)”;
- (b) by inserting after subsection (2) the following subsection:

“(2A) An investigating officer appointed under subsection (1) shall have all the powers and functions conferred on the Bank under this Part.”
- (c) by substituting for subsection (3) the following subsection:

“An investigating officer who is not an employee of the Bank shall be subject to, and enjoy such rights, privileges, protection, immunities and indemnities as may be specified in this Act, the Central Bank of Malaysia Act 2009 or other written law applicable to an employee of the Bank.”;
- (d) by substituting for subsection (4) the following subsection:

“An investigating officer, in exercising his powers and performing his functions, shall be subject to and comply with the directions, controls, instructions, conditions, restrictions or limitations as may be specified by the Bank, orally or in writing, either generally, or in any particular case or circumstance”; and
- (e) by inserting after subsection (4) the following subsections:

“(5) The Governor shall have all the powers and functions of an investigating officer.

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

Amendment of section 89

78. Section 89 of the principal Act is amended —

- (a) in paragraph (1)(b) by substituting for the words “the premises for any property, record, report or document and seize and detain any property, record, report or document” the words “such premises, seize and detain any property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books, or information”;
- (b) in paragraph (1)(c) —
 - (i) by substituting for the words “or document” the words “, document, computer, computer output, system, data, books or information”; and
 - (ii) by inserting after the words “so seized and detained” the words “, including access to any program or data held in any computer or have access to, inspect or check the operation of any computer and any associated apparatus or material”;
- (c) in paragraph (1)(d) by substituting for the words “or document” the words “, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information”;
- (d) in paragraph (1)(e) by substituting for the words “or document” the words “, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information”;
- (e) in paragraph (1)(f) by inserting after the words “or receptacle” the words “, including accessing into a computer”;
- (f) by inserting after subsection (3) the following subsections:

“(3A) An investigating officer shall for the purposes of this section be provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of any program or data held in any computer including in a form in which the information contained in a computer can be taken away and in which it is visible and legible.

(3B) Any computer output, data, books, document, information or statement obtained by or provided to an investigating officer in the course of a search under this section shall, notwithstanding any law to

the contrary, be admissible in evidence in any proceedings under this Act.”;

- (g) in paragraph 4(a) by substituting for the words “or document” the words “, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information”;
- (h) in paragraph 4(b) by substituting for the words “or document” the words “, document, apparatus, equipment, machinery, computer, computer output, system, data, books, or information”;
- (i) in subsection (5) —
 - (i) by substituting for the words “be present” the words “in every instance be permitted to attend”;
 - (ii) by substituting for the words “and a copy of the list prepared under subsection (4) shall be delivered to such person at his request” the words “sign the search list or affix his thumbprint thereon, and be given a copy of the search list prepared and signed or affixed thumbprint under this section”; and
- (j) by inserting after subsection (5) the following subsection:

“(6) Where such occupant or person acting on behalf of the occupant under subsection (5) refuses to sign the search list or affix his thumbprint on the search list, the investigating officer shall endorse on the search list, under his name, the fact of and reasons for such refusal, if any, stated by such occupant or person acting on behalf of the occupant.”.

Amendment of section 90

79. Section 90 of the principal Act is amended —

- (a) in paragraph (2)(b) —
 - (i) by inserting after the word “him” the words “, within the time specified by such officer,”;
 - (ii) by substituting for the words “or document” the words “, document, apparatus, equipment, machinery, computer, computer output, system, data, books, information, article or thing which may assist in the investigation into the offence or breach,”;
- (b) by substituting for subsection (3) the following subsection:

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

- (c) by substituting for the paragraph after paragraph 8(c) the following paragraph:

“commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.”.

Amendment of section 91

80. The principal Act is amended by substituting for section 91 the following section —

“Admissibility of evidence

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

Amendment of section 92

81. Section 92 of the principal Act is amended —

- (a) by substituting for subsection (1) the following subsection:

“(1) An investigating officer searching a person under paragraph 89(1)(e) may, subject to the provisions of the Criminal Procedure Code [Act 593], detain such person as may be necessary to have the search carried out, and may remove him in custody to such place as may be necessary to facilitate such search.”; and

- (b) by inserting after subsection (1) the following subsection:

“(1A) Any search of a person conducted under this Part shall be in accordance with the provisions in the Criminal Procedure Code.”.

Amendment of section 93

82. Subsection 93(1) of the principal Act is amended by substituting for the paragraph after paragraph (h) the following paragraph:

“commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.”.

Amendment of section 94

83. Section 94 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

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

(b) by substituting for subsection (3) the following subsection:

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

Amendment of section 95

84. Section 95 of the principal Act is amended by substituting for the paragraph after paragraph 3(b) the following paragraph:

“commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.”.

Amendment of section 97

85. Section 97 of the principal Act is amended —

(a) by substituting for the paragraph after paragraph (1)(b) the following paragraph:

“release any property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information seized, detained or removed by him or any other investigating officer, to such person as he determines to be lawfully entitled to the property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information if he is satisfied that it is not required for the

purpose of any prosecution or proceedings under this Act, or for the purpose of any prosecution under any other written law.”;

(b) by substituting for subsection (3) the following subsection:

“(3) Where an investigating officer is unable to locate the person who is lawfully entitled to the property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information the investigating officer shall cause to be published a notice in the Bank’s website calling upon any person who is lawfully entitled to the property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information to claim such property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information within the period stipulated in the notice.

(4) Where no claim is made upon the expiry of the period specified in the notice published under subsection (3), the investigating officer shall make an application in writing to the court as to the disposal of such property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information.

(5) The court upon receiving the application under subsection (4) and being satisfied that the person under subsection (1) who is lawfully entitled to the property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information cannot be located shall order the same to be forfeited or disposed of by the Bank in accordance with the order made by the court.”.

Amendment of section 98

86. Section 98 of the principal Act is amended by inserting after the words “section 88” the words “or a police officer not below the rank of Inspector,”.

New sections 99A, 99B and 99C

87. The principal Act is amended by inserting after section 99 the following sections:

“Service of orders or notices generally, etc.

99A. (1) Any order or notice that is given under this Part, shall, where it is required to be served on an individual, be served by-

- (a) delivering it personally to the person for whom it is intended;
- (b) delivering it to an adult person at the last-known place of residence, occupation or business of the person for whom it is intended; or

- (c) sending it by registered post to the person for whom it is intended.

(2) Any order or notice that is given under this Part shall, where it is required to be served on a body corporate or unincorporate, be served by delivering the order or notice to an officer or agent of the body corporate or unincorporate at its registered address or business address.

(3) If the officer effecting any order or notice under subsection (1) or (2) is satisfied, for reasons to be recorded by him in writing, that the order or notice cannot be served in the manner provided in subsection (1) or (2), the order or notice may be served by affixing the order or notice on a conspicuous part of the premises-

- (a) in which the individual for whom the order or notice is intended is known to have last resided, to have been last employed or to have last carried on business; or
- (b) at the last known registered address or business address of the body corporate or unincorporate for whom the order or notice is intended,

and in such case the order or notice shall be deemed to have been duly served.

(4) If upon an investigation made under this Act, it appears to the investigating officer that there is sufficient evidence or reasonable grounds for suspicion to justify the commencement or continuance of any proceedings against any person, the investigating officer shall require a complainant, if any, and so many of the persons who appear to such investigating officer to be acquainted with the circumstances of the case as he thinks necessary, to execute a bond to appear before any court therein named or to give evidence in any court proceedings.

(5) If any complainant or person referred to in subsection (4) refuses to execute a bond under that subsection, the investigating officer shall report such refusal to the court which may thereupon in its discretion issue a warrant or summons to secure the attendance of such complainant or person.

Surrender of travel documents

99B. (1) Notwithstanding any written law to the contrary, an investigating officer may, by notice in writing, require any person who is the subject of an investigation for an offence under this Part, to surrender his travel documents including passport or exit permit in his possession, within such period as specified in the notice.

(2) A notice under subsection (1) shall be served personally to the person to whom it is addressed in accordance with section 99A.

(3) A person to whom a notice under subsection (1) is served shall comply with such notice, failing which he may be arrested and taken before a magistrate.

(4) Where a person is taken before a magistrate, unless such person complies with the notice under subsection (1) or satisfies the magistrate that he does not possess a travel document, the magistrate shall by warrant commit such person to prison-

- (a) until the expiry of a period of fourteen days from the date of his committal; or
- (b) until he complies with the notice under subsection (1),

whichever occurs earlier.

(5) For the purpose of subsection (4), a certificate signed by the Public Prosecutor to the effect that the person has complied with the written notice under subsection (1) shall be sufficient warrant for the Superintendent of Prison to discharge such person.

(6) An investigating officer may, with the written approval of the Bank, by notice in writing issued to any immigration officer, request that any person who is the subject of an investigation in respect of an offence under this Act be prevented from leaving Malaysia.

(7) The immigration officer may, upon being notified of a written notice made under subsection (6), require the person who is the subject of an investigation in respect of an offence under this Act, to surrender his passport, exit permit or any other travel document in his possession to an immigration officer.

(8) Subject to any order issued or made under any written law relating to immigration, "immigration officer" means any person appointed under section 3 of the Immigration Act 1959/63 [Act 155].

Agent provocateur

99C. Notwithstanding any law or rule of law to the contrary, in any proceedings against any person for an offence under this Act-

- (a) no *agent provocateur*, whether he is an officer of the Bank or not, shall be presumed to be an accomplice or be unworthy of credit by reason only of his having attempted to commit or to abet, or having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of such attempt, abetment or engagement was to secure evidence against such person;
- (b) any statement whether oral or in writing made to an *agent provocateur* by any person, including any person who is subsequently charged with an offence under this Act, shall be

admissible in evidence and given due weight and consideration at any trial for an offence under this Act; and

- (c) a conviction for any offence under this Act solely on the uncorroborated evidence of any *agent provocateur* shall not be illegal and no such conviction shall be set aside merely because the court which tried the case has failed to refer in the grounds of its judgment to the need to warn itself against the danger of convicting on such evidence.”.

Amendment of section 100

88. The principal Act is amended by substituting for section 100 the following section:

“Assistance to police or other public officer

100. The Bank may at its own initiative, or on the request of a public officer—

- (a) supply to a police officer or any other public officer a copy of any books, computer output, data, document or information seized, detained or taken possession of under section 89 or of any record of examination under paragraph 90(2)(a), or of any written statement on oath or affirmation made under paragraph 90(2)(c) or of any books, computer output, data, document or information produced under paragraph 90(2)(b), or otherwise in the course of any examination under paragraph 90(2)(a), or under any written statement on oath or affirmation made pursuant to paragraph 90(2)(c), and such police officer or other public officer may make such use of such copy of such record, statement, books, computer output, data, document or information as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person; or
- (b) allow a police officer or any other public officer to have access to and inspect any property, apparatus, equipment, machinery, computer, computer output, system, data, books, document, information, article or thing which had been produced before, or seized, detained or taken possession of, by an investigating officer under this Part, and such police or other public officer may make such use of any knowledge gained by such access or inspection as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person.

Amendment of section 101

89. Section 101 of the principal Act is amended by substituting for the full stop the following words “and the Evidence Act 1950 or any other written law which the Minister may, on the recommendation of the Bank, prescribe.”.

New Part VIIIA

90. The principal Act is amended by inserting after section 106 the following Part:

**"PART VIIIA
Administrative Action**

Power of the Bank to take action

106A. (1) A person has committed a breach under this Act if the person fails to comply with or give effect to-

- (a) any provision of this Act;
- (b) any regulations made under this Act;
- (c) any order made or any direction issued under this Act by the Bank; or
- (d) any standards, condition, restriction, specification or requirement under this Act.

(2) The Bank shall have regard to the following matters in determining the appropriate action to be taken in each case:

- (a) the effectiveness of the enforcement action to be taken under this Act;
- (b) the proportionality of the action to be taken with the breach committed;
- (c) deterrence of future breaches of similar nature by other persons; and
- (d) any other matter that is considered as relevant in the opinion of the Bank.

(3) If the Bank is of the opinion that a person has committed a breach and it is appropriate to take action against that person, the Bank may, subject to section 123A, take any one or more of the following actions:

- (a) make an order in writing requiring the person in breach-
 - (i) to comply with or give effect to; or
 - (ii) to do or not to do any act in order to ensure compliance with,

such provisions, regulations, order, direction, standards, condition, restriction, specification or requirement referred to in subsection (1);

- (b) subject to subsection (4), impose a monetary penalty-
 - (i) in accordance with the order published in the *Gazette* made under section 106C or if no such order has been made, such amount as the Bank considers appropriate, but in any event not exceeding five million ringgit in the case of a breach that is committed by a body corporate or unincorporate or one million ringgit in the case of a breach that is committed by any individual, as the case may be;
 - (ii) which shall not exceed three times the gross amount of pecuniary gain made or loss avoided by such person as a result of the breach; or
 - (iii) which shall not exceed three times the amount of money which is the subject matter of the breach,

whichever is greater for each breach or failure to comply;
- (c) reprimand in writing the person in breach or require the person in breach to issue a public statement in relation to such breach, if it is in the opinion of the Bank that such breach is relevant for the information of the general public;
- (d) make an order in writing requiring the person in breach to take such steps as the Bank may direct to mitigate the effect of such breach; or
- (e) make an order in writing requiring the prescribed institution to remedy the breach including making restitution to any other person aggrieved by such breach.

(4) The Bank may impose a monetary penalty under paragraph (3)(b) only in respect of the following:

- (a) breach of any provision set out in the Third Schedule;
- (b) breach of any requirement under any other provision of this Act where no offence is provided for non-compliance of that requirement;
- (c) failure to comply with any requirement imposed under regulations made under this Act where no provision for imposition of penalty is provided for in accordance with paragraph 123(2)(b); or
- (d) failure to comply with any standards, order, direction, requirement, condition, specification, restriction or otherwise made or imposed pursuant to any provision set out in the Third Schedule.

(5) If a breach is committed by a body corporate or unincorporate, any action under subsection (3) can be taken against a person-

- (a) who is its director, controller, officer or partner, or was purporting to act in any such capacity; or
- (b) who is concerned in the management of its affairs,

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

(6) If a breach is committed by a person-

- (a) who is a director, controller, officer or partner of a body corporate or unincorporate, or was purporting to act in any such capacity; or
- (b) who is concerned in the management of the affairs of a body corporate or unincorporate,

an action under subsection (3) can be taken against the body corporate or unincorporate.

(7) For the purposes of paragraph (3)(e), in determining whether or not any amount is to be paid by a person in breach, the Bank shall have regard to-

- (a) whether or not one or more persons have suffered loss or been otherwise adversely affected as a result of the breach; or
- (b) the profits that have accrued to such person in breach.

(8) Any monetary penalty paid by a person in accordance with paragraph (3)(b) shall be paid into and form part of the Federal Consolidated Fund.

(9) Where a person fails to pay a monetary penalty imposed by the Bank under paragraph (3)(b) within the period specified by the Bank, the penalty imposed by the Bank may be sued for and recovered as a civil debt due to the Government.

(10) Where a person fails to remedy the breach including making restitution to any other person aggrieved by the breach under paragraph (3)(e), notwithstanding any other written law, the Bank may sue for and recover such sum as a civil debt due to the person aggrieved by the breach.

(11) Nothing in this section shall preclude the Bank from taking any of the actions that it is empowered to take under this Act or any written law.

Lodgment of amount not distributed with the Registrar of Unclaimed Moneys

106B. To the extent that any of the amount paid under paragraph 106A(3)(e) or subsection 106A(10) has not been distributed by the person in breach after reasonable efforts to notify the aggrieved persons have failed due to the difficulty of notifying the aggrieved persons, such amount shall be lodged with the Registrar of Unclaimed Moneys in accordance with the provisions of the Unclaimed Moneys Act 1965 [Act 370].

Power of the Bank to prescribe monetary penalty

106C. The Bank may, with the concurrence of the Minister, prescribe the following matters as it deems necessary, for giving full effect to or for convenient implementation of subparagraph 106A(3)(b)(i), or for the purposes of this Act :

- (a) classify or designate the breaches under this Act into different categories of breaches; and
- (b) fix, in accordance with paragraph (a), a monetary penalty, or a range of monetary penalties, in respect of each category.

Application for appeal of decisions

106D. (1) Any person who is aggrieved by a decision of the Bank under paragraph 106A(3)(b) or (e) may within twenty-one days after the person has been notified of the decision, appeal by filing a notice in writing to the Monetary Penalty Review Committee established under the Financial Services Act 2013 or Islamic Financial Services Act 2013.

(2) The decision of the Bank under paragraph 106A(3)(b) or (e), as the case may be, shall not take effect until the appeal is disposed of.

(3) The Monetary Penalty Review Committee may decide to confirm the decision of the Bank or require the Bank to reconsider and reach a decision in accordance with the findings of the Committee.

New Part VIIIB

91. The principal Act is amended by inserting after Part VIIIA the following Part:

“Part VIIIB
Civil actions

Civil action by the Bank

106E. Where it appears to the Bank that there is a reasonable likelihood that any person will contravene or has contravened or will breach or has breached or is likely to fail to comply with or has failed to comply with any-

- (a) provisions of this Act;

- (b) provisions of any regulations made pursuant to this Act;
- (c) order made or direction issued by the Bank under this Act;
- (d) standards, condition, restriction, specification or requirement made or issued pursuant to any provision of this Act; or
- (e) action taken by the Bank under subsection 106A(3),

the Bank may institute civil proceedings in the court seeking any order specified under subsection 106F(1) against that person whether or not that person has been charged with an offence in respect of the contravention or breach or whether or not a contravention or breach has been proved in a prosecution.

Orders by court

106F. (1) The court may on an application by the Bank under section 106E make one or more of the following orders:

- (a) an order requiring the person to pay an amount which shall not exceed three times-
 - (i) the gross amount of pecuniary gain made or loss avoided by such person as a result of the contravention, breach or non-compliance; or
 - (ii) the amount of money which is the subject matter of the contravention, breach or non-compliance,
 as the case may be;
- (b) an order requiring the person to pay a civil penalty in such amount as the court considers appropriate having regard to the severity or gravity of the contravention, breach or non-compliance, but in any event not exceeding twenty-five million ringgit;
- (c) an order-
 - (i) restraining the person from engaging in any specific conduct; or
 - (ii) requiring the cessation of the contravention, breach or non-compliance;
- (d) an order directing a person to do a certain act;
- (e) an order directing the person, or any other person who appears to have been involved in the contravention, breach or non-compliance to take such steps as the court may direct to mitigate the effect of such contravention, breach or non-compliance;

- (f) an order directing the prescribed institution to remedy the contravention, breach or non-compliance including making restitution to any other person aggrieved by such contravention, breach or non-compliance;
 - (g) where a person has refused or failed to comply with any action taken by the Bank under subsection 106A(3), an order directing the person to comply with such action that is taken by the Bank; and
 - (h) any other order deemed appropriate by the court including any ancillary order deemed desirable in consequence of the making of an order under any provision in this subsection.
- (2) The court may make an order under subsection (1) against a person-
- (a) who is the director, controller, officer or partner, or was purporting to act in any such capacity; or
 - (b) who is concerned in the management of the affairs,

of a body corporate or unincorporate in the event where the contravention, breach or non-compliance has been committed by the body corporate or unincorporate unless that person proves that the contravention, breach or non-compliance was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the contravention, breach or non-compliance as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.

- (3) If a contravention, breach or non-compliance is committed by a person-
- (a) who is a director, controller, officer or partner of a body corporate or unincorporate, or was purporting to act in any such capacity; or
 - (b) who is concerned in the management of affairs of a body corporate or unincorporate,

an order under subsection (1) can be made against the body corporate or unincorporate.

- (4) Any sum ordered by the court under subsection (1), shall be applied-
- (a) firstly, to reimburse the Bank for all costs of the proceedings in respect of the contravention, breach or non-compliance; and
 - (b) secondly, to pay persons aggrieved by the contravention, breach or non-compliance in the case of an order under paragraph (1)(f); or
 - (c) thirdly, to pay into and form part of the Federal Consolidated Fund unless the court orders for such sums or part thereof to

be used to compensate persons who have suffered loss as a result of the contravention, breach or non-compliance.

(5) If the prescribed institution considers that it is not practicable to provide a remedy to the persons referred to in paragraph (1)(f), in view of the amount of any potential distribution to each person or the difficulty of ascertaining or notifying the person whom it is appropriate to provide a remedy, the prescribed institution shall lodge such amount with the Registrar of Unclaimed Moneys in accordance with the provisions of the Unclaimed Moneys Act 1965.

(6) The court may revoke or vary an order made by it under this section or suspend the operation of such an order.

(7) The powers conferred on the court under this section are in addition to any of its other powers, and do not derogate from its other powers provided under any other written law.

(8) Applications under this section may be commenced at any time within six years from the date on which the Bank discovered the contravention, breach or non-compliance.

Civil action to seek compensation

106G. (1) Where any person-

- (a) has been convicted of an offence under this Act or under any other written law; or
- (b) has had any offence committed by him compounded under section 113,

and such offence has resulted in, or caused, or subsequent to its commission, results in, or causes, any loss or damage of any nature or in any form to a prescribed institution, the Bank may institute civil proceedings in court for the purposes of seeking indemnity from the persons referred to in subsection (2).

(2) The following persons shall be jointly and severally liable to indemnify the prescribed institution in full for any loss or damage to the prescribed institution:

- (a) the person convicted of the offence, or the person whose offence has been compounded under section 113; and
- (b) any director, officer or controller of the prescribed institution, any other person purporting to act in any such capacity, or any person who is in any manner or to any extent responsible for the management of the affairs of the prescribed institution, or any person who is assisting in such management.

(3) The court may, upon reviewing an application by the Bank, make an order specifying the amount of moneys the persons referred to in subsection (2) are liable to indemnify the prescribed institution.

(4) The persons referred to in subsection (2) shall not be liable to so indemnify the prescribed institution if-

- (a) the offence was committed without his knowledge, consent or connivance; and
- (b) he took all reasonable precautions and had exercised due diligence to prevent the commission of the offence as he ought to have taken precautions or to have exercised, having regard to the nature of his functions and to all the circumstances in which the offence was committed.

(5) An amount ordered by the court under subsection (3) shall be applied-

- (a) firstly, to reimburse the Bank for all costs of the proceedings to seek the indemnity; and
- (b) secondly, to compensate the prescribed institution.

(6) Civil proceedings under subsection (1) may be commenced at any time within six years from the date on which the person has been convicted of the offence under this Act or other written law or compounded under section 113.

Interim orders

106H. If an application is made to a court for an order under subsection 106F(1) or 106G(1), the court may, if it deems appropriate, before considering the application, make an interim order of the kind applied for and such order shall be expressed to have effect pending the determination of the application.

Contravention of court order

106I. (1) Any person who contravenes an order of the court under subsection 106F(1), 106G(3) or section 106H commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.

(2) Subsection (1) does not affect the powers of the court in relation to the punishment of contempt of court.

No undertaking as to damages

106J. Where the Bank makes an application for an order under subsection 106F(1) or 106G(1), the court shall not, as a condition of the grant of the order, require any undertaking as to damages to be given by or on behalf of the Bank.

Other actions

106K. An application made pursuant to subsection 106F(1) or 106G(1) shall not prejudice any other action that may be taken by the Bank, aggrieved person or prescribed institution, as the case may be, under this Act or any other law.

Evidence obtained in investigations may be used in civil proceedings

106L. (1) Notwithstanding any law, any document or information obtained by the Bank in the exercise of its investigation powers against-

- (a) a prescribed institution;
- (b) any director or officer of the prescribed institution;
- (c) any agent of the prescribed institution; or
- (d) any other person,

may be used by the Bank in a civil action instituted by the Bank.

(2) For the avoidance of doubt, any document or information referred to in subsection (1) shall not be inadmissible in any civil proceedings under this Part to which the Bank is a party by reason only that it was obtained by the Bank in the exercise of its investigation powers and the admissibility thereof shall be determined in accordance with the rules of evidence under any law.

Amendment of section 107

92. The principal Act is amended by deleting section 107.

New section 107A

93. The principal Act is amended by inserting after section 107 the following section:

“Enforceable undertakings

107A. (1) The Minister or the Bank may accept a written undertaking given by a person in connection with a matter in relation to which the Minister or the Bank, as the case may be, has a power or function under this Act.

(2) The written undertaking accepted under subsection (1) may be varied or withdrawn by the person giving the undertaking with the consent of the Minister or the Bank, as the case may be.

(3) If the Bank considers that a person who has given a written undertaking has breached any of the terms of the undertaking—

- (a) given to the Bank, the Bank may apply; or
- (b) given to the Minister, the Bank may recommend to the Minister to apply,

to the High Court for an order under subsection (4) by way of originating summons.

(4) If the High Court is satisfied that a person has breached a term of the undertaking, the High Court may make any or all of the following orders:

- (a) an order directing the person to comply with the undertaking;
- (b) an order directing the person to pay to the Federal Consolidated Fund an amount up to the amount of any financial benefit that the person obtained (whether directly or indirectly) and that is reasonably attributable to the breach;
- (c) any order that the High Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach; or
- (d) any other order that the High Court considers appropriate.

(5) The Bank shall be entitled to be heard in proceedings relating to an application made to the High Court in respect of a breach of undertaking given to the Minister.”.

Amendment of section 108

94. The principal Act is amended by substituting for section 108 the following section:

“Falsification, concealment and destruction of document

108. A person, with intent to deceive, in respect of a document to be produced or submitted under any provision of this Act, who makes or causes to be made a false entry, omits to make, or causes to be omitted, any entry, or alters, abstracts, conceals or destroys, or causes to be altered, abstracted, concealed or destroyed, any entry, forges a document, or makes use of or hold in his possession a false document, purporting to be a valid document, alters any entry made in any document, or issues or uses a document which is false or incorrect, wholly or partially, or misleading commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.”

New section 108A

95. The principal Act is amended by inserting after section 108 the following section:

“Imprisonment

108A. Where the penalty of imprisonment has been provided for an offence under this Act, such penalty shall not apply to a body corporate convicted of the offence.”.

Amendment of section 112

96. The principal Act is amended by substituting for the full stop a comma “,” and inserting the following words “and a police officer not below the rank of Inspector, or an investigating officer appointed under section 88 may arrest without warrant a person whom he reasonably suspects to have committed or is committing the offence.”.

New section 112A

97. The principal Act is amended by inserting after section 112 the following section:

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

112A. An investigating officer who makes an arrest under section 112 shall make over the arrested person to a police officer without unnecessary delay and the arrested person shall be dealt with according to the law relating to criminal procedure as if he had been arrested by a police officer.”.

Amendment of section 113

98. Subsection 113(1) of the principal Act is amended by deleting the words “including the daily fine, if any, in the case of a continuing offence,”.

New section 114A

99. The principal Act is amended by inserting after section 114 the following section:

“Prosecution

114A. No prosecution for an offence under this Act shall be instituted except with the written consent of the Public Prosecutor.”.

[Amendment of section 115

100. Section 115 of the principal Act is amended —

(a) by substituting for the shoulder note the following shoulder note:

“Financial statements and report”; and

- (b) by substituting for the words “annual accounts and annual report made under subsection 48(1) of the Central Bank of Malaysia Act 1958” the words “financial statements and report made under section 13 of the Central Bank of Malaysia Act 2009”.]

Amendment of section 116

101. Section 116 of the principal Act is amended by deleting subsection (2) and (3).

Amendment of section 117

102. Section 117 of the principal Act is amended by inserting after the words “the Minister,” the words “the Governor, the Deputy Governor,”.

Amendment of section 119

103. The principal Act is amended by substituting for section 119 the following section:

“Secrecy

- 119.** (1) Nothing in this Act shall authorise the Bank or the Minister to direct the Bank to inquire specifically into the affairs of any individual client of a prescribed institution or a development financial institution.

(2) Notwithstanding subsection (1), the Bank may inquire into the affairs or account of a customer of a prescribed institution for the purposes of exercising its powers or functions under this Act, the Financial Services Act 2013, the Islamic Financial Services Act 2013 or section 47 of the Central Bank of Malaysia Act 2009.

(3) No person, who has access to any document or information relating to the affairs or account of any customer of a prescribed institution, including—

(a) the prescribed institution; or

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

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

(4) Subsection (3) shall not apply to any document or information relating to the affairs or account of any customer of a prescribed institution—

(a) that is disclosed to the Minister, the Bank, any officer of the Bank or any person appointed under this Act or the Central

Bank of Malaysia Act 2009 for the purposes of exercising any powers or functions under this Act or the Central Bank of Malaysia Act 2009;

- (b) that is in the form of a summary or collection of information set out in such manner as does not enable information relating to any particular customer of the prescribed institution to be ascertained from it; or
- (c) that is at the time of disclosure is, or has already been made lawfully available to the public from any source other than the prescribed institution.

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

(6) Any person who contravenes subsection (2) or (4) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million ringgit or to both.”.

Amendment of section 120

104. The principal Act is amended by substituting for section 120 the following section:

“Permitted disclosure

120. (1) A prescribed institution or any of its directors or officers may—

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

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

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

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

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

(a) order that the proceedings be held *in camera* and in such case, the document or information shall be secret as between the court and the parties thereto, and no such party shall disclose such document or information to any other person; and

(b) make such further orders as it may consider necessary to ensure the confidentiality of the customer information.”;

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

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

Amendment of section 123

105. Subsection 123(2) of the principal Act is amended —

(a) by inserting the word “and” after the semicolon at the end of paragraph (a);

(b) by substituting for paragraph (b) the following paragraph:

“(b) to provide for the imposition of penalties for any offence under the regulations which shall not exceed imprisonment for a term not exceeding five years or a fine not exceeding ten million ringgit or to both”;

(c) by deleting the word “and” at the end of paragraph (b) and substituting for the semicolon “;” a full stop; and

(d) by deleting paragraph (2)(c).

New section 123A

106. The principal Act is amended by inserting after section 123 the following section —

“Opportunity to make representations

123A. (1) Where the Minister, on the recommendation of the Bank, or the Bank proposes to take any action against any person under subsection 33H(4), 54(1), section 55 or 106A(3), the Bank shall serve on such person a written notice of the proposed action.

(2) The written notice under subsection (1) shall set out—

- (a) the action that the Minister or the Bank, as the case may be, proposes to take and the grounds for such action;
- (b) the period within which the person referred to in subsection (1) may make a written representation to the Minister or the Bank, as the case may be;
- (c) in the case of any proposed action under subsection 106A(3), the non-compliance or breach committed by the person; and
- (d) where the Bank proposes to impose a monetary penalty under paragraph 106A(3)(b), the right of the person in breach to pay, within a period specified in the notice, the monetary penalty stated in such notice.

(3) The person referred to in subsection (1) shall be given a reasonable opportunity to make a written representation to the Minister or the Bank, as the case may be, by submitting such representation to the Bank within fourteen days from the date of the notice by the Bank.

(4) After the expiry of the period of fourteen days from the date of the notice by the Bank and considering any written representation under subsection (3), the Minister, on the recommendation of the Bank, or the Bank, as the case may be, shall decide whether to—

- (a) proceed with the proposed action or a variation of such action; or
- (b) take no further action.

(5) The Minister or the Bank, as the case may be, shall give the person referred to in subsection (1) a written notice of the decision under subsection (4) and the decision shall take effect from the date specified in the notice.

(6) Notwithstanding subsection (1), the Minister or the Bank may, as the case may be, first take the proposed action and the opportunity to make representations shall be given immediately after the action has been taken if any delay in taking the proposed action would be detrimental to the interests of any prescribed institution, its stakeholders, the financial system or the public generally.

(7) The Minister or the Bank may, as the case may be, confirm, amend or revoke the exercise of action taken under subsection (6) in consequence of representations made under that subsection.

(8) Subsection (6) shall not apply to any action taken under section 106A.”.

Amendment of section 124

107. The principal Act is amended by substituting for section 124 the following section:

“Amendment of Schedule

124. The Minister may, on the recommendation of the Bank, from time to time, by an order published in the *Gazette*, amend any provision in the First, Second and Fourth Schedules of this Act and upon such publication, such provision as amended shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication or from such later date as may be specified in the order.”.

Amendment of section 126

108. The principal Act is amended by substituting for section 126 the following section:

“Power of the Bank to issue guidance

126. The Bank may issue guidance in writing consisting of such information, advice or recommendation as it considers appropriate—

- (a) with respect to the provisions of this Act;
- (b) for the purpose of carrying out the regulation and supervision of prescribed institutions; or
- (c) with respect to any other matter which, in the opinion of the Bank, is desirable to give information, advice or recommendation.”.

Amendment of section 127

109. The principal Act is amended by substituting for section 127 the following section:

“Application of measures relating to international and domestic transactions

127. Nothing contained in this Act shall in any manner affect, or derogate from, Division 2, Part XIV of the Financial Services Act 2013, or Division 2, Part XV of the Islamic Financial Services Act 2013, and in the application of

any provision of this Act to any person, the provision shall apply subject to the provisions in those Divisions and, accordingly, in the event of any conflict or inconsistency between any provision of this Act and those Divisions, the provisions in those Divisions shall prevail.”.

Amendment of section 129

110. The principal Act is amended by deleting section 129.

Amendment of section 130

111. Subsection 130(2) of the principal Act is amended by substituting for the word “Schedule” with the word “First Schedule”.

General savings

112.(1) Every order or subsidiary legislation made and any approval, authority, direction, exemption, requirement, specification, verification or other executive act granted or done by the Bank or the Minister before the effective date and in force immediately before the effective date, shall be deemed to have been granted or done under the corresponding provisions introduced or amended by this Act, and shall continue to remain in full force and effect in relation to the person to whom it applied until amended or revoked under the principal Act.

(2) Every guideline, circular or notice issued by the Bank under the deleted section 126 of the principal Act before the date of coming into operation of this Act (referred to in this section as the “effective date”) and in force immediately before the effective date, in relation to any matter which corresponds with sections 33D and 42C of the principal Act as introduced in this Act and sections 41 and 75 of the principal Act as amended by this Act, shall be deemed to be standards which have been lawfully specified under such provisions of the principal Act and shall remain in full force and effect in relation to the person to whom it applied until amended or revoked under the principal Act.

(3) Every guideline, circular or notice issued under the deleted section 126 of the principal Act or generally under the principal Act before the effective date and in force immediately before the effective date, in relation to any matter other than that which corresponds with sections 33D and 42C of the principal Act as introduced in this Act and sections 41 and 75 of the principal Act as amended by this Act, shall be deemed to have been issued under the amended section 126 of the principal Act and shall continue to remain in full force and effect in relation to the person to whom it applied until amended or revoked under the principal Act.

Savings in respect of prescribed institution carrying on Islamic financial business

113. (1) An approval granted under subsection 129(1) of the principal Act, as deleted under this Act, shall be deemed to have been granted under paragraph 33A(1)(b) of the principal Act, as introduced in this Act, and any reference to the deleted subsection 129(1) in any written law, standard or guidelines issued by the Bank shall be construed as a reference to section 33A.

(2) Every guideline, circular or notice issued as a direction under subsection 129(3) of the principal Act, as deleted under this Act, in relation to any matter which corresponds with section 33B or section 33E of the principal Act, as introduced in this Act, shall be deemed to be standards which have been lawfully specified under section 33B or section 33E of the principal Act, as the case may be, and shall remain in full force and effect in relation to the person to whom it applied until amended or revoked under the principal Act.

Amendment of Schedule

114. The Schedule to the Act is amended by substituting for the title “SCHEDULE” with the title “FIRST SCHEDULE”.

New Second, Third and Fourth Schedules

115. The principal Act is amended by inserting after the First Schedule the following Schedules:

“SECOND SCHEDULE [Subsection 42D(1)]

LIST OF PROHIBITED BUSINESS CONDUCT

1. Engaging in conduct that is misleading or deceptive, or is likely to mislead or deceive in relation to the nature, features, terms or price of any financial service or product.
2. Inducing or attempting to induce a financial consumer to do an act or omit to do an act in relation to any financial service or product by-
 - (a) making a statement, illustration, promise, forecast or comparison which is misleading, false or deceptive;
 - (b) dishonestly concealing, omitting or providing material facts in a manner which is ambiguous; or
 - (c) recklessly making any statement, illustration, promise, forecast or comparison which is misleading, false or deceptive.
3. Exerting undue pressure, influence or using or threatening to use harassment, coercion, or physical force in relation to the provision of any financial service or product to a financial consumer, or the payment for any financial service or product by a financial consumer.
4. Demanding payments from a financial consumer in any manner for unsolicited financial services or products including threatening to bring legal proceedings unless the financial consumer has communicated his acceptance of the offer for such financial services or products either orally or in writing.

5. Exerting undue pressure on, or coercing, a financial consumer to acquire any financial service or product as a condition for acquiring another financial service or product.
6. Colluding with any other person to fix or control the features or terms of any financial service or product to the detriment of any financial consumer.

THIRD SCHEDULE
[Paragraph 106A(3)(b)]

IMPOSITION OF PENALTY

A monetary penalty may be imposed in respect of a breach or non-compliance with the following provisions or standards, requirements, conditions, specifications, restrictions or otherwise made or imposed pursuant to such provisions:

1. subsection 5(1), (2) or (3);
2. paragraph 5A(1)(a), (b) or (d);
3. section 6(1), (2), (4) or (5);
4. section 6A;
5. subsection 7(1);
6. subsection 8(2) or (3);
7. subsection 10(1);
8. subsection 11(1), (3) or (5);
9. subsection 13(1);
10. subsection 16(4) or (5);
11. subsection 25(1) or (4);
12. subsection 26(2);
13. subsection 27(1) or (4);
14. subsection 28(1), (3) or (3A)
15. subsection 29(1);
16. subsection 31(1) or (6);
17. subsection 32(1) or (5);
18. subsection 33(3);
19. subsection 33A(2);
20. subsection 33B(1), (2), (3) or (4);
21. subsection 33E(2), paragraph 33E(4)(a) or subsection 33E(5);
22. section 33F;

23. section 33G;
24. section 33H;
25. paragraph 33I(1)(c) or (d), or subsection (2) or (3);
26. subsection 33J(1) or(2);
27. subsection 33K (1) or (2);
28. subsection 33M(1) or (2);
29. subsection 33N(2);
30. subsection 34(1) or (2);
31. subsection 35(1) or (4);
32. subsection 36(1) or (2);
33. subsection 37(2) or (5);
34. subsection 38(2);
35. subsection 39(5);
36. subsection 41(2) or (3);
37. subsection 42(1) or (3);
38. subsection 42C(3);
39. subsection 42E(2);
40. subsection 44(5);
41. subsection 48(1);
42. subsection 63(1);
43. subsection 64(1) or (5);
44. subsection 65(1);
45. subsection 69(1);
46. subsection 70(2);
47. subsection 71(1);
48. subsection 72(1);
49. subsection 73(1) or (4);

50. subsection 74(1);
51. subsection 75(2);
52. subsection 76(2) or (7);
53. subsection 77(1);
54. subsection 78(1); or
55. subsection 116(1).

FOURTH SCHEDULE
[Subsection 120(1)]

PERMITTED DISCLOSURES

<i>First column</i>	<i>Second column</i>
<i>Purposes for or circumstances in which customer documents or information may be disclosed</i>	<i>Persons to whom documents or information may be disclosed</i>
1. Documents or information which is permitted in writing by the customer, the executor or administrator of the customer, or in the case of a customer who is incapacitated, any other legal personal representative.	Any person permitted by the customer or, as the case may be, the executor, administrator or legal personal representative.
2. In connection with an application for a Faraid certificate, grant of probate, letters of administration or a distribution order under the Small Estates (Distribution) Act 1955 [Act 98] in respect of a deceased customer's estate.	Any person whom a prescribed institution in good faith believes is entitled to obtain a Faraid certificate, the grant of probate, letters of administration or a distribution order.
3. In a case where the customer is declared bankrupt, is being or has been wound up or dissolved in Malaysia or in any country, territory or place outside Malaysia.	All persons to whom the disclosure is necessary in connection with the bankruptcy or winding up or dissolution.
4. Any criminal proceedings or civil proceedings between a prescribed institution and— (a) its customer, his surety or guarantor relating to the customer's transaction; (b) two or more parties making adverse claims to money in a customer's account where the prescribed institution seeks relief by way of interpleader; or (c) one or more parties in respect of property in or over which some right or interest has been conferred on the prescribed institution.	All persons to whom the disclosure is necessary for the purpose of the criminal proceedings or civil proceedings.

<i>First column</i>	<i>Second column</i>
<i>Purposes for or circumstances in which customer documents or information may be disclosed</i>	<i>Persons to whom documents or information may be disclosed</i>
5. Compliance by a prescribed institution which has been served a garnishee order attaching moneys in the account of a customer.	All persons to whom the disclosure is required to be made under the garnishee order.
6. Compliance with a court order made by a court not lower than a Sessions Court.	All persons to whom the disclosure is required to be made under the court order.
7. Compliance with an order or request made by an enforcement agency in Malaysia under any written law for the purposes of an investigation or prosecution of an offence under any written law.	An investigating officer authorized under the written law to investigate or any officer authorized to carry out prosecution or any court.
8. Documents or information is required by the Inland Revenue Board of Malaysia under section 81 of the Income Tax Act 1967 [Act 53] for purposes of facilitating exchange of information pursuant to taxation arrangements or agreements having effect under section 132 or 132A of the Income Tax Act 1967.	Any officer of the Inland Revenue Board of Malaysia authorized to receive the documents or information.
9. Disclosure of credit information of a customer to a credit reporting agency registered under the Credit Reporting Agencies Act 2010 [Act 710] for purposes of carrying on credit reporting business as defined in the Credit Reporting Agencies Act 2010.	Any officer of the credit reporting agency authorized to receive the documents or information.
10. Performance of functions of the prescribed institution which are outsourced.	Any person engaged by the prescribed institution to perform the outsourced function.
11. Disclosure to a consultant engaged by the prescribed institution.	Consultant engaged by the prescribed institution.”.