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Act 704

LABUAN FINANCIAL SERVICES AND SECURITIES ACT 2010

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LABUAN FINANCIAL SERVICES AND SECURITIES ACT 2010

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LAWS OF MALAYSIA

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LABUAN FINANCIAL SERVICES AND SECURITIES ACT 2010

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LAWS OF MALAYSIA

Act 704

LABUAN FINANCIAL SERVICES AND SECURITIES ACT 2010

An Act to provide for the licensing and regulation of financial services and securities in Labuan, the establishment of an exchange and for other matters related thereto.

[*11 February 2010*, *P.U. (B) 58/2010*]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Labuan Financial Services and Securities Act 2010.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Interpretation

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

"actuary" means a person, being a Fellow of any of the professional associations listed in the Second Schedule or a person recognized by the Authority as an actuary for the purposes of this Act, who appears on the list of actuaries maintained by the Authority;

"approved auditor" means an approved auditor under section 10 of the Labuan Companies Act 1990 [*Act 441*];

"Authority" means the Labuan Financial Services Authority established under section 3 of the Labuan Financial Services Authority Act 1996 [*Act 545*];

"authorized officer" means an officer duly authorized by the Authority under subsection 3(2);

"bank licensee" means a Labuan bank or a Labuan investment bank licensed under Part VI;

"by-laws" means the written terms by reference to which the committee regulates its own procedures and includes such terms applicable thereto as contained in the memorandum and articles of association of an exchange established under this Act;

"constituent documents" means the statute, charter, memorandum of association and articles of association, rules, by-laws, partnership agreement, or other instrument, under or by which a person is established and the scope of that person's functions, business, powers and duties are set out, whether contained in one or more documents;

"corporation" means any body corporate formed or incorporated or existing within Malaysia or outside Malaysia and includes a foreign Labuan company but does not include—

(a) a corporation sole;

(b) a trade union registered under any written law as a trade union; and

(c) a society registered under any written law relating to co-operative societies;

"court" means a court of competent jurisdiction;

"Court" means the High Court or a judge thereof;

"custodian" means the person who is entrusted by a mutual fund with custody of the property of the fund pursuant to an agreement to that effect;

"dealing in securities" means, whether as principal or agent, making or offering to make with any person or inducing or attempting to induce any person to enter into or to offer to enter into—

(a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or

(b) any agreement the purpose or avowed purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities;

"debenture" includes debenture stocks, bonds, notes and any other evidence of indebtedness of a corporation for borrowed monies, whether or not constituting a charge on the assets of the corporation, but shall not be construed as applying to any of the following:

(a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray the consideration payable under, a contract for sale or supply of goods, property or services or any contract of hire in the ordinary course of business;

(b) a cheque, banker's draft or any other bill of exchange or a letter of credit;

(c) a banknote, guarantee or an insurance policy;

(d) a statement, passbook or other document showing any balance in a current, deposit or savings account;

(e) any agreement for a loan where the lender and borrower are signatories to the agreement and where the lending of money is in the ordinary course of business of the lender, and any promissory note issued under the terms of such an agreement;

(f) any instrument or product or class of instruments or products as the Authority may prescribe;

"declaration" means a written statement of facts which the person making it signs and solemnly declares to be true before a commissioner or magisterial officer or notary public;

"director", in relation to a person specified in the first column of the First Schedule, has the meaning set out in the second column of the First Schedule as against such person;

"domestic company" means a company incorporated under the *Companies Act 1965 [*Act 125*];

"established", in relation to a person specified in the first column of the First Schedule, has the meaning set out in the third column of the First Schedule as against such person;

"establishment", in relation to—

(a) a company, means incorporation;

(b) a statutory body, means coming into existence under the law establishing, appointing or constituting it;

(c) a co-operative society, means registration, incorporation or otherwise coming into legal existence as a co-operative society;

(d) a partnership, including a limited partnership and a limited liability partnership, means formation;

(e) a sole proprietorship, means registration of its business; and

(f) any other body, association or group of persons, whether corporate or unincorporated, which requires registration or any other form of recording or recognition under any written law before it can lawfully commence its activities, means registration, recording or recognition under such written law;

"expert" includes any engineer, accountant, solicitor, valuer, auditor or any other person whose profession or reputation gives authority to a statement made by him;

**NOTE*—The Companies Act 1965 [*Act 125*] has since been repealed by the Companies Act 2016 [*Act 777*] which comes into operation on 31 January 2017—*see* subsection 620(1) of Act 777 and P.U. (B) 50/2017.

"financial year" means the period not exceeding fifty-three weeks at the end of which the balance of the fund's accounts is struck or, if no such balance is struck or if the period of fifty-three weeks for so doing is exceeded, the calendar year;

"foreign company" means—

(a) a company, a corporation, a society, association or other body incorporated outside Malaysia; or

(b) an unincorporated society, association or other body which under the law of its place of origin may sue or be sued, or hold property in the name of the secretary or other officer of the society, association or body duly appointed for that purpose, and which does not have its head office or principal place of business in Malaysia;

"foreign currency" means any currency other than ringgit;

"foreign Labuan company" means a foreign company registered under Part VIII of the Labuan Companies Act 1990;

"foundation" means a foundation established under the Labuan Foundations Act 2009 [*Act 706*], Part XI of the Labuan Islamic Financial Services and Securities Act 2010 [*Act 705*] or such similar entity established under the laws of any recognized country or jurisdiction notwithstanding any statutory definition to the contrary;

"fund administrator" means a person who, for valuable consideration, provides a mutual fund with administrative services or facilities alone or with accounting services;

"fund manager" means a person who, for valuable consideration, provides management services alone or with investment advice or administrative services in respect of securities for the purposes of investment, including dealing in securities or such other activity as may be specified by the Authority;

"holding company" has the meaning assigned to it in the Labuan Companies Act 1990;

"home supervisory authority" means any relevant authority or body in Malaysia or of any other country which exercises supervisory functions over the operations of any licensed entity;

"insurance licensee" means a person licensed under Part VII;

"Labuan" means the Federal Territory of Labuan;

"Labuan bank" means a person who is licensed to carry on Labuan banking business under Part VI;

"Labuan company" has the meaning assigned to it in the Labuan Companies Act 1990;

"Labuan investment bank" means a person who is licensed to carry on Labuan investment banking business under Part VI;

"Labuan licensed institution" means a person who is licensed to carry on Labuan financial business under Part VI;

"Labuan private trust company" means a Labuan company or foreign Labuan company carrying on trust company business for a private trust and registered with the Authority under Division 4 of Part V;

"Labuan trust company" means a person licensed to carry on trust company business under sections 61 and 71;

"liabilities" includes debts, duties and obligations of every kind, whether present or future, or whether vested or contingent;

"licence" means a licence granted or renewed under this Act;

"licensed entity" means a person licensed or registered to carry on any activity under any Part;

"limited liability partnership" means a limited liability partnership formed under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010 [*Act 707*], Part X of the Labuan Islamic Financial Services and Securities Act 2010, or under the laws of any recognized country or jurisdiction notwithstanding any statutory definition to the contrary;

"limited partnership" means a limited partnership formed under the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, Part X of the Labuan Islamic Financial Services and Securities Act 2010, or under the laws of any recognized country or jurisdiction notwithstanding any statutory definition to the contrary;

"Malaysian bank licensee" means a bank licensee which is an office or a subsidiary of a Malaysian bank;

"Minister" means the Minister charged with the responsibility for finance;

"mutual fund" or "fund" means a Labuan company, a corporation incorporated under the laws of any recognized country or jurisdiction, a partnership, a protected cell company, a foundation, or a unit trust which—

(a) collects and pools funds for the purpose of collective investment with the aim of spreading investment risk; and

(b) issues interests in a mutual fund which entitles the holder to redeem his investments that is agreed upon by the parties and receive an amount computed by reference to the value of a proportionate interest in the whole or part of the net assets of the aforesaid types of entities, as the case may be,

and includes an umbrella fund whose interests in a mutual fund or units are split into a number of different class funds or sub-funds and whose participants are entitled to exchange rights in one part for rights in another;

"national language" means the national language of Malaysia as defined in the National Language Act 1963/67 [*Act 32*];

"office" includes the principal place of business, a branch, an agency, a mobile place of business, a place of business set up and maintained for a limited period only, an electronic terminal and any other place of business;

"officer", in relation to a corporation, includes—

(a) a director, secretary or employee of the corporation including the principal officer;

(b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and

(c) a liquidator of the corporation appointed in a voluntary winding-up;

but does not include—

(A) a receiver who is also not a manager;

(B) a receiver and manager appointed by the Court; and

(C) a liquidator appointed by the Court or by the creditors;

"participant", in relation to a person specified in the first column of the First Schedule, has the meaning set out in the fourth column of the First Schedule as against such person;

"partnership" means a limited partnership or a limited liability partnership;

"person" includes a corporation, partnership, a body of persons, corporate or unincorporated and a corporation sole;

"person in control", in relation to an applicant for a licence or a licensed entity under this Act, means a person who—

(a) is entitled to exercise, or control the exercise of, not less than one-third of the votes attached to the voting shares in such applicant or licensed entity;

(b) has the power to appoint, or cause to be appointed, a majority of the directors of such applicant or licensed entity; or

(c) has the power to make, or cause to be made, decisions in respect of the business or administration of such applicant or licensed entity, and to give effect to such decisions or cause them to be given effect to;

"prescribe", where no mode is mentioned, means prescribe from time to time by order published in the *Gazette,* and a power to prescribe includes the power to make different provisions in the order for different persons, classes, categories or descriptions of persons;

"principal officer", in relation to a licensed entity, means a person, by whatever name called, who is responsible, subject to the authority of the directors, for the conduct of the business and the administration of the licensed entity;

"private fund" means a mutual fund—

(a) whose securities are owned or held by—

(i) not more than fifty investors where the first time investment of each of such investors is not less than two hundred and fifty thousand ringgit or such other sum as may be prescribed by the Authority or the equivalent in any foreign currency; or

(ii) any number of investors where the first-time investment of each of such investors is not less than five hundred thousand ringgit or such other sum as may be prescribed by the Authority or the equivalent in any foreign currency; or

(b) which is designated as a private fund under regulations made under this Act;

"prospectus" means any prospectus, notice, circular, advertisement or invitation inviting applications or offers to subscribe for or purchase securities, or offering any securities for subscription or purchase;

"protected cell company" means a company incorporated, or converted into, a protected cell company in accordance with the provisions of Part VIIIB of the Labuan Companies Act 1990 or such similar entity established under the laws of any recognized country or jurisdiction notwithstanding any statutory definition to the contrary;

"public fund" means a mutual fund other than a private fund;

"recognized country or jurisdiction" means a country or jurisdiction as may be specified by the Authority;

"record" means a facility for storing information which can be subsequently retrieved or reproduced;

"regulations" means regulations made under this Act;

"related", in relation to a corporation, means related within the meaning of section 4 of the Labuan Companies Act 1990;

"resident" means any person who is—

(a) in relation to a natural person, a citizen or permanent resident of Malaysia; and

(b) in relation to any other person, a person who has established a place of business, and is operating, in Malaysia,

and includes a person who is declared to be a resident pursuant to section 43 of the *Exchange Control Act 1953 [*Act 17*];

"ringgit" means a ringgit in the currency of Malaysia;

"rules", in relation to an exchange established under Part IX, means the rules governing the conduct of the exchange or its members;

"securities" means any investments commonly known or capable of being described as securities, and includes—

(a) shares, debentures, funds, units, interests in a limited partnership or limited liability partnership or unit trust or foundation or protected cell company or corporation;

(b) debentures, bonds or notes of or issued by any body (incorporated or unincorporated), government, local government or public authority;

**NOTE*—The Exchange Control Act 1953 [*Act 17*] has since been repealed by the Financial Services Act 2013 [*Act 758*] which comes into operation on 30 June 2013—*see* sections 271 and 272 of Act 758.

(c) certificates of interest or participation in, temporary or interim certificates for, receipts for or warrants to subscribe to or purchase any of the investments described in paragraphs *(a)* and *(b)*; and

(d) securities as defined in the Labuan Islamic Financial Services and Securities Act 2010;

"specify", where no mode is mentioned, means specify from time to time in writing, and a power to specify includes the power to specify differently for different persons or different classes, categories or descriptions of persons;

"subsidiary" shall have the meaning assigned to it under the Labuan Companies Act 1990;

"trust officer" means an officer of a Labuan trust company approved and designated as a trust officer by the Authority;

"unit trust" means a trust established under the laws of Malaysia relating to Labuan or the laws of any recognized country or jurisdiction for the purpose, or having the effect, of providing facilities for the participation by persons as beneficiaries under the trust in any profits or income arising from the acquisition, holding, management or disposal of any property.

(2) Any reference in this Act to "this Act" shall, unless otherwise expressly stated, be deemed to include a reference to any regulation, rule, order, notification or other subsidiary legislation made under this Act.

(3) Notwithstanding the definition of "securities" under this Act and "interest" as defined in section 66 of the Labuan Companies Act 1990, the Minister may, on the recommendation of the Authority, prescribe any instrument or product or class of instruments or products to be securities for the purposes of this Act and the Labuan Financial Services Authority Act 1996.

Administration of the Act

3. (1) The Authority is responsible for the due administration of this Act, subject to the general directions and control of the Minister.

(2) The Authority may authorize any of its members or officers to perform any of its functions, exercise any of its powers or discharge any of its duties under this Act.

(3) Subject to such limitations, if any, as may be prescribed, an authorized officer shall perform all the functions, exercise all the powers and discharge all the duties of the Authority as authorized and every function so performed, power so exercised and duty so discharged shall be deemed to have been duly performed, exercised and discharged for the purposes of this Act.

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal and signature of the Authority.

Fit and proper person

4. (1) Every licensed entity shall ensure that its directors, principal officers and trust officers, where applicable, remain as fit and proper persons throughout their appointment with the licensed entity.

(2) If a director, principal officer or trust officer, where applicable, ceases to be a fit and proper person, the licensed entity and such director, principal officer or trust officer, where applicable, shall as soon as reasonably practicable, notify the Authority in writing of the same, together with details of the change.

(3) In determining whether a person is a fit and proper person under this Act, the Authority may take into consideration the following:

(a) integrity, competence, soundness of judgment and financial standing of the person;

(b) whether the person has been adjudged a bankrupt, in Malaysia or elsewhere;

(c) whether the person has been convicted of a criminal offence in Malaysia or elsewhere and where the penalty imposed is imprisonment of one year or more, whether in itself or in addition to a fine; and

(d) such other criteria as may be specified in guidelines issued by the Authority.

(4) A person shall be under a duty to give notice in writing to the Authority, as soon as practicable, of any material event that could reasonably be expected to affect his status as a fit and proper person.

(5) Where the Authority is satisfied that a person is not fit and proper, the Authority may disqualify the person from acting in his capacity as a director, principal officer or trust officer, as the case may be, of a licensed entity.

Business in, from or through Labuan

5. (1) A person licensed to carry on any of the activities under this Act shall carry on such activities only in, from or through Labuan except that a licensed entity may carry on such business in Malaysia outside Labuan as may be permitted by the Authority from time to time:

Provided that nothing in this section permits a licensed entity from carrying on any regulated activities under the Capital Markets and Services Act 2007 [*Act 671*], where such regulated activities are carried on in Malaysia other than Labuan.

(2) Notwithstanding subsection (1), a mutual fund, a fund manager and a fund administrator established, licensed or registered, as the case may be, under Part III shall be deemed to be carrying on business in Labuan notwithstanding that the business is carried on wholly outside Labuan or outside Labuan from a place of business or registered office within Labuan and the expression "carrying on business from Labuan" includes carrying on business outside Labuan from a place of business or a registered office within Labuan.

Syariah matters

6. Any person—

(a) proposing to make an offer of subscription or purchase, or issue an invitation to subscribe for or purchase, securities in or from within Labuan; or

(b) carrying on any business regulated under Parts III, IV, VI, VII and X,

which is expressly in conformity with Syariah principles shall comply with the relevant provisions of the Labuan Islamic Financial Services and Securities Act 2010 and in so doing, shall be deemed to have complied with all relevant laws in Labuan relating to such matters.

Part II

SECURITIES

Division 1

PRELIMINARY

Interpretation

7. (1) In this Part, unless the context otherwise requires—

"borrowing company" means a Labuan company that is or will be under a liability, whether or not such liability is present or future, to repay any money received or to be received by it in response to an offer made under section 8 to subscribe for or purchase debentures of the Labuan company;

"guarantor company", in relation to a borrowing company, means a corporation that has guaranteed, or has agreed to guarantee, the repayment of any money received or to be received by the borrowing company in response to an offer made under section 8 to subscribe for or purchase debentures of the borrowing company;

"promoter", in relation to a prospectus issued by or in connection with a Labuan company, means a promoter of the company who was a party to the preparation of the prospectus or any relevant portion thereof, but does not include any person by reason only of his acting in a professional or advisory capacity; and

"secured debenture" means—

(a) any debenture which is stated on its face to be a secured debenture; and

(b) any debenture which is issued on terms affording the holder of the debenture rights and powers to vote and demand a poll in respect of the business and undertaking of the company, whether in addition to the rights of members of the company or in substitution for those rights.

DIVISION 2

OFFERS

Offers or invitations which require the approval of the Authority

8. (1) Subject to subsections (3) to (6), a person, its officers, directors, agent or any other person on its behalf, shall not make an offer for subscription or purchase, or issue an invitation to subscribe for or purchase securities in or from within Labuan without the prior written approval of the Authority.

(2) (*Deleted by Act A1654*).

(3) An applicant shall submit to the Authority such documents and such other information in relation to the offer or invitation in such form and manner and at such times as the Authority may require.

(4) Where an application has been submitted to the Authority under this section, the Authority may—

(a) approve an offer or invitation with or without revisions and subject to such terms and conditions as it thinks fit; or

(b) reject an offer or invitation.

(5) The following offers or invitations of securities are excluded from the requirement to obtain the approval of the Authority under subsection (1):

(a) an offer or invitation of securities, where—

(i) the offer or invitation is addressed to an identifiable category of persons to whom it is directly communicated by the person making the offer or invitation or by his appointed agent; or

(ii) the members of that category to which the offer or invitation is made are the only persons who may accept the offer or invitation and they are in possession of sufficient information to be able to make a reasonable evaluation of the offer or invitation,

and the number of persons to whom the offer or invitation is communicated does not exceed fifty;

(b) an offer or invitation of debentures, where—

(i) the first-time investment of each of the initial debenture holders is not less than two hundred and fifty thousand ringgit or the equivalent in any other currency and they are in possession of sufficient information to be able to make a reasonable evaluation of the offer or invitation; or

(ii) the first-time investment of each of the initial debenture holders is less than two hundred and fifty thousand ringgit or the equivalent in any other currency and the number of persons to whom the offer or invitation is communicated does not exceed fifty and they are in possession of sufficient information to be able to make a reasonable evaluation of the offer or invitation;

(c) an offer or invitation of securities in a mutual fund which satisfies the mutual fund requirements under Part III;

(d) an offer or invitation of securities pursuant to a take-over offer which complies with the relevant law applicable to such offer; and

(e) an offer or invitation of securities or such classes or categories of securities as may be specified by the Authority.

(6) Any specification or specifications made under paragraph (5)*(e)* shall be subject to any condition, restriction or limitation as the Authority may impose.

(7) Any person who makes an offer or invitation of securities in contravention of subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

(8) (*Deleted by Act A1654*).

False or misleading statements

9. (1) Where any statement or information is required to be submitted to the Authority in relation to any offer or invitation of securities submitted pursuant to subsection 8(3), an applicant and any of its officers shall not—

(a) submit or cause to be submitted any statement or information that is false or misleading;

(b) submit or cause to be submitted any statement or information from which there is a material omission; or

(c) engage in or aid or abet conduct that he knows to be misleading or deceptive or is likely to mislead or deceive the Authority.

(2) It shall be a defence to a prosecution or any proceedings for contravention of subsection (1) if it is proved that the defendant, after making enquiries as were reasonable in the circumstances, had reasonable grounds to believe, and did until the time of the making of the statement or provision of the information or engaging in the conduct was of the belief that—

(a) the statement or information was true and not misleading;

(b) the omission was not material;

(c) there was no material omission; or

(d) the conduct in question was not misleading or deceptive.

(3) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

Advertisements

10. (1) No advertisement offering, or calling attention to an offer or intended offer of, securities under subsection 8(1), being an offer of securities not excluded under subsection 8(5), shall be published in Labuan until it has been approved by the Authority.

(2) An application for approval of an advertisement shall be lodged with the Authority together with a copy of the advertisement verified in such manner as the Authority directs.

(3) Any person who publishes or causes to be published in Labuan an advertisement without the prior approval of the Authority commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Registration of prospectus

11. (1) Subject to subsection (2), a person shall not issue, offer for subscription or purchase, make an invitation to subscribe for or purchase, securities in or from within Labuan unless a prospectus in relation to such offer or invitation has been registered with the Authority.

(2) The requirement under subsection (1) shall not apply if the offer or invitation is made pursuant to or in connection with an offer or invitation excluded under subsection 8(5).

(3) The Authority shall not register a copy of any prospectus—

(a) if it contains any statement or matter which is in its opinion misleading in the form and context in which it is included; and

(b) unless—

(i) a copy signed by every director and by every person who is named therein as a proposed director of the corporation or operator in the case of a public fund applying for registration under section 31 or by their agents authorized in writing is lodged with the Authority on or before the date of its issue;

(ii) the prospectus appears to comply with the requirements of this Act and the regulations or the Authority is satisfied that any departure from the requirements of this Act or the regulations by such prospectus is justified and is unlikely to mislead a person investing on the faith of its content; and

(iii) there is also lodged with the Authority—

(aa) in the case of a prospectus relating to a public fund—

(i) a certificate from an expert certifying that it complies with the requirements of Part III; and

(ii) where all or any part of the prospectus is not in the national language or English language, a translation into the national language or English language of the prospectus or that part of the prospectus, verified in a manner satisfactory to the Authority;

(bb) in the case of any other prospectus, a copy, verified as specified, of any consent required by section 13 to the issue of the prospectus and any material contract referred to in the prospectus or, in the case of such a contract not reduced into writing, a memorandum giving full particulars thereof, verified as specified.

(4) If a prospectus is issued without a copy thereof having been so registered, the corporation and every person who is knowingly a party to the issue of the prospectus commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

(5) In relation to a prospectus relating to a public fund, such prospectus shall, in addition—

(a) provide full, true and plain disclosure of all facts and circumstances that would facilitate a reasonable assessment by a prospective investor in determining whether to purchase or subscribe to shares of a public fund;

(b) contain a statement summarizing the rights of investors under section 36; and

(c) where the public fund has completed a financial year in operation, be accompanied by or contain reference to the availability of the financial statements of the financial year of the public fund immediately preceding the date of such offer and the auditor's report thereon.

(6) Where—

(a) any change occurs which materially affects any of the matters required to be disclosed under subsection (5); or

(b) there has been a material change affecting the matters disclosed in the prospectus,

then the fund manager of the public fund or the promoter, as the case may be, shall within thirty days of such occurrence incorporate such change to the prospectus relating to such public fund or offer pursuant to subsection 8(1) and provide a copy thereof to each of its investors and the Authority.

Document containing offer of securities to be made via Labuan trust company or bank licensee and to be deemed prospectus

12. (1) Where a corporation allots or issues or agrees to allot or issue to a person any securities under subsection 8(1), and where such an offer is not excluded under subsection 8(5), the offer or invitation of securities shall be made through its agent which shall be a Labuan trust company or a bank licensee.

(2) Any document by which the offer under subsection 8(1) is made shall for all purposes be deemed to be a prospectus issued by the corporation, and all written laws and rules of law as to the contents of prospectuses and as to liability in respect of advertisements and statements and non-disclosures in prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if the securities had been offered under subsection 8(1) and as if persons accepting the offer in respect of any securities were subscribers therefor but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of statements or non-disclosures in the document or otherwise.

(3) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, securities was made by a corporation with a view to the securities being offered under subsection 8(1) if it is shown—

(a) that an offer of securities under subsection 8(1) was made within six months after the allotment or agreement to allot; or

(b) that at the date when the offer of the securities under subsection 8(1) was made, the whole consideration to be received by the corporation in respect of such securities had not been so received.

(4) The requirements of this Part as to prospectuses shall have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a corporation.

(5) In addition to complying with the other requirements of this Part, the document making the offer shall state—

(a) the net amount of the consideration received or to be received by the corporation making the offer in respect of the securities to which the offer relates; and

(b) the place and time at which the contract under which the securities have been or are to be allotted may be inspected.

(6) Where an offer to which this section relates is made by a corporation, it shall be sufficient if the document referred to in subsection (1) is signed on behalf of the corporation by two directors of the corporation and any such director may authorize his agent in writing to sign on his behalf.

Expert's consent to issue of prospectus containing statement by him

13. (1) A prospectus inviting subscription for or purchase of securities of a corporation and including a statement purporting to be made by an expert or to be based on a statement made by an expert shall not be issued unless there appears in the prospectus a statement that he has given and has not withdrawn his consent.

(2) If any prospectus is issued by a corporation in contravention of this section, the corporation and every person who is knowingly a party to the issue thereof commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

Civil liability for misstatement in prospectus

14. (1) Subject to this section, each of the following persons shall be liable to pay compensation to all persons who subscribe for or purchase any securities on the faith of a prospectus for any loss or damage sustained by reason of an untrue statement therein, or by reason of the willful non-disclosure therein of any matter of which he had knowledge and which he knew to be material, that is to say every person who—

(a) is a director at the time of issue of the prospectus;

(b) authorized or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;

(c) is a promoter of the corporation; or

(d) authorized or caused the issue of the prospectus.

(2) Notwithstanding anything in subsection (1), where the consent of an expert is required to the issue of a prospectus and he has given that consent, he shall not by reason only thereof be liable as a person who has authorized or caused the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert, and the inclusion in the prospectus of a name of a person as a trustee for debenture-holders, auditor, banker, barrister, advocate or solicitor or stock or share broker shall not for that reason alone be construed as an authorization by such person for the issue of the prospectus.

(3) No person shall be liable under subsection (1) if he proves—

(a) that, having consented to become a director of the corporation, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent;

(b) that the prospectus was issued without his knowledge or consent and he gave reasonable public notice thereof forthwith after he became aware of its issue;

(c) that after the issue of the prospectus and before allotment or sale thereunder he, on becoming aware of any untrue statement therein, withdrew his consent and gave reasonable public notice of the withdrawal and of the reason therefor; or

(d) that—

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment, issue or sale of the securities believe, that the statement was true;

(ii) as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of an extract from the report or valuation, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the expert making the statement was competent to make it and that that expert had given the consent required by section 13 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the person's knowledge, before any allotment, issue or sale thereunder; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

(4) Subsection (3) shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 13 as a person who has authorized or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

(5) A person who apart from this subsection would under subsection (1) be liable, by reason of his having given a consent required of him by section 13, as a person who has authorized the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert shall not be so liable if he proves—

(a) that, having given his consent under section 13 to the issue of the prospectus, he withdrew it in writing before a copy of the prospectus was lodged with the Authority;

(b) that, after a copy of the prospectus was lodged with the Authority and before issue or sale thereunder, he on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and the reasons therefor; or

(c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the issue or sale of the securities believe that the statement was true.

(6) Where—

(a) a prospectus contains the name of a person as a director of a corporation, or as having agreed to become a director, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof; or

(b) the consent of a person is required under section 13 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the company except any without whose knowledge or consent the prospectus was issued, and any other person who authorized or caused the issue of the prospectus, shall be liable to indemnify the person so named or whose consent was so required against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, or in defending himself against any action or legal proceedings brought against him in respect thereof.

Criminal liability for misstatement in prospectus

15. (1) Where in any prospectus, or in any advertisement of the kind referred to in section 10, there is an untrue statement or willful non-disclosure, any person who authorized or caused the issue of the prospectus or advertisement commits an offence and shall, on conviction, be liable to a fine not exceeding one million

ringgit or to imprisonment for a term not exceeding three years or to both unless he proves that the statement or non-disclosure was immaterial or that he had reasonable ground for believing and did, up to the time of the issue of the prospectus, believe that the statement was true or that the non-disclosure was immaterial.

(2) A person shall not be deemed to have authorized or caused the issue of a prospectus by reason only of his having given the consent required by this Division to the inclusion therein of a statement purporting to be made by him as an expert.

Labuan trust company or bank licensee as agent in offer

16. (1) No allotment or issue shall be made of any securities of a corporation offered under subsection 8(1), being an offer of securities not excluded under subsection 8(5), unless the securities have been offered through a Labuan trust company or a bank licensee.

(2) For the avoidance of doubt, a Labuan trust company or a bank licensee shall be the agent of a corporation which has offered securities under subsection 8(1) through the Labuan trust company or bank licensee to receive applications for the issue of securities and shall be so described in the prospectus.

(3) All monies payable on application for the securities in a corporation shall be paid to the Labuan trust company or bank licensee acting as an agent for the corporation, and pending receipt by the Labuan trust company or bank licensee of the amount of the minimum subscription, it shall hold all monies received by it upon trust for the applicant, and if the amount of the minimum subscription is not received by the Labuan trust company or bank licensee within the time stated in the prospectus, the Labuan trust company or bank licensee shall, subject to any right under the terms of the prospectus to deduct any costs and charges owing to it or to the Authority in connection with the prospectus or the offer or his acting as a broker in the matter, return the application monies or such proportion thereof as remains after making deductions, if any, in accordance with the terms of the prospectus to the applicants *pro rata* based on the respective amounts paid by them.

(4) Upon receipt by a Labuan trust company or a bank licensee acting as agent for a corporation of the amount of the minimum subscription on behalf of the corporation, the Labuan trust company or bank licensee shall, subject to its right to deduct from such monies its proper remuneration and disbursement, hold such monies and any further application monies as agent for the corporation.

Prohibition of allotment unless minimum subscription received

17. (1) No allotment or issue shall be made of any securities of a corporation offered under subsection 8(1), being an offer of securities not excluded under subsection 8(5), unless—

(a) the minimum subscription has been subscribed; and

(b) the sum payable on application for the securities so subscribed has been received by the corporation,

but if a cheque for the sum payable has been received by the corporation, the sum shall be deemed not to have been received by the corporation until the cheque is paid by the bank on which it is drawn.

(2) The minimum subscription shall be—

(a) calculated based on the price at which the security is or will be offered; and

(b) reckoned exclusively of any amount payable otherwise than in cash.

(3) The amount payable on application on each security offered shall not be less than five per centum of the price at which the security is or will be offered.

(4) Any condition requiring or binding any applicant for securities to waive compliance with any requirement of this section shall be void.

(5) No corporation shall issue or allot, and no officer or promoter of a corporation shall authorize or permit to be issued or allotted, securities under subsection 8(1) on the basis of a prospectus after the expiration of six months from the issue of the prospectus.

(6) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

Application monies to be held in trust until issuance or allotment

18. (1) Subject to subsections 16(3) and (4) and subsection 17(1), all applications and other monies paid prior to issuance or allotment by any applicant on account of securities offered under subsection 8(1) by a corporation shall, until the issuance or allotment of such securities, be held upon trust for the applicant and such monies shall be paid into and kept in a separate trust account, pending issuance or allotment.

(2) If there is non-compliance with this section, every officer of the corporation who is in default and who knowingly and wilfully authorizes or permits the default commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

DIVISION 3

DEBENTURES

Power to issue debentures

19. (1) Subject to this Division and to the terms and conditions of its memorandum and articles, a Labuan company shall have the power to issue debentures on such terms and conditions as it thinks fit and in particular, but without limiting the generality of the foregoing, may issue debentures—

(a) constituting a charge on any or all of the assets of the company;

(b) convertible from debentures into shares in the company; or

(c) as secured debentures.

(2) The debt payable under any debenture, whether sealed or signed on behalf of the company, shall be a specialty debt of the company, and where the debenture is issued by a branch of a company, shall be located at that branch.

(3) The Minister may make regulations—

(a) restricting the right of a Labuan company or any particular class of Labuan companies to issue debentures which may be converted into shares; and

(b) prescribing the terms and conditions or the event or events upon which conversion shall or may take place.

Trustee for debenture holders

20. (1) Every Labuan company which offers debentures under subsection 8(1), being an offer of debentures not excluded under subsection 8(5), shall make provision in those debentures, or in a trust deed relating to those debentures, for the appointment of a Labuan trust company as a trustee for the holders of the debentures.

(2) A borrowing company shall not allot any debentures until such time as a Labuan trust company has been appointed as a trustee for the holders of those debentures.

(3) The Authority may approve any other person to act as a trustee together with the Labuan trust company for the holders of the debentures.

(4) If default is made by a borrowing company in complying with this section, the borrowing company and every officer of the borrowing company who is in default commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

Exemptions and indemnifications of trustee from liability

21. (1) Subject to this section, a term, provision or covenant of a debenture or a trust deed of a term of contract with holders of debentures secured by a trust deed shall be void insofar as the term, provision or covenant, as the case may be, would have the effect of—

(a) exempting a trustee from liability for contravention of any provision of this Part or for breach of trust or failure to show the degree of care and diligence required of it as a trustee;

(b) indemnifying a trustee against liability for contravention of any provision of this Part or for breach of trust or for failure to show the degree of care and diligence required of it as a trustee,

unless the term, provision or covenant—

(A) releases the trustee from liability for anything done or omitted to be done before the release is given; or

(B) enables a meeting of debenture holders to approve the release of a trustee from liability for anything done or omitted to be done before the release is given.

(2) For the purpose of paragraph (1)(B)—

(a) a release is approved if the debenture holders who vote for the resolution hold seventy-five per centum of the nominal value of the debentures held by all the debenture holders who attend the meeting and vote on the resolution; and

(b) a debenture holder attends the meeting and votes on the resolution if—

(i) such debenture holder attends the meeting in person and votes on the resolution; or

(ii) if proxies are permitted, the debenture holder is represented at the meeting by a proxy and the proxy votes on the resolution.

Duties of trustee

22. (1) A trustee for the holders of debentures—

(a) shall exercise reasonable diligence to ascertain whether or not the assets of the borrowing company and each of its guarantor companies, which are or may be available by way of securities or otherwise, are sufficient, or are likely to be or become sufficient, to discharge the principal debt as and when it becomes due;

(b) shall satisfy itself that each prospectus relating to the debentures does not contain any matter which is inconsistent with the terms of the debentures or with the relevant trust deed;

(c) shall exercise reasonable diligence to ascertain whether or not the borrowing company and each of its guarantor companies have committed any breach of the terms, provisions or covenants of the debentures or the trust deed;

(d) except where it is satisfied that a breach of the terms, provisions or covenants of the debentures or the trust deed would not materially prejudice the security, if any, for the debentures or the interests of the holders of the debentures, shall take all steps and do all such things as it is empowered to do to cause the borrowing company and any of its guarantor companies to remedy any breach of those terms, provisions or covenants;

(e) where the borrowing company or any of its guarantor companies fails, when so required by the trustee, to remedy any breach of the terms, provisions or covenants of the debentures or the trust deed, shall place the matter before a meeting of holders of the debentures, submit such proposal for the protection of their investment as the trustee considers necessary and appropriate and obtain the directions of the holders in relation thereto; and

(f) where the borrowing company submits to those holders a compromise or arrangement, shall give them a statement explaining the effect of the compromise or arrangement and, if it thinks fit, recommend to them an appropriate course of action to be taken by them in relation thereto.

(2) Where, after due enquiry, a trustee for the holders of debentures at any time is of the opinion that the assets of a borrowing company and of any of its guarantor companies which are or should be available, whether by way of security or otherwise, are insufficient or likely to become insufficient to discharge the principal debt as and when it becomes due, the trustee may lodge an application in the specified form with the Authority for a direction under this subsection and the Authority may, on such application, after giving the borrowing company an opportunity for making representations in relation to the application, by direction in writing served on the borrowing company at its registered office in Labuan, impose such restrictions on the activities of the borrowing company, including restrictions on advertising for deposit or loans and on borrowing by the borrowing company, as the Authority thinks necessary for the protection of the interests of the holders of the debentures, or the Authority may, and if the borrowing company so requires shall, direct the trustee to lodge an application with the Court for an order under subsection (4) and the trustee shall apply accordingly.

(3) Where—

(a) after due enquiry, a trustee for the holders of debentures at any time is of the opinion that the assets of the borrowing company and of any of its guarantor companies which are or should be available are insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due; or

(b) the borrowing company has contravened or failed to comply with a direction by the Authority under subsection (2),

the trustee may, and where the borrowing company has requested the trustee to do so, the trustee shall, apply to the Court for an order under subsection (4).

(4) Where an application is lodged by a trustee with the Court under subsection (2) or (3), the Court, after giving the borrowing company an opportunity of being heard, may, by order, do all or any of the following things, namely—

(a) direct the trustee to convene a meeting of the holders of the debentures for the purpose of placing before them such information relating to their interests as the trustee

considers necessary or appropriate and for the purpose of obtaining their directions in relation thereto, and give such directions in relation to the conduct of the meeting as the Court thinks fit;

(b) stay all or any actions or proceedings before any Court by or against the borrowing company;

(c) restrain the payment of any monies by the borrowing company to the holders of debentures of the borrowing company or to any class of such holders;

(d) appoint a receiver of such of the property as constitutes the security, if any, for debentures or any part thereof; or

(e) give such further directions from time to time as may be necessary to protect the interests of the holders of debentures, the members of the borrowing company or any of its guarantor companies or the public, but in making any such order the Court shall have regard to the rights of all creditors of the borrowing company.

(5) The Court may vary or rescind any order made under subsection (4) as it thinks fit.

(6) A trustee in making any application to the Authority or the Court shall have regard to the nature and kind of the security given when the debentures were offered under subsection 8(1), and, if no security was given, shall have regard to the position of the holders of the debentures as unsecured creditors of the borrowing company.

(7) A trustee may rely upon any certificate or report given or statement made by any advocate, auditor or officer of the borrowing company or guarantor company if it has reasonable grounds for believing that such advocate, auditor or officer was competent to give or make the certificate, report or statement.

(8) This section shall not apply to an offer or invitation of securities under subsection 8(5).

Obligations of directors of borrowing company

23. (1) The directors of the borrowing company shall—

(a) at the end of a period not exceeding three months ending on a day, such day being the later of the date of the relevant prospectus, if applicable, or the date on which the debenture is issued pursuant to the trust deed, which the trustee for the holders of debentures of the borrowing company is required to notify to the borrowing company in writing; and

(b) at the end of each succeeding period thereafter, being a period of three months or such shorter time as the trustee may, in any special circumstances, allow,

prepare a report that relates to that period and complies with the requirements of subsection (2) and, within thirty days after the end of each such period, lodge a copy of the report relating to that period with the Authority and with the trustee.

(2) The report referred to in subsection (1) shall be signed by not less than two of the directors on behalf of all of them and shall set out in detail any matter adversely affecting the security or the interests of the holders of the debentures and, without affecting the generality of the foregoing, shall state—

(a) whether or not the limitations on the amount that the borrowing company may borrow have been exceeded;

(b) whether or not the borrowing company and each of its guarantor companies have observed and performed all the provisions and covenants binding upon them respectively by or pursuant to the debentures or any trust deed;

(c) whether or not any event has happened which has caused or could cause the debentures or any provisions of the relevant trust deed to become enforceable and, if so, particulars of that event;

(d) whether or not any circumstances affecting the borrowing company, its subsidiaries or its guarantor companies or any of them have occurred which materially affect any security or charge created by the debentures or any trust deed and, if so, particulars of those circumstances;

(e) whether or not there has been any substantial change in the nature of the business of the borrowing company or any of its subsidiaries or any of its guarantor companies since the debentures were first issued under subsection 8(1) which has not previously been reported upon as required by this section and, if so, particulars of that change; and

(f) where the borrowing company has deposited money with, or lent money to, or assumed any liability of, a corporation which pursuant to section 4 of the Labuan Companies 1990 is deemed to be related to the borrowing company, particulars of—

(i) the total amount so deposited or lent and the extent of any liabilities so assumed during the period covered by the report; and

(ii) the total amount owing to the borrowing company in respect of money so deposited or lent and the extent of any liabilities so assumed as at the end of the period covered by the report,

distinguishing between deposits, loans and assumptions of liability which are secured and those which are unsecured, but not including any deposit with or loan to or any liability assumed on behalf of a corporation if that corporation has guaranteed the re payment of the debentures of the borrowing company and has secured the guarantee by a charge over its assets in favour of the trustee for the holders of the debentures of the borrowing company.

(3) Where there is a trustee for the holders of any debentures issued by a borrowing company, the borrowing company and each guarantor company which has guaranteed the repayment of the monies raised by the issue of those debentures shall, within twenty-one days after the creation of the charge, furnish the trustee on behalf of the holders of the debentures, whether or not any demand therefor by it has been made, with particulars in writing of any charge created by the corporation or the guarantor company, as the case may require, and when the amount to be

advanced upon the security of the charge is indeterminate within seven days after the advance with particulars of the amount or amounts in fact advanced, but where any such advances are merged in a current account with bankers or trade creditors, it shall be sufficient for particulars of the net amount outstanding in respect of any such advances to be furnished every three months.

(4) The directors of every borrowing company which has issued debentures under subsection 8(1), not including those excluded under subsection 8(5), and of every guarantor company which has guaranteed the repayment of the monies raised by the issue of such debentures shall, at some date not later than nine months after the expiration of each financial year of the borrowing company or the guarantor company, cause to be made out and lodged with the Authority and with the trustee a profit and loss account together with a detailed statement of outstanding liability under such debentures for the period from the end of that financial year until the expiration of six months after the end of that financial year and a balance sheet as at the end of the period to which the profit and loss account relates.

(5) Where any guarantor company, being a company which is incorporated in any state or territory nominated for the purposes of this section by the Minister, has lodged with the appropriate authority in any such nominated state or territory a profit and loss account and balance sheet for the relevant period, that shall be sufficient compliance with the requirements of subsection (4) if, with the consent of the trustee, there is lodged with the Authority and the trustee certified copies of the profit and loss account and balance sheet so lodged.

(6) Where the directors of a borrowing company do not lodge with the trustee a report as required under subsection (1), or where the directors of a borrowing company or of its guarantor companies do not lodge with the Authority and the trustee the profit and loss account, detailed statement and balance sheet as required under subsection (4) within the time specified, the trustee shall, as soon as possible, lodge notice of that fact with the Authority.

(7) Any person who contravenes subsection (1) or (4) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

(8) This section shall not apply to an offer or invitation of securities under subsection 8(5).

Obligation of guarantor company to furnish information

24. (1) For the purpose of the preparation of a report which, by this Act, is required to be signed by or on behalf of the directors of a borrowing company or any of them, that borrowing company may, by notice in writing, require any of its guarantor companies to furnish it with any information relating to that guarantor company which, by this Act, is required to be contained in that report, and that guarantor company shall furnish the borrowing company with that information before such date, being a date not later than fourteen days after the notice is given, as may be specified in that behalf in the notice.

(2) A guarantor company which fails to comply with the requirement contained in a notice given under subsection (1) and every officer of that company who is in default commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

(3) This section shall not apply to an offer or invitation of securities under subsection 8(5).

Loan and deposits to be immediately repayable on certain events

25. (1) Where in any prospectus issued in connection with an offer or invitation under subsection 8(1) to subscribe for or to purchase debentures of a Labuan company there is a statement as to any particular purpose or project for which the monies received by the borrowing company in response to the offer or invitation are to be applied, the borrowing company shall from time to time make reports to the trustee for the holders of debentures of the borrowing company as to the progress that has been made towards achieving such purpose or completing such project.

(2) Where it appears to a trustee to which a report is furnished by a borrowing company that such purpose or project has not been achieved or completed within the time stated in the prospectus within which the purpose or project is to be achieved or completed or, where no such time was stated, then within a reasonable time, the trustee may, and, if in its opinion it is necessary for the protection of the interests of the holders of the debentures, the trustee shall give notice in writing to the borrowing company requiring it to repay the monies so received and, within one month after such notice is given, lodge with the Authority a copy of such notice.

(3) A trustee shall not give a notice under subsection (2) if it is satisfied—

(a) that the purpose or project has been substantially achieved or completed;

(b) that the interests of the holders of the debentures have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time; or

(c) that the failure to achieve or complete the purpose or project was due to circumstances, other than shortage of funds, beyond the control of the borrowing company that could not reasonably have been foreseen by that borrowing company at the time that the prospectus was issued.

(4) This section shall not apply to an offer or invitation of securities under subsection 8(5).

Retention of over-subscriptions in debenture issues

26. (1) A borrowing company shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the borrowing company has specified in the prospectus—

(a) that it expressly reserves the right to accept or retain over-subscriptions; and

(b) a limit on the amount of the over-subscription that may be accepted or retained.

(2) Subject to any regulations, where a borrowing company specifies in a prospectus relating to a debenture issue that it expressly reserves the right to accept or retain over-subscriptions—

(a) the borrowing company shall not make, authorize or permit any statement or reference as to the asset-backing for the issue to be made or contained in any prospectus relating to the issue, other than a statement or reference to the total assets and the total liabilities of the borrowing company and of its guarantor company, if any; and

(b) the prospectus shall contain a statement or reference as to what the total assets and total liabilities of the borrowing company would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

(3) Any borrowing company who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

PART III

MUTUAL FUNDS

DIVISION 1

PRELIMINARY

Interpretation

27. (1) In this Part, unless the context otherwise requires—

"investor" means a person, including a custodian and an underwriter, who is the owner of securities issued by a mutual fund but does not include a person who only takes the initiative in forming or organizing the business of the mutual fund and does not have any ownership in the fund;

"operator", in respect of a mutual fund, means—

(a) where the mutual fund is a corporation, a director of that corporation;

(b) where the mutual fund is a limited partnership, a general partner in that limited partnership;

(c) where the mutual fund is a limited liability partnership, the designated partner in that limited liability partnership; or

(d) where the mutual fund is a unit trust, a trustee of that trust;

"promoter" means a person acting alone or in conjunction with others directly or indirectly who takes the initiative in forming or organizing the business of a mutual fund, but does not include a custodian or an underwriter who receives underwriting commission without taking part in the founding or organizing of the mutual fund business;

"registered public fund" means a public fund registered under section 33;

"shares" means one or more of the shares in the share capital of a mutual fund company including, in the case of a company limited by guarantee, the interest of a member of such company and includes an interest in a mutual fund partnership and a unit in a mutual fund unit trust.

DIVISION 2

MUTUAL FUNDS

SUBDIVISION 1

PRIVATE FUNDS

Notification by private funds

28. A private fund shall be entitled to carry on business or arrange or administer its affairs by giving notice in writing to the Authority setting out the details of the scope and nature of its business.

Private fund to lodge an information memorandum or such other offering document

29. (1) A private fund shall lodge the information memorandum or such other offering document relating to the private fund purporting to describe the business and affairs of the private fund with the Authority.

(2) The information memorandum or such other offering document referred to in subsection (1) shall be lodged by a private fund through a licensed entity which shall be reasonably satisfied that—

(a) the information memorandum or such other offering document being lodged refers to a private fund as defined under this Part; and

(b) there is no element of fraud involved in the establishment of the private fund.

(3) An information memorandum or such other offering document lodged by a private fund shall be deemed to be a prospectus in so far as it relates to the liability of that private fund for any statement or information that is false or misleading or from which there is a material omission.

(4) Upon receipt of the information memorandum or such other offering document under subsection (1), the Authority shall enter the particulars of the same in the registers maintained pursuant to Division 5 of this Part.

Exclusion of liability for errors or omission in the information memorandum or such other offering document

30. Where an information memorandum or such other offering document is lodged by the private fund with the Authority under section 29, neither the Authority nor any of its officers or employees shall be liable for any loss or damage suffered by any person or persons by reason of any error, misstatement or omission of whatever nature appearing therein.

SUBDIVISION 2

PUBLIC FUNDS

Public funds shall be registered

31. (1) No public fund shall carry on business or arrange or administer its affairs unless it has been granted registration under paragraph 33(1)*(a)*.

(2) Subject to subsection (3), no proposed public fund shall carry on business or arrange or administer its affairs unless it has been granted provisional acceptance under paragraph 33(1)*(b)*.

(3) A proposed public fund to which a provisional acceptance has been granted under paragraph 33(1)*(b)* shall not carry on business or arrange or administer its affairs without the prior written consent of the Authority.

Application by public funds

32. (1) An application to the Authority under subsection 31(1) or subsection 31(2) shall be accompanied by the following:

(a) a statement setting out the scope and nature of the business to be carried on by the applicant in or from within Labuan;

(b) the instrument by which the applicant is constituted or such other proof as the Authority may require to be satisfied that the applicant is lawfully constituted under the laws of Malaysia relating to Labuan or under the laws of any recognized country or jurisdiction;

(c) a statement on the following:

(i) the address of the applicant's place of business and its address for service relating to Labuan;

(ii) the name and address of a person in Labuan who is authorized to represent the applicant and to accept service on its behalf;

(iii) the address of the applicant's place of business outside Labuan; and

(iv) the names, addresses and relevant experience of the directors of the fund;

(d) a signed declaration by the directors of the applicant fund on confidentiality and secrecy; and

(e) where available, a copy of the prospectus, either in draft or final form, of the public fund.

(2) The public fund or proposed public fund shall submit such other information as may be specified by the Authority from time to time.

(3) If any change is made or occurs in respect of any information under subsection (1) as specified by the Authority, the applicant, after being granted registration or provisional acceptance as the case may be, shall within thirty days after the change occurs lodge with the Authority a notice specifying the change.

Power to grant or refuse registration of public funds

33. (1) The Authority may grant or refuse to grant—

(a) registration of a public fund; or

(b) provisional acceptance of a proposed public fund.

(2) A grant under subsection (1) may be made subject to any terms, conditions, limitations or restrictions.

(3) A provisional acceptance granted under paragraph (1)*(b)* shall be valid and effective for a period not exceeding six months from the date on which it is granted.

(4) A provisional acceptance may be renewed for a period not exceeding three months upon application being made to the Authority and accompanied by such documents or information as the Authority may require.

(5) Notwithstanding the grant of a provisional acceptance under paragraph (1)*(b)* to a proposed public fund, the Authority may grant registration to such a proposed public fund as a public fund under paragraph (1)*(a)*.

Registration procedure

34. (1) Where the Authority grants registration of a public fund under paragraph 33(1)*(a)*, it shall—

(a) register the public fund in the register maintained under Division 5 of this Part; and

(b) issue a certificate of registration to the public fund.

(2) Where the Authority grants a provisional acceptance under paragraph 33(1)*(b)*, the promoter of the proposed public fund shall, before the expiry of the provisional acceptance period or renewed provisional acceptance period deliver to the Authority—

(a) the provisional acceptance of the Authority;

(b) proof satisfactory to the Authority that the proposed public fund is lawfully constituted in Labuan or any recognized country or jurisdiction; and

(c) the information referred to in subsection 32(1).

(3) If the Authority is satisfied that the proposed public fund referred to in subsection (2) has complied with the requirements of that subsection it may grant registration to the public fund.

(4) Where the Authority grants registration under subsection (3), it shall register the public fund in the register maintained under Division 5 of this Part and issue a certificate of registration.

Prospectus relating to public fund

35. (1) No registered public fund shall, in or outside Labuan, make an offer of securities unless prior to such offer it has lodged a prospectus with the Authority in accordance with the prospectus requirements under section 11.

(2) For the avoidance of doubt, the civil and criminal liabilities for misstatements in prospectuses provided for under Part II shall equally apply to a prospectus lodged under this section.

Investors' rights

36. (1) If a registered public fund publishes a prospectus or any amendment thereto that contains any misrepresentation relating to any of the matters required to be disclosed under subsection 11(5), a person who purchased any securities pursuant to such prospectus or amendment thereto is deemed to have relied upon the misrepresentation and shall have the rights provided in subsection (2).

(2) A person referred to in subsection (1) may elect to exercise a right of action—

(a) for the rescission of the purchase; or

(b) for damages,

jointly and severally against the fund and every person who, while aware of the misrepresentation, signed the prospectus or amendment thereto and consented to its publication and lodgement or caused it to be signed or published and filed.

(3) For the purposes of this section, "misrepresentation" means—

(a) any untrue or misleading statement of any of the matters required to be disclosed referred to subsection (1); or

(b) an omission to disclose any of such matters.

(4) No person shall be liable under this section if he proves that the purchaser purchased the shares offered by the prospectus or amendment thereto with knowledge of the misrepresentation.

(5) The right of action for rescission or damages conferred by subsection (2) is in addition to any other right which the aggrieved party may have at law.

Limitation

37. Notwithstanding any other written law to the contrary, an action under subsection 36(2) may not be commenced after—

(a) one hundred and eighty days from the day on which the aggrieved party first had knowledge of the misrepresentation; or

(b) one year from the date of the purchase transaction that gave rise to the cause of action,

whichever is earlier.

Certificate of compliance

38. Every registered public fund which carries on business outside Labuan under the laws of any recognized country or jurisdiction shall, every year, within ninety days of the end of its financial year, lodge with the Authority a certificate of compliance or an equivalent document by whatever named called from the competent authority that is responsible for the regulation and supervision of the conduct of its business in that recognized country or jurisdiction.

Foreign public fund may be managed or administered in Labuan

39. A public fund lawfully registered under the laws of any recognized country or jurisdiction need not be registered as a public fund under section 33 so long as the public fund is administered or managed in Labuan by a fund administrator, a custodian, a trustee or a fund manager, who is licensed, registered or eligible under this Part.

DIVISION 3

LICENSING

SUBDIVISION 1

FUND MANAGERS AND FUND ADMINISTRATORS

Licensing of fund managers

40. (1) No person shall carry on business as a fund manager of a public fund unless that person is a Labuan company who has been granted a licence to act as a fund manager under this section.

(2) Notwithstanding subsection (1), the following persons may carry on business as a fund manager of a public fund:

(a) a person who is and continues to be a qualified and authorized manager of mutual funds under the laws of any recognized country or jurisdiction and has received written permission from the Authority to carry on business as manager of public funds; or

(b) a bank licensee.

(3) A fund manager who is carrying on fund management activities in relation to a private fund only is not required to be licensed under this Part.

Licensing of fund administrators

41. (1) No person shall carry on business as a fund administrator of a public fund unless that person is a Labuan company or Labuan trust company and has been granted a licence to act as a fund administrator under this Act.

(2) Notwithstanding subsection (1), the following persons may carry on business as a fund administrator of a public fund:

(a) a bank licensee;

(b) a Labuan trust company;

(c) a securities licensee under Part IV;

(d) a management company licensed under Part VIII; or

(e) a person who is and continues to be a qualified and authorized fund administrator of mutual funds under the laws of any recognized country or jurisdiction and has received written permission from the Authority to carry on business as a fund administrator of public funds.

(3) A fund administrator who is carrying on fund administration activities in relation to a private fund only is not required to be licensed under this Part.

Application for fund manager's licence

42. An application for a licence to carry on business as a fund manager of a public fund shall be—

(a) made in such form as may be specified by the Authority; and

(b) accompanied by—

(i) particulars of the financial and human resources and administrative facilities available to the applicant for the competent and efficient conduct of its business;

(ii) a statement on the following:

(aa) the address of the applicant's place of business and its address for service relating to Labuan;

(bb) the name and address of a person in Labuan who is authorized to represent the applicant and to accept service on its behalf; and

(cc) the address of the applicant's place of business outside Labuan; and

(iii) such information or documents as the Authority may require for the purpose of determining the application.

Application for fund administrator's licence

43. An application for a licence to carry on business as a fund administrator of public funds shall be—

(a) made in such form as may be specified by the Authority; and

(b) accompanied by such information or documents as the Authority may require for the purpose of determining the application.

Power to grant or refuse licence

44. (1) Upon receiving an application, the Authority may grant or refuse to grant a licence.

(2) The grant of a licence may be made subject to any terms, conditions, limitations or restrictions.

(3) Except with the written consent of the Authority no change shall be made in respect of the identity, residence, domicile, ownership or shareholding of the fund manager or fund administrator during the period of operation of the licence.

(4) The Authority shall not grant—

(a) a licence to a fund manager of a public fund; or

(b) a licence to a fund administrator of a public fund,

unless it is satisfied that the applicant is a fit and proper person to engage in the business of fund management or fund administration of mutual funds.

SUBDIVISION 2

TRUSTEES OR CUSTODIANS

Eligibility of trustees or custodians of public funds

45. (1) No person shall carry on business as a trustee of a public fund unless that person is a Labuan trust company.

(2) No person shall carry on business as a custodian of a public fund unless it is a bank licensee or a Labuan trust company.

(3) This section does not apply to a person who is and continues to be a qualified and authorized trustee or custodian of public funds under the laws of any recognized country or jurisdiction and has received written permission from the Authority to carry on business as a trustee or custodian of a public fund.

SUBDIVISION 3

GRANT OF LICENCE OR REGISTRATION

Licence or registration

46. A licence or registration granted under this Part shall—

(a) be in such form as may be specified;

(b) remain in force until it is revoked; and

(c) be admissible in all courts as *prima facie* evidence of the facts stated in it.

Division 4

DUTIES

Duties of fund managers and fund administrators of public funds

47. The fund manager or the fund administrator of a public fund and its officers shall, in exercising their powers and duties—

(a) act honestly;

(b) exercise the degree of care and diligence that would be reasonably expected of a person in that position;

(c) act in the best interests of the investors in the public fund and, where there is a conflict between the interest of the investors and their own interests, give priority to the investors' interests;

(d) treat the investors who hold interests of the same class equally and participants who hold interests of different classes fairly;

(e) not make use of information acquired through being a fund manager or fund administrator or its officer to—

(i) gain an improper advantage for themselves or another person; or

(ii) cause detriment to the investors in the public fund;

(f) ensure that all payments out of the property of the public fund are made in accordance with the constituent documents of the public fund, this Act and any regulations;

(g) report to the Authority, as soon as practicable after it becomes aware of any breach of—

(i) this Act and any regulations; or

(ii) the public fund's constituent documents that has had, or is likely to have, a materially adverse effect on the interests of the investors; and

(h) take reasonable care to make and retain adequate records of all matters, transactions and dealings, including accounting records.

Duties of fund managers, fund administrators, trustees or custodians and directors under applicable law

48. The duties of the fund manager, fund administrator, trustee or custodian and their directors imposed on them under this Division are in addition to and not in derogation from the duties which are otherwise imposed on them by any applicable law.

Specific duties of fund managers of public funds

49. (1) The fund manager of a public fund shall—

(a) ensure that a written agreement is entered into with each client before transactions are carried out on behalf of a client;

(b) understand each client's investment objectives, instructions, risk profile and investment restrictions, where applicable, which shall be reassessed and updated at least annually;

(c) exercise diligence and thoroughness in, and have reasonable and adequate basis for, preparing the investment policy or investment recommendation;

(d) obtain each client's approval for the investment policy or investment recommendation prior to its implementation;

(e) provide each client with full and accurate information in order to make an informed investment decision when approving the investment policy or investment recommendation;

(f) avoid any misrepresentation in any investment policy or investment recommendation; and

(g) ensure that sufficient monies and properties are available in the client's account to carry out transactions.

(2) A written agreement referred to in paragraph (1)*(a)* shall cover amongst others, the following areas:

(a) the client's investment objectives, instructions, risk profile and investment restrictions;

(b) notification of any significant change to the investment policy or investment recommendation;

(c) mode and manner of reporting to client;

(d) clear authorization of discretionary management;

(e) frequency of written report for the performance and review of the client's monies or properties against an appropriate benchmark;

(f) amount of fees and charges to be paid by the client;

(g) the fund manager's intention to receive, or practice of receiving, soft commission;

(h) details of the custodian arrangement; and

(i) such other matters as may be specified by the Authority from time to time.

(3) A fund manager who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

Duty to segregate client's assets

50. (1) A fund manager of public funds shall ensure that each client's assets are deposited into a trust account and maintained by a custodian or a trustee or any other person as may be permitted by the Authority, as the case may be, not later than the next bank business day or such other day as may be specified by the Authority, following the day on which the fund manager receives the client's assets.

(2) Where client's assets that are required by this section to be deposited into a trust account are received by a fund manager in a place outside Malaysia, the fund manager may deposit such assets into a trust account maintained by it in that place.

(3) The trust account referred to in subsections (1) and (2) shall always be kept separate from those of the fund manager, and shall be so marked in the books of the fund manager relating to each client's account, so that at no time shall such monies, property or other valuable consideration form part of or be mixed with the general assets of the fund manager, and all investments made by the company as trustee shall be so designated that the trusts to which the investments belong can be readily identified at any time.

(4) Client's assets held in a trust account shall not be available for the payment of the debts of a fund manager or liable to be paid or taken in execution under an order or process of court for the payment of the debt of a fund manager.

(5) Nothing in this section shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any client's assets held in a trust account or against or upon any client's assets received for the purchase or from the sale of securities before such assets are deposited into the trust account.

(6) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

Duty of fund manager and custodian or trustee to be independent of each other

51. (1) The fund manager and the custodian or trustee of a public fund shall—

(a) be different persons and act independently of each other;

(b) not be a related corporation of the other; and

(c) not have executive directors or other officers in common.

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

DIVISION 5

REGISTERS AND ACCOUNTING

Registers

52. (1) The Authority may keep separate registers for—

(a) private funds;

(b) public funds; and

(c) fund managers and fund administrators of public funds.

(2) The registers referred to in subsection (1) may contain—

(a) the information required under sections 29, 32, 42 and 43 in respect of each person who has been granted a licence or registration or who has received written permission under this Act;

(b) the date of such licence, registration or written permission, as the case may be; and

(c) the date on which such licence or registration or written permission was revoked.

(3) The registers kept under this section shall be in such form as the Authority may determine.

(4) The Authority may issue to any person, upon request by the person, a certificate of compliance in such form, upon payment of such fee, as may be prescribed.

(5) No person exercising any power or discharging any duty under this Part shall, knowingly, have any financial interest in any person who has been licensed, registered or given written permission under this Part.

Accounts and audit

53. (1) Every registered public fund shall—

(a) keep or cause to be kept accounts and records and shall, after the end of each financial year cause to be prepared a statement of accounts for that financial year which shall include a balance sheet and an account of income and expenditure in accordance with generally accepted accounting principles applicable in Malaysia or in any recognized country or jurisdiction;

(b) keep such accounting records and financial statements or true copies thereof at its place of business in Labuan and make them available for inspection by the Authority or any person authorized in writing by the Authority;

(c) keep at its place of business in Labuan and make available to the Authority or any person authorized in writing by the Authority such other records, statements, documents or information as the Authority may prescribe in writing;

(d) within three months of the end of each financial year present to an auditor the financial statements referred to in paragraph *(a)* and such other records and information as may be required for audit in accordance with generally accepted auditing principles applicable in Malaysia or any recognized country or jurisdiction; and

(e) provide to or make available for inspection by all the investors of the fund the financial statements referred to in paragraph *(a)* together with the report of the auditor thereon.

(2) The accounting records and financial statements required to be kept in accordance with subsection (1) may be kept in any currency and in any language, but if they are kept in a language other than the national language or English language, a translation into the national language or English language, verified in a manner satisfactory to the Authority, shall be kept by the public fund together with such accounting records and financial statements.

PART IV

MARKET INTERMEDIARIES

DIVISION 1

PRELIMINARY

Interpretation

54. In this Part, unless the context otherwise requires "securities licensee" means a person, who for valuable consideration, provides investment advice or administrative services in respect of securities for the purposes of investment, including dealing in securities or such other activity as may be specified by the Authority.

DIVISION 2

SECURITIES LICENSEE

Securities licensee

55. (1) No person shall carry on business as a securities licensee unless that person is a Labuan company who has been granted a licence to act as a securities licensee under this section.

(2) Notwithstanding subsection (1), the following persons may carry on business as a securities licensee:

(a) a fund manager referred to in subsections 40(1) and (2); and

(b) a bank licensee.

Application for licence

56. (1) An application to the Authority under subsection 55(1) to be licensed as a securities licensee under this Part shall be made in writing by or on behalf of the applicant to the Authority.

(2) An application for a licence to carry on business as a securities licensee shall be—

(a) made in such form as may be specified by the Authority; and

(b) accompanied by—

(i) such application fee as may be prescribed by regulations;

(ii) particulars of the financial and human resources and administrative facilities available to the applicant for the competent and efficient conduct of its business;

(iii) a statement on the following:

(aa) the address of the applicant's place of business and its address for service relating to Labuan;

(bb) the name and address of a person in Labuan who is authorized to represent the applicant and to accept service on its behalf; and

(cc) the address of the applicant's place of business outside Labuan;

(iv) a statement to the effect that applicant has declared its compliance with the *Anti-Money Laundering and Anti-Terrorism Financing Act 2001 [*Act 613*] and shall ensure that it shall update its policies and procedures periodically so as to comply with their requirements; and

(v) such other information or documents as the Authority may reasonably require for the purpose of determining the application.

Power to grant or refuse licence

57. (1) Upon receiving an application under section 56, the Authority may grant or refuse the application.

**NOTE*—The Anti-Money Laundering and Anti-Terrorism Financing Act 2001 [*Act 613*] has been amended and referred as Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [*Act 613*] which comes into operation on 1 September 2014—*see* section 3 Anti-Money Laundering and Anti-Terrorism Financing (Amendment) Act 2014 [*Act A1467*] and P.U. (B) 400/2014.

(2) The grant of a licence under this Part may be made subject to any terms, conditions, limitations or restrictions.

(3) Except with the written consent of the Authority, no change shall be made in respect of the identity, residence, domicile, ownership or shareholding of the securities licensee during the period of operation of the licence.

Division 3

GRANT OF LICENCE

Licence

58. A licence granted under this Part shall—

(a) be in such form as may be specified;

(b) specify any terms, conditions, restrictions or limitations;

(c) remain in force until it is revoked; and

(d) be admissible in all courts as *prima facie* evidence of the facts stated in it.

Part V

LABUAN TRUST COMPANIES

Division 1

PRELIMINARY

Interpretation

59. In this Part, unless the context otherwise requires—

"estate" means any property, whether real or personal, which is committed to the administration or management of a Labuan trust company as executor, administrator, trustee, receiver, committee, guardian or agent;

"Labuan managed trust company" means a person carrying on trust company business where such business is managed by another Labuan trust company pursuant to the provisions of Division 3 of this Part;

"settlor" means—

(a) a person who provides trust property or makes a testamentary disposition on trust or to a trust, but does not include a person who contributes to a unit trust and described as such within a trust instrument; and

(b) if there is more than one settlor named in the trust instrument, the named settlors must be connected persons;

"trust company business" means—

(a) establishing or using a share transfer office or share registration office;

(b) administering, managing or otherwise dealing with property as an agent, legal personal representative or trustee, whether by servant or agent or otherwise;

(c) maintaining an agent for the purpose of soliciting or procuring business, whether or not the agent is continuously resident in Labuan;

(d) maintaining an office, agency or branch, whether or not that office, agency or branch is also used for any purpose by another entity;

(e) the provision of—

(i) management and accounting services to; or

(ii) directors, secretaries and registered offices for,

Labuan companies incorporated or registered under the Labuan Companies Act 1990 and foreign Labuan companies registered under that Act;

(f) incorporating or registering companies under the Labuan Companies Act 1990 and generally acting as a lodging agent for any document required to be lodged by a company or person under that Act; and

(g) providing such other services as may be approved by the Authority from time to time, to or on behalf or any person;

"trust instrument" means an instrument in writing by which a trust is created and includes a unilateral declaration of trust and an instrument varying the terms of the trust.

Licence required to carry on trust company business in Labuan

60. No person shall carry on or transact or hold himself out as carrying on or transacting any trust company business unless—

(a) the person is incorporated or registered under the Labuan Companies Act 1990 and such person is licensed to do so under this Act; or

(b) the person is licensed as a Labuan managed trust company.

Licensing of trust companies

61. (1) Subject to section 60, a person incorporated or registered under the Labuan Companies Act 1990 may apply to the Authority, in the specified form, for a licence to carry on trust company business in Labuan.

(2) An applicant may apply to the Authority for a licence under subsection (1) by meeting the following criteria:

(a) the applicant has contributed at least the equivalent in any foreign currency of one hundred and fifty thousand ringgit to the capital or working funds of the Labuan company or foreign Labuan company;

(b) the applicant either—

(i) has obtained, or will obtain a professional indemnity insurance policy with a coverage of not less than one million ringgit or its equivalent in any foreign currency or such other amount or denomination as may be determined by the Authority; or

(ii) has deposited with the Authority security to the value of one hundred thousand ringgit or its equivalent in any foreign currency or such other amount or denomination as may be determined by the Authority;

(c) the applicant is able to meet its obligations, including its liabilities to its shareholders; and

(d) the directors and officers of the applicant who are responsible for the management of the Labuan trust company in Labuan, are fit and proper persons.

(3) A Labuan trust company shall have—

(a) at least two trust officers, one of whom shall be based in Labuan; and

(b) a place of business in Labuan.

Terms and conditions of licence

62. (1) The Authority may approve the application for a licence as a Labuan trust company subject to such terms and conditions, if any, as it may deem fit.

(2) Every Labuan trust company shall lodge a notice in the specified form with the Authority of—

(a) any change to its place of business in Labuan; and

(b) any change to its trust officers,

within seven days from the effective date of change specified.

(3) Every Labuan trust company shall remain indemnified under a professional indemnity insurance policy with a coverage of not less than one million ringgit or its equivalent in any foreign currency or such other amount as may be determined by the Authority throughout its operation as a Labuan trust company.

(4) No Labuan trust company shall open any office or acquire or establish any subsidiary outside Labuan without the prior written consent of the Authority.

(5) Any person who contravenes subsection (4) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding one year or to both.

Temporary continuation for winding-up

63. Notwithstanding any provision to the contrary, the Authority may authorize in writing the Labuan trust company to carry on business to such extent and for such duration as he may specify in the authorization for the purpose only of enabling the Labuan trust company to wind-up its affairs consequent upon the revocation of its licence.

Division 2

POWERS OF LABUAN TRUST COMPANIES

Disclosure of interests in relation to Labuan trust company

64. Every Labuan trust company who is in any way, whether directly or indirectly, interested in a contract or proposed contract or in the counterparty to a transaction where it is acting in a fiduciary position whether as a trustee or otherwise, shall, as soon as reasonably practicable, furnish details of its interest to the client concerned and the Authority.

Labuan trust company's power to act as executor

65. Where a Labuan trust company is appointed either alone or jointly with any other person as executor in the last will of a testator or in a codicil thereto, regardless of when the will or codicil was made, the Labuan trust company may act as executor and may apply for probate of such will and any codicil thereto, and may do and discharge all the acts and duties of an executor as fully and effectively as any other executor.

Labuan trust company's power to act as administrator

66. (1) In any case in which a person may apply for a grant of letters of administration of the estate of a deceased person, whether with or without the will annexed, that person may—

(a) join with a Labuan trust company in an application for a grant of letters of administration of the estate to himself and the Labuan trust company jointly; or

(b) authorize a Labuan trust company to apply for a grant of letters of administration of the estate.

(2) Where administration of an estate, whether with or without the will annexed, is granted to a Labuan trust company either alone or jointly with any other person, the Labuan trust company may do and discharge all acts and duties which belong to the office of an administrator or joint administrator, as the case may be, notwithstanding its incorporation.

Additional powers of a Labuan trust company

67. A Labuan trust company may be appointed as agent or trustee under any settlement or other instrument creating a trust, or to perform any trust or duty which it is authorized, by this Act or by its memorandum or articles of association or by any instrument under which the Labuan trust company was incorporated, to undertake, and may be so appointed, regardless of when the settlement or instrument creating the trust or imposing the duty was made, and whether as an original trustee, a new trustee or an additional trustee, and may do and discharge all the acts and duties of a trustee as fully and effectively as any other trustee.

Labuan trust company's power to act as sole trustee

68. (1) A Labuan trust company may be appointed or continue to act as sole trustee notwithstanding that it is provided by the terms of the instrument creating the trust or any power or otherwise that there shall be more than one trustee to perform the trust.

(2) Notwithstanding subsection (1), a Labuan trust company shall not be appointed or be entitled to act as sole trustee in any case in which the instrument creating the trust or power expressly—

(a) forbids the appointment of a Labuan trust company;

(b) provides that there shall be another trustee in addition to a Labuan trust company; or

(c) provides that a Labuan trust company shall not be appointed to act as sole trustee.

Labuan trust company's power to act as joint trustee with another

69. (1) A Labuan trust company may act as trustee, executor or agent together with another Labuan trust company or person if—

(a) the instrument under which it acts so provides;

(b) it is authorized or required to do so by law; or

(c) the Court so orders.

(2) A Labuan trust company shall not be liable for breach of trust or loss resulting from any act or omission of a joint trustee, executor or agent with whom it is acting, unless the Labuan trust company has itself actively participated in, or assented to, such breach of trust.

Delegation to Labuan trust company

70. (1) It shall be lawful for any executor, administrator, trustee or agent to delegate by deed or in writing to a Labuan trust company either alone or together with any other company or person, as his attorney, all such trusts and powers as may be lawfully delegated by him.

(2) All acts done by the Labuan trust company as such delegatee shall, as against any person dealing with the Labuan trust company without notice of the revocation of such authority by such executor, administrator, trustee or agent, be valid and effectual notwithstanding such revocation.

DIVISION 3

LABUAN MANAGED TRUST COMPANIES

Licensing of Labuan managed trust companies

71. (1) No person may be licensed as a Labuan managed trust company unless it is—

(a) a Labuan company or a foreign Labuan company; or

(b) a foreign company licensed, registered or approved to carry out trust company business in other jurisdictions.

(2) The Authority may grant or refuse to grant a licence to such person as a Labuan managed trust company and impose any terms and conditions on such licence as it deems necessary.

(3) An application for a licence under this Part shall be accompanied by—

(a) submission of a proposed detailed management agreement between the applicant and the Labuan trust company;

(b) submission of a certified copy of the certificate of incorporation or constituent document of the applicant; and

(c) submission of a letter of good standing or such other document of this nature from the relevant authority of the applicant's home country where applicable.

Terms and conditions of licence as Labuan managed trust company

72. (1) Prior to commencing business as a Labuan managed trust company, every Labuan managed trust company shall appoint a Labuan trust company as its Labuan managed trust manager to give effect to its trust company business.

(2) Every Labuan managed trust company shall at all times, ensure that the Labuan trust company is and continues to be licensed as a Labuan trust company under this Act.

(3) For the avoidance of doubt, save for sections 61 and 62 and Division 4 of this Part, all the provisions that apply to a Labuan trust company under this Act shall similarly apply to a Labuan managed trust company.

(4) If, subsequent to its appointment as the Labuan managed trust manager of a Labuan managed trust company, the licence of such managed trust manager is revoked under section 168, the managed trust company shall appoint a new managed trust manager within the period of four weeks following the date on which the licence of the managed trust company is revoked, failing which the licence of the managed trust company shall be automatically revoked by the Authority.

Division 4

LABUAN PRIVATE TRUST COMPANIES

Meaning of "connected persons"

73. For the purposes of Division 4—

(a) a "private trust" means a trust where each beneficiary of the trust is a connected person in relation to the settlor of the trust;

(b) a person is a connected person in respect of any of the following relationships:

(i) his spouse;

(ii) his descendants and their spouses;

(iii) his parents, including step-parents;

(iv) his grandparents and his spouse's grandparents;

(v) his parents-in-law, including step-parents-in-law;

(vi) his brother, step-brother, sister, step-sister and their spouses;

(vii) his spouse's brother, step-brother, sister, step-sister and their spouses and children;

(viii) his parent's brother, step-brother, sister, step-sister and their spouses;

(ix) children of the brother, step-brother, sister or step-sister of his parents, both present and future, including step-children and their spouses; and

(x) children of his brother, step-brother, sister or step-sister, both present and future, including step-children and their spouses;

(c) for any of the relationships specified in paragraph *(b)* that may be established by affinity or consanguinity, that same relationship may be established by adoption.

Registration as Labuan private trust company

74. (1) No person may be registered as a Labuan private trust company unless it is—

(a) a Labuan company; or

(b) a foreign Labuan company.

(2) An applicant may apply to the Authority, in the specified form for registration as a Labuan private trust company in Labuan by meeting the following criteria:

(a) it satisfies the Authority that it shall provide the services of a trust company only for a private trust or private trusts created or to be created by or at the direction of a settlor or an individual or individuals who are connected persons to the settlor described in the trust instrument;

(b) submission of a certified copy of the executed trust instrument and any subsequently executed trust instrument;

(c) submission of a letter of undertaking that it shall not carry out any trust company business other than with respect to the private trust or private trusts; and

(d) it shall appoint a Labuan trust company as its agent.

(3) The Authority may refuse to register an applicant as a Labuan private trust company if it has reason to believe that the applicant is likely to carry on business in a manner detrimental to public interest or the interests of the beneficiaries of any private trust with respect to which it provides services.

(4) The Authority may, as it deems necessary, impose, vary or revoke any terms or conditions on any registration under this Division by specifying it in writing.

Terms and conditions of registration as a Labuan private trust company

75. (1) A Labuan private trust company shall, at all times, ensure that—

(a) it complies with paragraph 74(2)*(a)*; and

(b) its agent is a Labuan trust company licensed under this Part.

(2) Subject to subsection (3), a Labuan private trust company shall not be registered under this Division during any period in which it is in contravention of subsection (1).

(3) If, subsequent to its appointment as the agent of a Labuan private trust company, the licence of the agent is revoked, subsection (2) does not apply and the Labuan private trust company shall continue to be registered for the period of thirty days following the date on which the licence of the agent is revoked.

Duties of agent of Labuan private trust company

76. (1) A Labuan trust company shall not act as the agent of a Labuan private trust company unless it has taken all reasonable steps to satisfy itself that the Labuan private trust company—

(a) complies with paragraph 74(2)*(a)*; or

(b) where the Labuan private trust company is not at that time carrying on private trust business, that the Labuan private trust company will, on commencing its private trust business, comply with paragraph 74(2)*(a)*.

(2) The agent of a Labuan private trust company shall on a periodic basis take all reasonable steps to satisfy itself that the Labuan private trust company continues to comply with paragraph 74(2)*(a)*.

(3) The frequency with which the agent reviews the compliance of a Labuan private trust company with paragraph 74(2)*(a)* shall be determined by the agent on the basis of its assessment of the risk that the Labuan private trust company may fail to comply with that section.

(4) The agent shall take all reasonable steps to ensure that the most recent copies of the following records with respect to each Labuan private trust company for which it acts as agent are kept at its office in Labuan at all times:

(a) the trust instrument and any deed or document varying the terms of the trust, for each relevant trust; and

(b) the documentation and other information on which it has relied to satisfy itself that the Labuan private trust company complies with paragraph 74(2)*(a)*.

(5) If at any time the agent of a Labuan private trust company forms the opinion that the Labuan private trust company does not comply with paragraph 74(2)*(a)*, it shall immediately notify the Authority in writing of its opinion.

Powers of the Authority

77. (1) Notwithstanding anything to the contrary in any trust instrument, where the Authority is satisfied that in the interest of a private trust it is necessary for all or any of the trusts for which the Labuan private trust company is acting as trustee to be transferred to a new trustee for administration by such trustee, the Authority may petition the court for that purpose.

(2) Whenever the Authority takes action pursuant to subsection (1), the court may, after hearing representations from the Authority or any other person appearing to the court to be affected, order the transfer of any such trust to a new trustee, and may make such supplemental or incidental orders or give such directions as the court thinks fit.

(3) Without prejudice to any provision under any written law, the Authority shall have the *locus standi* or legal right to appear, institute and conduct proceedings pursuant to subsection (1).

(4) The Authority may claim the legal costs incurred in the exercise of its powers under subsection (1) from the relevant person or Labuan private trust company, as the case may be.

Non-application of the provisions of this Part

78. The provisions of Divisions 1, 2, 3 and 5 of this Part shall not apply to Labuan private trust companies unless otherwise provided under this Part.

DIVISION 5

MISCELLANEOUS

Labuan trust company subject to same control as any other executor

79. Where a Labuan trust company has been appointed as executor, administrator, trustee, agent or attorney, it shall be subject in all respects to the same control and to removal or restraint from acting, and generally to the jurisdiction of the court, in the same manner as any other executor, administrator, trustee, agent or attorney.

Affidavit of officer

80. In all cases in which a Labuan trust company is required or authorized to make any affidavit, declaration or statement, it may do so by any of its officers appointed for the purpose.

Examination of books and accounts of a Labuan trust company

81. (1) Any person who—

(a) satisfies the Court that he has an interest under any trust which is for the time being under the control or management of a Labuan trust company; and

(b) objects to an act or decision of the Labuan trust company on the basis that there was some irregularity or impropriety by the Labuan trust company in doing that act or making that decision,

may apply to the Court to have such entries in the books and accounts of the Labuan trust company as are related to that act or decision examined.

(2) Where the Court receives an application under subsection (1), it may appoint an auditor to examine such entries in the books and accounts of the Labuan trust company and the auditor shall report his findings to the Court.

(3) Where it is established by the findings of the auditor that there has been an irregularity or impropriety by the Labuan trust company, the Court may make such order as it thinks fit.

(4) For the purposes of this section, an auditor shall not include any internal auditor of the Labuan trust company.

Retention of records

82. (1) A Labuan trust company shall maintain any record as may be required to be kept under this Act for a period of not less than six years from the date an account has been closed or the transaction has been completed or terminated.

(2) Any Labuan trust company which contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

Money paid to a Labuan trust company to be held in trust

83. (1) Any money, property or other valuable consideration paid or given to or held by a Labuan trust company in a fiduciary capacity shall always be kept separate from those of the Labuan trust company, and shall be so marked in the books of the Labuan trust company relating to each particular trust as always to be distinguished from any other in the registers and other books of account kept by the Labuan trust company, so that at no time shall such monies, property or other valuable consideration form part of or be mixed with the general assets of the Labuan trust company, and all investments made by the company as trustee shall be so designated that the trusts to which the investments belong can be readily identified at any time.

(2) Any Labuan trust company which fails to comply with the requirement of subsection (1) and every officer of that Labuan trust company who is in default commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

Commission, fees, charges and expenses levied by a Labuan trust company

84. (1) A Labuan trust company shall be entitled—

(a) where it holds an estate on behalf of any person, to receive out of the estate a commission, in addition to all monies properly expended by the Labuan trust company and fees payable to it and chargeable against the estate; and

(b) in all other cases, to levy fees, charges and expenses in respect of any work performed by the Labuan trust company for or on behalf of any person.

(2) Where the Court is of the opinion that any commission, fees, charges or expenses levied in respect of any estate or in respect of any work performed by the Labuan trust company are excessive, the Court may, on the application of any person, on whose behalf the estate is held, or on whose behalf the work was performed, review that commission, fees, charges or expenses, and may reduce it as it thinks fit.

(3) The commission, fees, charges or expenses which a Labuan trust company is entitled to receive under this section shall not in any way be affected or diminished by the fact that any other person may be entitled to a commission, fees, charges or expenses in respect of the work performed.

(4) A Labuan trust company shall have the right to share the commission, fee, charges or expenses to which it is entitled under this section with any other person.

Translation of accounts and records

85. Where any accounts or other records required to be kept under this Act are not kept in the national or English language, the directors of the Labuan trust company shall cause a true translation of such accounts and records to be made from time to time at intervals of not more than seven days and shall cause such translations to be kept with the original accounts and records.

PART VI

LABUAN BANKING

DIVISION 1

PRELIMINARY

Interpretation

86. In this Part, unless the context otherwise requires—

"bank licence" means a licence granted pursuant to an application under section 88 or section 89, as the context may require;

"building credit business" means the business of providing any credit facilities to any person for the express purpose of—

(a) the purchase of immovable property;

(b) the construction, reconstruction or renovation of any building or other structure,

for residential, commercial or industrial purposes;

"capital funds" means paid-up capital and reserves;

"commodity derivative instrument" includes, to the extent such instrument is not a derivative financial instrument, commodity futures, commodity forward, commodity swap, commodity option or other commodity instruments with similar characteristics, that are reasonably possible to be settled in cash or with securities or other derivative instruments;

"credit facilities" means—

(a) any advance, loan or other facility in whatever form or by whatever name called, by the giving of which the person to whom the same is given has access, directly or indirectly, to the funds of the person giving the same; or

(b) any liability whatsoever incurred on behalf of any person;

"credit token business" means any business where a token, being a cheque, card, voucher, stamps, booklet, coupon, form or other document or thing is given or issued to a person, referred to as "customer", by the person carrying on the business, referred to as "issuer", whereby such issuer undertakes—

(a) that on the production of the token, whether or not some other action is also required, the issuer will supply cash, goods or services on credit; or

(b) that where, on the production of the token to a third party, whether or not any other action is also required, the third party supplies cash, goods or services, the issuer will pay the third party for them, whether or not deducting any discount or commission, in return for payment to be made thereafter to the issuer by the customer,

and for the purposes of this definition, the use of a token to operate a machine provided by the issuer or by a third party shall be regarded as the production of the token to the person providing the machine;

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

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

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

and such repayment being either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it, regardless whether the transaction is described as a loan, an advance, an investment, a saving, a sale or a sale and repurchase, but does not include money paid *bona fide*—

(A) by way of an advance or a part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is not or are not in fact sold, hired or otherwise provided;

(B) by way of security for the performance of a contract or by way of security in respect of any loss which may result from the non-performance of a contract;

(C) without prejudice to paragraph (B), by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise; and

(D) in such other circumstances, or to or by such other person, as the Authority may specify;

"derivative financial instrument" means futures, forward, swap, or option contract, or other financial instrument with similar characteristics but does not include—

(a) all on-balance-sheet receivables and payables, including those that derive their values or contractually require cash flows from the price of some other security or index, such as mortgage-backed securities, interest-only and principal-only obligations, and indexed debt instruments; and

(b) option features that are embedded within an on-balance-sheet receivable or payable, such as the conversion feature and call provisions embedded in convertible bonds;

"derivative instrument" means an instrument the value of which depends upon the value of underlying indices or assets such as currencies, securities, commodities or other derivative instruments and includes a derivative financial instrument and a commodity derivative instrument;

"development finance business" means the business of providing capital or other credit facility on terms which would require the same to be utilized for industrial, agricultural, commercial or other economic development; and for the purposes of this definition, "development" includes the commencement of any new industrial, agricultural, commercial or other economic venture or the expansion or improvement of any such existing venture;

"factoring business" means the business of acquiring debts due to any person;

"Labuan banking business" means—

(a) the business of receiving deposits on current account, deposit account, savings account or any other account as may be specified by the Authority;

(b) Labuan investment banking business;

(c) Labuan financial business;

(d) Labuan Islamic banking business;

(e) such other business as the Authority, with the approval of the Minister, may specify,

in any currency (including ringgit where permitted by the *Exchange Control Act 1953 or such other relevant law in force);

"Labuan financial business" means—

(a) building credit business;

(b) credit token business;

(c) development finance business;

(d) leasing business;

(e) factoring business;

(f) money-broking business;

(g) Labuan Islamic financial business; or

(h) such other business as the Authority, with the approval of the Minister, may specify,

in any currency (including ringgit where permitted by the *Exchange Control Act 1953 or such other relevant law in force);

"Labuan investment banking business" means—

(a) the business of providing credit facilities;

(b) the business of providing consultancy and advisory services relating to corporate and investment matters, including dealing in securities, or making and managing investments on behalf of any person;

(c) the business of undertaking foreign exchange transactions, interest rate swaps, dealings in derivative instruments or derivative financial instruments or any other similar risk management activities;

(d) Labuan Islamic investment banking business;

**NOTE*—The Exchange Control Act 1953 [*Act 17*] has since been repealed by the Financial Services Act 2013 [*Act 758*] which comes into operation on 30 June 2013—*see* sections 271 and 272 of Act 758.

(e) Labuan financial business; or

(f) such other business as the Authority, with the approval of the Minister, may specify,

in any currency (including ringgit where permitted by the *Exchange Control Act 1953 or such other relevant law in force);

"Labuan Islamic banking business" means Islamic banking business carried on by a person licensed to do so under Part VI of the Labuan Islamic Financial Services and Securities Act 2010;

"Labuan Islamic financial business" means Islamic financial business carried on by a person licensed to do so under Part VI of the Labuan Islamic Financial Services and Securities Act 2010;

"Labuan Islamic investment banking business" means Islamic investment banking business carried on by a person licensed under Part VI of the Labuan Islamic Financial Services and Securities Act 2010;

"leasing business" means the business of letting or sub-letting property on hire for the purpose of the use of such property by the hirer regardless whether the letting is with or without an option to purchase the property, including charters of ships, and for the purpose of this definition, "property" includes any plant, machinery, equipment or other chattel attached or to be attached to the earth and "charters of ships" means bareboat charters only and does not include the transportation of passengers or cargo by sea or the charter of ships on a voyage or time charter;

"Malaysian bank" means a licensed as bank defined in the **Banking and Financial Institutions Act 1989 [*Act 372*] or an Islamic bank as defined in the ***Islamic Banking Act 1983 [*Act 276*];

**NOTE*—The Exchange Control Act 1953 [*Act 17*] has since been repealed by the Financial Services Act 2013 [*Act 758*] which comes into operation on 30 June 2013—*see* sections 271 and 272 of Act 758.

***NOTE*—The Banking and Financial Institutions Act 1989 [*Act 372*] has since been repealed by the Financial Services Act 2013 [*Act 758*] which comes into operation on 30 June 2013—*see* sections 271 and 272 of Act 758.

****NOTE*—The Islamic Banking Act 1983 [*Act 276*] has since been repealed by the Islamic Financial Services Act 2013 [*Act 759*] which comes into operation on 30 June 2013—*see* sections 282 and 283 of Act 759.

"money-broking business" means the business of arranging transactions between buyers and sellers in the money or foreign exchange markets as an intermediary in consideration of brokerage fees paid or to be paid, but does not include the buying or selling of ringgit or foreign currencies as a principal in such markets;

"payment system" means any system or arrangement for the transfer, clearing or settlement of funds or securities, but excludes—

(a) a payment system established or operated by the Central Bank or operated on behalf of the Central Bank, under the Central Bank of Malaysia Act 2009 [*Act 701*];

(b) a clearing house as defined under the Capital Markets and Services Act 2007;

(c) an in-house payment system operated by a person solely for his own administrative purposes that does not transfer, clear or settle funds or securities for third parties; and

(d) a system that solely facilitates the initiation of payment instructions;

"paid-up capital", in relation to an applicant under sections 88, 89 and 90 or a bank licensee, means the amount of money contributed by its participants for it to carry on business but does not include credit facilities granted to it by its participants.

Division 2

LICENSING

Labuan banking business, Labuan investment banking business and Labuan financial business to be carried on only under licence

87. (1) No person shall carry on Labuan banking business, Labuan investment banking business or Labuan financial business unless—

(a) it is a Labuan company or a foreign Labuan company; or

(b) it is a Malaysian bank,

and holds a valid licence to carry on such business.

(2) Any person who contravenes subsection (1) commits and offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding five years or to both, and in the case of a continuing offence, shall, in addition, be liable to a daily fine not exceeding ten thousand ringgit for each day the offence continues to be committed.

Application for licence to carry on Labuan banking business

88. (1) An application for a licence to carry on Labuan banking business shall be made in writing by or on behalf of the applicant to the Authority.

(2) An application for a licence to carry on Labuan banking business by a Labuan company shall be accompanied by the following:

(a) the applicant's constituent documents duly authenticated by an officer of the applicant in such manner as may be acceptable to the Authority; and

(b) a statement on the following:

(i) the name, place and date of establishment of the applicant;

(ii) the principal business and the principal place of business of the applicant; and

(iii) the names and addresses of the directors of the applicant and the participants who each holds ten per centum or more of the paid-up capital of the applicant;

(c) a statement on the names, addresses, qualifications, working experience and proposed positions of all officers who would be responsible for the management of the applicant's Labuan banking business;

(d) a proposed amendment to the applicant's constituent documents to the effect that the sole and exclusive object of the Labuan company shall be the carrying on of Labuan banking business;

(e) where the applicant—

(i) is a Labuan company which is a subsidiary of a holding company, a copy of the audited balance sheet of its holding company's business for each of the three financial years immediately preceding the date of application;

(ii) is a Labuan company which is not a subsidiary of any corporation, a copy of the audited balance sheet of the business of its participants who each holds ten per centum or more of the paid-up capital of the applicant for each of the three financial years immediately preceding the date of application;

(f) a guarantee secured and an undertaking given by the applicant in respect of its Labuan banking business, in such manner and such form as may be acceptable to the Authority, and such guarantee and undertaking shall provide, *inter alia*, that—

(i) the applicant shall comply with the financial obligations and requirements imposed under this Act and shall meet the applicant's liabilities in respect of its Labuan banking business;

(ii) no participant of the applicant who holds ten per centum or more of the paid-up capital of the applicant shall be changed without the prior written approval of the Authority;

(iii) every director or the principal officer of the applicant responsible for the management of its Labuan banking business shall be a fit and proper person and the appointment of such director or principal officer shall only be made after consultation with the Authority.

(3) An application for a licence to carry Labuan banking business by a proposed Labuan company to be incorporated under the Labuan Companies Act 1990 ("proposed Labuan company") shall be accompanied by the following:

(a) its proposed constituent documents duly authenticated in such manner as may be acceptable to the Authority by any of its officers;

(b) a statement on the following:

(i) the name, place and date of the proposed establishment of the applicant;

(ii) the proposed principal business and the proposed principal place of business of the applicant; and

(iii) the names and addresses of the proposed directors of the applicant and the proposed participants who each holds ten per centum or more of the paid-up capital of the applicant;

(c) a statement on the names, addresses, qualifications, working experience and proposed positions of all officers who would be responsible for the management of the applicant's Labuan banking business;

(d) a copy of the audited balance sheet of the business of the proposed participants who would each hold ten per centum or more of its paid-up capital for each of the three financial years immediately preceding the date of its application; and

(e) a statement on a guarantee secured and an undertaking given by its proposed participants that they would cause the proposed Labuan company, upon being incorporated, to secure a guarantee and give an undertaking as are referred to in paragraph (2)*(f)*.

(4) An application for a licence to carry on Labuan banking business by a foreign Labuan company shall be accompanied by the following:

(a) its constituent documents duly authenticated by an officer of the applicant in such manner as may be acceptable to the Authority;

(b) a statement on the following:

(i) the name, place and date of establishment of the applicant;

(ii) the principal business and the principal place of business of the applicant; and

(iii) the names and addresses of the directors of the applicant and the participants who each holds ten per centum or more of the paid-up capital of the applicant;

(c) a proposed amendment to the applicant's constituent documents to the effect that the sole and exclusive object of the foreign Labuan company shall be the carrying on of Labuan banking business;

(d) a copy of the audited balance sheet of the applicant's business for each of the three financial years immediately preceding the date of the application;

(e) an undertaking given by the applicant in respect of its Labuan banking business, in such manner and such form as may be acceptable to the Authority, and such undertaking shall provide, *inter alia* that—

(i) the applicant shall comply with the financial obligations and requirements imposed under this Act and shall meet the applicant's liabilities in respect of its Labuan banking business;

(ii) where the applicant is a foreign Labuan company, that it shall promptly notify the Authority of any change in its participants who hold ten per centum or more of its paid-up capital;

(iii) every director or the principal officer of the applicant responsible for the management of its Labuan banking business shall be a fit and proper person and the appointment of such director or principal officer shall only be made after consultation with the Authority.

(5) An application for a licence to carry on Labuan banking business by a foreign company which is seeking registration as a foreign Labuan company under the Labuan Companies Act 1990 ("proposed foreign Labuan company") shall be accompanied by the following:

(a) the constituent documents under which it is to be established, duly authenticated by any of its proposed officers in such manner as may be acceptable to the Authority;

(b) a copy of the audited balance sheet of the business for each of the three financial years immediately preceding the date of the application;

(c) a statement on—

(i) the name, place and date of the establishment of the foreign company;

(ii) the principal business and the principal place of business of the foreign company;

(iii) the names and addresses of the directors of the foreign company;

(iv) the names and addresses of the participants of the foreign company who each holds ten per centum or more of the paid-up capital of the foreign company;

(v) the names, addresses, qualifications, working experience and proposed positions of all proposed officers of the proposed foreign Labuan company who would be responsible for the management of its Labuan banking business; and

(d) an undertaking given by the foreign company as is referred to in paragraph (4)*(e)*.

(6) An application for a licence to carry on Labuan banking business by a Malaysian bank shall be accompanied by the following:

(a) the applicant's constituent documents duly authenticated by an officer of the applicant in such manner as may be acceptable to the Authority; and

(b) a copy of the audited balance sheet of the applicant's business for each of the three financial years immediately preceding the date of the application;

(c) a statement on the following:

(i) the name, place and date of establishment of the applicant;

(ii) the principal business and the principal place of business of the applicant; and

(iii) the names and addresses of the directors of the applicant and the participants who each holds ten per centum or more of the paid-up capital of the applicant;

(d) a statement on the names, addresses, qualifications, working experience and proposed positions of all officers who would be responsible for the management of the applicant's Labuan banking business.

Application for licence to carry on Labuan investment banking business

89. An application for a licence to carry on Labuan investment banking business shall be made in writing by or on behalf of the applicant to the Authority and the provisions of section 88 relating to Labuan banking business shall apply similarly save that "Labuan banking business" shall be read as "Labuan investment banking business".

Application for licence to carry on Labuan financial business

90. An application for a licence to carry on Labuan financial business shall be made in writing by or on behalf of the applicant to the Authority and shall be accompanied by such documents, statements and information as may be specified by the Authority.

Additional information

91. The Authority may, at any time after receiving an application under section 88, 89 or 90 and before a determination is made, verbally or in writing require the applicant to provide verbally or in writing such additional information, or to provide such additional documents, as may be considered necessary by the Authority for the purposes of determining the suitability of the applicant for the licence.

Grant of licence by the Authority

92. (1) Upon receiving an application for a licence under section 88, 89 or 90 and after being provided with all such information and documents as it may require under those sections, the Authority may approve the application, with or without conditions, or reject the application.

(2) Where the Authority rejects the application, the Authority shall notify the applicant in writing of the rejection.

(3) Where the Authority approves the application for a licence under subsection (1), the Authority shall issue the licence to the applicant upon the applicant's satisfaction of any condition imposed under such application for licence.

(4) A licence granted under this section shall remain in force until it is surrendered or revoked in accordance with this Act.

(5) No applicant shall be granted a bank licence under this section without the written consent of the Authority if its capital funds are less than ten million ringgit or its equivalent in any foreign currency in cash or such amount as may be specified in writing by the Authority.

(6) The Authority may, upon consultation with the Minister, by written notice to the bank licensee, vary the existing terms and conditions or impose such additional terms and conditions, in respect of a bank licence, from time to time as it deems fit.

Requirement to use, and restriction on use of, the words "licensed Labuan bank", etc.

93. (1) A bank licensee shall at all times affix or paint, and keep affixed or painted, in a prominent position on the outside of each of its offices and so as to be easily legible, its name, licence number and the words "licensed Labuan bank" or "licensed Labuan investment bank", as the case may be.

(2) A bank licensee shall, in any bill-head, printed form, letter paper, notice, advertisement, or any other document issued from its office and in the course of its business, prominently print its name, licence number and the words "licensed Labuan bank" or "licensed Labuan investment bank", as the case may be.

(3) No person, not being a bank licensee, shall, without the written consent of the Authority, assume or use the words "licensed Labuan bank", "licensed Labuan investment bank" or any derivative of such words in any language capable of being construed as indicating the carrying on of Labuan banking business or Labuan investment banking business by such person.

(4) Any person who contravenes subsection (3) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding five years or to both, and in the case of a continuing offence, shall in addition, be liable to a daily fine not exceeding ten thousand ringgit for each day the offence continues to be committed.

Maintenance of capital adequacy ratio

94. (1) No bank licensee shall carry on Labuan banking business or Labuan investment banking business if its capital funds are less than the amount specified in writing by the Authority.

(2) Every bank licensee shall maintain at all times, such capital adequacy ratio, as may be specified in writing by the Authority from time to time and no bank licensee shall carry on Labuan banking business or Labuan investment banking business if such specified capital adequacy ratio is not complied with, except with the approval of the Authority.

(3) A bank licensee shall at all times maintain its capital funds to reflect the risk weighted capital ratio as may be specified in writing by the Authority from time to time.

(4) The Authority may direct a bank licensee to take appropriate measures to rectify any deficiencies in such specified ratio in such manner as the Authority deems fit.

Amendment or alteration of constituent documents of bank licensees

95. (1) Every bank licensee which is a Labuan company shall, prior to the making of any amendment or alteration to any of its constituent documents, furnish to the Authority particulars in writing as to such proposed amendment or alteration for the approval of the Authority.

(2) Every bank licensee which is a foreign Labuan company or a Malaysian bank shall within three months after the making of any amendment or alteration to its constituent documents, furnish to the Authority particulars in writing of such amendment or alteration duly authenticated in a manner acceptable to the Authority by a director of the bank licensee.

(3) No bank licensee shall make any amendment or alteration that is contrary to any written law to its constituent documents.

(4) No participant of the bank licensee who holds fifteen per centum or more of the paid-up capital of the bank licensee shall be changed without the prior written approval of the Authority and, where the bank licensee is a foreign Labuan company, it shall promptly notify the Authority of any change in its participants who hold fifteen per centum or more of its paid-up capital.

Authority to publish list of Labuan banks and Labuan investment banks

96. The Authority shall publish annually not later than 31 March of each year a list of all existing Labuan banks and Labuan investment banks as at 31 December of the preceding year and their licence numbers in the *Gazette*, and if any licence is issued, revoked or surrendered, subsequent to such publication, the Authority shall cause to be published in the *Gazette* as soon as practicable a revised list of all existing Labuan banks and Labuan investment banks and their licence numbers.

DIVISION 3

DUTIES OF BANK LICENSEES

Offices and subsidiaries

97. A bank licensee which is a Labuan company may, subject to the prior written consent of the Authority, open any office other than its principal place of business in Labuan, or acquire or establish any subsidiary.

Prohibition of certain accounts

98. (1) No bank licensee shall accept any money on deposit or loan which is repayable on demand by cheque, draft, order or any other instrument drawn by the depositor on the bank licensee.

(2) Every bank licensee shall conduct proper due diligence enquiries prior to opening any account for a customer.

(3) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding five years or to both, and in the case of a continuing offence, shall, in addition, be liable to a daily fine not exceeding ten thousand ringgit for each day the offence continues to be committed.

Financial statements, statistics and information to be submitted to the Authority

99. The bank licensee shall comply with the requirements with respect to financial statements, statistics and information to the Authority as set out in the Third Schedule.

DIVISION 4

GENERAL PROVISION

Payment from a deceased person's account

100. (1) Notwithstanding anything in any written law or rule of law, a bank licensee may, without the production of letters of probate or letters of administration, pay any sum not exceeding the equivalent of five thousand ringgit standing to the credit of a deceased person to any person who produces satisfactory proof of—

(a) the death of such deceased person; and

(b) his entitlement under the law to the sum standing to the credit of such deceased person.

(2) A bank licensee shall not make any payment under subsection (1) if it has received other claims to any money standing to the credit of the deceased person.

(3) A bank licensee or its directors or officers shall not be liable in respect of any claim by any person in connection with any payment made in accordance with this section but such person may recover any sum lawfully due to him from the person to whom such payment has been made.

PART VII

LABUAN INSURANCE

DIVISION 1

PRELIMINARY

Interpretation

101. (1) In this Part, unless the context otherwise requires—

"domestic insurance business" means insurance business where the subject matter of the contract is—

(a) property which at the time of the making of the contract is situated in Malaysia or is in transit to or from Malaysia;

(b) a ship or an aircraft registered in Malaysia and all liabilities arising from the operation of such ship or aircraft;

(c) the life or any contingency related to any person who, at the time of the making of the contract, is a resident; or

(d) a risk of any nature in respect of any person who, at the time of the making of the contract, is a resident;

"general insurance business" means insurance business which is not life insurance business but which includes accident, medical, surgical and hospital expenses insurances related to any person;

"insurance business" means the business of effecting and carrying out contracts—

(a) protecting persons against loss or liability to loss in respect of risks to which such persons may be exposed; or

(b) to pay a sum of money or other thing of value upon the happening of an event,

and includes reinsurance business;

"insurance licence" means a licence granted under this Part;

"insured" means a person who is covered by an insurance policy;

"insurer" means a person who carries on insurance business;

"Labuan captive insurance business" means Labuan insurance business where the insured is a related corporation or associate corporation of the Labuan insurer or where the insured is any other person in respect of whom the Labuan insurer is authorized by the Authority to provide insurance or reinsurance;

"Labuan insurance broker" means a person who is licensed to—

(a) arrange Labuan insurance business on behalf of prospective or existing policy owners;

(b) arrange Labuan reinsurance business on behalf of any insurer seeking reinsurance; or

(c) analyze the financial circumstances of another person and provides a plan to meet that other person's financial needs and objectives, whether or not a fee is charged in relation thereto;

"Labuan insurance business" means insurance and reinsurance business which includes takaful and retakaful business, Labuan captive insurance business and such other insurance business approved by the Authority but does not include any insurance business that is regulated or prohibited under other written law in Malaysia;

"Labuan insurance manager" means a person who is licensed to provide management or administration services related to Labuan insurance business but does not include a Labuan underwriting manager;

"Labuan insurer" means a person who is licensed to carry on Labuan insurance business;

"Labuan underwriting manager" means a person, not being a *bona fide* employee, who is licensed to provide underwriting services, including the administration of the business, to one or more Labuan insurers;

"life insurance business" means insurance business connected with any policy by which payment of policy monies is insured on death or on the happening of any contingency dependent on the termination or continuation of human life and includes any incidental extension of cover and reinsurances of such business;

"Malaysian insurer" means an insurer which is licensed under the *Insurance Act 1996 [*Act 553*] or the **Takaful Act 1984 [*Act 312*];

"net premium income", in relation to a financial year, means the premiums receivable under contracts of insurance or reinsurance after deducting any premiums payable for reinsurances arranged in respect of such contracts of insurance or reinsurance;

**NOTE*—The Insurance Act 1996 [*Act 553*] has since been repealed by the Financial Services Act 2013 [*Act 758*] which comes into operation on 30 June 2013—*see* sections 271 and 272 of Act 758.

***NOTE*—The Takaful Act 1984 [*Act 312*] has since been repealed by the Islamic Financial Services Act 2013 [*Act 759*] which comes into operation on 30 June 2013—*see* sections 282 and 283 of Act 759.

"policy" means an insurance policy and includes a cover note or any written contract of insurance whether or not embodied in or evidenced by an instrument in the form of an insurance policy; and any reference to a policy of an insurer includes a reference to any policy in respect of which the insurer is under any liability, whether the policy was issued by the insurer or the liability was transferred to the insurer from another insurer;

"policy owner" means any person who effects a policy;

"reinsurance business" means a business whereby the reinsurer assumes a part of the liability under an original contract of insurance of another insurer or reinsurer;

"reinsurer" means a person who carries on or transacts or holds himself out as carrying on or transacting reinsurance business;

"working funds" means—

(a) in relation to a Labuan company, the paid-up capital unimpaired by losses; and

(b) in relation to a foreign Labuan company or a branch of a Malaysian insurer, the surplus of assets over liabilities to be maintained in the books of its office in Labuan.

(2) Where fifteen per centum or more of the voting shares of a corporation are held by another corporation, the first-mentioned corporation shall be deemed to be an associate corporation of the other corporation, and any reference in this Act to an "associate corporation" shall be construed as a reference to that first-mentioned corporation or that other corporation, as the case may be.

Division 2

LICENSING OF LABUAN INSURANCE BUSINESS AND LABUAN INSURANCE-RELATED ACTIVITIES

Licensing of Labuan insurance business and Labuan insurance-related activities

102. (1) No person shall carry on or transact or hold himself out as carrying on or transacting any Labuan insurance business unless that person is—

(a) a Labuan company;

(b) a foreign Labuan company; or

(c) a branch of a Malaysian insurer,

and holds a valid insurance licence.

(2) No person shall carry on or transact or hold himself out as carrying on or transacting any business as a Labuan insurance manager, Labuan underwriting manager or Labuan insurance broker or any other Labuan insurance-related activities as may be specified by the Authority unless that person holds a valid insurance licence.

(3) Except with the prior written approval of the Authority, a person who is not an insurance licensee shall not assume or use the words "Labuan insurer", "Labuan insurance manager", "Labuan underwriting manager", "Labuan insurance broker" or any derivative of such words in any language capable of being construed as indicating the carrying on of Labuan insurance business or Labuan insurance-related activities by such person.

(4) This section shall not apply to bank licensees as defined in Part VI, distributing the insurance products of a Labuan insurer subject to the prior written approval of the Authority.

Application for insurance licence to carry on Labuan insurance business

103. (1) Every applicant for an insurance licence to carry on Labuan insurance business shall satisfy the Authority that—

(a) the applicant is, or will be, a Labuan company or a foreign Labuan company or a branch of a Malaysian insurer;

(b) the working funds of the applicant—

(i) in a case where the applicant proposes to carry on either life insurance business or general insurance business, are at least seven million and five hundred thousand ringgit or its equivalent in any foreign currency or such other amount or denomination as may be specified by the Authority;

(ii) in a case where the applicant proposes to carry on solely reinsurance business, are at least ten million ringgit or its equivalent in any foreign currency or such other amount or denomination as may be specified by the Authority; or

(iii) in a case where the applicant proposes to carry on solely Labuan captive insurance business, are at least three hundred thousand ringgit or its equivalent in any foreign currency or such other amount or denomination as may be specified by the Authority;

(c) the sum of money specified in paragraph *(b)* is maintained in an account of the applicant with a bank in Labuan, as evidenced by a certificate of such bank, at the time when the application is made;

(d) the person in control, director and principal officer of the applicant are fit and proper persons to be associated with a Labuan insurer;

(e) the applicant either—

(i) has established, or will establish, its management in Labuan with adequate knowledge and expertise of the Labuan insurance business to be carried on; or

(ii) has appointed, or will appoint, a licensed Labuan underwriting manager or Labuan insurance manager in Labuan with adequate knowledge and experience of the Labuan insurance business to be carried on, save that with respect to applicants who apply to carry out Labuan captive insurance business, only a Labuan underwriting manager may be appointed; and

(f) the applicant will become a member of an association of Labuan insurers.

(2) Notwithstanding paragraph (1)*(b)*, the Authority may, having regard to the extent and volume of Labuan insurance business which the applicant proposes to carry on, specify a lesser amount of working funds, subject to the applicant providing adequate guarantee on such terms and conditions as may be acceptable to the Authority for the difference in amount.

(3) Every application for a license to carry on Labuan insurance business shall—

(a) be made in writing and be submitted to the Authority;

(b) state whether such Labuan insurance business is in relation to life insurance business or general insurance business;

(c) set out the types of Labuan insurance business, as the case may be, which are to be carried on under the insurance licence;

(d) set out the applicant's business plans; and

(e) be accompanied by—

(i) a copy of—

(aa) the applicant's constituent documents duly authenticated by a director or officer of the applicant;

(*bb)* the resolutions of the board and the general meeting, if any, of the applicant, duly authenticated by a director or officer of the applicant, authorizing the applicant to apply for an insurance licence;

(cc) the applicant's certificate of incorporation or registration, as the case may be, certified by the relevant registering authority in the place of establishment or origin of the applicant; and

(dd) except in relation to an application to carry on a Labuan captive insurance business, a letter of awareness from the applicant's home supervisory authority or such authority as may be specified by the Authority.

(ii) a copy of the applicant's audited annual accounts for the three consecutive years immediately preceding the application, where applicable;

(iii) a statement on—

(aa) the name, place and date of establishment of the applicant;

(bb) the names, addresses, qualifications and experience of the directors and officers responsible for the overall management of the affairs of the applicant; and

(cc) the name and address of each member who holds fifteen per centum or more of the voting shares of the applicant;

(iv) a declaration by the applicant on the probity of the applicant's directors and officers who would be concerned in the management of the proposed Labuan insurer; and

(v) in the case of an application by a Labuan company, a guarantee secured and an undertaking given, and, in the case of an application by a foreign Labuan company or a branch of a Malaysian insurer, an undertaking given, by the applicant in respect of its Labuan insurance business, in such manner and such form as may be acceptable to the Authority, and such guarantee and undertaking shall provide, *inter alia*, that—

(aa) the applicant shall comply with the financial obligations and requirements imposed under this Act and shall meet the applicant's liabilities in respect of its Labuan insurance business;

(bb) where the applicant is a Labuan company, no participant of the applicant who holds ten per centum or more of the paid-up capital of the applicant shall be changed without the prior written approval of

the Authority and, where the applicant is a foreign Labuan company, that it shall promptly notify the Authority of any change in its participants who hold ten per centum or more of its paid-up capital; and

(cc) every director or the principal officer of the applicant responsible for the management of its Labuan insurance business shall be a fit and proper person and the appointment of such director or principal officer shall only be made after consultation with the Authority.

(4) Paragraph (3)*(e)*(v) shall not apply to an application to carry on a Labuan captive insurance business where the policy owner is a related corporation or associate corporation of the Labuan insurer.

(5) The Authority may require from the applicant such other information or documents as may be specified by the Authority for the purpose of determining the application.

(6) The matters specified under subsection (5) may differ as between applicants, or different classes, categories or descriptions of applicants as may be determined by the Authority.

(7) An application under this section may be made in relation to a person not yet established under the Labuan Companies Act 1990 but will be so established in the event of such person obtaining an insurance licence, and in such event the requirements of subsection (1) may be varied by the Authority as it deems appropriate.

Application for insurance licence to carry on Labuan insurance-related activities

104. (1) Every applicant for an insurance licence to carry on business as a Labuan insurance manager, Labuan underwriting manager or Labuan insurance broker shall satisfy the Authority that—

(a) the person in control, director and principal officer of the applicant are fit and proper persons;

(b) the applicant is able to maintain sufficient funds in its business to cover its expenses of operations and management in Labuan for at least six months;

(c) in respect of an applicant for an insurance licence to carry on the business of a Labuan insurance manager or Labuan underwriting manager—

(i) the applicant has established, or undertakes to establish, its management in Labuan with adequate knowledge and expertise of the Labuan insurance business to be carried on; or

(ii) the applicant has appointed, or undertakes to appoint, a licensed Labuan insurance manager or Labuan underwriting manager in Labuan with adequate knowledge and experience of the Labuan insurance business to be carried on;

(d) in respect of an applicant for an insurance licence to carry on business as a Labuan insurance broker—

(i) the applicant has established, or undertakes to establish, its management in Labuan with adequate knowledge and expertise of the Labuan insurance business to be carried on; or

(ii) the applicant has appointed, or undertakes to appoint, a licensed Labuan insurance manager in Labuan with adequate knowledge and experience of the Labuan insurance business to be carried on;

(e) the applicant either has obtained or undertakes to obtain any professional indemnity insurance policy of not less than two million and five hundred thousand ringgit or its equivalent in any foreign currency or such other amount or denomination as may be specified by the Authority, and remain indemnified under such policy throughout its operation in Labuan;

(f) the applicant holds such qualification as may be specified by the Authority; and

(g) the applicant undertakes to become a member of an association of Labuan insurers.

(2) Every application for a licence to carry on business as a Labuan insurance manager, Labuan underwriting manager or Labuan insurance broker shall—

(a) be made in writing and be submitted to the Authority;

(b) state the nature of the business to be carried on under the insurance licence; and

(c) be accompanied by—

(i) a copy of—

(aa) the applicant's constituent documents, duly authenticated by a director or officer of the applicant;

(bb) the resolutions of the board and the general meeting, if any, of the applicant, duly authenticated by a director or officer of the applicant, authorizing the applicant to apply for an insurance licence;

(cc) the applicant's certificate of incorporation or registration, as the case may be, certified by the relevant registering authority in the place of establishment or origin of the applicant; and

(dd) a letter of awareness from the applicant's home supervisory authority or such authority as may be specified by the Authority;

(ii) a copy of the applicant's audited annual accounts for the three consecutive years immediately preceding the application, where applicable;

(iii) a statement on—

(aa) the name, place and date of establishment of the applicant;

(bb) the names, addresses, qualifications and experience of the directors and officers responsible for the overall management of the affairs of the applicant; and

(cc) the name and address of each member who holds fifteen per centum or more of the voting shares of the applicant;

(iv) a declaration by the applicant on the probity of the applicant's directors and officers who would be concerned in the management of the proposed Labuan insurance manager, the proposed Labuan underwriting manager or the proposed Labuan insurance broker, as the case may be;

(v) in the case of an application by a Labuan company, a guarantee secured and an undertaking given, and, in the case of an application by a foreign Labuan company or a branch of a Malaysian insurer, an undertaking given, by the applicant in respect of the business of a Labuan insurance manager, Labuan underwriting manager or Labuan insurance broker, as the case may be, in such manner and such form as may be acceptable to the Authority, and such guarantee and undertaking shall provide, *inter alia*, that–

(aa) the applicant shall comply with the financial obligations and requirements imposed under this Act and shall meet the applicant's liabilities in respect of the business of a Labuan insurance manager, Labuan underwriting manager or Labuan insurance broker, as the case may be;

(bb) where the applicant is a Labuan company, no participant of the applicant who holds ten per centum or more of the paid-up capital of the applicant shall be changed without the prior written approval of the Authority and, where the applicant is a foreign Labuan company, that it shall promptly notify the Authority of any change in its participants who hold ten per centum or more of its paid-up capital; and

(cc) every director or the principal officer of the applicant responsible for the management of the business of a Labuan insurance manager, Labuan underwriting manager or Labuan insurance broker, as the case may be, shall be a fit and proper person and the appointment of such director or principal officer shall only be made after consultation with the Authority.

(3) The Authority may require from the applicant such other information or documents as may be specified by the Authority for the purpose of determining the application.

(4) The matters specified under subsection (3) may differ as between applicants, or different classes, categories or descriptions of applicants as may be determined by the Authority.

Grant of insurance licence

105. (1) Upon receiving an application for an insurance licence, the Authority may approve the application, with or without conditions, or reject the application.

(2) Where the Authority rejects the application, the Authority shall notify the applicant in writing of the rejection.

(3) Where the Authority approves the insurance licence under subsection (1), the Authority shall issue the insurance licence to the applicant.

(4) The Authority may specify in the insurance licence the type of activities the insurance licensee may carry on.

(5) An applicant who is aggrieved by the decision of the Authority under subsection (1) to reject his application, may within thirty days of the decision being notified to him, appeal to the Minister in writing.

(6) An insurance licensee shall comply with any conditions imposed under a license granted under subsection (1) for the duration of the license.

(7) A licence granted under this section shall remain in force until it is surrendered or revoked in accordance with this Act.

(8) The Authority may, upon consultation with the Minister, by written notice to the insurance licensee vary the existing terms and conditions or impose such additional terms and conditions, in respect of an insurance licence, from time to time as it deems fit.

Publication of list of all insurance licensees

106. The Authority shall publish annually not later than 31 March of each year a list of all existing insurance licensees as at 31 December of the preceding year and their licence numbers in the *Gazette*, and if any licence is issued, revoked or surrendered, subsequent to such publication, the Authority shall cause to be published in the *Gazette* as soon as practicable a revised list of all existing insurance licensees and their licence numbers.

Continuing licensing requirements

107. (1) Every Labuan insurer which is a Labuan company shall, prior to the making of any amendment or alteration to any of its constituent documents, or prior to any change of its person in control, director or principal officer, furnish to the Authority particulars in writing of any such proposed amendment, alteration or change, for the approval of the Authority.

(2) Every Labuan insurer which is a foreign Labuan company shall, prior to the making of any change of its principal officer, furnish to the Authority the particulars in writing of any proposed change for the approval of the Authority.

(3) Every Labuan insurer which is a foreign Labuan company or a branch of a Malaysian insurer shall notify in writing within three months after the making of any amendment or alteration to any of its constituent documents, or any change of its person in control or director and furnish to the Authority particulars in writing of such amendment, alteration or change duly authenticated in a manner acceptable to the Authority by a director of the Labuan insurer.

(4) Every insurance licensee shall immediately notify the Authority of any amendment or alteration to any information which had been furnished to the Authority in connection with the application for the insurance licence.

(5) No Labuan insurer shall make any amendment or alteration to its constituent documents which are contrary to any written law.

(6) Where the Labuan insurer is a Labuan company, no participant of the Labuan insurer who holds fifteen per centum or more of the paid-up capital of the applicant shall be changed without the prior written approval of the Authority and, where the Labuan insurer is a foreign Labuan company, it shall promptly notify the Authority of any change in its participants who hold fifteen per centum or more of its paid-up capital.

Division 3

FINANCIAL REQUIREMENTS AND DUTIES OF AND RESTRICTIONS ON INSURANCE LICENSEES

Appointment of actuary

108. Every Labuan insurer carrying on life insurance business shall appoint an actuary annually within such period as may be specified by the Authority.

Margin of solvency

109. Every Labuan insurer, including an insurance licensee which carries on Labuan captive insurance business, shall ensure that the realizable value of its assets exceeds the amount of its liabilities by a margin in such an amount or calculated in such manner as may be specified in writing by the Authority from time to time.

Separate accounts to be kept by Labuan insurer

110. (1) Every Labuan insurer shall keep the accounts and funds in respect of its Labuan insurance business separate from its other funds.

(2) Every Labuan insurer which carries on both life insurance business and general insurance business shall keep the accounts and funds in respect of its life insurance business separate from the accounts and funds in respect of its general insurance business.

(3) Every Labuan insurer which is a branch of a Malaysian insurer shall keep the accounts in respect of its Labuan insurance business separate from the accounts in respect of its domestic insurance business carried on in Labuan.

Submission of financial statements

111. Every Labuan insurer shall comply with the requirements with respect to the submission of financial statements as set out in the Third Schedule.

Subsidiaries and offices of insurance licensee

112. An insurance licensee which is a Labuan company may, subject to the prior written consent of the Authority, open any office other than its principal place of business in Labuan, or acquire or establish any subsidiary.

Restriction on business by Labuan insurer

113. (1) No Labuan insurer shall carry on any business activities in Labuan or elsewhere from its office in Labuan other than its Labuan insurance business or business activities in connection with or for the purposes of such Labuan insurance business.

(2) Notwithstanding the definition of "Labuan insurance business" and notwithstanding subsection (1), a Labuan insurer may carry on the reinsurance of domestic insurance business, including the reinsurance of domestic insurance business transacted in the Malaysian currency and such other business as may be specified by the Authority.

(3) No Labuan insurer shall act on behalf of another Labuan insurer as a Labuan insurance manager or Labuan underwriting manager unless such first-mentioned Labuan insurer has been granted an insurance licence to carry on business as Labuan insurance manager or Labuan underwriting manager, as the case may be.

Restrictions on and duties of Labuan insurance manager, Labuan underwriting manager and Labuan insurance broker

114. (1) No licensed Labuan insurance manager shall provide any services other than administrative services and no licensed Labuan underwriting manager shall provide any services other than underwriting services.

(2) No licensed Labuan underwriting manager shall provide underwriting services in or from Labuan to any person not licensed under this Act or to any business carried on by an insurer registered under the *Insurance Act 1996 or by a takaful operator registered under the **Takaful Act 1984.

**NOTE*—The Insurance Act 1996 [*Act 553*] has since been repealed by the Financial Services Act 2013 [*Act 758*] which comes into operation on 30 June 2013—*see* sections 271 and 272 of Act 758.
***NOTE*—The Takaful Act 1984 [*Act 312*] has since been repealed by the Islamic Financial Services Act 2013 [*Act 759*] which comes into operation on 30 June 2013—*see* sections 282 and 283 of Act 759.

(3) A licensed Labuan insurance broker may handle the insurance or reinsurance of domestic insurance business, transacted in the Malaysian currency provided that such activity does not include any activity that is regulated or prohibited under other written law in Malaysia.

(4) Every licensed Labuan insurance manager or licensed Labuan underwriting manager who acts on behalf of a Labuan insurer shall maintain its own funds separate from the funds of the Labuan insurer and shall not apply the funds of such Labuan insurer to meet any of its expenses or liabilities other than in respect of the Labuan insurance business.

List of Labuan insurers to be supplied by Labuan insurance manager and Labuan underwriting manager

115. Every licensed Labuan insurance manager and licensed Labuan underwriting manager shall, within thirty days from the close of its financial year, submit to the Authority, in such form and manner as may be specified by the Authority, a list of all Labuan insurers for whom such licensed Labuan insurance manager provides administrative services or licensed Labuan underwriting manager provides underwriting services.

Conduct of business

116. (1) Every Labuan insurer shall—

(a) conduct its business with due diligence and care in accordance with sound insurance principles;

(b) follow accepted international accounting standards or such other standards as may be approved by the Authority;

(c) register all assets in its name, or in the name of a custodian or nominee for the Labuan insurer where assets are acquired in the name of such custodian or nominee, and in the case of bearer shares, hold them in safe custody; and

(d) indicate clearly on its letterhead, stationery and other documents containing its name that it is licensed under this Act, together with the number of its insurance licence.

(2) No Labuan insurer shall advertise or publish, in any form, information which is untrue or which is likely to mislead another person in relation to the written laws applicable to Labuan insurers and their related businesses and activities or that Labuan insurer's financial status or insurance or reinsurance plans or any other matter in respect of its Labuan insurance business.

(3) Paragraphs (1)*(a)* and *(d)* and subsection (2) shall apply with the necessary modifications to a licensed Labuan insurance manager, licensed Labuan underwriting manager and licensed Labuan insurance broker.

Division 4

PAYMENT OF POLICY MONIES UNDER A LIFE POLICY AND PERSONAL ACCIDENT POLICY

Application of this Division

117. In this Division, a reference to a policy is a reference to a life policy, including a life policy under section 23 of the Civil Law Act 1956 [*Act 67*], and a personal accident policy effected by a policy owner upon his own life providing for payment of policy monies on his death.

Power to make nomination

118. (1) A policy owner who has attained the age of eighteen years may nominate a natural person to receive policy monies payable upon his death under the policy by notifying the Labuan insurer in writing of the name, date of birth, identity card number or birth certificate number and address of the nominee at the time the policy is issued.

(2) Where a nomination is made after the policy is issued, the policy owner shall submit the policy together with the particulars of the nominee referred to in subsection (1) for the Labuan insurer's endorsement of the nomination on the policy.

(3) A nomination made under subsection (1) shall be witnessed by a person of sound mind who has attained the age of eighteen years and who is not a nominee named under that subsection.

(4) The Labuan insurer—

(a) shall prominently display in the nomination form a notice that the policy owner has to assign the policy benefits to his nominee if his intention is for his nominee, other than his spouse, child or parent, to receive the policy benefits beneficially and not as an executor;

(b) shall record the nomination and the particulars of the nominee in its register of policies; and

(c) shall register in its register of policies the nomination made under subsection (1) and such nomination shall take effect from the date the nomination is registered.

(5) A failure to comply with subsection (4) shall affect the validity of the nomination unless otherwise proven that the necessary notification of the nomination was made by the policy owner and given to the Labuan insurer for endorsement on the policy.

(6) A nomination made under subsection (1) may be in favour of one person or several persons and where there is more than one person nominated, the policy owner may direct that specified shares be paid to the persons nominated and in the absence of direction by the policy owner, the Labuan insurer shall pay such persons in equal shares.

Revocation of nomination

119. (1) A nomination, including a nomination to which section 121 applies, shall be revoked—

(a) upon the death of the nominee, or where there is more than one nominee, upon the death of all the nominees, during the lifetime of the policy owner;

(b) by a notice in writing given by the policy owner; or

(c) by any subsequent nomination.

(2) Subject to subsection (1), a nomination shall not be revoked by a will or by any other act, event or means.

(3) Where there is more than one nominee and one of the nominees predeceases the policy owner, in the absence of any subsequent nomination by the policy owner disposing of the share of the deceased nominee, the Labuan insurer shall pay the share of the deceased nominee to the remaining nominees in proportion to their respective shares.

Payment of policy monies

120. (1) Subject to subsection (2), where a policy owner dies having made a nomination, the Labuan insurer shall pay the policy monies of the deceased policy owner according to the direction of the nomination upon receipt of a claim by the nominee and the claim is accompanied by proof of death of the policy owner.

(2) Where a nominee fails to claim the policy monies within two months of the Labuan insurer becoming aware of the death of the policy owner, the Labuan insurer shall notify the nominee in writing at his last-known address of his entitlement to claim the policy monies.

(3) Where a nominee fails to claim the policy monies within twelve months of the notification under subsection (2), section 124 shall apply as though no nomination was made.

(4) Where a nominee, other than a nominee under section 121, dies after the death of the policy owner but before any policy monies has been paid to him as nominee, section 119 or section 124 shall apply to the policy, as the case may be.

Trustee of policy monies

121. (1) A nomination by a policy owner, other than a Muslim policy owner, shall create a trust in favour of the nominee of the policy monies payable upon the death of the policy owner, if—

(a) the nominee is his spouse or child; or

(b) where there is no spouse or child living at the time of nomination, the nominee is his parent.

(2) A payment under subsection (1) shall not form part of the estate of the deceased policy owner or be subject to his debts.

(3) The policy owner, by the policy, or by a notice in writing to the Labuan insurer, may appoint trustees of the policy money and where there is no trustee—

(a) the nominee who is competent to contract; or

(b) where the nominee is incompetent to contract, the parent of the incompetent nominee and where there is no surviving parent, the Public Trustee,

shall be the trustee of the policy monies and the receipt of a trustee shall be a discharge to the Labuan insurer for all liability in respect of the policy monies paid to the trustee.

(4) A policy owner shall not deal with a policy to which subsection (1) applies by revoking a nomination under the policy, by varying or surrendering the policy, or by assigning or pledging the policy as security, without the written consent of the trustee.

(5) Nothing in this section shall prejudice a creditor of a policy owner from applying to the court for a declaration that this section, wholly or partly, is inapplicable to any particular policy on the ground that the premiums under that policy were paid to defraud the creditor.

Nominee other than a nominee under section 121

122. (1) A nominee, other than a nominee under section 121, shall receive the policy monies payable on the death of the policy owner as an executor and not solely as a beneficiary and any payment to the nominee shall form part of the estate of the deceased policy owner and be subject to his debts and the Labuan insurer shall be discharged from liability in respect of the policy monies paid.

(2) Subsection (1) applies to a nominee of a Muslim policy owner who, on receipt of the policy monies, shall distribute the policy monies in accordance with syariah principles.

Assigned or pledged policy monies

123. (1) Notwithstanding a nomination under section 118 or the creation of a trust under subsection 121(1), where the policy monies, wholly or partly, have been pledged as security or assigned to a person, the claim of the person entitled under the security or the assignee shall have priority over the claim of the nominee and, subject to the rights under the security or the assignment being preserved, the Labuan insurer shall pay the balance of the policy monies to the nominee.

(2) Where more than one person is entitled under the security or the assignment, the respective rights of the persons entitled under the security or the assignment shall be in the order of priority according to the priority of the date on which the security or the assignment was created, both security and assignment being treated as one class for this purpose.

Payment of policy monies where there is no nomination

124. (1) Where a policy owner of a policy dies without having made a nomination, subject to section 123, the Labuan insurer shall pay the policy monies of the deceased policy owner to the applicant who produces the Grant of Probate or Letters of Administration or Distribution Order.

(2) Subject to subsection (1), the Labuan insurer may pay to the policy owner's spouse, child or parent in that order of priority and where there is more than one spouse, child or parent, in equal shares to each person of that class and where there is no spouse, child or parent and—

(a) where the policy monies do not exceed one hundred thousand ringgit or its equivalent in foreign currency or such greater amount or denomination as may be specified, the Labuan insurer may pay all that policy monies without requiring the Grant of Probate or Letters of Administration or Distribution Order—

(i) to a person who satisfies the Labuan insurer to be entitled and likely to be given the Grant of Probate or Letters of Administration or Distribution Order; or

(ii) to a person who satisfies the Labuan insurer to be beneficially entitled to the estate of the deceased policy owner; or

(b) where the policy monies are more than one hundred thousand ringgit or its equivalent in foreign currency, or such greater amount or denomination may be specified, the Labuan insurer may pay to the person referred to in subparagraph *(a)*(i) or (ii) the amount referred to in that paragraph and subject to subsection (6), pay to that person the balance of the policy monies upon production of the Grant of Probate or Letters of Administration or Distribution Order.

(3) In this section, a reference to policy monies is a reference to the aggregate amount of policy monies in respect of all policies of the policy owner with that Labuan insurer where there is no nomination.

(4) The Grant of Probate or Letters of Administration or Distribution Order granted or having effect as if granted, in respect of the personal estate comprising the policy monies, by a court in Malaysia or a competent authority outside Malaysia, or its certified copy shall be sufficient proof to the Labuan insurer to pay the policy monies to the person to whom the grant was made.

(5) The Labuan insurer may accept the Grant of Probate or Letters of Administration or Distribution Order or any other document having the same effect, granted by a court in Malaysia or a competent authority outside Malaysia, as sufficient proof to pay the policy monies of the deceased policy owner to the person to whom the grant was made, provided that such Grant of Probate or Letters of Administration or Distribution Order or other document having the same effect has been duly registered with the court in Malaysia and sealed in accordance with the Probate and Administration Act 1959 [*Act 97*].

(6) Where, upon the expiry of twelve months after a payment under paragraph (2)*(b)* has been made by a Labuan insurer, a balance of the policy monies still remains payable and no claim has been made by a person who holds a Grant of Probate or Letters of Administration or Distribution Order, the Labuan insurer shall pay the balance of the policy monies to the person who received the initial payment of the policy monies.

(7) Policy monies paid under this section shall be deemed to have been duly paid and the Labuan insurer shall be discharged from liability in respect of the policy monies so paid notwithstanding the absence or invalidity of, or any defect in, the Grant of Probate or Letters of Administration or Distribution Order or any other document having the same effect.

(8) A person to whom a payment may be made under this section shall give a receipt which shall be deemed to be a valid receipt.

Payment to person incompetent to contract

125. Where a person has not attained the age of eighteen years, or is certified by a medical practitioner in the public service to be of unsound mind and no committee of his estate has been appointed, or to be incapable, by reason of infirmity of mind or body, of managing himself and his property and affairs, the Labuan insurer—

(a) in the case of a nominee under subsection 121(1)—

(i) if the policy monies are ten thousand ringgit or its equivalent in foreign currency or less or such other amount or denomination as may be specified, may pay to a person who satisfies the Labuan insurer that he will apply the policy monies for the maintenance and benefit of the nominee under subsection 121(1), or a person to whom policy monies are payable under subsection 124(2) or (6), subject to the execution of an undertaking by that person that the policy monies will be applied solely for the maintenance and benefit of the nominee; and

(ii) if the policy monies are more than the amount specified in paragraph *(a)*, shall pay to the Public Trustee or a trust company nominated by the Public Trustee; or

(b) in the case of a person to whom policy monies are payable under subsection 124(2) or (6), shall pay to the Public Trustee or a Labuan trust company nominated by the Public Trustee.

Distribution of policy monies in due course of administration

126. A person to whom policy monies may be paid under section 124 shall receive the policy monies as an executor and not solely as a beneficiary and shall distribute the policy monies in the due course of administration of the estate of the deceased person in accordance with the terms of a will of the deceased person, and if there is not such will, in accordance with the law applicable to the administration, distribution and disposition of his estate upon his intestacy.

This Division to prevail over policy and any other written law

127. (1) This Division shall have effect in relation to a policy which is in force on or after its operation, and in relation to a nomination made before, on or after its operation, notwithstanding anything contained in the policy, and nothing contained in a policy shall derogate from, or be construed as derogating in any manner or to any extent from, this Division.

(2) This Division shall have shall force and effect notwithstanding anything inconsistent with or contrary to any other written law relating to probate, administration, distribution or disposition of the estates of deceased persons, or in any rule of law, practice or custom in relation to those matters.

DIVISION 5

WINDING-UP

Winding-up of Labuan insurer

128. (1) The Authority shall be a party to any petition for the winding-up of any Labuan insurer.

(2) The Authority may present a petition for the winding-up of a Labuan insurer or its Labuan insurance business on the grounds of its inability to meet any liabilities or when it suspends payment to its creditors.

(3) For the purposes of subsections (1) and (2), the court shall have regard to the interests of the policy owners, other customers and creditors of the Labuan insurer.

(4) In any winding-up of a Labuan insurer, or when a Labuan insurer becomes insolvent, there shall be paid from the assets in the insurance fund or other funds of the Labuan insurer in priority to all other unsecured debts—

(a) firstly, the costs and expenses of the winding-up, including the costs of the liquidator or the receiver;

(b) secondly, all wages or salary, whether or not earned wholly or in part by way of commission, including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment, of any employee not exceeding one thousand five hundred ringgit or its equivalent in foreign currency or such other amount or denomination as may be specified from time to time in respect of services rendered by him to the Labuan insurer within a period of four months before the commencement of the winding-up;

(c) thirdly, all amounts due in respect of workers' compensation, under any written law relating to workers' compensation, which accrued before the commencement of the winding-up;

(d) fourthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death to any other person in his right, which accrued in respect of any period before the commencement of the winding-up;

(e) fifthly, all amounts due in respect of contributions payable during the twelve months next before the commencement of the winding-up by the Labuan insurer as the employer of any person under any written law relating to employees' superannuation or provident funds or under any scheme of superannuation or retirement benefit which is an approved scheme under any federal law relating to income tax;

(f) sixthly, the amount of all federal tax assessed under any written law before the date of the commencement of the winding-up or assessed at any time before the time fixed for the proving of debts has expired;

(g) seventhly, all the liabilities and expenses attributable to its Labuan insurance business of the class for which the particular insurance fund is created; and

(h) eighthly, after the liabilities and expenses attributable to the Labuan insurance business of the class to which the particular insurance fund referred to in paragraph *(g)* is applicable have been fully met, the amounts required to make good any deficit in the other insurance funds.

(5) The debts in each class specified in subsection (4) shall rank in the order therein specified but debts of the same class shall rank equally between themselves, and shall be paid in full, unless the assets in the insurance fund of the Labuan insurer are insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(6) The provisions of this section shall have effect notwithstanding anything inconsistent therewith or contrary thereto in any other written law.

PART VIII

COMPANY MANAGEMENT

Interpretation

129. In this Part, unless the context otherwise requires—

"company management" means the provision of treasury processing services and such other services, and to such persons, as may be permitted by the Authority;

"management company" means a Labuan company incorporated or foreign Labuan company registered under this Act for the purpose of undertaking or offering to undertake the business of company management.

Register of management companies

130. (1) The Authority may keep a register of all management companies licensed under this Part.

(2) The register kept under subsection (1) shall show—

(a) the information required under paragraph 131(2)*(c)* with respect to each management company licensed under this Part;

(b) the date of grant of the licence; and

(c) if such licence is revoked, the date of its revocation.

(3) The register shall be in such form as the Authority may determine.

Application for licence

131. (1) No person, except a Labuan company incorporated, or a foreign Labuan company registered, under the Labuan Companies Act 1990, may apply to the Authority for a licence to carry on the business of company management.

(2) An application under subsection (1) shall be—

(a) made in such manner as the Authority may determine; and

(b) accompanied by—

(i) such application fees as may be prescribed;

(ii) a statement of the financial and human resources and administrative facilities available to the applicant for the competent and efficient conduct of its business; and

(iii) such other documents or information as the Authority may reasonably require for the purpose of considering the application;

(c) contain—

(i) the address of the applicant's place of business and its address for service in Labuan;

(ii) the name and address of a person resident in Labuan who is authorized to represent the applicant and to accept service on its behalf; and

(iii) the address of any place of business that the applicant may have outside Labuan.

(3) If any information referred to in paragraph (2)*(c)* is altered at any time after its submission, the applicant, upon being granted a licence under this Part, shall give in writing to the Authority particulars of the alteration within one month of the date of the grant of the licence or within one month after the alteration is made, whichever is the later.

Grant of licence

132. (1) The Authority may grant or refuse to grant a licence to any applicant.

(2) The Authority shall not grant a licence unless he is satisfied that the applicant—

(a) is of sufficient good repute to be engaged in the business of company management;

(b) has or has available to it adequate knowledge, expertise, resources and facilities necessary for the proper management or administration of its business;

(c) has sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities; and

(d) will be in a position to comply with any conditions imposed by the Authority.

(3) Notwithstanding subsection (2), the Authority shall reject an application if it determines that a licence should not be granted in the public interest.

(4) A licence may be granted subject to such terms, conditions, restrictions or limitations as the Authority deems fit.

(5) A licence shall—

(a) be in such form as may be specified;

(b) be admitted in all courts as *prima facie* evidence of the facts stated therein; and

(c) remain in force until it is revoked.

(6) Where the Authority grants a licence to an applicant, it shall issue a licence to the applicant on payment of such licence fee as may be prescribed.

(7) Every licence issued under this Part shall bear the date on which the licence is granted.

Part IX

EXCHANGES

Division 1

PRELIMINARY

Interpretation

133. (1) In this Part, unless the context otherwise requires—

"business day" means a day during any part of which the facilities of an exchange established pursuant to this Part are available to its trading agents for trading purposes or would have been available but for a suspension of trading ordered by the Authority under section 143;

"committee" means the persons responsible for all matters relating to listing, licensing, trading and other matters related to the securities market;

"exchange" includes a body corporate established as a securities exchange under section 134 and the Labuan International Financial Exchange that was established by the Minister under section 30 of the *Labuan Offshore Securities Industry Act 1998 [*Act 579*] that was approved and recognized immediately before the effective date;

"listing sponsor" means a person licensed by an exchange established pursuant to this Part, pursuant to its rules to carry on functions as a listing sponsor;

"secretary" means the secretary for the time being of an exchange established pursuant to this Part and includes an acting or assistant secretary;

"securities market" means a stock market or a place at which, or a facility by means of which—

(a) offers to sell, purchase or exchange securities are regularly made or accepted;

(b) offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities, are regularly made; or

(c) information concerning the prices at which or the consideration for which particular persons or classes of persons propose to sell, purchase or exchange, or may reasonably be expected to sell, purchase or exchange, securities is regularly provided;

"trading agent" means a person licensed and authorized to engage in the business of dealing in securities pursuant to the rules of the exchange established pursuant to this Part.

**NOTE*—The Labuan Offshore Securities Industries Act 1998 [*Act 579*] has since been repealed by the Labuan Financial Services and Securities Act 2010 [*Act 704*] which comes into operation on 11 February 2010—*see* section 201 of Act 704.

DIVISION 2

EXCHANGES

Establishment of exchanges

134. The Authority may approve a Labuan company to be an exchange in Labuan upon such terms as it deems fit.

By-laws of exchanges

135. The Authority may prescribe such by-laws as may be expedient or necessary for the purpose of carrying out the provisions and matters connected with any exchange.

Rules of exchanges

136. An exchange established under section 134 may make rules which provide for—

(a) the conditions and administration of licences issued by such exchange and for the regulation generally of the conduct of trading agents and listing sponsors in connection with the business of such exchange;

(b) the financial, accounting, record-keeping, disclosure and capital adequacy requirements applicable to trading agents and listing sponsors;

(c) the conditions under which securities may be listed for trading in the securities market proposed to be operated by such exchange;

(d) the conditions governing dealings in securities by trading agents and listing sponsors;

(e) the class or classes of securities that may be dealt in by trading agents and listing sponsors or listed in such exchange;

(f) confidentiality with respect to information relating to the affairs of such exchange and of any trading agent or listing sponsor in connection with the business of such exchange;

(g) the arbitration of disputes arising out of or in connection with any securities market operated by such exchange;

(h) the suspension of trading in and the delisting of any security listed on such exchange;

(i) the carrying on of the business of such exchange with due regard to the interests of the public;

(j) a fair and independent market for the listing and trading of securities; and

(k) such other matters as the exchange deems necessary or desirable for the proper and efficient regulation, management and control of such exchange and the securities market operated by it.

Regulatory functions of exchanges

137. (1) In addition to its other functions, an exchange established under section 134 shall have regulatory functions and shall—

(a) ensure that it adequately supervises the market operations and the conduct of market participants;

(b) ensure the adequacy and efficiency of internal controls;

(c) ensure market participants follow capital adequacy rules;

(d) investigate misconduct or apparent misconduct by market participants and their representatives that could seriously affect investors or other participating organizations and promptly report to the Authority on these instances of misconduct;

(e) investigate possible market abuses, including insider dealing and fraudulent behaviour; and

(f) take disciplinary measures or agree to a settlement after a public hearing.

(2) Where an investigation is carried out by such exchange, it shall, in writing, forthwith—

(a) inform the Authority of the nature of such investigation and persons involved in the investigation; and

(b) advise the Authority on the status of such investigation at such intervals as the Authority may request.

(3) On the completion of an investigation, such exchange shall—

(a) transmit to the Authority all information in its possession relating to any such investigation; and

(b) inform the Authority of the outcome of such investigation and of any disciplinary measure or other course of action taken as a result of an investigation.

(4) An exchange established under section 134 shall ensure that an adequate budget allocation is made to properly carry out the regulatory functions mentioned in subsection (1).

(5) In this section "internal controls" means the system of controls put in place to asses and ensure the effectiveness of an exchange in the exercise of its regulatory functions and "market participants" means any investment dealer or any other person which has been given direct access to trading on the exchange.

Powers of the committee

138. (1) The affairs of an exchange established under section 134 shall be managed by a committee consisting of not less than three persons who possess relevant experience in financial, commercial or legal matters of whom the chairman and one other person shall be appointed by the Minister and the rest appointed by the Authority.

(2) Subject to this Division, such committee shall have full power in all matters relating to listing, licensing, securities or dealings on such exchange and other matters related thereto.

(3) Subject to section 184, the provisions of the Labuan Companies Act 1990 shall, unless the context otherwise requires, apply in all respects to the persons who make up the committee as if such persons were directors for the purposes of that Act.

Dealing in securities

139. (1) No person other than a trading agent shall engage in or hold himself out as engaging in the business of dealing in securities on any exchange.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

Register of trading agents and listing sponsors

140. (1) An exchange established under section 134 shall keep a register of the trading agents and listing sponsors and shall enter therein the names and addresses of the trading agents and listing sponsors and the date upon which each was admitted and ceased to be a trading agent or listing sponsor.

(2) The register of trading agents and listing sponsors shall be made available for inspection at the registered office of such exchange during business hours.

(3) Any person may require, and if required, the relevant exchange shall forthwith provide, a copy of the register or any part thereof on payment of such fee as may be specified in writing by such exchange.

(4) Any payment under subsection (3) shall be made to such exchange.

Financial statements of an exchange

141. Within six months of the end of each financial year, an exchange established under section 134 shall file with the Authority a copy, certified by the secretary as a true copy, of the financial statements of such exchange for that year prepared and audited in accordance with the provisions of Part VI of the Labuan Companies Act 1990.

Persons not deemed to be carrying on business in Malaysia

142. No person shall be deemed to be engaging in or carrying on a trade or business in Malaysia or with residents of Malaysia for the purpose of any written law by reason only of the fact that—

(a) securities of such person are listed on a securities market operated by an exchange established under section 134;

(b) such person is a trading agent or listing sponsor and that transactions are effected by it or on its behalf through the facilities of such exchange; or

(c) such person undertakes activities in Labuan incidental to the proper conduct of the activities referred to in paragraphs *(a)* and *(b)*.

Suspension of trading on exchanges

143. (1) The Authority may direct any exchange established under section 134 by written notice to suspend trading, or any committee established under section 138 may, after notifying the Authority, suspend trading, on such exchange either wholly for a period not exceeding five consecutive business days or in respect of specified securities for such period as the Authority deems fit if the Authority after consultation with the committee determines that the orderly conduct of such trading is being or is likely to be prevented by reason of *force majeure*, natural disaster, strike or lock-out, revolution or other political upheaval or economic or financial crisis, wherever occurring.

(2) Pursuant to subsection (1), suspension of trading shall be carried out in accordance with the rules of the relevant exchange.

(3) The Authority may, after consultation with the committee, direct an exchange to extend the period of suspension of trading under subsection (1) either wholly for additional periods not exceeding five consecutive business days or in relation to specified securities for such additional periods as it deems fit.

(4) The Authority shall within two business days give written notice of such extension to an exchange indicating therein the reason therefor and duration thereof and such notices shall take effect upon its delivery to such exchange.

(5) The Authority shall on the business day next following delivery to an exchange of the notice under this section and if so requested by such exchange provide an opportunity for such exchange to be heard on the need for any suspension of trading or any extension thereof.

(6) The Authority may revoke, withdraw or modify any direction made under subsections (1) and (3) at any time prior to expiry of the period of suspension or extension thereof.

Minister's power to suspend trading

144. (1) Without prejudice to section 143, where the Minister is satisfied that it is in the public interest to do so, or that it is expedient for the protection of investors or for the proper regulation of an exchange to do so, he may, on the recommendation of the Authority, make a suspension order relating to all or any of the following:

(a) the functions of an exchange or its committee;

(b) the functions of any subcommittee established by the committee referred to in paragraph *(a)*; or

(c) the functions of the principal officer, by whatever name called, who is responsible for the conduct of the business and operations of an exchange or any committee, as the case may be.

(2) For so long as the suspension order is in force, the following provisions shall apply:

(a) none of the functions to which the order relates shall be performed by such exchange or committee or any subcommittee established by the committee or by any officer of such exchange or the committee or any such subcommittee;

(b) any function to which paragraph *(a)* applies may be performed by such person as shall be specified in the order in relation to that function; and

(c) a person or body referred to in paragraph *(a)* shall not, by act or omission, either directly or indirectly, affect the manner in which the functions referred to in the order are performed unless the person referred to in paragraph *(b)* requests for his or its assistance.

(3) Subject to subsection (6), a suspension order shall continue to be in force for such period, being a period not exceeding six months, as shall be specified in the order.

(4) A suspension order or any extension thereof under subsection (6) shall take effect when a copy of the order or notice of the extension is served under paragraph (7)*(a)* to such exchange, committee or the subcommittee established by the committee to which the order relates.

(5) Without prejudice to subsection (4), where a suspension order is made or such an order is extended under subsection (6), the Authority shall, as soon as it may be practicable, give a copy of the order or, as the case may be, the notice of its extension, to the principal officer of such exchange, the committee or a subcommittee established by the committee as the Authority may consider appropriate in the circumstances.

(6) The Minister may, on the recommendation of the Authority, extend the period during which a suspension order is to remain in force for any further periods each not exceeding three months.

(7) Where a suspension order is made or extended under this section, the Authority shall—

(a) forthwith serve a copy of the order or notice in writing of the extension on such exchange, committee or the subcommittee to which the order relates; and

(b) cause a suspension order or the notice of the extension as the case may be, to be published in the *Gazette*.

(8) Any person who contravenes a suspension order issued under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

(9) For the purposes of this section, "principal officer" includes a person, by whatever name called, who either individually or jointly with one or more other persons, is responsible for matters relating to listing, licensing, securities or dealings on such exchange or the committee.

Powers of the Authority

145. (1) For the purposes of this Act and the proper conduct of the business of any exchange established under section 134 and in addition to any other powers accorded to it under this Act, the Authority may—

(a) at any time investigate or enquire into any transaction involving the purchase or sale of securities entered into by any person whether directly or indirectly to ascertain if that person has used dishonest, unfair or unethical devices or trading practices whether such devices or trading practices constitute an offence under this Act or any other written law or an infringement of any of the rules or otherwise;

(b) require any such person to submit detailed information of any transaction involving the purchase or sale of securities;

(c) require the production of, inspect and make copies or printouts of or take extracts from any document record or thing relating to—

(i) the business or affairs of an exchange;

(ii) any dealing in securities;

(iii) any advice, report or analysis concerning securities; or

(iv) the accounts or records of any person concerned in any capacity with the matters referred to in subparagraph (i), (ii) or (iii) and any audit of, or report of an auditor concerning, the same; or

(d) whenever the Authority considers it necessary, examine by way of on-site inspections, the affairs or business of any market participants, which shall include listing sponsors and trading agents, for the purpose of—

(i) assessing whether the market participant is carrying out its permitted activities in accordance with this Act, any regulations made under this Act and or any other applicable law;

(ii) confirming that the provisions of the *Anti-Money Laundering and Anti-Terrorism Financing Act 2001 are being complied with; and

(iii) carrying out the functions of the Authority;

(e) with the authority of a search warrant issued by the court to that effect and with or without the assistance of such persons as the Authority may require unless the Authority has reasonable grounds for believing that, by reason of the delay in obtaining the search warrant, the object of any entry is likely to be frustrated, and in such instance without a warrant—

(i) break into and search any premises, place or item therein on or in which the Authority has reason to suspect there may be any document, record

*NOTE—The Anti-Money Laundering and Anti-Terrorism Financing Act 2001 [*Act 613*] has been amended and referred as Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [*Act 613*] which comes into operation on 1 September 2014—*see* section 3 Anti-Money Laundering and Anti-Terrorism Financing (Amendment) Act 2014 [*Act A1467*] and P.U. (B) 400/2014.

or thing the production of which was required by virtue of this section but not produced in compliance with such requirement; or

(ii) take possession of or secure against interference any document, record or thing the production of which was required.

(2) The Authority may in writing authorize any other person to assist it to perform functions under this Act.

(3) A person who—

(a) fails to comply with a requirement made under subsection (1);

(b) in purported compliance with a requirement made under subsection (1) furnishes information or makes a statement that is false or misleading in a material particular; or

(c) obstructs or hinders the Authority or another person in the exercise of any power under subsection (1),

commits an offence and shall, on conviction, be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding five years or to both.

(4) The powers conferred under this section are in addition to, and not in derogation of, any other powers conferred by law.

Division 3

FALSE OR MISLEADING MARKET AND INSIDER DEALING

Creation of false or misleading market

146. Whoever creates or does anything which is calculated to create a false or misleading appearance of active trading in any securities or a false or misleading appearance with respect to the market for, or the price of, any such securities commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit.

Insider dealing

147. Subject to the defences available under this Division, any individual who has information as an insider and—

(a) he deals in securities that are price-affected securities in relation to the information;

(b) he encourages another person to deal in securities that, whether or not that other person knows it, are price-affected securities in relation to the information; or

(c) he discloses the information otherwise than in the proper performance of the functions of his employment, office or profession, to another person,

commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit.

Defences

148. (1) An individual is not guilty of insider dealing by virtue of dealing in securities or encouraging another person to do so if he shows—

(a) that he did not at the time expect the dealing to result in a profit attributable to the fact that the information in question was price-sensitive information in relation to securities;

(b) that at the time he believed on reasonable grounds that the information had been disclosed widely enough to ensure that none of those taking part in the dealing in the securities would be prejudiced by not having that information; or

(c) that he would have done what he did even if he had not had the information.

(2) An individual is not guilty of insider dealing by virtue of a disclosure of information if he shows—

(a) that he did not at the time expect any person, because of the disclosure, to deal in securities; or

(b) that, although he had such an expectation at the time, he did not expect the dealing to result in profit attributable to the fact that the information was price-sensitive information in relation to securities.

(3) For the avoidance of doubt, any references to a profit in this Division includes the avoidance of a loss.

Dealing in securities

149. For the purposes of this Division, a person deals in securities if—

(a) he acquires or disposes of securities, whether as principal or agent; or

(b) he procures, directly or indirectly, an acquisition or disposal of listed securities by another person.

Procuring the acquisition or disposal of securities

150. (1) A person procures the acquisition or disposal of securities if securities are acquired or disposed of by a person who is, in relation to the acquisition or disposal—

(a) his agent;

(b) his nominee; or

(c) a person who is acting at his direction.

(2) Subsection (1) is not exhaustive as to the circumstances in which a person may be regarded as procuring an acquisition or disposal of securities by another.

(3) "Acquisition" or "disposal" in relation to securities includes agreeing to acquire or dispose of securities or entering into or terminating a contract which creates the securities, as the case may be.

Inside information

151. "Inside information" means information which—

(a) relates to particular securities or to a particular issuer of securities or to particular issuers of securities and not to securities generally or to issuers of securities generally;

(b) is specific or precise;

(c) has not been made public; and

(d) is price sensitive.

"Price-affected securities" and "price-sensitive information"

152. Securities are "price-affected" securities in relation to inside information, and inside information is "price-sensitive" in relation to securities, if and only if the information would, if made public, be likely to have a significant effect on the price or value of the securities.

Information as an insider

153. An individual has information as an insider if and only if—

(a) it is, and he knows it is, inside information; and

(b) he has it, and knows that he has it, from an inside source, that is to say—

(i) by virtue of being a director, employee or shareholder of an issuer of securities;

(ii) by virtue of having access to the information through his employment, office or profession; or

(iii) by virtue of the direct or indirect source of his information being a person who has it in either of the ways set out in subparagraph (i) or (ii).

Definition of "made public"

154. (1) "Made public" shall be construed in accordance with subsections (2) and (3), but these provisions are not exhaustive as to the meaning of that expression.

(2) Information is made public if—

(a) it is published in accordance with the rules of the exchange for the purpose of informing investors and their professional advisors;

(b) it is contained in records which by virtue of law are open to inspection by the public;

(c) it can be readily acquired by those likely to deal in any securities, or with any issuer of securities, to which the information relates; or

(d) it is derived from information which has been made public.

(3) Information may be treated as made public even though—

(a) it can be acquired only by persons exercising diligence or expertise;

(b) it is communicated to a section of the public and not the public at large;

(c) it can be acquired only by observation;

(d) it is communicated only on payment of a fee; or

(e) it is published only outside Labuan.

Exceptions

155. (1) For the avoidance of doubt, insider dealing is not committed in the following circumstances:

(a) an acquisition or disposal of securities or the communication of information that is carried out under any other written law relating to schemes of arrangement, reconstructions and take-overs relating to corporations;

(b) a clearing house which acquires or disposes of securities for the purpose of settlement of a market contract or in relation to any proceedings or other action relating to the settlement of a market contract where the acquisition or disposal of securities is effected in accordance with the rules of the clearing house;

(c) a stock exchange in relation to a sale or purchase of securities where the stock exchange acts on an instruction from a clearing house;

(d) the redemption of units of a collective investment scheme by a trustee or manager under a trust deed relating to that collective investment scheme in accordance with a buy-back covenant contained or deemed to be contained in the trust deed at a price that is required by the trust deed to be calculated, so far as is reasonably practicable, by reference to the underlying value of the assets less—

(i) any liabilities of that collective investment scheme to which the units relates; and

(ii) any reasonable charge for purchasing the units;

(e) subscribing for, or purchasing, securities under an underwriting agreement or a sub-underwriting agreement and includes entering in to such an agreement or selling securities subscribed for, or purchased, under such an agreement;

(f) the sale or purchase of securities pursuant to a requirement imposed by the Government, a statutory body or any regulatory authority, or any requirement imposed under any written law or order of court; and

(g) communication of information pursuant to a requirement imposed by the Government, a statutory body or any regulatory body or any requirement imposed under any written law or order of court.

PART X

SELF-REGULATORY ORGANIZATIONS

Declaration or recognition of a self-regulatory organization

156. (1) "Self-regulatory organization" means a self-regulatory organization whose object is to regulate the operations of its members or of the users of its services, their standards of practice and business conduct in order to better protect investors and consumers of securities or related services and includes such other organizations as may be declared or recognized as such by the Authority.

(2) The Authority may, subject to such terms and conditions as it thinks fit, by publication in the *Gazette* declare or recognize that a corporation or organization shall be a self-regulatory organization in relation to a specified sector or industry, or any part thereof, where the Authority is satisfied that the corporation or organization—

(a) has a constitution and internal rules and policies which are consistent with this Act and any written law applicable to such sector or industry, or part thereof;

(b) has the capacity and the financial and administrative resources necessary or desirable to carry out its functions and the regulatory or supervisory functions it shall perform as a self-regulatory organization, including dealing with breaches of the law or of the applicable standards and guidelines;

(c) shall not discriminate unreasonably against a person in offering access to its services or in carrying out its functions as a self-regulatory organization;

(d) is managed or controlled by officers or persons in control who are fit and proper persons under this Act; and

(e) satisfies such criteria as may be specified in the rules stipulated by the Authority.

(3) The Authority may, by written arrangement, delegate a power or function of the Authority to a self-regulatory organization.

(4) An arrangement under subsection (3) shall provide for—

(a) any power or function delegated to the self-regulatory organization by the Authority under subsection (3);

(b) the terms and conditions upon which the power or function has been delegated and may be exercised by the self-regulatory organization;

(c) the persons authorized to exercise the power or function delegated on behalf of the self-regulatory organization; and

(d) the submission to the Authority of periodical reports in respect of the exercise of a delegated power or function by the self-regulatory organization.

Rules of a self-regulatory organization

157. (1) A self-regulatory organization may make rules, not inconsistent with this Act, any regulations made under this Act or guidelines issued by the Authority or any other applicable law, with respect to the matters for which it has regulatory or supervisory functions, including such functions as may be delegated to it by the Authority.

(2) Rules made by the self-regulatory organization under subsection (1), and amendments thereto, shall be of no effect unless approved by the Authority.

(3) The Authority shall be taken to have granted approval for the purposes of subsection (1) where it has not objected to them within one month after they were submitted to the Authority for such approval.

(4) The rules of a self-regulatory organization may make provision with respect to shareholding and voting rights in the self-regulatory organization in the interests of the members of the self-regulatory organization, the consumers, investors and of the users of their services.

Restriction on decision-making

158. A self-regulatory organization shall not make a decision under its rules that adversely affects the rights of a person unless—

(a) the self-regulatory organization has given the person an opportunity to make representations about the matter; or

(b) the self-regulatory organization considers, on reasonable grounds, that any delay in making the decision will prejudicially affect a class of consumers, investors or members of the sector or industry as may be applicable.

Obligations of and in relation to officers of a self-regulatory organization

159. A self-regulatory organization shall notify the Authority, in the manner specified by the Authority, as soon as practicable before or after a person is appointed as an officer of the self-regulatory organization.

Powers to direct a self-regulatory organization

160. (1) The Authority may, after giving a self-regulatory organization reasonable opportunity to make representations about the matter, give a written direction to the self-regulatory organization—

(a) suspending, for the period specified in the direction, a specified provision of its constitution or its rules;

(b) requiring, subject to the Labuan Companies Act 1990 or any other law, the amendment of its constitution as specified in the direction so as to bring it in conformity with this Act, any regulations made under this Act or any rules made by the Authority;

(c) requiring the amendment of its rules as specified in the direction so as to bring them in conformity with the relevant Act; or

(d) for the implementation or enforcement of its constitution or its rules.

(2) Where the Authority has reasonable grounds to believe that—

(a) an officer of a self-regulatory organization is not a fit and proper person under this Act; or

(b) a particular person's appointment or continuing in office as an officer of a self-regulatory organization is likely to be detrimental to the self-regulatory organization or to affect prejudicially the interest of the investors and consumers of financial services or of members of the relevant sector or industry,

the Authority may, after giving the officer and the self-regulatory organization reasonable opportunity to make representations, direct the self-regulatory organization not to appoint the officer, or to remove the officer from office.

(3) Subsections (1) and (2) shall not limit the directions that the Authority may give to a self-regulatory organization.

Termination of arrangements and revocation of declaration or recognition

161. (1) The Authority may revoke a declaration or recognition where—

(a) the self-regulatory organization has failed to commence operations within three months after an arrangement under this Part has been entered into;

(b) the Authority is not satisfied that the self-regulatory organization is properly performing or is able to perform the functions or powers delegated to it, or its other functions and powers;

(c) the Authority is satisfied that the self-regulatory organization has committed a material breach of an arrangement or of a relevant Act or other applicable law;

(d) it appears to the Authority that the self-regulatory organization is involved in a financial crime; or

(e) the self-regulatory organization fails to comply with a direction of the Authority.

(2) The Authority shall not revoke a declaration or a recognition unless the Authority has notified the self-regulatory organization of its intention and the reason for the Authority's action, and has given the self-regulatory organization a reasonable opportunity to make representations to the Authority.

(3) The Authority shall cause notice of the revocation under subsection (1) to be published in the *Gazette*.

Amendments to the constitution of a self-regulatory organization

162. Notwithstanding section 24 of the Labuan Companies Act 1990, an amendment to the constituent documents of a self-regulatory organization shall be of no effect unless it is approved by the Authority.

Protection for a self-regulatory organization

163. A self-regulatory organization, the officer or employee of a self-regulatory organization or a member of a committee of a self-regulatory organization shall not be liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by them in the performance, in good faith, of their functions and duties in connection with the regulatory or supervisory functions of the self-regulatory organization, including those delegated to it by the Authority.

Financial statements of the self-regulatory organization

164. (1) Within six months of the end of each financial year the self-regulatory organization shall file with the Authority a copy, certified by the secretary as a true copy, of the financial statements of the self-regulatory organization for that year prepared and audited in accordance with Part VI of the Labuan Companies Act 1990.

(2) The financial statements shall be audited by an auditor.

(3) Where, in the course of his audit, the auditor of a self-regulatory organization has reason to believe that—

(a) there has been a material adverse change in the risks inherent in the business of a self-regulatory organization with the potential to jeopardize the ability of the self-regulatory organization to continue as a going concern;

(b) the self-regulatory organization may be in contravention of this Act, any regulations made under this Act, any guidelines issued by the Authority or any directions issued by the Authority;

(c) a financial crime has been, is being or is likely to be committed; or

(d) serious irregularities have occurred,

he shall forthwith report in writing the matter to the Authority.

(4) Any report made under subsection (3) shall not constitute a breach of the duties of the auditor.

Powers of Authority with respect to self-regulatory organizations

165. For the purposes of this Division, the powers conferred to the Authority under section 160 shall apply equally with respect to any Labuan corporation or organization declared or recognized by the Authority as a self-regulatory organization under section 156.

PART XI

MISCELLANEOUS

DIVISION 1

APPEALS

Appeals

166. (1) Any person who is aggrieved by the decision of the Authority to reject an application for a licence or registration or to revoke a licence or registration under this Act may, within thirty days of the decision being notified to him, appeal to the Authority in writing.

(2) The Authority shall, after considering the appeal under subsection (1), make a final decision and shall notify the applicant in writing of its decision.

(3) An applicant who is aggrieved by the decision of the Authority under subsection (2) may, within thirty days of the decision being notified to him, appeal to the Minister in writing who may confirm, vary or reverse the decision, and whose decision shall be final.

(4) For the avoidance of doubt, the bringing of an appeal under subsections (1) and (3), does not suspend the decision being appealed against.

DIVISION 2

REVOCATION AND SURRENDER

Revocation of consent, licence or registration

167. The Authority may revoke any consent, licence or registration made under this Act—

(a) at the request of the licensed entity;

(b) where—

(i) the licensed entity has ceased to carry on business in or from within Labuan;

(ii) the licensed entity has contravened any provision of this Act or any terms, conditions, restrictions or limitations attached to the licence or registration as the case may be;

(iii) the Authority has, either in connection with the application for the licence or registration, or at any time after the grant of the licence or registration, been provided with false or misleading information, document or declaration by or on behalf of the licensed entity;

(iv) the licensed entity has been convicted of an offence under this Act or of a criminal offence in any recognized country or jurisdiction;

(v) the licensed entity has knowingly and willfully supplied false, misleading or inaccurate information or failed to disclose information required under this Act;

(vi) the licensed entity is carrying on business in a manner that the Authority reasonably believes to be detrimental to the interests of, in the case of licensed entities under Part III, investors of mutual funds, or to the public interest;

(vii) the licensed entity is declared bankrupt or has been wound-up or otherwise dissolved;

(viii) a resolution for the licensed entity's voluntary winding-up has been passed;

(ix) in relation to a bank licensee or an insurance licensee, where any guarantee or undertaking referred to in sections 88 and 89 or sections 103 and 104 has not been honoured; or

(x) the Authority in its discretion deems fit for any other reason.

Revocation procedure

168. (1) Before revoking any consent, licence or registration under section 167, the Authority shall—

(a) give the licensed entity notice in writing of the grounds on which it intends to do so;

(b) afford the licensed entity opportunity to make written representations to it within a period of thirty days after receipt of the notice; and

(c) take such representations into consideration.

(2) Where the Authority revokes any licence or registration under section 167, the Authority shall give notice in writing to the licensed entity of such revocation and the revocation shall take effect on the date specified in the notice.

(3) Where the revocation is of a bank licence or an insurance licence, the Authority shall, as soon as practicable, publish in one widely circulated newspaper in Malaysia and one international financial newspaper a notice of the revocation of the bank licence or the insurance licence, as the case may be, under this section but any delay in publishing such notice or failure to publish such notice shall not in any manner affect the validity of such revocation.

(4) Where the revocation is of the registration of a Labuan trust company, in addition to subsections (1) and (2)—

(a) upon a request for revocation, the Labuan trust company shall satisfy the Authority that it has made adequate provision in respect of all its liabilities and shall also appoint a date on which the revocation is to take effect; and

(b) the Labuan trust company shall, not later than twenty-one days before the date appointed under paragraph (4)*(a)* above, publish an advertisement of the proposed revocation of its registration in at least one widely circulated Malaysian newspaper and one international financial newspaper.

Surrender of licence or registration

169. (1) Any licensed entity under this Act may surrender its licence or registration respectively with the prior approval of the Authority.

(2) The licensed entity shall give fourteen days' notice to the Authority of the surrender.

(3) The Authority shall give its approval if it is satisfied that licensed entity has made adequate provision in respect of all its liabilities, and thereupon shall appoint a date on which the surrender is to take effect.

(4) Where the approval of the Authority has been obtained under subsection (3), the licensed entity shall, not later than twenty-one days before the date appointed under subsection (3), publish an advertisement of the proposed surrender in at least one widely circulated Malaysian newspaper and one international financial newspaper.

(5) The Authority shall, as soon as practicable, publish in the one widely circulated Malaysian newspaper and one international financial newspaper a notice of every surrender under this section but any delay in publishing such notice or failure to publish such notice shall not in any manner affect the validity of such surrender.

Consequences of revocation or surrender of licence

170. (1) Where the revocation of a licence or registration under section 167 or the surrender of a licence or registration under section 169 has taken effect, the licensed entity shall, as from the date such revocation or surrender takes effect, cease to transact any further business.

(2) Notwithstanding subsection (1), where a licensed entity continues to exist as a corporation after the revocation of its licence has taken effect, the Minister may, on the recommendation of the Authority, authorize in writing such licensed entity to continue to transact its business activities to such extent and for such duration as the Minister may specify in the authorization for the purposes of the winding-up of its affairs or for the purposes of meeting the claims of its policy owners, other customers or creditors.

(3) Every licensed entity whose licence has been revoked or surrendered shall continue to be subject to the provisions of this Act as long as its liabilities remain unsatisfied or not otherwise provided for.

DIVISION 3

GENERAL

Payment systems

171. (1) No person shall—

(a) commence to operate any payment system in, from or through Labuan; or

(b) where such person has been operating any payment system in, from or through Labuan immediately before the coming into operation of this Act, continue to operate such system,

unless he has submitted for the approval of the Authority the scheme of operations of the payment system and the rules, contract, by-laws or other documents relating to the rights, duties and liabilities of the persons participating in the payment system and obtained the authorization in writing of the Authority to operate the payment system.

(2) Before making any decision under subsection (1), the Authority may require the person seeking authorization to submit to the Authority such other information and particulars relating to the payment system or to the person seeking the authorization, or to the persons who are or will be participating in the payment system, as the Authority may specify, and may also make such inspection of the premises, equipment, machinery, books or other documents, accounts and transactions relating to the payment system as the Authority may consider desirable.

(3) The Authority may approve or reject a scheme submitted under subsection (1) and the rules, contract, by-laws or other documents relating to the scheme and submitted with the scheme or may approve the same subject to such modifications and alterations to the scheme, or to any or all such documents submitted therewith, as it may deem necessary, desirable or expedient, and may in giving any authorization under this section, impose such restrictions, limitations, or conditions as it may deem fit.

(4) Notwithstanding anything contained in any authorization given, or in any scheme or document approved, under subsection (3), any person authorized under that subsection shall comply with any regulations made under this Act relating to payment systems, and where there is any conflict or inconsistency between the terms of such authorization or anything in such scheme or in any such document and such regulations, the provisions of the regulations shall prevail and have full force and effect.

(5) While an authorization under subsection (3) is in force, the Authority may, from time to time, inspect the premises, equipment, machinery, books or other documents, accounts or transactions relating to the payment system.

(6) The Authority may, at any time, after giving the person authorized under subsection (3) a reasonable opportunity to make representations, revoke or suspend, or amend anything contained in, an authorization granted under that subsection.

(7) In making any revocation under subsection (6), the Authority may include requirements of a consequential, ancillary or incidental nature to be complied with by the person whose authorization is being revoked or by any person participating in the system, and in making any suspension under that subsection, the Authority may impose such terms, conditions and requirements as it deems necessary or expedient.

(8) Any person whose authorization is revoked or suspended under subsection (6) shall immediately cease to operate the payment system in respect of which the authorization was revoked or suspended.

(9) No Labuan licensed entity shall be granted an approval to operate any payment system under this section.

Transfer of business

172. (1) For the purposes of this section, any reference to "transferor" is a reference to a licensed entity under Part V (Divisions 1, 2 and 3 only), Part VI and Part VII, transferring its business which requires it to be licensed under this Act and the "transferee" is a reference to the licensed entity who is licensed to carry out such business, receiving the transfer from the transferor.

(2) The whole or any part of the business of a transferor may be transferred to the transferee if the transfer is effected by a scheme under this section.

(3) A scheme under this section shall not provide for the business of the transferor to be transferred to a person who is not yet licensed to carry out such business under this Act or who is not yet in existence except when it is expressly provided in the scheme that such scheme shall only come into operation upon such person being licensed.

(4) A scheme under this section may include provisions for matters incidental to the transfer thereby effected and provisions for giving effect to that transfer, and in particular may include provision for—

(a) any property, rights or liabilities of the transfer including the assets comprising the insurance fund (in the case of a transfer of an insurance business), to vest, by virtue of the scheme and without further assurance, in the transferee;

(b) in the case of a transfer of an insurance business, the registration by the transferee of policies transferred, for the amounts to be included in respect of those policies in the transferee's insurance fund and for other matters arising under this Act out of the transfer;

(c) the continuation by or against the transferee of any legal proceedings pending or against the transferor;

(d) the dissolution without the winding-up, of the transferor; or

(e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out.

(5) A scheme under this section shall be of no effect unless it is first approved by the Authority and subsequently confirmed by the Court.

(6) The following provisions shall apply in respect of every scheme:

(a) the transferor shall submit to the Authority a copy of the scheme together with copies of reports, if any, setting out the terms of the scheme;

(b) each of the parties to the scheme shall, not later than one month after a copy of the scheme is submitted to the Authority, cause to be published in not less than two daily newspapers approved by the Authority a notice, containing such particulars as may be specified, of the intention to make an application to the Court for confirmation of the scheme; and

(c) each of the parties to the scheme shall, for a period of fifteen days after the publication of the notice mentioned in paragraph *(b)*, keep of a copy of that scheme at its office in Labuan and such copy shall be open to inspection by all of its members and policy owners who are affected by the scheme.

(7) In addition to subsection (6), in respect of a scheme for the transfer of an insurance business, the following provisions shall apply:

(a) actuarial reports, if any, shall be submitted together with copies of the scheme;

(b) the transferor shall submit to the Authority a report sufficient to indicate the opinion of the actuary on the likely effects of the scheme on policy owners of the parties to the scheme in respect of any transfer of life insurance business;

(c) each of the parties to the scheme shall furnish a copy of and the report mentioned in paragraph *(b)* to any person who asks for such copy at any time before the Court confirms the scheme; and

(d) the Authority may cause a report on a scheme to be made by an actuary independent of the parties to the scheme and, if it does so, shall cause a copy of the report to be sent to each of such parties.

(8) Copies of any scheme and any such report as are mentioned in subsections (6) and (7), or summaries thereof approved by the Authority, shall, except so far as the Court upon application made in that behalf otherwise directs, be transmitted by each of the parties to the scheme to each of its policy owners affected by the scheme.

(9) The parties to a scheme shall be jointly and severally liable to reimburse to the Authority any costs or expenses incurred by the Authority under this section in connection with the scheme; and the scheme shall include provisions as to how the liability is to be borne as between such parties:

Provided that where the Court has made any order as to costs, the costs to be reimbursed to the Authority shall not exceed the amount specified in such order.

(10) The Authority may approve or reject a scheme.

(11) After a scheme has been approved by the Authority under subsection (10), an application may be jointly made to the Court by way of *ex parte* originating summons by the parties to the scheme for such order of the Court to confirm such approved scheme and to facilitate or enable the scheme being given effect to.

(12) An application to the Court with respect to any matter connected with a scheme may, at any time before confirmation of the scheme by the Court, be made by the Authority or by any person who in the opinion of the Court is likely to be affected by the scheme.

(13) The Court may confirm a scheme with or without modifications or may refuse to confirm the scheme.

(14) A scheme which has been confirmed by the Court under subsection (13) shall have effect according to its tenor notwithstanding anything in the preceding sections and shall be binding on any person thereby affected.

(15) On confirmation of the scheme, each of the parties to the scheme shall, unless it is an unincorporated company file a copy of the scheme with the Authority and with the regulatory authorities in its country of establishment or origin.

(16) The transferee shall, within one month after the scheme takes effect, lodge with the Authority—

(a) statements of the assets and liabilities of each of the parties to the scheme, as at the time immediately before the transfer, signed on behalf of such party;

(b) a copy of the scheme as confirmed by the Court and a sealed copy of the order of the Court confirming the scheme; and

(c) a declaration made by the chairman of the board of directors of the transferee, or by its principal officer in Labuan, fully setting out every payment made or to be made to any person on account of the transfer, and stating that, to the best of his belief, no other payment beyond those so set out has been, or is to be, made on account thereof by or with the knowledge of the parties to the scheme.

(17) The transferor shall lodge, within thirty days of the making of the order of the Court under subsection (11), an authenticated copy of such order together with an authenticated copy of the scheme approved by the Authority under subsection (10), with the appropriate authority, if any, concerned with the registration or recording of dealings in any movable property or an interest in movable property transferred pursuant to the order.

(18) Where an order of the Court under subsection (11) vests any alienated land, or any share or interest in any alienated land, in the transferee—

(a) the Court shall, where such alienated land is in West Malaysia, pursuant to subsection 420(2) of the *National Land Code [*Act 56 of 1965*], cause a copy of the order to be served on the Registrar of Titles or the Land Administrator, as the case may be, immediately after the making of the order so that the Registrar of Titles or the Land Administrator, as the case may be, gives effect to the provisions of the subsections 420(2), (3) and (4);

**NOTE*—National Land Code [*Act 56 of 1965*] has been revised and named as National Land Code [*Act 828*] which comes into operation on 15 October 2022.

(b) where such alienated land is in Sabah, the transferee shall, as soon as practicable after the order has been made, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land in the transferee as provided under the Land Ordinance of Sabah [*Sabah Cap. 68*]; or

(c) where such alienated land is in Sarawak, the transferee shall, as soon as practicable after the order has been made, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land, in the transferee, as provided under the Land Code of Sarawak [*Sarawak Cap. 81*].

(19) An order of the Court under subsection (11) may relate to any property or business of the transferor outside Malaysia and, if it so relates, effect may be given to it either in accordance with any reciprocal arrangements relating to enforcement of judgements that may exist between Malaysia and the country, territory or place outside Malaysia in which such property or business is, or where there are no such arrangements, in accordance with the law applicable in such country, territory or place.

(20) In this section, "parties to the scheme" means the transferor and the transferee, and "parties to a scheme" shall be construed accordingly.

Internal audit

173. (1) Every bank licensee and insurance licensee shall conduct an internal audit of its books and operations as the Authority may specify from time to time and shall submit to the Authority a report of such internal audit which shall include a report on the said licensee's accounting system and controls.

(2) An internal auditor appointed by a bank licensee or an insurance licensee to carry out an internal audit of its books and operations under subsection (1) shall for the purposes of this Part be deemed to be an officer of the bank licensee or the insurance licensee respectively and shall, at all times, be subject to section 178.

(3) An internal audit may be carried out by any person except an external auditor of the bank licensee or insurance licensee, as the case may be, under section 174.

(4) An internal auditor shall immediately report to the Authority if, in the course of his duties as an internal auditor of a bank licensee or insurance licensee, he is satisfied that—

(a) there has been a contravention of the provisions of this Act or that an offence under any written laws has been committed by the bank licensee or insurance licensee or any of its officers or employees; or

(b) any irregularity which jeopardizes the interests of the creditors of the bank licensee or the insurance licensee, or, in the case of the insurance licensee, the interests of the policy owners, or any other serious irregularity, has occurred.

(5) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

External auditor

174. (1) Every licensed entity shall appoint an external auditor annually before such date or within such period as may be specified by the Authority.

(2) The Authority may maintain a list of auditors for the purpose of this section.

(3) An auditor appointed under subsection (1) shall carry out an audit of the accounts of the licensed entity in respect of its business operations and shall submit a report of such audit together with his comments on the accounting system and controls of the licensed entity to the participants of the licensed entity and to the Authority.

(4) The Authority may, at any time, require an auditor appointed under this section to submit to the Authority such clarifications in relation to his audit as the Authority may specify.

(5) An auditor shall immediately report to the Authority if, in the course of his duties as an auditor of a licensed entity, he is satisfied that—

(a) there has been a contravention of the provisions of any Part of this Act or that an offence under any written laws has been committed by the licensed entity or any of its employees; or

(b) any irregularity which jeopardizes the interests of policy owners, in the case of a licensed entity under Part V, or creditors of the licensed entity, or any other serious irregularity, has occurred.

(6) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

Accounts and records

175. (1) A licensed entity under this Act shall cause to be kept proper accounting and other records that will sufficiently explain the transaction and financial position of the licensed entity.

(2) Every licensed entity and the directors thereof shall cause appropriate entries to be made in the accounting and other records of the licensed entity within sixty days of completion of the transaction to which they relate.

(3) It shall be mandatory for the accounting and other records of a licensed entity to be kept at the registered office of the licensed entity or at such place in Labuan as the directors of the licensed entity think fit and the accounting and other records shall at all times be open to inspection by any director and shall be kept in such manner as to enable them to be conveniently and properly audited.

(4) The Authority may, in any particular case, direct that the accounting and other records of a licensed entity be open to inspection by an auditor acting for a director, but only upon an undertaking in writing that the information acquired by the auditor during his inspection shall not be disclosed to him except to that director.

(5) Any director of a licensed entity who fails to take all reasonable steps to secure compliance by the licensed entity with the requirements of this section, or a director who has by his own willful act been the cause of any default by the licensed entity under this section commits an offence.

(6) For the purposes of this section, "accounting and other records" shall include, if applicable, the following:

(a) all sums of money received and expended by the licensed entity and the matters in respect of which the receipt and expenditure took place;

(b) all sales and purchases of goods by the licensed entity;

(c) the assets and liabilities of the licensed entity; and

(d) all such relevant books and records as specified by the Authority.

(7) Notwithstanding subsection (3), the Authority may in writing allow a licensed entity to keep accounting and other records outside Labuan provided that the licensed entity shall also maintain accounts and records that reflect its financial position with reasonable accuracy and such accounts and records are updated once every six months in Labuan.

Money or other property from illegal activities

176. (1) Any licensed entity or any person carrying on any activity under this Act shall not accept—

(a) any money or other property originating from a transaction, operation or other activity which is a criminal offence under the laws of Malaysia or which, had it been carried out in Malaysia, would have been such an offence; or

(b) any money or other property the receipt, ownership or control of which is or would be an offence as specified in paragraph (1)*(a)*.

(2) Where any person, being a director, officer or agent of any such licensed entity or such person specified in subsection (1)—

(a) has reason to believe that the licensed entity or person specified in subsection (1) has property or has income accruing to it or derived by it and originating from a transaction, operation or other activity which is a criminal offence under the laws of Malaysia or which, had it been carried out in Malaysia, would have been such an offence; or

(b) has received or has in its possession or control money or other property the receipt, ownership or control of which is or would be an offence as specified in paragraph (2)*(a)*,

it shall be the duty of such person to forthwith bring the matter to the notice of the Authority.

(3) Any person who without reasonable excuse fails to comply with the requirements of subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

(4) All monies or property described in subsections (1) and (2) shall be forfeited to the Government and become its property absolutely.

Examination and inspection of books and documents of licensed entities

177. (1) The Authority may from time to time—

(a) examine and inspect the books or other documents, accounts and transactions of any licensed entity; or

(b) obtain from any licensed entity, require any licensed entity to provide access to the Authority to, or require any licensed entity to furnish, any information or copies of any records, books or other documents relating to the business of such licensed entity being carried on under this Act which, in the opinion of the Authority, are necessary to enable it to ascertain compliance with the provisions of this Act.

(2) The Authority may approve the home supervisory authority of a licensed entity to conduct the activities referred to in paragraphs (1)*(a)* and *(b)*.

(3) Every director or officer of a licensed entity shall extend his co-operation and assistance to the Authority to facilitate any examination and inspection carried out under paragraph (1)*(a)*.

Secrecy

178. (1) No person who for any reason has access to any record, book, register, correspondence or other document, material or information whatsoever relating to the affairs or accounts of the following persons, shall disclose to any other person, or make a record for any person of any such record, book, register, correspondence or other document, material or information:

(a) a mutual fund under Part III;

(b) any customer of a Labuan trust company or a Labuan private trust company under Part V;

(c) any customer of a bank licensee under Part VI;

(d) any policy owner under Part VII;

(e) an exchange established under Part IX;

(f) a self-regulatory organization established under Part X; and

(g) any licensed entity under this Act.

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

(a) any disclosure lawfully required under section 28B of the Labuan Financial Services Authority Act 1996 or under section 22 of the Labuan Business Activity Tax Act 1990 [*Act 445*];

(b) any disclosure required under an order of the court made upon an *ex parte* application, provided that the person disclosing the relevant information shall notify the person affected by the order and upon receipt of such notification, the affected person may file in the necessary application to the court to contest the order or otherwise comply with the order accordingly;

(c) information relating to a mutual fund under Part III, with the prior consent of the mutual fund and its investors concerned;

(d) information relating to a customer of a Labuan trust company or a Labuan private trust company under Part V, with the prior written consent of the customer;

(e) information relating to a customer of a bank licensee under Part VI, with the prior written consent of the customer or his personal representative;

(f) information relating to a policy owner under Part VII, with the prior written consent of the policy owner or his personal representative or in the course of placement of reinsurance business;

(g) information relating to a licensed entity, with the prior written consent of the licensed entity.

(3) No person who has any record, book, register, correspondence or other document, material or information which to his knowledge has been disclosed in contravention of subsection (1) shall in any manner howsoever disclose the same to any other person.

(4) All proceedings, except criminal proceedings, relating to a contravention of this section shall be commenced in any Court under the provisions of this Act and any appeal therefrom shall, unless the Court otherwise orders, be heard *in camera* and no details of the proceedings shall be published by any person without leave of the Court.

(5) Subject to subsection (6), nothing in this section shall limit any powers conferred upon the Court or a judge thereof by the Bankers' Books (Evidence) Act 1949 [*Act 33*] or prohibit obedience to an order made under that Act.

(6) Section 7 of the Bankers' Books (Evidence) Act 1949 shall not apply to a bank licensee under Part VI, its directors or offers.

(7) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

Translation

179. Where any instrument or document required to be lodged with the Authority is in a language other than in the national or English language, the instrument or document shall be accompanied by a verified or certified translation thereof either in the national or English language.

Application of Labuan Financial Services Authority Act 1996

180. Where there is any conflict or inconsistency with the provisions of this Act and the Labuan Financial Services Authority Act 1996, the provisions of Labuan Financial Services Authority Act 1996 shall prevail.

Application of Labuan Islamic Financial Services and Securities Act 2010

181. (1) A licensed entity who carries on or transacts or holds himself out as carrying on or transacting any Islamic banking business, Islamic investment banking business, takaful, retakaful or any other business under this Act which is syariah compliant, shall comply with the provisions of the Labuan Islamic Financial Services and Securities Act 2010 in matters where such syariah compliance are concerned, subject to such modifications as may be made by the Authority pursuant to guidelines.

(2) Where there is any conflict or inconsistency between the provisions of this Act and the Labuan Islamic Financial Services and Securities Act 2010 in matters where syariah compliance are concerned, the provisions of the Labuan Islamic Financial Services and Securities Act 2010 shall prevail.

Application of *Exchange Control Act 1953

182. (1) Subject to subsections (2) and (3), nothing in this Act shall affect the provisions of the *Exchange Control Act 1953 and in the application of any provision of this Act to a person or bank licensee, such provision shall apply subject to the provisions of the *Exchange Control Act 1953.

(2) Where there is conflict or inconsistency between the provisions of this Act and the *Exchange Control Act 1953, the provisions of the *Exchange Control Act 1953 shall prevail.

(3) The provisions of the *Exchange Control Act 1953 shall not apply in respect of any transactions exempted under that Act and any guidelines, circulars or notices issued thereunder.

Application of Capital Markets and Services Act 2007

183. (1) Subject to subsections (2) and (3), nothing in this Act shall affect the provisions of the Capital Markets and Services Act 2007 and in the application of any provision of this Act to any person, such provision shall apply subject to the provisions of the Capital Markets and Services Act 2007.

(2) Where there is conflict or inconsistency between the provisions of this Act and the Capital Markets and Services Act 2007, the provisions of the Capital Markets and Services Act 2007 shall prevail.

(3) The provisions of the Capital Markets and Services Act 2007 shall not apply to a licensed entity in respect of any licensed activity under this Act, when such licensed activity is carried on in Labuan or outside Malaysia.

**NOTE*—The Exchange Control Act 1953 [*Act 17*] has since been repealed by the Financial Services Act 2013 [*Act 758*] which comes into operation on 30 June 2013—*see* sections 271 and 272 of Act 758.

Application of Labuan Companies Act 1990 and *Companies Act 1965

184. (1) In addition to, and not in derogation of, the provisions of this Act—

(a) the Labuan Companies Act 1990 shall apply to—

(i) a bank licensee that is not a Malaysian bank licensee; and

(ii) an insurance licensee that is a Labuan company or a foreign Labuan company; and

(b) the *Companies Act 1965 shall apply to—

(i) a Malaysian bank licensee or a licensed entity licensed under section 90 which is an office of a Malaysian bank established under that Act; and

(ii) an insurance licensee which is a branch of a Malaysian insurer.

(2) Where there is any conflict or inconsistency between the provisions of this Act and the other Acts referred to in subsection (1) in their application to the respective licensed entities, the provisions of this Act shall prevail.

(3) Where any difficulty or doubt arises in the application of subsection (1) in relation to any particular licensed entity or any particular matter or circumstance or in general, the Authority may resolve the same by issuing a direction on the issue.

Non-application of certain laws

185. (1) No bank licensee shall, in respect of any business carried on by such licensee, be subjected to any of the provisions of the **Banking and Financial Institutions Act 1989 and the ***Islamic Banking Act 1983.

**NOTE*—The Companies Act 1965 [*Act 125*] and has since been repealed by the Companies Act 2016 [*Act 777*] which comes into operation on 31 January 2017–*see* subsection 620(1) of Act 777 and P.U. (B) 50/2017.

***NOTE*—The Banking and Financial Institutions Act 1989 [*Act 372*] has since been repealed by the Financial Services Act 2013 [*Act 758*] which comes into operation on 30 June 2013—*see* sections 271 and 272 of Act 758.

****NOTE*—The Islamic Banking Act 1983 [*Act 276*] has since been repealed by the Islamic Financial Services Act 2013 [*Act 759*] which comes into operation on 30 June 2013—*see* sections 282 and 283 of Act 759.

(2) No insurance licensee shall, in respect of any business carried on by such licensee under Part VII, be subjected to any of the provisions of the *Insurance Act 1996 and **the Takaful Act 1984.

(3) For the purpose of Part IX—

(a) the provisions of the Capital Markets and Services Act 2007 shall not be applicable to the establishment, conduct, activity and business of any exchanges established under Division 2 of Part IX;

(b) section 7, subsection 21(2), sections 24, 85, subsections 87(2), 87(4), 87(5), 87(10), 93(2), 93(6) and 93(7) of the Labuan Companies Act 1990 shall not be applicable to any exchange established under Division 2 of Part IX; and

(c) the provisions of the Holidays Act 1951 [*Act 369*] shall not apply to any exchange established under Division 2 of Part IX and any exchange established under Division 2 of Part IX may carry on its business for twenty-four hours in each day on any and all days of each week subject to any limitation or restriction imposed by or pursuant to the by-laws or the rules, as the case may be.

(4) The provisions of the Trust Companies Act 1949 [*Act 100*] shall not apply to a company registered as a Labuan trust company, a Labuan managed trust company or a Labuan private trust company.

Immunity

186. (1) No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any Court or any tribunal against any of the following persons, that is—

(a) the Minister;

**NOTE*—The Insurance Act 1996 [*Act 553*] has since been repealed by the Financial Services Act 2013 [*Act 758*] which comes into operation on 30 June 2013—*see* sections 271 and 272 of Act 758.

***NOTE*—The Takaful Act 1984 [*Act 312*] has since been repealed by the Islamic Financial Services Act 2013 [*Act 759*] which comes into operation on 30 June 2013—*see* sections 282 and 283 of Act 759.

(b) the Authority;

(c) any member, officer, committee, servant or agent of the Authority; and

(d) any other person lawfully acting on behalf of, or in compliance with instructions of, the Authority,

for or on account of, or in respect of, any act done or statement made or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance or in execution of, or intended pursuance or execution of this Act, or any guidelines, directions, advisories or other thing whatsoever issued under this Act:

Provided that such act or such statement was done or made, or was omitted to be done or made, in good faith.

(2) Subsection (1) shall be in addition to, and not in derogation of, the Public Authorities Protection Act 1948 [*Act 198*], and for the purposes of that Act, every person mentioned in subsection (1) shall be deemed to be a public officer or a person engaged or employed in the performance of a public duty.

(3) The Public Authorities Protection Act 1948 shall apply to any action, suit, prosecution or proceedings against the Authority or against any member of the Authority, any member of a committee, or any officer, servant or agent of the Authority in respect of any act, neglect or default done or omitted by it or him in such capacity.

General penalty

187. (1) A person who contravenes a requirement of this Act commits an offence.

(2) A person who commits an offence against this Act for which no penalty is expressly provided shall be liable—

(a) in the case of a body, incorporated or unincorporated, to a fine not exceeding three million ringgit; or

(b) in the case of an individual, to a fine not exceeding one million ringgit,

and in the case of a continuing offence, shall, in addition, be liable to a daily fine not exceeding five thousand ringgit for each day the offence continues to be committed.

Offences by body corporate

188. (1) If a body corporate commits an offence under this Act or any regulations made under this Act, any person who, at the time of the commission of the offence, was a director or other similar officer or was purporting to act in any such capacity—

(a) may be charged severally or jointly in the same proceedings with the body corporate; and

(b) if the body corporate is found to have committed the offence, shall be deemed to have committed that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—

(i) that the offence was committed without his knowledge, consent or connivance; and

(ii) that he took all reasonable precautions and had exercised due diligence to prevent the commission of that offence.

Annual and licence fees

189. (1) The Authority may prescribe such annual, licence or registration fees by regulations in respect of the activities of a licensed or registered entity or other activities under this Act.

(2) Such fees as may be prescribed shall be payable on or before 15 January of every year following the year in which any consent, licence or registration is granted.

(3) An unpaid fees may be sued for by the Authority by action as a civil debt and in addition the Authority may require payment of a penalty for late payment up to an amount equivalent to twice the amount of the fees unpaid and costs of recovering the amount including but not limited to costs of legal proceedings.

Fees and penalties to be paid into Fund

190. (1) All fees and penalties paid to the Authority under this Act and all sums of money paid under this section shall be paid into and form part of the Fund established under section 29 of the Labuan Financial Services Authority Act 1996.

(2) Notwithstanding subsection (1), all fees paid under section 140 of Part IX shall be paid into the fund of the Exchange or such other exchanges established pursuant to Part IX and may be used in accordance with the provisions of the by-laws of the Exchange or such other exchange.

Procedure where none laid down

191. In the event that any act or step is required or permitted to be done or taken under this Act and no form is specified or procedure laid down either in this Act or the regulations, application may be made to the Authority for directions as to the manner in which the same may be done or taken, and any act or step done or taken in accordance with such directions shall be a valid performance of such act or step.

Misrepresentation

192. A person who—

(a) willfully or recklessly makes a misrepresentation in any document or material or records required to be filed, supplied or delivered under this Act;

(b) makes any statement or gives any information required under this Act that he knows to be false or misleading;

(c) knowingly fails to disclose any fact or information required to be disclosed under this Act; or

(d) being in charge of, or having alone or with another or others possession of or control over, any information, records, books or other documents referred to in the provisions of this Act refuses or willfully neglects to comply with any lawful direction given under such provisions,

commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

Enforcement

193. (1) Where—

(a) a licensed entity is insolvent or is likely to become unable to meet all or any of its obligations or is about to suspend payment to any extent;

(b) a licensed entity, its principal officer, officer or any other such similar person is carrying on business in a manner the Authority reasonably believes to be detrimental to the interest of its beneficiaries, investors, creditors or any other such similar interested parties; or

(c) a licensed entity, its principal officer, officer or any other such similar person has contravened any provision of this Act or any other written law for the time being in force,

the Authority may—

(A) where applicable, impose new or additional terms, conditions, restrictions or limitations upon the operation of the licensed entity or vary or revoke any which have already been imposed;

(B) require the removal of any of the licensed entity's principal officers, officers, or any other such similar person by another person approved by the Authority;

(C) appoint a person, on behalf of the Authority, to assume control of the affairs of the licensed entity; or

(D) apply to the Court for an order to take such action as the Authority considers necessary to protect the interests of beneficiaries, investors, creditors or any other such similar interested parties of the licensed entity.

(2) The Authority may bring actions and institute proceedings for the enforcement of any provision of this Act or for the recovery of fees or other sums of money payable under this Act or expenses incurred by the Authority in the course of carrying out its obligations under this Act.

Power to compound

194. (1) The Authority may, with the written consent of the Public Prosecutor, in a case where he deems it fit and proper so to do, compound any offence committed by any person which is punishable under this Act by making a written offer to such person to compound the offence on payment to the Authority, within such time as may be specified in the offer, of an amount which shall not exceed fifty per centum of the amount of the maximum fine to which that person would have been liable if he had been convicted of the offence.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted.

(3) Where the amount specified in the offer under subsection (1) is not paid within the time specified in the offer, or within such extended period as the Authority may grant, prosecution of the offence may be instituted at any time after that against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (1), no prosecution shall be instituted after that in respect of such offence against the person to whom the offer to compound was made.

(5) Any monies paid into the Authority pursuant to subsection (1) shall be paid into and form part of the Fund established under section 29 of the Labuan Financial Services Authority Act 1996.

Service of documents

195. (1) Any document or notice required to be served by the Authority to a licensed entity, a mutual fund, a self-regulatory organization or an exchange under this Act may be served by leaving it at, or sending it by post to, the registered office of the particular licensed entity, mutual fund, self-regulatory organization or exchange.

(2) Where the document or notice has been served in accordance with subsection (1), the document or notice is deemed to have been properly served on the particular licensed entity, mutual fund, self-regulatory organization or exchange.

Power of the Minister to make regulations

196. The Minister may, on the recommendation of the Authority, make regulations prescribing all matters and things required by this Act to be prescribed or provided, for the carrying out of, or giving full effect to, the provisions of this Act.

Power of the Minister to issue directions

197. (1) The Minister may, on the written recommendation of the Authority, in the public interest, issue, by notification in the *Gazette*, a direction—

(a) prohibiting the formation of any business or activities, including any class of the business or activities; or

(b) directing a licensed entity, to cease to carry on its business or part of its business either immediately or within such time as may be specified in the direction.

(2) A direction made under this section may be revoked or varied by the Minister.

Power of the Minister to amend schedules

198. (1) The Minister may, on the recommendation of the Authority, from time to time by order published in the *Gazette*, vary, delete, add to, substitute for, or otherwise amend any of the schedules to this Act and upon publication of the order, such schedule as varied, deleted, added to, substituted for or otherwise amended, shall come into full force and effect and shall be deemed to be an integral part of this Act as from the date of such publication, or from such later date as may be specified in the order.

(2) The Minister in varying, deleting or substituting any of the schedules referred to in subsection (1) may impose such terms and conditions as he thinks necessary.

Power of the Minister to grant exemptions

199. The Minister may, on the recommendation of the Authority, exempt a Labuan licensed entity from any of the provisions of this Act and may, in granting such exemption, impose such terms and conditions as the Minister thinks fit.

Publication of notification, *Gazette*

200. Without prejudice to any other provisions of this Act, the Authority shall, either as expressly provided in the provisions or where no time frame is specified, as soon as practicable, publish the notification, including notification of *Gazette*, but any delay in publishing such notification shall not in any manner affect the validity of the notification or the content or order made therein.

Repeal, savings and transitional

201. (1) For the purposes of this section, "effective date" means the date appointed by the Minister under section 1.

(2) The Labuan Trust Companies Act 1990 [*Act 442*], Offshore Banking Act 1990 [*Act 443*], Offshore Insurance Act 1990 [*Act 444*] and Labuan Offshore Securities Industry Act 1998 (the "repealed Acts") are repealed with effect from the effective date.

(3) Notwithstanding subsection (1)—

(a) all—

(i) regulations, orders, directions, notifications, exemptions and other subsidiary legislation, howsoever called; and

(ii) all approvals, directions, decisions, notifications, exemptions and other executive acts, howsoever called,

made, given or done under or in accordance with, or by virtue of the repealed Acts shall be deemed to have been made, given, or done under, or in accordance with, or by virtue of, the corresponding provisions of this Act, and shall continue to remain in full force and effect in relation to the persons to whom they applied until amended, repealed, rescinded, revoked or replaced under, in accordance with or by virtue of, the corresponding provisions of this Act;

(b) every direction, notice, guideline or circular issued by the Authority or the Minister under the repealed Acts before the effective date and in force immediately before the effective date, shall be deemed to have been lawfully issued under this Act in relation to the particular provision of this Act corresponding to the matter dealt with in the direction, notice, guideline or circular and shall remain in full force and effect until it is amended, rescinded or repealed under this Act;

(c) any application for an approval or consent, or for any other purpose whatsoever, or any appeal relating to such application, made by any person to the Minister or to the Authority under the repealed Acts before the effective date, and pending immediately before the effective date, shall, if there is a corresponding provision in this Act, be dealt with as if it was made under that provision and, if there is no such corresponding provision in this Act, such application or appeal shall lapse on the effective date; and

(d) all transactions or dealings lawfully executed or entered into, and all business lawfully done, under or in accordance with the repealed Acts by a person who is approved or registered under the repealed Acts, with any other person, shall be deemed to have been lawfully and validly executed, entered into, or done, under and in accordance with this Act, and accordingly, any right or liability under such transactions or dealings, immediately before the effective date, shall be deemed to continue to be lawful and valid under this Act.

(3) Where a reference is made in any written law to the "Labuan Offshore Securities Industry Act 1998", the "Offshore Trust Companies Act 1990" the "Offshore Banking Act 1990", and the "Offshore Insurance Act 1990", on and after the appointed date, such reference shall be construed as a reference to the relevant Parts of this Act.

(4) Without prejudice to the generality of the above, the Labuan International Financial Exchange that was established by the Minister under section 30 of the repealed Labuan Offshore Securities Industry Act 1998 that was approved and recognized immediately before the effective date shall be deemed to have been approved under the corresponding provisions of this Act.

(5) Any condition or restriction imposed by the Minister on the Labuan International Financial Exchange and in force immediately before the effective date shall be deemed to be a condition or restriction to which its approval or recognition under this Act is subject.

(6) Without prejudice to the generality of subsection (2) and subject to the provisions of this Act, any person who holds any of the following licences or is granted registration, as the case may be, immediately before the effective date shall, from that date, be deemed to be licensed under this Act in respect of the activity which that person was carrying on under the first-mentioned licence:

(a) a manager's licence granted under the repealed Labuan Offshore Securities Industry Act 1998;

(b) an administrator registered under the repealed Labuan Offshore Securities Industry Act 1998;

(c) a trust company registered under the repealed Labuan Trust Companies Act 1990;

(d) an offshore banking licence and an offshore investment banking licence granted under the repealed Offshore Banking Act 1990;

(e) an offshore insurance licence granted under the repealed Offshore Insurance Act 1990.

(7) Any condition or restriction to which any licence or registration referred to in subsection (6) was subject immediately before the effective date, to the extent that it is consistent with the provisions of this Act, shall be deemed to be a condition or restriction to which the corresponding licence referred to in subsection (6) is subject.

Continuance of other rights, liabilities, etc., under the repealed Acts

202. (1) Nothing in the repealed Acts or this Act shall affect any person's liability to be prosecuted or punished for offences or breaches committed under the repealed Acts before the effective date or any proceedings brought, sentence imposed or action taken before that day in respect of such offence or breach.

(2) Any right, privilege or obligation or liability acquired, accrued or incurred before the effective date or any legal proceedings, remedy or investigation in respect of such right, privilege, obligation or liability shall not be affected by this Act and shall continue to remain in force as if this Act had not been enacted.

FIRST SCHEDULE

[Subsection 2(1); definition of "director"]

First Column (*person*)	Second Column (*director*)	Third Column (*established*)	Fourth Column (*participant*)
Corporation	a person occupying the position of director of the corporation, by whatever name called, and includes a person in accordance with whose directions or instructions the directors of the corporation are accustomed to act and an alternate or substitute director	incorporated	a shareholder
Co-operative society	a member of the board or other governing body, howsoever called, of the co-operative society	registered, incorporated or otherwise coming into legal existence as a co-operative society	a member
Statutory body	a member of the board, committee, council or other governing body, howsoever called, of the statutory body	its coming into existence under the law establishing, appointing or constituting it	a shareholder or, where the statutory body has no share capital, a person wholly, severally or jointly with other persons owning the statutory body
Partnership	a partner	its formation	a partner
Limited partnership	the general partner (or person holding such similar role)	its formation or where registration or other form of recording or recognition is required before activities or business can lawfully be commenced, its registration, recording or legal recognition under the law applicable	a partner
Limited liability partnership	the designated partner (or person holding such similar role)	its formation or where registration or other form of recording or recognition is required before activities or business can lawfully be commenced, its registration, recording or legal recognition under the law applicable	a limited partner

First Column (*person*)	Second Column (*director*)	Third Column (*established*)	Fourth Column (*participant*)
Sole-proprietorship	the sole proprietor	where registration or other form of recording or recognition is required before activities or business can lawfully be commenced, its registration, recording or legal recognition under the law applicable	the sole proprietor
Any other body, association or group of persons whether corporate or unincorporated	any person having direction or control of the management of its affairs or business	where registration or other form of recording or recognition is required before activities or business can lawfully be commenced, its registration, recording or legal recognition under the law applicable	a member, howsoever called, of such body, association or group

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Second Schedule

[subsection 2(1)]

Recognized Professional Associations in relation to the qualifications of actuaries

The Institute of Actuaries in England

The Faculty of Actuaries in Scotland

The Society of Actuaries in the United States of America

The Canadian Institute of Actuaries

The Australian Institute of Actuaries

Such other associations as may be approved by the Authority

THIRD SCHEDULE

[sections 99 and 111]

Financial information and statistics and information to be submitted to the Authority

Part A: Bank licensee

Financial statements

Within six months after the close of each financial year of a bank licensee, or such further period as the Authority may approve, a bank licensee shall submit to the Authority, in respect of its entire business operations, two copies each of its latest audited annual balance sheet, profit and loss account, a statement setting out the sources, allocation and utilization of its funds and the report of the auditor.

Statistics and information

(1) Every bank licensee, at such frequency as may be specified by the Authority from time to time, submit to the Authority a statement showing the assets and liabilities of the bank licensee in relation to its Labuan banking business or Labuan investment banking business, as the case may be.

(2) A statement to be submitted under paragraph (1) shall include—

(a) a statement specifying the total amount of credit facilities granted by the bank licensee to such customers of the bank licensee as may be specified by the Authority;

(b) a statement specifying the class, category or description of credit facilities given and the business or industry in which the customers of the bank licensee are involved;

(c) a statement showing that the bank licensee has complied with the requirements imposed upon it by section 100; and

(d) such other statements, information, documents, statistics or returns as the Authority may specify.

(3) Notwithstanding paragraph (2), the Authority may publish any consolidated statement, in respect of any category, class or description of bank licensees as the Authority deems appropriate, aggregating the figures in the returns submitted under paragraph (1):

Provided that nothing in this paragraph shall authorize the Authority to designate any particular bank licensee to constitute a category, class or description of bank licensees for the purposes of this paragraph.

(4) Where any person is required by or under this Part to submit, produce or provide to the Authority any information, statistics, return or document, the Authority may specify that the same shall be submitted, produced or provided in such form and manner and within such period or at such intervals or times, not inconsistent with any provision of this Part or any regulations made under this Act, as the Authority may set out in the specification; and such person shall not submit, produce or provide as true or accurate any information, statistic, return or document which he knows, or has reason to believe, to be false, inaccurate or misleading.

Part B: Insurance licensee

Financial statements

(1) Every Labuan insurer shall, within six months after the close of each financial year or such further period as the Authority may approve, submit to the Authority, in respect of its entire Labuan insurance operations, four copies each of its audited annual balance sheet, profit and loss account, revenue account and, in respect of its life insurance business, a report setting out the actuarial valuation of its assets and liabilities as approved in accordance with its constituent documents.

(2) Every Labuan insurer shall submit to the Authority four copies each of the documents mentioned in paragraph (1) as approved in accordance with its constituent documents as soon as practicable after such approval.

(3) Every Labuan insurer which is a foreign Labuan company shall, in addition to the financial statements which are required to be submitted to the Authority under paragraph (1), also submit each year a certified copy of its latest audited annual balance sheet in respect of its entire operations both in and outside Labuan within three months of its being filed with the regulatory authorities in its country of establishment or origin.

(4) Every licensed Labuan insurance manager, licensed Labuan underwriting manager and licensed Labuan insurance broker shall, within six months after the close of each financial year or such further period as the Authority may approve, submit to the Authority four copies each of its audited annual balance sheet and profit and loss account.

(5) Notwithstanding any provision in this Act, the Authority may require an insurance licensee to submit to the Authority any document relating to its operation in such manner as may be specified in writing by the Authority.

Part C: Additional conditions

Notwithstanding the above, the Authority may impose new or additional requirements for matters set out in this Schedule.

LAWS OF MALAYSIA

Act 704

LABUAN FINANCIAL SERVICES AND SECURITIES ACT 2010

LIST OF AMENDMENTS

Amending law	Short title	In force from
Act A1654	Labuan Financial Services and Securities (Amendment) Act 2022	01-01-2019

LAWS OF MALAYSIA

Act 704

LABUAN FINANCIAL SERVICES AND SECURITIES ACT 2010

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
8	Act A1654	01-01-2019
101	Act A1654	01-01-2019
114	Act A1654	01-01-2019