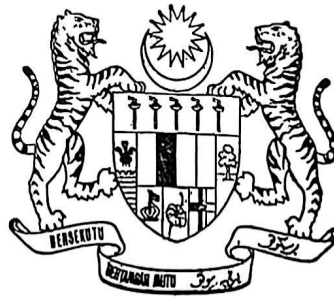


29/3/73



REPEALED BY ACT 372 c.i.f. 1.1.90

LAWS OF MALAYSIA

Act 102

BANKING ACT, 1973

Date of Royal Assent 20th March, 1973

Date of publication in *Gazette* ... 22nd March, 1973

LAWS OF MALAYSIA**Act 102****BANKING ACT, 1973**

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REPEALED BY ACT 372 c. 1.1.1.90

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LAWS OF MALAYSIA

Act 102

BANKING ACT, 1973

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

[15th April, 1973] PU(B) 147/73

BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang Dipertuan Agung with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows :

PART I

PRELIMINARY

1. (1) This Act may be cited as the Banking Act, 1973, and shall come into force on such date as the Minister may by notification in the Gazette appoint.

PU(B) 147/73

Short title, commencement and application.

(2) This Act shall apply throughout Malaysia.

2. In this Act unless the context otherwise requires—

Interpretation.

“bank” means any person who carries on banking business;

“banking business” means the business of receiving money on current or deposit account, paying and collecting cheques drawn by or paid in by customers, and making advances to customers and includes such other business as the Central Bank, with the approval of the Minister may prescribe for the purposes of this Act;

in any currency
MUSA

x PU (B)
750/78

“branch” in relation to a bank, includes a mobile branch of the bank and a branch established and maintained for a limited period only;

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

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

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

Act 276 →

“licence” means a licence granted under section 3;

“licensed bank” means a bank holding a valid licence and all the offices and branches in the Federation of such a bank shall be deemed to be one bank;

AA 633 →

“licensed finance company”

“other deposit liabilities” in relation to a bank means the deposit liabilities at that bank other than savings account, sight and time liabilities and deposit liabilities from any other licensed bank/or the Central Bank;

for such other documents in lieu of passbooks as approved by the Central Bank
AA 529

“savings account liabilities” in relation to a bank means the total deposits at that bank which normally require the presentation of passbooks/or the deposit or withdrawal of monies;

“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;

any Islamic bank
Act 274

“sight liabilities” in relation to a bank means the total deposits at that bank which are repayable on demand, but does not include savings account liabilities or the deposits of any other licensed bank/or of the Central Bank at that bank;

79/65. “subsidiary” has the meaning assigned to it under section 5 of the Companies Act, 1965;

“time liabilities” in relation to a bank means the total deposits at that bank which are repayable otherwise than on demand, but does not include savings account liabilities or the deposits of any other licensed bank/or of the Central Bank at that bank.

PART II

LICENSING OF BANKS

Banking business to be transacted only by a licensed bank.

3. (1) Banking business shall not be transacted in the Federation except by a corporation which is in the possession of a licence in writing from the Minister authorizing it to do so.

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(2) A corporation which desires authority to carry on banking business in the Federation 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 corporation is incorporated, duly verified by a statutory declaration made by a senior officer of the corporation;
- (b) a copy of the latest audited balance sheet of the corporation; and
- (c) such other 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 the provisions of section 4, grant a licence, with or without conditions, or refuse a licence.

(5) 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 ^{five} ~~five~~ thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(A.A.422)

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.

Minister
may vary or
revoke
condition
of licence.

(2) The Minister shall, prior to any action under subsection (1), notify his intention in writing to take such action to the licensed bank concerned and shall give the licensed 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 so varied or revoked.

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

(4) Any licensed 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 ~~five thousand~~ ^{ringgit} dollars.

(AA 422)

Licence not to be granted in certain cases.

5. (1) No bank shall be granted a licence under section 3 nor shall any bank licensed thereunder carry on business in the Federation without the written consent of the Minister if—

(a) in the case of a bank incorporated in the Federation, its capital funds unimpaired by losses or otherwise is less than ~~two million Malaysian dollars~~;

The minimum amount AA529

(b) in the case of a bank incorporated outside the Federation—

(i) its capital funds unimpaired by losses or otherwise is less than ~~five million Malaysian dollars~~; and

(ii) it holds net working funds in the Federation, unimpaired by losses or otherwise of less than ~~two million Malaysian dollars~~.

Ab. AA529

(2) For the purposes of this section—

“capital funds” means paid-up capital and reserves;

“net working funds” in relation to a bank incorporated outside the Federation means the net liabilities of its branches and offices in the Federation to its branches and offices outside the Federation computed in such a manner as may be prescribed by notice in writing from time to time by the Central Bank.

AA529

Foreign-owned banks.

(3) ...
6. (1) No bank shall be granted or shall hold a licence if the Minister is satisfied that it is or has become owned or controlled by a foreign government.

(2) Where the Minister is satisfied that a licensed bank has become owned or controlled by a foreign government, the Minister may continue to allow the bank to hold its licence for such temporary period or periods and subject to such condition or conditions as the Minister may determine for the purposes of winding up its business in the Federation or of enabling the foreign government to divest itself of the ownership or control of the bank.

(3) For the purposes of this section, a bank shall be deemed to be owned or controlled by a foreign government if fifty per centum or more of its capital issued and paid-up

is owned by or on behalf of the government of any country other than the Federation or of an agency of such government, or if a majority of the persons having the direction, control or management of the bank are appointed by or on behalf of such government or agency.

7. Except with the consent in writing of the Central Bank—
- (a) no licensed bank may open a new branch, agency or office in any part of the Federation; and
 - (b) no licensed bank incorporated in the Federation may open a new branch, agency or office in any place outside the Federation.

Opening
of new
branches.

8. (1) Every licensed bank in the Federation 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.

← Licence
fee.

MA529

(2) The Minister may prescribe different licence fees for different banks varied according to the size or location of banks or to both, size being measured in relation to number of branches, deposit liabilities or capital or any combination thereof.

9. (1) Except with the consent in writing of the Minister—
- (a) a person or body of persons not being a licensed bank shall not assume or use in relation to the business or any part of the business carried on by the person or body of persons the word "bank" or any of its derivatives or any word indicating the carrying on of banking business, either in National Language or in English or in any other language;
 - (b) no bank shall hereafter be licensed by a name which includes any of the words "Central", "Commonwealth", "Federal", "Federation", "Malaysia", "Malaysian", "National", "Reserve" or "State" either in National Language or in English or in any other language.

Restriction
of use of
title "bank"
and the use
of certain
words in a
bank's
name.

Sub. Act 276

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

(A.A.422)

(3) Nothing in this section shall apply to any association of banks or of employees of banks formed for the promotion of their mutual interests.

Exami-
nation
of persons
suspected
of trans-
acting
banking
business.

10. If the Central Bank has reason to suspect or believe that any person is transacting banking business without a licence, the Central Bank may examine the books, accounts and records of the person for purposes of ascertaining whether the person has contravened or is contravening any provision of this Act, and any refusal to submit such books, accounts or records without just cause, shall be *prima facie* evidence of transacting banking business without a licence.

Revocation
of licence.

11. (1) If any licensed bank—

- (a) is carrying on its business in a manner detrimental to the interest of its depositors and other creditors;
- (b) has insufficient assets to cover its liabilities to the public;
- (c) is contravening any provision of this Act or of the Central Bank of Malaysia Ordinance, 1958; or
- (d) has ceased to carry on banking business in the Federation,

61/58.

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

Provided that the Minister shall prior to any such revocation notify his intention to take such action to the bank concerned and shall give the licensed 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.

(2) Where the licence of a 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.

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

(4) 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 39, 41 and 42.

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 bank shall as from the date of the notice cease to transact any banking business in the Federation 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.

13. The Central Bank shall cause to be published in the *Gazette* in each year a list of all 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 therefor shall also be caused to be published in the *Gazette*.

Publication of list of banks.

PART III

FINANCIAL REQUIREMENTS AND DUTIES OF BANKS

14. (1) The Central Bank may require licensed banks to maintain capital funds in the case of a bank incorporated in the Federation, or net working funds in the case of a bank incorporated outside the Federation in proportion to the total assets of its branches and offices in the Federation at such percentage, not exceeding ten per centum of the total assets, as may be prescribed from time to time by the Central Bank.

Sub. M-529
Maintenance of capital funds and net working funds.

(2) For the purposes of this section, the expressions "capital funds" and "net working funds" shall have the meanings assigned to them by subsection (2) of section 5.

Sub M-529

15. (1) Every licensed 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 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;

Maintenance of reserve funds.

- (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 61/58. Ordinance, 1958;
- (c) net balances with banks in the Federation; D/AA 454
- (d) net money at call in the Federation;
- (e) Treasury bills issued by the Government or by the Government of any State authorized to issue Treasury bills; *and* (AA 454)
- (f) inland bills of exchange and promissory notes rediscountable at the Central Bank; and D/AA 454
- (g) 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 licensed bank to render such return or returns as the Central Bank deems necessary for the implementation of this section and of section 17.

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

17. (1) The Central Bank may if it is satisfied that it is necessary to do so require licensed banks to maintain a minimum amount or amounts of assets specified in subsection (2) to be held in the Federation expressed as a percentage or percentages which such assets shall bear to the sight, savings account, time and other deposit liabilities of each bank ~~/~~ either jointly or separately.

Minimum
local assets
require-
ment.

(2) For the purposes of subsection (1) the specified assets shall be—

- (a) the assets specified in subsection (6) of section 16;
- (b) loans or advances made to persons in the Federation;

- (c) securities issued by the Government or by the Government of any State or by any public authority established by any Federal law, and any other securities issued in the Federation and approved for the purposes of this section by the Central Bank; and
- (d) such other assets in the Federation as may be approved from time to time by the Central Bank for the purposes of this section.

(3) Any licensed bank which fails to comply with the requirements of subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding ~~one~~ ¹⁰⁰⁰ thousand dollars for every day during which the default continues.

*low
(AA4-22)*

No discrimination of banks.

18. No licensed bank shall be required to maintain a higher percentage of liquid assets or assets specified in subsection (2) of section 17 either to its sight liabilities or to its savings account liabilities or to its time liabilities or other deposit liabilities ~~jointly~~ or separately than any other licensed bank is required to maintain.

Auditor and auditor's report.

19. (1) Notwithstanding the provisions of the Companies Act, 1965 every licensed 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 licensed 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 licensed bank to that auditor.

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

- (a) to carry out for the year in respect of which he is appointed—
 - (i) in the case of a bank incorporated in the Federation, an audit of the accounts of that bank; and
 - (ii) in the case of a licensed bank incorporated outside the Federation, an audit of the accounts of that bank in respect of its operations in the Federation; and

(b) to make a report in accordance with section 174 of the Companies Act, 1965— 79/65.

(i) in the case of a licensed bank incorporated in the Federation, upon the annual balance sheet and profit and loss account; and

(ii) in the case of a licensed bank incorporated outside the Federation, upon the annual balance sheet and profit and loss account in respect of its operations in the Federation.

(4) (a) The report of the auditor referred to in paragraph (b) (i) of subsection (3) shall be laid together with the report of the directors of the licensed 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 20.

(b) The report of the auditor on the annual balance sheet and profit and loss account of a licensed bank incorporated outside the Federation forwarded under paragraph (c) (i) of subsection (1) of section 20 may be made in a manner that complies with the law for the time being applicable in the place of its incorporation or origin.

(5) No person having an interest in a licensed 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 a licensed bank who shall after such appointment acquire such interest or become 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 35 in relation to an investigation by the Central Bank of the affairs of a licensed bank under section 33 or 34 are hereby imposed and conferred in relation to auditors appointed under this section.

(7) Any licensed 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} five thousand dollars. ¹⁹⁹⁹

(0.A.422)

Audited
balance
sheet.

20. (1) Every licensed bank shall—

(a) exhibit in a conspicuous position in every office or place of business in the Federation—

(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;

Sub. A7529
(b) publish within fourteen days of the laying of its accounts at its annual general meeting in at least two daily newspapers published in the Federation and approved by the Central Bank, one in the National Language and one in English 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 a licensed bank incorporated in the Federation with branches outside the Federation, two copies each of its latest audited annual balance sheet and profit and loss account in respect of its operations in the Federation, 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 the Federation; and

(iii) in the case of a licensed bank incorporated outside the Federation, two copies each of its latest audited annual balance sheet and profit and loss account in respect of its operations in the Federation.

BANKING

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

Sub. M-529

Provided that this subsection shall not apply to those documents referred to—

- (a) in paragraph (c) (i) of subsection (1) in respect of a licensed bank incorporated outside the Federation; and
- (b) in paragraph (c) (ii) of subsection (1) in respect of operations in each country outside the Federation.

(3) The Central Bank may require any licensed 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 licensed 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 five thousand dollars.

twenty
(A.A.422)

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

Statistics to be furnished.

- (a) not later than fifteen days after the last day of each month a statement showing the liabilities and assets of its banking offices and branches in the Federation at the close of business on the last business day of the preceding month;
- (b) a statement giving an analysis of loans and advances of its banking offices and branches in the Federation 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 the Federation; and
- (d) any such statistical information as may be requested by the Central Bank.

Sub. M-529

(ca)...



AAS29

Except for the purposes of paragraphs (a) & (b), any

AA529 and (c) Act 330

(A.A. 422)

(2) ~~Any~~ information received from a bank under this section shall be regarded as secret between that bank and the Central Bank.

(3) Any licensed 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} one thousand dollars ^{per day} 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.

22. A licensed bank incorporated in the Federation which operates branch offices or agencies outside the Federation 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 BANKS

Information on change in control of locally incorporated banks.

23. (1) Whenever a change is about to occur in the control of any licensed bank incorporated in the Federation, the bank shall report the proposed change to the Central Bank.

(2) (a) Whenever a loan or advance is made by any licensed bank secured in the aggregate by twenty per centum or more of the paid-up capital shares of any other licensed bank incorporated in the Federation, the licensed bank shall report the fact to the Central Bank.

(b) The reports required to be made under this subsection shall contain the following—

- (i) the names and addresses of the borrowers;
- (ii) the name of the licensed bank 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.

(3) 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.

(4) For the purposes of this section, the expression "control" in relation to a bank means the possession directly or indirectly of the power to direct or cause the direction of the management and policy of the bank.

(5) Any licensed 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 five thousand dollars.

23A, 23B, 23C, 23D, 23E, 23F and 23G. . . .
24. (1) Every licensed 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) (i) scheme for reconstruction of the bank; or
- (ii) scheme for amalgamation, merger, or otherwise between the bank and any other corporation,

wherein the whole or any part of the undertaking 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:

Provided that the approval of the Minister shall not be unreasonably withheld.

24A
25. (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 a licensed 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.

(2) No person who has been a director of, or directly concerned in the management of, a licensed bank which has been wound up by a court shall without the express

(A.A.A.22)
Add. AAG33
Sanction for reconstruction etc. of bank required.

← AA574
Disqualification of directors and employees of banks. 79/65.

authority of the Minister act or continue to act as a director of, or be directly concerned in the management of, any 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 ^{five}~~five~~ thousand ^{dollars}~~dollars~~ or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(A.A. 422)

PART V

RESTRICTIONS ON BUSINESS

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

26. (1) No licensed bank shall—

(a) pay any dividend on its shares until all its capitalised 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;

(c) grant unsecured advances, unsecured loans or unsecured credit facilities in excess of, in the aggregate and outstanding at any one time, ten thousand dollars to—

(i) any of its directors;

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

(iii) any corporation which is deemed to be related to the bank as described in section 6 of the Companies Act, 1965 other than a licensed bank or a borrowing company licensed under the Borrowing Companies Act, 1969; or

(d) except in special circumstances as the Central Bank may allow, grant to its officers, employees or other persons being persons receiving remuneration from the licensed bank (other than accountants, advocates and solicitors, architects, estate agents, doctors and any other persons receiving remuneration from a

d/AA529

Sub. by A.A. 422.

79/65.

Act 6.

d/AA529

bank in respect of their professional services) unsecured advances, unsecured loans or unsecured credit facilities which in the aggregate and outstanding at any one time exceed six months' remuneration of that officer, employee or person.

(2) All the directors of the bank shall be liable jointly and severally to indemnify the bank against any loss arising from the making of any unsecured advance, unsecured loan or unsecured credit facility under subparagraphs (i) and (ii) of paragraph (c) of subsection (1)

d/AAS29

(3) For the purposes of this section—

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

d/AAS29

“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.

26A...

27. (1) Except as provided under paragraph (c) of subsection (1) of section 26, no licensed bank incorporated in the Federation shall grant an advance, loan or credit facility whether secured or otherwise—

Restriction on grant of loan, advance or credit facility to directors etc. Sub AAS29

(a) to any of its directors (as defined in subsection (3) of section 26);

(b) to any firm or corporation of which any of its directors (as defined in subsection (3) of section 26) is a partner, director, manager or agent or to any corporation in which shares any of its directors (as so defined) has interest; or

(c) to any individual, firm or corporation of whom or of which any of its directors (as defined in subsection (3) of section 26) is a guarantor,

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 of not less than two-thirds of all the other directors of the bank and the approval has been recorded in the minutes of the meeting of the directors.

Sub. by
A.O. 422

d/KAS29

- (2) For the purposes of subsection (1), a person shall be deemed to have interest in the shares of a corporation if—
- (a) that person owns twenty per centum or more of the paid-up capital shares of the corporation;
 - (b) twenty per centum or more of the paid-up capital shares of the corporation are subject to a trust under which (to the knowledge of that person) he has an interest;
 - (c) the corporation is or its directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person in relation to twenty per centum or more of the paid-up capital shares of the corporation;
 - (d) that person is entitled to exercise or control the exercise of not less than twenty per centum or such other percentage as may be prescribed from time to time by the Central Bank, of the votes attached to the voting shares in the corporation;
 - (e) that person has entered into a contract to purchase twenty per centum or more of the paid-up capital shares of the corporation;
 - (f) that person has a right otherwise than by reason of having an interest under a trust, to have twenty per centum or more of the paid-up capital shares transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
 - (g) that person has a right to acquire twenty per centum or more of the paid-up capital shares of the corporation under an option whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;

- (h) that person is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of the corporation or of a class of its members) to exercise or control the exercise of a right attached to twenty per centum or more of the paid-up capital shares of the corporation, not being shares of which he is the registered holder; or
- (i) the aggregate total of shares to which two or more circumstances mentioned in the preceding paragraphs relate, shall be at any one time twenty per centum or more of the paid-up capital shares of the corporation.

27A
27AA

28. (1) Every director of a licensed 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 licensed bank shall as soon as practicable declare the nature of his interest to the board of directors of that licensed bank and the secretary of that licensed bank shall cause such declaration to be circulated forthwith to all the directors.

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AAs29
AAG33
Disclosure of interests by directors.

(2) The requirements of subsection (1) shall not apply in any case where the interest of the director consists only of 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 licensed 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 a licensed 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 a licensed 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 licensed 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 licensed 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 licensed 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 ^{five} ~~five~~ thousand ^{dollars} ~~dollars~~ or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(N.A. 425)

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

29. (1) Any overdraft or other credit facility granted by any licensed 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 overdraft or other credit facility is granted, as may be directed by the Central Bank in writing.

(2) An overdraft or other 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 licensed 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 overdraft or credit facility;

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

(4) Any licensed 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.

30. (1) No licensed bank shall make any loan or advance exceeding in the aggregate thirty per centum of the amount of its total deposits on the security of immovable property for the purpose of purchasing, improving or altering immovable property:

d/17/529
Loans and advances secured by immovable property.

Provided that any bank may, with the prior written consent of the Central Bank, make such loans or advances in an aggregate amount not exceeding sixty per centum of the amount of its total deposits.

(2) A loan or advance secured solely by a charge, deed of trust or other instrument upon immovable property or by notes or by other obligations which are so secured shall, for the purposes of this section, be a loan or advance secured by immovable property; a loan or advance secured in part by charge, deed of trust, or other instrument upon immovable property, or by notes or other obligations which are so secured or by any other form of security, shall for the purposes of this section be a loan or advance secured by immovable property to the extent, but only to the extent, of the value of that immovable property as a security as determined by the Central Bank.

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

(4) Any licensed bank which acts in contravention of the provisions of subsection (1) shall be guilty of an offence under this Act.

Bank not to engage in trade.

31. (1) No licensed bank 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 import and export trade except in the course of satisfaction of debts due to it for the purposes of carrying on its banking business.

(2) The provisions of this section shall not apply to the purchasing or selling of gold by any licensed bank.

(3) Any licensed bank which acts in contravention of this section shall be guilty of an offence under this Act.

Proof of compliance with sections 26, 27, 29, 30 and 31.

32. Any licensed 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 ~~26, 27, 29, 30 and 31.~~

~~26, 26A, 27, 27A, 29 and 31~~
MS29

PART VI

POWERS OF SUPERVISION AND CONTROL OVER BANKS

Investigation of banks.

33. The Central Bank shall from time to time investigate under conditions of secrecy, the books, accounts and transactions of each licensed bank and of any branch, agency or office outside the Federation opened by a licensed bank incorporated in the Federation.

Special investigation of banks.

34. 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 a licensed bank, if he has reason to believe such licensed 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.

61/58.

Production of bank's books and documents.

35. (1) For the purposes of an investigation under sections 33 and 34, a licensed 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:

Provided that the 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 bank.

(2) Any licensed 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} one thousand ^{ringgit} dollars for every day during which the default continues.

(A.A. 425)

(3) For the purposes of an investigation under sections 33 and 34, all officers and employees of the Central Bank shall be deemed to be public servants within the meaning of the Penal Codes applicable.

F.M.S. Cap.
45.
Sabah Ord.
3/59.
Sarawak
Cap. 57.

36. (1) Except as provided in sections 33 and 34, 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 licensed 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:

Banking
secrecy

Provided that 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.

Act 33.

(2) Except with the consent of the Central Bank in writing and to the extent specified therein, no officer of any licensed 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 representatives gives or give his or their permission so to do;
- (b) the customer is declared bankrupt; or
- (c) the information is required to assess the credit-worthiness of the customer ~~in connection with such credit bureau as may be established with the~~

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approval of the Central Bank or relating to a *bona fide* commercial transaction or a prospective commercial transaction.

(3) The provisions of subsection (2) shall not apply to the giving of information to auditors appointed under section 19, officers and employees of the bank who are resident in the Federation.

(4) 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 ~~ten~~ ^{eight} thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Identify
(AA 452)

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

37. (1) Every licensed bank shall send to the Central Bank ~~not later than fifteen days~~ 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—

within such period as may be prescribed by notice in writing from time to time by the Central Bank
(AA 529)
d/AA 529

- (a) any of its directors (as defined in subsection (3) of section 26);
- (b) any firm in which it or any of its directors (as defined in subsection (3) of section 26) is interested as partner, manager, agent or guarantor;
- (c) any individual of whom any of its directors (as defined in subsection (3) of section 26) is a guarantor;
- (d) any corporation which is deemed to be related to the bank as described in section 6 of the Companies Act, 1965;
- (e) any of its officers, 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 a bank in respect of their professional services) in excess of six months' remuneration of the officer, employee or other person;
- (f) any corporation in which it or any of its directors (as defined in subsection (3) of section 26), officers, 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 a bank in respect of their professional

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d/AA 529

Sub. AA 529

services) is interested as a director, manager, agent or guarantor or in shares of which any of the aforesaid persons has interest within the meaning of subsection (2) of section 27; and

- (g) 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 a licensed 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 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.

38. A licensed 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.

Banks unable to meet obligations to inform Central Bank.

39. (1) Where—

- (a) a licensed 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) a licensed bank becomes unable to meet its obligations or suspends payment; or
- (c) after an investigation is made under section 33 or 34 the Central Bank is of the opinion that a licensed bank—
 - (i) is following unsound or improper practices;

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

- (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 in 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 in 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.

40. Where the Central Bank has acted under paragraph (c) of subsection (2) of section 39 with respect to a licensed bank, the following provisions shall have effect—

- (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.

Effect of removal of office of director or appointment of a director of a bank by the Central Bank.
79/65.

41. (1) Where the Central Bank has assumed or has appointed another person to assume control of the business of a licensed bank in pursuance of paragraph (e) of subsection (2) of section 39, the Central Bank or that person shall, subject to subsection (2), remain in control of, 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.

Control of licensed bank by Central Bank.

(2) Where the Central Bank has assumed or has appointed another person to assume control of the business of a licensed bank in pursuance of paragraph (e) of subsection (2) of section 39 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 or has appointed another person to assume control of the business of a licensed bank in pursuance of paragraph (e) of subsection (2)

of section 39, or ceased to control the business of a licensed bank in pursuance of this section, the Central Bank shall notify that fact in the *Gazette*.

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

42. (1) Where the Central Bank has assumed control or has appointed another person to assume control of the business of a licensed bank in pursuance of paragraph (e) of subsection (2) of section 39, the licensed 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 licensed 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} ~~one~~ thousand ^{four} ~~one~~ dollars for every day during which the default continues.

A.A. 422)

Extension of jurisdiction to subsidiaries of banks.

43. Any reference in this Part to a licensed bank shall be read as including a reference to a subsidiary of a licensed bank, but nothing in this Part applies to an office or branch outside the Federation of a subsidiary of a licensed bank incorporated outside the Federation.

Moratorium.

44. (1) The Central Bank may, with the approval of the Minister, if it considers it to be in the interests of the depositors of a 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*.

45. (1) Every licensed bank incorporated in the Federation 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.

Amendment of bank's constitution.

(2) Every licensed bank whether incorporated in or outside the Federation 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 licensed 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 ~~five hundred dollars~~ for every day during which the default continues.

Two thousand Niggit-AA 422.

PART VII

MISCELLANEOUS

46. (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 of or in execution or intended execution of or in connection with the execution or intended execution of, any power conferred upon the Government, Central Bank or the officer by this Act.

Indemnity.

(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 39 shall be deemed to be an officer of the Central Bank.

Priority of deposit liabilities.

47. Where a licensed bank becomes unable to meet its obligations or suspends payments, the assets of the bank in the Federation shall be available to meet all deposit liabilities of the bank in the Federation; and such deposit liabilities shall have priority over all other liabilities of the bank.

Penalties on directors and managers.

48. (1) Any person who, being a director or manager of a licensed bank—

(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,

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shall be guilty of an offence, and shall on conviction be liable to a fine not exceeding ^{twenty} five thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(AA422)

(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 these 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.

49. Any director, manager, trustee, auditor, employee or agent of any licensed 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 ^{five}~~five~~ thousand dollars ^{or}~~or~~ to imprisonment for a term not exceeding ^{three}~~three~~ years or to both such fine and imprisonment.

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 (AA-422)

50. (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.

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

(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.

51. Any director, officer or employee of a licensed bank or other persons being persons receiving remuneration from the licensed bank, who asks for or receives, consents or agrees to receive any gift (other than a gift of nominal

Prohibition on receipt of commission by staff.

value received during festive occasions), 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 endeavouring 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 that 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} ~~five~~ thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(A.A.422)

General penalty.

52. Any licensed bank which contravenes or fails to comply with any provision of this Act and 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 dollars.

Power of Governor to compound.

53. (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 monies 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.

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

Jurisdiction. Act 92. Sabah Cap. 29. Swk. Cap. 42.

55. Notwithstanding anything in the Subordinate Courts Act, 1948, the Subordinate Courts Ordinance of Sabah or the Subordinate Courts Ordinance of Sarawak, a Sessions Court in the States of Malaya and a Court of a Magistrate of the First Class in Sabah or Sarawak, shall have jurisdiction to try any offence under this Act or under any regulations made thereunder, and to award full punishment for any such offence.

Regulations.

56. (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 a licensed bank of shares of any corporation or the acquisition or development by the bank of any immovable property; and

(b) to provide for control by the Central Bank with respect to a licensed bank becoming a partner or proprietor of any firm with unlimited liability;

(c) (d) (e)...

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

← *Amend*
Declaration
of holidays.

(2) No bank shall do any business with the public on any day declared a bank holiday under the provisions of subsection (1).

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

(4) Any reference to a bank holiday in any written law for the time being in force shall include any day declared to be a bank holiday under the provisions of this section and any day which is a public holiday within the meaning of any written law relating to public holidays for the time being in force.

58. A licensed 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.

Application
of other
laws.

59. (1) The provisions of this Act shall not apply to—

Exemption.

(a) the Post Office Savings Bank established under the provisions of the Post Office Savings Bank Ordinance, 1948 of the States of Malaya or Post Office Savings Bank Ordinance of Sarawak;

40/48.
Swk.
Cap. 40.

(b) any business of pawnbroking carried on by a person licensed under any written law relating to pawnbrokers for the time being in force in the Federation; and

Act 6.

(c) any borrowing company licensed under the Borrowing Companies Act, 1969;

Act 276

→ (d) any Islamic bank.

(2) The Minister may on the recommendation of the Central Bank, exempt any business prescribed to be banking business under section 2 on such terms and conditions as may be imposed.

Sub. AA454

PART VIII

REPEAL AND TRANSITIONAL PROVISIONS

Repeal.
62/58.

60. (1) The Banking Ordinance, 1958 (hereinafter referred to as "the repealed Ordinance") is hereby repealed.

P.U. (A)
474/69.

(2) The Emergency (Essential Powers) Ordinance No. 12, 1969 is hereby repealed.

Saving.

61. All regulations, instructions, orders and decisions made under or in accordance with the repealed Ordinance shall remain valid and binding and shall be deemed to have been made under the provisions of this Act until they are amended or repealed.

Transitional provisions.

62. (1) Any licence which is granted under the repealed Ordinance and is in force at the commencement of this Act shall be deemed to have been granted under this Act and shall remain valid until it is revoked under this Act.

(2) Any bank which has been granted a licence under the repealed Ordinance and which has entered into any transactions prohibited by or under sections 26, 29, 30 and 31 shall within six months of the commencement of this Act submit a statement of the transactions to the Central Bank and shall within that period or such further period as the Central Bank may specify in any particular case, liquidate the transactions or bring the transactions within the limitations allowed by those sections and dispose of any property or right as may have been acquired thereby.

(3) Any bank which is granted a licence under the repealed Ordinance shall comply with the provisions of section 5 within a period of three months from the commencement of this Act or within such further period as the Minister may specify in any particular case.

63. Section 218 of the Companies Act, 1965 is hereby amended by substituting for paragraph (k) of subsection (1), the following—

Amend-
ment of
Companies
Act, 1965.
79/65.

“(k) the company has carried on banking business in Malaysia in contravention of the provisions of section 3, 5 or 6 of the Banking Act, 1972.”.