

**LAWS OF BRUNEI**

**REVISED EDITION 1984**

**CHAPTER 95**

**BANKING**

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BANKING ACT

An Act to provide for the regulation and licensing of the business of banking

Commencement: 1st January 1957

18 of 1956  
5 of 1962  
S 43/92 act 2-12-92  
S 18/94 act 1-1-94  
S 30/95 act 1-6-95  
S 34/97 act 1-1-98  
Short title S 16/93 act 1-1-93

- 1. This Act may be cited as the Banking Act.
2. (1) In this Act —

“bank” means any company carrying on banking business or using the word “bank” or the equivalent thereof in any language other than English or in any dialect of such language or any derivative of the word “bank” or its equivalent as aforesaid as part of the title under which business is carried on or using any name implying that such person carries on the business of banking and holds a valid licence granted under this Act, but shall not include a registered co-operative society or a remittance shop duly registered or licensed under any written law;

Interpretation

“banking business” means the business of receiving money or current or deposit account, paying and collecting cheques drawn by or paid in by customers, the making of advances to customers, and includes such other business as His Majesty the Sultan and Yang Di-Pertuan in Council may prescribe for the purposes of this Act;

the Minister with the approval of Com S 18/94 act 1-1-94

“Clerk of Council” means the person appointed to the position of Clerk to the Council of Ministers;

“company” means a company incorporated in Brunei under the Companies Act or a company incorporated or registered under the law of any country provided that such company, if not incorporated in Brunei, has complied with the provisions of Part IX of the Companies Act;

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com s 43/92

“Islamic bank” means a bank licensed under the Emergency (Islamic Banking) Order, 1992;

“licensed bank” means a bank licensed under section 4.

“Minister” means the Minister responsible for finance (com s 30/99)

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(2) If it is provided in any section that the bank and every officer thereof who is in default shall be liable to a default fine the same shall mean that the bank and every officer thereof who knowingly and wilfully authorises or permits the default or contravention specified, shall for every day during which the default or contravention continues be liable to a fine of an amount not exceeding such amount as may be specified in such section.

Banking business to be transacted only by a company

3. (1) No banking business shall be transacted in Brunei except by a company.

(2) A contravention by any person of subsection (1) shall constitute an offence punishable by the penalty provided by section 15.

Banking business to be transacted only by a company licensed for such purpose

4. (1) Notwithstanding the provisions of any law to the contrary, no company shall continue or commence to carry on banking business in Brunei without obtaining from His Majesty in Council a licence so to do. His Majesty in Council may in his discretion, and without assigning any reasons therefor, refuse to grant such a licence.

(2) In the event of doubt as to whether a company is or is not carrying on banking business the matter shall be submitted to His Majesty in Council for determination and the decision of His Majesty in Council thereon shall be final and conclusive for all purposes of this Act.

(3) A contravention by any person of subsection (1) shall constitute an offence punishable by the penalty provided by section 15.

Minima for authorised capital

5. (1) The incorporation of a company which has as its object or one of its objects the carrying on of banking business shall not be authorised unless its authorised capital is not less than \$3,000,000.

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(2) Notwithstanding that section 94 of the Companies Act, shall have been complied with no company which has as its object or one of its objects the carrying on of

banking business, shall be entitled to commence to carry on business, unless —

(a) if its authorised capital is \$3,000,000 the sum has been subscribed and not less than \$1,500,000 have been paid up thereon in cash; or

(b) if its authorised capital is more than \$3,000,000, at least \$3,000,000 have been subscribed and not less than \$500,000 have been paid up thereon in cash.

(3) Notwithstanding anything contained in Part IX of the Companies Act, no company incorporated outside Brunei, which has as its object or one of its objects the carrying on of banking business shall continue or commence to carry on banking business within Brunei unless it has proved to the satisfaction of ~~His Majesty in Council~~ that it has a paid up capital of a sum which in his opinion is equivalent to an amount being not less than \$6,000,000.

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the Minister  
(am s 20/95  
act 1-6-95)

(4) Notwithstanding the provisions of subsection (3) a company incorporated outside Brunei which has as its object or one of its objects the carrying on of banking business, but does not intend to carry on banking business in Brunei, may commence business within Brunei upon the filing by the directors of such company with the Registrar of Companies of a declaration to the effect that the company will not carry on banking business in Brunei.

(5) Notwithstanding the provisions of the foregoing subsections, the statutory minima for paid up and authorised capital prescribed therein may be hereafter and from time to time amended by order of ~~His Majesty in Council~~ signified in the *Gazette*.

the Minister with the approval of His Majesty the Sultan and Yang Di-Pertuan  
(am s. 18/94 act 1-1-94)  
Reserve Fund

6. Every bank incorporated in Brunei shall maintain a reserve fund and shall out of the net profits of each year and before any dividend is declared, transfer a sum equivalent to

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not less than 20 per cent of such profits to the reserve fund, until the amount of the said fund is equal to the paid up capital.

For the purposes of this section "net profits" means the profits of the company calculated after allowing for all the usual working charges, interest on loans and advances, repairs and outgoings, depreciation, bounties or subsidies received from any Government or from a public body, profits by way of premium on shares sold, profits on sale proceeds of forfeited shares, or profits from the sale of the whole or part of the undertaking of the company but without any deduction in respect of income tax or any other tax or duty on income or revenue or for expenditure by way of interest on debentures, or otherwise on capital account or on account of any sum which may be set aside each year out of the profits for reserve or any other special fund.

6A ... Am S 30/95 waf 1-6-95  
6B ... Am S 16/94 waf 1-1-94

Restriction on use of word "bank"

Amel an Islamic bank (Am S. 43/92 waf 2-12-92)

7. (1) No person other than a licensed bank carrying on banking business in accordance with the provisions of section 4 shall, without the consent of ~~His Majesty in Council~~, use or continue to use the word "bank" or the equivalent thereof in any language or dialect other than English or any derivative of such word or equivalent in the name under which business is being carried on or continue to use any name implying that the business of banking is carried on.

the Minister S. 30/95

(2) Any person who acts in contravention of the provisions of this section shall be guilty of an offence and shall in addition to the penalty for such offence provided for by section 15 be liable to a fine of \$250 for every day, subsequent to the day of conviction of such offence, during which such offence continues.

(from S. 18/94 waf 1-1-94) Special powers of His Majesty in Council

The Minister

8. (1) ~~His Majesty in Council~~ may, if he considers it to be in the public interest so to do, order any licensed bank —

(a) to produce within such period as may be named in such order any books, accounts or documents of any such bank;

(b) to delete from the name under which it is carrying on business, within such period as shall be named in such order, the word "bank" or any derivative thereof, or any other word or words forming part of its name;

(c) to refrain from carrying on banking business;

(d) to return for cancellation by the Minister any licence issued to such bank under section 4:

Provided that before any order is made under paragraph (b), (c) or (d) notice in writing shall be given by the ~~Clerk of Council~~ Minister (Am S 18/14 with 1-1-79) to such licensed bank, that it is intended to make such an order and shall afford such licensed bank an opportunity of submitting a written statement of its case.

(2) Any licensed bank failing to comply with an order made under this section shall be guilty of an offence and shall in addition to the penalty provided for by section 15 be liable to a default fine of \$100 for every day during which the default continues after conviction.

(3) The Minister shall publish in the *Gazette* the name of any licensed bank the licence of which has been cancelled.

9. (1) ~~Every licensed bank shall pay to the Government~~ an annual fee of \$1,000 or such other amount as may be prescribed by His Majesty in Council. Such fee shall be payable as at the date of the grant of a licence in accordance with the provisions of section 4 and thereafter upon each anniversary of such date. Annual fee payable by licensed bank (Am S 18/14 with 1-1-79)

(2) A contravention of subsection (1) shall constitute an offence: Penalty, the penalty provided for by section 15 and in addition the bank and every officer thereof who is in default shall be liable to a default fine of \$250.

(3) The Minister shall publish annually in the *Gazette* the name of every licensed bank which has paid the annual fee prescribed in this section.

(4) ... § 18(14) until 1-1-04

Exhibition and publication of audited balance sheet by licensed bank

10. (1) Every licensed bank shall —

(a) on or before the thirtieth day of April in every year exhibit, and shall keep exhibited until the audited balance sheet for the succeeding year is so exhibited, in a conspicuous position in every office and branch of such bank in Brunei a copy of its audited balance sheet for the preceding financial year;

(b) on or about the date of the presentation of such balance sheet to the share holders in general meeting, cause a copy thereof to be published in the *Gazette*, and in a newspaper circulating in Brunei.

(2) Any licensed bank which fails to comply with the requirements of this section shall be guilty of an offence: Penalty, a fine of \$8,000.

Returns to be submitted

11. (1) Every licensed bank shall furnish to the Minister —

(a) not later than 42 days after the last day of June and December a statement in the form set out in the First Schedule showing the assets and liabilities of the bank at the close of business on the thirtieth day of June and the thirty-first day of December respectively;



(b) not later than 42 days after the last day of June and December a statement in the form set out in the Second Schedule giving an analysis of advances current and bills discounted as at the thirtieth day of June and the thirty-first day of December respectively; and

(c) within 20 days of the commencement of each month, a statement in the form set out in the Third Schedule, giving a statement of the assets and liabilities as at the close of business at the end of the preceding month:

Provided that in the case of a bank which is a company incorporated outside Brunei the statements to which reference is made in paragraphs (a), (b) and (c) shall comprise data only with respect to offices and/or branches of such company which are situated in Brunei:

dm 5/18/94 Provided further that <sup>the Minister with the approval of His Majesty the Sultan and Yang Di-Perduan (AM 5/18/94 with 1-1-94)</sup> ~~His Majesty in Council~~ may by order signified in the *Gazette* from time to time vary the form of the First, Second and Third Schedules, and the dates as at which the information required in the Second Schedule should be compiled and forwarded to the Minister.

(2) No information supplied by any licensed bank pursuant to the provisions of this section which might disclose the state of the banking account or accounts of any person shall be published or made public in any manner.

(3) A contravention of any of the requirements of subsection (1) shall constitute an offence: Penalty, the bank and every officer thereof who is in default shall be liable to a default fine of \$100.

12. The requirements of this Act shall be in addition to and not in derogation of the requirements of any written law relating to companies for the time being in force in Brunei. <sup>Saving of requirements of other law</sup>

Individuals not eligible to take part in management of licensed banks

**13. (1) No person —**

(a) who has been a director of, or directly or indirectly concerned in the management of a bank which has been wound up by a court; or

(b) who has been sentenced by a competent court to a term of imprisonment for an offence involving dishonesty and has not received a full pardon for the offence for which he was sentenced;

shall, without the express authorisation of <sup>the Minister</sup> ~~His Majesty in Council~~, act or continue to act as a director of, or be directly or indirectly concerned in the management of, any licensed bank.

(2) Any person contravening subsection (1) shall be guilty of an offence.

Power of entry, search, detention of documents and arrest

**14. Whenever it appears to a magistrate upon the oath of any person, that there is reasonable cause to suspect that a contravention of section 3 or 4 has been or is being committed in any building or place, such magistrate may by warrant directed to any police officer of or above the rank of Inspector empower him with such assistance as may be necessary by day or night —**

(a) to enter, and, if necessary, to break into such building or place and to search for and detain any machinery, type, appliances, paper, printing materials, writing materials, books, documents, accounts, notices or writings which appear to afford evidence of the commission of such contravention; and

(b) to arrest any person found in such building or place who may appear to be concerned with the commission of such contravention.

Dom S 20/95  
NCF 1-6-95

15. Any person who is guilty of an offence against this Act for which no other penalty is provided shall be liable to imprisonment for 3 years and to a fine of \$80,000.

General  
penalty

16. ... AM S. 15/94 ... 1-1-94

### FIRST SCHEDULE

(Section 11 (1) (a))

#### Statement of Assets and Liabilities of the

..... Bank, on the ..... day  
of ..... 19 .....

#### LIABILITIES

1. Subscribed capital.  
Paid up capital.  
Reserve fund.
2. Deposits payable after notice or on a fixed day.
3. Deposits on current account.
4. Balance due on current account to other banks.
5. Special advances by other banks.
6. Bills payable.
7. Bills received for collection.
8. Liabilities other than the foregoing.

#### ASSETS

1. Coin in bank coffers.
2. Coin in transit.
3. Bullion in hand or in transit.
4. Drafts on State Treasury.
5. Treasury Bills.
6. Brunei currency notes.
7. Balances due from other banks.
8. Bills under discount covered by bonds, shares and other securities.
9. Bills under discount covered by bonds, shares and other securities  
overdue and unpaid.
10. Bills under discount unsecured.
11. Bills under discount unsecured overdue and unpaid.
12. Loans and advances other than bills secured.  
Loans and advances unsecured.
13. Overdrawn accounts unsecured.

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- 14. Loans to Government.  
Loans to public bodies.  
Loans to public companies other than banks.
- 15. Advances to other banks.
- 16. Landed property other than bank premises.
- 17. Bank premises.
- 18. Other assets not included in the foregoing.

Aggregate amount of loans to and liabilities direct and indirect of directors or officers of bank and of any firm or partnerships in which they or any of them have any interest.

We declare that the foregoing return is made up from the books of the bank and that to the best of our knowledge and belief it is correct, and shows truly and clearly the financial position of the bank.

A.B. ....Director

C.D. ....Director

E.F. ....Accountant

or

A.B. ....Agent

SECOND SCHEDULE

(Section 11 (1) (b))

Name of Bank .....

ANALYSIS OF CUSTOMERS' LIABILITIES TO BANK

AS AT ..... FOR LOANS AND ADVANCES

	Amount	Number of
	\$	Customers
	<hr/>	
1. Government .....		
2. Local Councils .....		
3. Electricity, water, harbour, dock and other public utility bodies .....		
CREDIT AND FINANCIAL INSTITUTIONS :		
4. Banks, etc. ....		
PRIMARY PRODUCTION :		
5. Rubber .....		

- 6. Sago .....
- 7. Timber .....
- 8. Padi (including milling) .....
- 9. Pepper .....
- 10. Other agriculture (including livestock) .....
- FOR MANUFACTURE OF :
- 11. Textiles, leather and clothing .....
- 12. Wood products (including furniture) .....
- 13. Soaps and oils .....
- 14. Stone, cement, bricks, glass, ceramics and pottery .....
- 15. Other manufactured products .....
- CONSTRUCTION:
- 16. For buildings in course of erection .....
- GENERAL COMMERCE :
- 17. Wholesale and retail merchants .....
- 18. Copra and rubber shippers .....
- MISCELLANEOUS:
- 19. Transport services .....
- 20. Hotels and restaurants .....
- 21. Entertainments .....
- 22. Professional and private individuals .....
- 23. Building (mortgage)\* .....
- 24. Other advances .....

	Amount	Number of
	\$	Customers

- Number of customers liable in respect of loans and advances :
- Up to \$400.....
  - Over \$400 and up to \$800 .....
  - Over \$800 and up to \$4,000 .....
  - Over \$4,000 and up to \$8,000 .....
  - Over \$8,000 and up to \$40,000 .....
  - Over \$40,000 and up to \$80,000 .....
  - Over \$80,000 .....

TOTAL \$

*\*to include all mortgage loans which cannot be classified under items 1 to 19.*

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..... General Manager
..... Chief Accountant

Date .....

THIRD SCHEDULE

(Section 11 (1) (c))

Name of Bank .....
Month of ..... 19.....

Total Brunei
(All Branches)
\$

ASSETS

- 1. Cash on hand including bullion and non-Brunei currency notes
2. Treasury Bills
3. Investments in Government and other securities
4. Advances in current account, loans, fixed loans, past due loans, local bills discounted, sundry clients etc. (excluding balances due by other banks)

\$

LIABILITIES.

- 5. Current Accounts in all currencies, sundry clients, margins, etc. (excluding balances due to other banks)
6. Deposit receipts and fixed deposits in all currencies
7. Savings Deposits (not included elsewhere)

\$

VOLUME OF OPERATIONS DURING THE MONTH

- 8. Cheques sent out for clearing
9. Debits to current deposit accounts (excluding cheques received through local clearing)

I/We hereby certify that the above is a true and correct statement to the best of my/our knowledge and belief.

Signed .....

Name and address of Bank .....

Date .....19 .....