

No. S 43

**CONSTITUTION OF BRUNEI DARUSSALAM**  
(Order under Section 83(3))

**EMERGENCY (ISLAMIC BANKING) ORDER, 1992**

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

**PART I**

**PRELIMINARY**

1. This Order may be cited as the Emergency (Islamic Banking) Order, 1992 and shall come into force on the 2nd day of December, 1992. Citation and commencement.
  
2. In this Order unless the context otherwise requires — Interpretation.

"company" means a company formed and registered under the Companies Act ; Chapter 39.

"depositor" means a person who has an account at an Islamic bank, whether the account is a current account, a savings account, an investment account or any other deposit account ;

"Islamic bank" means any company which carries on Islamic banking business and holds a valid licence ; and all the offices and branches of such bank shall be deemed to be one bank ;

"Islamic banking business" means banking business whose aims and operations do not involve any element which is not approved by the Religion of Islam ;

"investment account liabilities" means the deposit liabilities at Islamic bank in respect of funds placed by a depositor for a fixed period of time under an agreement to share the profits and losses of that bank on the investment of such funds ;

"licence" means a licence granted under section 3 ;

"Minister" means the Minister responsible for Finance ;

"other deposit liabilities" in relation to an Islamic bank means the deposit liabilities at that bank other than savings account, investment account, sight and time liabilities and deposit liabilities from any other Islamic bank or any licensed bank under the Banking Act ; Chapter 95.

"public company" means a company incorporated in Brunei under the Companies Act other than a private company ; Chapter 39.

"saving account liabilities" in relation to an Islamic bank means the total deposits at that bank which normally require the presentation of passbooks or such other documents in lieu of passbooks as approved by the Minister for the deposit or withdrawal of moneys ;

Chapter 95. "sight liabilities" in relation to an Islamic bank means the total deposits at that bank which are repayable on demand, but does not include savings account liabilities or the deposits of any other Islamic bank or any licensed bank under the Banking Act ;

Chapter 95. "time liabilities" in relation to an Islamic bank means the total deposits at that bank which are repayable otherwise than on demand, but does not include savings account liabilities or the deposits of any other Islamic bank or any licensed bank under the Banking Act.

## PART II

### LICENSING OF ISLAMIC BANKS

Islamic  
Banking by  
licensed  
Islamic Bank.

3. (1) Islamic banking business shall not be transacted in Brunei except by a company which is in the possession of a licence in writing from His Majesty The Sultan and Yang Di-Pertuan in Council authorising it to do so.

(2) A company which desires authority to carry on Islamic banking business in Brunei shall apply in writing to the Minister for a licence under this section and shall supply —

- (a) a copy of the memorandum of association and articles of association or other instrument under which the company is incorporated, duly verified by a statutory declaration made by a senior officer of the company ; and
- (b) such other document or information as may be called upon by the Minister.

(3) Upon receiving and after considering an application under subsection (2), His Majesty in Council may grant a licence, with or without conditions, or refuse a licence. The conditions which His Majesty in Council may impose on a licence include the introduction of any banking business with the approval of Syariaiah advisory body established under the provisions of subsection (4)(b).

(4) His Majesty in Council shall not grant a licence unless he is satisfied —

- (a) that the aims and operations of the banking business which it is desired to carry on will not involve any element which is not approved by the Islamic Religion ; and
- (b) that there is, in the articles of association of the bank concerned, provision for the establishment of a Syariaiah advisory body comprising of at least three Bruneian Muslim religious scholars to advise the bank on the operations of its banking business in order to ensure that they do not involve any element which is not approved by the Islamic Religion.

(5) Any person who contravenes the provisions of this section shall be guilty of an offence and shall, on conviction, be liable not a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 3 years or to both.

4. (1) The Minister may at any time vary or revoke any existing condition of a licence or impose conditions or additional conditions.

Minister may vary or revoke condition of licence.

(2) The Minister shall, prior to any action under subsection (1), notify his intention in writing to take such action to the Islamic bank concerned and shall give the bank an opportunity to submit within such period, being not less than fourteen days, as may be specified in the notification reasons why the condition of the licence should not be varied or revoked or conditions or additional conditions should not be imposed.

(3) Where a licence is subject to conditions, the Islamic bank shall comply with those conditions.

(4) Any Islamic bank which fails to comply with any condition of its licence shall be guilty of an offence and shall on conviction be liable to a fine not exceeding \$30,000.

5. (1) No company shall be granted a licence under section 3 nor shall any company licensed thereunder carry on business in Brunei without the written consent of the Minister if its capital funds unimpaired by losses or otherwise is less than the minimum amount.

Licence not to be granted in certain cases.

(2) For the purpose of this section —

“Capital funds” means paid-up capital and reserves and any other sources of capital as may be prescribed by notice in writing from time to time by the Minister ;

“minimum amount” means such amount of capital funds to be maintained by an Islamic bank as may be prescribed by the Minister by notification in the *Gazette*.

(3) The prescription of the minimum amount to be maintained under section (2) shall be complied with within such uniform period of grace being not less than three months as may be specified in the notification.

6. (1) No company shall be granted or shall hold a licence if the Minister is satisfied that it is or has become foreign-owned or controlled, or its aims or operations are suspected to be detrimental to the interests of the Islamic banking business.

Foreign-owned bank.

(2) For the purpose of this section, a company shall be deemed to be foreign-owned or controlled if fifty per centum or more of its capital issued and paid-up is owned by or on behalf of persons who

are not Muslim citizens of Brunei, or if a majority of the persons having direction, control or management of the company are not Muslim citizens of Brunei.

Opening of new branches. 7. Except with the prior approval in writing of the Minister, no Islamic bank may open a new branch, agency or office in any part of Brunei or outside Brunei.

Correspondent banking relationship. 8. (1) Subject to subsection (2), every Islamic bank may establish a correspondent banking relationship with any bank outside Brunei.

(2) No Islamic bank may, except with the approval of the Minister, establish correspondent banking relationship with any private bank outside Brunei or with any bank owned or controlled by the government or an agency of the government of any foreign country.

Licence fee. 9. Every Islamic bank shall pay to the government such annual licence fee as the Minister may by notification in the *Gazette* prescribe.

Revocation of licence. 10. (1) Subject to subsection (2), if any Islamic bank —

- (a) is pursuing aims or carrying on operations involving any element which is not approved by the doctrines of Islamic Religion ;
- (b) is carrying on its business in a manner detrimental to the interests of its depositors and other creditors ;
- (c) has insufficient assets to cover its liabilities to the public ;
- (d) is contravening any provision of this Order ; or
- (e) has ceased to carry on banking business in Brunei ;

the Minister may revoke any licence issued to such bank.

(2) The Minister shall, prior to any such revocation, notify his intention to take such action to the Islamic bank concerned and shall give the bank an opportunity to submit within thirty days, as may be specified in the notification, reasons why the licence should not be revoked.

(3) Where the licence of an Islamic bank has been revoked under subsection (1) the bank may within thirty days of the revocation appeal against the revocation to the High Court, which may make such order thereon as it thinks proper, including any direction as to the costs of the appeal.

11. (1) Where an order of revocation becomes effective under section 10 — Effect of  
revocation  
of licence.

- (a) notice of the revocation shall be published in the *Gazette* ; and
- (b) the Islamic bank shall as from the date of the notice cease to trans act any banking business in Brunei except as may be approved by the Minister for the purposes of winding up of its banking business.

(2) The provisions of paragraph (b) of subsection (1) shall not prejudice the enforcement by any person of any right or claim against the bank or by the bank of any right or claim against any person.

12. The Minister shall cause to be published in the *Gazette* in each year a list of all Islamic banks to which licences have been issued under this Order, and if any licence is issued, revoked or surrendered during the interval between the publication of two such lists, notice thereof shall also be caused to be published in the *Gazette*. Publication  
of list of  
Islamic  
Banking.

### PART III

#### FINANCIAL REQUIREMENTS AND DUTIES OF ISLAMIC BANKS

13. (1) The Minister may require an Islamic bank to maintain capital funds, unimpaired by losses or otherwise, in such proportion to such assets of its branches and offices both in Brunei and outside Brunei or only of its branches and offices in Brunei as may be prescribed from time to time by the Minister by notice in writing. Capital Funds.

(2) "Capital funds" in subsection (1) shall have the meaning assigned to that expression in subsection (2) of section 5 but with such modifications as may be specified from time to time for the purposes of subsection (1) by the Minister by notice in writing.

14. (1) Every Islamic bank— Reserve  
Funds.

- (a) shall maintain a reserve fund ; and
- (b) before any dividend is declared shall transfer to the reserve fund out of the net profits of each year, after due provision has been made for zakat or taxation—
  - (i) so long as the amount of the reserve fund is less than fifty per centum of the paid-up capital, a sum equal to not less than fifty per centum of the net profits ;
  - (ii) so long as the amount of the reserve fund is fifty per centum but less than one hundred per centum of the paid-up capital, a sum equal to not less than twenty-five per centum of the net profits.

(2) If the Minister is satisfied that the aggregate reserve fund of an Islamic bank is adequate for its business, he may by order in

writing exempt the bank from the provisions of subsection (1) for such period as he thinks fit.

Liquid Assets. 15. (1) The Minister may from time to time, prescribe by notice in writing to each Islamic bank a minimum amount or amounts of liquid assets to be held by the bank at all times.

(2) The minimum amount or amounts of the assets so prescribed to be held shall be expressed in the form of—

- (a) a percentage or percentages which such assets shall bear the sight, saving account, time and other deposit liabilities of each Islamic bank and such other liabilities thereof as may be determined by the Minister either jointly or separately ; and
- (b) a percentage which such assets shall bear to the investment account of each Islamic bank and such percentage or percentages may be varied by the Minister from time to time by notice in writing to the bank.

(3) Where the Minister issues a notice under subsection (1) each Islamic bank shall be allowed such uniform period of grace, being not less than seven days, as may be specified in that notice in which to comply with the provisions thereof.

(4) An Islamic bank shall not, during any period in which it has failed to comply with any notice under subsection (1), without the approval of the Minister, lend or advance any money to any person.

(5) For the purpose of computing the minimum amount or amounts of liquid assets under this section and the sight, savings account, investment account, time and other deposit liabilities of an Islamic bank carrying on business in Brunei and elsewhere and such other liabilities of such bank as may be determined by the Minister, the offices and branches of such bank in Brunei shall be deemed to constitute a separate bank carrying on business in Brunei.

(6) For the purposes of this section liquid assets shall be—

- (a) notes and coin which are legal tender in Brunei ;
- (b) net balances at Banks in Brunei ; and
- (c) such other assets as may be approved by the Minister.

(7) The Minister may by notice in writing require each Islamic bank to render such return or returns as the Minister deems necessary for the implementation of this section.

(8) Any Islamic bank which fails to comply with any of the provisions of this section shall on conviction be liable to a fine not exceeding \$30,000.

16. (1) Notwithstanding the provisions of the Companies Act, every Islamic bank shall appoint annually an auditor approved by the Minister. Auditor.  
Chapter 39.

(2) The Minister may appoint an auditor —

- (a) if the Islamic bank fails to appoint an auditor ; or
- (b) if he considers it desirable that another auditor should act with the auditor appointed under subsection (1), and may fix the remuneration to be paid by the Islamic bank to that auditor.

(3) The duties of the auditor appointed under subsection (1) and (2) for an Islamic bank shall be —

- (a) to carry out for the year in respect of which he is appointed an audit of the account of the bank ; and
- (b) to make a report in accordance with section 133 of the Companies Act upon the annual balance sheet and profit and loss account of the bank.

Chapter 39

(4) The report of the auditor referred to in paragraph (b) of subsection (3) shall be laid together with the report of the directors of the Islamic bank at the annual general meeting of the bank ; and a statutory declaration made by a senior officer of the bank to the effect that the report was so laid shall accompany the documents forwarded under paragraph (c) of subsection (1) of section 17.

(5) No person having an interest in an Islamic bank otherwise than as a shareholder, and no director or officer of that bank, shall be eligible for appointment as auditor to an Islamic bank and any person who after appointment acquires such interest or becomes a director or an officer of that bank shall forthwith cease to be the auditor.

(6) The duties, powers and liabilities imposed and conferred by section 32 in relation to an investigation by the Minister of the affairs of an Islamic bank under section 30 and 31 are hereby imposed and conferred in relation to auditors appointed under this section.

(7) Any Islamic bank which fails to comply with the requirements of subsection (4) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding \$30,000.

17. (1) Every Islamic bank shall —

- (a) exhibit in a conspicuous position in every office or place of business in Brunei —
  - (i) a copy each of its latest audited annual balance sheet, profit and loss account, together with any note thereon, and the report of the auditor ;

Audited  
Balance  
Sheet.

- (ii) the full names of all its directors ; and
- (iii) the full names of all subsidiaries for the time being of the bank.
- (b) within fourteen days of the laying of its accounts at its annual general meeting publish in a newspaper published in Brunei and approved by the Minister a copy each of its latest audited annual balance sheet, profit and loss account, together with any note thereon, and the report of the auditor ; and
- (c) within six months after the close of each financial year or such further period as the Minister may approve, forward to the Minister —
  - (i) two copies each of its latest audited annual balance sheet, profit and loss account, together with any note thereon, and the reports of the auditor and the directors ;
  - (ii) in the case of an Islamic bank with branches outside Brunei, two copies each of its latest audited annual balance sheet and profit and loss account in respect of its operations in Brunei, and two copies each of its latest audited annual balance sheet and profit and loss account in respect of its operations in each country outside Brunei.

(2) The form and content of the balance sheet and profit and loss account shall, together with the report of the directors, be as approved by the Minister.

(3) The Minister may require any Islamic bank to submit such further or additional information as it may deem necessary either by way of explanation, amplification or otherwise with regard to the balance sheets and profit and loss accounts forwarded by that bank under paragraph (c) of subsection (1) and that information shall be submitted within such period and in such manner as the Minister may require.

(4) Any Islamic bank which fails to comply with the provisions of this section shall be guilty of an offence and shall on conviction be liable to a fine not exceeding \$4,000 for every day during which the default continues.

Statistics to  
be furnished.

18. (1) Every Islamic bank shall send to the Minister in such form as may be prescribed by the Minister —

- (a) a statement showing the liabilities and assets of its banking offices and branches in Brunei at the close of business on the last business day of each month within



such period as may be prescribed by notice in writing from time to time by the Minister ;

- (b) a statement giving an analysis of loans, advances and investment of its banking offices and branches in Brunei at such intervals and within such period as may be prescribed by notice from time to time by the Minister ;
- (c) not later than six months after the close of its financial year, a statement showing the income and expenditure in respect of its business in Brunei ;
- (d) any such statistical information as may be requested by the Minister.

(2) Except for the purposes of paragraph (d) of subsection (1), any information received from a bank under this section shall be regarded as secret between that bank and the Minister.

(3) Any Islamic bank which fails to comply with any requirement set out in subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding \$4,000 for every day during which the default continues.

19. (1) An Islamic bank which operates branch offices or agencies outside Brunei shall furnish to the Minister any information relating to the operations of such offices or agencies after every three months or such period as may be prescribed by the Minister.

Information  
on foreign  
branches.

#### PART IV

##### OWNERSHIP, CONTROL AND MANAGEMENT OF ISLAMIC BANKS

20. (1) Whenever a change is about to occur in the control of any Islamic bank, the bank shall report the proposed change to the Minister.

Information  
on change in  
control of  
Islamic banks.

(2) Whenever a loan or advance is made by any Islamic bank secured in the aggregate by twenty per centum or more of the paid-up capital shares of any other Islamic bank or of any licensed bank under the Banking Act incorporated in Brunei or of any finance company licensed under the Finance Companies Act, the Islamic bank shall report the fact to the Minister.

Chapter 95.  
Chapter 89.

(3) The reports required to be made under subsection (2) shall contain the following —

- (i) the names and addresses of the borrowers ;
- (ii) the name of the Islamic bank, the licensed bank or finance company issuing the shares by which the loan or advance is secured ;

(iii) the number of shares by which the loan or advance is secured ; and

(iv) the amount of the loan or advance.

(4) The reports under subsections (1) and (2) shall be in addition to any report which may be required pursuant to the provisions of any other written law.

(5) For the purposes of this section, the expression "control" in relation to an Islamic bank means the possession directly or indirectly of the power to direct or cause the direction of the management and policy of the bank.

(6) Any Islamic bank which fails to comply with the provisions of subsection (1) or (2) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding \$30,000.

Sanction for  
reconstruction.

21. (1) Every Islamic bank shall obtain the approval of the Minister of any proposed —

(a) arrangement or agreement —

(i) for the sale or disposal of its shares or business ;  
or

(ii) affecting voting power, management or other  
matters,

which will result in a change in the control or  
management of the bank ; and

(b) scheme —

(i) for reconstruction of the bank ; or

(ii) for amalgamation, merger or otherwise between  
the bank and any other corporation,

wherein the whole or any part of the undertaking or  
the property of the bank is to be transferred to another  
corporation.

(2) The Minister may approve or refuse to allow the proposed arrangement, agreement or scheme, but the approval of the Minister shall not be unreasonably withheld.

Disqualifi-  
cations of  
directors and  
employees.  
Chapter 39.

22. (1) Without prejudice to anything contained in the Companies Act, any person who is director, manager, secretary or other officer concerned in the management of an Islamic bank shall cease to hold office —

(a) if he becomes a bankrupt, suspends payment or  
compounds with his creditors ;

- (b) if he is convicted of an offence involving dishonesty or fraud ; or
- (c) if he becomes insane.

No person who has been a director of, or directly concerned in the management of, an Islamic bank or a licensed bank under the Banking Act which has been wound up by a court shall, without the express authority of the Minister, act or continue to act as a director of, or be directly concerned in the management of, any Islamic bank.

Chapter 95.

(3) Any person who acts in contravention of subsection (1) or (2) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 3 years or to both.

## PART V

### RESTRICTIONS ON BUSINESS

23. (1) No Islamic bank shall —

Restrictions on  
payment of  
dividend.

- (a) pay any dividend on its shares until all its capitalized expenditure (including preliminary expenses, organization expenses, share-selling commission, brokerage, amounts of losses incurred and any other item of expenditure not represented by tangible assets) has been completely written off ;
- (b) grant an advance, loan or credit facility against the security of its own shares ; or
- (c) grant unsecured advances, unsecured loans or unsecured credit facilities in excess of, in the aggregate and outstanding at any one time, \$10,000 to any corporation which is deemed to be related to the bank, other than an Islamic bank, a licensed bank under the Banking Act, a finance company licensed under the Finance Companies Act or any other financial institution approved by the Minister.

Chapter 95.  
Chapter 89.

(2) For the purpose of this section "unsecured advances", "unsecured loans" and "unsecured credit facilities" mean respectively advances, loans and credit facilities made without security, or, in respect of any advance, loan and credit facility made with security, any portion thereof which at any time exceeds the market value of the assets constituting the security or, where the Minister is satisfied that there is no established market value, the value made on the basis of a valuation approved by the Minister ;

Prohibition  
of loans.

24. (1) Except as provided for under paragraph (c) of subsection (1) of section 23 and subsection (2) of this section, no Islamic bank shall grant advances, loans or credit facilities to —

- (a) any of its directors, officers or employees or other persons being persons receiving remuneration from it (other than accountants, advocates and solicitors, architects, estate agents, doctors and any other persons receiving remuneration from it in respect of their professional services) ;
- (b) any firm in which any of its directors, officers or employees is interested as partner, manager, agent or guarantor ;
- (c) any corporation in which any of its officers or employees is a director, manager, agent or guarantor, or any corporation in the share of which any of its officers or employees has any material interest as determined by the Minister.
- (d) any corporation in which any of its directors (not being an executive director, he being within the ambit of the provisions of paragraph (c) pursuant to subsection (3)) is a member, director, manager, agent or guarantor, or any corporation in the shares of which any such director of Islamic bank has any interest whatsoever directly or indirectly ; or
- (e) any individual for whom any of its directors, officers or employees is a guarantor.

(2) An Islamic bank may grant to any of its officers or employees loans which are provided under its appropriate scheme of service and, where the bank is satisfied that special or compassionate circumstances exist, a loan not exceeding at any one time six months' remuneration of that officer or employee on such terms and conditions as the bank thinks fit.

(3) The provisions of paragraph (c) of subsection (1) and subsection (2) shall also apply to the executive directors of Islamic banks.

(4) The provisions of paragraph (d) of subsection (1) shall not apply to the granting of advances, loans or credit facilities by an Islamic bank to —

- (a) a corporation which is listed on recognized stock exchange and in the shares of which no director of that Islamic bank has, directly or indirectly, any material interest as determined by the Minister ; and
- (b) a public company in which a director of that Islamic bank has no interest in his personal capacity, as determined by the Minister :

Provided that for the purposes of this subsection the director concerned is not an executive director of that Islamic bank.

(5) For the purposes of this section, "director", "officer" or "employee" includes a spouse, parent or child of a director, an officer or employee.

25. No Islamic bank shall grant any advance, loan or credit facility under the exemption referred to in subsection (4) of section 24 unless the following conditions are satisfied :

Restrictions  
on grant of  
loan or credit  
facility.

- (a) that the advance, loan or credit facility meets the standards of credit-worthiness required of other applicant borrowers ;
- (b) that the terms of the advance, loan or credit facility are not less favourable to the bank than those offered to others ;
- (c) that the grant of the advance, loan or credit facility will serve the best interest of the bank ; and
- (d) that the advance, loan or credit facility has been approved by the votes of not less than two-thirds of all the other directors of the bank at a duly constituted meeting of the full board of directors and the approval has been recorded in the minutes of that meeting.

26. (1) No Islamic bank shall grant any customer any credit facilities or incur any other liabilities on his behalf to an aggregate amount in excess of such percentage as may be determined from time to time by the Minister in relation to such bank's capital funds unimpaired by losses or otherwise.

Restrictions  
of credit to  
single  
customer.

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

- (a) transactions with other Islamic banks, with licensed banks under the Banking Act and with finance companies licensed under the Finance Companies Act.
- (b) any facilities granted in respect of imports into or exports from Brunei or trade within Brunei against letters of credit or bills of exchange ; or
- (c) any other transactions which the Minister may approve from time to time.

Chapter 95.  
Chapter 89.

(3) For the purposes of subsection (1), the expression "capital funds" shall have the meaning assigned to it by subsection (2) of section 5.

Disclosure of  
interest by  
directors.

27. (1) Every director of an Islamic bank who is in any manner whatsoever, whether directly or indirectly, interested in an advance, loan or credit facility or proposed advance, loan or credit facility from that Islamic bank shall as soon as practicable declare the nature of his interest to the board of directors of that Islamic bank and the secretary of that Islamic bank shall cause such declaration to be circulated forthwith to all the directors.

(2) . The requirements of subsection (1) shall not apply in any case where the interest of the director consists only in being a member or creditor of a corporation which is interested in an advance, loan or credit facility or proposed advance, loan or credit facility from that Islamic bank if the interest of the director may properly be regarded as not being a material interest.

(3) For the purposes of subsection (1), a general notice given to the board of directors of an Islamic bank by a director to the effect that he is an officer or member or a specified firm or a member of a specified corporation and he is to be regarded as interested in any advance, loan or credit facility which may, after the date of the notice, be made to that firm or corporation shall be deemed to be a sufficient declaration of interest in relation to any advance, loan or credit facility so made if —

- (a) it specifies the nature and extent of his interest in a specified firm or corporation ;
- (b) his interest shall not be different in nature or greater in extent than the nature and extent so specified in the notice at the time any advance, loan or credit facility is made ; and
- (c) it is given at the meeting of the directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given.

(4) Every director of an Islamic bank who holds any office or possesses any property whereby whether directly or indirectly duties or interest might be created in conflict with his duties or interest as a director shall declare at a meeting of the directors of the Islamic bank the fact and the nature, character and extent of the conflict.

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

- (a) after he becomes a director of the Islamic bank ; or
- (b) (if already a director) after he commenced to hold office or to possess the property as the case may require.

(6) The secretary of the Islamic bank shall cause to be brought up and read any declaration made under subsection (1) or (4) at the next meeting of the directors after it is given, and shall record any declaration made under this section in the minutes of the meeting at which it was made or at which it was brought up and read.

(7) Any director who acts in contravention of subsection (1) or (4) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 3 years or to both.

28. (1) Any credit facility granted by any Islamic bank to any person for the purpose of financing the purchase or the holding of shares shall not exceed such percentage of the market value of the share at the time the credit facility is granted, as may be directed by the Minister in writing.

Limitations  
on credit  
facility.

(2) A credit facility granted under this section to any person shall be accounted for in an account separate from that kept for any other credit facility granted to him.

(3) The Minister may give direction in writing to any Islamic bank in respect of the following matters, that is to say —

- (a) the basis and method for determining the market value of shares held as security for such credit facility ;
- (b) the withdrawal of funds or shares by the person to whom such credit facility was granted ;
- (c) the substitution of other shares for shares held as security for such credit facility ; and
- (d) such other matters as may be deemed necessary.

(4) Any Islamic bank which acts in contravention of the provisions of this section or section 23, 24, 25 and 26 shall be guilty of an offence and shall on conviction be liable for a fine not exceeding \$30,000.

29. Any Islamic bank, if at any time called upon in writing by the Minister to do so, shall satisfy it by the production of such evidence or information as it may require that the bank is not acting in contravention of any of the provisions of section 23, 24, 25, 26 and 28.

Proof of  
compliance.

## PART VI

### POWERS OF SUPERVISION AND CONTROL OVER ISLAMIC BANKS

30. The Minister shall from time to time investigate, under conditions of secrecy, the books, accounts and transactions of each Islamic bank and of any branch, agency or office outside Brunei opened by an Islamic bank.

Investigation  
of Banks.

31. (1) The Minister may at any time make a special investigation, under conditions of secrecy, of the books, accounts and transactions of an Islamic bank, if he has reason to believe that such Islamic bank is carrying on its business in a manner detrimental to interests of its depositors and other creditors, or has insufficient assets to cover its liabilities to the public, or is contravening the provisions of this Order.

Special  
investigation.

(2) For the purpose of an investigation under section 30 or 31, an Islamic bank shall afford the Minister access to its books, accounts and documents and shall give such information and facilities as may be required to conduct the investigation.

(3) Books, accounts and documents shall not be required at such times and at such places as shall interfere with the proper conduct of the normal daily business of the bank concerned.

(4) Any Islamic bank which fails to allow access to its books, accounts and documents or to give information or facilities in accordance with subsection (2) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding \$4,000 for every day during which the default continues.

Banking  
secrecy.

32. (1) Except with the consent of the Minister in writing and to the extent specified therein, no officer of any Islamic bank and no person who by reason of his capacity or office has by any means access to the records of that bank, registers or any correspondence or material with regard to the account of any individual customer of that bank shall give, divulge or reveal any information whatsoever regarding the moneys or other relevant particulars of the account of the customer unless —

- (a) the customer or his personal representative gives his permission to do so ;
- (b) the customer is declared bankrupt ; or
- (c) the information is required to assess the credit-worthiness of the customer relating to a bonafide commercial transaction or a prospective commercial transaction.

(2) The provisions of subsection (1) shall not apply to the giving of information to auditors appointed under section 16, officers and employees of the bank who are resident in Brunei.

(3) Any person who acts in contravention of the provisions of this section shall be guilty of an offence and shall on conviction be liable to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 3 years or to both.

Advances  
against  
interest of  
depositors.

33. (1) Every Islamic bank shall send to the Minister within such period as may be prescribed by notice in writing from time to time by the Minister after the last day of each month a statement in the form to be prescribed by the Minister showing particulars of all advances, loans or credit facilities granted by it to —

- (a) any corporation which is deemed to be related to the bank ;



- (b) any corporation or public company referred to in subsection (4) of section 24 ; and
- (c) any individual in whom and any firm or corporation in which any of its directors is interested, directly or indirectly, as declared under the provisions of section 27, other than advances, loans and credit facilities particulars of which have already been supplied pursuant to the preceding paragraphs.

(2) If on examination of the particulars supplied by an Islamic bank under subsection (1) it appears to the Minister that any such advance, loan or credit facility is being granted to the detriment of the interests of the depositors of that bank, he may by order in writing prohibit that bank from granting any further advance, loan or credit facility or impose such restrictions on the grant thereof as he thinks fit, and may further direct that bank to secure repayment of any such advance, loan or credit facility within such time and to such extent as may be specified in the order.

34. An Islamic bank which considers that it is likely to become unable to meet its obligations or is about to suspend payment shall forthwith inform the Minister of that fact.

Islamic Banks  
liable to  
meet its  
obligations.

35. (1) Whenever it appears to the Minister that any Islamic bank —

Action if  
bank unable  
to meet  
obligations.

- (i) is following unsound or improper practices ;
- (ii) is likely to become unable to meet its obligations or is about to suspend payment ;
- (iii) has contravened or failed to comply with any provision of this Order ;
- (iv) has contravened or failed to comply with any condition imposed on its licence ; or
- (v) is likely to be carrying on its business in a manner detrimental to the interests of its depositors,

the Minister may exercise such one or more powers specified in subsection (2) as it deems to be necessary.

(2) Subject to subsection (1), the Minister may —

- (a) issue orders to the bank to take such steps as the Minister may consider necessary to rectify the matter and the bank shall carry out such orders within such time as may be prescribed by the Minister ;
- (b) prohibit the bank from extending any further advance, loan or credit facility for such period or periods as may be specified and subject to such exceptions if any and other conditions as the Minister may impose ;

- (c) remove from office any of its directors or appoint any person as its director ;
- (d) appoint a person to advise the bank on the proper conduct of its business ;
- (e) assume control of, and carry on, the business of the bank or appoint some other person to assume control of, and carry on, the business of the bank ; or
- (f) present a petition to the High Court for the winding up of the bank by the Court.

(3) Where the Minister has appointed a person —

- (a) to be director of the bank under paragraph (c) of subsection (2) ;
- (b) to advise the bank on the proper conduct of its business under paragraph (d) of subsection (2) ; or
- (c) to assume control of, and carry on, the business of the bank under paragraph (e) of subsection (2),

the Minister may fix the remuneration and expenses to be paid to that person by the bank.

Effect of  
action by  
Minister.

36. Where the Minister has acted under paragraph (c) of subsection (2) of section 35 with respect to an Islamic bank, the following provisions shall have effect —

Chapter 39.

- (a) notwithstanding anything contained in the Companies Act and the articles of association of the bank, the rights of the members or holders of shares to elect directors of the bank in place of those who are removed from office by the Minister shall cease to be exercisable ;
- (b) any director removed from office under that paragraph shall cease to hold office, and shall not be entitled to claim any compensation for the loss or termination of office ; and
- (c) every removal or appointment under that paragraph shall be final and conclusive and shall not be questioned in any Court.

Control of  
Islamic  
banking by  
Minister.

37. (1) Where the Minister has assumed or has appointed another person to assume control of the business of an Islamic bank in pursuance of paragraph (e) of subsection (2) of section 35, the Minister or that person shall, subject to subsection (2), remain in control of the bank and continue to carry on the business of the bank in the name and on behalf of the bank until such time as the Minister is satisfied that the reasons for which it assumes control or has appointed another person to assume control have ceased to exist.

(2) Where the Minister has assumed control, or has appointed another person to assume control, of the business of an Islamic bank in pursuance of paragraph (e) of subsection (2) of section 35 the High Court may, upon application of the bank, order that the Minister shall cease to control the business of the bank as from a date specified in the order if the High Court is satisfied that it is no longer necessary for the protection of the depositors of the bank that the Minister should remain in control of the business of the bank.

(3) Where the Minister has assumed control, or has appointed another person to assume control, of the business of an Islamic bank in pursuance of paragraph (e) of subsection (2) of section 35, or ceased to control the business of an Islamic bank pursuant of this section, the Minister shall notify that fact in the *Gazette*.

38. (1) Where the Minister has assumed control, or has appointed another person to assume control, of the business of an Islamic bank in pursuance of paragraph (e) of subsection (2) of section 35, the Islamic bank shall submit its business to the control of the Minister or to that person and shall provide with such facilities as the Minister requires to carry on the business of the bank.

Islamic Bank  
under control  
to cooperate.

(2) Any Islamic bank which fails to comply with subsection (1) or with any requirement of the Minister thereunder shall be guilty of an offence and shall on conviction be liable to a fine not exceeding \$4,000 for every day during which the default continues.

39. Any reference in this Part to an Islamic bank shall be read as including a reference to a subsidiary of an Islamic bank.

Subsidiaries.

40. (1) The Minister may if it considers it to be in the interests of the depositors of an Islamic bank, make an order prohibiting the bank from carrying on banking business or from doing or performing any act or function with banking business or any aspect thereof as may be specified in the Order.

Moratorium.

(2) The Minister may if it considers it to be in the interests of the depositors, apply to the High Court for an order staying the commencement or continuance of any proceedings by or against the bank in regard to any business of the bank. Such an order shall be valid for a period not exceeding six months.

(3) So long as an order under subsection (1) remains in force the licence granted to the bank under this Order shall be suspended.

(4) Where an order has been made under subsection (1), the Minister shall notify that fact in the *Gazette*.

41. (1) Every Islamic bank shall, prior to the making of any amendment or alteration in the memorandum of association or articles of association or other instrument under which it is incorporated, furnish to the Minister particulars in writing of such proposed amendment or alteration for its approval.

Amendment of  
bank's  
constitution.

(2) Every Islamic bank shall, within 3 months after making of any amendment or alteration in the memorandum of association or other instrument under which it is incorporated, furnish to the Minister particulars in writing (verified by a statutory declaration made by a senior officer of the bank) of such amendment or alteration.

(3) Any Islamic bank which fails to comply with the requirements of subsection (1) or (2) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding \$2,000 for every day during which the default continues.

## PART VII

### MISCELLANEOUS

Indemnity. 42. (1) The Minister or any Government officer shall not be subject to any action, claim or demand by or liability to any person in respect of anything done or omitted to be done in good faith in pursuance or in execution or intended execution, or in connection with the executing or intended execution, of any power conferred upon the Minister or the officer by this Order.

(2) For the purposes of this section any public officer shall be deemed to be an officer of the Government.

Priority. 43. Where an Islamic bank becomes unable to meet its obligations or suspends payments, the assets of the bank in Brunei shall be available to meet all sight and savings account liabilities of the bank in Brunei ; and such liabilities shall have priority over all other liabilities of the bank.

Penalties on directors and managers. 44. (1) Any person who, being a director or manager of an Islamic bank —

- (a) fails to take all reasonable steps to secure compliance by the bank with the requirements of this Order ; or
- (b) fails to take all reasonable steps to ensure the correctness of any statement submitted under the provisions of this Order,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 3 years or to both.

(2) In any proceedings against a person under subsection (1) it shall be a defence to prove that he has reasonable grounds to believe that another person was charged with the duty of securing compliance with the requirements of this Order or with the duty of ensuring that those statements were accurate and that that person was competent and in a position to discharge that duty.

(3) A person shall not be sentenced to imprisonment for any offence under subsection (1) unless in the opinion of the Court he has committed the offence wilfully.

45. Any director, manager, trustee, auditor, employee or agent of any Islamic bank who —

Offences by directors, employees and agents.

- (a) wilfully makes or causes to be made a false entry in any book of record or in any report, slip, document or statement of the business, affairs, transactions, condition, assets or accounts of the bank ;
- (b) wilfully omits to make an entry in any book of record or in any report, slip, document or statement of the business, affairs, transactions, condition, assets or accounts of the bank, or wilfully causes any such entry to be omitted ; or
- (c) wilfully alters, abstracts, conceals or destroys an entry in any book of record or in any report, slip, document or statement of the business, affairs, transactions, condition, assets or accounts of the bank, or wilfully causes any such entry to be altered, abstracted, concealed or destroyed,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding \$40,000 or to imprisonment for a term not exceeding 4 years or to both.

46. (1) Where any offence against any provision of this Order has been committed by a corporation, firm, society or other body of persons, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer thereof or was purporting to act in such capacity shall be deemed to be guilty of 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.

Offences by companies.

(2) Where any person would be 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, or of the clerk or servant of the agent, provided that the act, omission, neglect or default was committed by the clerk or servant in the course or his employment, or by the clerk or servant of the agent when acting in the course of his employment in such circumstance that had the act, omission, neglect or default been committed by the agent his principal would have been liable under this section.

47. Any director, officer or employee of an Islamic bank, or other persons being persons receiving remuneration from the Islamic bank, who asks for or receives, consents or agrees to receive any gift, commission, emolument, service, gratuity, money, property or thing of value for his own personal benefit or advantage or for that of any of his relatives, from any person other than from that bank, for

Prohibition on receipt of commission by staff.

procuring or endeavouring to procure for any person any advance, loan or credit facility from that bank or the purchase or discount of any draft, note, cheque, bill of exchange or other obligations by the bank, or for permitting any person to overdraw any account with that bank, shall be guilty of any offence and shall on conviction be liable to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 3 years or to both.

General penalties.	48. Any Islamic bank which contravenes or fails to comply with any provision of this Order or regulations made thereunder for which no penalty is expressly provided shall be guilty of an offence and shall on conviction be liable to a fine not exceeding \$50,000.
Exceptions.	49. The Minister may exempt any Islamic bank from any provision of this Order with or without conditions.
Application of Companies Act.	50. An Islamic bank shall, in addition to the provisions of this Order, be subject to the relevant provisions of the Companies Act, save that where there is any conflict or inconsistency between the provisions of this Order and the provisions of Companies Act the provisions of this Order shall prevail.
Court of Magistrate.	51. The Court of a Magistrate shall have jurisdiction to try any offence committed under this Order and may impose any punishment therefor provided.
Prosecution of an offence.	52. No prosecution in respect of any offence under this Order shall be instituted except by or under the direction of the Attorney General acting upon a complaint made by the Minister.
Regulations.	53. The Minister may, with the consent of His Majesty, make such regulations as may be required from time to time for carrying into effect the objects of this Order.

## PART VIII

### CONSEQUENTIAL AMENDMENTS

Amendments.	54. The Schedule (which contains consequential amendments) shall have effect.
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### SCHEDULE

Chapter 89.	1. The Finance Companies Act is amended by adding the words "or Islamic Banking Act "; after the words "Banking Act" in paragraph (a) of subsection (1) of section 38 of the Finance Companies Act.
Chapter 89.	
Chapter 95.	2. The Banking Act is amended —  (a) by inserting the following definition of "Islamic bank" after the definition of "company" in subsection (1) of section 2 —  "Islamic bank" means a bank licensed under the Emergency (Islamic Banking) Order, 1992 ";

- (b) by inserting the words "and an Islamic bank" after the words "the provisions of section 4" in subsection (1) of section 7.
3. The Exchange Control Act is amended by inserting the words "or the Emergency (Islamic Banking) Order "; at the end of the definition of "bank" and "banker" in subsection (1) of section 2. Chapter 141.
4. The Brunei Investment Agency Act is amended by inserting the words "or the Emergency (Islamic Banking) Order "; at the end of the definition of "bank" in section 2. Chapter 137..
5. The Currency Act is amended by inserting the words "and an Islamic bank licensed under the Emergency (Islamic Banking) Order" after the words "Banking Act" in the definition of "bank" in section 2. Chapter 32.

Made this 2nd day of December 1992 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY  
THE SULTAN AND YANG DI-PERTUAN  
BRUNEI DARUSSALAM

## PUNISHMENTS

No. of section	Nature of offence	Punishment prescribed
3	Violation of possession of a valid licence	Fine not exceeding \$30,000 or imprisonment not exceeding 3 years or both
4	Violation of any condition of the licence	Fine not exceeding \$30,000
15	Violation of any provision relating to the holding of minimum amount of liquid assets	Fine not exceeding \$30,000
16	Violation of any provision relating to the appointment of an auditor	Fine not exceeding \$30,000
17	Violation of any provision relating to submission of account and audit report	Fine not exceeding \$4,000 for every day during which the default continues
18	Violation of any provision relating to the submission of statements of liabilities and assets etc	Fine not exceeding \$4,000 for every day during which default continues
20	Violation of any provision relating to a loan or advance to another bank or finance company	Fine not exceeding \$30,000
22	Violation of any provision relating to the conditions of officers of an Islamic bank	Fine not exceeding \$30,000 or imprisonment not exceeding 3 years or both
27	Violation of any provision relating to the responsibilities of a director or manager	Fine not exceeding \$30,000 or imprisonment not exceeding 3 years or both
28	Violation of any provision relating to the grant of credit for financing the purchase of shares etc	Fine not exceeding \$30,000



## PUNISHMENTS (Continued)

No. of section	Nature of offence	Punishment prescribed
31	Violation of any provision relating to the investigation made by the Minister	Fine not exceeding \$4,000 for every day during which the default continues after conviction
32	Violation of any provision relating to secrecy of the customer's account	Fine not exceeding \$30,000 or imprisonment not exceeding 3 years or both
38	Violation of any provision relating to the control of an Islamic bank by the Minister	Fine not exceeding \$4,000 for every day during which the default continues
41	Violation of any provision relating to the amendments or alterations in the instrument of the bank	Fine not exceeding \$2,000 for every day during which the default continues
44	Violation of any provision relating to the negligence of any director or manager	Fine not exceeding \$30,000 or imprisonment not exceeding 3 years or both
45	Violation of any provision relating to the fraud made by any director, manager, auditor, employee etc	Fine not exceeding \$40,000 or imprisonment not exceeding 4 years or both
47	Violation of any provision relating to misuse of the powers by any director or officer of the bank	Fine not exceeding \$30,000 not exceeding 3 years or both
48	Violation of any other provision of the Act	Fine not exceeding \$50,000