

No. S 110

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))**

DEPOSIT PROTECTION ORDER, 2010

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CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))

DEPOSIT PROTECTION ORDER, 2010

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Deposit Protection Order, 2010 and shall commence on 1st. January, 2011.

(2) The long title of this Order is "An Order for the administration of a deposit protection scheme, to establish the Brunei Darussalam Deposit Protection Corporation and for matters connected therewith or incidental thereto".

Interpretation.

2. In this Order, unless the context otherwise requires —

"assessment year", in relation to the calculation and payment of premiums under this Order, means the period beginning on the first day of January and ending on the 31st. day of December of each year or such other period as may be approved by the Minister;

"Authority" means the Authority as stated in the Banking Order, 2006 (S 45/2006), the Islamic Banking Order, 2008 (S 96/2008) and in the case of the Finance Companies Act (Chapter 89), the Minister;

"Board" means the board of directors of the Corporation;

"chairman" means the chairman of the Board;

"chief executive officer" means the chief executive of the Corporation;

"Corporation" means the Brunei Darussalam Deposit Protection Corporation established by section 3;

"deposit" means a deposit as defined in section 2(3) of the Banking Order, 2006 (S 45/2006), a deposit as defined in section 2(3) of the Islamic Banking

Order, 2008 (S 96/2008) and a deposit as defined in section 2 of the Finance Companies Act (Chapter 89), as the case may be;

"depositor" means a person —

(a) whose account has been or is to be credited in respect of monies constituting a deposit or part of such deposit; or

(b) to whom a member institution is liable in respect of an instrument issued for monies constituting a deposit or part of such deposit;

"deposit protection" means the protection provided to the depositors of a member institution in case of its failure to pay its deposits;

"director" means a director of the Board;

"financial institution" means a bank licensed under section 4 or 23 of the Banking Order, 2006 (S 45/2006), an Islamic bank licensed under section 4 or 23 of the Islamic Banking Order, 2008 (S 96/2008) and a finance company licensed under section 3 of the Finance Companies Act (Chapter 89);

"*Hukum Syara*" means the Laws of Islam according to the Syafeite, Hanafi, Maliki or Hanbali Sect of the *Ahli Sunnah Waljamaah*;

"member institution" means any financial institution deemed to be a member institution under section 27 whose membership has not been cancelled under section 31 or terminated under section 32;

"Minister" means the Minister of Finance;

"protected deposits" means the deposits protected pursuant to section 45.

PART II

BRUNEI DARUSSALAM DEPOSIT PROTECTION CORPORATION

Chapter 1

Establishment

Establishment of Corporation.

3. (1) There is hereby established the "Brunei Darussalam Deposit Protection Corporation".

(2) The Corporation shall be a body corporate with perpetual succession and a common seal with power, subject to this Order, to acquire and dispose of property and may sue and be sued in its corporate name.

(3) All deeds, documents and other instruments requiring the seal of the Corporation shall be sealed with the common seal of the Corporation by the authority of the Corporation in the presence of the chief executive officer or a member of the Corporation and of some other person duly authorised by the Corporation to act in that behalf, and shall be signed by the chief executive officer or member of the Corporation, as the case may be, and by that duly authorised other person, and such signing shall be sufficient evidence that the common seal of the Corporation has been duly and properly affixed and that the seal is the lawful seal of the Corporation.

(4) The Corporation may by resolution or otherwise appoint an officer of the Corporation or any other agent either generally or in a particular case to execute or sign on behalf of the Corporation any agreement or other instrument not under seal in relation to any matter coming within the powers of the Corporation.

Objects of Corporation.

4. The objects of the Corporation shall be —

(a) to administer a deposit protection scheme for the member institutions under this Order;

(b) to provide protection against the loss of part or all of the deposits of a member institution;

(c) to provide incentives for sound risk management in the financial system; and

(d) to promote or contribute to the stability of the financial system.

Powers of Corporation.

5. (1) The Corporation shall have all such powers as may be necessary for or in connection with, or reasonably incidental to, the furtherance of its objects, the performance of its functions or the discharge of its duties under this Order or under any other written law.

(2) Without prejudice to the generality of subsection (1), for the purpose of this Order, the Corporation may do all such things necessary or incidental to the objects of the Corporation.

(3) The Corporation may, either generally or in any particular case, appoint any person who is not a director, officer or employee of the Corporation to render such assistance as it may specify in the exercise of its powers, the performance of

its functions or the discharge of its duties under this Order or under any other written law or to exercise, perform or discharge such power, functions or duties as may be specified by the Corporation and subject to the supervision of the Board on behalf of and in the name of the Corporation.

Office of Corporation.

6. The Corporation may, in or outside Brunei Darussalam, establish any office as it considers necessary or expedient for the performance of its functions.

Chapter 2

Board of Directors

Duties and composition.

7. (1) There shall be a board of directors of the Corporation who shall be responsible for the conduct of the business and affairs of the Corporation and shall exercise all powers and do all acts which may be exercised or done by the Corporation.

(2) The Board shall consist of —

(a) a chairman, who shall be appointed by His Majesty the Sultan and Yang Di-Pertuan;

(b) 4 other directors appointed by His Majesty the Sultan and Yang Di-Pertuan, of whom at least 2 shall have relevant banking and finance or private sector experience.

Terms of office of directors.

8. The chairman and other directors shall hold office for a term not exceeding 3 years and shall be eligible for re-appointment.

Disqualification and termination of directors.

9. (1) No person shall be appointed as or shall remain a director who is an officer of a member institution.

(2) His Majesty the Sultan and Yang Di-Pertuan may terminate or suspend the appointment of any director if —

(a) he becomes of unsound mind or otherwise becomes incapable of carrying out his duties;

(b) he is adjudicated a bankrupt, suspends payment or compounds with his creditors;

(c) he has been charged for a criminal offence under any written law punishable with imprisonment, whether by itself, or *in lieu* of, or in addition to, a fine, in any court in or outside Brunei Darussalam;

(d) he is guilty of serious misconduct in relation to his duties under this Order; or

(e) he is absent, except on leave granted by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, in the case of the chairman or by the chairman, in the case of all other directors, from at least 2 meetings of the Board in any period of 12 months.

(3) Notwithstanding subsection (2), a director may at any time resign his office by giving a written notice of not less than 30 days to the Minister.

Actions and proceedings of Board not affected by vacancy etc.

10. The Board may act notwithstanding any vacancy and its proceedings shall not be invalidated by —

(a) the absence of any director;

(b) any defect afterwards discovered in the appointment or qualification of any director or the constitution of the Board;

(c) any omission, defect or irregularity in the convening or conduct of a meeting; or

(d) the presence or participation of a person who is not a director of the Board.

Remuneration and allowances for directors.

11. Every director attending any meeting of the Board shall be paid by the Corporation such fees, other remuneration and allowances as may be determined by the Minister, on the recommendation of the Board.

Duties of directors.

12. (1) A director shall act honestly and in the best interest of the Corporation and use reasonable diligence in the discharge of the duties of his office.

(2) A director or any person who has been a director shall not —

(a) make improper use of any information acquired by virtue of his position as a director to gain, directly, or indirectly, an advantage for himself or for any other person; or

(b) do, say or publish anything which may be detrimental to the interests of the Corporation.

Meetings.

13. (1) The Board shall meet as often as may be required but not less than 4 times a year.

(2) The chairman shall preside at all meetings of the Board and in his absence, the directors present shall elect a chairman among the directors and the person so elected shall preside and have all the powers of the chairman.

(3) The *quorum* for a meeting of the Board shall be a simple majority.

(4) The decisions of the Board shall be adopted by a simple majority of the directors present and voting.

(5) In the case of an equality of votes, the chairman shall have a casting vote.

(6) A resolution in writing, signed by all the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

(7) Nothing in this section shall prevent the chairman from authorising a director to use live video, television links or other appropriate communication or multimedia facilities to participate in any meeting of the Board.

Board may make by-laws.

14. (1) The Board may make such by-laws as are necessary or expedient in relation to the administration, management, control, business, assets and affairs of the Corporation including —

(a) the functions, powers, duties, remuneration, benefits and terms and conditions of services, code of conduct or surcharge on officers, employees and agents of the Corporation;

(b) the conflicts of interest in respect of serving directors, officers and employees of the Corporation and those directors, officers and employees who have left the service of the Corporation;

(c) the appointment, terms of reference and activities of committees established by the Corporation;

(d) the rules and procedures to be observed by the directors at Board meetings; or

(e) such other matters as may be required to be provided for under the by-laws in this Order.

(2) By-laws made under this section shall be binding on all persons to whom the by-laws apply.

(3) Any person who does not comply with the by-laws made under subsection (1)/b) is guilty of an offence under this Order.

Chapter 3

Chief executive officer

Appointment, functions and accountability.

15. (1) The chief executive officer shall be appointed by His Majesty the Sultan and Yang Di-Pertuan.

(2) His Majesty the Sultan and Yang Di-Pertuan may, as His Majesty deems necessary appoint the chief executive officer to be a member of the Board.

(3) The chief executive officer shall be responsible for the day-to-day administration of the business and affairs of the Corporation.

(4) The chief executive officer shall be answerable and accountable to the Board for the exercise of his powers and the performance of his duties.

(5) In the absence or incapacity of the chief executive officer, the Board may authorise a director of the Corporation to perform the duties, functions and responsibilities of the chief executive officer.

Terms and conditions of service.

16. The chief executive officer shall —

(a) be deemed to be an officer or employee of the Corporation and be subject to the terms and conditions of service as may be determined by the Board; and

(b) enjoy such compensation and such other amenities as approved by the Minister, upon recommendation of the Board.

Chapter 4

Officers and employees

Appointments, terms and conditions of service.

17. (1) The Corporation may appoint such officers and employees as are necessary for carrying on the business and affairs of the Corporation and such officers and employees shall hold office for such periods, receive such salaries, allowances and benefits, and shall be subject to such terms and conditions of service as may be determined by the Board.

(2) An officer or employee of the Corporation shall act in good faith and comply with such requirements, standards, duties and code of conduct as set out by the Board.

(3) The Corporation may, with the approval of the Board, establish and maintain a pension or provident fund for its officers and employees out of the monies of the Corporation.

Preservation of secrecy.

18. (1) Except for the purpose of the performance of his duties or when lawfully required to do so by any court or under any written law, no person who is or has been a director, officer, employee, consultant or agent of the Corporation shall disclose to any person any information relating to the affairs of the Corporation or any person which he has acquired in the performance of his duties or the exercise of his functions.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 3 years or both.

Restriction on enquiring specifically into affairs of particular customer.

19. Without prejudice to the powers of inspection, examination, investigation, inquiry or resolution conferred on the Corporation, nothing in this Order shall –

(a) authorise the Minister to direct the Corporation; or

(b) authorise the Corporation,

to inquire specifically into the affairs of any customer of a member institution.

PART III

FINANCE

Source of funds.

20. (1) For the purposes of this Order, the Corporation shall maintain and administer a fund which shall comprise —

(a) all premiums received by the Corporation under this Order; and

(b) all other monies and assets which may in any manner become lawfully payable to, and received by or vested in the Corporation relating to any matter incidental to its powers, duties and functions,

(2) The Corporation is empowered —

(a) to credit all direct operating income to, or charge all expenses, costs and losses against the fund; or

(b) where such income, expenses, costs or losses cannot be specifically attributed to the fund, such credit or charge shall be proportional to the amount of premiums collected in the assessment year prior to the year in which such credit or charge is made.

(3) In relation to the first assessment year of the Corporation, such credit or charge under subsection (2)(b) shall be determined by the Corporation.

Borrowing power of Corporation.

21. (1) The Corporation, may borrow from the Consolidated Fund or raise funds in such manner and upon such terms and conditions as may be approved by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan.

(2) Any borrowing from the Consolidated Fund or raising of funds as provided in subsection (1) shall be in accordance with *Hukum Syara'*.

Permitted investments.

22. (1) The Corporation may invest in —

(a) any stocks, funds, shares or securities in companies incorporated or operating in Brunei Darussalam; and

(b) any investment in any entity or instrument of issuers based in any other country or territory alternating or originating in any other currency, including —

- (i) any obligation of a corporation, commercial bank or a bank-holding company, asset-backed security and mortgage-backed security issued or unconditionally guaranteed by a corporate entity or trust; any repurchase and reverse repurchase agreement with a major commercial bank or a primary dealer;
- (ii) futures, forwards, options contracts or swaps on any investment which are traded on an exchange;
- (iii) any security listed and traded on an exchange;
- (iv) any exchange-traded funds, instruments that provide exposure to market indices for any investment, a private equity fund and a hedge fund;
- (v) any Islamic financial instrument;
- (vi) any bullion, commodity and currency;
- (vii) any other specific investment not included in this subsection as may be approved by the Corporation.

(2) Any investment from the fund shall be in accordance with *Hukum Syara'*.

Financial year.

23. The financial year of the Corporation shall begin on the 1st. day of January and end on the 31st. day of December of each year except that the first financial year of the Corporation shall begin on the date of commencement of this Order and end on 31st. December of the following year.

Audit.

24. (1) The accounts of the Corporation shall be audited annually —

(a) by the Auditor General; or

(b) by any person who has been authorised to perform the duties required by the Companies Act (Chapter 39) to be performed by an auditor who shall be appointed annually by His Majesty the Sultan and Yang Di-Pertuan.

(2) Where the accounts have been audited under subsection (1)(b), they may be verified by the Auditor General before a copy is submitted to the Minister.

Financial statement and annual report.

25. The Corporation shall within 3 months from the close of its financial year transmit a copy of the annual accounts and annual report on the operations of the Corporation throughout the year to the Minister, who shall subsequently submit to His Majesty the Sultan and Yang Di-Pertuan.

PART IV

DEPOSIT PROTECTION

Chapter 1

Membership, cancellation and termination

Definition of deposit.

26. In this Part —

"deposit" means the unpaid balance of the aggregate of deposits as defined in section 2 received or held by a member institution from or on behalf of a person in the usual course of the business of deposit-taking of the member institution and shall include —

(a) on-member institution Brunei dollar and foreign currency deposits;

(b) a bank draft, certified cheque or other similar instrument or payment instruction, drawn or made against a deposit account for which the member institution is primarily liable;

(c) a cheque entered into a payment system or a clearing house notwithstanding any delay or failure by the member institution in crediting the account; or

(d) any other liability or financial instrument as may be specified by the Corporation,

but excludes —

(i) a deposit that is not payable in Brunei Darussalam;

(ii) money market deposits;

(iii) any structured deposits;

- (iv) negotiable instruments of deposit and other bearer deposits;
- (v) repurchase agreements; and
- (vi) any other liability or financial instrument as may be specified by the Corporation;

"trust accounts" includes monies held on account for the purpose of trust.

Membership.

27. (1) Every financial institution is deemed to be a member institution from the commencement of this Order.

(2) Any financial institution licensed after the commencement of this Order shall be deemed to be a member institution from the date it was granted a licence under section 4 or 23 of the Banking Order, 2006 (S 45/2006), section 4 or 23 of the Islamic Banking Order, 2008 (S 96/2008) or section 3 of the Finance Companies Act (Chapter 89), as the case may be.

Exemption from membership.

28. (1) A financial institution may apply in writing to the Minister to be exempted from the requirement under section 27(1) to be a member institution.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*, exempt a financial institution referred to in subsection (1) from the requirement under section 27(1).

(3) The Minister may require an applicant to furnish him with such information or documents as the Minister considers necessary in relation to the application.

(4) Without prejudice to the generality of subsection (2), the Minister shall, in determining whether to grant an exemption under subsection (2), have regard to —

(a) the scope of deposit-taking business conducted by the financial institution in Brunei Darussalam; and

(b) in the case of a financial institution which is incorporated in a jurisdiction other than Brunei Darussalam —

- (i) whether the deposits accepted by its branches and offices located within Brunei Darussalam are protected by a deposit protection scheme, or any other scheme of a similar nature, established and maintained in the jurisdiction in which the financial institution is incorporated (referred to in this section as the foreign deposit protection scheme); and

- (ii) whether the scope and level of protection available to those deposits under the foreign deposit protection scheme, or any other scheme of a similar nature are not less than the scope and level of protection that would be available to the deposits under the scheme if those deposits were protected by the scheme.

(5) The Minister may, by notice in writing, impose on an exempt member institution such conditions or restrictions relating to the exemption as the Minister may think fit.

(6) The Minister may at any time —

(a) by notice in writing to an exempt member institution, add to, vary or revoke any existing condition or restriction imposed by the Minister under subsection (5); or

(b) by notice in writing impose such conditions or restrictions as the Minister may think fit on a class of exempt member institution.

(7) An exempt member institution shall comply with all conditions or restrictions imposed on it under subsection (5) or (6), as the case may be.

(8) Any exempt member institution which contravenes subsection (7) is guilty of an offence and liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine of \$10,000 for every day or part thereof during which the offence continues after conviction.

Withdrawal of exemption.

29. (1) The Minister may withdraw an exemption granted to an exempt member institution under section 28(2) if —

(a) the exempt member institution fails to comply with a condition or restriction imposed in respect of the exemption; or

(b) the Minister considers it necessary in the public interest.

(2) Before withdrawing any exemption granted to an exempt member institution under section 28(2), the Minister shall —

(a) give the exempt member institution notice in writing of his intention to do so; and

(b) in the notice referred to in paragraph *(a)*, call upon the exempt member institution to show cause within such time as may be specified in the notice why the exemption should not be withdrawn.

(3) If the exempt member institution referred to in subsection (2) —

(a) fails to show cause within the time specified in the notice or within such extended period of time as the Minister may allow; or

(b) fails to show sufficient cause,

the Minister shall give notice in writing to the exempt member institution of the date on which the withdrawal of the exemption is to take effect.

(4) Where a withdrawal of exemption becomes effective, the Minister shall publish a notice of the withdrawal in the *Gazette*.

Terms and conditions of membership.

30. (1) The terms and conditions of membership of a member institution shall be prescribed by regulations made under section 86.

(2) A member institution shall comply with the terms and conditions as may be prescribed pursuant to subsection (1).

(3) Any member institution which contravenes subsection (2) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000 and in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Cancellation of membership.

31. The Corporation shall cancel the membership of a member institution by informing the member institution in writing if the licence of the member institution has been surrendered or revoked under the Banking Order, 2006 (S 45/2006), the Islamic Banking Order, 2008 (S 96/2008) or the Finance Companies Act (Chapter 89), as the case may be.

Termination of membership.

32. (1) The Board may, at any time after the Corporation has received a notification from the Authority that a member institution has ceased, or is likely to cease, to be viable convene a meeting to determine whether the membership of the member institution should be terminated.

(2) Where the Board proposes to terminate the membership of the member institution, the Corporation shall give written notice of its proposal to the member institution and shall give the member institution an opportunity to make representations within 5 days from the date of such notice.

(3) Where representations are received by the Corporation from the member institution, the Board shall consider the representations and shall make a determination to confirm or not to confirm the proposal to terminate the membership of the member institution.

(4) Where the Board has confirmed its proposal to terminate the membership of the member institution, it shall inform the Minister of its determination in writing.

(5) Where the Minister disagrees with the determination of the Board, the Minister shall within 15 days from the date of receipt of the notice inform the Board in writing of his decision relating to such determination, and such decision shall become binding on the Board.

(6) Where the Minister has not informed the Board of his decision within the period stipulated under subsection (5), the Minister shall be deemed to have approved the proposal of the Board to terminate the membership and the Corporation shall —

(a) immediately inform the Authority accordingly; and

(b) issue a written notice of termination of membership to the member institution and its membership shall terminate on the expiration of the period specified in the notice.

(7) Where, at any time after a notice of termination has been given to a member institution under subsection (6), the Corporation is satisfied that as the result of any action by the member institution, or any other person, the risks to depositors or to the Corporation has been averted or substantially reduced, the Corporation may revoke its notice of termination and inform the Minister accordingly.

(8) The termination of a membership by the Corporation shall be final.

Effects of cancellation or termination.

33. (1) Where the membership of a member institution is cancelled under section 31 or terminated under section 32 —

(a) the financial institution shall not assume or use the words "deposit protection" or any derivative of these words in any language or any other word in any language capable of being construed that the financial institution is a member institution;

(b) the member institution shall inform its depositors in writing that the outstanding deposits with the member institution shall continue to be protected deposits for a period of 2 years from the effective date of

cancellation or termination, unless the deposit is fully withdrawn or has reached its maturity, whichever is earlier;

(c) in the case of a cancellation due to a member institution surrendering its licence, such institution shall be required to notify its depositors of the cancellation of its membership in a manner to be prescribed by the Corporation;

(d) the member institution shall not be considered to be a member institution by reason only that its deposits continue to be protected deposits under paragraph *(b)*, section 46 or 47; and

(e) the member institution shall not be relieved from its obligations or liabilities to the Corporation that have accrued before the cancellation or termination of its membership.

(2) For the purposes of subsection (1)*(b)*, the cancellation under section 31 or termination under section 32 of the membership shall not affect the obligation, right and the ability of the Corporation to make a payment under Chapter 4 of this Part.

(3) For the purpose of subsection (1)*(c)*, the member institution shall indemnify the Corporation in the event of any payment made by the Corporation to depositors, in respect of such of its deposits as have been transferred or acquired by another member institution or such other person as approved by the Minister.

(4) The Corporation may, in such manner and through such media as it deems expedient, give public notice of the cancellation or termination of any membership of a member institution if in the opinion of the Corporation, the public interest requires that such notice be given.

(5) Where a member institution is obligated to repay to a person any monies that are received or held by the member institution, such monies shall be deemed not to constitute part of a deposit for the purposes of deposit protection with the Corporation if the date on which the person acquires his interest in the monies is a date subsequent to the date on which the membership of the member institution is cancelled under section 31 or terminated under section 32 by the Corporation.

(6) Any member institution which contravenes section (1)*(a)*, *(b)* or *(c)* is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000 and in the case of a continuing offence to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

Maintenance of assets in Brunei Darussalam.

34. (1) Regulations may be made under section 86 to require a member institution, or a class of member institutions to maintain, in relation to its

protected deposits base, such minimum amount of assets in Brunei Darussalam as may be prescribed for meeting its liabilities in respect of protected deposits placed with the member institution.

(2) Regulations may be made under section 86 which are necessary or expedient for carrying out the purposes of this section, including regulations for or with respect to —

(a) the circumstances under which, and the manner in which, the Corporation may impose an asset maintenance requirement;

(b) the types of assets that are to be treated as assets maintained in Brunei Darussalam and the minimum amount of assets for the purpose of an asset maintenance requirement; and

(c) the method for the valuation of assets maintained in Brunei Darussalam.

(3) If the Corporation is satisfied that a member institution has failed to comply with any asset maintenance requirement under subsection (1), the Corporation may by notice in writing to the member institution impose a financial penalty.

(4) The financial penalty shall be of an amount not exceeding 10 *per cent* of the deficiency in the amount of assets necessary to comply with the asset maintenance requirement, for every day or part thereof during which there is a deficiency.

(5) Before imposing a financial penalty on a member institution, the Corporation shall —

(a) give the member institution notice in writing of its intention to do so, including the basis for its decision to impose the financial penalty; and

(b) in the notice referred to in paragraph (a), call upon the member institution to show cause within such time as may be specified in the notice why the financial penalty should not be imposed.

(6) If the member institution referred to in subsection (5) —

(a) fails to show cause within the time specified in the notice or within such extended period of time as the Corporation may allow; or

(b) fails to show sufficient cause,

the Corporation shall give notice in writing to the member institution of the date by which the payment of the financial penalty is to be made.

(7) Where a member institution is given a notice under subsection (6), the member institution shall pay the financial penalty to the Corporation by the date of payment specified in the notice.

(8) Any financial penalty payable under this Order shall be recoverable as a debt due to the Corporation by the member institution.

(9) Notwithstanding any provision in the Limitation Act (Chapter 14), an action to recover any financial penalty recoverable by virtue of this section shall not be brought after the expiration of 3 years from the date on which the cause of action accrued.

(10) Any financial penalty paid to or recovered by the Corporation shall be paid into the Consolidated Fund.

(11) Where the Corporation has commenced any proceedings in a court to recover a financial penalty from a member institution, the Corporation shall be entitled to claim costs on a full indemnity basis from that member institution.

(12) Any member institution which is aggrieved by a decision of the Corporation to impose a financial penalty under subsection (3) may, within 30 days of the decision of the Corporation, appeal in writing to the Minister whose decision shall be final.

Chapter 2

Premiums

First premium.

35. (1) The Corporation shall assess and collect the premium payable by a member institution for the assessment year in which it becomes a member institution (hereinafter referred to as "the first premium") an amount of \$50,000 or such other rate to be prescribed by the Corporation, with the prior approval of the Minister, whichever is the higher.

(2) No first premium shall be required to be paid in relation to any deposit transferred from a member institution to another member institution within a business group upon which premium has been paid for the assessment year in which the member institution becomes a member.

(3) A member institution shall pay the first premium to the Corporation within 30 days from the date it becomes a member.

Annual premium.

36. (1) Every member institution shall, for each assessment year following the assessment year in which it becomes a member institution, pay an annual premium for all protected deposits placed with it.

(2) The maximum annual premium rates under this Order shall not exceed 0.5 *per cent* of the total protected deposits.

(3) The *quantum* of such annual premium paid under subsection (2) shall not be lower than the first premium.

(4) A member institution shall pay the annual premium within 30 days upon the receipt of the notice of payment.

Calculation of annual premium.

37. (1) The annual premium shall be calculated as follows —

(a) the premium rates to be applied to a member institution shall be based on the total protected deposits held by the member institution as at 31st. December of the preceding assessment year; and

(b) the applicable premium rates for each member institution shall be based on such criteria as may be prescribed.

(2) The premium payable by a member institution shall be based on returns to be certified by the chief executive of the member institution to be submitted in such form and within such period as the Corporation may require.

(3) For the purpose of this section, "chief executive" in relation to a member institution, means an individual, by whatever name called, who, or jointly with one or more persons, is responsible, subject to the authority of the directors, for the conduct of the business and the administration of that member institution.

Notice of payment of premium.

38. Where the Corporation has computed the amount of premium payable by a member institution or any assessment year or part thereof under section 36 or 42, the Corporation shall give the member institution notice in writing of the amount of annual premium or the additional premium that the member institution is required to pay under this Order for that assessment year or part thereof.

No set-off on premium payment.

39. A member institution shall not reduce or otherwise adjust any premium payment payable by it to the Corporation on the basis of any claim by the member institution against the Corporation.

Power to refund or remit premium.

40. The Corporation may, with the approval of the Minister, refund or remit in whole or in part any premium paid or payable by any member institution under this Order.

Refund of premium paid in excess.

41. Where it appears to the Corporation that a member institution has paid premium in excess of the amount payable under this Order, the Corporation shall refund to the member institution the amount of premium paid in excess.

Additional premium where funds insufficient to meet payment.

42. (1) Where the funds are insufficient to make any payment due to the depositors under this Order, the Authority may, with the concurrence of the Corporation, determine —

(a) that member institution shall be required to pay additional premium for any assessment year or part thereof; and

(b) the premium rate or rates for the purposes of computing the additional premium.

(2) Where a determination is made under subsection (1) —

(a) the Authority shall, as soon as practicable —

(i) publish a notice in the *Gazette* of the requirement to pay additional premium and the premium rate or rates for the purposes of computing the additional premium referred to in subsection (1); and

(ii) compute the additional premium payable by the member institutions for that assessment year or part thereof and notify the Corporation accordingly; and

(b) the Corporation shall, upon receipt of the notification referred to in paragraph (a)(ii) give notice in writing to every member institution of the additional premium that the member institution is required to pay for that assessment year or part thereof and the date by which the additional premium shall be paid.

(3) Any member institution shall not, without the prior approval of the Minister, be required to pay additional premium for any assessment year exceeding 0.5 *per cent* of the total protected deposit of that member institution.

{4} For the purposes of subsection {3}, the total protected deposit of a member institution shall be determined on the date prescribed by the Authority for computing the amounts of premium payable by member institutions.

Payment of premium and late payment fees.

43. {1} Where a member institution is given notice in writing to pay a premium under this Order for any assessment year or part thereof, the member institution shall pay to the Corporation –

(a) in the case of the premium, on or before the date of payment specified in the regulations;

(b) in the case of the additional premium, on or before the date of payment specified in the notice,

the amount of premium or additional premium, as the case may be, that the member institution is required to pay for that assessment year or part thereof.

{2} Subject to subsection {3}, if a member institution fails to pay the premium or additional premium or any part thereof in contravention of subsection {1} –

(a) the Corporation may, by notice in writing, impose on the member institution such late payment fee as the Corporation may by regulations determine; and

(b) the member institution shall pay to the Corporation the late payment fee together with the unpaid premium or additional premium, as the case may be, on or before the date of payment specified in the notice.

{3} The late payment fee referred to in subsection {2} shall not exceed the amount of premium or additional premium, as the case may be, owing by the member institution.

{4} The amount of premium or additional premium owing by the member institution or the late payment fee shall be paid in such manner as may be specified in the regulations.

{5} Without prejudice to any other remedy, any premium, additional premium or late payment fee payable under this Order shall be recoverable as a debt due to the Corporation by the member institution.

{6} Where the Corporation has commenced any legal proceedings in a court to recover a premium, additional premium or a late payment fee from a member institution, the Corporation shall be entitled to claim costs on a full indemnity basis from that member institution.

Premium regulations.

44. Regulations may be made under section 86 in respect of the determination of the first premium and the annual premiums including —

(a) the establishment of a system of classifying member institutions in different categories;

(b) the criteria or factors to be taken into account, the procedures to be followed by the Corporation in determining the category in which a member institution is classified; and

(c) any other matters related thereto.

Chapter 3

Scope of coverage

Scope of coverage.

45. (1) The Corporation shall administer a deposit protection scheme for all protected deposits placed with a member institution.

(2) For the purpose of subsection (1), where a depositor owns more than one deposit with a member institution, the aggregate of those deposits shall be protected by the deposit protection scheme to a maximum amount of \$50,000 in respect of the principal and return on the deposits.

(3) Subject to regulations made under section 86 —

(a) where a member institution is obligated to repay monies to a depositor who is acting as a trustee for another or as joint owner with another, and the trusteeship or joint ownership is disclosed on the records of the member institution —

(i) the deposit of the depositor as trustee or as a joint owner, shall be deemed to be a deposit separate from any deposit of that depositor acting on his own behalf or acting in another trust or joint capacity with the member institution;

(ii) where a trustee is acting for 2 or more beneficiaries, the deposit held in trust by him for each beneficiary, shall each be deemed to be a separate deposit; and

(iii) the deposit held in trust by a trustee for a beneficiary in a member institution shall be deemed to be a deposit separate from a deposit of that beneficiary with the member institution

on his own behalf and shall also be deemed to be separate from any deposit held in trust by another trustee for the beneficiary in the member institution;

(b) for the avoidance of doubt, where a depositor is a joint owner of a deposit in a member institution with another person, all the deposits of such depositor with such person shall be aggregated and be deemed to be one protected deposit to a maximum amount of \$50,000.

(4) For the purposes of subsection (3) —

(a) the member institution shall indicate on its records —

- (i) for a trust account, that the account is held by the trustee for the named beneficiaries; or
- (ii) for a joint account, the names of the individual joint owners;

(b) the trustee shall —

- (i) maintain detailed records as may be prescribed on the trust accounts;
- (ii) submit to the member institution such records as may be required by the Corporation under this Order; and
- (iii) file a statutory declaration certifying the accuracy of the records submitted at subparagraph (ii) when required by the Corporation;

(c) the trustee in maintaining and submitting any record on the trust accounts required under paragraph *(b)* shall ensure that the information given shall be true, correct and complete and shall not contain false or deceptive information and the member institution shall rely on such records for the purposes of paragraph *(a)* and the trustee shall indemnify the member institution in the event of any legal proceedings relating to such records.

(5) Notwithstanding anything in subsection (3)*(a)*, the Corporation shall not separately protect the deposits held in trust for any beneficiary if, in the opinion of the Corporation, the trust exists primarily for the purpose of obtaining or increasing deposit protection.

(6) For the purpose of subsection 3*(a)*(iii), any deposit held on trust by the same trustee for the same beneficiary shall be aggregated and be deemed to be one deposit.

(7) Subject to regulations made under section 86 and the disclosure made by the trustee under subsection (4)(c), where a depositor –

- (a) operates business as a sole proprietor or a partner of a partnership;
- or
- (b) carries on any professional practice,

that has been disclosed as such on the records of the member institution, a deposit of such business or professional practice shall be deemed to be separate from the deposits of the depositor on his own behalf or as trustee or joint owner.

Deposits by amalgamating institutions etc.

46. (1) Where a person has deposits with 2 or more member institutions that amalgamate and continue in operation as one member institution (in this Chapter referred to as the "amalgamated institution"), a deposit of that person with an amalgamating institution on the day on which the amalgamated institution is formed, less any withdrawal from the deposit, shall be deemed to be and continue to be separately protected by the deposit protection scheme for a period of 2 years or upon maturity or until withdrawal, whichever is earlier, after the amalgamating institution becomes part of the amalgamated institution.

(2) A deposit made by a person referred to in subsection (1) with an amalgamated institution after the day on which the amalgamated institution is formed shall be protected by the deposit protection scheme only to the extent that the aggregate of that person's deposits with the amalgamated institution is less than \$50,000.

(3) Where a member institution acquires the deposits of another member institution or amalgamating institution, those deposits, less any withdrawal from the deposits, shall continue to remain in the deposit protection scheme separately from any protected deposit up to the coverage limit of \$50,000 for a period of 2 years, or upon maturity or until withdrawal, whichever is earlier, after the date of acquisition.

(4) A member institution shall maintain such records as necessary for the purposes of subsections (1) and (2).

Deposits of member institution acquired by non-member institution.

47. (1) Where deposits with a member institution are acquired by a person who is not a member institution, such deposits shall be deemed to be and continue to be protected by the deposit up to the limit of \$50,000 for the remainder of the assessment year, or upon maturity or until withdrawal, whichever is earlier, after the acquisition of the deposits by the acquiring non-member institution.

(2) For the purposes of subsection (1), and in accordance with such regulations as may be prescribed —

(a) in relation to the depositors, the member institution shall —

- (i) obtain written consent of at least 75 *per cent* of all the depositors or their personal representatives to transfer deposits;
- (ii) obtain written acknowledgement of each depositor that the depositor is aware that deposits transferred to the non-member institution will remain protected deposits for the remainder of the assessment year, or upon maturity or until withdrawal, whichever is earlier, the deposits placed with the amalgamated non-member institution shall no longer be protected deposits in whole or in part by the Corporation;
- (iii) upon a request in writing, pay to a depositor, the principal amount of the deposit and return thereon, calculated to the date of withdrawal and no charge or penalty shall be imposed in respect of the payment; and
- (iv) provide a statement that the acquired member institution's obligation to repay deposits will be assumed by the non-member institution; and

(b) in relation to the acquiring non-member institution, enter into an agreement in writing to assume the acquired member institution's liability in relation to the deposits on the same terms and conditions.

(3) For the purpose of subsection (2)(b), the member institution shall indemnify the Corporation in the event of any payment made by the Corporation to depositors, in respect of such of its deposits as have been transferred or acquired by the acquiring non-member institution.

Deemed deposits.

48. Where a member institution assumes the deposits of another member institution under section 45, the deposits are for the purposes of sections 35 and 36, deemed to be placed with the member institution that assumes them as of the day on which they are assumed.

Not part of deposit.

49. Where monies are or were received by a member institution for which the institution has issued or is obligated to issue an instrument evidencing a deposit, other than a bank draft, certified cheque, traveller's cheque, prepaid letter of credit or money order —

(a) the monies do not constitute a deposit unless the instrument and records of the institution specify the person entitled, at the date of issue of the instrument, to the repayment of the monies evidenced thereby;

(b) the person referred to in paragraph (a) shall be deemed to be the depositor in respect of the monies unless particulars of a transfer of the instrument are entered on the records of the institution, in which case the most recent transferee shown on the records shall be deemed to be the depositor; and

(c) the entry of a transfer on the records of a member institution is ineffective for the purpose of paragraph (b), if the entry is made subsequent to the cancellation or termination of the membership of the member institution.

Chapter 4

Payments

Payments.

50. (1) All payments made by the Corporation in respect of deposits and all associated costs thereon shall be made from the funds.

(2) All payments made by the Corporation shall be based on the deposit records of the member institution as in the opinion of the Corporation appears to be entitled to it.

Obligatory payment.

51. (1) The Corporation shall, in the manner described in subsection (2), make payment in respect of any deposit protected with the Corporation where a winding-up order has been made in respect of —

(a) a member institution that holds the deposit; or

(b) any person to whom that deposit has been transferred —

(i) under section 33(1)(c) from a member institution which has surrendered its licence; or

- (ii) under section 46(1) from a member institution which has amalgamated with such person.

(2) Where the Corporation is obliged to make payment under subsection (1) in respect of any deposit, the Corporation shall as soon as practicable and in any case not later than 3 months from the date of the winding-up order make payment to such person based on the record of a member institution as in the opinion of the Corporation appears to be entitled to it in such manner deemed appropriate by the Corporation.

Discretionary payment.

52. The Corporation may, with the prior written approval of the Minister, make payment in respect of any protected deposit where —

(a) the member institution that holds the deposit or any person to whom that deposit has been transferred under section 33(1)(c) from a member institution which has surrendered its licence or under section 46(1) from a member institution amalgamating with such person, is unable to make any payment in respect of the deposit, by reason of —

- (i) an order of a court;
- (ii) any action taken by the Authority or the Corporation; or
- (iii) any action taken by the receiver, manager or receiver and manager during the period when a member institution is in receivership;

(b) a petition for winding-up has been presented to the court against the member institution that holds the deposit or any person to whom that deposit has been transferred under section 33(1)(c) from a member institution which has surrendered its licence or under section 46(1) from a member institution amalgamating with such person; and

(c) the membership of the member institution that holds the deposit is cancelled or terminated.

Advance payment.

53. The Corporation may in respect of sections 51 and 52 make advance payment to the depositors of the member institution.

Date of computing liability.

54. (1) The date for computing liability for obligatory payment by the Corporation shall be the date of the commencement of winding-up of the member institution.

(2) The date for computing liability for the discretionary payment in respect of an event under section 52 shall be the date when the event first occurs.

Calculation of protected foreign currency deposits for obligatory payment.

55. For the purpose of making obligatory payment by the Corporation, all protected foreign currency deposits will be paid in Brunei dollars based on the published value of the currency exchange rate as of the date of winding-up of the member institution.

How return on deposit to be calculated for obligatory payment.

56. For the purpose of calculating the obligatory payment by the Corporation in respect of any protected deposit protected by the Corporation where a winding-up order has been made in respect of a member institution that holds the deposit, the principal, including return accrued, in relation to the deposit shall be included only up to the date of the winding-up of the member institution.

Restrictions on entitlement to payment.

57. Where the Corporation has paid a protected depositor the full amount of payment payable to the protected depositor in respect of his protected deposits in accordance with this Order, no other person is entitled, in respect of the protected deposits, to payment under this Order.

Corporation may pay return on obligatory payment.

58. Where the Corporation makes an obligatory payment under section 51, the Corporation may at its sole discretion pay, in addition to the amount the Corporation is obliged to pay, return on that amount at a rate determined by the Corporation for the period commencing on the date of the winding-up in respect of a member institution that holds the deposit and ending on the date of the making of the payment in respect of the deposit, but the aggregate of the payments made under this section and section 51 in relation to the deposit shall in no case exceed \$50,000.

How return on deposit to be calculated for discretionary payment.

59. In calculating the payment by the Corporation in respect of any protected member institution where the Corporation makes a discretionary payment –

(a) subject to paragraph *(b)*, the return accrued, in relation to the deposit shall be included only up to the date of the payment by the Corporation; or

(b) if a proceeding for the winding-up of a member institution that holds the deposit has been commenced before the date of the payment by the Corporation but a winding-up order has not yet been made, the return accrued, in relation to the deposit shall be included only up to the date of the commencement of the winding-up of the member institution.

Return on index-linked deposits.

60. Any return referred to in section 56 or 59 in relation to a deposit held by a member institution shall be determined in accordance with regulations prescribed if a payment to be made by the member institution in respect of the deposit is to be determined, in whole or in part, by reference in any way to –

(a) the market price of a security, commodity or financial instrument;

(b) the exchange rate between any 2 currencies;

(c) a reference rate determined by reference to any one or more of those prices or rates;

(d) a reference rate determined by reference to any one or more non-financial events; or

(e) any other kind of variable index or reference point as may be specified by the Corporation.

Discharge of liability.

61. Payment under this Chapter by the Corporation in respect of any protected deposit discharges the Corporation from all liabilities to the extent of the amount of the payment made in respect of that deposit, and in no case is the Corporation under any obligation to see to the proper application in any way of the payment so made.

Subrogation.

62. (1) On any payment under this Order to, or for the benefit of, any protected depositor in respect of his protected deposit, the Corporation shall be subrogated to the extent of such payment to all the rights and remedies of —

(a) the protected depositor;

(b) the person who received the payment on behalf of the protected depositor;

(c) in the case where payment is made to a protected depositor who is a beneficiary of a trust, the trustee; or

(d) in the case where payment is made to an protected depositor who is a client in a client account, the depositor who held the protected deposit in that client account,

as the case may be, in respect of the protected deposit in priority over —

(i) the rights and remedies of the protected depositor, the person who received the payment on behalf of the protected depositor, the trustee or the depositor of a client account, as the case may be, in relation to that protected deposit; and

(ii) the rights and remedies of any person who is subrogated, whether or not before the Corporation's subrogation, to the rights and remedies of any of the persons referred to in paragraphs (a), (b), (c) and (d) in relation to that protected deposit,

and may maintain an action in respect of those rights and remedies in the name of person referred to in paragraph (a), (b), (c) or (d), as the case may be, or in the name of the Corporation.

(2) The persons referred to in subsection (1)(a), (b), (c) and (d), or any person who is subrogated, whether or not before the Corporation's subrogation, to the rights and remedies of those persons, shall not be entitled to receive any amount from, or out of, the assets of the failed member institution until the Corporation has been reimbursed in full the amount of payment paid to those persons.

(3) The Corporation shall be entitled —

(a) in the case where the failed member institution is wound up, to be reimbursed out of the assets of the failed member institution for the expenses incurred in —

(i) the payments to protected depositors; and

- (ii) the lodging of a claim with the liquidator of the member institution for any payment that has been paid out to protected depositors; or

(b) in any other case, to be reimbursed by the failed member institution or the provisional liquidator of the failed member institution, as the case may be, for the expenses incurred in —

- (i) the payments to protected depositors; and
- (ii) where a claim has been lodged with the provisional liquidator of the failed member institution for any payment that has been paid out to protected depositors, the lodging of the claim.

Assignment.

63. Where the Corporation deems it advisable, the Corporation may withhold payment in respect of any deposit with a member institution until it has received an assignment in writing of all the rights and interests of the depositor in relation to the deposit.

Time limitation for claims.

64. No action may be taken against the Corporation in respect of the obligation of the Corporation to make payment in relation to a deposit held by a member institution that is being wound up unless the action is commenced within 10 years after the date of the commencement of the winding-up of the member institution.

PART V

OFFENCES

Holding out as member institution.

65. (1) No person shall hold itself out to be a member institution, or represent that it or any other person is protected under the Corporation unless such other person is a member institution.

(2) Any person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term not exceeding 3 years or both and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

False statements.

66. Any person who prepares, signs, approves or concurs in any —

(a) account, statement, return, report or other document required to be submitted to the Corporation under this Order that he knows or has reason to believe is false, or contains false or misleading information; or

(b) return that does not present fairly information required to be submitted to the Corporation under this Order,

is guilty of an offence and liable on conviction to a fine not exceeding \$100,000, imprisonment for a term not exceeding 3 years or both.

Failure to provide information etc.

67. Every member institution that fails or neglects —

(a) within the time specified for so doing, to provide the Corporation with any account, record, statement, return, report or other document respecting the business or affairs of a member institution that is required to be submitted to the Corporation under this Order; or

(b) to respond, within the time specified in the notice, to a request for information or explanations respecting a member institution made by or on behalf of the Corporation under this Order,

is guilty of an offence and liable on conviction to a fine not exceeding \$100,000 and in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

General penalty for offences not otherwise provided for.

68. Unless otherwise provided in this Order, any person, other than the Corporation, who commits an offence against this Order, contravenes or does not comply with this Order, any specification or requirement made, or any order in writing, direction, instruction, or notice given, or any limit, term, condition or restriction imposed, or any other thing howsoever done, in the exercise of any power conferred under, pursuant to or by virtue of, of this Order is guilty of an offence and liable on conviction to a fine not exceeding \$100,000.

Offences by body corporate etc.

69. (1) Where an offence has been committed by any body corporate or unincorporate under this Order, any person who at the time of the commission of the offence was a director, officer or controller of the body corporate or unincorporate or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the carrying on of any business or for the

management of any assets, liabilities or affairs of such body corporate or unincorporate, or was assisting in such management, commits that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

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

(3) Subsection (2) is applicable where such act, omission, neglect or default was committed by the clerk or servant of the principal in the course of his employment, or by the agent when acting on behalf of the principal, or by the clerk or servant of such agent in the course of his employment by such agent or otherwise on behalf of the agent.

Compounding of offences.

70. (1) The Corporation may, without instituting proceedings against any person for any offence under this Order, or any regulations made thereunder, which is punishable only by a fine or a penalty, demand and receive the amount of the fine or penalty or such reduced amount as it thinks fit from that person.

(2) If that person —

(a) pays that amount to the Corporation within 14 days after the demand, no proceedings shall be taken against him in relation to the offence; or

(b) does not so pay the amount so demanded, the Corporation may cause proceedings to be instituted in relation to the offence.

Court may order compliance.

71. Where a person is convicted of an offence under this Order, the court may, in addition to any fine or term of imprisonment that may be imposed, order such person to rectify the contravention of this Order in respect of which he was convicted.

Additional monetary punishment.

72. Where a person is convicted of an offence under this Order, the court may, where it is satisfied that as a result of the commission of the offence the convicted person acquired a monetary benefit or that monetary benefit accrued to the benefit of such person, order the convicted person to pay, notwithstanding the

maximum amount of any fine that may otherwise be imposed under this Order, an additional fine in an amount equal to the court's estimation of the amount of the monetary benefit.

Compliance or restraining order.

73. If a person does not comply with any provision of this Order, the Corporation may apply to the High Court for an order directing such person to comply or restrain such person from acting in breach of the provision and, on the application, the Court may make such order as it thinks fit.

Recovery of fines.

74. All fines payable under this Order are recoverable and enforceable, with costs, at the suit of the Corporation, instituted by the Corporation and, when recovered, to be paid into and form part of the Consolidated Fund.

PART VI

GENERAL

Submission of information to Corporation.

75. (1) Unless expressly provided for in this Order to the contrary, if in the exercise of any of its powers, the performance of any of its functions, or the discharge of any of its duties under this Order, the Corporation requires any information from any member institution or from any related corporation of any of the member institution, on any matter relating to the business or affairs of such member institution or related corporation, such member institution or related corporation shall, notwithstanding section 58 of the Banking Order, 2006 (S 45/2006) or section 58 of the Islamic Banking Order, 2008 (S 96/2008) submit such information to the Corporation.

(2) Any officer or agent of the member institution or related corporation or any other person having access or holding or in possession of the books, records, accounts or other documents of a member institution or related corporation shall, if at any time called upon in writing by the Corporation to do so, produce the same to the Corporation as it may require.

(3) Where the information obtained by the Corporation under subsection (1) or (2) relates to the account, business or affairs of any customer of any member institution or related corporation supplying the information, that information shall be confidential as between the Corporation and the member institution or related corporation supplying it.

(4) Any person who fails to comply with any requirement under this section is guilty of an offence and liable on conviction to a fine not exceeding \$100,000

and in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

Submission of information to Authority.

76. The Authority is entitled to all information obtained by or produced to the Corporation, whether in the course of conducting an examination, inspection or otherwise, regarding the business and affairs of any member institution or any of its subsidiaries or affiliates or of any person dealing with the member institution or any of its subsidiaries or affiliates, that relates to the safety and soundness or the operations, of the member institution.

Judicial notice.

77. The court shall take judicial notice of —

- (a) any fact or matter required to be published under this Order; and
- (b) any fact or matter set out in any certificate issued under this Order.

Winding-up of Corporation.

78. No written law relating to insolvency or winding-up of any body corporate shall apply to the Corporation and in no case shall the business and affairs of the Corporation be wound-up.

Public servants.

79. The directors, the chief executive officer and the officers and employees of the Corporation shall be deemed to be public servants within the meaning of the Penal Code (Chapter 22).

Power to appoint attorney.

80. The Corporation may, by instrument under its common seal, appoint a person whether in Brunei Darussalam or outside Brunei Darussalam to be its attorney, and the person so appointed may, subject to the instrument, do any act or execute any power or function which he is authorised by the instrument to do or execute.

Immunity.

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

- (a) the Corporation;

(b) any director, officer, employee or agent of the Corporation, either personally or in their official capacity;

(c) any person lawfully acting on behalf of the Corporation, any such director, officer, employee or agent, either personally or in his capacity as a person acting on such behalf,

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

(2) Subsection (1) shall apply only where such act or such statement was done or made, or was omitted to be done or made in good faith.

(3) Nothing in subsection (1) shall be construed to relieve the Corporation from the obligation to make payment in respect of a protected deposit under this Order.

Inspection of books of member institutions.

82. (1) The Corporation may from time to time inspect, under conditions of secrecy, the books of a member institution for the purposes of this Order.

(2) For the purposes of an inspection under this section —

(a) the member institution and any other person who is in possession of the books of the member institution shall produce such books to the Corporation and give such information or facilities as may be required by the Corporation.

(b) the member institution shall procure that any other person who is in possession of its books produce its books to the Corporation and give such information or facilities as may be required by the Corporation; and

(c) the Corporation may —

(i) make copies of, or take possession of, any of such books;

(ii) use, or permit the use of, any of such books for the purposes of any proceedings under this Order; and

(iii) retain possession of any of such books for so long as is necessary —

(a) for the purposes of exercising a power conferred by this section;

(b) for a decision to be made on whether or not proceedings should be commenced under this Order in relation to such books; or

(c) for such proceedings to be commenced and carried on.

(3) No one shall be entitled, as against the Corporation, to claim a *lien* on any of the books, such a *lien* is not otherwise prejudiced.

(4) The Corporation may require a person who produced any book to the Corporation to explain, to the best of his knowledge and belief, any matter about the compilation of the book or to which the book relates.

(5) Any person who, without reasonable excuse, contravenes subsection (2) or a requirement of the Corporation under subsection (4) is guilty of an offence and liable on conviction to a fine not exceeding \$100,000, imprisonment for a term not exceeding 2 years or both and in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

Provision of information and production of books.

83. (1) The Corporation may, by notice in writing, require a member institution to —

(a) provide such information; or

(b) produce any book,

at such time and in such manner as the Corporation may reasonably require for the proper discharge of its functions.

(2) Any information received from a member institution under this section shall be treated as secret by the Corporation.

(3) Nothing in subsection (2) shall preclude the Corporation from disclosing the information if —

(a) the information is already in the public domain;

(b) the information is disclosed in such a manner that an individual member institution's identity cannot be ascertained;

(c) the member institution consents to the disclosure; or

(d) disclosure of the information on individual member institutions is necessary in the Corporation's performance of its functions or in the exercise of its powers.

(4) Any member institution which fails to or neglects to furnish any information or produce any book required by the Corporation under this section is guilty of an offence.

Service of documents etc.

84. (1) Any notice, order or document required or authorised by this Order to be served on any person may be served —

(a) by delivering it to the person or to some adult member or employee of his family or household at his last known place of residence;

(b) by leaving it at his usual or last known place of residence or business in an envelope addressed to the person;

(c) by sending it by registered post addressed to the person at his usual or last known place of residence or business; or

(d) in the case of a body corporate, firm or body of persons —

(i) by delivering it to the secretary or other like officer of the body corporate, firm or body of persons as its registered office or principal place of business; or

(ii) by sending it by registered post addressed to the body corporate, firm or body of persons at its registered office or principal place of business.

(2) Any notice, order or document sent by registered post to any person in accordance with subsection (1) shall be deemed to be duly served on the person at the time when the notice, order or document, as the case may be, would in the ordinary course of post be delivered.

(3) When proving service of the notice, order or document referred to in subsection (2), it shall be sufficient to prove that the envelope containing the notice, order or document, as the case may be, was properly addressed, stamped and posted by registered post.

Electronic service.

85. (1) The Corporation may provide an electronic service for the service of any notice that is required or authorised by this Order to be served on any person.

(2) The Corporation may use the electronic service to serve any notice on behalf of the Corporation.

(3) For the purposes of the electronic service, the Corporation may assign to any person —

- (a) an authentication code; and
- (b) an account with the electronic service.

(4) Notwithstanding section 84, where any person has given his consent for any notice to be served on him through the electronic service, the Corporation may serve the notice on that person by transmitting an electronic record of the notice to that person's account with the electronic service.

(5) Where a person has given his consent for a notice to be served on him through the electronic service, the notice shall be deemed to have been served at the time when an electronic record of the notice enters his account with the electronic service.

(6) Notwithstanding any other written law, in any proceedings under this Order —

- (a) an electronic record of any notice that was served, through the electronic service; or
- (b) any copy or print-out of that electronic record,

shall be admissible as evidence of the facts stated or contained therein if that electronic record, copy or print-out —

- (i) is certified by the Corporation to contain all or any information served through the electronic service in accordance with this section; and
- (ii) is duly authenticated in the manner specified in subsection (8) or is otherwise authenticated in the manner provided in the Evidence Act (Chapter 108) for the authentication of computer output.

(7) For the avoidance of doubt —

- (a) an electronic record of any notice that was served, through the electronic service; or
- (b) any copy or print-out of that electronic record,

shall not be inadmissible in evidence merely because the notice was served, without the delivery of any equivalent document or counterpart in paper form.

(8) For the purposes of this section, a certificate —

(a) giving the particulars of —

- (i) any person whose authentication code was used to served the notice; and
- (ii) any person or device involved in the production or transmission of the electronic record of the notice, or the copy or print-out thereof;

(b) identifying the nature of the electronic record or copy or print-out thereof; and

(c) purporting to be signed by the Corporation or by a person occupying a responsible position in relation to the operation of the electronic service at the relevant time,

shall be sufficient evidence that the electronic record, copy or print-out has been duly authenticated, unless the court, in its discretion, calls for further evidence on this issue.

(9) Where the electronic record of any notice, or a copy or print-out of that electronic record, is admissible under subsection (6), it shall be presumed, until the contrary is proved, that the electronic record, copy or print-out accurately reproduces the contents of that document.

(10) Regulations may be made under section 86 which are necessary or expedient for carrying out the purposes of this section, including regulations prescribing the procedure for the use of the electronic service, including the procedure in circumstances where there is a breakdown or interruption of the electronic service.

Power to make regulations, rules, orders, by-laws, directives, guidelines, circulars or notices.

86. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such regulations, rules or orders, by-laws, directives, guidelines, circulars or notices, as may be necessary or expedient for giving full effect to this Order, for carrying out or achieving the objects and purposes of this Order, or any provision thereof, or for the further, better or more convenient implementation of this Order.

(2) Any regulations, rules, orders, by-laws, directives, guidelines, circulars or notices made under this section may relate to all, or any class, category or description of persons and different provisions may be made for different persons, classes, categories or descriptions of person.

{3} Without prejudice to the generality of subsection (1), such regulations, rules, orders, by-laws, directives, guidelines, circulars or notices may be made in respect of —

(a) forms, including forms of notifications, notices and certificates, for the purposes of this Order;

(b) the conduct, business and affairs of the Corporation;

(c) deposits of a trustee, joint owner or a deposit of a business or professional practice under section 45;

(d) the coverage of deposits and related matters to it on the following —

(i) where a person has deposits with 2 or more member institutions that amalgamate and continue in operation as one member institution under section 46; or

(ii) where such deposits are to be acquired by a person who is not a member institution under section 47;

(e) the return to be payable based on the returns of a financing facility;

(f) forms, method and procedures for compounding of offences; or

(g) anything under this Order required to be made as regulations, rules, orders, by-laws, directives, guidelines, circulars or notices.

Related amendments to Chapter 89.

87. The Finance Companies Act is amended by repealing section 30 and by substituting the following 6 new sections therefor —

"Action by Minister if finance company cannot meet its obligations.

30. (1) Where a finance company —

(a) considers that it is likely to become unable to meet its obligations, or that it is insolvent, or about to suspend payments; or

(b) becomes unable to meet its obligations, or is insolvent, or suspends payments,

it shall forthwith inform the Minister of such fact.

(2) Upon receiving such information, and after an inspection or investigation is made under section 26, the Minister is of the opinion that —

(a) the finance company is carrying on its business in a manner likely to be detrimental to the interest of its depositors or its creditors;

(b) the finance company is insolvent or is likely to become unable to meet its obligations or is about to suspend payment;

(c) the finance company has contravened or failed to comply with any of the provisions of this Act; or

(d) the finance company has contravened or failed to comply with any condition attached to its licence; or

(e) it is in the public interest to do so,

the Minister may exercise such one or more of the powers specified in subsection (3) as appears to the Minister to be necessary.

(3) The powers referred to in subsection (2) are that the Minister may —

(a) require the finance company concerned forthwith to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Minister may consider necessary;

(b) appoint a person to advise the finance company in the proper conduct of its business; or

(c) assume control of and carry on the business of the finance company or direct some other person to assume control of and carry on the business of the finance company.

(4) The Minister may, upon representation made to him or on his own motion, modify or cancel any action taken by him under subsection (3), and in so modifying or cancelling any action may impose such conditions as he thinks fit, subject to which the modification or cancellation shall have effect.

(5) In this Act, any reference to the Minister having assumed control of or carrying on the business of a finance company under this section shall be deemed to include a reference to the Minister having directed some other person to assume control of and carry on the business of that finance company.

Powers of Minister.

30A. Where the Minister has taken action under section 30(2), he may exercise one or more of the following powers —

(a) confirm, vary or reverse any requirement, appointment or direction made by him;

(b) make such order as he may think fit in relation to the affairs of the finance company concerned and exercise any power under section 30;

(c) present a petition to the High Court for the winding-up of the finance company by the High Court.

Finance company under control of Minister.

30B. (1) Where the Minister has assumed control of the business of a finance company under section 30, the finance company shall submit its business into the control of the Minister; and shall provide the Minister with such facilities as it may require to carry on the business of the finance company.

(2) Where the Minister has assumed control of the business of a finance company under section 30, the Minister shall remain in control of, and continue to carry on the business of, that finance company in the name and on behalf of the finance company until such time as he is satisfied that —

(a) the reasons for which he assumed control of the business have ceased to exist; or

(b) it is no longer necessary in the public interest that he should remain in control of the business.

(3) Where the Minister has assumed control of the business of a finance company under section 30 or has ceased to control the business of such a finance company under this section, the Minister shall provide public notification of that fact in the *Gazette* and such newspaper as he considers appropriate.

(4) A finance company which fails to comply with subsection (1) or with any requirement of the Minister thereunder is guilty of an offence and liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 every day during which the offence continues after conviction.

Disbursement of funds.

30C. (1) The provisions of this section apply, and apply only, where the Minister has assumed control of the business of a finance company under section 30.

(2) The Minister may, from the assets of the finance company, discharge in whole or part deposit liabilities which the Minister is satisfied are owned by the finance company and including sums owed to the Minister under subsection (4).

(3) In discharging deposit liabilities under subsection (2), the Minister shall have regard to the available assets of the finance company at any time and the amount of deposit liabilities (whether then due or not) in the following categories and shall not discharge any deposit liability in the second and third categories unless satisfied that there are assets of the finance company available to enable the deposit liabilities set out in the category or categories preceding –

(a) deposit liabilities incurred by the finance company with non-finance company customers where the deposit liabilities are required by the Minister to be included in the computation of the reserve and liquidity requirements under sections 13A and 25;

(b) deposit liabilities incurred by the finance company with other finance company where the deposit liabilities are required by the Minister to be included in the computation of the reserve and liquidity requirements under sections 13A and 25;

(c) deposit liabilities incurred by the finance company with non-finance company customers where the deposit liabilities are not required by the Minister to be included in the computation of the reserve and liquidity requirements under sections 13A and 25.

(4) The Minister may discharge deposit liabilities of the finance company from the assets of the finance company in which case the Minister shall be subrogated to the rights of each such depositor to the intent that each sum so paid by the Minister shall rank as a debt of the finance company to the Minister ranking with the same priority as the deposit liability which it has discharged.

(5) Without the prior approval of the Minister and subject to such conditions (if any) as the Minister may specify, neither the receiver of all or any of the property of the finance company nor a liquidator of the finance company, whether (in either case) appointed before or after the Minister assumed control of the finance company, shall exercise any powers or rights which would be exercisable but for the provisions of this subsection.

(6) Where —

(a) the Minister has not given approval under subsection (5) to the exercise of powers or rights which would otherwise be available to a receiver or liquidator; or

(b) has given such approval but subject to conditions,

the receiver or liquidator shall not be liable to any person for any failure to discharge his obligations in that capacity which derives from the absence of such approval or any condition attached to such approval.

(7) The powers of the Minister under this section may be exercised by the Minister notwithstanding the provisions of any other written law.

Appointment of chairman and new board members.

30D. (1) Where the Minister has assumed control of the business of a finance company under section 30 and has made determination that the value to be realised from the finance company's assets is less than the finance company's liabilities, he may —

(a) serve notice upon any person who at the time of such determination was serving as a director thereof without any right to compensation, whereupon he shall cease to be a director of the finance company and any agreement between him and the finance company which provides for compensation in respect of services of directors of the finance company shall be unenforceable in so far as it relates to such compensation; and

(b) direct that either all former directors of the finance company or, as the case may be, such former director or directors of the finance company as may be specified in the direction, shall cease to be entitled to compensation, whether by way of pension or otherwise, in respect of their service as directors, whereupon any agreement between any former director and the finance company which provides for any such compensation shall be unenforceable in so far as it relates to such compensation.

(2) In the event of the Minister serving notice upon a director of a finance company under subsection (1)(a), such person as the Minister may appoint shall be virtue of this section become chairman and a director of a newly constituted board of directors of the finance company to be appointed by the Minister.

(3) Under subsection (2), the Minister shall appoint to the new board of directors not less than 3 persons but not more than 20 persons, and

including at least 2 persons who, in the opinion of the Minister, possess expertise in banking or finance.

(4) The Minister in exercise of his control of a finance company under section 30 shall take such steps as necessary to appoint the Chairman and directors appointed pursuant to subsections (2), (3) and (4) as the Chairman and directors of every subsidiary of the finance company; and for the purposes of this subsection the Minister shall be entitled to exercise all voting rights pertaining to issued shares in any subsidiary of the finance company.

(5) Subject to 30E(2), no fee or reward, financial or otherwise shall be paid by the finance company to any director who is appointed under this section.

(6) Notwithstanding his removal from office by subsection (1), every former director shall remain liable for all his acts and omissions in respect of the period while he was a director.

Remuneration and expenses of the Minister and others.

30E. (1) The Minister may at any time (whether or not the appointment of such person has terminated) fix the remuneration and expenses to be paid by a finance company to any person appointed by the Minister under section 30 or 30A to advise a finance company in the proper conduct of its business.

(2) Where, under section 30(3)(c) or section 30A(b) the Minister has assumed control of the business of a licensed finance company or some other person has assumed control of the business of such a finance company pursuant to a direction or orders of the Minister, the Minister may, at any time, whether or not he or that other person has ceased to be in control of the business of the finance company, fix the remuneration and expenses to be paid by the finance company to the Minister and to any person employed or authorised by him under section 30D(3) to assist in the control of and the carrying on of the business of the finance company, or to that other person, as the case may be."

Related amendments to S 45/2006.

88. The Banking Order, 2006 is amended —

(a) by repealing section 59 and by substituting the following new section therefor —

"Action by Authority if bank cannot meet its obligations.

59. (1) Where a bank —

(a) considers that it is likely to become unable to meet its obligations, or that it is insolvent, or about to suspend payments; or

(b) becomes unable to meet its obligations, or is insolvent, or suspends payments,

it shall forthwith inform the Authority of such fact.

(2) Upon receiving such information, and after an inspection or investigation is made under section 49, 50, 51, 52, 53 or 54, the Authority is of the opinion that —

(a) the bank is insolvent or is likely to become unable to meet its obligations or is about to suspend payment;

(b) the bank has contravened or failed to comply with any of the provisions of this Order; or

(c) the bank has contravened or failed to comply with any condition attached to its licence; or

(d) the bank has contravened or failed to comply with any condition attached to its licence; or

(e) it is in the public interest to do so,

the Authority may exercise such one or more of the powers specified in subsection (3) as appears to the Authority to be necessary.

(3) The powers referred to in subsection (2) are that the Authority may —

(a) require the bank concerned forthwith to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;

(b) appoint a person to advise the bank in the proper conduct of its business; or

(c) assume control of and carry on the business of the bank or direct some other person to assume control of and carry on the business of the bank.

(4) The Authority may, upon representation made to him or on his own motion, modify or cancel any action taken by it under

subsection (2), and in so modifying or cancelling any action may impose such conditions as he thinks fit, subject to which the modification or cancellation shall have effect.

(5) In this Order, any reference to the Authority having assumed control of or carrying on the business of a bank pursuant to the provision of this section shall be deemed to include a reference to the Authority having directed some other person to assume control of and carry on the business of that bank.";

(b) in section 63(4), by deleting "56" from the first line and by substituting "59" therefor.

Related amendments to S 96/2008.

89. The Islamic Banking Order, 2008 is amended by repealing section 59 and by substituting the following new section therefor —

"Action by Authority if Islamic bank cannot meet its obligations.

59. (1) Where an Islamic bank —

(a) informs the Authority that it is likely to become unable to meet its obligations, or that it is insolvent, or about to suspend payments; or

(b) becomes unable to meet its obligations, or is insolvent, or suspends payments,

it shall forthwith inform the Authority of such fact.

(2) Upon receiving such information, and after an inspection or investigation is made under section 49, 50, 51, 52, 53 or 54 the Authority is of the opinion that —

(a) an Islamic bank is carrying on its business in a manner likely to be detrimental to the interest of its depositors or its creditors;

(b) an Islamic bank is insolvent or is likely to become unable to meet its obligations or is about to suspend payment;

(c) an Islamic bank has contravened or failed to comply with any of the provisions of this Order; or

(d) an Islamic bank has contravened or failed to comply with any condition attached to its licence; or

(e) it is in the public interest to do so,

the Authority may exercise such one or more of the powers specified in subsection (3) as appears to the Authority to be necessary.

(3) The powers referred to in subsection (2) are that the Authority may –

(a) require the Islamic bank concerned forthwith to take any action or to do or not to do any act or thing whatsoever in relation to its business as the Authority may consider necessary;

(b) appoint a person to advise the Islamic bank in the proper conduct of its business; or

(c) assume control of and carry on the business of the Islamic bank or direct some other person to assume control of and carry on the business of the Islamic bank.

(4) The Authority may, upon representation made to him or on his own motion, modify or cancel any action taken by it under subsection (2), and in so modifying or cancelling any action may impose such conditions as he thinks fit, subject to which the modification or cancellation shall have effect.

(5) In this Order, any reference to the Authority having assumed control of or carrying on the business of a Islamic bank pursuant to the provision of this section shall be deemed to include a reference to the Authority having directed some other person to assume control of and carry on the business of that Islamic bank."

Made this 12th. day of Muharam, 1432 Hijriah corresponding to the 18th. day of December, 2010 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM.