

LAWS OF BRUNEI

CHAPTER 89

FINANCE COMPANIES

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CHAPTER 89
FINANCE COMPANIES
ARRANGEMENT OF SECTIONS

Section

PART 1
PRELIMINARY

1. Citation
2. Interpretation

PART 2
LICENSING OF FINANCE COMPANIES

3. Licensing of finance company
4. Use of words “finance company”
5. Examination of persons suspected of transacting financing business
6. Application for licence
7. Minimum capital requirements of finance company
8. Restriction on company opening branches of finance company
9. Merger etc. of finance company
10. Amendment of constitution of finance company

11. Revocation of licence
12. Publication of list of finance companies

PART 3

RESERVE FUNDS, DIVIDENDS, BALANCE SHEETS
AND INFORMATION

13. Maintenance of reserve fund by finance companies
- 13A. Minimum cash balances
14. Restriction on payment of dividends by finance companies
15. Exhibition of balance sheet by finance companies
16. Information and statistics to be furnished by finance companies

PART 4

REGULATION OF BUSINESS

17. Acknowledgement of indebtedness
18. Demand deposits, dealings in foreign exchange etc. by finance companies
19. Dealing by finance company in own shares etc.
20. Restrictions on trade by finance companies
21. Restrictions on investments by finance companies
22. Restriction on holding immovable property by finance companies
23. Liquidation of prohibited transactions by finance companies
- 23A. Prohibition of credit facilities to director and officer
- 23B. Disclosure of interest by directors
24. Orders by Authority

PART 5

MINIMUM LIQUID ASSETS

25. Minimum holdings of liquid assets by finance companies

PART 6

INSPECTION OF FINANCE COMPANIES

26. Inspection of finance companies
27. Powers of Authority to issue orders after inspection

PART 7

SUBMISSION OF ACCOUNTS AND AUDITOR'S REPORT

28. Director to submit copy of profit and loss account and auditor to submit copy of his report to Authority

PART 8

GENERAL

29. Indemnity
30. Action by Minister if finance company cannot meet obligations
30A. Powers of Minister
30B. Finance company under control of Minister
30C. Disbursement of funds
30D. Appointment of Chairman and new Board members
30E. Remuneration and expenses of Minister and others
31. Moratorium
32. Memorandum and Articles of Association of finance company
33. Disqualification of directors or officers of finance company
33A. Approval of director etc. of finance company

34. Penalty for offences not otherwise provided for
 35. Offences by directors or managers
 36. Holding out as finance company
 37. *Fiat* of Attorney General
 38. Exemptions
 39. Winding-up provisions
 40. Liquidation of securities by finance company
 41. Operation of Act not to affect Chapter 39
 42. Regulations
 43. Courts of Magistrates to have full jurisdiction
 44. Memorandum and Articles of Association for Islamic financing business
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FINANCE COMPANIES ACT

An Act to licence and control finance companies and for matters connected therewith

Commencement: 1st August 1973
[E 1/1973]

PART 1 PRELIMINARY

Citation

1. This Act may be cited as the Finance Companies Act.

Interpretation

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

“auditor” means any person approved by the Minister as a finance company auditor for the purposes of this Act;

“Authority” means the Brunei Darussalam Central Bank established by the Brunei Darussalam Central Bank Order, 2010 (S 103/2010);

[S 17/2021]

“company” means a company incorporated or registered under the Companies Act (Chapter 39);

“deposit” means a sum of money received or paid on terms —

(a) under which it will be repaid, with or without interest, or at a premium or discount; or

(b) under which it is repayable, either wholly or in part, with any consideration in money or money’s worth,

such repayment being either on demand or at a time or in such circumstances agreed by or on behalf of the person making the payment and the person receiving it, regardless whether the transaction is described as a loan, credit facility, advance,

investment, saving, sale or sale and repurchase, but does not include money paid *bona fide* —

- (i) by way of an advance or a part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is not or are not in fact sold, hired, or otherwise provided;
- (ii) by way of security for the performance of a contract or by way of security in respect of any loss which may result from the non-performance of a contract;
- (iii) without prejudice to sub-paragraph (ii), by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise;

“depositor” means a person entitled, or prospectively entitled, to repayment of a deposit whether made by him or not;

“director” includes any person occupying the position of director of a finance company by whatever name called and includes a person in accordance with whose directions or instructions the directors of a finance company are accustomed to act and an alternate or substitute director;

“finance company” means any company licensed under this Act, to carry on financing business or Islamic financing business, and all branches and offices in Brunei Darussalam of such a company is deemed to be one finance company for the purpose of this Act:

“financing business” means the business of —

(a) borrowing money from the public, by acceptance of deposits and issuing certificates or other documents acknowledging or evidencing indebtedness to the public and undertaking to repay the money on call or after an agreed maturity period;

(b) lending money to the public or to a company on the basis that the public or the company undertakes to repay the money, whether within an agreed period of time or not, or by installments, and shall include the business of financing

hire-purchase transactions arising out of hire-purchase agreements, where the money used, or to be used, for such business is borrowed from the public;

“Islamic financing business” means financing business the aims and operations of which do not involve any element which is not approved by *Hukum Syara*’;

“Minister” means the Minister responsible for finance;

“public company” means a company incorporated in Brunei Darussalam other than a private company.

PART 2

LICENSING OF FINANCE COMPANIES

Licensing of finance company

3. (1) No financing business shall be transacted in Brunei Darussalam except by a company that is in possession of a valid licence granted by the Authority, authorising it to conduct financing business or Islamic financing business in accordance with the provisions of this Act.

(2) Any person who contravenes the provisions of subsection (1) is guilty of an offence and liable on conviction to a fine of \$20,000 and imprisonment for 5 years.

Use of words “finance company”

4. No person or body of persons, whether incorporated or not, other than a finance company licensed under this Act shall, without the consent of the Authority —

(a) use the words “finance company” or any of its derivatives in any language, or any other words indicating that it transacts financial business, in the name, description or title under which such persons or body of persons is transacting business in Brunei Darussalam; or

(b) make or continue to make any representations to such effect in any bill-head, letter paper, notice, advertisement or in any other manner whatsoever:

Provided that nothing in this section shall prohibit an association of finance companies formed for the protection of common interests from using the words “finance company” or any of its derivatives in any language as part of its name or description of its activities.

Examination of persons suspected of transacting financing business

5. (1) Whenever the Authority has reason to believe that a person is conducting financing business or Islamic financing business without a licence, he may call for the books, accounts and records of such person in order to ascertain whether or not such person has violated or is violating, any provisions of this Act, and any person wilfully refusing to submit such books, accounts and records is guilty of an offence and liable on conviction to a fine of \$4,000 and imprisonment for 2 years.

(2) Upon the conviction of any person for an offence against subsection (1), a Court of a Magistrate shall have power to order the production of any books, accounts and records to the Authority and any person failing to comply with such order is guilty of an offence and liable on conviction to a fine of \$4,000 and imprisonment for 2 years and, in the case of a continuing offence, to a fine of \$100 for each day during which the offence continues.

Application for licence

6. (1) As from the date of the coming into operation of this Act, any public company proposing to conduct financing business or Islamic financing business in Brunei Darussalam shall, before commencing any such business, apply in writing to the Authority for a licence under this Act.

(2) In considering any application by a public company for a licence, the Authority may require to be satisfied as to —

- (a) the financial condition of the company;
- (b) the character of the management of the company;
- (c) the adequacy of the capital structure and earning prospects of the company;
- (d) the objects of the company as disclosed in its memorandum of association;

(e) the convenience and needs of the community to be served;

(f) whether the public interest will be served by the granting of a licence; and

(g) in the case of an Islamic financing business, that the finance company will comply with the doctrines of Islamic Religion, and that proper provision will be made in the finance company's constituting documents for the appointment of, and the provision of advice by, the appropriate Syariah advisory body.

(3) The Authority may grant a licence with or without conditions, or refuse to grant a licence.

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

(5) Where a licence is granted subject to conditions, the finance company shall comply with those conditions and any finance company that fails to comply with any conditions of its licence is guilty of an offence and liable on conviction to a fine of \$2,000.

Minimum capital requirements of finance company

7. Subject to the provisions of this Act, no finance company shall be granted or shall hold a licence unless its capital, issued and paid up in cash, and unimpaired by losses or otherwise, is not less than \$25,000,000.

Restriction on company opening branches of finance company

8. (1) No finance company shall open any new branch, agency or office, whether inside or outside Brunei Darussalam, without submitting an application in writing to the Authority.

(2) In considering such application, the Authority may require to be satisfied by an inspection under section 26 or otherwise, as to —

(a) the financial condition of the company;

(b) the general character of the management of the company;

(c) the adequacy of the capital structure and earning prospects of the company;

(d) the convenience and needs of the community to be served;
and

(e) whether the public interest will be served by the opening or, as the case may be, change of location of the place of business.

(3) Upon being so satisfied as to the matters referred to in subsection (2), the Authority may —

(a) grant the application; or

(b) without assigning any reason therefor, refuse to grant the application,

and his decision thereon shall be final.

(4) Any finance company that fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine of \$2,000 for every day during which the default continues.

Merger etc. of finance company

9. (1) No finance company carrying on business in Brunei Darussalam shall be merged or consolidated with or acquire a majority interest in any other finance company without the prior approval of the Authority.

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

(3) The Authority may —

(a) approve the application; or

(b) refuse the application.

Amendment of constitution of finance company

10. (1) Every finance company that intends to alter its Memorandum of Association or Articles of Association shall, before proposing any resolution in this regard, furnish to the Authority for its approval, particulars in writing (verified by a statutory declaration made by the secretary of the finance company) of that proposed alteration.

(2) The Authority may thereupon —

- (a) approve the proposed alteration without modification;
- (b) approve the proposed alteration with modification; or
- (c) refuse to approve the proposed alteration.

(3) If the Authority —

(a) approves the proposed alteration with modification, the finance company shall adopt the proposed alteration as so modified or not proceed with the proposed alteration; and

(b) refuses to approve the proposed alteration, it may request the finance company to withdraw the proposed alteration and the finance company shall comply with the Authority's request.

(4) Any finance company which fails to comply with the requirement of subsection (1) or with any request by the Authority made under subsection (3) is guilty of an offence and liable on conviction to a fine of \$1,500 for every day during which the default continues.

Revocation of licence

11. (1) The Authority —

(a) shall, by order, revoke the licence of a finance company if the company ceases to carry on the business for which it has been licensed in Brunei Darussalam or goes into liquidation or is wound up or otherwise dissolved;

(b) may, in its discretion, by order, revoke the licence of a finance company if, in his opinion, the finance company —

- (i) is carrying on its business in a manner likely to be detrimental to the interests of its depositors;
- (ii) has insufficient assets to cover its liabilities to its depositors;
- (iii) carries on business while its paid-up capital (unimpaired by losses or otherwise) is less than \$1,000,000; or

- (iv) is contravening or has contravened the provisions of this Act; and
- (c) may, also in its discretion, by order, revoke the licence of a company —
 - (i) if the finance company or any person who is in a managerial or executive position in that finance company has been convicted of any offence against this Act; or
 - (ii) if it considers it in the public interest to do so:

Provided that before revoking any licence, the Authority shall give the finance company notice in writing of its intention to do so, specifying a date, not less than 21 days after the date of the notice, upon which such revocation shall take effect and calling upon the finance company to show cause to the Authority why such licence should not be revoked.

(2) Where the Authority has revoked a licence under the provisions of subsection (1), he shall forthwith inform the finance company by notice in writing of such revocation.

Publication of list of finance companies

12. The Authority shall cause to be published in the *Gazette* in the month of April in each year a list of all finance companies to which licences have been issued under this Act and if any licence is issued or revoked during the interval between the publication of two such lists, notice thereof shall also be caused to be published in the *Gazette*.

PART 3

RESERVE FUNDS, DIVIDENDS, BALANCE SHEETS AND INFORMATION

Maintenance of reserve fund by finance companies

- 13.** Every finance company shall —
- (a) maintain a reserve fund;

(b) if the paid-up capital of the finance company is not less than \$2 million, transfer to such reserve fund out of the net profits of each year after due provision has been made for taxation —

- (i) so long as the amount of the reserve fund is less than 50 *per cent* of the paid-up capital, a sum equal to not less than 30 *per cent* of the net profits;
- (ii) so long as the amount of the reserve fund is not less than 50 *per cent* but less than 100 *per cent* of the paid-up capital, a sum equal to not less than 15 *per cent* of the net profits;
- (iii) so long as the amount of the reserve fund is not less than 100 *per cent* of the paid-up capital, a sum equal to not less than 5 *per cent* of the net profits; and

(c) if the paid-up capital of the finance company is less than \$2 million, transfer to such reserve fund out of the net profits of each year after due provision has been made for taxation —

- (i) so long as the amount of the reserve fund is less than 50 *per cent* of the paid-up capital, a sum equal to not less than 50 *per cent* of the net profits;
- (ii) so long as the amount of the reserve fund is not less than 50 *per cent* but less than 100 *per cent* of the paid-up capital, a sum equal to not less than 25 *per cent* of the net profits;
- (iii) so long as the amount of the reserve fund is not less than 100 *per cent* of the paid-up capital, a sum equal to not less than 10 *per cent* of the net profits.

Minimum cash balances

13A. (1) The Authority may require finance company to maintain minimum cash balances, not exceeding 30 *per cent* of each finance companys' 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 prescribe different ratios for different types of liabilities and may further

prescribe the method of computing the amount of the required reserves, but the ratios shall be uniform for all finance companies.

(3) Any prescription of, or change in, the minimum reserve requirements under subsection (1) or (2) shall take effect only after the expiration of 30 days' notice to the finance companies of the Authority's intention to take such action.

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

(5) If the defaulting finance company fails to make good the deficiency within the period specified in the order referred to in subsection (4), it shall be lawful, notwithstanding the provisions of any other written law, for the Authority to serve a notice in writing upon any other finance company with which the defaulting finance company has a credit balance, whether in current or deposit account, directing that finance company to transfer to the Authority such amount (not exceeding such credit balance) as is specified in the notice as being equivalent to the amount of the deficiency in the minimum cash balances of the defaulting finance company required under subsection (1) and the other finance company shall immediately comply with the requirements of that notice.

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

(7) The Authority may, in addition to any action taken under subsections (4) and (5), impose on any finance company that fails to maintain sufficient minimum cash balances required under subsection (1) a penalty interest charge of \$1,000 per day or such larger amount as the Authority may determine for every day during which the deficiency continues.

(8) Any finance company that fails or refuses to pay a penalty interest charge under subsection (7) is guilty of an offence against this Act, punishable under section 34(1).

Restriction on payment of dividends by finance companies

14. No finance company shall pay any dividend on its shares until all its capitalised expenditure (including preliminary expenses, organisation expenses, share selling commission, brokerage, amount of losses incurred and any item of expenditure not represented by tangible assets) has been completely written off.

Exhibition of balance sheet by finance companies

15. Every finance company shall exhibit throughout the year, in a conspicuous position in every office and branch of that finance company, a copy of its last audited balance sheet together with the full and correct names of all persons who are directors of the finance company, as soon as such balance sheet is audited. A copy of such balance sheet shall be published in at least one of the local newspapers not later than 6 months after the end of each financial year.

Information and statistics to be furnished by finance companies

16. (1) Every finance company shall furnish to the Authority at such time and in such manner as the Authority may prescribe, all such information and data as he may reasonably require for the proper discharge of his functions under the provisions of this Act.

(2) Every finance company that fails or neglects to furnish any information required by the Authority under subsection (1) and within the time specified by the Authority is guilty of an offence and liable on conviction to a fine of \$4,000 for every day during which the default continues.

PART 4

REGULATION OF BUSINESS

Acknowledgement of indebtedness

17. Where a finance company has accepted money from any person as a deposit, the company shall within 2 months after the acceptance of the

money issue to that person a document which acknowledges or evidences or constitutes an acknowledgement of the indebtedness of the company in respect of that deposit.

Demand deposits, dealings in foreign exchange etc. by finance companies

18. (1) No finance company shall —

(a) accept any deposit which is repayable on demand by cheque, draft or order drawn by a depositor on the finance company;

(b) deal in gold or foreign exchange of whatever kind;

(c) grant unsecured advances, unsecured loans or unsecured credit facilities which in the aggregate and outstanding at any one time exceed 10 *per cent* of the paid-up share capital and published reserves of the finance company and which as regards —

(i) any individual director whether borrowing on his own account or jointly with another director;

(ii) a firm in which it or any of its directors has an interest as a partner, manager or agent, or to any individual or firm of whom or of which any of its directors is a guarantor;

(iii) any other person or body of persons whether incorporated or not,

exceed at any time the sum of \$5,000; and

(d) grant or permit to be outstanding to any customer any advances, loans or credit facilities, or give financial guarantees or incur any other liabilities on his behalf to an aggregate amount of such advances, loans or credit facilities, guarantees or liabilities in excess of 60 *per cent* of the paid-up share capital and published reserves of the finance company:

Provided that, with the approval of the Authority, the percentage referred to in this paragraph may be increased to 100 *per cent* of the paid-up share capital and published reserves of the finance company.

(2) In subsection (1)(c) —

“directors” include the husband, wife, father, mother, son or daughter of a director;

“unsecured advances”, “unsecured loans” or “unsecured credit facilities” mean advances, loans or credit facilities made without security or, in respect of any advance, loan or credit facility made 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 the Authority.

(3) All the directors of a finance company shall be liable jointly and severally to indemnify a finance company against any loss arising from the making of any unsecured advance, loan or credit facility under subsection (1)(c)(ii) or (iii).

Dealing by finance company in own shares etc.

19. (1) Except as is otherwise expressly provided by this Act, no finance company shall give, whether directly or indirectly and whether by means of a loan guarantee or the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of, or for, any shares in the finance company or, where such company is a subsidiary, in its holding company, or in any way purchase, deal in or lend money on its own shares.

(2) Nothing in subsection (1) shall prohibit —

(a) the provision by a finance company, in accordance with any scheme for the time being in force, of money for the purchase of or subscription for fully-paid shares in the finance company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of such company, including any director holding a salaried employment or office in such company; or

(b) the giving of financial assistance by a finance company to persons, other than directors, *bona fide* in the employment of that company or of a subsidiary of that company with a view to enabling those persons to purchase fully-paid shares in the finance company to be held by themselves by way of beneficial ownership.

(3) If there is any contravention of this section, the finance company and every officer of such company who is in default is guilty of an offence and liable on conviction to a fine of \$8,000 or imprisonment for 3 years.

(4) Nothing in this section shall operate to prevent the finance company from recovering the amount of any loan made in contravention of this section or any amount for which it becomes liable on account of any financial assistance given in contravention of the provisions of this section.

Restrictions on trade by finance companies

20. (1) No finance company shall engage, whether on its own account or on a commission basis, and whether alone or with others, in the wholesale or retail trade, including the import or export trade, except for the purpose of carrying on its financing business or Islamic financing business.

(2) Except as provided in this Act, a licensed finance company shall not carry on any kind of business other than financing business or Islamic financing business.

Restrictions on investments by finance companies

21. (1) No finance company shall acquire or hold any part of the share capital of, or otherwise have a direct interest in, any financial, commercial, agricultural, industrial or other undertaking exceeding in the aggregate 25 *per cent* of the paid-up share capital and published reserves of that finance company except such shareholding as the finance company may acquire in the course of realising debts due to it, which shareholding shall however, be disposed of at the earliest suitable moment.

(2) Notwithstanding the provisions of subsection (1), the percentage holding or interest referred to in that subsection may upon application of a finance company to the Authority, and with the consent of the Authority, be increased to not more than 50 *per cent* of the paid-up share capital and published reserves of that finance company.

Restriction on holding immovable property by finance companies

22. (1) No finance company shall purchase or acquire any immovable property, or any right, title or interest therein, exceeding in the aggregate at any one time 25 *per cent* of the finance company's paid-up share capital and published reserves, except as may be reasonably necessary for the purpose of

conducting its business or of housing or providing amenities for its staff but this shall not prevent a finance company from —

(a) letting part of any building which is used for the purpose of conducting its business; or

(b) securing a debt on any immovable property and, in the event of default in payment of such debt, from holding that immovable property for realisation by sale or auction at the earliest suitable moment.

(2) This section does not apply to such property as may from time to time be approved by the Authority.

Liquidation of prohibited transactions by finance companies

23. Any company which, before 1st August 1973, being the date of the coming into operation of this Act, had entered into any transaction prohibited by the provisions of sections 18, 19, 20, 21 and 22 shall, if it is licensed under this Act —

(a) within 6 months of that date, submit a statement of those transactions to the Authority; and

(b) furthermore within that time, or such further time as the Authority may specify, liquidate those transactions or failing liquidation of those transactions be subject to the restrictions specified in sections 18, 19, 20, 21 and 22 and be bound accordingly to dispose of any movable or immovable property, or any right, title or interest therein as may have been acquired as a result of those prohibited transactions.

Prohibition of credit facilities to director and officer

23A. (1) Unless exempted by the Authority in writing with or without conditions, or except as provided under subsection (2) or (3), no finance company shall give any credit facility to —

(a) any of its directors or officers or any other person receiving remuneration from it (other than any accountant, advocate, architect, estate agent, doctor and any other person receiving remuneration from it in respect of his professional services);

(b) any body corporate or unincorporate, firm or sole proprietorship, in which any of its directors or officers is a director or manager, or for which any of its directors or officers is a guarantor or an agent;

(c) any company in which any of its directors or officers has any interest in the shares of that company; or

(d) any person for whom any of its directors or officers has given any guarantee or other undertaking whatsoever involving financial liability.

(2) A finance company may give to any of its officers or its executive director —

(a) any credit facility which is provided for under his scheme of service; or

(b) where there is no such provision and the finance company is satisfied that special or compassionate circumstances exist, a credit facility not exceeding at any one time —

(i) 6 months' remuneration of that officer or executive director; or

(ii) his remuneration for such longer period as may be approved by the Authority,

and subject to such other terms and conditions as the finance company thinks fit.

(3) The provisions of —

(a) subsection (1)(a) does not apply to the giving of any credit facility to the spouse, child or parent of an officer, including an executive director, of that finance company for the purchase of a residence; and

(b) subsection (1)(c) does not apply to the giving of any credit facility by a finance company to a company in which none of the directors or officers of that finance company has any material interest in the shares of that company.

(4) In this section —

(a) “director” or “officer” includes a spouse, child or parent of that director or officer; and

(b) the Authority shall specify what constitutes a material interest in the shares of a company.

Disclosure of interest by directors

23B. (1) Every director of a finance company who has in any manner, whether directly or indirectly, any interest in an advance, loan or credit facility or proposed advance, loan or credit facility from that finance company shall as soon as practicable declare in writing the nature of that interest to the board of directors, and the secretary of that finance company or other officer appointed by it for that purpose shall cause a copy of such declaration to be circulated forthwith to all directors.

(2) The requirements of subsection (1) do not apply where —

(a) the interest of any director consists only of being a director, officer or member of a body corporate or unincorporate, or a director or officer of a sole proprietorship or a firm which is interested in an advance, loan or credit facility or proposed advance, loan or credit facility from that finance company; and

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

(3) For the purposes of subsection (1), a general notice given to the Board of Directors of a finance company by a director to the effect that he is a director, an officer or member of the body corporate or unincorporate, or a director or officer of the sole proprietorship or the firm to which the credit facility is given or proposed to be given shall be a sufficient declaration of interest in relation to such credit facility or proposed credit facility if —

(a) it specifies the nature and extent of his interest in the body corporate or unincorporated, sole proprietorship or firm;

(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 the meeting of Board of Directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of Board of Directors after it has been served on each of the directors.

(4) Every director of a finance company who holds any office or possesses any property whereby, directly or indirectly, duties or interest might be created in conflict with his duties or interest as a director of that finance company, shall declare at a meeting of Board of Directors of that finance company the fact of his holding such office or possessing such property 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 became a director of the finance company; or

(b) if already a director, after he commenced to hold that office or to possess that property.

(6) The secretary of the finance company or its other officer referred to in subsection (1) shall record any declaration made under this section in the minutes of the meeting at which it was made or at which it was brought up and read.

(7) Any director who contravenes subsection (1) or (4) is guilty of an offence and liable on conviction to a fine not exceeding \$50,000 and imprisonment for a term not exceeding 3 years or both.

Orders by Authority

24. (1) The Authority may, by order, prescribe —

(a) the maximum rates of interest or profit that finance companies shall pay on different types or classes of deposits;

(b) the maximum amount or amounts, expressed as percentage or percentages, of total assets that finance companies may hold in one or more types or classes of loans, or advances;

(c) the minimum down payments and maximum maturity periods for different types or classes of loans or advances granted by finance companies;

- (d) the maximum rates of interest, profit or commission and other charges and the methods of computing such interest, profit or commission and other charges that finance company may impose on different types of classes of loans, or advances granted by them; and
- (e) the maximum amount of loans or advances which finance companies may grant to any person or class of persons.
- (2) Any order made under subsection (1) applies uniformly to all finance companies, or to any class or classes of finance companies, and shall, together with its effective date, be published in the *Gazette*.

PART 5

MINIMUM LIQUID ASSETS

Minimum holdings of liquid assets by finance companies

25. (1) Every finance company shall maintain a minimum holding of liquid assets.

(2) The minimum amount of liquid assets to be maintained by finance companies shall be determined by the Authority and shall be expressed as a percentage of the liabilities of each finance company on account of deposits.

(3) The Authority shall prescribe the method of computing the amount of liquid assets to be held by finance companies.

(4) For the purposes of this section, “liquid assets” means all or any of the following —

- (a) notes and coins that are legal tender in Brunei Darussalam;
- (b) net balances at banks in Brunei Darussalam;
- (c) net money at call in Brunei Darussalam;
- (d) other assets that the Authority may prescribe.

(5) Any finance company that fails to comply with any requirements of this section shall be liable, on being called upon to do so by the Authority

(in addition to any other penalty that may be imposed under this Act) to pay a penalty interest charge not less than one-fifteenth of one *per cent* of the amount of the deficiency for every day during which the default continues and shall not while the default continues accept any deposits or enter into new commitments without the approval of the Authority.

PART 6

INSPECTION OF FINANCE COMPANIES

Inspection of finance companies

26. (1) The Authority may inspect or cause to be inspected under conditions of secrecy, the books, accounts and transactions of any finance company and of any branch, agency or office outside Brunei Darussalam opened by a finance company incorporated in Brunei Darussalam.

(2) The Authority may make an investigation, under conditions of secrecy, of the books, accounts and transactions of a finance company, if he has reason to believe that such finance company is carrying on its business in a manner detrimental to the interest of its depositors and other creditors or it is not conducting its Islamic financing business according to the directions of the Syariah advisory body or has insufficient assets to cover its liabilities to the public, or is contravening the provisions of this Act.

(3) The Authority may appoint any auditor, other than the auditor appointed by the finance company under the provisions of section 131 of the Companies Act (Chapter 39) to exercise the powers of the Authority under subsections (1) and (2).

(4) For the purpose of an inspection or investigation under this section, a finance company shall afford the Authority access to its books, accounts and documents and shall give such information and facilities as may be required to conduct the investigation:

Provided that such books, accounts and documents shall not be required to be produced at such times and at such places as shall interfere with the proper conduct of the normal daily business of that finance company.

(5) If any book, account or document or information is not supplied in accordance with subsection (4), the finance company concerned is guilty of an offence and liable on conviction to a fine of \$8,000 and to a further fine

of \$1,000 in respect of every day during which the default continues after conviction.

(6) *(Deleted)*.

Powers of Authority to issue orders after inspection

27. (1) If the Authority finds upon an inspection under section 26 that the affairs of a finance company is contrary to *Hukum Syara'* in relation to Islamic financing business are being conducted in a manner likely to be detrimental to the interests of the depositors or prejudicial to the interests of the finance company or contrary to *Hukum Syara'* in relation to Islamic financing business, the Authority may by order require the finance company or contrary to *Hukum Syara'* in relation to Islamic financing business to take such corrective action as the Authority considers to be necessary or require the finance company or contrary to *Hukum Syara'* in relation to Islamic financing business to discontinue such practices or procedures.

(2) No order shall be issued under subsection (1) unless the finance company has been given a reasonable opportunity to present its views to the Authority.

(3) The Authority may, upon representation being made to him, or on his own motion, modify or cancel any order issued under subsection (1), and in so modifying or cancelling any order, may impose such conditions as he thinks fit.

PART 7

SUBMISSION OF ACCOUNTS AND AUDITOR'S REPORT

Director to submit copy of profit and loss account and auditor to submit copy of his report to Authority.

28. (1) The directors of a finance company shall submit to the Authority a copy of the profit and loss account and balance sheet made out pursuant to section 122 of the Companies Act (Chapter 39).

(2) Every auditor of a finance company shall submit to the Authority a copy of his report as to every balance sheet and profit and loss account (including every consolidated balance sheet and consolidated profit and loss account) that he is required under section 133 of the Companies Act (Chapter 39) to make to members of the finance company.

PART 8

GENERAL

Indemnity

29. Neither the Government nor the Authority, nor any officer of the Government or the Authority, 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 or in connection with the execution of any power conferred on the Government, the Authority, or any officer of the Government or the Authority by this Act.

Action by Minister if finance company cannot meet obligations

30. (1) Where a finance company —

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

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

it shall forthwith inform the Minister of such fact.

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

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

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

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

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

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

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

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

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

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

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

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

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

Powers of Minister

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

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

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

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

Finance company under control of Minister

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

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

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

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

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

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

Disbursement of funds

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

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

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

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

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

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

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

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

(6) Where —

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

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

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

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

Appointment of Chairman and new Board members

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

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

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

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

(3) Under subsection (2), the Minister shall appoint to a new Board of Directors not less than three persons but not more than twenty persons,

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

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

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

(6) Notwithstanding his removal from office under 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 Minister and others

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

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

Moratorium

31. (1) The Authority may, if he considers it to be in the interests of the depositors of a finance company, by order —

(a) prohibit a finance company from carrying on its business; and

(b) stay the commencement or continuance of any actions or proceedings against a finance company in regard to its business for a specified period of time on such terms and conditions as he deems reasonable, and may extend the period up to a total period of moratorium of not more than 6 months.

(2) So long as an order under subsection (1) remains in force, any licence granted to such finance company under this Act shall be suspended.

Memorandum and Articles of Association of finance company

32. (1) Every company that was not carrying on financing business in Brunei Darussalam before 1st August 1973, being the date of the coming into operation of this Act shall, before it is granted a licence by the Authority to carry on financing business under this Act, include in its Memorandum of Association or Articles of Association the restrictions, limitations and prohibitions contained in sections 18, 19, 20, 21 and 22.

(2) Every company that —

(a) has carried on financing business in Brunei Darussalam before 1st August 1973, being the date of the coming into operation of this Act; and

(b) is licensed under this Act,

but whose Memorandum of Association or Articles of Association does not include all or any of the restrictions, limitations or prohibitions contained in sections 18, 19, 20, 21 and 22, is deemed to have included in its Memorandum of Association or Articles of Association all or any of such restrictions, limitations or prohibitions as are not so included.

(3) To the extent that any such restriction, limitation or prohibition so deemed to have been included in the Memorandum of Association or Articles of Association under subsection (2), is inconsistent with any provisions already included in the Memorandum of Association or Articles of Association, that restriction, limitation or prohibition shall prevail over such provision.

Disqualification of directors or officers of finance company

33. (1) Without prejudice to anything contained in the Companies Act (Chapter 39), no person shall be appointed or elected, or accept appointment or election, as a director, manager, secretary or other officer concerned in the management of a finance company —

(a) if he becomes bankrupt, suspends payments or compounds with his creditors, whether within or outside Brunei Darussalam;

(b) if a charge for a criminal offence relating to dishonesty, fraud or violence has been proved against him in any court within or outside Brunei Darussalam;

(c) if there has been made against him any order of detention, supervision, restricted residence, banishment or deportation, or if there has been imposed on him any form of restriction or supervision by bond or otherwise, under any law relating to prevention of crime, or to preventive detention for prevention of crime or drug trafficking, or to restricted residence, or to banishment or immigration; or

(d) if he has been director of, or directly concerned in the management of, any corporation which is being or has been wound up by a court or other authority competent to do so within or outside Brunei Darussalam, or of any finance company, the licence of which has been revoked under this Act.

(2) Except with the approval of the Authority, no person who is subject to the disqualification under subsection (1)(d) may —

(a) be appointed or elected, or accept appointment or election;
or

(b) notwithstanding anything in subsection (3), continue in his office,

as a director, manager, secretary, or other officer concerned in the management of any finance company.

(3) Where a person who is a director, manager, secretary, or the officer concerned in the management of a finance company, becomes subject to any of the disqualifications mentioned in subsection (1), he shall

immediately cease to hold office, and the finance company shall immediately terminate his appointment in such capacity.

(4) Whilst criminal proceedings are pending in any court for any offence as is referred to in subsection (1)(b) against any person who is a director, manager, secretary, or other officer concerned in the management of a finance company, such person shall not act in such capacity, or hold any other office, or act in any other capacity, in that finance company, or in any manner, whether directly or indirectly be concerned with, or take part or engage in, any activity, affairs or business whatsoever of or in relation to that finance company, except as may be authorised by the Authority, subject to such conditions as it may impose.

(5) For the purpose of subsection (4), criminal proceedings referred to therein are deemed to be pending from the date that the accused person was first charged in court for the offence until the date of the final conclusion of the proceedings, whether in the court of original jurisdiction or, in the event of any appeal by any party, in the court of final appellate jurisdiction.

(6) Any person who contravenes subsections (1) to (4) is guilty of an offence and liable on conviction to a fine not exceeding \$50,000 and imprisonment for a term not exceeding 5 years or both.

Approval of director etc. of finance company

33A. (1) No finance company shall appoint a person as its director unless —

(a) the finance company has served on the Authority a notice in writing stating that it proposes to appoint that person to a specified position and containing such particulars as may be prescribed; and

(b) the Authority has, before the expiration of 3 months from the date of service of the notice, notified the finance company in writing that there is no objection to that person being appointed to the specified position or such period lapses without the Authority having served on the finance company a notice of objection in writing.

(2) A notice under subsection (1)(a) shall contain a statement signed by the person proposed to be appointed that it is served with his knowledge and consent.

(3) The Authority may object to the person proposed to be appointed and serve notice thereof under subsection (1)(b) on the ground that it appears to him that such person is not a fit and proper person to be so appointed, but before serving such notice the Authority shall serve on the finance company and on the person a preliminary notice in writing stating that —

(a) the Authority is considering the service on the finance company of a notice of objection on that ground; and

(b) the finance company and that person may, within one month from the date of service of the preliminary notice, make representations in writing to the Authority.

(4) The Authority shall not be obliged to disclose any particulars of the grounds on which he is considering the service of the notice of objection or on which he serves the notice of objection.

(5) Where representations are made in accordance with this section the Authority shall take them into consideration in deciding whether to serve the notice of objection.

Penalty for offences not otherwise provided for

34. (1) Any finance company which, or person who, contravenes or fails to comply with any provisions of this Act or any order made under this Act for which no penalty is expressly provided is guilty of an offence and liable on conviction to a fine of \$20,000 and imprisonment for 5 years.

(2) The Authority may, without instituting proceedings against any person for any offence against this Act, or any regulations made thereunder, which is punishable only by a fine or a default penalty, demand and receive the amount of such fine or default penalty or such reduced amount as he thinks fit from such person, whereupon —

(a) if such person pays such amount to the Authority within 14 days after the demand, no proceedings shall be taken against him in relation to the offence; and

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

Offences by directors or managers

35. (1) Any person who, being a director, managing director or manager of a finance company —

(a) fails to comply, or to take all reasonable steps to secure compliance by the finance company, with the provisions of this Act or any order made under this Act or any other law relating to finance companies in force in Brunei Darussalam; or

(b) fails to ensure or to take all reasonable steps to ensure the accuracy and correctness of any statement or information submitted under this Act or of any other law relating to finance companies in force in Brunei Darussalam,

is guilty of an offence and liable on conviction to a fine of \$20,000 and imprisonment for 5 years.

(2) In any proceedings against a person under subsection (1) it shall be a defence to prove that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of securing compliance with the provisions of this Act or any order made under this Act or any other written law relating to finance companies in Brunei Darussalam or with the duty of securing that those statements were accurate and correct and that the person was in a position to discharge that duty.

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

Holding out as finance company

36. Where any public or private company or firm holds itself out to be a licensed finance company when it is not licensed under this Act, such company or firm is guilty of an offence against this Act and every director, manager or every officer of such company and the proprietor or every partner or officer of such firm, unless he proves that such holding out by the company or firm was made without his knowledge or consent, is guilty of an offence and liable on conviction to a fine of \$20,000 and imprisonment for 5 years.

Fiat of Attorney General

37. No prosecution in respect of any offence against this Act shall be instituted except by, or under the direction of, the Attorney General acting upon a complaint made by the Authority.

Exemptions

38. (1) This Act does not apply to —

(a) any bank licensed under the Banking Order, 2006 (S 45/2006), Islamic Banking Order, 2008 (S 96/2008) or International Banking Order, 2000 (S 53/2000);

(b) any co-operative society registered under any law of Brunei Darussalam; or

(c) any business of pawnbroking carried on by a person licensed under the Pawnbrokers Order, 2002 (S 60/2002).

(2) Notwithstanding any provisions in this Act, the Minister with the approval of His Majesty the Sultan and Yang Di-Pertuan, may exempt any finance company from any or all of the provisions of this Act.

Winding-up provisions

39. (1) Without prejudice to the provision of the Insolvency Order, 2016 (S 1/2016) —

[S 1/2016]

(a) a company (whether or not it is being wound up voluntarily) may be wound up under an order of the court on the petition of the Authority; and

(b) the court may order the winding-up of a company if —

(i) the company has held a licence under this Act and that licence has expired or has been revoked; or

(ii) the company has carried on financing business or Islamic financing business in Brunei Darussalam in contravention of the provisions of this Act.

(2) In the winding-up of a company that has been carrying on financing business or Islamic financing business, the depositors are deemed

to be holders of debentures issued to them by the company and secured by a floating charge over all the property and undertaking of the company.

Liquidation of securities by finance company

40. (1) As soon as practicable after the making of an order for the winding-up of a finance company, the liquidator of such company shall publish in the *Gazette* a notice requiring every debtor of the finance company to redeem any property he has deposited with the company as security for any loan or credit facility that he has obtained from the finance company, and shall also send by registered post such notice to every debtor whose security is held by the finance company and whose name is mentioned in the statement of affairs made out under the Insolvency Order, 2016 (S 1/2016).

[S 1/2016]

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

(3) After the latest date for redeeming any security held by the finance company specified in the notice, the liquidator may proceed to realise any security held by the finance company forthwith, notwithstanding any agreement setting out any other period of redemption previously entered into between the finance company and the debtor.

Operation of Act not to affect Chapter 39

41. Nothing in this Act shall affect the operation of the Companies Act (Chapter 39), and any company that is liable to be incorporated under that Act shall continue to be so liable as if this Act had not been passed but in case of conflict between that Act and this Act, the provisions of this Act shall prevail unless otherwise provided in this Act.

Regulations

42. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan make such regulations for, or in respect of, every purpose which is deemed by him necessary for carrying out the provisions of this Act and for the prescribing of any matter which is authorised or required under this Act to be so prescribed.

(2) Without prejudice to the generality of subsection (1), the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan by such regulations —

- (a) prescribe fees to be charged under this Act; and
- (b) regulate advertisement of finance companies.

Courts of Magistrates to have full jurisdiction

43. Notwithstanding the provisions of any written law to the contrary, a Court of a Magistrate shall have jurisdiction to try any offence against this Act and to award the full punishment for any such offence.

Memorandum and Articles of Association for Islamic financing business

44. (1) No licence shall be granted by the Authority to a finance company to carry on Islamic financing business under this Act unless that finance company has included in its Memorandum of Association and Articles of Association the restrictions, limitations and prohibitions contained in sections 18, 19, 20 and 22.

(2) Every company that had been carrying on Islamic financing business before 4th March 2006, being the date of commencement of the Finance Companies Act (Amendment) Order, 2006 (S 41/2006) is deemed to have included in its Memorandum of Association and Articles of Association the restrictions, limitations and prohibitions contained in sections 18, 19, 20 and 22.

(3) To the extent that any such restriction, limitation or prohibition so deemed to have been included in Memorandum of Association and Articles of Association under subsection (2) is inconsistent with any provision already included in the Memorandum of Association and Articles of Association, that restriction, limitation or prohibition shall prevail over any such provision.

