

GAZETTED 20/3/06 (HJH NORA)

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

BANKING ORDER, 2006

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CONSTITUTION OF BRUNEI DARUSSALAM

(Order under Article 83(3))

BANKING ORDER, 2006

In exercise of the power conferred by Clause (3) of Article 83 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 Banking Order, 2006 and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*.

(2) The long title of this Order is "An Order to provide for the regulation and the licensing of banking business and for matters connected therewith or incidental thereto".

Interpretation.

2. (1) In this Order, unless the context otherwise requires –

“agreement” means an agreement whether formal or informal and whether express or implied;

“associate undertaking” shall be construed in accordance with Part I of the First Schedule;

“Authority” means the person appointed under subsection (1) of section 3 to be the Authority for the purposes of this Order;

“bank” means a company which carries on banking business and holds a licence granted under section 4 or 23, and includes all branches and offices in Brunei Darussalam of any such company for the purposes of this Order;

“banking business” means business which consists of or includes the receiving of deposits or other repayable funds from the public and the granting of credits for its own account and includes the following activities –

- (a) financial leasing;
- (b) money transmission services;
- (c) issuing and administering means of payment, such as credit cards, charge cards, travellers’ cheques and bankers’ drafts;
- (d) guarantees and commitments;
- (e) trading for own account or for account of customers in one or more of money market instruments, foreign exchange, financial futures and options, exchange and interest rate instruments and transferable securities;
- (f) participation in share issues and the provision of services relating to such issues;
- (g) advice to undertakings or capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings;
- (h) money broking;
- (i) portfolio management and advice;
- (j) safekeeping and administration of securities;
- (k) credit reference services;
- (l) safe custody services;
- (m) bank assurance; and
- (n) such other business as may be approved in writing by the Authority with the approval of the Minister;

“company” means a body corporate incorporated or registered in Brunei Darussalam under the Companies Act (Chapter 39);

“controller” shall be construed in accordance with Part II of the First Schedule;

“credit facilities” means –

- (a) the granting of advances, loans and other facilities whereby a customer of the bank has access to funds or financial guarantees; or
- (b) the incurring by a bank of other liabilities on behalf of the customer;

“deposit liability” means liability in respect of a deposit (as so construed), including where appropriate, a sum due as a debt to the Authority by virtue of subsection (4) of section 62, and “depositor” and related expressions shall be construed accordingly;

“director” includes any person occupying the position of director of a company, whatever the title of his office, and includes a person in accordance with whose directions or instructions the directors of a company are accustomed to act and an alternate or substitute director;

“document” includes a circular brochure, pamphlet, poster, handbill, prospectus and other document which is directed at or likely to be read by members of the public; and also includes any newspaper, magazine, journal or other periodical publication;

“licence” means a licence granted under section 4 or 23;

“licensed moneylender” means a moneylender licensed under section 3 of the Moneylenders Act (Chapter 62);

“Minister” means the Minister of Finance;

“officer”, in relation to a company, includes –

- (a) a director, the secretary or an employee of the company;

- (b) a receiver or manager of any part of the undertaking of the company appointed under a power contained in any instrument; and
- (c) the liquidator of the company appointed in a voluntary winding-up;

“owner of money” means the person who is entitled to the money (or the person who would be so entitled except for the operation of the Limitation Act (Chapter 14)), and includes his executors, administrators and assigns and the lawful attorney or agent of the person, guardian, executor, administrator or assign;

“parent undertaking” shall be construed in accordance with Part III of the First Schedule;

“place of business”, in relation to a bank, includes a head or main office, a branch, an agency, a mobile branch of the bank, any office established and maintained for a limited period only and any other place used by the bank for the dispensing or acceptance of money on account or for the conduct of other banking business;

“Registrar” has the same meaning as in the Companies Act (Chapter 39);

“share”, in relation to an institution, means a share in the share capital of that institution and includes an interest in such share;

“subsidiary undertaking” (and references to a subsidiary) shall be construed in accordance with Part III of the First Schedule;

“undertaking” shall be construed in accordance with Part III of the First Schedule.

(2) Without prejudice to any other meaning which the word “insolvent” may have, a bank shall, for the purposes of this Order, be deemed to be insolvent if either it is unable to pay its debts on demand or at a time or in circumstances agreed by or on behalf of the persons making the payment and the person receiving it.

(3) Subject to subsection (4), a “deposit” is a sum of money paid on terms under which it will be repaid (with or without interest or at a premium), and either on demand or at

a time or in circumstances agreed by or in behalf of the persons making the payment and the persons receiving it.

(4) Notwithstanding subsection (3), a sum of money is not a deposit if –

(a) it is paid by way of advance or part payment for the sale, hire or other provision of property or services and is repayable only in the event that the property or those services is or are not in fact sold, hired or otherwise provided;

(b) it is paid by way of security for payment for the provision of property or services provided or to be provided by the person by whom or on whose behalf the money is accepted;

(c) it is paid by way of security for the delivery up or return of any property, whether in any particular state of repair or in any other manner;

(d) it is a sum of money or a loan made by a person, in the course of a business of lending money carried on by him, to any other person, except a licensed bank; or

(e) it is a sum of money that is paid to an institution by a person who, at the time when it is paid, is a controller, director or manager of the institution, or a spouse, child or step-child of such a person.

(5) For the purposes of this Order, “capital funds”, in relation to a bank, means –

(a) if the bank is a company whose head office is situated in Brunei Darussalam the paid-up capital and published reserves of the company (excluding such reserves as the Authority may specify by notice in writing) deduction having been made for any loss appearing in the accounts of the bank;

(b) if the bank is a company whose head office is situated outside Brunei Darussalam, the net head office funds and such other liabilities as the Authority may decide:

Provided that, except for the purposes of section 11, in determining the capital funds of a bank at any time there shall be deducted any debit balance appearing in the bank’s profit and loss account.

(6) In paragraph (a) of subsection (5), “published reserves”, in relation to a company, means reserves which appear in its accounts but does not include any reserves which are represented by the written-down value of assets or by provision for the depreciation of fixed assets or which are maintained for any specific purposes.

(7) In paragraph (b) of subsection (5), “net head office funds”, in relation to a bank incorporated outside Brunei Darussalam, means the aggregate of its issued and paid-up capital (or its equivalent recognized by the Authority as applicable to the bank under the laws of the country or territory in which the bank is incorporated, formed or established) and its published reserves as the Authority may specify in writing, deduction having been made for any loss appearing in the accounts of the bank.

PART II

APPOINTMENT OF AUTHORITY, ASSISTANTS ETC.

Appointments.

3. (1) His Majesty the Sultan and Yang Di-Pertuan may, by notification published in the *Gazette*, appoint a person to be the Authority for the purposes of this Order.

(2) The Authority may authorise or appoint any person to assist in the exercise of the powers, duties and functions of the Authority under this Order or under the International Banking Order, 2000 (S53/00), either generally or in any particular case.

(3) Any person appointed by the Authority under subsection (2) shall be deemed to be a public servant for the purposes of the Penal Code (Chapter 22).

PART III

LICENSING OF BANKS

Licensing of banks.

4. (1) No banking business shall be carried on in Brunei Darussalam except by a company which is in possession of a licence granted under this Order, the Islamic Banking Act (Chapter 168) or the International Banking Order, 2000 (S53/00).

(2) Nothing in subsection (1) applies to the business which a moneylender may conduct in accordance with a licence granted to him under the Moneylenders Act (Chapter

62) or to the business which a finance company may conduct in accordance with the licence granted to it under the Finance Companies Act (Chapter 89).

(3) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, imprisonment for a term not exceeding 5 years or both and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day during which the offence continues after conviction.

Use of word “bank”.

5. (1) No person, whether incorporated or not, other than a bank shall, without the written consent of the Authority –

(a) use the word “bank” or any of its derivatives in any language, or any other word indicating it transacts banking business, in the name, description or title under which the person or body of persons is transacting business in Brunei Darussalam; or

(b) make or continue to make any representation to that effect in any bill head, letter paper, notice, advertisement or in any other manner.

(2) Nothing in this section shall prohibit an association of banks formed for the protection of common interests from using the word “bank” or any of its derivatives in any language as a part of its name or description of its derivatives.

(3) Any person who contravenes subsection (1) 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 \$5,000 for every day during which the offence continues after conviction.

Persons appearing to transact banking business without licence.

6. (1) Whenever the Authority has reason to believe that a person is transacting banking business without a licence, the Authority shall at all times –

(a) have full and free access to the premises at which that person is suspected of transacting banking business without a licence or at which that person may have books, accounts and records; and

(b) have the power to examine, copy or take possession of the books, accounts and records of that person in order to ascertain whether or not that person has violated, or is violating, any of the provisions of this Order.

(2) Any refusal to allow full and free access to such premises or to submit such books, accounts and records shall be *prima facie* evidence of the fact of operation without a licence.

Application for licence.

7. (1) A company which desires to carry on banking business in Brunei Darussalam shall, in the prescribed form and on payment of the prescribed fee, make an application to the Authority for a licence accompanied by –

(a) a copy of the Memorandum of Association and Articles of Association or other instrument under which it is incorporated;

(b) a copy of its latest balance sheet together with such other documents (if any) as may be prescribed;

(c) an undertaking appropriate to the class of licence sought in a form acceptable to the Authority which may impose different undertakings for different circumstances as to the persons or description of persons to or for whom the company proposes to provide banking business, and as to the service and activities proposed to be offered to and with such persons.

(2) After receiving an application under subsection (1), the Authority may require the applicant to submit such further information as the Authority considers necessary or desirable to enable the application to be fully assessed for the purposes of this Order.

(3) Before determining an application under subsection (1), the Authority may require one or more representatives of the applicant to appear before the Authority to be interviewed with respect to the application and, at such an interview, the representatives may, with the approval of the Authority, submit further evidence.

(4) Any person who knowingly or recklessly furnishes any document or information which is false or misleading in a material particular in connection with an application for a licence falling within subsection (1) is guilty of an offence and liable on

conviction to a fine not exceeding \$300,000, imprisonment for a term not exceeding 3 years or both.

Criteria for granting and refusing licences.

8. (1) In considering whether to grant a licence, the Authority shall have regard to –
- (a) the need to protect the public interest or the interests of depositors, customers, other creditors and potential depositors, customers and other creditors; and
 - (b) the need to protect the security, reputation and economic interests of Brunei Darussalam in relation to financial matters.
- (2) Without prejudice to the generality of subsection (1), the Authority shall not grant a licence unless the Authority is satisfied that –
- (a) the applicant enjoys a high reputation in the financial community or will be able to do so if a licence is granted;
 - (b) every person who is to be a director, controller or manager of the business is a fit and proper person to hold that position;
 - (c) the applicant will carry on banking business in Brunei Darussalam and, in carrying on the business, will at all times maintain adequate accounting and other records and adequate systems of control of its business and records;
 - (d) in the case of a bank whose head office is proposed to be situated in Brunei Darussalam, its capital issued and paid up is not less than \$100,000,000, deduction having been made in respect of a debit balance, if any, appearing in the profit and loss account of the bank; and
 - (e) in the case of a bank whose head office is situated outside Brunei Darussalam –
 - (i) its capital issued and paid up is not less than the equivalent of \$1,000,000,000 deduction having been made in respect of a debit balance, if any, appearing in the profit and loss account of the bank;
 - (ii) it holds net head office funds of not less than \$30,000,000 in respect of its business in Brunei Darussalam, at all times, in the form of assets approved by the Authority.

(3) In determining for the purposes of paragraph (b) of subsection (2), whether a person is a fit and proper person to hold any position, regard shall be had to –

(a) his probity;

(b) his competence and soundness of judgment for fulfilling the responsibilities of position including, without limitation, the due diligence he is likely to conduct and fulfil –

(i) in respect of customers, based on the principle of “know the client”; and

(ii) in respect of the sources, destination and application of customer funds; and

(c) whether the public interest, the interests of potential depositors, investors, customers and parties or the reputation of Brunei Darussalam are, or are likely to be, in any way prejudiced by his holding that position,

and, without prejudice to the generality of this section, regard may be had to his education, experience, record, conduct and activities in business or financial matters.

(4) Without prejudice to the generality of subsections (1) and (2), the Authority shall not grant a licence to an applicant if it appears to the Authority that –

(a) the applicant is an institution which is closely linked with any person; and

(b) the applicant’s close links with that person or any matter relating to any laws of any jurisdiction outside Brunei Darussalam or administrative provisions to which that person is subject are such as would (were a licence to be granted to the applicant) prevent the effective exercise by the Authority of the Authority’s supervisory functions in relation to the applicant.

(5) For the purposes of subsection (4), an applicant is closely linked with –

(a) any person who is or, if he were an undertaking, would be its parent undertaking;

(b) any undertaking which is a subsidiary undertaking of the applicant;

(c) any undertaking which is or, if any person falling within paragraph (a) were an undertaking, would be a fellow subsidiary undertaking; and

(d) any person in accordance with whose directions or instructions the directors of the applicant are accustomed to act,

and any reference to the applicant's close links with any person shall be construed accordingly.

(6) Notwithstanding anything in the preceding provisions of this section, a bank shall not be granted or hold a licence if the Authority is satisfied that 50 per cent or more of its capital issued and paid-up is owned by or on behalf of the government of any country or territory other than Brunei Darussalam or of an agency of any such government, or that all or a majority of the persons having the directions, control or management of the bank are appointed by or on behalf of any such government or agency:

Provided that the Authority may, in its absolute discretion, grant a licence to any such bank for such period not exceeding one year at any time as the Authority may think fit.

Determination of application for licence.

9. (1) On receipt of an application for a licence under subsection (1) of section 7, the Authority shall, subject to subsection (2), within a period of 4 calendar months or such extended time as the applicant and the Authority shall decide, grant or refuse the licence applied for.

(2) Where the Authority intends to refuse a licence, it shall serve on the applicant notice in writing stating that it is considering taking that decision for the reasons stated in the notice.

(3) An applicant on whom notice is served under subsection (2) may, within 28 days of the service of the notice, submit written representations to the Authority.

(4) The Authority shall consider any representations made in response to a notice under subsection (2) before giving further consideration to the matter to which the notice relates.

(5) If, after considering any representation made under subsection (3), the Authority refuses to grant the licence, the Authority shall serve on the applicant notice thereof in writing.

(6) Any applicant who is aggrieved by the refusal of the Authority to grant a licence may, within 30 days of the decision of the Authority, appeal in writing to the Minister whose decision shall be final.

Conditions of licence.

10. (1) In granting a licence, the Authority may impose such conditions as the Authority thinks appropriate.

(2) It shall be a condition of every licence that the Authority shall continue to be satisfied as to matters mentioned in section 8.

(3) The Authority may at any time vary or revoke any conditions of a licence imposed under subsection (1) or may impose conditions or additional conditions thereto.

(4) Prior to taking action under subsection (3), the Authority shall notify its intention to take the action to the bank concerned and shall give the bank an opportunity to submit in writing within such period, being not less than 14 days, as may be specified in the notification reasons why the conditions of its licence should not be so varied or revoked or, as the case may be, why conditions or additional conditions should not be so imposed.

(5) A bank which is aggrieved by any action taken by the Authority under subsection (3) may appeal to the Minister against the variation, revocation or, as the case may be, imposition of the condition or additional condition concerned, whose decision shall be final.

(6) Any bank which fails to comply with any of the conditions of its licence is guilty of an offence and liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction.

Capital ratios.

11. (1) The Authority may require banks to maintain capital funds in Brunei Darussalam in proportion to their total assets or to every category of assets at such ratio as may be prescribed.

(2) Any bank incorporated in Brunei Darussalam shall not, at any time, have a capital adequacy ratio of less than 10 per cent or such other percentage as may be determined by the Authority, as calculated in accordance with such form, content and manner as may be determined by the Authority by notice in writing.

(3) Any licensed bank which fails to comply with the requirements of the Authority under subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction.

(4) Subject to the provisions of any other written law, a bank incorporated in Brunei Darussalam shall not reduce its paid-up capital during the currency of its licence without the approval of the Authority.

(5) The Authority may suspend or restrict the operations of a bank which fails to comply with subsection (2) or (4) or any requirement of the Authority under subsection (1).

Branches of banks.

12. (1) No bank shall open a new place of business or change the location of an existing place of business in Brunei Darussalam without submitting a written application in respect thereof to the Authority, which may –

- (a) approve the application; or
- (b) refuse the application, without assigning any reason therefor.

(2) No bank incorporated in Brunei Darussalam shall open a new branch, agency or office in any place outside Brunei Darussalam without submitting a written application in respect thereof to the Authority, which may –

- (a) approve the application; or
- (b) refuse the application, without assigning any reason therefor.

(3) Any bank which contravenes subsection (1) or (2) is guilty of an offence and liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction.

Licence fees.

13. (1) Every bank licensed in Brunei Darussalam shall pay such annual licence fee as may be prescribed.

(2) In respect of each of its branches in Brunei Darussalam, every licensed bank shall pay such annual or other fee or fees as may be prescribed.

(3) In respect of its branches outside Brunei Darussalam, every bank which is incorporated in Brunei Darussalam shall pay such annual fee as may be prescribed.

(4) Under subsections (1), (2) and (3), different licence fees may be prescribed in respect of different classes or description of each place of business and such classes or description may take account of the different facilities provided at each place of business, but the fees so specified shall apply uniformly within each such class or category.

(5) The manner of payment of a licence fee shall be as specified by the Authority.

Notification of becoming new or increased controller.

14. (1) No person shall become an indirect, 10 per cent, 20 per cent, 33 per cent or majority controller of a bank incorporated in Brunei Darussalam unless he has served on the Authority a written notice that he intends to become such a controller and the Authority either –

(a) has notified him in writing before the end of the period of 3 months beginning with the date of service of his notice that there is no objection to his becoming such a controller; or

(b) has allowed that period to elapse without serving on him under section 15 a written notice of objection to his becoming such a controller.

(2) After receiving a notice from any person under subsection (1), the Authority may, by notice in writing, require him to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve a notice of objection.

(3) Where additional information or documents are required from any person by a notice under subsection (2), the time between the giving of that notice and the receipt of the

information or documents shall be added to the period mentioned in paragraph (a) of subsection (1).

(4) A notice given by any person under subsection (1) shall not be regarded as complying with that subsection except as regards his becoming a controller of the bank in question within the period of one year beginning with the following date –

(a) in the case of a person who becomes such controller without having been served with a notice of objection, the date on which he became such a controller; and

(b) in the case of a person who becomes such a controller after having been served with one or more notices of objection which or, as the case may be, each of which was quashed, the date on which the notice or, as the case may require, the latest date on which any of the notices was quashed.

Objection to new or increased control.

15. (1) Where a person has served a notice on the Authority under subsection (1) of section 14 then, unless the Authority is satisfied, having regard to the need to ensure the sound and prudent management of the bank in question, that that person is a fit and proper person to become a controller of the description in question, the Authority may serve on that person a notice of objection under this section.

(2) Where a person required to serve a notice under subsection (1) of section 14 in relation to his becoming a controller of any description becomes such a controller without having served notice on the Authority as so required, then, at any time within 3 months after becoming aware of his having done so, the Authority may serve on him a notice of objection under this section if, had notice been served on it under subsection (1) of section 14, it would have done so.

(3) For the purpose of deciding whether to serve notice of objection on any person by virtue of subsection (2), the Authority may by notice in writing require the person concerned to provide such information or documents as it may require.

(4) Where the reasons stated in a notice of objection under this section relate specifically to matters which –

(a) refer to a person identified in the notice, other than the person on whom it is served; and

(b) are in the opinion of the Authority prejudicial to that person in relation to any office of employment,

then, unless it considers it impracticable to do so, the Authority shall serve a copy of the notice of objection on that person.

(5) A notice of objection under this section –

(a) shall specify the reasons why the Authority is not satisfied as mentioned in subsection (1); and

(b) shall give particulars of the right of appeal under subsection (6).

(6) A person aggrieved by the service of a notice of objection under this section (or a copy of such notice) may, within 28 days of that service, appeal to the Minister, whose decision shall be final.

Contravention of section 14.

16. (1) Subject to subsection (2), a person is guilty of an offence if –

(a) before the end of the period mentioned in paragraph (a) of subsection (1) of section 14 he becomes a controller of a description falling within that subsection;

(b) he contravenes section 14 by becoming a controller of any description after having been served with a notice of objection of his becoming a controller of that description; or

(c) having become a controller of any description in contravention of section 14 (whether before or after being served with a notice of objection) he continues to be such a controller after such a notice has been served on him.

(2) A person shall not be guilty of an offence under subsection (1) if he shows that he did not know the acts or circumstances by virtue of which he became a controller of the relevant description; but where a person becomes a controller of any such description without such knowledge and subsequently becomes aware of the fact that he has become a controller, he is guilty of an offence unless, within 14 days of becoming aware of the fact, he gives the Authority a written notice of it.

(3) Any person who contravenes subsection (1) 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.

Restrictions on and sale of shares.

17. (1) The powers conferred by this section shall be exercisable where a person –

- (a) has contravened section 14 by becoming a controller of any description of a bank in Brunei Darussalam after having been served with a notice of objection to his becoming a controller of that description; or
- (b) having become a controller of any description in contravention of that section, continues to be one after such a notice has been served on him.

(2) The Authority may by notice in writing served on the person concerned, direct that any shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions –

- (a) any transfer of, or agreement to transfer, those shares or, in the cases of unissued shares, any transfer of, or agreement to transfer, the right to be issued with them shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to the holder;
- (d) except in a liquidation, no payment shall be made of any sum due from the institution on the shares, whether in respect of capital or otherwise.

(3) The Authority may order the sale of any shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions.

- (4) No order shall be made under subsection (3) –
- (a) until the end of the period within which an appeal can be brought against the notice of objection concerned; and
 - (b) if such an appeal is brought, until it has been determined or withdrawn.

(5) Where shares are sold in pursuance of an order under this section, the proceeds of sale, less the costs of the sale, shall be paid in such manner directed by the Authority for the benefit of the person beneficially interested in them and the receipts of such person shall be a full discharge to the Authority.

(6) This section applies –

(a) to all shares in the institution of which the person in question is a controller of the relevant description which are held by him or any of his associate which were not so held immediately before he became such a controller of that institution; and

(b) where the person in question became a controller of the relevant description of an institution as a result of the acquisition by him or any of his associate of shares in another company, to all the shares in that company which are held by him or any of his associate which were not so held before he became such a controller of that institution.

(7) A copy of any notice served on the person concerned under subsection (2) shall be served on the institution or other company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

Prior notification of ceasing to be a relevant controller.

18. (1) A person shall not cease to be an indirect, 10 per cent, 20 per cent, 33 per cent or majority controller of a bank unless he has first given to the Authority written notice of his intention to cease to be such a controller of the bank.

(2) If, after ceasing to be such a controller of a bank, a person will, either alone or with any associate or associates –

(a) still hold 10 per cent or more of the shares in the bank or in another body of which the bank is a subsidiary undertaking;

(b) still be entitled to exercise or control the exercise of 10 per cent or more of the voting power at any general meeting of the bank or of another such other body; or

(c) still be able to exercise a significant influence over the management of the bank or of another such body by virtue either of a holding of shares in the bank or

in the other body or of an entitlement to exercise, or control the exercise of, the voting power at a general meeting of the bank or the other body, his notice under subsection (1) shall state the percentage of the shares or voting power which (alone or with any associate) he will hold or be entitled to exercise or control.

(3) Subject to subsection (4), a person who contravenes subsection (1) or (2) is guilty of an offence.

(4) Subject to subsection (5), a person is guilty of an offence under subsection (3) if he shows that he did not know of the acts or circumstances by virtue of which he ceased to be controller of the relevant description in sufficient time to enable him to comply with subsection (1).

(5) Notwithstanding anything in subsection (4), a person who ceases to be a controller of a relevant description without having complied with subsection (1) is guilty of an offence if, within 14 days of becoming aware of the fact that he has ceased to be such a controller, he fails to give the Authority a written notice of that fact complying with subsection (2).

(6) Any person in contravention of this section is guilty of an offence and liable on conviction to a fine not exceeding \$100,000.

Notification of controller etc. by bank.

19. (1) At least once in each year, every bank shall give to the Authority written notice of the name of every person who, to the knowledge of the bank, is, at the date of the notice, a controller of the bank.

(2) In relation to each person named in a notice under subsection (1) as a controller of a bank, the bank shall state to the best of its knowledge –

(a) whether he is an indirect, 10 per cent, 20 per cent, 33 per cent or majority controller;

(b) what percentage of shares of the bank he holds, either alone or with any associate; and

(c) what percentage of the voting power at a general meeting of the bank he is entitled to exercise, or control the exercise of, either alone or with any associate.

(3) The Authority may at any time by notice in writing require a bank –

(a) to give such a notice as is referred to in subsection (1); or

(b) to obtain from any shareholder of the bank and to transmit to the Authority information –

(i) as to whether that shareholder holds voting shares in the bank as beneficial owner or as trustee; and

(ii) if he holds them as trustee, to indicate as far as it can the person for whom he holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

(4) A bank which fails to comply with subsection (1) or (3) is guilty of an offence and liable on conviction to a fine not exceeding \$20,000.

Amendment of constitution of bank.

20. (1) Every 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 a bank is incorporated or constituted, furnish to the Authority particulars in writing of the proposed amendment.

(2) Every bank, within 3 months of the making of any amendment or alteration in the Memorandum of Association or Articles of Association or other instrument under which it is incorporated or constituted shall furnish to the Authority particulars in writing (verified by statutory declaration made by a senior officer of the bank) of the alteration.

(3) A bank which contravenes subsection (1) or (2) is guilty of an offence and liable on conviction to a fine not exceeding \$30,000 and, in the case of a continuing offence, to a further fine not exceeding \$3,000 for every day during which the offence continues after conviction.

Revocation of licence.

21. (1) Subject to the provisions of this section, the Authority may by notice in writing revoke a licence on any of the following grounds –

(a) that the bank holding the licence has ceased to transact banking business in Brunei Darussalam;

(b) that, in connection with any application relating to the licence, information or documents has or have been furnished to the Authority which is or are untrue or misleading in a material particular;

(c) that, in a case where the bank holding the licence is incorporated or regulated under the law of a country or territory outside Brunei Darussalam, the supervisory authority in that country or territory has withdrawn its licence or authority to carry on business as a bank in that country or territory;

(d) that the bank holding the licence proposes to make, or has made, any composition or arrangement with its creditors or has gone into liquidation or has been wound up or otherwise dissolved;

(e) that the bank holding the licence is carrying on its business in a manner likely to be detrimental to the public interest or the interests of the depositors of the bank or has insufficient assets to cover its liabilities to the public or its depositors;

(f) that the bank holding the licence is contravening the provisions of this Order; or

(g) that, upon taking action under section 56, the Authority considers that it is in the public interest to revoke the licence.

(2) Before revoking a licence under subsection (1), the Authority shall give the bank concerned notice in writing of its intention to do so, specifying a period which, subject to subsection (4), shall be not less than 21 days from the date of the notice, within which the bank may submit written representations to show cause why the licence should not be revoked.

(3) The Authority shall consider any representations made in response to a notice under subsection (2) before giving further consideration to the revocation of the licence.

(4) In any case where the Authority considers it necessary to do so in the public interest, the Authority may reduce the period of 21 days referred to in subsection (2) to such

period of not less than 2 business days as may be specified in the notice under that subsection.

(5) If, after consideration of any representations made as mentioned in subsection (3), the Authority –

(a) revokes the licence; or

(b) varies or revokes any of the conditions of the licence,

the Authority shall serve on the bank concerned notice in writing of the revocation or variation stating the reasons for its decision and the date on which the revocation or variation takes effect (being not earlier than the expiry of the period specified in the notice under subsection (2)).

(6) Any bank whose licence has been revoked pursuant to the provisions of this section may appeal to the Minister against the revocation.

(7) If the bank concerned gives due notice of the appeal to the Minister the revocation shall not take effect unless it is confirmed, reversed or varied by the Minister or the appeal is for any reason dismissed or withdrawn.

(8) The bringing of an appeal by a bank under this section does not affect the exercise by the Authority of any of its powers under Part VII.

Directions on revocation or surrender of licence or variation of conditions.

22. (1) Where a licence has been revoked under section 21 –

(a) notice of the revocation shall be published in the *Gazette*; and

(b) the institution concerned shall, as from the date of the revocation, cease to transact any banking business in Brunei Darussalam except as may be approved by the Authority for the purpose of winding up its banking business.

(2) Without prejudice to subsection (1), where the Authority has revoked a licence or varied the conditions of a licence or a licence has been surrendered, the Authority may by notice in writing give the institution concerned such directions in writing as the Authority thinks fit and any such direction may be revoked or varied in the same manner as it was given.

(3) Paragraph (b) of subsection (1) and subsection (2) 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.

(4) An institution which contravenes a direction under this section or the variation of such a direction is guilty of an offence and liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day during which the offence continues after conviction.

Other categories of licences and fees.

23. (1) The Authority may also grant –

(a) a merchant bank licence for the purpose of carrying on merchant banking business, including corporate finance, the underwriting of share and bond issues, mergers and acquisitions, portfolio investment management, management consultancy and such other fee-based activities as may be specified by the Authority in the licence; or

(b) a restricted banking licence for the purpose of carrying on banking business subject to the restriction that the licensee may not offer, conduct or provide such business except to or for the persons named or described in the undertaking accompanying the application for the licence, as mentioned in paragraph (c) of subsection (1) of section 7.

(2) Subject to this Order, the grant of a licence under paragraphs (a) or (b) of subsection (1) shall be subject to the restriction that the licensee may not offer, conduct or provide banking business except in respect of the services named or described in the undertaking accompanying the application for the licence, as mentioned in paragraph (c) of subsection (1) of section 7.

(3) Every licensee shall pay such annual fee or fees as may be prescribed.

(4) In granting such licence, the Authority may impose such conditions as the Authority considers fit.

PART IV
RESERVE FUNDS, DIVIDENDS, BALANCE SHEETS AND INFORMATION

Maintenance of reserve fund.

- 24.** (1) Every bank shall –
- (a) maintain a reserve fund; and
 - (b) transfer to that reserve fund out of the net profits of each year, after due provision has been made for taxation, a sum determined as follows –
 - (i) so long as the amount of the reserve fund is less than 50 per cent of the paid-up capital, the sum shall not be less than 50 per cent of those net profits;
 - (ii) so long as the amount of the reserve fund is 50 per cent or more but less than 100 per cent of the paid-up capital, the sum shall not be less than 25 per cent of those net profits; and
 - (iii) so long as the amount of the reserve fund is 100 per cent or more of the paid-up capital, the sum shall not be less than 5 per cent of those net profits.

(2) If the Authority is satisfied that the aggregate reserve fund of a bank whose head office is situated outside Brunei Darussalam is adequate for its business, it may, by order in writing, exempt that bank from the provisions of subsection (1) for such period as it thinks fit.

(3) Any bank which fails to comply with the provisions of subsection (1) 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 for every day during which the offence continues after conviction.

Provision for bad and doubtful debts.

25. The Authority shall establish guidelines as to the provision to be made by the bank for bad and doubtful credit risks; and the bank shall secure that adequate provision is made in accordance with those guidelines before any profit or loss is declared.

Payment of dividends.

26. (1) No locally incorporated bank shall pay any dividend on its shares until all its capitalised expenditure (including preliminary expenses, organisation expenses, share selling commission, brokerage, amount of losses and any item of expenditure not represented by tangible assets) has been completely written-off.

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

Prohibition of accrual of interest on past due loans.

27. No bank shall accrue interest income from loans which are 2 years or more past due or such other time as is determined by the Authority nor shall such a bank accrue interest for any loan which has been identified under section 25 requiring a provision for loss, provided however that nothing in this section shall be taken to impair the rights of a bank under any agreement with any other party.

Publication and exhibition of audited accounts and statements.

28. (1) Within 3 months after the close of each financial year or within such longer period as the Authority may approve, every bank shall publish in at least one daily newspaper circulating in Brunei Darussalam, and exhibit thereafter throughout the year in a conspicuous position in each of its offices and branches in Brunei Darussalam –

(a) a copy of its latest audited annual balance sheet, and a copy of the profit and loss account, together with any notes thereon, and a copy of the report of the auditors;

(b) the full and correct names of all persons who are directors for the time being of the bank;

(c) the names of all subsidiary companies for the time being of the bank;
and

(d) in the case of a bank incorporated outside Brunei Darussalam, the accounts of its head office and of its local operations.

(2) A copy of each of the documents referred to in subsection (1) shall be sent to the Authority by the bank, prior to the first publication thereof under that subsection, together with a copy of the director's report.

(3) Together with the balance sheet and other documents required to be sent to the Authority under subsection (2), every bank shall send to the Authority –

(a) a duly audited balance sheet showing its assets used in, and liabilities arising out of its operation in, Brunei Darussalam as at the date to which its balance sheet was made up;

(b) a duly audited income and expense statement; and

(c) a profit and loss account which gives an audited true and fair view of the profit and loss arising out of the bank's operation in Brunei Darussalam for the last preceding financial year of the bank:

Provided that a bank shall be entitled to make such apportionments of expenses incurred in connection with operations or administration affecting both Brunei Darussalam and elsewhere and to add such notes and explanations as in its opinion are necessary or desirable in order to give a true and fair view of the profit and loss of its operations in Brunei Darussalam.

(4) In the case of a bank incorporated or established in Brunei Darussalam, the annual balance sheet and profit and loss account of the bank referred to in subsection (1) and the balance sheet, income and expense statement and profit and loss account referred to in subsection (3) shall be in such form as the Authority may approve.

(5) In the case of a bank incorporated outside Brunei Darussalam, the documents referred to in paragraphs (a) and (d) of subsection (1) may be in a form which complies with the law for the time being applicable in the place of incorporation or origin but the documents referred to in subsection (3) shall be in such form as the Authority may approve.

(6) The Authority may require any bank to submit such further or additional information as it may consider necessary either by way of explanation, amplification or otherwise with regard to any documents sent by the bank under subsection (2) or (3) and that information shall be submitted within such period and in such manner as the Authority may require.

(7) A bank which fails to comply with any provision of this section is guilty of an offence and liable on conviction to a fine not exceeding \$30,000 and, in the case of a continuing offence, to a further fine not exceeding \$3,000 for every day during which the offence continues after conviction.

Statements to be furnished by banks.

29. (1) Every bank shall furnish to the Authority such information (including returns) at such time and in such manner as the Authority may reasonably require for the proper discharge of its functions.

(2) Every bank shall furnish to the Authority –

(a) not later than 15 days after the last day of each month a statement in the prescribed form showing the assets and liabilities of its banking offices and branches in Brunei Darussalam at the close of business on the last business day of the preceding month;

(b) not later than one month after the last day of each quarter of a calendar year, a statement in a form approved by the Authority giving an analysis of loans and advances of its offices and branches in Brunei Darussalam as at the 31st. day of March, 30th. day of June, 30th. day of September and the 31st. day of December, respectively;

(c) not later than 3 months after the close of its financial year a statement in a form approved by the Authority showing the income and expenditure in respect of its banking business in Brunei Darussalam;

(d) any such statistical or other such information as may be requested by the Authority at any time.

(3) The Authority may require any statement submitted to it pursuant to subsection (1) to be accompanied by a certificate –

(a) of the auditor appointed by the bank pursuant to section 98; or

(b) of any other auditor appointed by the Authority pursuant to that section,

as to whether, in the opinion of the auditor, the statement is correct.

(4) Any information received from a bank under this section shall be under strict conditions of confidentiality as between the bank and the Authority.

(5) Nothing in this section shall prevent the Authority from preparing and publishing consolidated statements aggregating information furnished under this section.

(6) Any bank which fails or neglects the provisions of this section is guilty of an offence and liable on conviction to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction.

Advances to directors, associates etc.

30. (1) Every bank shall send to the Authority, not later than 15 days after the last day of each month, a statement in a form approved by the Authority showing particulars of advances, loans or credit facilities by it to –

(a) any of its directors;

(b) any firm in which it or any of its directors is a partner, manager or agent, or to any individual or firm of whom or of which any of its directors is a guarantor;

(c) any undertaking that is, a group undertaking in relation to the bank;

(d) any of its officers, employees or other persons being persons receiving remuneration (exclusive of benefit and allowance) from it, where the amount of the advance, loan or credit facilities exceeds one year's remuneration of the officer, employee or other person;

(e) any private or public company in which the bank or any of its directors, officers, employees or other persons who receive remuneration from the company has an interest as a director, manager, agent or guarantor; or

(f) any individual in whom, and any firm or company in which, any of its directors has an interest, directly or indirectly, as declared under the provisions of section 31, other than advances, loans and credit facilities particulars of which have already been supplied pursuant to paragraphs (a), (b), (c), (d) and (e) of this subsection.

(2) If, from an examination of the particulars supplied by a bank under subsection (1), it appears to the Authority that any advances, loans or credit facilities falling within that subsection are being or have been granted to the detriment of the public interest, the Authority may by order in writing –

(a) prohibit the bank concerned from granting any further advances, loans or credit facilities falling within subsection (1) or impose such restrictions on the grant thereof as the Authority thinks fit; and

(b) direct the bank to secure repayment of any such advances, loans or credit facilities already made within such time and to such extent as may be specified in that order.

(3) In this section, “director” includes the wife, husband, father, mother, son and daughter of a director.

Disclosure of interest by directors.

31. (1) Every director of a bank who has in any manner whatsoever, whether directly or indirectly, an interest in an advance, loan or credit facility, or proposed advance, loan or credit facility from that bank shall, as soon as practicable, send a declaration in writing of the nature of the interest to the secretary of the bank and the secretary shall cause that declaration to be circulated forthwith to all the directors.

(2) The requirements of subsection (1) do not apply in any case where –

(a) the interest of the director consists only of being a member or creditor of an institution which is interested in an advance, loan or credit facility or proposed advance, loan or credit facility from that bank; and

(b) the interest of the director may properly be regarded as of a trivial nature.

(3) For the purposes of subsection (1), a general notice given to the board of directors of a bank by a director to the effect that he is an officer or member or a particular institution and is to be regarded as having any interest in any advance, loan or credit facility which, after the date of the notice, may be made to that institution 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 that institution;

(b) his interest is not 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 a meeting of the directors of the bank or the director takes reasonable steps to ensure that it is declared at the next meeting of the directors after it is given.

(4) Every director of a 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 director shall declare at a meeting of the directors of that 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 bank; or

(b) if he is already a director, after he commences to hold the office or to possess the property, as the case may be.

(6) Where any declaration is made under subsection (1) or (4), the secretary of the bank shall cause the declaration (if not actually made at the meeting) to be read at the next meeting of the directors after it is so made and shall record each such declaration in the minutes of the meeting at which it is made or read.

(7) Any director who is in contravention of subsections (1) or (4) is guilty of an offence and liable on conviction to a fine not exceeding \$150,000, imprisonment for a term not exceeding 3 years or both.

Power to obtain information and require production of documents.

32. (1) The Authority may by notice in writing served on a relevant person –

(a) require the relevant person to provide the Authority, at such time or at such intervals or in respect of such period as may be specified in the notice, with such information as the Authority may reasonably require for the performance of its functions under this Order;

(b) require the relevant person to provide the Authority with a report by an accountant or other person with relevant professional skill on, or on any aspect of, any matter about which the Authority has required or could require the relevant person to provide information under paragraph (a),

and the Authority may require such information or report to be in such form as it is specified in the notice.

(2) In a case falling within paragraph (b) of subsection (1), the Authority may require that the accountant or other person appointed by the relevant person shall be a person nominated or approved by the Authority.

(3) The Authority may –

(a) by notice in writing served on a relevant person require him to produce, within such time and at such place as may be specified in the notice, such information or documents of such description as may be so specified;

(b) authorise an officer or agent of the Authority (in this section referred to as an “authorised person”) on production of his authority, to require the relevant person to provide the appointed person forthwith with such information, or to produce to the appointed person forthwith such documents as he may specify,

being such information or documents as the Authority may reasonably require for the performance of the Authority’s functions under this Order.

(4) Where by virtue of subsection (3), the Authority has power to require the production of any information or documents from a relevant person, the Authority shall have the like power to require the production of documents from any person who appears to be in possession of them, but where a person from whom production of any documents is required under this section claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(5) Any power under this section to require a person to produce any documents includes power –

(a) if the information or documents are produced, to take copies of them or extracts from them and to require the person in question or, where that person is an institution, any other person who is a present or a past director, controller or manager

of, or is or was at any time employed by or acting as an employee of, that institution, to provide an explanation of them; and

(b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his belief, where they are.

(6) The Authority may, by notice in writing served on any person who is or is to be a director, controller or manager of an institution which is a relevant person require him to provide the Authority, within such time as may be specified in the notice, with such information or documents as the Authority may reasonably require for determining whether he is a fit and proper person to hold the position which he holds or is to hold.

(7) A statement made by a person in compliance (or purported compliance) with a requirement imposed by virtue of this section may be used in evidence against him.

(8) In this section, “relevant person” includes any of the following –

(a) an institution which is or has been a licensed bank;

(b) any person who is or was either a subsidiary or a parent undertaking of a licensed bank or of an undertaking with which a licensed bank is or was closely linked;

(c) any person who has a liability to any other person in respect of a deposit received in the course of a banking business;

(d) any other person or body who is, or whom the Authority believes or suspects on reasonable grounds to be, carrying on a banking business in or from within Brunei Darussalam;

(e) any subsidiary or parent undertaking of an undertaking falling within paragraphs (c) or (d);

(f) any person who is in possession or control of any document belonging to or relating to, or any information relating to, any banking business carried on by any person mentioned in paragraphs (a), (b), (c), (d) and (e);

(g) such other person as to the Authority may decide.

Use of information, powers etc. for protection of depositors.

33. (1) If it appears to the Authority to be desirable to do so in the interests of the depositors or potential depositors of a relevant person, the Authority may also exercise the powers conferred by subsections (1) and (4) of section 34 in relation to –

(a) any company which is or has at any relevant time been a parent or subsidiary undertaking of the relevant person or with which the relevant person is or has been otherwise closely linked; or

(b) in relation to a partnership of which the relevant person is or has at any relevant time been a member or with which the relevant person is or has been otherwise closely linked.

(2) In determining for the purposes of subsection (1), whether the relevant person is or has been closely linked with any other person, subsection (5) of section 8 shall apply as it applies in relation to subsection (4) of that section except that for any reference in that subsection to the applicant there shall be substituted a reference to the relevant person.

(3) References in subsection (7) of section 32 apply also in relation to provisions of that section applied by this section.

(4) In this section, “relevant person” has the same meaning as in subsection (8) of section 32.

Right of entry to obtain information and documents.

34. (1) A person authorised in writing in that behalf by the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under section 32 for the purpose of obtaining there the information or documents required by the notice and of exercising the powers conferred by subsection (4) of section 32.

(2) A person authorised in writing in that behalf by the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice could be served under section 32 for the purpose of obtaining there such information or documents as are specified by the Authority, being information or documents which could have been required by such a notice.

(3) Any person who intentionally obstructs a person exercising rights conferred by this section 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.

(4) Any reference in this section to section 32 includes a reference to any provision of that section as applied by section 33.

PART V PROHIBITED BUSINESS

Credit facilities and limits.

35. (1) Subject to subsection (2) –

(a) the aggregate amount outstanding by way of credit facilities granted by a bank shall not at any time exceed 20 per cent of its capital funds or such greater percentage not exceeding 50 per cent of its capital funds as the Authority may approve; and

(b) the aggregate amount outstanding by way of substantial credit facilities granted by a bank shall not at any time exceed 25 per cent, or such greater percentage as the Authority may specify, of the total amount.

(2) Subsection (1) does not apply to credit facilities resulting from –

(a) transactions with the Government;

(b) transactions between banks;

(c) the purchase of telegraphic transfers or loans or advances made against telegraphic transfers;

(d) any facilities granted against letters of credit or bills or guarantees or documents in respect of imports into or exports from Brunei Darussalam; or

(e) any other type of transaction which the Authority may approve.

(3) Without prejudice to subsection (1), a bank shall not –

(a) grant any credit facilities against the security of its own shares;

(b) grant, whether directly or indirectly, unsecured credit facilities in such that the aggregate amount outstanding at any time exceeds the sum of \$10,000 or such other sum as the Authority may direct in any of the following cases –

- (i) to any of its directors or their associates, whether those credit facilities are obtained by its directors or the associates jointly or severally;
- (ii) to an institution in which it or any of its directors or their associates has an interest as a partner, manager or agent, or to any person of whom or of which any of its directors or their associates is a guarantor;
- (iii) to any company, other than a bank, which is an associate of the bank.

(4) All the directors of a bank shall be liable, jointly and severally, to indemnify the bank against any loss arising from the making of any unsecured credit facility or any credit facility which he knew or ought to have known became unsecured under subsection (3), whether the bank has contravened those provisions or not.

(5) A bank which contravenes any of the provisions of this section is guilty of an offence and liable on conviction to a fine not exceeding \$150,000.

(6) In this section –

(a) “substantial credit facility” means any credit facility granted by a bank to a person which, either alone or together with any credit facilities granted to any associate, in the aggregate exceeds 15 per cent of the bank’s capital funds;

(b) “unsecured credit facilities” means credit facilities given without security, or in respect of any credit facility given with security, any part thereof which at any time exceeds the market value of the assets constituting that security, or where the Authority is satisfied that there is no established market value, on the basis of a valuation approved by it.

Non-financial businesses.

36. (1) No bank in Brunei Darussalam shall carry on, or enter into any partnership, joint venture or other arrangement with any person to carry on, whether in Brunei Darussalam or elsewhere, any business except for the following –

- (a) banking business;
- (b) any business the conduct of which is regulated or authorised by the Authority under any other written law;
- (c) any business which is incidental to the business which the bank may carry on under paragraph (a) or (b);
- (d) any business or class of business as the Authority may approve, subject to such conditions as it may impose in any particular case.

(2) Nothing in this section shall be construed as exempting a bank from any requirement which apart from this section, the bank is required to comply with under any written law for the conduct of any business.

(3) Any bank which contravenes this section or fails to comply with any condition imposed or prescribed under this section is guilty of an offence and liable on conviction to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day during which the offence continues after conviction.

Restrictions on commercial investments etc.

37. (1) Subject to subsection (2), a bank incorporated or registered in Brunei Darussalam shall not acquire or hold any part of the share capital of, or otherwise have an interest in, any financial, commercial, agriculture, industrial or other undertaking exceeding in the aggregate 10 per cent of the bank's capital funds or such other percentage as the Authority may allow.

- (2) This section does not apply with respect to –
- (a) any shareholding approved in writing by the Authority in another bank or in a subsidiary undertaking of the bank concerned formed for the carrying out of nominee, executor or trustee functions or other functions incidental to banking business;

(b) any shareholding approved by the Authority in any company set up for the purpose of the promotion of development in Brunei Darussalam; or

(c) any shareholding which the bank acquires in the course of the satisfaction of any debt due to it,

but where a bank acquires a shareholding as mentioned in paragraph (c) and, but for this subsection, that shareholding would be in breach of subsection (1), the shareholding shall be reported to the Authority and disposed of as soon as practicable.

(3) A bank which contravenes any of the provisions of this section is guilty of an offence and liable on conviction to a fine not exceeding \$150,000.

Control on acquisition of major shareholdings.

38. (1) No bank may enter into an agreement to acquire the share capital of any company by virtue of which the bank would, if the agreement were carried out, acquire or hold, whether directly or indirectly, an interest exceeding 20 per cent or more of the share capital of that company, without first notifying the Authority of its intention to enter into the agreement and obtaining the prior approval of the Authority to its entering into the agreement.

(2) The Authority may give its approval under subsection (1) with or without conditions and, if it declines to give its approval, may do so without giving any reasons.

(3) Subsection (1) does not apply to an agreement by virtue of which the bank would acquire an interest exceeding 20 per cent or more of the share capital in a company by way of enforcement of security to satisfy debts due to it by the company if, before making such an acquisition pursuant to the agreement, the bank obtains the approval of the Authority to retain the shareholdings as an investment.

(4) If, in the case of such an acquisition as is referred to in subsection (3), the Authority does not grant approval, the bank concerned shall dispose of the shareholdings as soon as practicable.

(5) A bank which contravenes any of the provisions of this section is guilty of an offence and liable on conviction to a fine not exceeding \$150,000.

Restrictions on acquisition of immovable property.

39. (1) Subject to subsection (2), a bank shall not acquire any immovable property wherever situated or interest therein such that the aggregate value of such property and interests held by the bank exceeds 20 per cent of the capital funds of the bank or such other percentage as the Authority may allow.

(2) For the purposes of determining the aggregate value of the interest in or rights over immovable property referred to in subsection (1), there shall be excluded such portion of the value as may be attributable to the following –

(a) any interest in or right over immovable property or any part thereof used for the purpose of conducting the business of the bank in Brunei Darussalam or housing or providing amenities for its officers;

(b) any interest in or right over immovable property held by way of security for the purposes of a transaction entered into in the ordinary course of the business of the bank in Brunei Darussalam;

(c) any interest in or right over immovable property held by way of enforcement of such security referred to in paragraph (b) provided that it is disposed of as soon as practicable; and

(d) such other interest in or rights over immovable property as the Authority may allow.

(3) The Authority may provide for the manner of valuation of immovable property for the purposes of this section.

(4) Any bank which contravenes subsection (1) 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 for every day during which the offence continues after conviction.

Loans secured by immovable property.

40. (1) Subject to subsection (2), a bank shall not make any loans or advances which exceed in the aggregate 20 per cent of the amount of its deposits in Brunei Darussalam or such higher or lower percentage as the Authority may allow (including the deposits and

borrowings from any other bank) on the security of immovable property for the purpose of purchasing, improving or altering such immovable property.

(2) With the prior written consent of the Authority, any bank whose business is principally in making loans or advances on the security of immovable property may make such loans or advances in an aggregate amount up to, but not in excess of 50 per cent of the amount of its deposits in Brunei Darussalam or such higher or lower percentage as the Authority may allow (including the deposits and borrowings from any other bank at that bank).

(3) A loan or advance secured solely by a mortgage, deed of trust, or other such instrument upon immovable property or by notes or other obligations which are so secured, is, for the purpose of this section, a loan or advance secured by immovable property; and where a loan or advance is secured in part by a mortgage, deed of trust, or other instrument upon immovable property which is of less value than the amount of the loan or advance, or by notes or other obligations which are so secured, then, for the purposes of this section, account shall be taken only of so much of the loan or advance as is equal to the value of the immovable property as a security as determined by a person appointed by the Authority.

(4) Nothing in this section shall be construed as prohibiting a bank from accepting as security for a loan or advance previously made in good faith without security or upon security subsequently found to be inadequate, a mortgage, deed of trust, or other instrument upon immovable property, or notes or other obligations which are so secured.

(5) A bank which contravenes the provisions of subsection (1) or (2) is guilty of an offence and liable on conviction to a fine not exceeding \$150,000.

Power of Authority to secure compliance.

41. (1) If at any time called upon in writing by the Authority to do so, a bank shall satisfy the Authority by the production of such evidence or information as it may require, that the bank is not in contravention of any of the preceding provisions of this Part.

(2) For the purpose of securing compliance with the preceding provisions of this Part and with sections 11, 25 and 38, the Authority may by notice in writing require any

licensed bank to prepare a statement aggregating its assets, liabilities or profits, as the case may be, with the assets, liabilities or profits of all or related companies or parties; and the bank shall comply with that requirement within such time as is specified in the notice.

(3) A bank which fails to comply with any of the provisions of this section is guilty of an offence and liable on conviction to a fine not exceeding \$150,000.

Relief for overseas banks from compliance with certain limitations.

42. (1) On an application in writing made to the Authority by a bank whose head office is situated outside Brunei Darussalam, the Authority may relieve the bank from compliance with any of the restrictions or limitations imposed by any of sections 35, 37 and 38 in relation to any transaction falling within those sections and specified in the application.

(2) The Authority shall not grant relief under subsection (1) unless it is satisfied that such grant is in the public interest or the interests of the creditors or depositors of the bank; and any relief from compliance may be made subject to such conditions as the Authority thinks fit.

(3) An order under subsection (1) shall be effective for a period ending on such date as the Authority may specify; but no such relief may be granted to have effect for a period longer than 2 years from the date of the commencement of this Order.

(4) The Authority may grant relief under subsection (1) in respect of transactions entered into by a bank before or within 3 months after the date of commencement of this Order.

Effect of certain pre-commencement transactions to be regularised.

43. (1) The provisions of this section apply if, at any time before the date of commencement of this Order, a bank has entered into any transaction which, if this Order had commenced, would have been contrary to any of the preceding provisions of this Part and would continue to be so immediately before such commencement.

(2) Within 6 months of the date of commencement of this Order, the bank shall submit to the Authority a statement of any such transaction as is referred to in subsection (1)

and, subject to the following provisions of this Part, shall forthwith (and within the limitations of the provision in question) take such steps as are necessary to secure that (had this Part been in force at the material time) the bank would no longer be in breach of the provision.

(3) A bank which fails to comply with the provisions of this section is guilty of an offence and liable on conviction to a fine not exceeding \$150,000.

PART VI

MINIMUM ASSETS REQUIREMENTS

Minimum liquid assets.

44. (1) The Authority may by notice in writing to each bank require such banks to hold at all times a minimum amount or amounts of liquid assets.

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

(a) a percentage or percentages which those assets shall bear to the sight, savings account, time and other deposit liabilities of each bank and such other liabilities thereof as may be determined by the Authority, either jointly or separately; and

(b) a percentage which those assets shall bear to the investment account of each bank,

and any percentage so specified may be varied by the Authority by notice in writing to each bank.

(3) A notice under subsection (1) shall not take effect before the expiry of a period specified in the notice, being not less than 10 days from the date of the notice.

(4) During any period in which a bank is not in compliance with a notice under subsection (1), the bank shall not make further credit facilities available to any person.

(5) For the purpose of computing the minimum amount of liquid assets under this section and of specified assets within the meaning of section 46 and the savings account, time and other liabilities of a bank carrying on business in Brunei Darussalam and elsewhere and such other liabilities of such a bank as may be determined by the Authority, the office and branches of such a bank in Brunei Darussalam shall be deemed to constitute a separate bank carrying on business in Brunei Darussalam.

(6) The following are liquid assets for the purposes of this section –

- (a) notes and coins which are legal tender in Brunei Darussalam;
- (b) balances with the Authority; and
- (c) such other assets as the Authority may approve.

(7) The Authority may by notice in writing require each bank to render such returns as he considers necessary for the implementation of this section.

(8) A bank which fails to comply with any of the provisions of this section is liable to pay, on being called upon to do so by the Authority, a penalty of \$3,000 per day or such larger amount as the Authority may determine for every day during which the failure continues.

(9) A bank which fails or refuses to pay the penalty under subsection (8) is guilty of an offence and liable on conviction to a fine not exceeding \$100,000.

Minimum cash balances.

45. (1) The Authority may by notice in writing to each bank require such banks to maintain minimum cash balances, not exceeding 30 per cent of each bank's deposit and other liabilities, on deposit with the Authority as reserves against their deposit and other liabilities.

(2) Subject to the limit specified in subsection (1), the Authority may specify different ratios for different types of liabilities and may further specify the method of computing the amount of the required reserves, but the ratios shall be uniform for all banks.

(3) No specification of, or change in, the minimum reserve requirements under subsections (1) or (2) shall take effect before the expiry of 30 days notice in writing to each bank of the Authority's intention to take the action.

(4) Where a bank (in this section referred to as "the defaulting bank") has failed to maintain minimum cash balances as required under subsection (1), the Authority may in writing direct the defaulting bank to make good the deficiency within such period as may be specified and the defaulting bank shall comply with such requirements.

(5) If the defaulting bank fails to make good the deficiency within the period specified under subsection (4), the Authority may serve notice in writing on any other bank in Brunei Darussalam (in this section referred to as the "debtor bank") with which the defaulting bank has a credit balance, whether in current or deposit account, directing that debtor bank to transfer to the Authority the full amount of such credit balance; and, notwithstanding the provisions of any other written law, the debtor bank shall immediately comply with the requirements of that notice.

(6) No action shall lie against, and no liability shall attach to, the debtor bank for any loss or damage suffered by the defaulting bank as a result of the debtor bank taking action in compliance with the requirements of the notice under subsection (5).

(7) Without prejudice to any action that may be taken by the Authority under subsection (4) or (5), on being called upon to do so by the Authority, a bank which fails to maintain minimum cash balances as required under subsection (1) is liable to pay a penalty of \$3,000 per day or such larger amount as the Authority may determine for every day during which the failure continues.

(8) A bank which fails or refuses to pay the penalty under subsection (7) is guilty of an offence and liable on conviction to a fine not exceeding \$150,000.

Minimum asset requirements.

46. (1) The Authority may by notice in writing to each bank require such bank to hold at all time a minimum amount of specified assets in Brunei Darussalam.

(2) The minimum amount of specified assets referred to in subsection (1) shall be expressed as a percentage which the assets shall bear to the demand, savings account, time and other liabilities of each bank, either jointly or separately.

(3) The following are specified assets for the purposes of this section –

(a) the assets specified in paragraphs (a), (b) and (c) of subsection (6) of section 44;

(b) loans or advances made to persons in Brunei Darussalam;

(c) securities issued by the Government, or by any public authority established by any written law, and any other securities issued in Brunei Darussalam and approved for the purposes of this section by the Authority; and

(d) other assets in Brunei Darussalam which may be approved by the Authority for the purposes of this section.

(4) On being called upon to do so by the Authority, a bank which fails to comply with any of the requirements under subsection (1) is liable to pay a penalty of \$3,000 per day or such larger amount as the Authority may determine for every day during which the failure continues.

(5) A bank which fails or refuses to pay the penalty under subsection (4) is guilty of an offence and liable on conviction to a fine not exceeding \$150,000.

PART VII POWERS OF CONTROL OVER BANKS

Regulation of interest rates of banks etc.

47. (1) The Authority may determine and announce the rates of interest payable to or by banks, the rates of discount chargeable by banks, or the rates of commission and any other charges of whatsoever nature payable to banks.

(2) Subsection (1) applies only to interest, discount, commission and any other such charges payable by persons resident in, or in respect of business carried on in, Brunei Darussalam but, subject to that and to subsections (3) and (4), it applies to all banks.

(3) Subsection (1) does not apply to transactions between banks.

(4) Without prejudice to subsections (1) and (2), the Authority may limit any determination under subsection (1) to transactions of such class or description as may be specified in the determination.

(5) To the extent that any interest, discount, commission or any other such charges to which a determination under subsection (1) applies purports to be greater than that permitted by the determination, the interest, discount, commission or charge shall be irrecoverable, whether by way of proceedings, set-off or otherwise, and any such interest, discount, commission or charge already paid after such determination shall forthwith be repaid by the bank.

Recommendations concerning credits and investments.

48. (1) In respect of loans and advances or investments of banks the Authority may make recommendations to the banks in respect of the following –

(a) the purposes for which loans, advances or investments may or may not be granted or made;

(b) the maximum maturities or, in the case of loans and advances, the type and minimum amount of security which shall be required and, in the case of letters of credit, the minimum or margin deposit;

(c) the limits for any description of loans, advances or investments or for the total amount outstanding in respect of any description of loans, advances or investments.

(2) Any recommendation made under subsection (1) shall apply uniformly to all banks engaging in the transactions covered by the recommendations.

(3) Where the Authority has made a recommendation under subsection (1) and either –

(a) no notice of objection is made under subsection (4); or

(b) such a notice is given but representations are not made in accordance with that subsection,

the Authority may issue a direction in writing to each licensed bank on any of the matters referred to in subsection (1) requiring that effect be given to the recommendation within such time as is specified in the direction.

(4) Where the Authority has made a recommendation under subsection (1), the bank generally or any one of them may, within 14 days of the receipt of the recommendation, give the Authority notice in writing of objection to the recommendation; and where such a notice is given, the bank concerned shall be entitled, within one month of the notice, to make representations in writing to the Authority setting out the reasons for the objection.

(5) Upon receipt of any representations under subsection (4), the Authority shall consider them and may –

(a) reject the representations; or

(b) amend or modify the recommendation in accordance with the representations, or otherwise,

and, in either event, the Authority shall thereupon issue a direction in writing to each bank requiring that, within such time as is specified in the direction, effect be given to the original recommendation or, as the case may be, to the recommendation as subsequently amended or modified by the Authority.

(6) Any bank which fails to comply with a direction under subsection (3) or (5), is guilty of an offence and liable on conviction to a fine not exceeding \$150,000.

Investigations on behalf of the Authority.

49. (1) If it appears to the Authority desirable to do so in the public interest or the interests of the creditors or depositors of the bank, the Authority may appoint one or more appropriate persons (in this section referred to as “inspectors”) to investigate and report to the Authority on –

(a) the nature, conduct or state of the bank’s business or any particular aspect of it; or

(b) the ownership or control of the bank,

and the Authority shall give written notice of any such appointment to the bank concerned.

(2) If an inspector thinks it necessary for the purposes of his investigation, he may also investigate the business of any person which is or has at any relevant time been –

(a) a holding company, subsidiary or related company of the bank concerned;

(b) a subsidiary or related company of a holding company of that bank;

(c) a holding company of a subsidiary of that bank; or

(d) a body corporate in the case of either a controller or an indirect controller of that bank, other than a 10 per cent controller,

or the business of any partnership of which the institution is or has at any relevant time been a member.

(3) Where an inspector decides to investigate the business of any person by virtue of subsection (2), he shall give that person and the Authority written notice to that effect.

(4) It shall be the duty of every person who is or was a director, controller, manager, officer, agent, banker or advocate and solicitor or other similar person of a person who is under investigation (whether by virtue of subsections (1) or (2)) whom the inspector considers may be of assistance to his investigation any person appointed to make a report in respect of that person under paragraph (b) of subsection (1) of section 32 and anyone who becomes a controller in relation to that person –

(a) to produce to the inspectors, within such time and at such place as they may require, all documents relating to the person concerned which are in his custody or power;

(b) to attend before the inspectors at such time and place as they may require;

(c) otherwise to give the inspectors all assistance in connection with the investigation which he is reasonably able to give,

and any inspector may take copies of or extracts from any documents produced to him under paragraph (a).

(5) The preceding provisions of this section apply in relation to an institution which was formerly a licensed bank as they apply in relation to an institution which continues to be a licensed bank.

(6) For the purpose of exercising his powers under this section, an inspector may enter any premises occupied by a person who is being investigated by him under this section; but he shall not do so without prior notice in writing to that person and to the Authority unless he has reasonable cause to believe that, if such a notice were given, any documents whose production could be required under this section would be removed, tampered with or destroyed.

(7) If so required, an inspector shall produce evidence of his appointment under this section.

(8) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

(9) Any person who –

(a) without reasonable excuse fail to produce any documents which it is his duty to produce under subsection (4);

(b) without reasonable excuse fails to attend before an inspector when required to do so;

(c) without reasonable excuse fails to answer any question which is put to him by an inspector with respect to any person who is being investigated by virtue of subsection (2);

(d) intentionally obstructs an inspector in the exercise of the rights conferred by subsection (6),

is guilty of an offence and liable on conviction to a fine not exceeding \$100,000, imprisonment for a term not exceeding 6 months or both and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day during which the offence continues after conviction.

Investigation of suspected contravention.

50. (1) Where the Authority has reasonable grounds for suspecting that any person is guilty of contravening section 4 or 6, the Authority or any duly authorised officer or agent of the Authority may by notice in writing require that or any other person –

(a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Authority may require for the purpose of investigating the suspected contravention;

(b) to produce, at such time and place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents or such description, as may be so specified, beings documents the production of which may be required by the Authority for that purpose;

(c) to attend at such place and time as may be specified in the notice and answer questions relevant for determining whether such a contravention has occurred.

(2) The Authority or any duly authorised officer or agent of the Authority may take copies of or extracts from any documents produced under this section.

(3) Any officer or agent of the Authority may, on producing evidence of his authority, enter any premises occupied by a person on whom a notice has been served under subsection (1) for the purpose of obtaining the information or documents required by the notice, asking the questions referred to in paragraph (c) of that subsection or exercising the powers conferred by subsection (2).

(4) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

(5) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the rights conferred by subsection (3) is guilty of an offence and liable on conviction to a fine not exceeding \$100,000, imprisonment for a term not exceeding 6 months or both.

Powers of entry in cases of suspected contraventions.

51. (1) A magistrate may issue a warrant under this section if satisfied on information laid on oath by the Authority or an officer or agent of the Authority that there are reasonable grounds for suspecting that a person is guilty of such a contravention as is mentioned in section 50 and –

(a) that person has failed to comply with a notice served on him under that section;

(b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by him in response to such a notice; or

(c) that there are reasonable grounds for suspecting that if a notice were served on him under that section it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(2) A warrant under this section shall authorise any police officer together with any other person named in the warrant and any other police officer –

(a) to enter any premises occupied by the person mentioned in subsection (1) which are specified in the warrant, using such force as is reasonably necessary for the purpose;

(b) to search the premises and take possession of any documents appearing to be such as are mentioned in paragraph (c) of subsection (1) or to take, in relation to any such documents, any other steps which may appear necessary for preserving them or preventing interference with them;

(c) to take copies of or extracts from any such documents;

(d) to require any person named in the warrant to answer questions relevant for determining whether that person is guilty of any such contravention as is mentioned in section 50.

(3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(4) Any documents of which possession is taken under this section may be retained –

(a) for a period of 3 months;

(b) for such further period as the Magistrate considers fit and proper in the circumstances; or

(c) if within that period proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 50, until the conclusion of those proceedings.

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

(6) Any person who intentionally obstructs the exercise of any right conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with paragraph (d) of subsection (2) 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.

Obstruction of investigation.

52. A person who knows or suspects that an investigation is being or is likely to be carried out –

(a) under section 49; or

(b) into such a contravention as is mentioned in section 50,

is guilty of an offence where he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation, unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation, is liable on conviction to a fine not exceeding \$100,000, imprisonment for a term not exceeding 2 years or both.

Inspection of banks.

53. (1) The Authority shall inspect, under conditions of confidentiality, the books, accounts and transactions of any bank in Brunei Darussalam and of any branch, agency or office outside Brunei Darussalam opened by a bank incorporated or registered in Brunei Darussalam.

(2) Without prejudice to the generality of subsection (1), such inspection may be conducted in respect of activities of the bank that are regulated or licensed under any written law.

Special investigation of banks.

54. The Authority may at any time make an investigation, under conditions of confidentiality, of the books, accounts and transactions of any bank in Brunei Darussalam, if it has reason to believe that any bank –

- (a) is carrying on its business in a manner likely to be detrimental to the public interest or the interests of the creditors or depositors of such bank;
- (b) has insufficient assets to cover its liabilities to the public; or
- (c) is contravening any provision of this Order.

Provisions supplementary to sections 53 and 54.

55. (1) For the purposes of an inspection under section 53 or an investigation under section 54, the bank under inspection or investigation shall –

- (a) produce its books, accounts, documents and other records, however kept or maintained, to the Authority and afford the Authority access thereto; and
- (b) provide such information or facilities as may be required by the Authority to conduct the inspection or investigation.

(2) The books, accounts, documents and records referred to in subsection (1) shall not be required to be produced at such times or at such places as would unduly interfere with the proper conduct of the normal daily business of the bank.

(3) The Authority may appoint an auditor, other than the auditor appointed by the bank or by the Authority under section 98, to exercise the powers of the Authority under section 53 or 54.

(4) Customer information that is obtained by the Authority from a bank incorporated outside Brunei Darussalam during an inspection under section 53 or an investigation under section 54 may be disclosed by the Authority to the parent supervisory authority of the bank where –

- (a) the customer information does not consist of deposit information; or
 - (b) the customer information is required by the parent supervisory authority for the sole purpose of carrying out its supervisory functions,
- and in either case is subject, in respect of customer information required by the Authority, to provisions in relation to sharing of information at least equivalent to those under this Order.

(5) Any bank which, without reasonable excuse, contravenes subsection (1) 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 for every day during which the offence continues after conviction.

Inspection in Brunei Darussalam by parent supervisory authority.

56. (1) In relation to a bank incorporated outside Brunei Darussalam, a parent supervisory authority may, with the prior written approval of the Authority and under conditions of confidentiality, conduct an inspection in Brunei Darussalam of the books, accounts and transactions of any branch or office of that bank in Brunei Darussalam in accordance with this section if the following sections are satisfied –

(a) the inspection is required by the parent supervisory authority for the sole purpose of carrying out its supervisory functions;

(b) the parent supervisory authority has given to the Authority such written undertaking as to the confidentiality of the information obtained, as the Authority may determine; and

(c) the parent supervisory authority has given a written undertaking to the Authority to comply with the provisions of this Order and such conditions as the Authority may impose under subsection (2).

(2) The Authority may at any time, whether before, on or after giving written approval for an inspection under this section, require the parent supervisory authority to comply with conditions relating to –

(a) the classes of information to which the parent supervisory authority shall or shall not have access in the course of the inspection;

(b) the conduct of the inspection;

(c) the use or disclosure of any information obtained in the course of the inspection; and

(d) such other matters as the Authority may determine.

(3) Subject to compliance by a parent supervisory authority with such conditions as the Authority may impose under subsection (2), a bank under inspection –

(a) shall afford the parent supervisory authority access to such books, accounts, documents and other records, however kept or maintained, of the branch or office of the bank under inspection, and provide such information (including information relating to the bank's internal control systems) and facilities as may be required to conduct the inspection; and

(b) shall not be required to afford the parent supervisory authority access to its books, accounts, documents and other records, however kept or maintained, or to provide information or facilities at such times or at such places as would unduly interfere with the proper conduct of the normal daily business of the bank.

(4) A parent supervisory authority may, with the prior written approval of the Authority, appoint another body to conduct the inspection under subsection (1), and in such event the provisions of this section shall apply to the appointed body as they apply to the parent supervisory authority.

(5) For the purposes of ensuring the confidentiality of any information obtained in the course of an inspection by a parent supervisory authority under this section, subsection (1) of section 58 shall, with the necessary modifications, apply to any official of the parent supervisory authority as if the official is an officer of a bank.

(6) Any bank which refuses or neglects, without reasonable excuse, to afford access to any book, account, document or other record, however kept or maintained, or provide any information or facility as may be required by this section is guilty of an offence and liable on conviction to fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day during which the offence continues after conviction.

Confidentiality of inspection and investigation reports.

57. (1) Where a written report or any part thereof (referred to in this section as the report) has been produced in respect of any bank in Brunei Darussalam –

(a) by the authority upon an inspection under section 53 or an investigation under section 54; or

(b) by a parent supervisory authority upon an inspection under section 56, the report shall not be disclosed by the bank, or any officer or auditor of the bank, to any other person except in the circumstances provided under subsection (2).

(2) Disclosure of the report referred to in subsection (1) may be made –

(a) by the bank in Brunei Darussalam to any officer or auditor of that bank solely in connection with the performance of the duties of the officer or auditor, as the case may be, in that bank;

(b) by any officer or auditor of the bank in Brunei Darussalam to any other officer or auditor of that bank, solely in connection with the performance of their duties in that bank;

(c) to the Authority if requested by the Authority, where the report has been produced by a parent supervisory authority; or

(d) to any other person as the Authority may approve in writing.

(3) In granting written approval for any disclosure under paragraph (d) of subsection (2), the Authority may impose such conditions as it considers appropriate.

(4) The obligation on an officer or auditor referred to in subsection (1) shall continue after the termination or cessation of his employment or appointment at the bank.

(5) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that report was disclosed to him in contravention of subsection (1) shall be guilty of an offence, unless he proves that –

(a) the disclosure was made contrary to his desire;

(b) where the disclosure was made in any written form, he has as soon as practicable surrendered or taken all reasonable steps to surrender the report and all copies thereof to the Authority; and

(c) where the disclosure was made in an electronic form, he has as soon as practicable taken all reasonable steps to ensure that all electronic copies of the report have been deleted and that the report and all copies thereof in other forms have been surrendered to the Authority.

(6) Any person who contravenes subsection (1) or fails to comply with any condition imposed by the Authority under subsection (3), is guilty of an offence and liable on conviction to a fine not exceeding \$150,000, imprisonment for a term not exceeding 3 years or both.

Banking confidentiality.

58. (1) Customer information shall not, in any way, be disclosed by a bank in Brunei Darussalam or any of its officers to any other person except as expressly provided in this Order.

(2) A bank in Brunei Darussalam or any of its officers may, for such purpose as may be specified in the first column of the Third Schedule disclose customer information to such persons or class of persons as may be specified in the second column of that Schedule, and in compliance with such conditions as may be specified in the third column of that Schedule.

(3) Where customer information is likely to be disclosed in any proceedings referred to in item 3 or 4 of Part I of the Third Schedule, the court may, either of its own motion, or on application of any party to the proceedings or the customer to which the customer information relates –

(a) direct that the proceedings be held in camera; and

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

(4) Where an order has been made by a court under subsection (3), any person who, contrary to such an order, publishes any information that is likely to lead to the identification of any party to the proceedings is guilty of an offence and liable on conviction to a fine not exceeding \$150,000.

(5) Any person (including where a person is a body corporate, an officer of the body corporate) who receives customer information referred to in Part II of the Third Schedule shall not, at any time, disclose the customer information or any part thereof to any other person, except as authorised under that Schedule or if required to do so by an order of the court.

(6) Any person who contravenes subsection (1) or (5) is guilty of an offence and liable on conviction to fine not exceeding \$150,000, imprisonment for a term not exceeding 3 years or both.

(7) In this section and in the Third Schedule, unless the context otherwise requires –

(a) where disclosure of customer information is authorised under the Third Schedule to be made to any person which is a body corporate, customer information may be disclosed to such officers of the body corporate as may be necessary for the purpose for which the disclosure is authorised under that Schedule; and

(b) the obligation of any officer or other person who receives customer information referred to in Part II of the Third Schedule shall continue after the termination or cessation of his appointment, employment, engagement or other capacity or office in which he had received customer information.

(8) For the avoidance of doubt, nothing in this section shall be construed to prevent a bank from entering into an express agreement with a customer of that bank for a higher degree of confidentiality than that prescribed in this section and in the Third Schedule.

(9) Where, in the course of an inspection under section 53 or an investigation under section 54 or the carrying out of the Authority's function of supervising the financial condition of any bank, the Authority incidentally obtains customer information and such information is not necessary for the supervision or regulation of the bank by the Authority, then, such information shall be treated as confidential by the Authority.

(10) This section and the Third Schedule shall also apply, with such modifications as may be prescribed by the Authority, to any licence granted under section 23.

Action by Authority if bank cannot meet its obligations.

59. (1) Where –

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

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

(c) after an inspection or investigation is made under sections 49, 50, 51, 52, 53 or 54 the Authority is of the opinion that the bank –

- (i) is carrying on its business in a manner likely to be detrimental to the interest of its depositors or its creditors;
- (ii) is insolvent or is likely to become unable to meet its obligations or is about to suspend payment;
- (iii) has contravened or failed to comply with any of the provisions of this Order; or
- (iv) has contravened or failed to comply with any condition attached to its licence; or

(d) the Authority considers it in the public interest to do so,

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

(2) The powers referred to in subsection (1) 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.

(3) The Authority may, upon representation made to it or on its 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 it thinks fit, subject to which the modification or cancellation shall have effect.

(4) In this Order, any reference to the Authority having assumed control of or carrying on the business of a bank pursuant to the provisions 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.

Powers of Authority.

60. Where the Authority has taken action under subsection (2) of section 59, it may, without prejudice to the power conferred by paragraph (h) of subsection (1) of section 21 exercise one or more of the following powers, that is to say –

- (a) confirm, vary or reverse any requirement, appointment or direction made by it;
- (b) make such order as it may think fit in relation to the affairs of the bank concerned and exercise any power which it may exercise under section 59;
- (c) present a petition to the High Court for the winding-up of the bank by the High Court.

Bank under control of Authority.

61. (1) Where the Authority has assumed control of the business of a bank in pursuance of section 59, the bank shall submit its business into the control of the Authority; and shall provide the Authority with such facilities as it may require to carry on the business of the bank.

(2) Where the Authority has assumed control of the business of a bank in pursuance of section 59, the Authority shall remain in control of, and continue to carry on the business of, that bank in the name and on behalf of the bank until such time as it is satisfied that –

- (a) the reasons for which it assumed control of the business have ceased to exist; or
- (b) it is no longer necessary in the public interest that it should remain in control of the business.

(3) Where the Authority has assumed control of the business of a bank in pursuance of section 59 or has ceased to control the business of such a bank in pursuance of this section, it shall provide public notification of that fact in the *Gazette* and such newspaper as the Authority considers appropriate.

(4) A bank which fails to comply with subsection (1) or with any requirement of the Authority 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.

62. (1) The provisions of this section apply, and apply only, where the Authority has assumed control of the business of a bank pursuant to section 59.

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

(3) In discharging deposit liabilities pursuant to subsection (2), the Authority shall have regard to the available assets of the bank 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 bank available to enable the deposit liabilities set out in the category or categories preceding –

(a) deposit liabilities incurred by the bank with non-bank customers where the deposit liabilities are required by the Authority to be included in the computation of the liquidity and reserve requirements pursuant to sections 44 and 45;

(b) deposit liabilities incurred by the bank with other banks where the deposit liabilities are required by the Authority to be included in the computation of the liquidity and reserve requirements pursuant to sections 44 and 45;

(c) deposit liabilities incurred by the bank with non-bank customers where the deposit liabilities are not required by the Authority to be included in the computation of the liquidity and reserve requirements pursuant to sections 44 and 45.

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

(5) Without the prior approval of the Authority and subject to such conditions (if any) as the Authority may specify, neither the receiver of all or any of the property of a the

bank nor a liquidator of the bank, whether (in either case) appointed before or after the Authority assumed control of the bank, shall exercise any powers or rights which would be exercisable but for the provisions of this subsection.

(6) Where –

(a) the Authority has not given its approval pursuant to 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 Authority under this section may be exercised by the Authority notwithstanding the provisions of any other written law.

Appointment of Chairman and new board members.

63. (1) Where the Authority has assumed control of the business of a bank in pursuance of section 59 and it has made a determination that the value to be realised from the bank's assets is less than the bank's liabilities, it may –

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

(b) direct that either all former directors of the bank or, as the case may be, such former director or directors of the bank 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 bank which provides for any such compensation shall be unenforceable in so far as it relates to such compensation.

(2) In the event of the Authority serving notice upon a director of a bank pursuant to paragraph (a) subsection (1), such member of the Authority as it may appoint shall by virtue of this section become Chairman and a director of a newly constituted board of directors of the bank to be appointed by the Authority.

(3) Under subsection (2), the Authority 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 Authority, possess expertise in banking.

(4) The Authority in exercise of its control of a bank pursuant to section 56 shall take such steps as necessary to appoint the Chairman and directors appointed pursuant to subsections (2), (3) and (4) as Chairman and directors of every subsidiary of the bank and for the purposes of this subsection the Authority shall be entitled to exercise all voting rights pertaining to issued shares in any subsidiary of the bank.

(5) Subject to subsection (2) of section 64, no fee or reward, financial or otherwise shall be paid by the bank 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 Authority and others.

64. (1) The Authority may at any time (whether or not the appointment of such person has terminated) fix the remuneration and expenses to be paid by a bank to any person appointed by the Authority under sections 59 or 60 to advise a bank in the proper conduct of its business.

(2) Where, under paragraph (c) of subsection (2) of section 59 and paragraph (b) of section 60 the Authority has assumed control of the business of a licensed bank or some other person has assumed control of the business of such a bank pursuant to a direction or orders of the Authority, the Authority may, at any time, whether or not it or that other person has ceased to be in control of the business of the bank, fix the remuneration and expenses to be paid by the bank to the Authority and to any person employed or authorised by it under

subsection (3) section 63 to assist it in the control of and the carrying on of the business of the bank, or to that other person, as the case may be.

Moratorium.

65. (1) If the Authority considers it to be in the public interest, the Authority may issue a direction prohibiting the bank from carrying on banking business or from doing or performing any act or function connected with banking business or any aspect thereof that may be specified in such direction.

(2) If the Authority considers it to be in the public interest, the Authority may 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.

(3) Any direction made under subsection (1) shall be valid for a period not exceeding one year, without prejudice to the making of a subsequent direction or directions.

(4) So long as a direction under subsection (1) remains in force, the licence granted to that bank under this Order shall be suspended.

Notices to banks.

66. (1) The Authority may, if it appears to the Authority to be necessary or expedient in the public interest or the interest of the banking system, by notice in writing to banks give directions or impose requirements on or relating to the operations and activities of and standards to be maintained by banks.

(2) Without prejudice to the generality of subsection (1), any notice under that subsection may be given in respect of –

- (a) the revaluation of the assets of banks;
- (b) the maintenance of credit files of borrowers and the grading of loans;
- (c) the prohibition or control of the sale of commemorative coins or medals;
- (d) the deposit of specified securities with authorised depositaries;
- (e) the issue of Brunei dollar negotiable certificates of deposit;

(f) prior notification to the Authority of changes in interest rates and minimum lending rates of banks;

(g) restrictions on the granting of Brunei dollar credit facilities in whatever form or by whatever means to residents of Brunei Darussalam where such facilities are to be used outside Brunei Darussalam, or to non-residents;

(h) the appointment of directors, chief and deputy chief executive officers and other principal officers of a bank;

(i) the maintenance of a register of dealers of a bank;

(j) the terms and conditions for the operation of a bank's current and other accounts with the Authority;

(k) the manner in which a bank conducts its dealings with its customers, the procedures for the reporting of transactions between a bank and its employees, and conflicts of interest involving a bank and its employees or involving a bank and its customers;

(l) the maximum aggregate permissible percentage holdings by any class, category or description of persons of interests in shares of a bank incorporated in Brunei Darussalam;

(m) the limits of the total amount of foreign exchange transactions which a bank incorporated in Brunei Darussalam may undertake and for this purpose the limits may be applied uniformly to all such banks or separate limits may be determined for any particular bank incorporated in Brunei Darussalam or for 2 or more of such banks;

(n) the opening of new branches of a bank and the change of location of any place of business of a bank;

(o) the installation of automated teller machines by a bank;

(p) the provision for and the writing-off of bad debts;

(q) any audit of a Brunei Darussalam branch of a bank by an internal auditor from its head office which is outside Brunei Darussalam;

(r) the forms, returns and submissions of statistics for the purposes of this Order.

(3) Every bank shall comply with any direction given or requirement imposed by any notice under this section.

PART VIII
OVERSEAS BRANCHES AND REPRESENTATIVE OFFICES
OF DOMESTIC BANKS

Control of establishment etc. of overseas branches and representative offices.

67. (1) A bank which is incorporated in Brunei Darussalam shall not establish or maintain any overseas branch or overseas representative office thereof without the approval of the Authority.

(2) If, before the commencement of this Order, a bank already maintains overseas branch or overseas representative office, then, at that commencement, approval under subsection (1) shall be deemed to have been given to the bank concerned in respect of that branch or office.

(3) By notice in writing served on a licensed bank, the Authority may at any time attach to an approval granted or deemed to have been granted under subsection (1) or (2), in respect of any overseas branch or overseas representative office such conditions, or amend or cancel any conditions so attached, as it may think appropriate.

(4) If the Authority considers it appropriate to do so –

(a) in order to protect the public interest or the interests of the creditors or depositors; or

(b) in order to protect the reputation of Brunei Darussalam in relation to financial matters; or

(c) where the Authority has given notice under subsection (1) of section 21 revoking the licence of the bank concerned,

the Authority may revoke an approval granted or deemed to have been granted under subsection (1) or (2) in respect of an overseas branch or overseas representative office.

(5) Where the Authority refuses to grant approval under subsection (1) or revokes an approval under subsection (4), it shall notify the bank in writing of such refusal or revocation.

(6) A bank which fails to comply with subsection (1) or with any condition attached under subsection (3) 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 for every day during which the offence continues after conviction.

Conditions regarding overseas branches and representative offices.

68. (1) Every bank incorporated in Brunei Darussalam which maintains an overseas branch shall be subject to the following conditions –

(a) the bank shall submit to the Authority a return in such form, and at such intervals, as the Authority may specify showing the assets and liabilities of the overseas branch;

(b) the bank shall submit to the Authority, in such form and manner as the Authority may require, such further information as the Authority may consider necessary for the proper understanding of the functions and activities of the overseas branch;

(c) if the Authority by notice in writing to the bank concerned requires any return submitted to it under paragraph (a), or any information submitted to it pursuant to a requirement under paragraph (b), to be accompanied by a certificate of an auditor, the bank shall provide, to the Authority a certificate of the auditor appointed under section 98 as to whether or not, in the opinion of the auditor, the return or information is correctly compiled from the books and records of the overseas branch;

(d) if the Authority wishes to examine, at the place where the overseas branch is maintained books, accounts and transactions of the branch, the bank shall for that purpose furnish at that place to the person carrying out the examination on behalf of the Authority such books, accounts, documents and other records, however kept or maintained, securities, cash or other information as he may require:

Provided that, so far as is consistent with the conduct of the examination, such books, accounts, documents and under any records, however kept or maintained, securities and cash shall not be required to be produced at such times and such places as would interfere with the proper conduct of the normal daily business of the overseas branch.

(2) Every bank incorporated in Brunei Darussalam which maintains an overseas representative office thereof shall be subject to the following conditions –

(a) the bank shall submit to the Authority such information as it may require regarding the functions and activities of the overseas representative office;

(b) if the Authority wishes to examine, at the place where the representative office is maintained, the functions and activities of that office, the bank shall for that purpose afford at that place to the person carrying out the examination on behalf of the Authority such information and facilities as may be required to conduct the examination, and the bank shall produce to that person such documents or other information as he may require.

(3) A bank which fails to comply with any condition in subsection (1) or (2) or with any requirement imposed under either of those subsections, is guilty of an offence and liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day during which the offence continues after conviction.

PART IX UNCLAIMED BALANCES

Return and payment of unclaimed money to the Authority.

69. (1) A bank that holds unclaimed money on 31st December in any year shall, within 3 months after that date, or such longer period as the Authority may in any particular case allow, lodge with the Authority a return relating to that money in a form approved by the Authority.

(2) If, after 31st. December and before the bank lodges the return with the Authority, the bank pays any unclaimed money to the owner of the unclaimed money, the return must contain such particulars relating to the amounts so paid as are required by the form.

(3) The bank, when lodging the return, must pay to the Authority an amount equal to the sum of the unclaimed money specified in the return less the sum of amounts paid by the bank and specified in accordance with subsection (2).

(4) The Authority shall pay money received under this section into the Consolidated Fund.

(5) A bank that fails to comply with subsection (1), (2) or (3) 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 for every day during which the offence continues after conviction.

Copies and inspection of returns.

70. (1) A bank that lodges a return shall retain a copy of the return at its registered office or principal place of business in Brunei Darussalam.

(2) The copy shall be retained for at least 6 years after the date on which it was lodged.

(3) The copy may be held in any form, but it shall be readily able to be reproduced in the form of a document.

(4) A bank shall make the retained copies of returns reasonably available for inspection by any person.

(5) The bank may charge such inspection fee as may be prescribed.

Publication of information relating to unclaimed money.

71. (1) The bank shall cause to be published such information as appears to the Authority to be sufficient to give reasonable notification of –

(a) the existence of each sum of unclaimed money paid to the Authority under this Order that exceeds such sum as may be prescribed; and

(b) the identity of the owner of the money (if known).

(2) The Authority may determine the method by which such information is to be published.

Liability in respect of unclaimed money.

72. (1) Any bank that pays unclaimed money to the Authority in compliance with this Order is relieved from all further liability, other than a liability arising under any other written law in respect of the money concerned.

(2) This section does not operate to relieve a bank from –

(a) any obligation to comply with section 70 or a requirement, notice or direction under this Part; or

(b) liability in respect of money paid to the Authority in purported compliance with this Order if the Authority repays the money to the bank under this Part.

Owner's entitlement to recovery.

73. The owner of any money paid to the Authority under this Order is entitled to recover that money from the Authority in accordance with this Part.

Extinguishment of entitlement.

74. Notwithstanding the provisions of the Limitation Act (Chapter 14) –

(a) if an owner's right to money paid to the Authority under this Order was not extinguished before the date of that payment, the owner's entitlement under this Part is not extinguished until the end of a period of 6 years beginning on that date; and

(b) the owner's right to that money subsists until the end of that period.

Application for repayment.

75. (1) The owner of money paid to the Authority under this Order may apply to the Authority for repayment of the money.

(2) An application under this section shall be made in writing and be lodged with the Authority.

Time for application.

76. An application in accordance with section 75 may be lodged at any time before the owner's right to the money is extinguished.

Onus on applicant.

77. An applicant shall bear the onus of establishing that the applicant is the owner of the money to which the application relates.

Standard of proof.

78. The standard of proof for establishing ownership of unclaimed money is the balance of probabilities.

Notice of determination.

79. (1) The Authority shall determine an application by giving the applicant notice in writing to the effect that the Authority is satisfied or is not satisfied that the applicant is the owner of the money or part of the money to which the application relates.

(2) If the Authority has not determined an application by the end of the period of 3 months after its lodgment, the Authority is taken to have given the applicant notice, at the end of that period, to the effect that the Authority is not satisfied that the applicant is the owner of the money concerned.

Authority may repay unclaimed money to owner.

80. (1) The Authority may repay unclaimed money paid to the Authority under this Order to any person who is determined under this Part to be the owner of the money.

(2) A notice under section 79 is to be accompanied, or followed as soon as practicable, by the appropriate repayment (if any).

Authority may repay unclaimed money not required to be paid to Authority.

81. (1) The Authority may repay money paid to the Authority in purported compliance with this Order, but only if the Authority is of the opinion that the money is not unclaimed money that is required to be paid to the Authority under this Order.

(2) The money may be repaid to the person by whom it was paid or to such other person as the Authority considers appropriate.

Appropriation.

82. The Consolidated Fund is appropriated by this section for the purposes of, and to the extent necessary to permit, repayments by the Authority under this Part.

Recovery of money wrongly paid.

83. (1) If money is paid under this Part to a person who is not the owner of the money, the Authority is entitled to recover the money from the person to whom it was paid, unless prevented from doing so by operation of the Limitation Act (Chapter 14).

(2) The Authority is to pay money recovered under this section into the Consolidated Fund.

Unclaimed money.

84. (1) For the purposes of this Part, money is unclaimed money if it is money of a kind referred to in section 85 that a bank holds an account that has not been operated on for at least –

- (a) 6 years; or
- (b) such shorter period as may be approved, in any particular case, by the Authority.

(2) The account may include –

- (a) money whose owner is not identifiable; and
- (b) money owned jointly or severally by 2 or more persons.

Money that may constitute unclaimed money.

85. Unclaimed money includes –

- (a) money (including principal and interest, dividends, bonuses and profits) the recovery of which has been or may be barred by operation of law;
- (b) money on deposit;
- (c) share capital subscribed for a share in a body from which the capital subscribed may be withdrawn by the subscriber;
- (d) any other money which may be specified by the Authority.

Bank must first make reasonable efforts to ensure owner is paid money.

86. (1) A bank that holds any money of a kind referred to in section 85 in an account referred to in subsection (1) of section 84 shall make reasonable efforts –

- (a) to identify and locate the owner of the money; and
- (b) to ensure that the money is paid to the owner of the money.

(2) Money held by a bank in an account is not unclaimed money, notwithstanding the provisions of section 84, unless, after making reasonable efforts and after a reasonable period has passed, the bank is unable to ensure that the money is paid to the owner of the money.

(3) This section does not apply in respect of any money that is not unclaimed money because of section 87.

Certain money not unclaimed money.

87. (1) Money held by an bank in an account is not unclaimed money at any particular time notwithstanding the provisions of section 84, if at that time, the recovery of the money by its owner is not barred by operation of law and –

- (a) the bank holding the money also holds other money (not being unclaimed money) of the owner in an account; or
- (b) the bank knows or has reason to believe that the owner of the money wishes to retain the money in the account.

(2) However, a bank does not have reason to believe that an owner wishes to retain money in an account merely because the owner does not respond to a communication from the bank, or does not respond as specified in the communication, even if the terms of the communication suggest that the owner's failure to respond indicates such a wish.

(3) For the purposes of this Order, money is not unclaimed money if –

- (a) the money is, or is of a class, prescribed as exempt from the operation of this Order;
- (b) the money is held by a bank that is, or is of a class, prescribed as exempt from the operation of this Order; or

(c) the amount of money in the account concerned does not exceed \$100 or such other amount as may be prescribed.

Annotation of records.

88. (1) If the Authority is of the opinion that any matter in a record of a bank that relates (or may at some future time relate) to unclaimed money is incorrect, the Authority may direct the bank to note the record with details of what the Authority believes to be the true position concerning the matter.

(2) The bank shall comply with any such direction.

Disclosure of certain information prohibited.

89. (1) A person engaged in the administration of this Part shall not disclose any information obtained in connection with an application for payment of unclaimed money under this Part, including any information obtained for the purpose of determining the application.

(2) This section does not prohibit a disclosure that is mentioned in circumstances set out in the Third Schedule.

Liability of officers for offences by banks.

90. (1) If a bank contravenes, whether by act or omission, any provision of this Part or any regulations made under this Part, each officer of the bank is taken to have contravened the same provision if the officer knowingly authorised or permitted such contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the bank has been proceeded against or convicted under that provision.

(3) Nothing in this section affects any liability imposed on a bank for an offence committed by the bank against this Order or any regulations made thereunder.

Money held before commencement of this Order.

91. This Part applies to money held before as well as after the date of commencement of this Order.

Money held by bank.

92. In this Order, a reference to money held by a bank includes a reference to money that is under the control of the bank.

**PART X
INVITATIONS TO MAKE DEPOSITS**

Receiving, taking or acceptance of deposits prohibited, except under and in accordance with licence granted under section 4.

93. (1) Subject to section 96, no person shall receive, take or accept deposits except under and in accordance with a licence granted under subsection (1) of section 4 to carry on banking business.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000,000, imprisonment for a term not exceeding 10 years or both, and in the case of a continuing offence, to a further fine not exceeding \$100,000 for every day during which the offence continues after conviction.

Unsolicited calls.

94. (1) Subject to section 96, no person shall, without the written consent of the Minister, make an unsolicited call –

- (a) to solicit or procure the making of any deposit; or
- (b) to enter into or offer to enter into, any agreement with a view to the acceptance of any deposit,

from any person in Brunei Darussalam or outside Brunei Darussalam.

(2) The consent of the Minister under subsection (1) may be given to such person or such classes, categories or descriptions of persons, and be made subject to such conditions,

including a condition requiring the disclosure of such information to the persons on whom unsolicited calls are made, as may be set out in the consent.

(3) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000,000, imprisonment for a term not exceeding 10 years or both.

(4) In this section, “unsolicited call” includes a personal visit or verbal communication made without express invitation.

Advertisements for deposits.

95. (1) Subject to section 96 and to subsection (2) of this section, no person other than a bank shall issue, publish or otherwise facilitate any person to issue or publish an advertisement containing –

(a) any invitation to make a deposit or to enter into or offer to enter into any agreement to make a deposit;

(b) any information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of a deposit.

(2) Subsection (1) does not apply to the publication by any person of any such advertisement for or on behalf of a bank.

(3) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000,000, imprisonment for a term not exceeding 5 years or both.

Non-applicable of sections 93, 94 and 95.

96. Section 93, 94 and 95 do not apply to –

(a) the Government;

(b) any person licensed to carry on the business of a moneylender under the Moneylenders Act (Chapter 62);

(c) any person licensed to carry on the business of a pawnbroker under the Pawnbrokers Order, 2002 (S60/02);

- (d) any co-operative society registered under the Co-operative Societies Act (Chapter 84);
- (e) any finance company licensed under the Finance Companies Act (Chapter 89);
- (f) the Tabung Amanah Islam Brunei Corporation established under the Perbadanan Tabung Amanah Islam Brunei Act (Chapter 163);
- (g) any Islamic bank licensed under the Islamic Banking Act (Chapter 168);
- (h) any person carrying on the business of insurance with the approval of the Minister;
- (i) any bank licensed under this Order;
- (j) any statutory body which is authorised under any written law to accept, receive or take deposits; and
- (k) any person related or associated with any person referred to in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j).

Fraudulent inducement in relation to deposits.

97. Any person who –

- (a) makes, publishes or facilitates the making or publication of, any statement, promise or forecast which he knows to be misleading, false or deceptive;
- (b) dishonestly conceals any material fact; or
- (c) recklessly makes or publishes (dishonestly or otherwise), or recklessly facilitates the making or publication (dishonestly or otherwise) of, a statement, promise or forecast which is misleading, false or deceptive,

when he makes, publishes or facilitates the making or publication of such statement, promise or forecast or conceals such material fact, for the purpose of inducing, or who is reckless as to whether the same may induce, another person (whether or not it is the person to whom the statement, promise or forecast is made or from whom such material fact is concealed) –

- (i) to make or refrain from making a deposit; or
- (ii) to enter or refrain from entering into an agreement for the purpose of making a deposit, with him or any other person,

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000,000, imprisonment for a term not exceeding 10 years or both.

PART XI
MISCELLANEOUS

Auditing.

98. (1) Notwithstanding the provisions of the Companies Act (Chapter 39) every bank shall appoint annually an auditor who shall be a person approved by the Authority and not disqualified under subsection (2) from holding such an appointment; and for the purposes of this section an “approved auditor” is an auditor eligible for appointment as an auditor under the Companies Act (Chapter 39).

(2) No person shall be qualified to be appointed an auditor of a bank or to continue to hold such an appointment, if –

- (a) he is not or ceases to be an approved auditor;
- (b) he is or becomes a director, controller, officer or agent of the bank; or
- (c) he has or acquires a financial or proprietary interest in the bank otherwise than as a depositor.

(3) The Authority may appoint an auditor for a bank –

- (a) if the bank fails to appoint an auditor;
- (b) if it considers it desirable that another auditor should act with the auditor appointed under subsection (1);
- (c) if it considers it desirable to replace the auditor appointed under subsection (1),

and may at any time, fix the remuneration to be paid by the bank to the auditor.

(4) The duties of an auditor appointed under subsection (1) or (3) shall be –

- (a) to carry out, for the year in respect of which he is appointed, an audit of the accounts of the bank; and
- (b) to make a report in accordance with the provisions of the Companies Act (Chapter 39) –
 - (i) in the case of a bank incorporated in Brunei Darussalam, upon the annual balance sheet and profit and loss account that are referred to in section 28; and

- (ii) in the case of a bank incorporated outside Brunei Darussalam, upon the annual balance sheet and profit and loss account showing the assets and liabilities and profit or loss arising out of the bank's operations in Brunei Darussalam.

(5) The Authority may impose all or any of the following duties on an auditor in addition to those provided under subsection (4) –

- (a) a duty to submit such additional information in relation to his audit as the Authority considers necessary;
- (b) a duty to enlarge or extend the scope of his audit of the business and affairs of the bank;
- (c) a duty to carry out any other examination or establish any procedure in any particular case; and
- (d) a duty to submit a report on any of the matters referred to in paragraphs (b) and (c),

and the bank shall remunerate the auditor in respect of the discharge by him of all or any of these additional duties.

(6) The auditor's report made under subsection (4) shall be attached to the balance sheet, income and expense statement, and the profit and loss account and a copy thereof together with any report submitted under subsection (5) shall be transmitted in writing to the Authority.

(7) An auditor of a bank shall notify the Authority of any information which relates to the business or affairs of the bank and of which he becomes aware in his capacity as auditor of the bank or of a body with which it is closely linked body control or in preparing any report under this Order in the following circumstances –

- (a) the information is such as to give the auditor reasonable cause to believe, as regards the bank concerned –
 - (i) that there is or has been or may have been a failure to fulfil any of the criteria specified in section 8 and that the failure is likely to be of material significance;
 - (ii) that its licence should be revoked under section 21;

- (iii) that there is or has been, or may be or may have been, a contravention of any provision of this Order and that the contravention is likely to be of material significance; or
 - (iv) that the continuous functioning of the bank;
- (b) in a case where the auditor is the auditor of the bank concerned, the information is such as to lead to the auditor's refusal to certify the accounts or to the expression of reservation.

(8) In subparagraph (iii) of paragraph (a) of subsection (7), "of material significance" means of material significance for the exercise of the functions of the Authority under this Order.

(9) No duty to which an auditor of a bank may be subject shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information of which he becomes aware or opinion that he may form in his capacity as auditor and which –

- (a) relates to the business or affairs of the bank or of a body with which the bank is linked by control; and
- (b) is relevant to any function of the Authority under this Order or any other written law.

Clearing House and settlement of balance between banks.

99. (1) In order to facilitate the clearing of cheques and other credit instruments for banks and other financial institutions approved by the Authority, the Authority shall, in conjunction with such banks and institutions, establish or cause to be established a Clearing House.

(2) The Authority may inspect under conditions of confidentiality the operations, books, accounts, documents and any other records, however kept or maintained, of a Clearing House.

(3) Where the Authority is of the opinion that a Clearing House is carrying on its operations in a manner likely to be detrimental to the interest of banks or other participating financial institutions, the Authority may –

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

(b) appoint a person to advise the Clearing House on the proper conduct of its business;

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

(4) The Authority may at any time fix the remuneration and expenses to be paid by the operator of the Clearing House to any person appointed by the Authority under paragraphs (b) or (c) of subsection (3), whether or not the appointment of such person has terminated.

(5) Where the Authority has taken action under subsection (3), the Authority may, at any time, vary or reverse any requirement, appointment or direction made by it.

Declaration of holidays.

100. (1) The Authority may, at any time by notice in the *Gazette*, declare any day or days to be a bank holiday or holidays.

(2) No bank in Brunei Darussalam shall do any business without the approval of the Authority on any day declared a bank holiday under subsection (1).

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

(4) Any reference to a bank holiday in any written law which may from time to time be in force in Brunei Darussalam shall include any day declared to be a bank holiday under subsection (1) and any day which is a public holiday within the meaning of any written law relating to public holidays.

Priority of deposit liabilities.

101. (1) Where a bank becomes unable to meet its obligations or becomes insolvent or suspends payment, the assets of that bank in Brunei Darussalam shall be available to meet all deposit liabilities of the bank in Brunei Darussalam.

(2) The deposit liabilities shall have priority over all unsecured liabilities of the bank other than the preferential debts specified in the Companies Act (Chapter 39).

Priority of deposit liabilities *inter se*.

102. (1) Notwithstanding the provisions of any written law relating to the winding-up of companies, in the event of a winding up of a bank the deposit liabilities of the bank shall, amongst themselves, rank in the following order of priority –

(a) deposit liabilities incurred by the bank with non-bank customers where the deposit liabilities are required by the Authority to be included in the computation of the reserve and liquidity requirements under sections 44 and 45, as the case may be;

(b) deposit liabilities incurred by the bank with other banks where the deposit liabilities are required by the Authority to be included in the computation of the reserve and liquidity requirements under sections 44 and 45, as the case may be;

(c) deposit liabilities incurred by the bank with non-bank customers where the deposit liabilities are not required by the Authority to be included in the computation of the reserve and liquidity requirements under sections 44 and 45, as the case may be.

(2) The deposit liabilities in each class specified in subsection (1) shall –

(a) rank in the order specified therein but as between deposit liabilities of the same class shall rank equally between themselves; and

(b) be paid in full unless the assets of the bank are insufficient to meet them in which case they shall abate in equal proportions between themselves.

(3) For the purposes of section 101 and of this section, “deposit liabilities of a bank” means sums of money paid on terms –

(a) under which they will be repaid, with or without interest or at a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the persons making the payments and the bank receiving them; and

(b) which are not referable to the provision of property or services or to the giving of security,

but shall not include, in the case of a bank incorporated in Brunei Darussalam, liabilities of the bank arising from loans –

(i) granted by creditors whose claims are fully subordinated to the claims of all un-subordinated creditors; and

(ii) the terms of which comply with the criteria for the treatment of the liabilities as capital in the computation of the bank's capital adequacy ratio under section 10, whether or not the entire amount of such liabilities are treated in the computation as capital.

(4) For the purposes of paragraph (b) of subsection (3), money is paid on terms which are referable to the provisions of property or services or to the giving of security if –

(a) it is paid by way of advance or part-payment for the sale, hire or other provision of property or services of any kind and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided;

(b) it is paid by way of security for payment for the provision of property or services of any kind provided or to be provided by the bank by whom or on whose behalf the money is accepted; or

(c) it is paid by way of security for the delivery up or return of any property.

Redemption of securities held by bank under liquidation.

103. (1) As soon as practicable after the making of an order for the winding-up of a bank, the liquidator of the bank -

(a) shall publish in the *Gazette* and a daily newspaper circulating in Brunei Darussalam requiring every debtor of the bank to redeem any property he has deposited with the bank as security for any loan that he has obtained from the bank; and

(b) shall send a copy of that notice by registered post to every debtor whose security is held by the bank and whose name is mentioned in the statement of affairs made out under the provisions of the Companies Act (Chapter 39).

(2) The notice shall specify the latest date up to which any securities may be redeemed, which date shall not be less than 3 months from the date of the notice.

(3) Nothing in this section shall affect any powers exercisable by the Authority by virtue of sections 59 or 62.

Execution of instruments under seal.

104. Notwithstanding anything contained in the Articles of Association or regulations of any bank incorporated in Brunei Darussalam with respect to the execution of instruments under its seal, but without prejudice to anything in those Articles or regulations which is not inconsistent herewith, the seal of the bank shall not be affixed to any instrument except in the presence of a director of the bank and of one other person who is either a director or an officer of the bank duly authorised in that behalf, and the director and that other person shall sign every instrument to which the seal of the bank is so affixed in their presence.

Disqualification of directors and employees of banks.

105. (1) Notwithstanding the provisions of any other written law, except with the consent in writing of the Authority, no person –

(a) who is or becomes bankrupt, suspends payments or compounds with his creditors;

(b) who is or has been convicted in any country of an offence involving dishonesty or fraud and has not received a free pardon for the offence for which he was convicted; or

(c) who has been a director of, or directly concerned in the management of, a bank which is being or has been wound up by a court or the licence of which has been revoked,

shall act or continue to act as the director, manager, secretary or other officer of any bank.

(2) Without the approval of the Authority, no person may be nominated as a director of any bank incorporated in Brunei Darussalam.

(3) Without the approval of the Authority, no person may be nominated as a manager or person discharging similar functions.

(4) The Authority may at any time, by notice in writing, remove any director or manager of, or any person discharging similar functions in, any bank incorporated in Brunei Darussalam.

Offences by directors, managers, agents etc.

106. (1) A person being a director or manager of, or any person discharging similar functions in a bank who –

(a) fails to take all reasonable steps to secure compliance by a bank with the provisions of this Order or any other written law applicable to banks in Brunei Darussalam; or

(b) fails to take all reasonable steps to secure the accuracy and correctness of any statement submitted under this Order or of any other written law applicable to banks in Brunei Darussalam,

is guilty of an offence and liable on conviction to a fine not exceeding \$100,000, imprisonment for a term not exceeding 6 years or both.

(2) In any proceedings against a person under subsection (1), it shall be a defence to prove that he had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of those laws 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 an offence under subsection (1) unless in the opinion of the court he has committed the offence wilfully.

(4) Any director, manager, trustee, auditor, employee or agent of any bank who –
(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, accounts and any other record, however kept or maintained, of that 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, conditions, assets or accounts and under any records, however kept or maintained, of that 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, conditions, assets or accounts and any other record, however kept or maintained, of that bank, or wilfully causes any such entry to be altered, abstracted, concealed, or destroyed,

is guilty of an offence and liable on conviction to a fine not exceeding \$100,000, imprisonment for a term not exceeding 6 years or both.

Offences by bodies corporate.

107. Where an offence under this Order committed by a bank or other company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

(a) any director, manager, secretary or other similar officer of that body, or any person who was purporting to act in that capacity; or

(b) any other person who holds a controlling interest in that body,

he, as well as the company, is guilty of that offence and liable to be proceeded against and punished accordingly.

Indemnity.

108. No liability shall be incurred by –

(a) the Authority or any member of the Authority;

(b) any person authorised or appointed by the Authority under section 3;

(c) any person appointed under paragraph (b) of subsection (2) of section 59 to advise a bank in the proper conduct of its business;

(d) any person who has assumed control of the business of a bank pursuant to a direction or order of the Authority under paragraph (c) of subsection (2) of section 59 or paragraph (b) of section 60;

(e) any person appointed under subsection (1) of section 49,

as a result of anything done by him bona fide in the exercise of any power, or the performance of any power, duty or function conferred or imposed by or under this Order.

Indemnity and fidelity fund.

109. (1) The Authority may establish or cause to be established an indemnity and fidelity fund for the benefit of depositors or other persons to whom the bank may be liable upon such conditions as it may think fit. The Authority may consult banks for the purpose of establishing such conditions.

(2) The Authority may require any bank to effect insurance for the protection of depositors or other persons to whom the bank may be liable in the conduct of its licensed business upon such conditions as it may think fit. The Authority may set different conditions in respect of any bank.

Duty of a registered bank to furnish guarantee for liabilities.

110. A registered bank whose head office is situated outside Brunei Darussalam shall within one year of the commencement of this Order furnish to the Authority a written guarantee from its head office in respect of any liabilities which may be incurred by such bank.

Power of Authority to compound.

111. (1) The Authority 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 Authority 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 Authority may cause proceedings to be instituted in relation to the offence.

Publication of list of banks.

112. (1) The Authority shall cause to be published in the *Gazette* in each year a list of all banks to which licenses have been issued under this Order.

(2) If any licence is issued, revoked or surrendered during the interval between the publication of 2 such lists, notice thereof shall also be caused to be published by the Authority in the *Gazette*.

General penalty.

113. Any bank which contravenes any of the provisions of this Order for which no penalty is expressly provided is guilty of an offence and liable on conviction to a fine not exceeding \$10,000,000 and, in the case of a continuing offence, to a further fine not exceeding \$100,000 for every day during which the offence continues after conviction.

Offences triable in High Court.

114. Notwithstanding any provision of any other written law, offences against this Order shall be tried in High Court.

Prosecutions.

115. No prosecution in respect of any offence under this Order shall be instituted except by or with the written consent of the Public Prosecutor.

Recovery of fees, expenses etc.

116. There shall be recoverable as a civil debt due to the Authority from the bank concerned –

- (a) the amount of any fees payable under section 13;
- (b) any remuneration and expenses payable by the bank to any person appointed under paragraph (b) of subsection (2) of section 59; and
- (c) any remuneration and expenses payable by the bank to the Authority or to any person employed or authorised by the Authority under section 3 to assist it in the control of and the carrying on of the business of the bank or to any other person who has assumed control of the business of the bank pursuant to a direction or order of the Authority under paragraph (c) of subsection (2) of section 59 or paragraph (b) of section 60.

Relationship between this Order and Companies Act (Chapter 39).

117. (1) Nothing in this Order affects the operation of the Companies Act (Chapter 39), and any bank that is liable to be incorporated or registered under that Act continues to be so liable as if this Order had not commenced.

(2) In case of conflict between that Act and this Order, the provisions of this Order shall prevail unless otherwise provided in this Order.

Mergers.

118. (1) A bank incorporated in Brunei Darussalam shall not be merged or consolidated with, or be taken over by, any other company or body unincorporate without the prior written approval of the Authority.

(2) In considering such an application, the Authority shall have power to call for such information as it may require.

(3) Without prejudice to the generality of subsection (1), for the purposes of this section a bank shall be deemed to be merged with a body corporate or unincorporate if the bank or its shareholders enter into any agreement or arrangement under which all or substantially all of the business of the bank is to be managed, and under which the shareholders of the bank will be accorded rights, as if the bank has been merged with such company or body unincorporate, as the case may be.

Approval by Authority for merger of certain banks.

119. (1) Subject to this section and section 120, on the joint application of a bank incorporated in Brunei Darussalam and one or more banks which are wholly-owned subsidiaries of that bank, the Authority may approve the merger of those banks and issue a certificate of approval.

(2) The issue of a certificate of approval by the Authority under subsection (1) merges the banks that are parties to the merger agreement on which the application for the certificate of approval is based.

(3) Where a certificate of approval is issued under subsection (1) merging the banks, the merger shall for all purposes be deemed to have occurred and to be effective on the date mentioned in subsection (4).

(4) A certificate of approval issued under subsection (1) shall have no force or effect until a copy of the certificate and the merger agreement on which it is issued is lodged with the Registrar of Companies, and upon being so lodged the certificate shall take effect on and from the date of lodgment.

(5) No application to the Authority for a certificate of approval merging 2 or more banks may be made under subsection (1) unless –

(a) the merger is between a bank and one or more banks which are wholly owned subsidiaries of that bank;

(b) the banks proposing to merge have entered into a merger agreement; and

(c) the application for the certificate of approval is made within 2 weeks from the date of execution of the merger agreement referred to in paragraph (b).

(6) Where a certificate of approval is issued under subsection (1) merging the banks, those banks shall publish a notice of the approval of the merger at least once in a local daily newspaper within one week.

(7) For the avoidance of doubt, it is hereby declared that sections 151 and 152 of the Companies Act (Chapter 39) shall not apply to the banks which have jointly applied for a certificate of approval under subsection (1).

Condition for issue of certificate of approval.

120. (1) The Authority shall not issue a certificate of approval under section 119 unless the application thereof is supported by satisfactory evidence that the applicants have complied with the requirements of that section in relation to the merger.

(2) Nothing in this Order shall be construed as precluding the Authority from refusing to issue or approve the issue of any certificate of approval under section 119 and any

decision of the Authority under that section shall be final and shall not be called in question in any court.

Effect of merger.

121. As from the date mentioned in subsection (4) of section 119 the provisions set out in the Fourth Schedule shall have effect and shall apply to the banks that are parties to the merger agreement on which a certificate of approval is issued under subsection (1) of section 120.

Amendment of Schedules.

122. The Minister may, by notification in the *Gazette*, amend any of the Schedules to this Order.

Application of Order.

123. (1) Save as expressly provided this Order does not apply to licensed moneylenders, finance companies or banks licensed under the Islamic Banking Act (Chapter 168) or the International Banking Order, 2000 (S53/00).

- (2) Part X applies to licensed moneylenders and finance companies.
- (3) The Finance Companies Act (Chapter 89) does not apply to a bank.
- (4) The Moneylenders Act (Chapter 62) does not apply to a bank.
- (5) The Islamic Banking Act (Chapter 168) does not apply to a bank.

Exemptions.

124. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, subject to such conditions and for such period or periods as he thinks fit, exempt in writing any bank specified in the Second Schedule from any of the provisions of this Order.

Regulations.

125. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to and carrying

out the provisions of this Order, including the prescription of fees and of any other thing required to be or which may be prescribed under this Order, and for the due administration thereof.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

Power to issue guidelines etc.

126. The Authority may generally in respect of any particular provision of this Order, or generally in respect of the conduct of all or any licensed bank, issue such guidelines, circulars, or notes as the Authority may consider desirable.

Savings.

127. All regulations, instructions, orders and decisions made under or in accordance with the Banking Act (Chapter 95) (repealed by this Order), remain valid and binding and shall be deemed to have been made under the provisions of this Order, unless they are amended or repealed herein, or until they are amended or repealed.

Transitional licensing provisions.

128. (1) Notwithstanding the provisions of Part III, each of the banks specified in the Second Schedule shall, on or as soon as practicable after the commencement of this Order, be granted a licence under section 9 which may be made subject to such conditions, if any, as are contained in any licence under which the bank was carrying on banking business in Brunei Darussalam immediately before that commencement or which the Authority immediately before that commencement or which the Authority may impose having regard to this Order.

(2) Any bank which is granted a licence by virtue of this section shall comply with the provisions of paragraph (d), and sub-paragraphs (i) and (ii) of paragraph (e), of subsection (2) of section 8, within a period of one year of the commencement of this Order or for such later date as the Authority may decide.

(3) If any bank licensed by virtue of this section fails to comply with the provisions of paragraph (d), or sub-paragraph (i) or (ii) of paragraph (e), of subsection (2) of

section 8, in accordance with subsection (2) of this section, the licence granted to it by virtue of this section shall become null and void except in so far as may be necessary for the purpose of winding-up its banking business.

(4) The Authority may, in any particular case, extend the period provided by subsection (2) of this section and the period of validity of the licence concerned.

Amendment of Chapter 62.

129. The Moneylenders Act (Chapter 62) is amended –

(a) in subsection (1) of section 2, by deleting “a banker who is licensed as such under the provisions of section 4 of the Banking Act” and by substituting “, a bank licensed under sections 4 or 23 of the Banking Order, 2006, a finance company licensed under section 6 of the Finance Companies Act (Chapter 89)” therefor;

(b) by repealing section 5;

(c) in subsection (2) of section 8, by deleting “, 5” from the second line.

Amendment of Chapter 39.

130. Section 250 of the Companies Act (Chapter 39) is amended, in subsection (1), by substituting a semicolon for the fullstop at the end of paragraph (b) and by adding the following new paragraph –

“(c) the deposit liabilities as defined in section 2 of the Banking Order, 2006.”.

Repeal.

131. Subject to sections 127 and 128 the Banking Act (Chapter 95) is repealed.

**INTERPRETATION OF “ASSOCIATE”, “PARENT” AND
“SUBSIDIARY” UNDERTAKINGS**

**PART I
ASSOCIATE**

1. (1) In this Order, “associate”, in relation to another person, means any of the following –

(a) the wife or husband, or son, daughter or more remote issue, of that person;

(b) the brother or sister, or parent or more remote lineal ancestor, of that person;

(c) the trustees of any settlement under which that person has a life interest in possession;

(d) any company of which that person is a director;

(e) any person who is an employee or partner of that person;

(f) if that person is a company, any director or subsidiary undertaking of that company and any director or employee of such a subsidiary undertaking.

(2) In relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, an undertaking, sub-paragraph (3) applies in addition to sub-paragraph (1).

(3) If such person as is referred to in sub-paragraph (2) (call him “A”), has with any other person (“B”) an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in the undertaking concerned, or under which they undertake to act together in exercising their voting power in relation to that undertaking, B is an associate of A.

2. For the purposes of paragraph 1 –
“daughter” includes step-daughter;

“settlement” includes any disposition or arrangement under which property is held on trust;

“son” includes step-son.

PART II CONTROLLERS

3. (1) In this Order, “controller”, in relation to an institution, means a person who, either alone or together with any associate, –

(a) holds 10 per cent or more of the shares in the institution or in another body of which the institution is a subsidiary undertaking;

(b) is entitled to exercise or control the exercise of 10 per cent or more of the voting power at any general meeting of the institution or of another body of which the institution is a subsidiary undertaking;

(c) is able to exercise a significant influence over the management of the institution or of another body of which the institution is a subsidiary undertaking by virtue either of a holding of shares in the institution or in the other body or of an entitlement to exercise, or control the exercise of, the voting power at a general meeting of the institution or the other body.

(2) Without prejudice to a generality of sub-paragraph (c) of sub-paragraph (1), in the case of an institution, which is a partnership, every partner shall be regarded as a person falling within that paragraph.

4. (1) In this Order, “indirect controller” means a controller falling within sub-paragraph (c) of sub-paragraph (1) of paragraph 3 and references to other descriptions of controller shall be construed as follows –

(a) a “10 per cent controller” means a controller in whose case the percentage referred to in the relevant paragraph is 10 or more but less than 20;

(b) a “20 per cent controller” means a controller in whose case the percentage referred to in the relevant paragraph is 20 or more but less than 22;

(c) a “33 per cent controller” means a controller in whose case the percentage referred to in the relevant paragraph is 33 or more but less than 50;

(d) a “majority controller” means a controller in whose case the percentage referred to in the relevant paragraph is 50 or more.

(2) In sub-paragraphs (1)(a), (b), (c) and (d), “the relevant paragraph”, in relation to a controller, means whichever of sub-paragraphs (1)(a) and (b) of paragraph 3 gives the greater percentage in his case.

PART III

PARENT AND SUBSIDIARY UNDERTAKINGS ETC.

Undertakings.

5. In this Order, “undertaking” means –

(a) a body corporate or a partnership; or

(b) unincorporated association carrying on a trade or business with or without a view to profit.

Parent and subsidiary undertakings.

6. (1) For the purposes of this Order, an undertaking is a parent undertaking in relation to another undertaking (a “subsidiary undertaking”) if –

(a) it holds a majority of the voting rights in the undertaking;

(b) it is a member of the undertaking and has a right to appoint or remove a majority of its board of directors;

(c) it has a right to exercise a dominant influence over the undertaking –

(i) by virtue of provisions contained in the undertaking’s memorandum or articles, or

(ii) by virtue of a control contract;

(d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking;

(e) it is a member of the undertaking, no other person is the undertaking’s parent by virtue of any of sub-paragraphs (a) to (c), and at all times since the

beginning of the undertaking's immediately preceding financial year, a majority of the undertaking's board of directors have been directors who were appointed solely as a result of the exercise of its voting rights; or

(f) it has a participating interest in the undertaking and either actually exercises a dominant influence over the undertaking or it and the undertaking are managed on a unified basis; or

(g) it has a participating interest in the undertaking which either entitles it to 20 per cent or more of the voting rights in the undertaking or comprises 20 per cent or more of the shares in the undertaking,

and any reference to the participating interest provisions of this paragraph is a reference to sub-paragraphs (f) and (g).

(2) For the purposes of sub-paragraph (1) an undertaking shall be treated as a member of another undertaking –

(a) if any of its subsidiary undertakings is a member of that other undertaking; or

(b) if any shares in that other undertaking are held by a person acting on behalf of the undertaking or are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.

(3) Subject to sub-paragraph (4), a parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings.

(4) An undertaking ("A") shall not be treated as a parent undertaking of an undertaking ("B") by reason only that another undertaking which is A's subsidiary undertaking by virtue of sub-paragraph (1)(g) is a parent undertaking of B.

(5) Expressions used in the preceding provisions of this paragraph shall be construed in accordance with the following provisions of this Part.

Fellow subsidiary undertakings.

7. (1) Subject to sub-paragraph (2), “fellow subsidiary undertakings” are undertakings which are subsidiary undertakings of the same parent undertaking but are not parent undertakings or subsidiary undertakings of each other.

(2) 2 subsidiary undertakings of the same parent undertaking are not fellow subsidiary undertakings if either of them is a subsidiary undertaking by virtue only of sub-paragraph (1)(g) of paragraph 6.

Participating interests.

8. (1) A “participating interest” is an interest held by an undertaking in the shares of another undertaking which it holds on a long term basis for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest.

(2) A holding of 20 per cent or more of the shares of an undertaking shall be presumed to be a participating interest unless the contrary is shown.

- (3) The reference in sub-paragraph (1) to an interest in shares includes –
- (a) an interest which is convertible into an interest in shares; and
 - (b) an option to acquire shares or any such interest,

and an interest or option falls within sub-paragraphs (a) or (b), notwithstanding that the shares to which it relates are, until conversion or the exercise of the option, unissued.

(4) For the purposes of this paragraph, an interest held on behalf of an undertaking shall be treated as held by it.

- (5) For the purposes of this Part –
- (a) there shall be attributed to an undertaking any interest held by any of its subsidiary undertakings; and
 - (b) the reference in sub-paragraph (1) to the purpose and activities of an undertaking shall be taken to include the purposes and activities of any of its subsidiary undertakings and of the group as a whole.

Shares.

- 9.** (1) In this Part, references to shares –
- (a) in relation to an undertaking with share capital, are to allotted shares;
 - (b) in relation to an undertaking with no share capital, are to rights to shares in the capital of the undertaking;
 - (c) in relation to an undertaking without capital, are to interests –
 - (i) conferring any right to share in the profits or liability to contribute to the losses of the undertaking;
 - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding-up,
 - (iii) permitted by the law under which the undertaking is established.
- (2) Nothing in this paragraph affects the construction of the expression “actually exercises a dominant influence” in sub-paragraph (1)(f) paragraph 6.

Rights exercisable only in certain circumstances or temporarily incapable of exercise.

- 10.** (1) Rights which are exercisable only in certain circumstances shall be taken into account for the purposes of this Part only –
- (a) when the circumstances have arisen, and for so long as they continue to obtain; or
 - (b) when the circumstances are within the control of the person having the rights.
- (2) Rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

Rights held by one person on behalf of another.

- 11.** (1) Rights held by a person in a fiduciary capacity shall be treated for the purposes of this Part as not held by him.
- (2) Rights held by a person as nominee for another shall be treated for the purposes of this Part as held by the other.

(3) Rights shall be regarded as held as nominee for another if they are exercisable only on these instructions or with his consent or concurrence.

Rights attached to shares held by way of security.

12. Rights attached to shares held by way of security shall be treated for the purposes of this Part as held by the person providing the security –

(a) where, apart from the right to exercise them for the purposes of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with instructions; and

(b) where the shares are held in connection with the granting of loans as part of normal business activities and, apart from the right to exercise them for the purposes of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

Rights attributed to parent undertaking.

13. (1) Rights shall be treated for the purposes of this Part as held by a parent undertaking if they are held by any of its subsidiary undertakings.

(2) Nothing in paragraph 14 or 15 shall be construed as requiring rights held by a parent undertaking to be treated as held by any of its subsidiary undertakings.

(3) For the purposes of paragraph 15, rights shall be treated as being exercisable in accordance with the instructions, or in the interests of an undertaking if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of any group undertaking.

Group undertakings.

14. In this Part “group undertaking”, in relation to an undertaking, means an undertaking which is –

(a) a parent or subsidiary undertaking of that undertaking; or

(b) a subsidiary undertaking of any parent undertaking of that undertaking; and references to a group shall be construed accordingly.

Disregard of certain rights.

15. For the purposes of this Part, the voting rights in an undertaking shall be taken to be reduced by any rights held by the undertaking itself.

Undertakings which are not companies.

16. Subject to any specific provision made by this Part, expressions used in this Part which are appropriate to companies shall be construed, in relation to an undertaking which is not a company, as references to the corresponding persons, officers or organs, as the case may be, appropriate to undertakings of that description.

SECOND SCHEDULE

(section 128(1))

BANKS SUBJECT TO TRANSITIONAL LICENSING

Baiduri Bank Berhad

Brunei Investment and Commercial Bank Sdn. Bhd.

Citibank N.A.

Malayan Banking Berhad

RHB Bank Berhad

Standard Chartered Bank

The Hongkong and Shanghai Banking Corporation Ltd.

United Overseas Bank Ltd.

PART I

FURTHER DISCLOSURE NOT PROHIBITED

<i>First column</i>	<i>Second column</i>	<i>Third column</i>
Purpose for which customer information may be disclosed	Persons to whom information may be disclosed	Conditions
<p>1. Disclosure is permitted in writing by the customer or, if he is deceased, his appointed personal representative.</p>	<p>Any person as permitted by the customer or, if he is deceased, his appointed personal representative.</p>	
<p>2. Disclosure is solely in connection with an application for a grant of probate or letters of administration in respect of a deceased customer's estate.</p>	<p>Any person whom the bank in good faith believes is entitled to the grant of probate or letters of administration.</p>	
<p>3. Disclosure is solely in connection with – (a) where the customer is an individual, the bankruptcy of the customer; or (b) where the customer is a body corporate, the winding-up of the customer.</p>	<p>All persons to whom the disclosure is necessary for the purpose specified in the first column.</p>	<p><i>Note: Court may order the proceedings to be held in camera</i></p>

4. Disclosure is solely with a view to the institution of, or solely in connection with, the conduct of proceedings –

(a) between the bank and the customer or his surety relating to the banking transaction of the customer;

(b) between the bank and 2 or more parties making adverse claims to money in an account of the customer where the bank seeks relief by way of interpleader; or

(c) between the bank and one or more parties in respect of property, whether movable or immovable, in or over which some right or interest has been conferred or alleged to have been conferred on the bank by the customer or his surety.

All persons to whom the disclosure is necessary for the purpose specified in the first column.

Note: Court may order the proceedings to be held in camera

5. Disclosure is necessary for –
- (a) compliance with an order or request made under any specified written law to furnish information, for the purposes of an investigation or prosecution, of an offence alleged or suspected to have been committed under any written law; or
- (b) the making of a complaint or report under any specified written law for an offence alleged or suspected to have been committed under any written law.
- Any police officer or public officer duly authorised under the specified written law to carry out the investigation or prosecution or to receive the complaint or report, or any court.

6. Disclosure is necessary for compliance with a garnishee order served on the bank attaching moneys in the account of the customer.
- All persons to whom the disclosure is required to be made under the garnishee order.

7. Disclosure is necessary for compliance with an order of the Supreme Court or a Judge thereof pursuant to the powers conferred under the Evidence Act (Chapter 108). All persons to whom the disclosure is required to be made under the court order.
8. Where the bank is a bank incorporated outside Brunei Darussalam, the disclosure is strictly necessary for compliance with a request made by its parent supervisory authority solely in connection with the supervision of the bank. The parent supervisory authority of the bank incorporated outside Brunei Darussalam.
- (a) No deposit information shall be disclosed to the parent supervisory authority.
- (b) The parent supervisory authority is prohibited by the laws applicable to it from disclosing the customer information obtained by it to any person unless compelled to do so by the laws or courts of the country or territory where it is established.
9. Disclosure is in compliance with the provisions of this Order, or any notice or directive issued by the Authority to banks. The Authority or any person authorised or appointed by the Authority.

PART II
FURTHER DISCLOSURE PROHIBITED

<i>First column</i>	<i>Second column</i>	<i>Third column</i>
Purpose for which customer information may be disclosed	Persons to whom information may be disclosed	Conditions
<p>1. Disclosure is solely in connection with the performance of duties as an officer, or a professional adviser of the bank.</p>	<p>Any –</p> <p>(a) officer of the bank in Brunei Darussalam;</p> <p>(b) officer designated in writing by the head office of the bank; or</p> <p>(c) auditor, advocate and solicitor, consultant or other professional adviser appointed or engaged by the bank under a contract for service.</p>	
<p>2. Disclosure is solely in connection with the conduct of internal audit of the bank or the performance of risk management.</p>	<p>In the case of –</p> <p>(a) a bank incorporated outside Brunei Darussalam –</p> <p>(i) the head office or parent bank of the bank;</p> <p>(ii) any branch of the bank outside Brunei Darussalam</p>	

designated in writing by the head office of the bank; or

- (iii) any related corporation of the bank designated in writing by the head office of the bank; or

(b) a bank incorporated in Brunei Darussalam –

- (i) the parent bank; or
- (ii) any related corporation of the bank designated in writing by the head office of the bank.

3. Disclosure is solely in connection with the performance of operational functions of the bank where such operational functions have been out-sourced.

Any person including the head office of the bank or any branch thereof outside Brunei Darussalam which is engaged by the bank to perform the out-sourced functions.

If any out-sourced function is to be performed outside Brunei Darussalam, the disclosure shall be subject to such conditions as may be specified in a notice issued by the Authority or otherwise imposed by the Authority.

4. Disclosure is solely in connection with –

(a) the merger or proposed merger of the bank or its financial holding company with another company; or

(b) any acquisition or issue, or proposed acquisition or issue, of any part of the share capital of the bank or its financial holding company,

whether or not the merger or acquisition is subsequently entered into or completed.

Any person participating or otherwise involved in the merger, acquisition or issue, or proposed merger, acquisition or issue, including any of his advocate and solicitor or other professional advisers (whether or not the merger or acquisition is subsequently entered into or completed).

5. Disclosure is solely in connection with the restructure, transfer or sale, or proposed restructure, transfer or sale, of credit facilities (whether or not the restructure, transfer or sale is subsequently entered into or completed).

Any transferee, purchaser or any other person participating or otherwise involved in the restructure, transfer or sale, or proposed restructure, transfer or sale, including any of his advocate and solicitor or other professional advisers (whether or not the restructure, transfer or sale is subsequently entered into or completed).

No customer information, other than information relating to the relevant credit facilities, shall be disclosed.

6. In the case of a customer who has been issued with a credit or charge card by a bank in Brunei Darussalam, disclosure is strictly necessary for notification of the suspension or cancellation of the card by the bank by reason of the customer's default in payment to the bank.
- Any financial institution in Brunei Darussalam which issues credit or charge cards.
- No customer information, other than information relating to the following, may be disclosed –
- (a) the customer's name and identity;
 - (b) the amount of the debt outstanding on the customer's credit or charge card;
 - (c) the date of suspension or cancellation of the customer's credit or charge card, as the case may be.
7. Disclosure is strictly necessary –
- (a) for the collation, synthesis or processing of customer information by the credit bureau for the purposes of the assessment of the credit-worthiness of the customers of banks; or
 - (b) for the assessment, by other members of the credit bureau specified in the second column, of the credit-worthiness of the customers of banks.
- Any –
- (a) credit bureau of which the bank is a member;
 - (b) other member of the credit bureau that is –
 - (i) a bank or merchant bank; or
 - (ii) a person, or a person belonging to a class of persons, recognised by the Authority,
- (a) No deposit information shall be disclosed.
 - (b) The disclosure by any credit bureau to any person referred to in paragraph (b) of the second column shall be subject to such conditions as may be specified in a notice issued by the Authority or otherwise imposed by the Authority.

by notification published in the *Gazette*, as authorised to receive the information, where that member receives such information from the credit bureau.

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| <p>8. Disclosure is strictly necessary for the assessment of the credit-worthiness of the customer in connection with or relating to a bona fide commercial transaction or a prospective commercial transaction.</p> | <p>Any other bank or merchant bank in Brunei Darussalam.</p> | <p>No customer information, other than information of a general nature and not related to the details of the customer's account with the bank, shall be disclosed.</p> |
| <p>9. Disclosure is solely in connection with the promotion, to customers of the bank in Brunei Darussalam, of financial products and services made available in Brunei Darussalam by any financial institution specified in the second column.</p> | <p>Any financial institution in Brunei Darussalam which is licensed or otherwise regulated by the Authority.</p> | <p>No customer information, other than the customer's name, identity, address, and contact number shall be disclosed.</p> |

PART III
INTERPRETATION

In this Schedule, unless the context otherwise requires –

“advocate and solicitor” means an advocate and solicitor of the Supreme Court, or any person who is duly authorised or registered to practise law in a country or territory other than Brunei Darussalam by a foreign authority having the function conferred by law of authorising or registering persons to practice law in that country or territory;

“appointed personal representative”, in relation to a deceased person, means a person appointed as executor or administrator of the estate of the deceased person;

“credit bureau” means a credit bureau recognised as such by the Authority by notification in the *Gazette* for the purposes of this Schedule;

“public officer” includes any officer of a statutory body;

“surety”, in relation to a customer of a bank, includes any person who has given the bank security for the liability of the customer by way of a mortgage or a charge.

FOURTH SCHEDULE

(section 121)

EFFECT OF MERGER

Interpretation.

1. In this Schedule, unless the subject or context otherwise requires –

“Bank” means the bank into which the other banks that are parties to a merger agreement are merged and to which a certificate of approval is issued under section subsection (1) of section 119;

“customer” means any person having a banking account or any other account or other dealing, transaction or arrangement with any existing bank or the Bank, as the case may be;

“effective date” means the date mentioned in subsection (4) of section 119;

“existing banks” means the banks that are parties to a merger agreement other than the Bank, and “existing bank” shall be construed accordingly;

“liabilities” includes duties and obligations of every description, whether present or future, actual or contingent;

“property” means property and assets and rights of every description (whether present or future, actual or contingent) wheresoever situate and includes property held on trust and securities, rights, benefits and powers of every description but does not include any document required to be kept by an existing bank under the Companies Act (Chapter 39);

“security” means a mortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, lien, pledge, hypothecation, assignment by way of security, indemnity, right of set-off, undertaking or other means of securing the payment of a debt, whether present or future, or the discharge of an obligation or liability, whether actual or contingent;

“undertaking of an existing bank” means the business and all of the property vested in or belonging to or held by that existing bank immediately before the effective date and all of the liabilities to which that existing bank was subject immediately before that date.

Transfer of undertakings.

2. (1) On the effective date, the undertakings of the existing banks shall, by virtue of section 121 and this Schedule and without further assurance, be transferred to and vest in the Bank as if in all respects the bank were the same person in law as the existing Banks.

(2) The production of a copy of the certificate of approval issued under subsection of section 119 shall, on and after the effective date, be conclusive evidence in all courts and proceedings of the transfer of the undertakings of the existing banks to the Bank and of their vesting in the Bank.

(3) If any portion of the undertaking of an existing bank cannot be vested in the Bank by virtue of section 121 and this Schedule because transfers of that portion are governed otherwise than by the law of Brunei Darussalam then that existing bank shall, as soon as is practicable after the effective date, take all necessary steps for the purpose of securing that that portion is effectively transferred to the Bank.

Saving of contracts etc.

3. (1) Subject to this paragraph, all contracts, agreements, conveyances, covenants, settlements, trusts, deeds, leases, licenses and other instruments or undertakings entered into by or made with or addressed to an existing bank or to which an existing bank is a party (whether alone or with any other person) before and in force on the effective date shall as from that date be binding and of full force and effect in every respect against or in favour of the bank as fully and effectually as if, instead of an existing bank, the Bank had been a party thereto or bound thereby or entitled to the benefit thereof.

(2) In relation to every contract of employment to which sub-paragraph (1) applies, that sub-paragraph shall operate to substitute the Bank for the existing bank which was the employer thereunder immediately before the effective date.

Banking business.

4. Without prejudice to the generality of paragraphs 2 and 3, the following provisions shall have effect in relation to the banking businesses of the existing banks –

(a) any account between an existing bank and a customer at any office or branch of that existing bank shall be transferred to the bank on the effective date and shall become as and from that date an account between the bank and the customer with the same rights and subject to the same obligations and incidents (including rights of set-off) as would have been applicable thereto if the account between that existing bank and the customer had continued and so that any instruction, order, direction, mandate or authority given by the customer in relation to the account and

subsisting at or given after the effective date shall, unless and until revoked or cancelled, apply and have effect in relation to the account after its transfer to the bank, except that nothing in this sub-paragraph shall affect any right of the bank or of the customer to vary the conditions or incidents subject to which any account is kept;

(b) any security held by an existing bank as security for the payment of debts or liabilities (whether present or future, actual or contingent) of any person shall be transferred or deemed to be transferred to the bank on the effective date and shall be held by and be available to the bank as security for the payment of such debts and liabilities to the bank; and where the moneys secured by such a security include future advances to or liabilities of that person, the security shall as from that date be held by and be available to the bank as security for future advances to that person by, and future liabilities of that person to, the bank to the same extent to which future advances by, or liabilities to, the existing bank were secured thereby immediately before that date;

(c) the bank shall, in relation to any security transferred or deemed to have been transferred to it in accordance with or by virtue of the provisions of this Schedule and the moneys thereby secured in accordance with those provisions, be entitled to the same rights and priorities and subject to the same obligations and incidents as the existing bank from which the same has been transferred or deemed to have been transferred would have been entitled and subject to if the same had continued to be held by the existing bank; and

(d) the custody of any document, goods or other property held by an existing bank as bailee for any other person at any office or branch of that existing bank shall be transferred or deemed to be transferred to the bank on the effective date and the rights and obligations of that existing bank under any contract of bailment relating to such document, goods or property shall be transferred or deemed to be transferred on that date to the Bank.

Actions etc. not to abate.

5. Any action, arbitration or proceeding and any cause of action, arbitration or proceeding which shall, on the effective date, be pending or existing by, against or in favour of an existing bank shall not abate or be discontinued or be in any way prejudicially affected by reason of the provisions of this Schedule, but the same may be prosecuted, continued and enforced by, against or in favour of the bank as and when it might have been prosecuted,

continued and enforced by, against or in favour of an existing bank if this Schedule had not been commenced.

Documents etc. to remain evidence.

6. All documents, records and admissions which if this Schedule had not been enacted would have been evidence in respect of any matter for or against an existing bank shall, on and after the effective date, be admitted in evidence in respect of the same or the like matter for or against the bank.

Application of Chapter 108.

7. (1) Notwithstanding the transfer of the undertakings of the existing banks to the bank under and in the terms of this Schedule, the provisions of Chapter XIII of the Evidence Act (Chapter 108) shall continue to apply with respect to the books of the existing banks which are transferred to the bank by virtue of this Schedule and to entries made in such books before the effective date.

(2) In sub-paragraph (1), “books” has the same meaning as “bankers’ records” in section 176 of the Evidence Act (Chapter 108).

Application of documents.

8. (1) Subject to sub-paragraph (2), where any document whensoever made or executed contains any reference express or implied to an existing bank, such reference shall, on and after the effective date and except where the context otherwise requires, be read, construed and have effect as a reference to the bank.

(2) Without prejudice to the generality of sub-paragraph (1), where by any order of the court or by any trust deed, settlement, covenant or agreement or where by any will, codicil or other testamentary writing, whether made or executed before or after the effective date, an existing bank (whether alone or with any other person) was or is granted letters of administration or appointed trustee, executor, guardian or in any other fiduciary capacity, such order, trust deed, settlement, covenant, agreement, will, codicil or other testamentary writing shall not fail by reason of anything in this Schedule but shall, as from the effective date, be read and construed and have effect as if for any reference therein to that existing bank there was substituted a reference to the bank.

