

LAWS OF BRUNEI

CHAPTER 156

**NATIONAL BANK OF BRUNEI BERHAD ;
NATIONAL FINANCE SENDIRIAN BERHAD**

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**NATIONAL BANK OF BRUNEI BERHAD ;
NATIONAL FINANCE SENDIRIAN
BERHAD ACT**

An Act to make provision with respect to National Bank of Brunei Berhad and National Finance Sendirian Berhad, and for matters incidental thereto S.12/86

*Commencement : as to section 4 – 25th July 1986
as to rest of Act – 19th November 1986*

1. (1) This Act may be cited as the National Bank of Brunei Berhad ; National Finance Sendirian Berhad Act. Citation and application

(2) This Act and any regulation made hereunder shall, subject to any limitation expressly imposed thereon by the terms hereof, apply to all persons, notwithstanding they may not be citizens or residents of Brunei Darussalam.

2. In this Act, unless the subject or context otherwise requires — Interpretation

“Bank” means National Bank of Brunei Berhad, a company incorporated in Brunei Darussalam ;

“commencement” means the date of commencement of this Act ;

“connected person” means any person whom the Controller shall determine or deem to be a connected person for the purposes of this Act and may include —

(a) any person who at any time prior to commencement controlled or was concerned with the control or the management of the business and/or affairs of the Bank or the Finance Company whether directly or indirectly, in whole or in part, by operation of law, by contractual

right, by virtue of familial relationship, by arrangement (trust or other) or otherwise and irrespective of the manner in which such control or concern arose or was exercised ;

(b) any person who has at any time had an interest in the share capital of the Bank or the Finance Company ;

(c) any person who at any time prior to commencement was a director, banker, auditor, legal or other adviser or employee of the Bank or the Finance Company ;

(d) any person who has at any time had or continues to have in his possession or under his control any asset belonging to or financed by the Bank or the Finance Company ;

(e) any person who upon commencement is indebted to the Bank or the Finance Company ;

(f) any person who has lent money to or deposited money with the Bank or the Finance Company, whether or not the same remains outstanding upon commencement ;

(g) any person whom the Controller believes to possess any knowledge or information relating to the business dealings, affairs or assets of the Bank or the Finance Company ;

(h) any relative of any person referred to in paragraph (a), (b), (c), (d), (e), (f) or (g) ;

(i) any company (i) of which any person referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (h) is a director or officer ; (ii) over which

any such person has control (construed in accordance with paragraph (a)); or (iii) in any shares in the share capital of which any such person is interested, in each case upon commencement ; and

(j) any person in any other way connected or associated with or related to any person referred to in paragraph (a), (b), (c), (d), (e), (f), (g), (h) or (i) ;

“document” includes any paper, card, storage medium (magnetic or other) or other material or substance on or in which is written, printed, typewritten, lithographed, marked, captured, represented, reproduced or otherwise recorded or expressed any letter, figure, mark or any other visible, pictorial or audible representation ;

“excluded person” means any person whom the Controller may from time to time designate as an excluded person for the purposes hereof ;

“Finance Company” means National Finance Sendirian Berhad, a company incorporated in Brunei Darussalam ;

“former director” means any director of the Bank or the Finance Company who ceased to be director in accordance with section 5(2) ;

“former officer” means (a) any person removed from office by section 5(2) ; and (b) any person who was accustomed to act or did act in accordance with the instructions of any person removed from office by section 5(2) ; and (c) any person in accordance with whose instructions any person removed from office by section 5(2) was

accustomed or did act ; and (d) any other person who immediately prior to commencement was an officer of the Bank or the Finance Company ;

“passport” means any document issued by a competent authority whether in Brunei Darussalam or otherwise granting permission to the person specified in it to travel and authenticating his right to protection and shall include any document which establishes the identity of the holder ;

“person” includes an individual, body, company, corporation, sole trader, firm, joint venture, association, trust, syndicate, group, organisation, entity or a partnership of all or any of the foregoing, in each case whether or not having separate legal personality ;

“public officer” has the meaning ascribed thereto in the Constitution of Brunei Darussalam ;

“relative” in relation to any person includes —

(a) any spouse or any former spouse of such person ;

(b) any brother or sister of such person ;

(c) any brother or sister of any spouse or any former spouse of such person ;

(d) any lineal ascendant or descendant of such person ;

(e) any lineal ascendant or descendant of any spouse or any former spouse of such person ;

(f) any spouse or any former spouse or any person referred to in paragraph (b), (c), (d) or (e) ;

(g) any lineal ascendant or descendant of any person referred to in paragraph (b), (c) or (f) ;

“the Controller” means the person appointed by His Majesty the Sultan and Yang Di-Pertuan as Controller of the Bank and the Finance Company for the purposes of this Act ;

“the Minister” means the Minister of Finance.

3. The powers, duties and functions of the Controller under this Act shall be exercisable by the Controller and/or by any employee or officer or agent or adviser (including professional adviser) of the Ministry of Finance or any other public officer to whom, in each case, the Controller shall have delegated such powers, functions or duties. Accordingly, the expression “the Controller” when used herein shall also include any such delegate.

Exercise of powers, duties and functions of the Controller

4. (1) The Controller may investigate or enquire into the business and affairs of the Bank, the Finance Company or any connected person.

Powers of investigation

(2) For the purpose of any investigation or enquiry under section 4(1), the Controller may —

(a) enter and search any office, place of business or residence, and inspect any book or other document whatsoever, of the Bank, the Finance Company or any connected person ;

(b) require the Bank, the Finance Company or a connected person to produce to him any account, book or other document whatsoever within the custody or control thereof ;

(c) by notice in writing require any person whether or not a connected person to appear before him in order to answer any question as may be asked of such person in relation to the business or affairs of the Bank or of the Finance Company and may require that such answers be given on oath or affirmation ; and

(d) seize, take possession of and retain for such time as the Controller may deem necessary any object, article, material or thing, or any account, book or other document whatsoever relating to the Bank, the Finance Company or any connected person ; and/
or

(e) if a connected person is an individual, search him, provided always that whenever it is necessary to cause a woman to be searched, the search shall be made by another woman ; and

(f) seize, take possession of and retain for such time as the Controller may deem necessary the passport of any connected person.

(3) In conducting any examination under section 4(2)(c), the person conducting such examination may cause the proceedings of such examination to be recorded in writing.

(4) Any record of an examination made pursuant to section 4(3) shall be clearly read to and signed by the person examined, provided that if the person examined refuses to sign such record, the person conducting the examination shall endorse thereon under his hand the fact of such refusal and the reason thereof, if any, given by the person examined.

(5) Any finding, investigation report, examination record or other document relating to an investigation or enquiry under this Act shall, notwithstanding any other

written law or rule of law relating to evidence, be admissible in any proceeding under this Act or otherwise.

(6) The Controller may —

(a) grant permission to any person to have access to anything seized or of which possession is taken during the course of an investigation or enquiry under this Act ; or

(b) disclose or make available to any police officer or public officer any finding, investigation report, examination record or other document relating to an investigation or enquiry under this Act.

(7) If the Bank, the Finance Company or any person fails to comply with any requirement or refuses to answer any question which in any case is made or posed by the Controller in the exercise of his powers under the provisions of this section 4, such person shall be guilty of an offence: Penalty, imprisonment for 2 years and a fine of \$10,000.

(8) Whether or not any investigation or enquiry under section 4(1) has been commenced, any person who shall —

(a) conceal, hide, destroy or alter any object, article, material or thing, or any account, book or other document or any entry therein, of or relating to the Bank, the Finance Company or any connected person or the business or affairs thereof ;

(b) send any thing referred to in paragraph (a) out of Brunei Darussalam ; or

(c) sell, dispose of, charge, pledge, transfer or otherwise deal with or dissipate or remove from or send out of Brunei Darussalam, any money, property or asset belonging to or secured in favour of the Bank, the Finance Company or any connected person,

such person shall be guilty of an offence: Penalty, imprisonment for 2 years and a fine of \$10,000.

(9) Any person who wilfully makes any false statement in answer to a question asked of him under section 4(2)(c) shall be guilty of an offence: Penalty, imprisonment for a term of 2 years and a fine of \$10,000.

(10) Any person who wilfully obstructs the Controller in the exercise of powers under this section shall be guilty of an offence: Penalty, imprisonment for 2 years and a fine of \$10,000.

Management
of the Bank
and the
Finance
Company

5. (1) Management and control of each of the Bank and the Finance Company is hereby vested in the Controller as from commencement. Such management and control shall so vest in all respects without restriction together with all rights, privileges and advantages attaching thereto. The Controller shall thenceforth be entitled to exercise management and control of each of the Bank and the Finance Company to the exclusion of all other persons as if all rules of law had been complied with and everything necessary had been done to render such vesting fully effective.

(2) Upon commencement, all those persons who, immediately before commencement were directors of the Bank or the Finance Company shall cease to be directors thereof without any right to compensation from any person, and all such persons who also held executive offices in the Bank or the Finance Company shall simultaneously cease to hold those offices without right to compensation from any person.

(3) The Controller is hereby appointed as chairman and a director of each of the Bank and the Finance Company and shall hold each of those offices until an appointment is made to it under subsection (5).

(4) The Minister may, from time to time, appoint other persons as directors of each of the Bank and the Finance Company and may revoke such appointments.

(5) The Minister may, from time to time, appoint another director of the Bank or the Finance Company as the chairman thereof in place of the Controller and may revoke such appointment.

(6) Any person duly appointed as a director under section 5(3) or 5(4) shall be treated for all purposes as if he had been appointed at a general meeting of the Bank or, as the case may be, the Finance Company as a director thereof.

(7) The Minister may give to the directors of each of the Bank and the Finance Company such directions as he may consider necessary or expedient in the public interest as to the exercise and discharge of their powers, duties and functions.

(8) Upon commencement, that firm which, immediately before commencement acted as auditor of each of the Bank and the Finance Company shall cease to be auditor thereof without any right to compensation and the Controller shall appoint a firm in replacement therefor.

6. (1) Each former officer and the former auditors shall remain liable for all his or their acts and omissions in respect of the period prior to commencement.

Liability of
former
officers and
auditors

(2) If it appears to the Controller that at any time prior to commencement any business of either the Bank or the Finance Company was carried on with intent to defraud any person or for any fraudulent purpose, the High Court, on the application of the Controller, may, if it thinks proper so to do, declare that any person who was knowingly party to the carrying on of business in the aforesaid manner shall be personally responsible, without any limitation of liability (a) for all or any of the debts or other liabilities of the Bank or the

Finance Company as the High Court may direct ; and (b) to reimburse and indemnify each of the Bank and the Finance Company for and against all losses suffered by it as a result thereof.

(3) Any person who was knowingly party to the carrying on of business in the manner described in section 6(2) shall also be guilty of an offence : Penalty, imprisonment for 10 years and a fine.

Freezing of
accounts etc.

7. (1) Subject to section 7(2), neither the Bank nor the Finance Company shall from commencement make any payment to any person in respect of any loan made by such person to or any balance standing to the credit of any account held by such person with the Bank or, as the case may be, the Finance Company.

(2) Section 7(1) shall not apply to —

(a) all or any sum credited to an account of any person during the period from the ninetieth day prior to commencement to the tenth day after commencement by such person's employer in respect of such person's wages or salary or other amounts owing to such person arising from his employment ;

(b) all or any sum credited to a current account of any person in the ordinary course of business, provided that such account is utilised by such person in the operation of a lawful business carried on in Brunei Darussalam ; and

(c) all or any sum owed by the Bank or the Finance Company to or credited to any other account or accounts at the Bank or the Finance Company of any natural person resident in Brunei Darussalam up to in each case the aggregate amount of \$1,000 provided that this exclusion shall not apply to any sum owed to or credited to any account of an excluded person.

(3) Without limiting the generality of section 7(1) and in addition thereto but subject to section 7(2), from commencement —

(a) except with the permission of the Controller, no order given or request made by or on behalf of any person (other than the Controller) shall be carried out in so far as such order or request —

- (i) would require either the Bank or the Finance Company to make any payment or part with any asset ; or
- (ii) would require the Bank or the Finance Company to make any alteration in the person to whose credit any sum is to be held by it or to whose order any asset is to be held by it ; and

(b) no person shall demand payment of, realise, seek or acquire security for the performance of, dispose of, transfer, seek recovery of or otherwise deal with any obligation which the Bank or the Finance Company may owe to such person save in any case to the extent that the Controller may permit.

8. Where immediately before commencement, any property, facility or service not being the property of or provided by the Bank or the Finance Company was being used, enjoyed or employed by the Bank or the Finance Company in the carrying on of its business, the Bank or the Finance Company shall, notwithstanding any agreement to the contrary or the operation of any other written law, continue to have the right to use, enjoy or employ such property, facility or service upon the same terms and conditions, subject to section 9(3), as were applicable before commencement.

Continued
use of
property

9. (1) If either the Bank or the Finance Company has before commencement disposed of or charged any of its assets or extended any loan or other financial assistance in each case

Safeguarding
assets and
avoidance of
transactions

to any person, and, in the opinion of the Controller in the light of all circumstances of which he is aware, such disposal or charge or change was not made or such loan or financial assistance was not extended in good faith in the ordinary course of business of a financial institution, and a loss to the Bank or the Finance Company has arisen or does or could arise as a result of such disposal, charge, loan or financial assistance, the amount of the loss may be recovered as a civil debt from any former officer, any connected person or any manager or officer of the Bank or the Finance Company who was responsible therefor or from any other person who benefitted therefrom.

(2) Any civil proceeding for the recovery of a civil debt under section 6(2) may be brought by the Controller in the name of and on behalf of the Bank or the Finance Company.

(3) If either the Bank or the Finance Company has before commencement entered into a transaction which, in the opinion of the Controller was of such a nature that, as of the time it was entered into, could reasonably have been foreseen to be likely —

(a) to cause a loss to the Bank or, as the case may be, the Finance Company ; or

(b) to impose a liability on it greater than any benefit to it,

and which, in the opinion of the Controller —

(i) was both an unusual transaction for the Bank or, as the case may be, the Finance Company to enter into, having regard to the ordinary course of business of a financial institution, and not reasonably necessary for the purposes of its business having regard to circumstances at the time it was entered into ; or

- (ii) was a transaction entered into otherwise than in the ordinary course of business of a financial institution and on such terms or with such a party as to indicate an unreasonable lack of prudence on the part of the Bank or, as the case may be, the Finance Company, having regard to circumstances at the time it was entered into ; or
- (iii) was a transaction which was reasonably likely when entered into, to cause loss to the depositors in or lenders to the Bank or the Finance Company other than excluded persons or connected persons,

and upon commencement, the transaction remains in whole or in part unperformed or unexpired, the Bank or, as the case may be, the Finance Company shall, if so directed by the Controller, by notice in writing given to the other parties to the transaction, disclaim that transaction.

(4) Where a notice of disclaimer is given under section 9(3) with respect to any agreement, the agreement shall be deemed to be terminated on the date on which such notice is given.

(5) The performance of obligations and the payment of sums alleged by an excluded person or connected person to be owed by the Bank or the Finance Company to such excluded person or connected person shall be subject and subordinate to the prior payment by each of the Bank and the Finance Company of all of its other indebtedness as of commencement.

(6) The Controller may order any person he believes to be in possession or control of any asset owned by or secured in favour of either of the Bank or the Finance Company to deliver or re-deliver such asset to the Bank or, as the case may be, the Finance Company.

Share capital
etc.

10. (1) Upon commencement, all rights attaching to all shares or stock in the issued share capital of each of the Bank and its subsidiaries and the Finance Company shall be suspended until such time as the Controller orders the termination of such suspension.

(2) If, after commencement, a person other than the Controller would, apart from pursuant to this Act, have —

(a) a right to require the issue of, or to subscribe for or purchase, or otherwise acquire, any shares or stock in the capital of the Bank or the Finance Company ; or

(b) a right to appoint any person, or to be appointed, as a director or other officer of the Bank or the Finance Company ; or

(c) a right, whether express or implied, to exercise, whether wholly or in part, any power of control or direction of the Bank or the Finance Company, its management, property, assets or undertaking,

that right shall cease except to the extent directed by the Controller, provided that the cessation of a right of the type referred to in paragraph (a) shall in no way affect an obligation to subscribe for or purchase shares or stock referred to therein.

Actions
winding-up
etc.

11. (1) From commencement, no action or proceedings shall be proceeded with or commenced against the Bank or the Finance Company except by leave of the Controller and subject to such terms as the Controller may impose.

(2) If, at commencement, any action or proceeding against the Bank or the Finance Company are pending in any Court, such action or proceeding shall automatically be stayed until such time as the Controller may order to the contrary.

(3) Any attachment, sequestration, distress, execution or other enforcement proceeding against any of the assets, properties or undertaking of either of the Bank or the Finance Company whether in force at commencement or put in force thereafter shall be automatically stayed until such time as the Controller may order to the contrary.

(4) For so long as this Act shall remain in effect, neither the Bank nor the Finance Company shall be wound up or put into receivership except by proceedings instigated by the Controller.

12. (1) The Minister may, on behalf of the Government, in such manner and on such terms as he considers appropriate, guarantee any payment in respect of any liability of either of the Bank or the Finance Company.

Government
Guarantee

(2) Any sum required to fulfil any guarantee given under this section shall be charged on and raised out of the Consolidated Fund.

(3) The Bank or, as the case may be, the Finance Company shall reimburse the Government on demand for any payment made by the Government under any guarantee given under this section and from commencement all of the assets, properties (whether then owned or thereafter acquired) and undertaking of each of the Bank and the Finance Company shall be deemed charged to the Government by way of first fixed legal mortgage with the performance of its obligations under this section.

13. Without prejudice to the jurisdiction of the High Court, a Court of Magistrate shall have jurisdiction to try any offence against this Act or any regulation made thereunder, other than an offence under section 6(2) and (3), and notwithstanding the provisions of any written law to the contrary, such Court shall have power to impose the penalty or combination of penalties prescribed for any offence under this Act.

Jurisdiction
of Court of
Magistrate

Sanction to
prosecute

14. When any person is charged before a Court with an offence under this Act or any regulation made thereunder, no further proceedings in respect thereof shall be taken against him without the consent in writing of the Attorney General, except such as the Court may think necessary by remand whether in custody or otherwise to secure the due appearance of the person charged.

Protection of
Government
etc.

15. Neither the Government or the Minister or the Controller or any public officer shall be subject to any action, claim or demand by or liability to any person in respect of anything done or omitted to be done in good faith in pursuance or in execution or intended execution of any power, duty or function conferred by this Act or any regulation made thereunder.

Power
to make
regulations

16. (1) The Minister may make regulations providing for the carrying into effect of the purpose and intent of this Act.

(2) If any person contravenes this Act or any regulation or order made or given hereunder, he shall be guilty of an offence, and if no penalty has been prescribed for such offence: Penalty, imprisonment for 2 years and a fine of \$10,000.

Saving

17. This Act and each regulation made hereunder shall have effect and be enforceable notwithstanding anything to the contrary or inconsistent herewith or therewith contained in any other written law or any instrument having effect by virtue of any other written law or the memorandum or articles of association of either of the Bank or the Finance Company or any agreement to which either of the Bank or the Finance Company may be a party. In any case where the provisions of this Act or any regulation made hereunder conflict or are inconsistent with any of the foregoing, the provisions of this Act or such regulation shall prevail but otherwise the provisions thereof shall continue to apply to each of the Bank and the Finance Company.

18. The Controller may order that any former director or officer shall not be a director or officer of or in any way, whether directly or indirectly, be concerned with or take part in the management of any company for such period, not exceeding five years, as the Controller may consider appropriate.

Prohibition
against
former
director
or officer