



# LAWS OF MALAYSIA

Act 276

## Islamic Banking Act 1983

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

[7th April 1983] *PU(B) 182/1983*

### ARRANGEMENT OF SECTIONS

#### PART I

##### PRELIMINARY

1. Short title, commencement and application.
2. Interpretation.

#### PART II

##### LICENSING OF ISLAMIC BANKS

3. Islamic banking business to be transacted only by a licensed Islamic bank.
4. Minister may vary or revoke condition of licence.
5. Licence not to be granted in certain cases.
6. *(Deleted)*.
7. Opening of new branches.
8. Islamic bank may establish correspondent banking relationship with bank outside Malaysia.

9. Licence fee.
10. Restriction of the use of certain words in an Islamic bank's name.
11. Revocation of licence.
12. Effect of revocation of licence.
13. Publication of list of Islamic banks.
- 13A. Advice of Syariah Advisory Council.

### PART III

#### FINANCIAL REQUIREMENTS AND DUTIES OF ISLAMIC BANKS

14. Maintenance of capital funds.
15. Maintenance of reserve funds.
16. Percentage of liquid assets.
17. Auditor and auditor's report
18. Audited balance sheet.
19. Statistics to be furnished.
20. Information on foreign branches.

### PART IV

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

21. Information on change in control of Islamic banks.
22. Sanction for reconstruction, etc., of bank required.
23. Disqualification of directors and employees of banks.

### PART V

#### RESTRICTIONS ON BUSINESS

24. Restrictions on payment of dividends and grant of advances and loans.
25. Prohibition of loans, etc., to directors, officers and employees.
26. Restriction on grant of loan, advance or credit facility under section 25 (4).
27. Restriction of credit to single customer.
- 27A. Control of credit limits.
28. Disclosure of interests by directors.

29. Limitation on credit facility for purpose of financing the purchase or holding of shares.
30. Proof of compliance with sections 24, 25, 26, 27 and 29.

#### PART VA

##### INTERNATIONAL ISLAMIC BANKING BUSINESS

- 30A. Prohibition to carry on international Islamic banking business.
- 30B. Application for a licence to carry on international Islamic banking business by persons other than a licensed Islamic bank.
- 30C. Minister may vary or revoke condition of licence granted under this Part.
- 30D. Licence under this Part not to be granted in certain cases.
- 30E. Application of the provisions of this Act to international Islamic bank.

#### PART VI

##### POWERS OF SUPERVISION AND CONTROL OVER ISLAMIC BANKS

31. Investigation of banks.
32. Special investigation of banks.
33. Production of bank's books and documents.
34. Banking secrecy.
35. Action to be taken if advances are against interests of depositors.
36. Banks unable to meet obligations to inform Central Bank.
37. Action by Central Bank if bank unable to meet obligations or conducting business to the detriment of depositors.
38. Effect of removal of office of director or appointment of a director of a bank by the Central Bank.
39. Control of Islamic bank by Central Bank.
40. Islamic bank under control of Central Bank to co-operate with Central Bank.
41. Extension of jurisdiction to subsidiaries of banks.
42. Moratorium.
43. Amendment of bank's constitution.

#### PART VII

## MISCELLANEOUS

44. Indemnity.
45. Priority of Islamic deposits.
46. Penalties on directors and managers.
47. Offences by directors, employees and agents.
48. Offences by companies, etc., and by servants and agents.
49. Prohibition on receipt of commission by staff.
50. General penalty.
51. Power of Governor to compound.
52. Consent of the Public Prosecutor.
53. Regulations.
- 53A. Power to issue guidelines, *etc.*
54. Bank holidays.
55. Application of other laws.
56. Exemption.

## PART VIII

### CONSEQUENTIAL AMENDMENTS

57. Amendment of Banking Act 1973.
58. Amendment of Companies Act 1965.
59. Amendment of Central Bank of Malaysia Ordinance 1958.
60. Amendment of Finance Companies Act 1969.

## PART I

### PRELIMINARY

- Short title, commencement and application. **1.** (1) This Act may be cited as the Islamic Banking Act 1983 and shall come into force on such date as the Minister may by notification in the *Gazette* appoint.
- (2) This Act shall apply throughout Malaysia.

- Interpretation. **2.** In this Act unless the context otherwise requires—
- “branch” in relation to an Islamic bank includes a mobile branch of the bank and a branch established and maintained

for a limited period only;

61/58. “Central Bank” means the Central Bank of Malaysia established by the Central Bank of Malaysia Ordinance 1958;

Act 125. “company” has the meaning assigned to it by the Companies Act 1965;

“corporation” has the meaning assigned to it by the Companies Act 1965;

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

“foreign company” has the meaning assigned to it by the Companies Act 1965;

Act A1307.

Act 372. “foreign institution” means a foreign company which carries on business outside Malaysia which is similar to the Islamic banking business as provided under this Act or the business of any institution licensed under subsection 6(4) of the Banking and Financial Institutions Act 1989 [Act 372];

Act A1307.

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

“international Islamic bank” means any company or an office of any foreign institution which carries on international Islamic banking business and holds a valid licence under section 30B;

Act A1307.

“international Islamic banking business” means Islamic banking business in currencies other than ringgit or such other Islamic banking business as the Central Bank may specify;

Act A1307.

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

“Islamic deposit” means a sum of money or monies worth received by or paid to any person, under which the receipt and repayment shall be in accordance with the terms of an agreement made under any Syariah principle on any basis including custody or profit sharing;

Act A1255.

“investment account liabilities” (*Deleted*).

Act A1255.

“licence” means a licence granted under section 3;

“office” includes the principal place of business, a branch, an agency, a mobile place of business, a place of business set

Act A1307.

up and maintained for a limited period only, an electronic terminal and any other place of business;

“other deposit liabilities” (*Deleted*).

*Act A1255.*

*Act 125.* “public company” has the meaning assigned to it by the Companies Act 1965;

“savings account liabilities” (*Deleted*).

*Act A1255.*

“share” means share in the share capital of a corporation and includes stock, except where a distinction between stock and share is expressed or implied;

“sight liabilities” (*Deleted*).

*Act A1255.*

*Act 125.* “subsidiary” has the meaning assigned to it under section 5 of the Companies Act 1965;

“time liabilities” (*Deleted*).

*Act A1255.*

## PART II

### LICENSING OF ISLAMIC BANKS

Islamic banking  
business to be  
transacted only by a  
licensed Islamic bank.

**3.** (1) Islamic banking business shall not be transacted in Malaysia except by a company which is in the possession of a licence in writing from the Minister authorizing it to do so.

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

(a) a copy of the memorandum of association and articles of association or other instrument under which the company is incorporated, duly verified by a statutory declaration made by a senior officer of the company; and

(b) such other document or information as may be called upon by the Minister.

(3) Upon receiving an application under subsection (2) the Central Bank shall consider the application and make a recommendation to the Minister stating whether a licence should be granted or not and the conditions, if any, to be attached to the licence.

(4) Upon receiving an application under subsection (2) and the recommendation of the Central Bank under subsection (3), the Minister may, subject to section 4, grant a licence, with or without conditions, or refuse a licence.

(5) The Central Bank shall not recommend the grant of a licence, and the Minister shall not grant a licence, unless the Central Bank or the Minister, as the case may be, is satisfied—

- (a) that the aims and operations of the banking business which it is desired to carry on will not involve any element which is not approved by the Religion of Islam; and
- (b) that there is, in the articles of association of the bank concerned, provision for the establishment of a Syari'ah advisory body, as may be approved by the Central Bank, to advise the bank on the operations of its banking business in order to ensure that they do not involve any element which is not approved by the Religion of Islam.

*Act 642.* (5A) Any Islamic bank licensed under this section shall be deemed to be a member institution under the Malaysia Deposit Insurance Corporation Act 2005 [*Act 642*]. *Act A1255.*

(6) Any person who contravenes the provisions of this section shall be guilty of an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Minister may vary or revoke condition of licence.

**4.** (1) The Minister may at any time, on the recommendation of the Central Bank, vary or revoke any existing condition of a licence or impose conditions or additional conditions.

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

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

(4) Any Islamic bank which fails to comply with any condition of its licence shall be guilty of an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit.

Licence not to be granted in certain

**5.** (1) No company shall be granted a licence under section

cases. 3 nor shall any company licensed thereunder carry on business in Malaysia without the written consent of the Minister if its capital funds unimpaired by losses or otherwise is less than the minimum amount.

(2) For the purposes of this section—

“capital funds” means paid-up capital and reserves and any other sources of capital as may be defined and computed in such manner as may be prescribed by notice in writing from time to time by the Central Bank;

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

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

**6.** (*Deleted*).

*Act A1214.*

Opening of new branches. **7.** Except with the consent in writing of the Central Bank, no Islamic bank may open a new branch, agency or office in any part of Malaysia or outside Malaysia.

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

(2) The Central Bank may prescribe by notice in writing that no Islamic bank shall, except with the approval of the Minister on the recommendation of the Central Bank, establish a correspondent banking relationship with any bank established in any of the countries specified in the notification or with any bank owned or controlled by the government or an agency of the government of any such country.

Licence fee. **9.** Every Islamic bank shall pay to the Central Bank such annual licence fee as the Minister, on the recommendation of the Central Bank, may by notification in the *Gazette* prescribe.



Restriction of the use of certain words in an Islamic bank's name.

**10.** Except with the consent in writing of the Minister no Islamic bank shall be licensed by a name which includes any of the words “Central”, “Commonwealth”, “Federal”, “Federation”, “Malaysia”, “Malaysian”, “National”, “Reserve” or “State” either in the National Language or in English or in any other language.

Revocation of licence.

**11.** (1) Subject to subsection (2), if any Islamic bank—

- (a) is pursuing aims, or carrying on operations, involving any element which is not approved by the Religion of Islam;
- (b) is carrying on its business in a manner detrimental to the interests of its depositors and other creditors;
- (c) has insufficient assets to cover its liabilities to the public;
- (d) is contravening any provision of this Act;
- (e) has ceased to carry on banking business in Malaysia; or
- (f) has ceased to be a member institution under the Malaysia Deposit Insurance Corporation Act 2005,

*Act A1255.*

the Minister may, on the recommendation of the Central Bank, revoke any licence issued to such bank.

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

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

(4) The Central Bank shall be entitled to be heard on any such appeal.

(5) The making of an appeal under this section shall in no way affect the exercise of the powers and duties of the Central Bank under sections 37, 39 and 40.

Effect of revocation of licence.

**12.** (1) Where an order of revocation becomes effective under section 11—

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

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

Publication of list of Islamic banks.

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

Advice of Syariah Advisory Council

**13A.** (1) An Islamic bank may seek the advice of the Syariah Advisory Council on Syariah matters relating to its banking business and the Islamic bank shall comply with the advice of the Syariah Advisory Council.

*Act A1214.*

(2) In this section, “Syariah Advisory Council” means the Syariah Advisory Council established under subsection 16B (1) of the Central Bank of Malaysia Act 1958.

### PART III

#### FINANCIAL REQUIREMENTS AND DUTIES OF ISLAMIC BANKS

Maintenance of capital funds.

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

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

Maintenance of  
reserve funds.

**15.** (1) Every Islamic bank—

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

(2) If the Central Bank is satisfied that the aggregate reserve fund of an Islamic bank is adequate for its business, it may by order in writing exempt the bank from the provisions of subsection (1) for a period of one year.

Percentage of liquid  
assets.

**16.** (1) The Central Bank may from time to time prescribe by notice in writing to each Islamic bank a minimum amount or amounts of liquid assets to be held by the bank at all times.

(2) The minimum amount or amounts of the assets so prescribed to be held shall be expressed in the form of a percentage which such assets shall bear to the Islamic deposit of each Islamic bank.

*Act A1255.*

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

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

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

*Act A1255.*

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

(a) notes and coin which are legal tender in Malaysia;

*61/58.* (b) balances at the Central Bank, not including the reserve specified in paragraph (c) of subsection (1) of section 37 of the Central Bank of Malaysia Ordinance 1958;

*Act 275.* (c) investment certificates issued under the Government Investment Act 1983; and

(d) such other assets as may be approved by the Minister on the recommendation of the Central Bank.

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

(8) Any Islamic bank which fails to comply with any of the provisions of this section shall be liable to pay, on being called upon to do so by the Central Bank, a penalty of not more than one-tenth of one per centum of the amount of the deficiency for every day during which the deficiency continues.

(9) Any Islamic bank which fails or refuses to pay a penalty under subsection (8) shall be guilty of an offence under this Act.

Auditor and auditor's  
report.  
*Act 125.* **17.** (1) Notwithstanding the provisions of the Companies Act 1965, every Islamic bank shall appoint annually an auditor approved by the Minister.

(2) The Minister on the recommendation of the Central Bank may appoint an auditor—

(a) if the Islamic bank fails to appoint an auditor; or

(b) if he considers it desirable that another auditor should act with the auditor appointed under subsection (1),

and may fix the remuneration to be paid by the Islamic bank to that auditor.

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

(a) to carry out for the year in respect of which he is appointed an audit of the accounts of the bank; and

*Act 125.* (b) to make a report in accordance with section 174 of the Companies Act 1965 upon the annual balance sheet and profit and loss account of the bank.

(4) The report of the auditor referred to in paragraph (b) of

subsection (3) shall be laid together with the report of the directors of the Islamic bank at the annual general meeting of the bank; and a statutory declaration made by a senior officer of the bank to the effect that the report was so laid shall accompany the documents forwarded under paragraph (c) of subsection (1) of section 18.

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

(6) The duties, powers and liabilities imposed and conferred by section 33 in relation to an investigation by the Central Bank of the affairs of an Islamic bank under section 31 or 32 are hereby imposed and conferred in relation to auditors appointed under this section.

(7) Any Islamic bank which fails to comply with the requirements of subsection (4) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit.

Audited balance sheet. **18.** (1) Every Islamic bank shall—

- (a) exhibit in a conspicuous position in every office or place of business in Malaysia—
  - (i) a copy each of its latest audited annual balance sheet, profit and loss account, together with any note thereon, and the report of the auditor;
  - (ii) the full names of all its directors; and
  - (iii) the names of all subsidiaries for the time being of the bank;
- (b) within fourteen days of the laying of its accounts at its annual general meeting publish in at least two daily newspapers published in Malaysia and approved by the Central Bank a copy each of its latest audited annual balance sheet, profit and loss account, together with any note thereon, and the report of the auditor; and
- (c) within six months after the close of each financial year or such further period as the Central Bank may approve, forward to the Central Bank—
  - (i) two copies each of its latest audited annual balance sheet, profit and loss account, together with any

note thereon, and the reports of the auditor and the directors;

- (ii) in the case of an Islamic bank with branches outside Malaysia, two copies each of its latest audited annual balance sheet and profit and loss account in respect of its operations in Malaysia, and two copies each of its latest audited annual balance sheet and profit and loss account in respect of its operations in each country outside Malaysia.

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

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

(4) Any Islamic bank which fails to comply with the provisions of this section shall be guilty of an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit.

Statistics to be  
furnished.

**19.** (1) Every Islamic bank shall send to the Central Bank in such form as may be prescribed by the Central Bank—

- (a) a statement showing the liabilities and assets of its banking offices and branches in Malaysia at the close of business on the last business day of each month within such period as may be prescribed by notice in writing from time to time by the Central Bank;
- (b) a statement giving an analysis of loans, advances and investment of its banking offices and branches in Malaysia as at such intervals and within such period as may be prescribed by notice from time to time by the Central Bank;
- (c) not later than six months after the close of its financial year, a statement showing the income and expenditure in respect of its business in Malaysia;

61/58.

- (d) notwithstanding the provisions of subsection (3) of section 34, a statement showing such credit information of its customers as is required for the purposes of the credit bureau established under section 30 (1) (*mmm*) of the Central Bank of Malaysia

Ordinance 1958 at such intervals and within such period as may be prescribed by notice in writing from time to time by the Central Bank;

(da) *(Deleted)*.

*Act A1145.*

(e) any such statistical information as may be requested by the Central Bank.

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

*Act A1145.*

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

(4) It shall be the responsibility of the Central Bank to prepare and publish consolidated statements aggregating the figures in the returns furnished under paragraphs (a) and (b) of subsection (1).

Information on foreign branches.

**20.** An Islamic bank which operates branch offices or agencies outside Malaysia shall furnish to the Central Bank any information relating to the operations of such offices or agencies as may be requested by the Central Bank.

#### PART IV

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

Information on change in control of Islamic banks.

**21.** (1) Whenever a change is about to occur in the control of any Islamic bank, the bank shall report the proposed change to the Central Bank.

*Act 102.  
Act 6.*

(2) Whenever a loan or advance is made by any Islamic bank secured in the aggregate by twenty per centum or more of the paid-up capital shares of any other Islamic bank or of any licensed bank under the Banking Act 1973 incorporated in Malaysia or of any finance company licensed under the Finance Companies Act 1969, the Islamic bank shall report the fact to the Central Bank.

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

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

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

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

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

Sanction for reconstruction, etc., of bank required.

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

- (a) arrangement or agreement—
  - (i) for the sale or disposal of its shares or business; or
  - (ii) affecting voting power, management or other matters,

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

- (b) scheme—
  - (i) for reconstruction of the bank; or
  - (ii) for amalgamation, merger or otherwise between the bank and any other corporation,

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

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

(3) Subsection (1) shall not apply to any arrangement, agreement or scheme to be carried out by any Islamic bank



under the Malaysia Deposit Insurance Corporation Act 2005.

Disqualification of  
directors and  
employees of banks.  
*Act 125.*

**23.** (1) Without prejudice to anything contained in the Companies Act 1965, any person who is a director, manager, secretary or other officer concerned in the management of an Islamic bank shall cease to hold office—

- (a) if he becomes a bankrupt, suspends payment or compounds with his creditors; or
- (b) if he is convicted of an offence involving dishonesty or fraud.

*Act 102.*

(2) No person who has been a director of, or directly concerned in the management of, an Islamic bank or a licensed bank under the Banking Act 1973 which has been wound up by a court shall, without the express authority of the Minister, act or continue to act as a director of, or be directly concerned in the management of, any Islamic bank.

(3) Any person who acts in contravention of subsection (1) or (2) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

## PART V

### RESTRICTIONS ON BUSINESS

Restrictions on  
payment of dividends  
and grant of advances  
and loans.

**24.** (1) No Islamic bank shall—

- (a) pay any dividend on its shares until all its capitalized expenditure (including preliminary expenses, organization expenses, share-selling commission, brokerage, amounts of losses incurred and any other item of expenditure not represented by tangible assets) has been completely written off;
- (b) grant an advance, loan or credit facility against the security of its own shares; or

*Act 125.*  
*Act 102.*  
*Act 6.*

- (c) grant unsecured advances, unsecured loans or unsecured credit facilities in excess of, in the aggregate and outstanding at any one time, ten thousand ringgit to any corporation which is deemed to be related to the bank as described in section 6 of the Companies Act 1965, other than an Islamic bank, a

licensed bank under the Banking Act 1973, a finance company licensed under the Finance Companies Act 1969, or any other financial institution approved by the Central Bank.

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

Prohibition of loans,  
etc., to directors,  
officers and  
employees.

**25.** (1) Unless otherwise exempted by the Central Bank with or without conditions, or except as provided for under subsection (2) or subsection (4) of this section, no Islamic bank shall grant advances, loans or credit facilities to—

*Act A634.*

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

(2) An Islamic bank may grant to any of its officers or employees loans which are provided under its appropriate scheme of service and, where the bank is satisfied that

special or compassionate circumstances exist, a loan not exceeding at any one time six months' remuneration of that officer or employee on such terms and conditions as the bank thinks fit.

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

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

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

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

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

Restriction on grant of loan, advance or credit facility under section 25 (4).

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

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

Restriction of credit to single customer.

**27.** (1) No Islamic bank shall grant any customer any

credit facilities or incur any other liabilities on his behalf to an aggregate amount in excess of such percentage as may be determined from time to time by the Central Bank in relation to such bank's capital funds unimpaired by losses or otherwise.

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

*Act 102.  
Act 6.*

- (a) transactions with other Islamic banks, with licensed banks under the Banking Act 1973 and with finance companies licensed under the Finance Companies Act 1969;
- (b) any facilities granted in respect of imports into or exports from Malaysia or trade within Malaysia against letters of credit or bills of exchange; or
- (c) any other transactions which the Central Bank may approve from time to time.

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

Control of credit  
limits.

**27A.** (1) A director, manager or employee of an Islamic bank shall not grant any advance, loan or credit facility in excess of the limit of his authority or contrary to any directions imposed by the Islamic bank.

*Act A634.*

(2) For the purpose of this section, the Minister may by written notice direct an Islamic bank to submit any information relating to its policy and procedure for the granting of any advance, loan or credit facility, in particular the limits of authority of a director, manager or employee of the Islamic bank, or any variation thereof from time to time:

Provided that the Minister shall have powers to direct an Islamic bank to amend the procedure employed by the Islamic bank in the granting of any advance, loan or credit facility including the limits of authority in respect of such grant.

(3) Any person who contravenes any of the provisions of this section or any directions issued hereunder shall be guilty of an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Disclosure of interests  
by directors.

**28.** (1) Every director of an Islamic bank who is in any manner whatsoever, whether directly or indirectly, interested in an advance, loan or credit facility or proposed advance,

loan or credit facility from that Islamic bank shall as soon as practicable declare the nature of his interest to the board of directors of that Islamic bank and the secretary of that Islamic bank shall cause such declaration to be circulated forthwith to all the directors.

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

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

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

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

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

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

(6) The secretary of the Islamic bank shall cause to be brought up and read any declaration made under subsection

(1) or (4) at the next meeting of the directors after it is given, and shall record any declaration made under this section in the minutes of the meeting at which it was made or at which it was brought up and read.

(7) Any director who acts in contravention of subsection (1) or (4) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Limitation on credit facility for purpose of financing the purchase or holding of shares.

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

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

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

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

(4) Any Islamic bank which acts in contravention of the provisions of this section or any direction given under this section shall be guilty of an offence under this Act.

Proof of compliance with sections 24, 25, 26, 27 and 29.

**30.** Any Islamic bank, if at any time called upon in writing by the Central Bank to do so, shall satisfy it by the production of such evidence or information as it may require that the bank is not acting in contravention of any of the provisions of sections 24, 25, 26, 27 and 29.

## PART VA

### INTERNATIONAL ISLAMIC BANKING BUSINESS

Prohibition to carry on international Islamic banking business

**30A.** (1) No person shall carry on international Islamic banking business unless it is—

*Act A1307.*

- (a) an Islamic bank; or
- (b) a company or a foreign institution and holds a valid licence under section 30B to carry on such business.

(2) Any person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Application for a licence to carry on international Islamic banking business by persons other than a licensed Islamic bank

**30B.** (1) A company or a foreign institution other than a licensed Islamic bank which desires authority to carry on international Islamic banking business in Malaysia shall apply in writing through the Central Bank to the Minister for a licence under this Part and shall supply—

*Act A1307.*

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

(2) Upon receiving an application under subsection (1) the Central Bank shall consider the application and make a recommendation to the Minister stating whether a licence shall be granted or not and the conditions, if any, to be attached to the licence.

(3) Upon receiving an application under subsection (1) and the recommendation of the Central Bank under subsection (2), the Minister may, subject to section 30C, grant a licence, with or without conditions, or refuse a licence.

(4) The Central Bank shall not recommend the grant of a licence, and the Minister shall not grant a licence, unless the Central Bank or the Minister, as the case may be, is satisfied that the aims and operations of the banking business which it is desired to carry on does not involve any element which is not approved by the Religion of Islam.

Minister may vary or

**30C.** (1) The Minister may at any time, on the

*Act A1307.*

revoke condition of licence granted under this Part

recommendation of the Central Bank, vary or revoke any existing condition of a licence or impose conditions or additional conditions.

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

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

(4) Any international Islamic bank which fails to comply with any condition of its licence commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit.

Licence under this Part not to be granted in certain cases

**30D.** (1) No person shall be granted a licence under section 30B nor shall such person licensed thereunder carry on business in Malaysia without the written consent of the Minister if—

*Act A1307.*

(a) in the case of a company, its capital funds unimpaired by losses or otherwise is less than the minimum amount; or

(b) in the case of a foreign institution, its net working funds unimpaired by losses or otherwise is less than the minimum amount.

(2) For the purposes of this section—

“capital funds” means paid-up capital and reserves and any other sources of capital as may be defined and computed in such manner as may be specified by notice in writing from time to time by the Central Bank;

“minimum amount” means such amount of capital funds or such amount of net working funds to be maintained by an international Islamic bank as may be prescribed by the Minister on the recommendation of the Central Bank by notification in the *Gazette*; and

“net working funds” means such net liabilities of the foreign institution outside Malaysia as may be defined and computed in such manner as may be specified by notice in writing from time to time by the Central Bank.

(3) The prescription of the minimum amount to be



maintained under subsection (2) shall be complied with within such uniform period of grace being not less than three months as may be specified in the notification.

Application of the provisions of this Act to international Islamic bank

**30E.** (1) For the avoidance of doubt, it is declared that an Islamic bank or an international Islamic bank shall, in respect of the international Islamic banking business carried on by it, be subject to the provisions of this Act, and any provisions of this Act which apply to an Islamic bank shall apply to an international Islamic bank as if the references therein to an Islamic bank were references to an international Islamic bank unless specifically provided for in this Part.

*Act A1307.*

(2) For the purposes of subsection (1), the Minister on the recommendation of the Central Bank may by an order published in the *Gazette* make such modifications to any provisions of this Act as he may deem fit.

## PART VI

### POWERS OF SUPERVISION AND CONTROL OVER ISLAMIC BANKS

Investigation of banks.

**31.** The Central Bank shall from time to time investigate, under conditions of secrecy, the books, accounts and transactions of each Islamic bank and of any branch, agency or office outside Malaysia opened by an Islamic bank.

Special investigation of banks.  
*61/58.*

**32.** The Minister may at any time direct the Central Bank to make an investigation, under conditions of secrecy, of the books, accounts and transactions of an Islamic bank, if he has reason to believe such Islamic bank is carrying on its business in a manner detrimental to the interests of its depositors and other creditors, or has insufficient assets to cover its liabilities to the public, or is contravening the provisions of this Act or of the Central Bank of Malaysia Ordinance 1958.

Production of bank's books and documents.

**33.** (1) Subject to subsection (2), for the purposes of an investigation under section 31 or 32, an Islamic bank shall afford the Central Bank access to its books, accounts and documents and shall give such information and facilities as may be required to conduct the investigation.

(2) 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 the bank concerned.

(3) Any Islamic bank which fails to allow access to its books, accounts and documents or to give information or facilities in accordance with subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding four thousand ringgit for every day during which the default continues.

*F.M.S. Cap. 45.*

(4) For the purposes of an investigation under section 31 or 32, all officers and employees of the Central Bank shall be deemed to be public servants within the meaning of the Penal Code.

Banking secrecy.

**34.** (1) Except as provided in sections 31 and 32, nothing in this Act shall authorize the Minister to direct the Central Bank, or shall authorize the Central Bank, to enquire specifically into the affairs of any individual customer of any Islamic bank and any incidental information relating to the affairs of the individual customer obtained by the Central Bank in the course of an inspection or investigation made by the Central Bank under the provisions of this Act shall be secret between the Central Bank and that bank.

*Act 33.*

(2) Nothing in this section shall be deemed to limit any powers conferred upon the High Court or a Judge thereof by the Bankers' Books (Evidence) Act 1949 or to prohibit obedience to an order made under that Act.

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

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

(4) Subsection (3) shall not apply to the disclosure of information or document to—

*Act A1255.*

- (a) any director, officer, employee or agent of the Malaysia Deposit Insurance Corporation (hereinafter in this paragraph referred to as “the Corporation”) established under the Malaysia Deposit Insurance Corporation Act 2005 where such disclosure is for the purpose of the exercise of powers, the performance of functions or the discharge of duties of the Corporation or of the directors, officers, employees or agents of the Corporation under that Act; or
- (b) auditors appointed under section 17, officers and employees of the bank who are resident in Malaysia.

(5) Any person who acts in contravention of the provisions of this section shall be guilty of an offence and shall on conviction be liable to a fine not exceeding forty thousand ringgit or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Action to be taken if advances are against interests of depositors.

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

*Act 125.*

- (a) any corporation which is deemed to be related to the bank as described in section 6 of the Companies Act 1965;
- (b) any corporation or public company referred to in subsection (4) of section 25; and
- (c) any individual in whom and any firm or corporation in which any of its directors is interested, directly or indirectly, as declared under the provisions of section 28, other than advances, loans and credit facilities particulars of which have already been supplied pursuant to the preceding paragraphs.

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

(3) Any Islamic bank which has been issued with an order by the Central Bank pursuant to this section may appeal in writing to the Minister, who may, as he thinks fit, confirm, vary or revoke the order of the Central Bank.

Banks unable to meet obligations to inform Central Bank.

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

Action by Central Bank if bank unable to meet obligations or conducting business to the detriment of depositors.

**37.** (1) Where—

- (a) an Islamic bank informs the Central Bank—
  - (i) that it considers that it is likely to become unable to meet its obligations; or
  - (ii) that it is about to suspend payment;
- (b) an Islamic bank becomes unable to meet its obligations or suspends payment; or
- (c) after an investigation is made under section 31 or 32 the Central Bank is of the opinion that an Islamic bank—
  - (i) is following unsound or improper practices;
  - (ii) is likely to become unable to meet its obligations or is about to suspend payment;
  - (iii) has contravened or failed to comply with any provision of this Act;
  - (iv) has contravened or failed to comply with any condition imposed on its licence; or
  - (v) is likely to be carrying on its business in a manner detrimental to the interests of its depositors,

the Central Bank, with the concurrence of the Minister, may exercise such one or more powers specified in subsection (2) as it deems to be necessary.

(2) Subject to subsection (1), the Central Bank may—

- (a) issue orders to the bank to take such steps as the Central Bank may consider necessary to rectify the matter and the bank shall carry out such orders within such time as may be prescribed by the Central Bank;

- (b) prohibit the bank from extending any further advance, loan or credit facility for such period or periods as may be specified and subject to such exceptions if any and other conditions as the Central Bank may impose;
  - (c) remove from office any of its directors or appoint any person as its director;
  - (d) appoint a person to advise the bank on the proper conduct of its business;
  - (e) assume control of, and carry on, the business of the bank or appoint some other person to assume control of, and carry on, the business of the bank; or
  - (f) present a petition to the High Court for the winding up of the bank by the Court.
- (3) Where the Central Bank has appointed a person—
- (a) to be a director of the bank under paragraph (c) of subsection (2);
  - (b) to advise the bank on the proper conduct of its business under paragraph (d) of subsection (2); or
  - (c) to assume control of, and carry on, the business of the bank under paragraph (e) of subsection (2),

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

Effect of removal of office of director or appointment of a director of a bank by the Central Bank.

**38.** Where the Central Bank has acted under paragraph (c) of subsection (2) of section 37 with respect to an Islamic bank, the following provisions shall have effect—

*Act 125.*

- (a) notwithstanding anything contained in the Companies Act 1965 and the articles of association of the bank, the rights of the members or holders of shares to elect directors of the bank in place of those who are removed from office by the Central Bank shall cease to be exercisable;
- (b) any director removed from office under that paragraph shall cease to hold office, and shall not be entitled to claim any compensation for the loss or termination of office; and
- (c) every removal or appointment under that paragraph shall be final and conclusive and shall not be questioned in any Court.

Control of Islamic bank by Central Bank.

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

(2) Where the Central Bank has assumed control, or has appointed another person to assume control, of the business of an Islamic bank in pursuance of paragraph (e) of subsection (2) of section 37 the High Court may, upon application of the bank, order that the Central Bank shall cease to control the business of the bank as from a date specified in the order if the High Court is satisfied that it is no longer necessary for the protection of the depositors of the bank that the Central Bank should remain in control of the business of the bank.

(3) Where the Central Bank has assumed control, or has appointed another person to assume control, of the business of an Islamic bank in pursuance of paragraph (e) of subsection (2) of section 37, or ceased to control the business of an Islamic bank in pursuance of this section, the Central Bank shall notify that fact in the *Gazette*.

Islamic bank under control of Central Bank to co-operate with Central Bank.

**40.** (1) Where the Central Bank has assumed control, or has appointed another person to assume control, of the business of an Islamic bank in pursuance of paragraph (e) of subsection (2) of section 37, the Islamic bank shall submit its business to the control of the Central Bank or to that person and shall provide the Central Bank with such facilities as the Central Bank requires to carry on the business of that bank.

(2) Any Islamic bank which fails to comply with subsection (1) or with any requirement of the Central Bank thereunder shall be guilty of an offence and shall on conviction be liable to a fine not exceeding four thousand ringgit for every day during which the default continues.

Extension of jurisdiction to subsidiaries of banks.

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

Moratorium.

**42.** (1) The Central Bank may, with the approval of the

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

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

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

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

Amendment of bank's constitution.

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

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

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

## PART VII

### MISCELLANEOUS

Indemnity. **44.** (1) Neither the Government nor the Central Bank nor any officer of either 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 executing or intended execution, of any power conferred upon the Government, Central Bank or the officer by this Act.

(2) For the purposes of this section a Minister and any public officer shall be deemed to be an officer of the Government; and the Governor and Deputy Governor of the Central Bank and any director or employee thereof and any person holding any office therein or appointed by the Central Bank under paragraph (c), (d) or (e) of subsection (2) of section 37 shall be deemed to be an officer of the Central Bank.

Priority of Islamic deposits.  
*Act 359.*

**45.** (1) Where an Islamic bank is wound-up under paragraph 37(2)(f), the proceeds of the liquidation of the Islamic bank shall, subject to section 10 of the Government Proceedings Act 1956 [*Act 359*] and subsection (2), be paid to the depositors in priority over all other unsecured liabilities in the following manner:

*Act A1255.*

- (a) Islamic deposits based on custody; and
- (b) other Islamic deposits.

(2) Where a person has been appointed under paragraph 37(2)(d) or (e), as the case may be, or an Islamic bank is wound-up under paragraph 37(2)(f), all proper costs, charges and expenses, including the remuneration, of such appointed person shall be payable out of the assets of the Islamic bank in priority over all other claims.

Penalties on directors and managers.

**46.** (1) Any person who, being a director or manager of an Islamic bank—

- <sup>61/58.</sup> (a) fails to take all reasonable steps to secure compliance by the bank with the requirements of this Act and of the Central Bank of Malaysia Ordinance 1958 (hereafter in this section referred to as “the Ordinance”); or
- (b) fails to take all reasonable steps to ensure the correctness of any statement submitted under the provisions of this Act or the Ordinance,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(2) In any proceedings against a person under subsection



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

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

Offences by directors, employees and agents.

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

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

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Offences by companies, etc., and by servants and agents.

**48.** (1) Where any offence against any provision of this Act has been committed by a corporation, firm, society or other body of persons, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer thereof or was purporting to act in such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Where any person would be liable under this Act to any punishment or penalty for any act, omission, neglect or

default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any clerk, servant or agent, or of the clerk or servant of the agent, provided that the act, omission, neglect or default was committed by the clerk or servant in the course of his employment, or by the agent when acting on behalf of the person, or by the clerk or servant of the agent when acting in the course of his employment in such circumstances that had the act, omission, neglect or default been committed by the agent his principal would have been liable under this section.

Prohibition on receipt of commission by staff. **49.** Any director, officer or employee of an Islamic bank, or other persons being persons receiving remuneration from the Islamic bank, who asks for or receives, consents or agrees to receive any gift, commission, emolument, service, gratuity, money, property or thing of value for his own personal benefit or advantage or for that of any of his relatives, from any person other than from that bank, for procuring or endeavoring to procure for any person any advance, loan or credit facility from that bank or the purchase or discount of any draft, note, cheque, bill of exchange or other obligations by the bank, or for permitting any person to overdraw any account with that bank, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

General penalty. **50.** Any Islamic bank which contravenes or fails to comply with any provision of this Act or regulations made thereunder for which no penalty is expressly provided shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit.

Power of Governor to compound. **51.** (1) The Governor of the Central Bank, with the concurrence of the Minister, may compound any offence punishable under this Act by accepting such sum of money as he thinks fit, being not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted of the offence.

(2) Any moneys paid to the Governor pursuant to the provisions of subsection (1) shall be paid into and form part of the Consolidated Fund.

Consent of the Public Prosecutor. **52.** No prosecution in respect of any offence under this Act shall be instituted without the consent in writing of the

Public Prosecutor.

- Regulations. **53.** (1) The Central Bank may with the approval of the Minister make such regulations as may be required from time to time for carrying into effect the objects of this Act.
- (2) Without prejudice to the generality of subsection (1), regulations may be made—
- (a) to provide for control by the Central Bank with respect to the acquisition or holding by an Islamic bank of shares of any corporation or the acquisition or development by the bank of any immovable property;
  - (b) to provide for control by the Central Bank with respect to an Islamic bank becoming a partner or proprietor of any firm with unlimited liability;
  - (c) to provide for control by the Central Bank with respect to the granting of any credit facility to any person for the purpose of financing the acquisition or holding of immovable property, shares and contracts in consumer credit and commodity futures;
  - (d) to provide for the declaration by directors of Islamic banks to the board of directors of their respective Islamic banks of the number and description of any shares in any corporation which are held by or in trust for them or of which they have any right to become the holder (whether on payment or not) or in which they have, directly or indirectly, any beneficial interest, and of the nature of their interest as partner, director, manager or agent in any firm or corporation;
  - (e) to provide for the declaration by executive directors, officers and employees of Islamic banks to the respective boards of directors of such Islamic banks or such other person as may be specified in the regulations of the following kinds of interest held by or for any of them or any of their spouses or children :
    - (i) the number and description of any shares in any corporation which are held by or in trust for any such executive director, officer, employee, spouse or child or of which he has any right to become the holder (whether on payment or not) or in which he has, directly or indirectly, any beneficial interest;
    - (ii) the nature of any interest as partner, director, manager or agent in any firm or corporation; and
    - (iii) all other assets; and
  - (f) to provide for any matter relating to the regulation and

supervision of international Islamic bank.

Power to issue  
guidelines, *etc.*

**53A.** The Central Bank or the Minister may, from time to time, issue such guidelines, circulars or notes as the Central Bank or the Minister may deem expedient or necessary for carrying into effect the objects of this Act.

*Act A1307.*

Bank holidays.  
*Act 102.*

**54.** No Islamic bank shall do any business with the public on any day declared a bank holiday under the provisions of section 57 (1) of the Banking Act 1973.

Application of other  
laws.  
*Act 125.*

**55.** An Islamic bank which is incorporated under the Companies Act 1965 shall be subject to the provisions of that Act as well as to the provisions of this Act, save that where there is any conflict or inconsistency between the provisions of that Act and the provisions of this Act the provisions of this Act shall prevail.

Exemption.

**56.** The Minister may, on the recommendation of the Central Bank, if he considers it consistent with the purposes of this Act, by order published in the *Gazette*, exempt with or without conditions, any Islamic bank, international Islamic bank or person from all or any provision of this Act.

*Act A1307.*

## PART VIII

### CONSEQUENTIAL AMENDMENTS

Amendment of  
Banking Act 1973.  
*Act 102.*

**57.** (1) Section 2 of the Banking Act 1973 is amended—

(a) by inserting immediately after the definition of “depositor” the following new definition:

*Act 276.*

‘ “Islamic bank” means a bank licensed under the Islamic Banking Act 1983;’; and

(b) by inserting immediately after the words “other licensed bank” in the definitions of “other deposit liabilities”, “sight liabilities” and “time liabilities” the words “, any Islamic bank”.

(2) Section 9 of the Banking Act 1973 is amended by substituting for paragraph (b) of subsection (1) the following:

- “(b) no bank shall hereafter be licensed by a name which includes—
- (i) any of the words “Central”, “Commonwealth”, “Federal”, “Federation”, “Malaysia”, “Malaysian”, “National”, “Reserve”, or “State”;
  - (ii) any of the words “Islamic” or “Muslim” or any other words capable of being construed as indicating that the bank carries on Islamic banking business,
- either in National Language or in English or in any other language.”.

(3) Section 59 of the Banking Act 1973 is amended by deleting the word “and” at the end of paragraph (b) of subsection (1), substituting a semicolon for the full stop at the end of paragraph (c) of that subsection and inserting immediately thereafter the word “and”, and inserting immediately after that paragraph the following new paragraph (d):

“(d) any Islamic bank.”.

Amendment of  
Companies Act 1965.  
*Act 125.*  
*Act 276.*

**58.** (1) Section 4 of the Companies Act 1965 is amended by inserting immediately after the words “1973” in the definition of “banking corporation” the words “and an Islamic bank as defined in the Islamic Banking Act 1983”.

(2) Section 218 of the Companies Act 1965 is amended by substituting for paragraph (j) of subsection (1) the following:

“  
*Act 102.*  
*Act 276.* (j) the company has held a licence under the Banking Act 1973 or the Islamic Banking Act 1983, and that licence has been revoked or has expired and has not been renewed; or”.

Amendment of the  
Central Bank of  
Malaysia Ordinance  
1958.  
*61/58.*

**59.** (1) Section 2 of the Central Bank of Malaysia Ordinance 1958, which in this section is referred to as “the Ordinance”, is amended—

*Act 276.* (a) by inserting immediately before the semicolon at the end of the definition of “bank” the words “or the Islamic Banking Act 1983”;

(b) by inserting immediately after the definition of “Governor” the following new definitions:

“investment account liabilities” in relation to an Islamic bank means the deposit liabilities at that bank in respect of funds placed by a depositor with that

bank for a fixed period of time under an agreement to share the profits or losses of that bank on the investment of such funds;

*Act 276.*

“Islamic bank” means a bank licensed under the Islamic Banking Act 1983; and

- (c) by inserting immediately after the words “in relation to a bank” in the definition of “ other deposit liabilities” the words “other than an Islamic bank” and by inserting immediately after the semicolon at the end of that definition the following words:

“and in relation to an Islamic bank means deposit liabilities at that bank other than savings account, investment account, sight and time liabilities and deposit liabilities from another bank or the Central Bank;”.

- (2) Section 37 of the Ordinance is amended—

- (a) by inserting immediately after the words “payable to or by banks” in paragraph (b) of subsection (1) the words “other than Islamic banks”;
- (b) by inserting immediately after the words “each bank” in paragraph (c) of subsection (1) the words “, other than an Islamic bank,” and by substituting a semicolon for the full stop at the end of that paragraph;
- (c) by inserting immediately after paragraph (c) of subsection (1) the following new paragraph (d):

“(d) a reserve to be held by each Islamic bank at the Central Bank comprising such amounts expressed as a percentage of each bank’s sight, savings account, investment account, time and other deposit liabilities as may be approved by the Minister on the recommendation of the Board, whether denominated in Malaysian or foreign currency.”; and

- (d) by inserting immediately after the words “paragraph (c)” in subsection (2) the words “or (d)”.

(3) Section 41 of the Ordinance is amended by substituting for the words “banks or groups of banks” in the first paragraph the words “banks other than Islamic banks or groups of such banks, nor shall it discriminate among Islamic banks or groups of Islamic banks,”.

*Act 276.*

(4) Section 42 of the Ordinance is amended by inserting immediately after the words “Banking Act, 1973” the words “or the Islamic Banking Act 1983”.

- (5) Section 51 of the Ordinance is amended—

- (a) by deleting the words “interest charge” in paragraph (a) of subsection (4); and
- (b) by deleting the word “interest” in paragraph (b) of subsection (4).

Amendment of  
Finance Companies  
Act 1969.  
*Act 6.*  
*Act 276.*

**60.** Section 2 of the Finance Companies Act 1969 is amended by substituting for the words “to carry on banking business in the Federation” in the definition of “bank” the words “under the Banking Act 1973 or an Islamic bank licensed under the Islamic Banking Act 1983”.