

A BILL

i n t i t u l e d

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 2015.

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

General amendment

2. The Development Financial Institutions Act 2002 [*Act 618*], which is referred to as the “principal Act” in this Act, is amended by substituting for the words “credit facility” and “credit facilities” wherever appearing the words “financing facility” and “financing facilities” respectively.

Amendment of section 3**3. Section 3 of the principal Act is amended—**

(a) in subsection (1)—

- (i) by inserting after the definition of “related” the following definition:

‘ “books” includes any register or other record of information and any accounts or accounting records, however compiled, recorded or stored;’;

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

‘ “specify” means specify in writing by way of standards or any other forms;’;

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

‘ “Governor” and “Deputy Governor” mean the Governor and Deputy Governor of the Bank respectively;’;

- (iv) 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;’;

(v) by inserting after the definition of “prescribed institution” the following definition:

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

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

‘ “financing facility” means—

- (a) an advance, loan or other facility, in whatever form or by whatever name called, by which the customer has access, directly or indirectly, to the funds of the prescribed institution and includes a financing facility which is made in accordance with Shariah; and

(b) the giving of a guarantee, credit insurance or takaful cover in relation to a financing facility;’;

(vii) by inserting after the definition of “Chief Executive Officer” the following definition:

‘ “computer” has the same meaning as in the Evidence Act 1950;’;

(viii) by inserting after the definition of “liabilities” the following definition:

‘ “Shariah Advisory Council” means the Shariah Advisory Council established under the Central Bank of Malaysia Act 2009 [Act 701];’;

(ix) 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;’;

(x) by inserting after the definition of “officer” the following definition:

‘ “senior officer”, in relation to a prescribed institution, 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 under section 41, but shall not include a member of a Shariah committee;’;

(xi) in the definition of “office”, by inserting after the words “limited period only” the words “, an electronic terminal”;

(xii) in the definition of “controller”—

(A) by deleting the word “or” at the end of paragraph (b);

(B) by substituting for the comma at the end of paragraph (c) the words “; or”; and

(C) by inserting after paragraph (c) the following paragraph:

“(d) 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,”;

(xiii) by inserting after the definition of “controller” the following definition:

‘ “chairman”, in relation to a prescribed institution, means chairman of the board of directors;’;

(xiv) 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);’;
- (xv) in the definition of “associate”, by substituting for the word “thirty” in paragraph (d) the word “twenty”;
- (xvi) 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;’;
- (xvii) in the definition of “capital funds”, by inserting after the word “sections” the words “33c.”;
- (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) in paragraph (a)—

(A) by substituting for the words “have entered into an agreement or arrangement” the words “, pursuant to an agreement, arrangement or understanding, co-operate”; and

(B) by deleting the words “by means of interests in shares of that corporation already held by them jointly or severally”; and

(ii) in paragraph (b)—

(A) by deleting the word “or” at the end of subparagraph (iv);

(B) in subparagraph (v), by substituting for the full stop at the end of the subparagraph the words “; or”; and

(C) by inserting after subparagraph (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 relative of such person, or any related trusts together with one or more persons falling within subparagraph (i).”;

and

(d) by inserting after subsection (4) the following subsection:

“(5) Any reference in this Act to the power of the Minister or the Bank to impose or specify conditions

shall include the power of the Minister or the Bank, as the case may be, to amend or revoke any existing conditions or impose any new conditions.”.

Amendment of section 4

4. Section 4 of the principal Act is amended—

- (a) in subsection (2), by inserting after the word “authorize” 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 to perform any or all of its functions under this Act on behalf of and in the name of the Bank.”; and

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

Substitution 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 prejudice to 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 and duties under this section, the board of directors of a prescribed institution shall have regard to the interests of the customers and 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 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.”.

Substitution 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) The prescribed institution shall only submit an application for approval under subsection (1) after seeking and obtaining the Bank’s verification that the person has complied with the criteria set out in the First Schedule.

(3) 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.

(4) A prescribed institution shall notify the Bank of the appointment or reappointment of its Chief Executive Officer or directors within fourteen days from the date of the appointment or reappointment, as the case may be.”.

New section 6A

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

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

- (b) a 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 cease to 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 the appointment of such Chief Executive Officer or director; or
- (b) in the case of paragraph (1)(b), remove the chairman, director, Chief Executive Officer or senior officer from such office.

(1B) Notwithstanding anything contained in any contract of service or any other agreement relating to his appointment, such Chief Executive Officer or director 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) Subject to section 123B and notwithstanding subsections (1) and (1A), the Bank, with the concurrence of the Minister, may direct the prescribed institution—

- (a) to terminate the appointment of the Chief Executive Officer or director who becomes disqualified by virtue of subsection 7(1); or
- (b) to remove the Chief Executive Officer or director 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 Chief Executive Officer or director 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—

(a) in subsection (1), by substituting for the words “Chief Executive Officer or director” the words “chairman, director, Chief Executive Officer or senior officer”; and

(b) by deleting subsection (2).

Amendment of section 11

12. Section 11 of the principal Act is amended—

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

“(1) A director of a prescribed institution who has an interest, directly or indirectly, in a transaction or arrangement with the prescribed institution, or in any matter being or about to be considered by the prescribed institution, shall, as soon as practicable, disclose to the board of directors of the prescribed institution the nature and extent of his interest.”;

(b) by deleting subsections (2) and (4);

(c) in subsection (5), by substituting for the words “After the disclosure has been made and recorded, the director shall, in relation to that matter” the words “Whether or not a disclosure under subsection (1) has been made, the director shall, in relation to that transaction, arrangement or matter”; and

(d) by deleting subsection (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) in subsection (8), by substituting for the word “one” the word “ten”.

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 for subsection (4) 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 “**or 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 condition 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) and paragraph 26(1)(d).”.

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 paragraph (b); and

(ii) by substituting for the full stop at the end of paragraph (c) the words “; or”, and inserting after that paragraph the following paragraph:

“(d) dispose of all or any of its interest in its subsidiary or corporation in which it holds a material interest.”;

(c) by inserting after subsection (1) the following subsection:

“(1A) In determining the interest of a prescribed institution under subsection (1), the Bank shall take into consideration matters that the Bank considers relevant including whether the activities of that subsidiary or corporation in which the prescribed institution holds a material interest—

(a) is consistent with the business carried on by the prescribed institution; or

(b) directly or indirectly affect the safety and soundness of the prescribed institution.”; and

(d) by deleting subsection (3).

Amendment of section 27

25. Section 27 of the principal Act is amended by deleting subsections (2) and (4).

Amendment of section 28

26. Section 28 of the principal Act is amended—

(a) by deleting subsection (2);

(b) in subsection (3)—

(i) by substituting for the word “No” the words “Unless otherwise specified by the Bank, no”;

(ii) in paragraph (a), by substituting for the words “an accountant, advocate, architect, estate agent, doctor or any other” the word “any”;

(iii) by inserting at the end of paragraph (b) the word “and”; and

(iv) by deleting paragraph (c);

(c) by inserting after subsection (3) the following subsection:

“(3A) No prescribed institution shall grant any financing 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) in subsection (5), by inserting after the words “of a director or officer” the words “, 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) and except as may be approved by the Minister on the recommendation of the Bank, 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 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), (3), (4), (5) and (6).

Amendment of section 31

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

Amendment of section 32

29. Section 32 of the principal Act is amended by deleting subsections (2) and (5).

Amendment of section 33

30. Section 33 of the principal Act is amended by deleting subsection (3).

New Part IIIA

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

“PART IIIA

ISLAMIC FINANCIAL BUSINESS

Division 1

Interpretation

Interpretation and application

33A. (1) For the purposes of this Part—

“investment account” has the same meaning as in the Islamic Financial Services Act 2013 [*Act 759*];

“Islamic deposit” has the same meaning as in the Islamic Financial Services Act 2013;

“Islamic financial business” means the business or activity in accordance with Shariah which a prescribed institution is approved to carry on under paragraph 33B(1)(a) or (b), which may include—

- (a) 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
- (b) accepting money under an investment account.

(2) 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 33B(1) to carry on Islamic financial business.

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

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

33B. (1) Nothing in this Act or the Islamic Financial Services Act 2013 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 impose any condition on the approval granted by the Bank under subsection (1).

(3) 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).

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

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

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

Division 2

Shariah compliance

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 advice or 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 prescribed institution that 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 do 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 the purpose 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.

Functions and duties of Shariah committee and its members

33H. A Shariah committee and every member of the Shariah committee shall have such functions and duties 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 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), ceases to be a member,

shall notify the Bank of that fact and the reasons 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 123B, 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 functions and duties under this Act.

(2) Except as provided in section 33L, a member of a Shariah committee shall not disclose any document or information provided 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 carrying out of his functions and duties, 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 carrying out of his functions and duties under this Act.

Division 4

Audit on Shariah compliance

Appointment of person by 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 functions and duties 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) 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 functions and duties 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 for subsection (1) 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 for subsection (4) 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 a 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 by deleting subsections (2) and (5).

Amendment of section 38

36. Section 38 of the principal Act is amended by deleting subsection (2).

Amendment of section 39

37. Section 39 of the principal Act is amended by deleting subsection (5).

Amendment of section 40

38. Subsection 40(3) of the principal Act is amended by substituting for the word “five” the word “fifty”.

Substitution 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 prejudice to 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) The Bank may, in the interest of the prescribed institution, specify standards on prudential matters under this section to a subsidiary of a prescribed institution.

(4) Every prescribed institution and a subsidiary of a prescribed institution shall at all times—

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

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

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 the Financial Ombudsman 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 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;

“Financial Ombudsman Scheme” means a financial ombudsman 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.

Application

42B. (1) Sections 42C and 42D shall apply without prejudice to the provisions of the Capital Markets and Services Act 2007 [*Act 671*] in so far as such provisions relate to any of the regulated activities carried on by a prescribed institution under 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 purpose of ensuring that a prescribed institution is fair, responsible and professional when dealing with financial consumers.

(2) Without prejudice to 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 that is accurate, clear, timely and not misleading to financial consumers;
- (b) fairness of terms in a financial consumer contract for financial services or products;
- (c) promotion of financial services or products;
- (d) provision of recommendations or advice including assessments of suitability and affordability of financial services or products offered to financial consumers; and
- (e) complaints and dispute resolution mechanisms.

(3) The Bank may specify standards for the purposes of the definition of “financial consumer” under section 42A.

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

Prohibited business conduct

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

(2) Without prejudice to the generality of section 126, the Bank may issue guidance in writing on—

(a) descriptions of conduct which amount to any prohibited business conduct set out in the Second Schedule;
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 prescribed institution that 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) The Bank shall refer any complaint from an aggrieved person involving the prohibited business conduct set out in paragraphs 5 and 6 of the Second Schedule to the Competition Commission.

(6) In this section, “Competition Commission” means the Competition Commission established under the Competition Act 2010 [*Act 712*].

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 terms of the Financial Ombudsman Scheme setting out the scope including types of dispute that may be referred to it and its eligible complainants, the fees that may be charged and the types of award which may be granted under the Financial Ombudsman Scheme.

(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) in subsection (2)—

(i) by substituting for the word “five” the words “twenty-five”; and

(ii) by deleting the words “and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction”; and

(b) by deleting subsection (5).

Amendment of section 46

43. Subsection 46(3) of the principal Act is amended—

(a) by substituting for the word “five” the words “twenty-five”; and

(b) by deleting the words “and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction”.

Amendment of section 47

44. Subsection 47(2) of the principal Act is amended—

(a) by substituting for the word “five” the words “twenty-five”; and

(b) by deleting the words “and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction”.

Amendment of section 48

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

Amendment of section 49

46. Subsection 49(3) of the principal Act is amended—

- (a) by substituting for the word “one” the word “five”;
and
- (b) by deleting the words “and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction”.

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. Subsection 53(2) of the principal Act is amended—

- (a) by substituting for the word “five” the words “twenty-five”;
and

- (b) by deleting the words “and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction”.

Amendment of section 54

50. Section 54 of the principal Act is amended—

(a) in subsection (1)—

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

“(c) has breached or contravened any provision of this Act, the Central Bank of Malaysia Act 2009 or any written law, other than securities laws as defined in the Securities Commission Act 1993 [Act 498], regardless that there has been no prosecution or other action in respect of the breach or contravention;” and

(iv) by inserting after paragraph (c) 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 under 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 obtained an approval to carry on its business or activity in accordance with Shariah under—
 - (i) paragraph 33B(1)(a), is carrying on or is about to carry on any part of its business, affairs or activities in a manner which is contrary to Shariah; or
 - (ii) paragraph 33B(1)(b), is carrying on or is about to carry on any part of its Islamic financial business 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 be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding fifty million ringgit or to both.”.

Deletion 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 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) in subsection (2)—

- (i) by substituting for the word “five” the words “twenty-five”; and
- (ii) by deleting the words “and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction”; and

(b) in subsection (6)—

- (i) by substituting for the word “five” the words “twenty-five”; and
- (ii) by deleting the words “and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction”.

Amendment of section 62

54. Subsection 62(2) of the principal Act is amended—

- (a) by substituting for the word “five” the words “twenty-five”; and
- (b) by deleting the words “and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction”.

Amendment of 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 deleting subsection (2).

Amendment of section 71

60. Section 71 of the principal Act is amended—

(a) in subsection (1)—

- (i) by deleting the word “or” at the end of paragraph (d);
- (ii) by substituting for the full stop at the end of paragraph (e) a semicolon; and

(iii) by inserting after paragraph (e) 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

(b) 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) Subject to subsection (2), subsection 119(3) shall not apply to any documents or information relating to the affairs or account of any customer of a prescribed institution disclosed by an auditor of a prescribed institution to the Audit Oversight Board established under the Securities Commission Act 1993 or an officer or other person authorized in writing by the Audit Oversight Board to perform the responsibilities of the Audit Oversight Board.

(2) The disclosure under subsection (1) shall be subject to such conditions as may be specified by the Bank.

(3) 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).

Substitution of section 75

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

“Accounting standards

75. (1) For the 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 [*Act 558*];

“approved accounting standards” has the same meaning as in the Financial Reporting Act 1997.

(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 which has obtained the approval under subsection 33B(1) to carry on Islamic financial business are prepared in accordance with paragraph (2)(a), such financial statements are deemed to have been prepared in accordance with the approved accounting standards in so far as the financial statements relate to its Islamic financial business.”.

Amendment of section 76

66. Section 76 of the principal Act is amended by deleting subsections (2) and (7).

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. Section 80 of the principal Act is amended—

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

“Liability where accounting records and information not kept”;

(b) in subsection (1), by inserting after the words “accounting records” wherever appearing the words “or information”;

(c) by inserting after subsection (1) the following subsection:

“(1A) For the purposes of subsection (1), “accounting records” has the same meaning as in the Companies Act 1965.”; and

(d) 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 one year or to a fine not exceeding five million ringgit or to both.”.

Amendment of section 82

70. Section 82 of the principal Act is amended—

(a) by substituting for the words “books or other documents, accounts and transactions” the words “business and affairs”; and

(b) by substituting for the words “and any of its offices” the words “, its offices and subsidiaries”.

Amendment of section 83

71. Section 83 of the principal Act is amended—

(a) by substituting for the words “books or other documents, accounts and transactions” the words “business and affairs”;

(b) by inserting after the words “its offices” the words “and subsidiaries”;

(c) by inserting after the words “such prescribed institution” the words “or its subsidiary”;

- (d) by deleting the word “its” after the words “carrying on”;
- (e) by deleting the word “its” after the words “interests of”;
and
- (f) by deleting the word “its” after the word “cover”.

Amendment of section 84

72. Section 84 of the principal Act is amended—

- (a) by substituting for the words “the examiner” wherever appearing the words “the Bank”;
- (b) in subsection (1)—
 - (i) by inserting after the word “institution” the words “or its subsidiary”; and
 - (ii) 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 the Bank may specify;”;
- (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.”;
- (d) in subsection (3), by substituting for the words “a document or cash” the words “any document, title, security, cash, apparatus, equipment or machinery”;
and

(e) by inserting after subsection (3) the following subsection:

“(4) Any person who refuses to allow the Bank to take possession of the document, title, security, 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” wherever appearing the words “the Bank”;
- (ii) by substituting for the word “he” wherever appearing the words “the Bank”;
- (iii) in paragraph (a), by inserting after the words “prescribed institution” the words “, its subsidiary”;
- (iv) in paragraph (b)—
 - (A) in the national language text, by substituting for the word “pelanggan” the word “klien”;
and
 - (B) by inserting after the words “prescribed institution” the words “or its subsidiary”;
- (v) in paragraph (c), by inserting after the words “prescribed institution” the words “or its subsidiary or a member of the Shariah committee”; and
- (vi) by substituting for the words “document or information” the words “document, information or explanation”;

(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 Bank”;

(b) in subsection (1)—

(i) by substituting for the word “examiner” the word “Bank”;

(ii) by substituting for the words “his office” the words “such place and”; and

(iii) by substituting for the word “he” the words “the Bank”; and

(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, whether wholly or in part, 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) 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 on 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 thereto or the Bank, 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 inserting after the word “conducted” 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)—
 - (i) by substituting for the words “this Part” the words “this Act”; and
 - (ii) by inserting after the word “person” the words “appointed under subsection 4(3)”;
- (b) by inserting after subsection (1) the following subsection:
 - “(1A) An investigating officer appointed under subsection (1) shall have all the powers and functions conferred on the Bank under this Act.”;
- (c) in subsection (3), by substituting for the words “rights, protection and indemnity” the words “rights, privileges, protection, immunities and indemnities”;

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

“(4) 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 subsection:

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

New section 88A

78. The principal Act is amended by inserting after section 88 the following section:

“Governor to have powers and functions of investigating officer

88A. The Governor shall have all the powers and functions of an investigating officer.”.

Amendment of section 89

79. Section 89 of the principal Act is amended—

(a) in subsection (1)—

- (i) in paragraph (a), by deleting the words “belonging to or in possession or control of the prescribed institution or its holding company, subsidiary, or employee”;
- (ii) in paragraph (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”;

(iii) in paragraph (c)—

(A) by substituting for the words “report or document” the words “report, document, computer, computer output, system, data, books or information”; and

(B) 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”;

(iv) in paragraph (d), by substituting for the words “report or document” the words “report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information”;

(v) in paragraph (c), by substituting for the words “report, record or document” the words “record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information”; and

(vi) in paragraph (f), by inserting after the word “receptacle” the words “, including accessing into a computer”;

(b) in subsection (3), by substituting for the words “report or document” the words “report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information”;

(c) 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.”;

(d) in subsection (4)—

- (i) in paragraph (a), by substituting for the words “report or document seized” the words “report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information seized”; and
- (ii) in paragraph (b), by substituting for the words “report or document is found” the words “report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information is found or obtained”;

(e) in subsection (5)—

- (i) by substituting for the words “be present” the words “in every instance be permitted to attend”; and
- (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 thumb print thereon, and be given a copy of the search list prepared and signed or affixed thumb print under this section”; and

(f) 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 thumb print on the search list, the investigating officer shall endorse on

the search list, under his name, the fact of and reasons for such refusal, if any, stated by such occupant or person acting on behalf of the occupant.”.

Amendment of section 90

80. 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,”; and

(ii) by substituting for the words “report or document” the words “report, 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:

“(3) 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) in subsection (8), by substituting for the words “to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit, for each day during which the offence continues after conviction” the words “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

81. Section 91 of the principal Act is amended by substituting for the words “report or document” wherever appearing the words “report, document, apparatus, equipment, machinery, computer, computer output, system, data, books, information, article or thing”.

Amendment of section 92

82. 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

83. Section 93 of the principal Act is amended by substituting for the words “a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding three thousand ringgit for each day during which the offence continues after conviction” the words “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

84. Section 94 of the principal Act is amended—

(a) in subsection (1), by substituting for the words “report or document” wherever appearing the words “report, document, computer, computer output, system, data, books or information”; 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

- 85.** Section 95 of the principal Act is amended—

- (a) by substituting for the words “report or document” wherever appearing the words “report, document, apparatus, equipment, machinery, computer, computer output, system, data, books, information, article or thing”; and
- (b) in subsection (3), by substituting for the words “a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction” the words “imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both”.

Amendment of section 96

- 86.** Section 96 of the principal Act is amended by substituting for the words “report or document” the words “report, document, apparatus, equipment, machinery, computer, computer output, system, data, books, information, article or thing”.

Amendment of section 97

- 87.** Section 97 of the principal Act is amended—

- (a) in subsection (1), by substituting for the words “report or other document” and “report or document” the words “report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information”;

(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.”; and

(c) by inserting after subsection (3) the following subsections:

“(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 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 for the property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books or information to be forfeited or disposed of by the Bank in accordance with the order made by the court.”.

Amendment of section 98

88. 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

89. 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 Act, 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 Act 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 the service of 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 any person who appears 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 Act, 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 brought before a magistrate.

(4) Where a person is brought 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.”.

Substitution of section 100

90. 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 record, report, 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 made on oath or affirmation made pursuant to paragraph 90(2)(c) or of any record, report, 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 made 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, report, 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, record, report, 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 Act, and such police officer 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

91. Section 101 of the principal Act is amended by inserting after the words “Criminal Procedure Code” the words “and the Evidence Act 1950 or any other written law which the Minister may, on the recommendation of the Bank, prescribe”.

Amendment of section 102

92. Subsection 102(1) of the principal Act is amended by inserting after the words “examine into the” the words “business and”.

New Parts VIII_A and VIII_B

93. The principal Act is amended by inserting after section 106 the following Parts:

“PART VIII_A

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 123B, 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;

- (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 non-compliance;

- (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.

Lodgement of amount not distributed with 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 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) the classification or designation of breaches under this Act into different categories of breaches; and
- (b) the fixing, in accordance with paragraph (a), of a monetary penalty, or a range of monetary penalties, in respect of each category of breaches.

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) 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.

PART VIII B

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—

- (a) any provisions of this Act;
- (b) any provisions of any regulations made under this Act;
- (c) any order made or direction issued by the Bank under this Act;
- (d) any standards, condition, restriction, specification or requirement under this Act; or
- (e) any 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 of the sum 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 against whom the 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 any interim order as may have been applied for and such interim order shall have effect pending the determination of the application of the order.

Contravention of court order

106I. (1) Any person who contravenes any order of the court made 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 under 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 property, record, report, document, apparatus, equipment, machinery, computer,

computer output, system, data, books, information, article or thing 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 property, record, report, document, apparatus, equipment, machinery, computer, computer output, system, data, books, information, article or thing referred to in subsection (1) shall not be inadmissible in any civil proceedings under this Act 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 shall be determined in accordance with the rules of evidence under any law.

Deletion of section 107

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

New section 107A

95. The principal Act is amended by inserting before section 108 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 relating to the powers and functions of the Minister or the Bank, as the case may be.

(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 to the Minister or the Bank has breached any of the terms of the undertaking—

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

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 any of the terms 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, 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

96. Section 108 of the principal Act is amended by substituting for the words “a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction” the words “imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.”.

New section 108A

97. 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 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 sections 114A, 114B, 114C and 114D

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

“Prosecution

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

Protection in relation to disclosure of information to Bank

114B. (1) Where a person discloses in good faith to the Bank his knowledge or belief or any document or information that a contravention, breach or non-compliance has been committed or is about to be committed under this Act—

- (a) such person shall not be liable for a breach of a duty of confidentiality imposed by any law, contract or rules of professional conduct;
- (b) it shall be a defence in an action, a suit, prosecution or proceeding that is brought, instituted or maintained in any court or before any other authority against the person who made the disclosure to the Bank that in his belief the disclosure was necessary for the carrying into effect the provisions of this Act; or
- (c) no contractual or other rights or remedy may be enforced against the person on the basis of disclosure.

(2) Any document or information disclosed to the Bank under subsection (1) and the information and identity of the person making the disclosure shall be secret between the Bank and the person who made the disclosure.

Evidential provision

114C. In any criminal or civil proceedings under this Act—

- (a) any statement purporting to be signed by the Governor or any other person authorized to perform the functions of the Bank on its behalf, which forms part of or is annexed to any letter, register, record or document, however expressed, described or represented; or
- (b) the production of a printed copy of a standard, specification, order, direction, instruction, notice, requirement, condition or restriction, letter, register, record, document or any other instrument specified or issued pursuant to this Act,

shall, until the contrary is proved, be evidence of any fact stated therein.

Power of Bank to publish information

114D. The Bank may, where it thinks necessary, publish in such form and manner as it thinks fit, any information in relation to—

- (a) any enforcement action taken under this Act including criminal proceedings, compounding, civil actions and administrative actions; and
- (b) the outcome of actions referred to in paragraph (a) including the outcome of any proceedings, settlement in or out of court in relation to any contravention, breach or non-compliance of the provisions of this Act.”.

Amendment of section 116

100. Section 116 of the principal Act is amended—

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

“(1) A prescribed institution and a development financial institution for which an order is made under subsection 104(1) and their subsidiaries shall submit to the Bank, or such person as the Bank may specify, such document or information as it may require by notice in writing within such time as it may specify and the prescribed institution, the development financial institution, or their subsidiary, as the case may be, shall not submit any document or information—

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

- (b) in subsection (2)—

- (i) by substituting for the words “subsection (1)” the words “paragraph (1)(a)”;

- (ii) by substituting for the words “one million ringgit” the words “twenty-five million ringgit”; and
 - (iii) by deleting the words “and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction”;
- (c) by inserting after subsection (2) the following subsection:
- “(2A) Any person complying with subsection (1) shall not be treated as being in breach of any contract, agreement or arrangement.”;
- (d) by deleting subsection (3); and
- (e) in subsection (4), by inserting after the words “certified by” the words “any person including”.

Amendment of section 117

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

Substitution of section 119

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

“Secrecy

119. (1) Nothing in this Act shall authorize the Bank or the Minister to direct the Bank, to inquire specifically into the affairs or account of any 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 (3) or (5) 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.”.

Substitution of section 120

103. 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 as set out in the Fourth Schedule and paragraph (1)(b), shall be subject to such conditions as may be specified by the Bank.

(3) 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.

(4) 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 the affairs or account of a customer, 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's document or information.

(5) Unless the court otherwise orders, no person shall publish the name, address or photograph of any parties to such proceedings as are referred to in subsection (4), 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 the proceedings have been concluded.

(6) Any person who fails to comply with the conditions imposed by the Bank pursuant to subsection (2) or contravenes subsection (3) or (5) 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

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

- (a) in paragraph (a), by inserting after the semicolon at the end of the paragraph the word “and”;
- (b) in paragraph (b), by substituting for the words “which shall not exceed a fine of one million ringgit or imprisonment for a term not exceeding one year or both; and” the words “with imprisonment for a term not exceeding five years or a fine not exceeding ten million ringgit or to both.”; and
- (c) by deleting paragraph (c).

New sections 123A and 123B

105. The principal Act is amended by inserting after section 123 the following sections:

“Provisions relating to approvals, consents, standards, specifications, notices, requirements or directions

123A. (1) Unless otherwise expressly provided, any approval or consent granted, or any standards, specification, notice,

requirement or direction specified or issued under this Act—

- (a) may be either general or specific;
- (b) may be amended or revoked by the Minister or the Bank, as the case may be; or
- (c) shall be issued or communicated in such manner as the Bank thinks appropriate and shall be valid for all purposes.

(2) Any approval or consent under subsection (1) may be—

- (a) absolute or conditional; or
- (b) limited so as to expire on a specified date, unless renewed.

(3) Where power is given to the Minister or the Bank under this Act to make any specification, the Minister or the Bank shall have the power to specify differently for different persons or different classes, categories or descriptions of persons.

Opportunity to make representations

123B. (1) Where the Minister, on the recommendation of the Bank, or the Bank proposes to take any action against any person under subsections 8(2), 26(1), 33I(4), 54(1), section 55 or subsection 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 specified period 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 inform the person referred to in subsection (1) by 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, as the case may be, may 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 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.”.

Substitution of section 124

106. 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, by an order published in the *Gazette*, amend the First Schedule, Second Schedule and Fourth Schedule.”.

Substitution of section 126

107. 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 regulating and supervising 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.”.

Substitution of section 127

108. 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.”.

Deletion of section 129

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

Amendment of section 130

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

General savings

111. (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 of this Act and in force immediately before that 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 section 126 of the principal Act before the effective date of this Act and in force immediately before that date, in relation to any matter which corresponds with sections 33E 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 section 126 of the principal Act or generally under the principal Act before the effective date of this Act and in force immediately before that date, in relation to any matter other than that which

corresponds with sections 33E 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 section 126 of the principal Act as 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.

(4) The person holding office of Chief Executive Officer or director immediately before the coming into operation of this Act shall continue to hold such office for the unexpired period of the terms of office of such person.

Savings in respect of prescribed institution carrying on Islamic financial business

112. (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 33B(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 33B of the principal Act.

(2) Every guideline, circular, notice or any other instrument 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 33C or 33E of the principal Act, as introduced in this Act, shall be deemed to be standards which have been lawfully specified under section 33C or 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

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

New Second, Third and Fourth Schedules

114. 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 MONETARY PENALTY

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

1. subsection 5(1), (2) or (3)
2. paragraph 5A(1)(a), (b), (d) or (e)

3. subsection 6(1), (2), (3) or (4)
4. section 6A
5. subsection 7(1)
6. subsection 8(1), (1A), (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 (3)
12. subsection 26(2)
13. subsection 27(1) or (3)
14. subsection 28(1), (3) or (3A)
15. subsection 29(1)
16. subsection 31(1), (4), (5) or (6)
17. subsection 32(1) or (4)
18. subsection 33(1) or (2)
19. subsection 33B(2)
20. subsection 33C(1), (2) or (3)
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 33I(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(1), (4) or (6)
34. subsection 38(1)
35. subsection 39(1), (2) or (3)
36. subsection 41(4) or (5)
37. subsection 42(1) or (3)
38. subsection 42c(1)
39. subsection 42E(2)
40. subsection 44(4)
41. subsection 48(1)
42. subsection 63(1)
43. subsection 64(1) or (5)
44. subsection 65(1)
45. section 66
46. subsection 69(1)
47. subsection 70(1)
48. subsection 71(1)
49. subsection 72(1)
50. subsection 73(1), (3) or (4)
51. subsection 74(1)
52. subsection 75(2)
53. subsection 76(1), (3), paragraph 76(4)(b) or subsection 76(6)
54. subsection 77(1)
55. subsection 78(1)
56. paragraph 116(1)(b) or subsection 116(4)

FOURTH SCHEDULE

[Section 120]

PERMITTED DISCLOSURES

(1) <i>Purposes for or circumstances in which customer's documents or information may be disclosed</i>	(2) <i>Persons to whom customer's 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 <i>Faraid</i> 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 <i>Faraid</i> 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.
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.

(1) <i>Purposes for or circumstances in which customer's documents or information may be disclosed</i>	(2) <i>Persons to whom customer's documents or information may be disclosed</i>
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.

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EXPLANATORY STATEMENT

This Bill (“the proposed Act”) seeks to amend the Development Financial Institutions Act 2002 (“Act 618”).

2. *Clause 1* contains the short title and commencement date for the proposed Act.

3. *Clause 2* seeks to provide for the general amendment to Act 618 by substituting for the words “credit facility” and “credit facilities” wherever appearing the words “financing facility” and “financing facilities” respectively.
4. *Clause 3* seeks to amend section 3 of Act 618 to introduce certain new definitions and to amend certain existing definitions used in Act 618. *Clause 3* further seeks to introduce a new subsection 3(5) into Act 618 to provide that any reference to the power of the Minister or Bank to impose conditions shall include the power to amend or revoke any existing conditions or impose any new conditions.
5. *Clause 4* seeks to amend section 4 of Act 618 to empower the Bank to establish and authorize a committee to exercise any of its functions under Act 618 on behalf of and in the name of the Bank.
6. *Clause 5* seeks to substitute for section 5 of Act 618 a new section 5 which sets out the functions and duties of a board of directors of a prescribed institution.
7. *Clause 6* seeks to introduce a new section 5A into Act 618 to set out the duties of a director of a prescribed institution in addition to, and not in derogation of, any of his other duty or liability in other written law or rule of law.
8. *Clause 7* seeks to substitute for section 6 of Act 618 a new section 6 which provides that a prescribed institution shall not appoint or reappoint a Chief Executive Officer or director without the prior written approval of the Minister. This *clause* further provides that a prescribed institution shall seek the Bank’s verification that such person has complied with the minimum criteria for appointment prior to seeking the written approval of the Minister.
9. *Clause 8* seeks to introduce a new section 6A into Act 618 to require a chairman, director, Chief Executive Officer or senior officer of a prescribed institution to comply with the criteria set out in the First Schedule.
10. *Clauses 9, 11, 12, 14, 17, 24, 25, 26, 28, 29, 30, 34, 35, 36, 37, 40, 42, 45, 55, 56, 57, 58, 59, 60, 61, 63, 64, 66, 67, 68, 95 and 103* seek to delete subsections 7(2), 10(2), 11(2), (4), and (6), 13(2), 16(6), 26(3), 27(2) and (4), 28(2), 31(2) and (7), 32(2) and (5), 33(3), 36(3), 37(2) and (5), 38(2), 39(5), 42(2) and (4), 44(5), 48(2), 63(2), 64(2) and (6), 65(2), 69(2), 70(2), 71(2), 72(2), 73(2) and (5), 74(2), 76(2) and (7), 77(2), 78(2), section 107 and subsection 116(3) of Act 618 and *clauses 42, 43, 44, 46, 49, 53, 54, 59, and 85* seek to amend subsections 44(2), 46(3), 47(2), 49(3), 53(2), 59(2) and (6), 62(2) and 95(3) of Act 618 respectively following the removal of the criminal penalty for these sections due to the introduction of the new Part VIIIA and Part VIII B that empowers the Bank to take administrative action and civil action.
11. *Clause 10* seeks to amend section 8 of Act 618 to require any chairman, director, Chief Executive Officer or senior officer of a prescribed institution to immediately cease to hold office and cease to act in such capacity if he is disqualified under subsection 7(1) or if he no longer complies with any of the criteria set out in the First Schedule. The *clause* further provides that the

Bank may, with the concurrence of the Minister, direct a prescribed institution to terminate a Chief Executive Officer or director who is disqualified under subsection 7(1), or remove from office a Chief Executive Officer or director who no longer complies with the criteria set out in the First Schedule. The chairman, director, Chief Executive Officer or senior officer so terminated shall not be entitled to claim any compensation for such termination.

12. *Clauses 13, 15, 16, 18, 19, 20, 21, 22, 38, 42, 43, 44, 46, 47, 48, 49, 50, 52, 53, 54, 69, 73, 74, 80, 83, 84, 85, 97 and 105* seek to amend subsections 12(3), 14(2), 15(2), 18(3), 19(6) and (8), 21(2) and (4), 22(4), 24(2), 40(3), 44(2), 46(3), 47(2), 49(3), 50(2), 52(3), 53(2), 54(3), 58(2), 59(2) and (6), 62(2), 80(2), 85(2), 86(2), 90(3) and (8), section 93, subsection 94(3), 95(3), section 108 and subsection 123(2) of Act 618 respectively to increase the maximum liability for the offences in these sections in line with the maximum liability for similar offences imposed by other written laws on other financial institutions.

13. *Clause 23* seeks to amend section 25 of Act 618 to expand the scope of control by the Bank to include any acquisition or holding of material interest in any corporation by a prescribed institution. This *clause* also seeks to prohibit a prescribed institution from acquiring or holding any material interest in any corporation without the written approval of the Bank and to require a prescribed institution to comply with the conditions specified by the Bank. This *clause* further seeks to insert a new subsection 25(5) to empower the Bank to specify what constitutes “material interest” for the purposes of subsection 25(1) and paragraph 26(1)(d).

14. *Clause 24* seeks to amend section 26 of Act 618 to empower the Bank to direct prescribed institutions to dispose of all or any of its interest in its subsidiary or a corporation in which it holds a material interest. The *clause* also seeks to introduce a new subsection (1A) to provide that in determining the interest of a prescribed institution, the Bank shall take into consideration matters that the Bank considers relevant including whether the activities of that subsidiary or corporation is consistent with the business carried on by the prescribed institution or directly or indirectly affect the safety and soundness of the prescribed institution. This *clause* seeks to delete subsection 26(3) following the removal of the criminal penalty for this section.

15. *Clause 26* seeks to amend section 28 of Act 618 to remove the outright prohibition for a prescribed institution to grant financing facilities to related parties and to specify circumstances where the prohibition does not apply.

16. *Clause 27* seeks to amend section 29 of Act 618 to replace the restriction on a prescribed institution from granting credit to a single person in excess of the amount specified by the Bank with the restriction from having an exposure to a single counterparty including the exposure to any group connected to such single counterparty in excess of the limit as specified by the Bank in the prudential standards. This *clause* exempts any exposure to, and any exposure explicitly guaranteed by, the Bank or the Government from such restriction. The *clause* further seeks to empower the Bank to specify what constitutes “connected”, “counterparty” or “exposure”.

17. *Clause 31* seeks to introduce a new Part IIIA (sections 33A to 33N) into Act 618 on Islamic financial business and provides that a prescribed institution is permitted to carry on business or activity in accordance with Shariah with the prior written approval of the Bank. The new Part IIIA also provides that a prescribed institution shall ensure that its business, affairs and activities are in compliance with Shariah at all times and shall, if it becomes aware of any non-compliance, notify the Bank of the fact, cease from carrying on such business, affairs or activities and submit a plan to rectify the non-compliance. The new Part IIIA empowers the Bank to specify, in accordance with the advice of the Shariah Advisory Council, standards on Shariah matters which require the ascertainment of Islamic law by the Shariah Advisory Council.

The new Part IIIA requires a prescribed institution which carries on Islamic financial business to establish a Shariah committee to advise on its business, affairs and activities so that they are in compliance with Shariah, and provides for the functions and duties of a Shariah committee and its members to be set out in the standards as specified by the Bank. The new Part IIIA also provides for the conduct of an audit on Shariah compliance on a prescribed institution.

18. *Clause 32* seeks to delete subsections 34(3) to (6) of Act 618 that enables the Bank to modify the statement of corporate intent and requires the prescribed institution to implement the statement of corporate intent accepted by the Bank. This *clause* also removes the criminal penalty for this section.

19. *Clause 33* seeks to substitute for subsection 35(1) of Act 618 a new subsection 35(1) which requires the prescribed institution to submit to the Bank an annual funding requirement or additional funding requirement, as may be approved by the Minister. This *clause* also seeks to delete subsections 35(2), (3), (5) and (6) of Act 618 to remove the specific requirement as to the type of documents to be submitted to the Bank, the requirement for the prescribed institution to apply to the Bank for approval to borrow from its related or associate corporation and the criminal penalty for this section.

20. *Clause 39* seeks to substitute for section 41 of Act 618 a new section 41 which seeks to empower the Bank to specify standards on prudential matters relating to prescribed institutions for the purposes of promoting the safety and soundness of prescribed institutions and the integrity, professionalism and expertise in the conduct of the business, affairs and activities of prescribed institutions. The standards may relate to among others, corporate governance, risk management and prevention of the prescribed institution from being used, intentionally or unintentionally, for criminal activities.

21. *Clause 41* seeks to introduce a new Part IVA (sections 42A to 42E) into Act 618 on Business Conduct and Consumer Protection to empower the Bank to specify business conduct standards to a prescribed institution for purposes of ensuring that a prescribed institution is fair, responsible and professional when dealing with financial consumers. The new Part IVA prohibits a prescribed institution from engaging in any prohibited business conduct as set out in the Second Schedule and seeks to empower the Bank to issue guidance on whether a prescribed institution has engaged in any prohibited business conduct. The *clause* also seeks to provide that regulations may be made to require a prescribed institution to be a member of an approved financial ombudsman

scheme and to set out the scope of the financial ombudsman scheme including the types of dispute that may be referred to it, the eligible complainants, the fees that may be charged and the types of award which may be granted under the financial ombudsman scheme.

22. *Clause 50* seeks to amend subsection 54(1) of Act 618 by expanding the circumstances whereby the Bank may exercise its powers under subsection 54(2). These circumstances include committing or about to commit an act, or pursuing or 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 and failure to manage the prescribed institution's business or affairs in a manner that is consistent with sound risk management and good governance practices.

23. *Clause 51* seeks to delete section 56 of Act 618 following the insertion of a new section 123B which provides for the opportunity to make representations in relation to any action proposed to be taken by the Minister or the Bank.

24. *Clause 60* seeks to amend section 71 of Act 618 by inserting additional situations where the auditor is required to immediately report to the Bank. These include where there is any weakness in the internal controls which is relevant to the financial reporting process undertaken by the prescribed institution and where 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.

25. *Clause 62* seeks to introduce a new section 72A into Act 618 which provides that subsection 119(3) shall not apply to any documents or information relating to the affairs or account of any customer of a prescribed institution which is 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 by such Board. The *clause* further provides that an auditor is not liable to the prescribed institution for a breach of the duty of confidentiality for reporting to the Bank and is not liable to be sued for defamation in any court for any statement made by the auditor in good faith in discharging his duties under Act 618.

26. *Clause 65* seeks to substitute for section 75 of Act 618 a new section 75 to require a prescribed institution to prepare its financial statements in accordance with the approved accounting standards subject to any modifications set out in the standards which the Bank may specify. In the absence of any approved accounting standards, the prescribed institution is required to apply any standards as the Bank may specify for such purpose.

27. *Clause 70* seeks to amend section 82 of Act 618 to extend the Bank's examination power over subsidiaries of the prescribed institutions.

28. *Clause 71* seeks to amend section 83 of Act 618 to expand the scope of examination on the prescribed institutions to include its business and affairs.

29. *Clauses 72, 73 and 74* seek to amend sections 84, 85 and 86 of Act 618 to clarify that the examiner means the Bank, to clarify the meaning of document, to expand the types of things which the Bank has the right to take possession, and to introduce a new offence for any person who refuses to allow the Bank to take possession of certain things. The *clauses* also seek to specify that the Bank may examine a member of the Shariah committee, and any person examined by the Bank shall provide any document, information or explanation to the Bank as the Bank may require.

30. *Clause 75* seeks to introduce a new section 86A into Act 618 to prohibit the prescribed institutions, and their directors, officers, auditors or members of the Shariah Committee from disclosing to any other person any document or information produced by the Bank as set out in subsection (2) which has resulted from the administration or enforcement of the Act, the Central Bank of Malaysia Act 2009 or any other written law administered by the Bank, except in such circumstances as may be specified by the Bank.

31. *Clauses 76 to 77, 79 to 81 and 83 to 86* seek to amend sections 87 to 88, 89 to 92 and 94 to 97 of Act 618 to expand the scope of the Bank's examination powers by expanding the type of things that the Bank can have access to, take possession and that may be admissible in evidence.

32. *Clause 78* seeks to provide that the Governor shall have the powers and functions of an investigating officer.

33. *Clause 88* seeks to amend section 98 of Act 618 to empower a police officer not below the rank of Inspector to arrest without warrant any person whom he reasonably suspects to have committed or to be committing any offence under Act 618.

34. *Clause 89* seeks to introduce new sections 99A, 99B and 99C into Act 618 to provide for service of orders or notices generally, empower an investigating officer to require any person who is the subject of an investigation under the Act to surrender his travel documents and make provision for the credibility of an *agent provocateur's* evidence and admissibility of evidence given by an *agent provocateur*, whether he is an officer of the Bank or not.

35. *Clause 90* seeks to amend section 100 of Act 618 to empower the Bank, whether at its own initiative or on the request of a public officer, to supply to a police officer or public officer, a copy of any record, statement, books, computer output, data, document or information seized, detained or taken possession, or obtained or produced under any examination.

36. *Clause 93* seeks to introduce new Parts VIIIA and VIIIB into Act 618. The new Part VIIIA (sections 106A to 106D) seeks to empower the Bank to take administrative actions against any person for breach of any provision of Act 618 or any regulation made pursuant to Act 618, failure to comply with any order or direction issued under Act 618 and failure to comply with or give effect to any standards, condition, restriction, specification or requirement made under Act 618. The new Part VIIIA also sets out the matters that shall be taken into consideration by the Bank in determining the appropriate action to be taken in each case and whether or not any amount is to be paid by the prescribed institution to remedy the breach including making restitution. Where a person fails to remedy the breach including making restitution to any other person aggrieved by the

breach, the Bank may sue for and recover such sum as a civil debt due to the person aggrieved by the breach. Any amount paid under paragraph 106A(3)(e) or subsection 106A(10) which has not been distributed by the person in breach to the aggrieved person after reasonable efforts to notify the aggrieved persons have failed shall be lodged with the Registrar of Unclaimed Moneys in accordance with the provisions of the Unclaimed Moneys Act 1965 [Act 370].

The new Part VIII A seeks to empower the Bank, with the concurrence of the Minister, to prescribe the matters relating to classification or designation of the breaches under Act 618 into different categories of breaches and fix, in accordance with the classification or designation, a monetary penalty or range of monetary penalties in respect of each category. The new Part VIII A also provides that any person who is aggrieved by a decision of the Bank on the imposition of a monetary penalty or an order to remedy the breach including making restitution relating to a monetary sum to be paid by the person in breach, may appeal against such decision to the Monetary Penalty Review Committee established under the Financial Services Act 2013 [Act 758] or Islamic Financial Services Act 2013 [Act 759].

The new Part VIII B (sections 106E to 106L) seeks to empower the Bank to institute civil proceedings in a court against a person if there is a reasonable likelihood that any person will contravene or has contravened, or will breach or has breached or is likely to fail to comply with or has failed to comply with any provisions, regulations, order or any direction under Act 618. The new Part VIII B also seeks to empower the Bank to institute civil actions in court for purposes of seeking any person to indemnify a prescribed institution for any loss or damage to the prescribed institution which results from or is caused by the commission of an offence by such person.

37. *Clause 94* seeks to delete section 107 of Act 618 following removal of the general offence for the contravention or failure to comply with any provision of Act 618 or any specification, requirement, order, direction, instruction, limit, term, condition, restriction or regulation made, given or imposed under or pursuant to any provision of Act 618, for a new enforcement regime which constitutes criminal and administrative actions, as may be applicable for a breach or contravention of any provision under Act 618.

38. *Clause 95* seeks to introduce a new section 107A into Act 618 to empower the Minister or the Bank to accept a written undertaking given by a person in connection with the powers and functions of the Minister or the Bank, as the case may be. The new section 107A also provides that in the case of a person who has breached any of the terms of the undertaking, the Bank may apply or recommend to the Minister to apply, as the case may be, to the High Court for an order to be made in respect of such breach.

39. *Clause 97* seeks to introduce a new section 108A into Act 618 to provide that where the penalty of imprisonment has been provided for an offence under Act 618, such penalty of imprisonment shall not apply to a body corporate convicted of the offence.

40. *Clauses 98 and 104* seek to amend section 113 and paragraph 123(2)(c) of Act 618 to delete provisions in relation to continuing offences daily fines.

41. *Clause 99* seeks to introduce into Act 618—

- (a) new section 114A which provides that the prosecution for an offence under Act 618 shall be instituted with the written consent of the Public Prosecutor;
- (b) new section 114B which provides that a person who discloses in good faith to the Bank his knowledge, belief, document or information that a breach or contravention has been or is about to be committed shall not be liable for a breach of confidentiality and shall be able to raise as a defence that the disclosure was necessary, and that no contractual or other rights or remedy may be enforced against him;
- (c) new section 114C which provides that in any criminal or civil proceedings under Act 618 any statement purporting to be signed by the Governor or any authorized person, which forms part of or annexed to any document described in the new section 114C, or any instrument described in the new section 114C specified or issued pursuant to Act 618 shall be evidence of facts stated in the documents or instruments mentioned above until the contrary is proved; and
- (d) new section 114D which empowers the Bank to publish any information in relation to any enforcement action taken under Act 618 and the outcome of such actions.

42. *Clause 101* seeks to amend section 117 of Act 618 to provide for the Governor and the Deputy Governor protection against any legal proceedings for any act done or statement made, or omitted to be done or made, in good faith.

43. *Clause 102* seeks to substitute for section 119 of Act 618 a new section 119 which provides that nothing contained in Act 618 authorizes the Bank or the Minister to direct the Bank, to inquire specifically into the affairs or account of any client of any prescribed institution or development financial institution. These prohibitions are, however, without prejudice to the power of the Bank to inquire into the affairs or account of a customer for the purposes of exercising its powers under Act 618, the Financial Services Act 2013, the Islamic Financial Services Act 2013 or section 47 of the Central Bank of Malaysia Act 2009. The amended section 119 further prohibits a person who has access to any document or information in relation to the affairs or account of any customer of a prescribed institution including the prescribed institution itself and a director, officer or agent of the prescribed institution, from disclosing to another person such document or information.

44. *Clause 103* seeks to substitute for section 120 of Act 618 a new section 120 which provides for permitted disclosures for the purposes set out in the Fourth Schedule of the amended Act 618 or as approved in writing by the Bank.

45. *Clause 104* seeks to amend section 123 of Act 618 to increase the maximum penalty which can be provided in the regulations which the Minister, on the recommendation of the Bank, may make under this section.

46. *Clause 105* seeks to introduce into Act 618—
- (a) new section 123A to provide for matters relating to approvals, consents, standards, specifications, notices, requirements or directions, made or issued under Act 618; and
 - (b) new section 123B which provides that the Minister or the Bank, as the case may be, shall not take any action against any person without giving such person a notice of the proposed action and a reasonable opportunity to make representations unless any delay in taking that action would be detrimental to the interests of any prescribed institution, its stakeholders, the financial system or the public generally.
47. *Clause 106* seeks to substitute for section 124 of Act 618 a new section 124 which provides that the Minister may, by an order published in the *Gazette*, amend the First, Second and Fourth Schedules of Act 618.
48. *Clause 107* seeks to substitute for section 126 of Act 618 a new section 126 which provides that the Bank may issue guidance consisting of such information, advice or recommendation as the Bank considers appropriate.
49. *Clause 108* seeks to substitute for section 127 of Act 618 a new section 127 which provides that nothing in Act 618 shall 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 the application of the provisions in Act 618 shall be subject to provisions in those Divisions, and in the event of any conflict or inconsistency, the provisions in those Divisions shall prevail over the provisions in Act 618.
50. *Clause 109* seeks to delete section 129 of Act 618 following the introduction of the new section 33A into Act 618 on Islamic financial business.
51. *Clauses 111* and *112* seek to provide for the savings and transitional provisions for any approval, authority, direction, exemption, requirement, specification, verification, guideline, circular or notice issued by the Bank following the enactment of the proposed Act.
52. *Clause 114* seeks to introduce into Act 618—
- (a) the new Second Schedule to provide a list of prohibited business conduct;
 - (b) the new Third Schedule to provide a list of provisions in respect of which the Bank may impose an administrative monetary penalty; and
 - (c) the new Fourth Schedule to set out the permitted disclosures where the duty to preserve secrecy imposed under section 119 does not apply.

53. Other amendments not specifically dealt with in this Explanatory Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

[PN(U2)2923]