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LABUAN ISLAMIC FINANCIAL SERVICES AND SECURITIES ACT 2010

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LABUAN ISLAMIC FINANCIAL SERVICES AND SECURITIES ACT 2010

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LABUAN ISLAMIC FINANCIAL SERVICES AND SECURITIES ACT 2010

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LABUAN ISLAMIC FINANCIAL SERVICES AND SECURITIES ACT 2010

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

[*11 February 2010, P.U. (B) 59/2010*]

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 Islamic 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* and the Minister may appoint different dates for the coming into operation of different parts or different provisions of this Act.

Interpretation

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

"actuary" means a person being—

(a) a fellow of any of the professional associations listed in the Second Schedule or other associations as may be approved by the Authority; or

(b) a person recognized by the Authority as an actuary for the purposes of this Part, 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;

"bank licensee" means a Labuan bank or a Labuan investment bank licensed under Part VI of the Labuan Financial Services and Securities Act 2010 [*Act 704*];

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

(a) a corporation sole;

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

(c) a society registered under any written law as a co-operative society;

"court" means a court of competent jurisdiction;

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

"custodian" means a person who is entrusted by an Islamic 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;

"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;

"Director General" means the Director General of the Authority;

"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 the coming into existence under the law establishing, appointing or constituting it;

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

**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.

(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 unincorporate, 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;

"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 2010 [*Act 706*], Part IX 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 an Islamic 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;

"home supervisory authority" means any relevant authority or body in Malaysia or of any other country which exercises supervisory functions similar to those of the Authority or any person exercising such supervisory functions as may be deemed appropriate by the Authority after taking into account the representations made by the person as to the desirability of or the necessity for the examination;

"internal Syariah advisory board" means the board established under section 130;

"Islamic bank licensee" means a Labuan Islamic bank and a Labuan Islamic investment bank;

"Islamic bank licence" means a licence granted pursuant to an application under section 63 or 64, as the case may be;

"Islamic mutual fund" or "Islamic fund" means a mutual fund or fund which is established expressly with a view that the aims and operations of such fund shall be in compliance with Syariah principles;

"Islamic private fund" means an Islamic 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 an Islamic private fund under regulations made by the Minister,

and which is established expressly with a view that the aims and operations of such fund shall be in compliance with Syariah principles;

"Islamic public fund" means an Islamic mutual fund other than an Islamic private fund;

"Islamic self-regulatory organization" means a self-regulatory organization established under Part XI expressly with a view that the aims and operations of such self-regulatory organization are in compliance with Syariah principles, whose object is to regulate the operations of its members or of the users of its services, their standards or practice and business conduct in order to better protect investors and consumer of securities or related services and includes such other organizations as may be declared or recognized as such by the Authority;

"Labuan" means the Federal Territory of Labuan;

"Labuan bank" means a person who is licensed to carry on Labuan banking business under Part VI of the Labuan Financial Services and Securities Act 2010;

"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 of the Labuan Financial Services and Securities Act 2010;

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

"Labuan Islamic foundation" means a foundation established under section 107;

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

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

"Labuan Islamic limited partnership" or "Labuan Islamic limited liability partnership" means a partnership established under section 111;

"Labuan Islamic trust" means a trust established under section 105;

"Labuan trust company" means a person licensed to carry on trust company business under the Labuan Financial Services and Securities Act 2010;

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

"licence" means a licence granted under this Act;

"licensed entity" means a person licensed or registered to carry on any activities under any Part of this Act;

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

"Malaysian bank" means a licensed bank as 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*];

"Malaysian Islamic bank licensee" means an Islamic 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 entitle 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;

"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;

**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.

"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, appointed under a power contained in any instrument, of any part of the undertaking or property of the corporation; 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;

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

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

(b) a clearing house as defined under the Capital Markets and Services Act 2007 [*Act 671*];

(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;

"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;

"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;

"qualified person" means a person who—

(a) is not an undischarged bankrupt;

(b) has not been convicted of any offence arising out of criminal proceedings;

(c) is of good repute and character; and

(d) possesses the necessary qualifications and expertise in Islamic commercial law or Islamic jurisprudence,

and includes a corporation having in its employment at least one individual meeting the criteria mentioned in paragraphs *(a)* to *(d)*;

"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;

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

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

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

(b) notes of or issued by a body (incorporated or unincorporated), government, local government or public authority; and

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

which are issued expressly to be in compliance with Syariah principles, and include *Sukuk*;

"Syariah-compliant entity" means any person licensed or registered under the relevant laws administered by the Authority other than this Act and who carries on any business or part of its business which is in compliance with Syariah principles;

"Syariah adviser" means a qualified person appointed by any licensed entity or entity pursuant to this Act to advise on matters relating to Syariah principles;

"Syariah principles" include principles and concepts of Islamic law as approved or adopted, by way of rulings or by any other means, by the Syariah Supervisory Council, or the internal Syariah advisory board of a Labuan Islamic bank or takaful operator, or a Syariah adviser of any entity regulated under this Act, as the case may be;

"Syariah Supervisory Council" refers to the body established under section 7;

"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 and "specified" shall be construed accordingly;

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

"*Sukuk*" includes any certificates, instruments, notes and any other evidence of payment obligations of a corporation, body (incorporated or unincorporated), government, local government or public authority pursuant to any form of financing in accordance with Syariah principles, whether or not constituting a charge on the assets of the corporation**,** body (incorporated or unincorporated), government, local government or public authority, but shall exclude—

(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 bank note, 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 or a financing where the lender or financier and the borrower or customer are signatories

to the agreement and where the lending of money or the financing is in the ordinary course of business of the lender or financier, and any promissory note issued under the terms of such an agreement; and

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

"takaful licence" means a licence granted under Part VII;

"takaful licensee" means any person licensed under Part VII;

"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.

(4) For the purposes of this Act, *Sukuk* shall not constitute a unit trust.

Administration of the Act

3. (1) The Authority shall be 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 of the Authority.

Fit and proper person

4. (1) Every licensed entity shall ensure that its directors, principal officers or 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 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 such person;

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

(c) whether that 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 by 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 any person is not fit and proper, the Authority may disqualify such person from acting in his capacity of a licensed entity.

Business in, from or through Labuan

5. A person licensed to carry on any of the activities under this Act shall carry on such activities only in, from or through Labuan save and 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 any licensed entity from carrying out any regulated activities under the Capital Markets and Services Act 2007, where such regulated activities are carried out in Malaysia other than Labuan.

Compliance with Syariah principles

6. Any person carrying on any activity under this Act shall ensure that such activity shall be in compliance with Syariah principles.

PART II

SYARIAH SUPERVISORY COUNCIL

Establishment of the Syariah Supervisory Council

7. (1) The Authority may establish a Syariah Supervisory Council which shall be the authority for the ascertainment of Islamic law for the purposes of any business regulated or supervised by the Authority.

(2) The Authority shall have the power to determine the terms of reference and the functions of the Syariah Supervisory Council.

(3) The Syariah Supervisory Council may determine its own procedure.

Functions of the Syariah Supervisory Council

8. The Syariah Supervisory Council shall have the following functions:

(a) to ascertain Islamic law for the purposes of any business regulated or supervised by the Authority and issue a ruling upon reference made to it in accordance with section 9;

(b) to advise on any Syariah issue relating to any business regulated or supervised by the Authority upon reference made to it in accordance with section 9; and

(c) any other functions as may be determined by the Authority.

Power to make rulings and give advice

9. (1) A ruling or an advice shall be given by the Syariah Supervisory Council only upon reference made to it.

(2) For the purposes of subsection (1), reference to the Syariah Supervisory Council shall be made by the Authority, a licensed entity, an entity regulated under this Act or a Syariah-compliant entity in a manner determined by the Authority.

(3) Any ruling issued by the Syariah Supervisory Council pursuant to a reference under subsection (1) shall be binding on the Authority, such licensed entity, such entity regulated under this Act or such Syariah-compliant entity, as the case may be.

(4) For the avoidance of doubt, any ruling made by the Syariah Supervisory Council under subsection (1) pursuant to a reference made by the Authority, a licensed entity, an entity regulated under this Act or a Syariah-compliant entity, shall not be binding on any other licensed entity, entity regulated under this Act or Syariah-compliant entity unless otherwise adopted by the Authority in a manner it deems fit.

(5) If an advice is given by the Syariah Supervisory Council pursuant to subsection (1), the Authority, such licensed entity, such entity regulated under this Act or such Syariah-compliant entity, as the case may be, shall take into consideration such advice.

(6) Any reference for a ruling or an advice of the Syariah Supervisory Council under this Act or any other laws shall be submitted to the Authority.

Appointment of members to the Syariah Supervisory Council

10. (1) The Authority shall appoint qualified persons as members of the Syariah Supervisory Council.

(2) The Authority may, in addition to the members appointed pursuant to subsection (1), appoint persons who may not fulfil the requirement of qualified persons as to qualifications and expertise in Islamic commercial law or Islamic jurisprudence but who have knowledge or expertise in banking, finance, law, or any other related discipline as members of the Syariah Supervisory Council.

(3) The members of the Syariah Supervisory Council shall be paid such remuneration and allowances as may be determined by the Authority from the funds of the Authority.

Reference by court or arbitrator in making decision

11. (1) Where in any proceedings relating to any business regulated or supervised by the Authority before any court or arbitrator in Malaysia, any question arises concerning a Syariah matter, the court or the arbitrator, as the case may be, may—

(a) take into consideration any guideline, direction, advisory, notice or circular issued by the Authority pursuant to its powers under the Labuan Financial Services Authority Act 1996; or

(b) refer such question to the Syariah Supervisory Council for its ruling.

(2) Any ruling made by the Syariah Supervisory Council pursuant to a reference made under paragraph (1)*(b)* shall, for the purposes of proceedings in respect of which the reference was made, be taken into consideration by the court or arbitrator in arriving at a decision.

Part III

SECURITIES

Chapter 1

Offer of securities

Interpretation

12. 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 pay or repay any money received or to be received by it in response to an offer made pursuant to this Chapter to subscribe for or purchase *Sukuk* of the company;

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

"secured *Sukuk*" means—

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

(b) any *Sukuk* which is issued on terms affording the holder of the *Sukuk* 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 its substitution for those rights.

Offers or invitations which require the approval of the Authority

13. (1) Subject to subsections (3) to (7), 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—

(a) the prior written approval of the Authority; and

(b) in relation to *Sukuk*, the endorsement from a Syariah adviser under subsection (9).

(2) (*Deleted by Act A1655*).

(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 for prior written approval of the Authority under subsection (1):

(a) offers or invitations 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 in which the offer or invitation is made thereto 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) offers or invitations of *Sukuk*, where—

(i) the first time investment of each of the initial *Sukuk* 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 make a reasonable evaluation of the offer or invitation; or

(ii) the first time investment of each of the initial *Sukuk* 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 after 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) offers or invitations of securities in an Islamic mutual fund which satisfies the Islamic mutual fund requirements under Part IV;

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

(e) offers or invitations of securities or such classes or categories of securities as may be specified by the Authority.

(6) In addition to the exclusion from the requirement for approval of the Authority under subsection (5), offers or invitations of *Sukuk* under paragraph (5)*(b)* are excluded from the requirement for endorsement of the Syariah adviser under subsection (9).

(7) Sections 27, 28, 29, 30 and 31 shall not apply to an offer or invitation of securities under subsection (5).

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

(9) The endorsement of the Syariah adviser referred to in paragraph (1)*(b)* shall include a confirmation from the Syariah adviser that the documentation, structuring, investment as well as other administrative and operational matters in relation to such *Sukuk* is in compliance with Syariah principles.

(10) 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.

False or misleading statements

14. (1) Where any statement or information is required to be submitted to the Authority in relation to any offers or invitations of securities submitted pursuant to section 13, an applicant or 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 a 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

15. (1) No advertisement offering, or calling attention to an offer or intended offer of, securities under subsection 13(1), being an offer of securities not excluded under subsection 13(5), shall be published 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 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

16. (1) 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) Notwithstanding subsection (1), the requirement under that subsection shall not apply if the offer or invitation is made pursuant to or in connection with an offer or invitation excluded under subsection 13(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 an Islamic public fund applying for registration under section 36 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 or 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 an Islamic public fund—

(A) a certificate from an expert certifying that it complies with the requirement of Part IV; and

(B) 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 18 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 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 an Islamic 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 an Islamic public fund;

(b) contain a statement summarizing the rights of investors provided by section 41; and

(c) where the Islamic 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 Islamic public fund immediately preceding the date of such offer and the auditor's report thereon.

(6) Where any change occurs which materially affects any of the matters required to be disclosed under subsection (5), or there has been a material change affecting the matters disclosed in the prospectus, the fund manager of the Islamic public fund or the promoter, shall within thirty days of such occurrence incorporate such change to the prospectus relating to such Islamic public fund or offer pursuant to subsection 13(1) and provide a copy thereof to each of its investors and to the Authority.

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

17. (1) Where a corporation allots or issues or agrees to allot or issue to any person any securities pursuant to subsection 13(1), being an offer not excluded under subsection 13(5), the offer or invitation of securities shall be made through its agent which shall be a Labuan trust company or a bank licensee or an Islamic bank licensee.

(2) Any document by which the offer pursuant to subsection 13(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 pursuant to subsection 13(1) and as if the persons accepting the offer in respect of any securities were subscribers 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 13(1) if it is shown—

(a) that an offer of securities under subsection 13(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 13(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 (2) 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

18. (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

19. (1) Notwithstanding any other written laws, 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 wilful 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 only by that reason 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 *Sukuk* 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 18 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 18 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 18, 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 that—

(a) having given his consent under section 18 to the issue of the prospectus, he withdrew it in writing before a copy of the prospectus was lodged with the Authority;

(b) 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 *Sukuk* 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 18 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 director 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

20. (1) Where in any prospectus, or in any advertisement of the kind referred to in section 15, there is an untrue statement or wilful 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.

(2) A person shall not be liable under subsection (1) if 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.

(3) 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 Part to the inclusion therein of a statement purporting to be made by him as an expert.

Labuan trust company, bank licensee or Islamic bank licensee as agent in offer

21. (1) No allotment or issue shall be made of any securities of a corporation offered under subsection 13(1), being an offer not excluded under subsection 13(5), unless the securities have been offered through a Labuan trust company, bank licensee or Islamic bank licensee.

(2) For the avoidance of doubt, a Labuan trust company, bank licensee or Islamic bank licensee shall be the agent of a corporation which has offered securities pursuant to subsection 13(1) through the Labuan trust company, bank licensee or Islamic 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, bank licensee or Islamic bank licensee acting as an agent for the corporation, and pending receipt by the Labuan trust company, bank licensee or Islamic 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, bank licensee or Islamic bank licensee within the time stated in the prospectus, the Labuan trust company, bank licensee or Islamic 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, bank licensee or Islamic bank licensee acting as agent for a corporation of the amount of the minimum subscription on behalf of the corporation, the Labuan trust company, bank licensee or Islamic bank licencee 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

22. (1) No allotment or issue shall be made of any securities of a corporation offered pursuant to subsection 13(1) 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—

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

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

(3) The amount payable on application on each securities offered shall not be less than five per centum of the price at which the securities 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 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

23. (1) Subject to subsections 21(3), (4) and subsection 22(1), all applications and other monies paid prior to issuance or allotment by any applicant on account of securities offered pursuant to subsection 13(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) Every officer of the corporation 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.

Chapter 2

Sukuk

Power to issue *Sukuk*

24. (1) Subject to this Chapter and to the terms and conditions of its memorandum and articles, a Labuan company shall have the power to issue *Sukuk* on such terms and conditions as it thinks

fit and in particular, but without limiting the generality of the foregoing, may issue the following:

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

(b) a *Sukuk* which may be converted into shares in the company; or

(c) a secured *Sukuk*.

(2) The amounts payable under any *Sukuk*, whether sealed or signed on behalf of the company, shall be a specialty debt of the company, and where the *Sukuk* is issued by a branch of a company, it 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 *Sukuk* which may be converted into shares;

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

Trustee for *Sukuk* holders

25. (1) Every Labuan company which offers *Sukuk* pursuant to subsection 13(1) shall make provision in such *Sukuk*, or in a trust deed relating to such *Sukuk*, for the appointment of a Labuan trust company as a trustee for *Sukuk* holders.

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

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

(4) A borrowing company and every officer of the borrowing company 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.

Exemptions and indemnifications of trustee for *Sukuk* holders from liability

26. (1) Subject to this section, a term, provision or covenant of a *Sukuk* or a trust deed of a term of contract with *Sukuk* holders secured by a trust deed shall be void in so far as the term, provision or covenant, as the case may be, would have the effect of—

(a) exempting a trustee for *Sukuk* holders from liability for contravention of any provisions 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 for *Sukuk* holders against liability for contravention of any provisions 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 *Sukuk* 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 *Sukuk* holders who vote for the resolution hold seventy-five per centum of the nominal value of the *Sukuk* held by all the *Sukuk* holders who attend the meeting and vote on the resolution; and

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

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

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

Duties of trustee for *Sukuk* holders

27. (1) A trustee for *Sukuk* holders—

(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 avail able, by way of *Sukuk* or otherwise, are sufficient, or are likely to be or become sufficient, to discharge the principal amount of *Sukuk* as and when it becomes due;

(b) shall satisfy itself that each prospectus relating to the *Sukuk* does not contain any matter which is inconsistent with the terms of the *Sukuk* 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 covenants, terms and provisions of the *Sukuk* or the trust deed;

(d) except where it is satisfied that a breach of the covenants, terms and provisions of the *Sukuk* or the trust deed would not materially prejudice the security, if any, for the *Sukuk* or the interests of *Sukuk* holders, 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 covenants, terms and provisions;

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

(f) where the borrowing company submits to those *Sukuk* 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 *Sukuk* holders 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 insuf ficient to discharge the principal amount of *Sukuk* as and when it becomes due, the trustee for *Sukuk* holders 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 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 *Sukuk* holders, or the Authority may, and if the borrowing company so requires shall, direct the trustee for *Sukuk* holders to lodge an application with the Court for an order under subsection (4) and the trustee for *Sukuk* holders shall apply accordingly.

(3) Where—

(a) after due enquiry, a trustee for *Sukuk* holders at any time is of the opinion that the assets of the borrowing company and of any of its guarantor companies which is or should be available is insufficient, or likely to become insufficient, to discharge the principal amount of *Sukuk* 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 for *Sukuk* holders may, and where the borrowing company has requested the trustee for *Sukuk* holders to do so, the trustee for the holders of *Sukuk* shall, apply to the Court for an order under subsection (4).

(4) Where an application is lodged by a trustee for *Sukuk* holders 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, namely:

(a) direct the trustee for *Sukuk* holders to convene a meeting of *Sukuk* holders for the purpose of placing before them such information relating to their interests, as the trustee for the *Sukuk* holders 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 *Sukuk* holders 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 the *Sukuk* or any part thereof; or

(e) give such further directions from time to time as may be necessary to protect the interests of *Sukuk* holders, 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 for *Sukuk* holders in making any application to the Authority or the Court, shall have regard to the nature and kind of the security given when the *Sukuk* were offered pursuant to subsection 13(1), and, if no security was given, shall have regard to the position of *Sukuk* holders as unsecured creditors of the borrowing company.

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

Obligations of directors of borrowing company

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

(a) at the end of a period not exceeding three months ending on a day—

(i) such day being the later of the date of the relevant prospectus, if applicable; or

(ii) such day being the date in which the *Sukuk* is issued pursuant to the trust deed which the trustee for *Sukuk* holders 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 for *Sukuk* holders may, in any special circumstances, allow,

prepare a report that relates to that period and complies with the requirements of subsection (3) 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 for *Sukuk* holders.

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

(3) 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 matters adversely affecting the security or the interests of *Sukuk* holders 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 covenants and provisions binding upon them respectively by or pursuant to the *Sukuk* or any trust deed;

(c) whether or not any event has happened which has caused or could cause the *Sukuk* 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 *Sukuk* 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 *Sukuk* were first issued pursuant to subsection 13(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 Act 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 payment of the

Sukuk of the borrowing company and has secured the guarantee by a charge over its assets in favour of the trustee for *Sukuk* holders of the borrowing company.

(4) Where there is a trustee for any *Sukuk* holders issued by a borrowing company, the borrowing company and each guarantor company which has guaranteed the payment of the monies raised by the issue of those *Sukuk* shall, within twenty-one days after the creation of the charge, furnish the trustee for *Sukuk* holders on behalf of *Sukuk* holders, 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.

(5) The directors of every borrowing company which has issued *Sukuk* pursuant to subsection 13(1), not including the issue of *Sukuk* under subsection 13(5), and of every guarantor company which has guaranteed the repayment of the monies raised by the issue of such *Sukuk* 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 for *Sukuk* holders a profit and loss account together with a detailed statement of outstanding liability under such *Sukuk* 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.

(6) 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 (5) if, with the consent of the trustee for *Sukuk* holders, there is lodged with the Authority and the trustee for *Sukuk* holders, certified copies of the profit and loss account and balance sheet so lodged.

(7) Where the directors of a borrowing company do not lodge with the trustee for *Sukuk* holders a report as required by subsection (1), or where the directors of a borrowing company or of its guarantor companies do not lodge with the Authority and the trustee for *Sukuk* holders the profit and loss account, detailed statement and balance sheet as required by subsection (5) within the time specified, the trustee for *Sukuk* holders shall, as soon as possible, lodge notice of that fact with the Authority.

(8) Any person who contravenes subsection (5) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Obligation of guarantor company to furnish information

29. (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 fur nish 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 or every officer of that company which fails to comply with the requirement contained in a notice given pursuant to subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Monies to be immediately payable on certain events

30. (1) Where in any prospectus issued in connection with an offer or invitation pursuant to subsection 13(1) to subscribe for or to purchase *Sukuk* 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 *Sukuk* holders 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 for *Sukuk* holders 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 for *Sukuk* holders may, and, if in its opinion it is necessary for the protection of the interests of *Sukuk* holders, the trustee for the *Sukuk* holders shall, give notice in writing to the borrowing company requiring it to pay the monies so received by the borrowing company and, within one month after such notice is given, lodge with the Authority a copy of such notice.

(3) A trustee for *Sukuk* holders shall not give a notice pursuant to subsection (2) if it is satisfied that—

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

(b) the interests of the *Sukuk* holders 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) 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.

Retention of over-subscriptions in *Sukuk* issues

31. (1) A borrowing company shall not accept or retain subscriptions to a *Sukuk* 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 *Sukuk* issue that it 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 IV

ISLAMIC MUTUAL FUNDS

Chapter 1

Preliminary

Intepretation

32. 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 an Islamic mutual fund but does not include a person who only takes the initiative in forming or organizing the business of the Islamic mutual fund and does not have any ownership in the fund;

"operator", in respect of an Islamic mutual fund, means—

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

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

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

(d) where the Islamic 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 an Islamic 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 Islamic mutual fund business;

"registered Islamic public fund" means an Islamic public fund registered under section 38;

"shares" means one or more of the shares in the share capital of an Islamic 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 an Islamic mutual fund partnership and a unit in an Islamic mutual fund unit trust.

Chapter 2

Islamic private fund

Notification by Islamic private fund

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

Islamic private fund to lodge an information memorandum or such other offering document

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

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

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

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

(3) An information memorandum or such other offering document lodged by an Islamic private fund shall be deemed to be a prospectus in so far as it relates to the liability of that Islamic 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 Chapter 6 of this Part.

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

35. Where an information memorandum or such other offering document is lodged by the Islamic private fund with the Authority under section 34, 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.

Chapter 3

Islamic public fund

Islamic public fund shall be registered

36. (1) No Islamic public fund shall carry on business, arrange or administer its affairs in Labuan unless it has been granted registration under paragraph 38(1)*(a)*.

(2) Subject to subsection (3), no proposed Islamic public fund shall carry on business, arrange or administer its affairs unless it has been granted provisional acceptance under paragraph 38(1)*(b)*.

(3) A proposed Islamic public fund to which a provisional acceptance has been granted under paragraph 38(1)*(b)* shall not carry on business, arrange or administer its affairs without the prior written consent of the Authority.

Application by Islamic public fund

37. (1) An application to the Authority under subsection 36(1) or (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 Islamic fund;

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

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

(2) The Islamic public fund or proposed Islamic 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 as specified by the Authority under subsection (1), the applicant, after being granted registration or provisional acceptance, as the case may be, shall, within thirty days after the change has occurred, lodge with the Authority a notice specifying such change.

Power to grant or refuse registration of Islamic public fund

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

(a) registration of an Islamic public fund; or

(b) provisional acceptance of a proposed Islamic public fund.

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

(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 Islamic public fund, the Authority may grant registration to such a proposed Islamic public fund as an Islamic public fund under paragraph (1)*(a)*.

Registration procedure

39. (1) Where the Authority grants registration of an Islamic public fund under paragraph 38(1)*(a)*, it shall—

(a) register the Islamic public fund in the register maintained under Chapter 6 of this Part; and

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

(2) Where the Authority grants a provisional acceptance under paragraph 38(1)*(b)*, the promoter of the proposed Islamic 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 Islamic public fund is lawfully constituted in Labuan or any recognized country or jurisdiction; and

(c) the information referred to in subsection 37(1).

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

(4) Where the Authority grants registration under subsection (3), it shall register the Islamic public fund in the register maintained under Chapter 6 of this Part and issue a certificate of registration.

Prospectus relating to Islamic public fund

40. (1) No registered Islamic 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 16.

(2) For the avoidance of doubt, the civil and criminal liabilities for misstatements in prospectuses provided for under sections 19 and 20 shall equally apply to a prospectus lodged under this section.

Investors' rights

41. (1) If a registered Islamic public fund publishes a prospectus or any amendment that contains any misrepresentation relating to any of the matters required to be disclosed under subsection 16(5), a person who purchased any securities pursuant to such prospectus or amendment to the prospectus 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 Islamic public fund and every person who, while aware of the misrepresentation, signed the prospectus or amendment to the prospectus and consented to its publication and lodged 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 under 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 to the prospectus 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 under any written law.

Limitation

42. Notwithstanding any other written law to the contrary, any action under subsection 41(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

43. Every registered Islamic 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 Islamic public fund may be managed or administered in Labuan

44. An Islamic public fund lawfully registered under the laws of any recognized country or jurisdiction need not be registered as an Islamic public fund under section 38 so long as the Islamic 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.

Chapter 4

Fund managers and fund administrators

Fund manager or fund administrator of an Islamic public fund

45. (1) No person shall carry on business as a fund manager of an Islamic public fund unless that person is—

(a) a person falling within subsection 40(1) or (2) of the Labuan Financial Services and Securities Act 2010 and has obtained the prior approval of the Authority; or

(b) an Islamic bank licensee.

(2) No person shall carry on business as a fund administrator of an Islamic public fund unless that person is—

(a) a person falling within subsection 41(1) or (2) of the Labuan Financial Services and Securities Act 2010 and has obtained the prior approval of the Authority;

(b) an Islamic bank licensee; or

(c) an Islamic securities licensee under Part V.

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

Duties of a fund manager and fund administrator of an Islamic public fund

46. A fund manager or fund administrator of an Islamic 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 Islamic 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, fund administrator or its officers to—

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

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

(f) ensure that all payments out of the property of the Islamic public fund are made in accordance with the constituent documents of the Islamic 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 Islamic 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 a fund manager and fund administrator under applicable law

47. The duties of a fund manager and a fund administrator of an Islamic public fund provided for under this Chapter are in addition to and not in derogation from the duties which are otherwise imposed on them by any applicable law.

Specific duties of a fund manager of an Islamic public fund

48. (1) A fund manager of an Islamic 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, investment restrictions, risk profile and instructions;

(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

49. (1) A fund manager of Islamic 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 liabilities 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 liabilities 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.

Chapter 5

Trustees or custodians

Eligibility of a trustee or custodian of an Islamic public fund

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

(2) No person shall carry on business as a custodian of an Islamic public fund unless that person is a bank licensee, an Islamic bank licensee, or a Labuan trust company, provided that the bank licensee shall obtain the prior approval of the Authority.

(3) This section does not apply to a person who is and continues to be a qualified and authorized trustee or custodian of Islamic 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 an Islamic public fund.

Duties of a trustee or custodian and director under applicable law

51. The duties of a trustee or custodian and their directors provided for under this Chapter are in addition to and not in derogation of the duties which are otherwise imposed on them by any applicable law.

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

52. (1) A fund manager, custodian or trustee, of an Islamic public fund—

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

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

(c) shall 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.

Chapter 6

Registers and accounting

Registers

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

(a) Islamic private funds;

(b) Islamic public funds; and

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

(2) The registers required under subsection (1) may contain—

(a) the information required in respect of each person who has been granted 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 upon which such licence or registration or written permission was revoked.

(3) The registers required to be kept pursuant to 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

54. (1) Every registered Islamic 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 inspections 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 Islamic public fund together with such accounting records and financial statements.

Part V

LICENSING OF INTERMEDIARIES

Chapter 1

Preliminary

Interpretation

55. In this Part, unless the content otherwise requires, "Islamic 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, which is in compliance with Syariah principles in Labuan.

Chapter 2

Islamic securities licensee

Islamic securities licensee

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

(2) Notwithstanding subsection (1), the following persons can carry on business as an Islamic securities licensee:

(a) a person referred to in subsections 55(1) and (2) of the Labuan Financial Services and Securities Act 2010 and has obtained the prior approval of the Authority; and

(b) an Islamic bank licensee.

Application for licence

57. (1) An application to the Authority to carry on business as an Islamic 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 shall be—

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

(b) accompanied by—

(i) an application fee as may be prescribed;

(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 the 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 its 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 application for licence

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

(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 Islamic securities licensee during the period of operation of the licence.

Form of licence

59. 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.

**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.

PART VI

LABUAN ISLAMIC BANKING

Chapter 1

Preliminary

Interpretation

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

"deposit" means a sum of money received or paid on terms in compliance with Syariah principles—

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

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

and such payment or 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 financing, 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;

"Islamic building credit business" means the business of providing financing facilities in compliance with Syariah principles to any person for the express purpose of the purchase of immovable property, or the construction, reconstruction or renovation of any building or other structure, for residential, commercial or industrial purposes;

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

"Islamic credit token business" means any business in compliance with Syariah principles, 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 that—

(a) 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) where, on the production of the token to a third party, whether or not any other action is also required, the third party supplies goods, cash or services, the issuer will pay the third party for goods, cash or services supplied, 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;

"Islamic derivative financial instrument" means futures, forward, swap, or option contract which is in compliance with Syariah principles, or other financial instrument with similar characteristics but shall 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, profit-only and principal-only obligations, and indexed financial instruments, in compliance with Syariah principles; 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 *Sukuk*, in compliance with Syariah principles;

"Islamic 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, in compliance with Syariah principles, and includes an Islamic derivative financial instrument and an Islamic commodity derivative instrument;

"Islamic development finance business" means the business of providing capital or other financing facilities, in compliance with Syariah principles, 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;

"Islamic factoring business" means the business of acquiring debts due to any person in compliance with Syariah principles;

"Islamic financing facilities" means—

(a) any advance, financing or other facility in whatever form or by whatever name called, in compliance with Syariah principles, 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, in compliance with Syariah principles;

"Islamic leasing business" means the business of letting or subletting of property on hire in compliance with Syariah principles, 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;

"Islamic 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 and in compliance with Syariah principles, but does not include the buying or selling of ringgit or foreign currencies as a principal in such markets;

"Labuan Islamic banking business" means—

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

(b) Labuan Islamic investment banking business;

(c) Labuan Islamic financial business; or

(d) 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 [*Act 17*] or such other relevant law in force);

"Labuan Islamic financial business" means any of the following business in compliance with Syariah principles:

(a) Islamic building credit 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.

(b) Islamic credit token business;

(c) Islamic development finance business;

(d) Islamic leasing business;

(e) Islamic factoring business;

(f) Islamic money-broking business; or

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

conducted in any currency (including ringgit where permitted by the *Exchange Control Act 1953 or such other relevant law in force) and excludes any transaction pursuant to a scheme of financing approved by the Authority as a scheme which is in compliance with Syariah principles, whereby such transaction is strictly required for the purpose of compliance pursuant to such scheme of financing but which will not be required for any other schemes of financing;

"Labuan Islamic investment banking business" means any of the following business:

(a) providing financing facilities in compliance with Syariah principles;

(b) 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, in compliance with Syariah principles;

(c) undertaking foreign exchange transactions, profit rate swaps, dealings in Islamic derivative instruments or Islamic derivative financial instruments which are in compliance with Syariah principles or any other similar risk management activities;

(d) Labuan Islamic financial business; or

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

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**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.

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

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

"paid-up capital", in relation to an applicant under sections 63, 64 and 65 or an Islamic bank licensee, means the amount of money contributed by its participants for it to carry on business but does not include financing facilities granted to it by its participants.

Chapter 2

Licensing of Labuan Islamic banking business

Labuan Islamic banking business to be carried on only under licence

61. (1) Subject to subsection (2), no person shall carry on Labuan Islamic banking business other than the Labuan Islamic investment banking business unless—

(a) it is a Labuan company or a foreign Labuan company, established or registered for the sole and exclusive purpose of carrying on Labuan Islamic banking business in any location permitted by the Authority; or

(b) it is a Malaysian bank,

and holds a valid licence to carry on such business.

(2) Subsection (1) shall not apply to a Labuan bank unless the Labuan bank obtains the prior approval of the Authority to carry on Labuan Islamic banking business.

(3) 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.

**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.

Labuan Islamic investment banking business to be carried on only under licence

62. (1) Subject to subsection (2), no person shall carry on Labuan Islamic investment banking business unless—

(a) it is a Labuan company or a foreign Labuan company, established or registered for the sole and exclusive purpose of carrying on Labuan Islamic investment banking business only in any location permitted by the Authority; or

(b) it is a Malaysian bank,

and holds a valid licence to carry on such business.

(2) Subsection (1) shall not apply to a bank licensee unless the bank licensee obtains the prior approval of the Authority to carry on Labuan Islamic investment banking business.

(3) 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 Islamic banking business

63. (1) An application for a licence to carry on Labuan Islamic 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 Labuan Islamic 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;

(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 Islamic banking business in Labuan;

(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 Islamic banking business;

(e) where the applicant is a Labuan company which is—

(i) 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) 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 Islamic 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 Islamic 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; and

(iii) every director or the principal officer of the applicant responsible for the management of its Labuan Islamic 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 on Labuan Islamic 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 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 Islamic 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 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 Islamic banking business by a foreign Labuan company shall be accompanied by the following:

(a) its constituent documents duly authenticated in such manner by any of its officers 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 Islamic 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; and

(e) an undertaking given by the applicant in respect of its Labuan Islamic 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 Islamic 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; and

(iii) every director or the principal officer of the applicant responsible for the management of its Labuan Islamic 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 Islamic 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 in such manner by any of its proposed officers 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 the following:

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

(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 Islamic banking business; and

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

(6) An application for a licence to carry on Labuan Islamic 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;

(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; and

(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 Islamic banking business.

Application for licence to carry on Labuan Islamic investment banking business

64. An application for a licence to carry on Labuan Islamic investment banking business shall be made in writing by or on behalf of the applicant to the Authority and the provisions of section 63 relating to Labuan Islamic banking business shall apply similarly save that "Labuan Islamic banking business" shall be read as "Labuan Islamic investment banking business".

Application for licence to carry on Labuan Islamic financial business

65. An application for a licence to carry on Labuan Islamic 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

66. The Authority may, at any time after receiving an application under section 63, 64 or 65 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

67. (1) Upon receiving an application for a licence in accordance with section 63, 64 or 65 and after being provided with all such information and documents as it may require under such sections, and additional information and documents under section 66, the Authority may approve the application, with or without conditions, or reject the application.

(2) Where the Authority rejects the application for a licence under subsection (1), 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 the provisions of this Act.

(5) No applicant shall be granted a 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 Islamic bank licensee, vary the existing terms and conditions or impose such additional terms and conditions, in respect of the licence, from time to time as it deems fit.

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

68. (1) An Islamic 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 "Labuan Islamic bank" or "Labuan Islamic investment bank", as the case may be.

(2) An Islamic 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 "Labuan Islamic bank" or "Labuan Islamic investment bank", as the case may be.

(3) No person, not being an Islamic bank licencee, shall, without the written consent of the Authority, assume or use the words "Labuan Islamic bank", "Labuan Islamic investment bank" or any derivative of such words in any language capable of being

construed as indicating the carrying on of Labuan Islamic banking business or Labuan Islamic 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

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

(2) Every Islamic 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 Islamic bank licensee shall carry on Labuan Islamic banking business or Labuan Islamic investment banking business if such specified capital adequacy ratio is not complied with, except with the approval of the Authority.

(3) An Islamic 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 an Islamic 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 Islamic bank licensee

70. (1) Every Islamic 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 Islamic 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 Islamic bank licensee.

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

(4) No participant of the Islamic bank licensee who holds fifteen per centum or more of the paid-up capital of the Islamic bank licensee shall be changed without the prior written approval of the Authority and, where the Islamic 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 Islamic bank licensee

71. (1) The Authority shall publish annually not later than 31 March of each year a list of all existing Labuan Islamic bank 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 after such publication, the Authority shall cause to be published in the *Gazette*, as soon as practicable, a revised list of all existing Labuan Islamic bank licensees.

(2) The list referred to in subsection (1) shall be contained in the same *Gazette* published by the Authority under section 96 of the Labuan Financial Services and Securities Act 2010.

Chapter 3

Duties of Islamic bank licensees

Offices and subsidiaries

72. An Islamic bank licensee which is a Labuan company may, subject to the prior written consent of the Authority or in any other case as may be permitted by the Authority from time to time, open any office other than its principal place of business in Labuan, or acquire or establish any subsidiary.

Prohibition of certain accounts

73. (1) No Islamic 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 Islamic bank licensee.

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

(3) Any Islamic bank licensee 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

74. The Islamic bank licensee shall comply with the requirements with respect to financial statements, statistics and information to the Authority as specified in the Third Schedule.

Payment from a deceased person's account

75. (1) Notwithstanding any written law, an Islamic 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) An Islamic 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) An Islamic 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 TAKAFUL BUSINESS AND LABUAN TAKAFUL RELATED ACTIVITIES

Chapter 1

Preliminary

Interpretation

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

"domestic takaful business" means takaful business where the subject matter of the policy is—

(a) property which at the time of the making of the policy 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 of any contingency related to any person who, at the time of the making of the policy, is a resident; or

(*d*) a risk of any nature in respect of any person who, at the time of the making of the policy, is a resident.

"family takaful" means takaful for the benefit of the individual and his family;

"family takaful business" means takaful business relating to family takaful;

"general takaful business" means takaful business which is not a family takaful business but includes takaful business relating to mutual financial aid and assistance to participants for losses arising from perils such as accidents, fires, floods and burglaries;

"Labuan captive takaful business" means Labuan takaful business where the participant in such takaful business is a related corporation or associate corporation of the Labuan takaful operator or where the participant in such takaful business is any other person in respect of whom the Labuan takaful operator is authorized by the Authority to provide takaful or retakaful;

"Labuan retakaful business" means a business in compliance with Syariah principles whereby the Labuan retakaful operator assumes a part of the liability under an original contract of takaful of another takaful operator or retakaful operator;

"Labuan retakaful operator" means a Labuan takaful operator carrying on Labuan retakaful business;

"Labuan takaful broker" means a person who is licenced to—

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

(b) arrange for Labuan retakaful business on behalf of any takaful operator seeking retakaful; 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 takaful business" means takaful business which includes Labuan captive takaful business, Labuan retakaful business and such other takaful business approved by the Authority but does not include any takaful business that is regulated or prohibited under other written law in Malaysia;

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

"Labuan takaful operator" means a person who is licensed to carry on Labuan takaful business;

"Labuan takaful 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 takaful operators;

"Malaysian takaful operator" means a takaful operator which is licensed under the *Takaful Act 1984 [*Act 312*];

"net contribution income" in relation to a financial year, means the contributions receivable under contracts of takaful or retakaful after deducting any contributions payable arranged in respect of such contracts of takaful or retakaful;

"policy" means a takaful certificate and any reference to a policy of a Labuan takaful operator and includes a reference to any policy in respect of which the Labuan takaful operator is under any liability, whether the policy was issued by the Labuan takaful operator or the liability was transferred to the Labuan takaful operator from another takaful operator;

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

"takaful" means a scheme in compliance with Syariah principles based on brotherhood, solidarity and mutual assistance which provides for mutual financial aid and assistance to the participants in case of need whereby the participants mutually agree to contribute for that purpose;

"takaful business" means the business of takaful whose aims and operations are in compliance with Syariah principles;

"takaful certificate" includes any written contract of takaful whether or not embodied in or evidenced by an instrument in the form of a takaful certificate;

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

"takaful licensee" means any person licensed under this Part;

"takaful operator" means a person who carries on takaful business;

"working funds" means—

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

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**NOTE*—The Takaful 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) in relation to a foreign Labuan company or a branch of a Malaysian takaful operator, 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 to an "associate corporation" shall be construed as a reference to that first mentioned corporation or that other corporation, as the case may be.

Chapter 2

Licensing

Licensing of Labuan takaful business and Labuan takaful related activities

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

(a) a Labuan company;

(b) a foreign Labuan company; or

(c) a branch of a Malaysian takaful operator,

and holds a valid takaful licence.

(2) Notwithstanding subsection (1), a Labuan insurer as defined in the Labuan Financial Services and Securities Act 2010 may carry on or transact or hold himself out as carrying on or transacting any Labuan takaful business if the Labuan insurer has obtained the prior approval of the Authority.

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

(4) Notwithstanding subsection (3), a Labuan insurance manager, Labuan underwriting manager or Labuan insurance broker as defined in the Labuan Financial Services and Securities Act 2010 may carry on or transact or hold himself out as carrying on or transacting any business as a Labuan takaful manager, Labuan takaful underwriting manager or Labuan takaful broker or any other Labuan takaful-related activities if the Labuan takaful manager, Labuan takaful underwriting manager or Labuan takaful broker has obtained the prior approval of the Authority.

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

(6) This section shall not apply to bank licensees or Islamic bank licensees distributing the takaful products of a Labuan takaful operator who has obtained the prior approval from the Authority.

Application for takaful licence to carry on Labuan takaful business

78. (1) Subject to section 77, every applicant for a licence to carry on Labuan takaful 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 takaful operator;

(b) the working funds of the applicant—

(i) in a case where the applicant proposes to carry on either family takaful business or general takaful 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 Labuan retakaful 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 takaful 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 takaful operator;

(e) the applicant either—

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

(ii) has appointed, or will appoint, a licensed Labuan takaful underwriting manager or Labuan takaful manager in Labuan with adequate knowledge and experience of the Labuan takaful business to be carried on; and

for the purpose of paragraph (ii), save that with respect to applicants who apply to carry out Labuan captive takaful business, such applicant shall appoint only a Labuan takaful underwriting manager; and

(f) the applicant will become a member of an association as prescribed by the Authority.

(2) Notwithstanding paragraph (1)*(b)*, the Authority may, having regard to the extent and volume of Labuan takaful 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 takaful business shall—

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

(b) state whether such Labuan takaful business is in relation to family takaful business or general takaful business;

(c) set out the types of Labuan takaful business, as the case may be, which are to be carried on under the takaful 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 a takaful 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 takaful 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 takaful operator; 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 takaful operator, an undertaking given, by the applicant in respect of its Labuan takaful 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 takaful 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 takaful 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) Subparagraph (3)*(e)*(v) shall not apply to an application to carry on a Labuan captive takaful business where the policy owner is a related corporation or associate corporation of the Labuan takaful operator.

(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 information or documents specified by the Authority 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 a takaful licence, and in such event, the requirements of subsection (1) may be varied by the Authority as it deems appropriate.

Application for takaful licence to carry on Labuan takaful related activities

79. (1) Every applicant for a takaful licence to carry on business as a Labuan takaful manager, Labuan takaful underwriting manager or Labuan takaful 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 a takaful licence to carry on the business of Labuan takaful manager or Labuan underwriting manager—

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

(ii) the applicant has appointed, or will appoint, a licensed Labuan takaful manager or Labuan takaful underwriting manager in Labuan with adequate knowledge and experience of the Labuan takaful business to be carried on to act as its management in Labuan;

(d) in respect of an applicant for a takaful licence to carry on business as a Labuan takaful broker—

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

(ii) the applicant has appointed, or will appoint, a licensed Labuan takaful manager in Labuan with adequate knowledge and experience of the Labuan takaful business to be carried on to act as its management in Labuan;

(e) the applicant either has obtained or will obtain any professional indemnity insurance or professional indemnity takaful policy of not less than two million and five hundred thousand ringgit or its equivalent in any foreign currency or such other amount 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 will become a member of an association as prescribed by the Authority.

(2) Every application for a license to carry on business as a Labuan takaful manager, a Labuan takaful underwriting manager or a Labuan takaful 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 takaful 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 a takaful 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 takaful manager, a Labuan takaful underwriting manager or a Labuan takaful broker, as the case may be; 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 takaful operator, an undertaking given, by the applicant in respect of the business of a Labuan takaful manager, a Labuan takaful underwriting manager or a Labuan takaful 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 takaful manager, a Labuan takaful underwriting manager or a Labuan takaful 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 takaful manager, a Labuan takaful underwriting manager or a Labuan takaful 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 (2) may differ as between applicants, or different classes, categories or descriptions of applicants.

Grant of takaful licence

80. (1) Upon receiving an application for a takaful 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 takaful licence under subsection (1), the Authority shall issue the takaful licence to the applicant.

(4) The Authority may specify in the takaful licence the type of activities the takaful licensee may carry on.

(5) An applicant who is aggrieved by the decision of the Authority under subsection (1) when his application is rejected, may within thirty days of the decision being notified to him, appeal to the Minister in writing.

(6) A takaful licensee shall comply with any conditions imposed under a license granted pursuant to 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 the provisions of this Act.

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

Publication of list of all Labuan takaful licensees

81. (1) The Authority shall publish annually not later than 31 March of each year a list of all existing takaful 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 takaful licensees and their licence numbers.

(2) The list referred to in subsection (1) shall be contained in the same *Gazette* published by the Authority under section 106 of the Labuan Financial Services and Securities Act 2010.

Continuing licensing requirements

82. (1) Every Labuan takaful operator 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 takaful operator 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 takaful operator which is a foreign Labuan company or a branch of a Malaysian takaful operator 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, furnish to the Authority particulars in writing of such amendment, alteration or change duly authenticated in a manner acceptable to the Authority by its director.

(4) Every takaful 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 takaful licence.

(5) No Labuan takaful operator shall make any amendment or alteration to its constituent documents which are contrary to any written law.

(6) Where the Labuan takaful operator is a Labuan company, no participant of the Labuan takaful operator 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 takaful operator 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.

Chapter 3

Financial requirements and duties of and restrictions on takaful licencees

Appointment of actuary

83. Every Labuan takaful operator carrying on family takaful business shall appoint an actuary annually within such period as may be specified by the Authority.

Margin of solvency

84. Every Labuan takaful operator, including a takaful licensee which carries on Labuan captive takaful 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.

Segregation of takaful fund

85. (1) The assets of any fund established for any family takaful business and any general takaful business under this Act shall be kept separate from all other assets of the Labuan takaful operator, and shall not include any amounts on account of goodwill, the benefit of development expenditure or similar items not realizable apart from the business or part of the business of such Labuan takaful operator.

(2) For the purposes of this section, the assets from time to time representing any Labuan retakaful operator's deposit held by the Labuan takaful operator to meet liabilities of any fund established for any family takaful business or any general takaful business shall be treated with the agreement of the Labuan retakaful operator as assets of the fund.

Separate accounts to be kept by Labuan takaful operator

86. (1) Every Labuan takaful operator shall keep the accounts in respect of its Labuan takaful business separate from its other accounts.

(2) Every Labuan takaful operator which carries on both family takaful business and general takaful business shall keep the accounts in respect of its family takaful business separate from the accounts in respect of its general takaful business.

(3) Every Labuan takaful operator which is a branch of a Malaysian takaful operator shall keep the accounts in respect of its Labuan takaful business separate from the accounts in respect of its domestic takaful business carried on in Labuan.

Submission of financial statements

87. Every takaful licensee under this Part shall comply with the requirements with respect to the submission of financial statements as set out in the Third Schedule.

Subsidiaries and offices of takaful licensees

88. A takaful licensee under this Part may, subject to the prior written consent of the Authority or as may be permitted by the Authority from time to time, open any office other than its principal place of business in Labuan, or acquire or establish any subsidiary.

Restriction on business of takaful licensees by Labuan takaful operator

89. (1) No Labuan takaful operator shall carry on any business activities in Labuan or elsewhere from its office in Labuan other than its Labuan takaful business or business activities in connection with or for the purpose of such Labuan takaful business.

(2) Notwithstanding the definition of "Labuan takaful business" and subsection (1), a Labuan takaful operator may carry on the retakaful of domestic takaful business, including the retakaful of domestic takaful business transacted in ringgit and such other business as may be specified in writing by the Authority.

(3) No Labuan takaful operator shall act on behalf of another Labuan takaful operator as a Labuan takaful manager or Labuan takaful underwriting manager unless such first-mentioned Labuan takaful operator has been granted a takaful licence to carry on business as a Labuan takaful manager or Labuan takaful underwriting manager, as the case may be.

Restrictions on and duties of Labuan takaful manager, Labuan takaful underwriting manager and Labuan takaful broker

90. (1) No Labuan takaful manager shall provide any services other than administrative services and no Labuan takaful underwriting manager shall provide any services other than underwriting services.

(2) No Labuan takaful underwriting manager shall provide underwriting services to any person not licensed under this Act or to any business carried on by a takaful operator registered under the *Takaful Act 1984.

(3) A licensed Labuan takaful broker may handle the takaful or retakaful of domestic takaful 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 Labuan takaful manager or Labuan takaful underwriting manager who acts on behalf of a Labuan takaful operator shall maintain its own funds separate from the funds of the Labuan takaful operator and shall not apply the funds of such Labuan takaful operator to meet any of its expenses or liabilities other than in respect of the Labuan takaful business.

List of Labuan takaful operators to be supplied by Labuan takaful manager and Labuan takaful underwriting manager

91. Every Labuan takaful manager and Labuan takaful 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 takaful operators for whom such Labuan takaful manager provides administrative services or Labuan takaful underwriting manager provides underwriting services.

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

Conduct of business

92. (1) Every Labuan takaful operator shall—

(a) conduct its takaful business with due diligence and care in accordance with Syariah 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 such Labuan takaful operator 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 takaful licence.

(2) No Labuan takaful operator 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 takaful operators and their related business and activities or that Labuan takaful operator's financial status or takaful or retakaful plans or any other matter in respect of its Labuan takaful business.

(3) Paragraphs (1)*(a)* and *(d)* and subsection (2) shall apply with the necessary modifications to a Labuan takaful manager, Labuan takaful underwriting manager and Labuan takaful broker.

Chapter 4

Payment of policy monies under a family takaful policy and personal accident takaful policy

Application of this Chapter

93. In this Chapter, a reference to a policy is a reference to a family takaful policy in respect of the life of the policy holder including a life policy under section 23 of the Civil Law Act 1956 [*Act 67*], and a family takaful policy in respect of personal accident effected by a policy owner upon his own family providing for payment of policy moneys on his death.

Power to make nomination

94. (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 takaful operator 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 mentioned in subsection (1) for the Labuan takaful operator'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 takaful operator—

(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 takaful operator 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 takaful operator shall pay such persons in equal shares.

Revocation of nomination

95. (1) A nomination, including a nomination to which section 97 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 takaful operator shall pay the share of the deceased nominee to the remaining nominees in proportion to their respective shares.

Payment of policy monies

96. (1) Subject to subsection (2), where a policy owner dies having made a nomination, the Labuan takaful operator 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 takaful operator becoming aware of the death of the policy owner, the Labuan takaful operator 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 100 shall apply as though no nomination was made.

(4) Where a nominee, other than a nominee under section 97, dies after the death of the policy owner but before any policy monies has been paid to him as nominee, this section 95 or section 100 shall apply to the policy, as the case may be.

Trustee of policy monies

97. (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 takaful operator, 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 takaful operator 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 97

98. (1) A nominee, other than a nominee under section 97, 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 takaful operator 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

99. (1) Notwithstanding a nomination under section 94 or the creation of a trust under subsection 97(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 takaful operator 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

100. (1) Where a policy owner dies without having made a nomination, subject to section 99, the Labuan takaful operator shall pay the policy monies of the deceased policy owner to the applicant who produces the Grant of Probate, Letters of Administration or Distribution Order.

(2) Subject to subsection (1), the Labuan takaful operator 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 takaful operator may pay all that policy monies without requiring the Grant of Probate, Letters of Administration or Distribution Order—

(i) to a person who satisfies the Labuan takaful operator to be entitled and likely to be given the Grant of Probate, Letters of Administration or Distribution Order; or

(ii) to a person who satisfies the Labuan takaful operator to be beneficially entitled to the estate of thedeceased 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 as may be specified, the Labuan takaful operator 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, 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 takaful operator where there is no nomination.

(4) The Grant of Probate, 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 takaful operator to pay the policy monies to the person to whom the grant was made.

(5) The Labuan takaful operator may accept the Grant of Probate, 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, 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 takaful operator, a balance of the policy monies still remains payable and no claim has been made by a person who holds a Grant of Probate, Letters of Administration or Distribution Order, the Labuan takaful operator 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 takaful operator 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, 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

101. 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 takaful operator—

(a) in the case of a nominee under subsection 97(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 takaful operator that he will apply the policy monies for the maintenance and benefit of the nominee under subsection 97(1), or a person to whom policy monies are payable under subsection 100(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 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 100(2) or (6), shall pay to the Public Trustee or a trust company nominated by the Public Trustee.

Distribution of policy monies in due course of administration

102. A person to whom policy monies may be paid under section 100 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 no such will, in accordance with the law applicable to the administration, distribution and disposition of his estate upon his intestacy.

This Chapter to prevail over policy and any other written law

103. (1) This Chapter 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 Chapter.

(2) This Chapter shall have full 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.

Chapter 5

Winding-up

Winding-up of Labuan takaful operator

104. (1) The Authority shall be a party to any petition for the winding-up of any Labuan takaful operator.

(2) The Authority may present a petition for the winding-up of a Labuan takaful operator or its Labuan takaful 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 takaful operator.

(4) In any winding-up of a Labuan takaful operator, or when a Labuan takaful operator becomes insolvent, there shall be paid from the assets in the takaful fund or other funds of the Labuan takaful operator in priority to all other unsecured liabilities, the following liabilities in the following sequence:

(a) the costs and expenses of the winding-up, including the costs of the liquidator or the receiver;

(b) 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 takaful operator within a period of four months before the commencement of the winding-up;

(c) 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) 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) all amounts due in respect of contributions payable during the twelve months next before the commencement of the winding-up by the Labuan takaful operator 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) 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 liability has expired;

(g) all the liabilities and expenses attributable to its Labuan takaful business of the class for which the particular takaful fund is created; and

(h) the amounts required to make good any deficit in the other takaful funds after the liabilities and expenses attributable to the Labuan takaful business of the class to which the particular takaful fund referred to in paragraph *(g)* is applicable have been fully met.

(5) The liabilities in each class specified in subsection (4) shall rank in the order specified but liabilities of the same class shall rank equally between themselves, and shall be paid in full, unless the assets in the takaful fund of the Labuan takaful operator are insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(6) For the avoidance of doubt, the provisions relating to the winding-up as applied to a Labuan takaful operator shall not apply to any takaful fund which are segregated pursuant to section 85 and which shall not form part of the assets of the Labuan takaful operator.

(7) The provisions of this section shall have effect notwithstanding anything inconsistent therewith or contrary thereto in any other written law.

Part VIII

LABUAN ISLAMIC TRUSTS

Establishment of Labuan Islamic trusts

105. (1) A Labuan Islamic trust shall be a trust established under this section and in accordance with the requirements set out in the Labuan Trusts Act 1996 [*Act 554*], whereby the establishment of such trust is undertaken expressly with a view that its aims and operations shall be in compliance with Syariah principles.

(2) Unless otherwise provided, the provisions of the Labuan Trusts Act 1996 shall apply to any Labuan Islamic trust.

Assets of Labuan Islamic trusts

106. The trustee of a Labuan Islamic trust shall ensure that the assets of the Labuan Islamic trust do not include any property which is not permissible based on Syariah principles, and that the assets are managed and invested in a manner that is not in contravention of Syariah principles.

Part IX

LABUAN ISLAMIC FOUNDATION

Establishment of Labuan Islamic foundation

107. (1) A Labuan Islamic foundation shall be a foundation established under this section and in accordance with the Labuan Foundations Act 2010 whereby the establishment of such foundation is undertaken expressly with a view that its aims and operations shall be in compliance with Syariah principles.

(2) Unless otherwise provided, the provisions of the Labuan Foundations Act 2010 shall apply to any Labuan Islamic foundation.

Object and purpose

108. (1) The object and purpose of a Labuan Islamic foundation shall not include any object or purpose which are not in compliance with Syariah principles.

(2) A Labuan Islamic foundation shall not carry out any activity which is not in compliance with Syariah principles.

Charter

109. The charter of a Labuan Islamic foundation shall not include any element which is not in compliance with Syariah principles.

Assets

110. The officers of a Labuan Islamic foundation shall ensure that the assets of the Labuan Islamic foundation do not include any property which is not permissible based on Syariah principles, and that the assets are managed and invested in a manner that is not in contravention of Syariah principles.

PART X

LABUAN ISLAMIC LIMITED PARTNERSHIPS AND LABUAN ISLAMIC LIMITED LIABILITY PARTNERSHIPS

Establishment of Labuan Islamic limited partnership and Labuan Islamic limited liability partnership

111. (1) A Labuan Islamic limited partnership and Labuan Islamic limited liability partnership shall be established under this section and in accordance with the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, whereby the establishment of such partnership is undertaken expressly with a view that its aims and operations shall be in compliance with Syariah principles.

(2) Unless otherwise provided, the provisions of the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010 shall apply to any Labuan Islamic limited partnership and Labuan Islamic limited liability partnership.

Object and purpose

112. (1) The partnership agreement of a Labuan Islamic limited partnership and a Labuan Islamic limited liability partnership shall not include any object or purpose which are not in compliance with Syariah principles.

(2) A Labuan Islamic limited partnership and a Labuan Islamic limited liability partnership shall not carry out any activity which are not in compliance with Syariah principles.

Part XI

ISLAMIC SELF-REGULATORY ORGANIZATIONS

Declaration or recognition of an Islamic self-regulatory organization

113. (1) 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 an Islamic 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 enactment 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 an Islamic 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 an Islamic 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.

(2) The Authority may, by written arrangement, delegate a power or function of the Authority to an Islamic self-regulatory organization.

(3) The arrangement referred to in subsection (2), shall provide for—

(a) any power or function delegated to the Islamic self-regulatory organization by the Authority under subsection (2);

(b) the terms and conditions upon which the power or function has been delegated and may be exercised by the Islamic self-regulatory organization;

(c) the persons authorized to exercise the delegation on behalf of the Islamic 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 Islamic self-regulatory organization.

Rules of an Islamic self-regulatory organization

114. (1) An Islamic 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 an Islamic self-regulatory organization under subsection (1), and amendments thereto, shall be of no effect unless otherwise 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 an Islamic self-regulatory organization may make provision with respect to shareholding and voting rights in the Islamic self-regulatory organization in the interests of the members of the Islamic self-regulatory organization, the consumers, investors and of the users of their services.

Restriction on decision-making

115. An Islamic self-regulatory organization shall not make a decision under its rules that adversely affects the rights of a person unless—

(a) the Islamic self-regulatory organization has given the person an opportunity to make representations about the matter; or

(b) the Islamic 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 an Islamic self-regulatory organization

116. An Islamic 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 Islamic self-regulatory organization.

Powers to direct an Islamic self-regulatory organization

117. (1) The Authority may, after giving an Islamic self-regulatory organization reasonable opportunity to make representations about the matter, give a written direction to the Islamic 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) Subsection (1) shall not limit the directions that the Authority may give to an Islamic self-regulatory organization.

Termination of arrangements and revocation of declaration or recognition

118. (1) The Authority may revoke a declaration or recognition where—

(a) the Islamic 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 Islamic 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 Islamic 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 Islamic self-regulatory organization is involved in a financial crime; or

(e) the Islamic self-regulatory organization fails to comply with the direction of the Authority.

(2) The Authority shall not revoke a declaration or a recognition unless the Authority has notified the Islamic self-regulatory organization of its intention and the reason for the Authority's action, and has given the Islamic 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 an Islamic self-regulatory organization

119. Notwithstanding section 24 of the Labuan Companies Act 1990, an amendment to the constituent documents of an Islamic self-regulatory organization shall be of no effect unless it is approved by the Authority.

Protection for an Islamic self-regulatory organization

120. An Islamic self-regulatory organization, the officer or employee of an Islamic self-regulatory organization or a member of a committee of an Islamic 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 Islamic self-regulatory organization, including those delegated to it by the Authority.

Financial statements of an Islamic self-regulatory organization

121. (1) Within six months of the end of each financial year, the Islamic self-regulatory organization shall file with the Authority a copy, certified by the secretary as a true copy, of the financial statements of the Islamic 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 an Islamic self-regulatory organization has reason to believe that—

(a) there has been a material adverse change in the risks inherent in the business of an Islamic self-regulatory organization with the potential to jeopardize the ability of the Islamic self-regulatory organization to continue as a going concern;

(b) the Islamic 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 the Authority with respect to Islamic self-regulatory organization

122. For the purposes of this Part, the powers conferred to the Authority under section 117 shall apply equally with respect to any corporations or organizations declared or recognized by the Authority as an Islamic self-regulatory organization under section 113.

PART XII

GENERAL

Appeals

123. (1) Any person who is aggrieved by the decision of the Authority to refuse an application for a licence or registration or 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, an appeal made under subsections (1) and (3), does not suspend the decision being appealed against.

Revocation of consent, licence or registration

124. The Authority may revoke any consent, licence or registration made under this Act—

(a) at the request of the licensed entity;

(b) where the licensed entity—

(i) as ceased to carry on business in or from within Labuan;

(ii) 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) has been charged or convicted of an offence under this Act or of a criminal offence in any recognized country or jurisdiction;

(v) has knowingly and wilfully supplied false, misleading or inaccurate information or failed to disclose information required under this Act;

(vi) is carrying on business in a manner that the Authority reasonably believes to be detrimental to the public interest;

(vii) 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 an Islamic bank licensee or a takaful licensee, any guarantee or undertaking referred to in sections 63, 64, 78 and 79 has not been honoured; or

(x) for any other reasons as the Authority may in its discretion deem fit.

Revocation procedure

125. (1) Before revoking any licence or registration under section 124, 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 124, 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 takaful licence or an Islamic bank licence, the Authority shall, as soon as practicable, publish in one widely circulated Malaysian newspaper and one international financial newspaper a notice of every revocation of a takaful licence or an Islamic bank 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.

Surrender of licence

126. (1) Subject to this section, an Islamic bank licensee or takaful licensee may surrender its licence.

(2) Any Islamic bank licensee or takaful licensee intending to surrender its licence shall seek the prior approval of the Authority.

(3) The Authority shall give its approval if it is satisfied that the Islamic bank licensee or takaful licensee has made adequate provision in respect of all its liabilities, and thereupon shall appoint a date on which the surrender shall take effect.

(4) Where the approval of the Authority has been obtained under subsection (3), the Islamic bank licensee or takaful licensee shall, not later than twenty-one days before the date appointed under subsection (3), publish an advertisement of the proposed surrender of its licence 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 of a licence 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.

(6) Any Islamic bank licensee or takaful licensee granted a licence under this Act shall surrender its licence by giving fourteen days notice to the Authority prior to such surrender.

Consequences of revocation or surrender of licence

127. (1) Where the revocation of a licence or registration under section 124 or the surrender of a licence or registration under section 126 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 or surrender 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 subjected to the provisions of this Act as long as its liabilities remain unsatisfied or not otherwise provided for.

Transfer of business

128. (1) For the purposes of this section, any reference to "transferor" shall refer to a licensed entity under Part VI or VII transferring its business which requires it to be licensed under this Act and the "transferee" shall refer 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, to vest, by virtue of the scheme and without further assurance, in the transferee;

(b) in the case of a transfer of a takaful business, the registration by the transferee of policies transferred, for the amounts to be included in respect of those policies in the takaful fund operated by the transferee, 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 a takaful 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 family takaful business;

(c) each of the parties to the scheme shall furnish a copy of 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 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 of this Act 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 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 56/1965*], 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 subsections 420(2), (3) and (4) of the *National Land Code;

(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 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 section 171 of the Land Code of Sarawak [*Sarawak Cap. 81*].

**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 2020.

(19) An order of the Court under subsection (1) 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 judgments 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.

Additional licensing requirements of Islamic bank licensees and takaful licensees

129. The Authority shall not approve an application for an Islamic banking or takaful licence by any applicant under this Act unless it is satisfied that—

(a) the aims and operations of the business which such applicant desires to carry on will not involve any element which is not in compliance with Syariah principles; and

(b) there are, in the articles of association of such applicant, provisions for the establishment of an internal Syariah advisory board to advise such applicant on the operations of its business in order to ensure that its operations do not involve any element which is not in compliance with Syariah principles.

Establishment of internal Syariah advisory board for Islamic securities licensees and fund manager

130. (1) Each Islamic securities licensee and, fund manager regulated under Part IV, shall appoint qualified persons to their respective internal Syariah advisory board, and such Islamic securities licensee and fund manager regulated under Part IV shall notify the Authority in writing of such appointment.

(2) Notwithstanding the appointment under subsection (1), the Authority shall reserve the power at any time subsequent to such appointment to require any Islamic securities licensee or, fund manager regulated under Part IV, by way of notification in writing to such Islamic securities licensee or fund manager, to replace any member of the internal Syariah advisory board of such Islamic securities licensee or fund manager with another qualified person to the satisfaction of the Authority.

Syariah Adviser for Labuan Islamic trusts, Labuan Islamic foundation, Labuan Islamic limited partnership or Labuan Islamic limited liability partnership

131. (1) The trustee of a Labuan Islamic trust under this Act shall appoint a qualified person as a Syariah adviser, or consult a qualified person, to advise such trustee on the management and operations of the Labuan Islamic trust and ensure compliance with Syariah principles.

(2) The partners of a Labuan Islamic limited partnership or a Labuan Islamic limited liability partnership under this Act shall appoint a qualified person as a Syariah adviser, or consult a qualified person, who shall advise the Labuan Islamic limited partnership or the Labuan Islamic limited liability partnership on the management and operations of the Labuan Islamic limited partnership or the Labuan Islamic limited liability partnership and ensure compliance with Syariah principles.

(3) The officers of a Labuan Islamic foundation under this Act shall appoint a qualified person as a Syariah adviser, or consult a qualified person, who shall advise the Labuan Islamic foundation on the management and operations of the Labuan Islamic foundation and ensure compliance with Syariah principles.

(4) Notwithstanding subsections (1), (2) and (3), the Authority shall reserve the power at any time subsequent to any appointment of a Syariah adviser therein, to require any Labuan Islamic trust, Labuan Islamic limited partnership, Labuan Islamic limited liability partnership or Labuan Islamic foundation, by notification in writing, to replace the Syariah adviser with another qualified person to the satisfaction of the Authority.

(5) Notwithstanding subsections (1), (2), and (3), the Authority may specify that the Syariah adviser of a Labuan Islamic trust, Labuan Islamic limited partnership, Labuan Islamic limited liability partnership or Labuan Islamic foundation to conduct an internal Syariah compliance review of the business and operations of such Labuan Islamic trust, Labuan Islamic limited partnership, Labuan Islamic limited liability partnership or Labuan Islamic foundation.

Internal Syariah compliance review

132. The internal Syariah advisory board of an Islamic bank licensee, a takaful licensee, an Islamic securities licensee and, a fund manager regulated under Part IV, shall conduct an internal review of the business and operations of such Islamic bank licensee, takaful licensee, Islamic securities licensee and, fund manager regulated under Part IV, as the Authority may specify from time to time, for the purpose of ascertaining whether such business and operations are in compliance with Syariah principles.

External Syariah compliance review

133. (1) An Islamic bank licensee, takaful licensee, Islamic securities licensee and, a fund manager regulated under Part IV may engage, other than its internal Syariah advisory board, a qualified person to conduct an external review of its business and operations at its own discretion for the purpose of determining whether such business and operations are in compliance with Syariah principles, and such Islamic bank licensee, takaful licensee, Islamic securities licensee and, fund manager regulated under Part IV, shall be required to engage such qualified person to conduct such review upon being required to do so by the Authority via a direction to that effect being issued to such Islamic bank licensee, takaful licensee, Islamic securities licensee and fund manager regulated under Part IV.

(2) The Islamic bank licensee, takaful licensee, Islamic securities licensee and fund manager regulated under Part IV, shall submit a report containing the findings of the internal review of the internal Syariah advisory board referred to in subsection (1), as part of the submission of the financial statements of the Islamic bank licensee, takaful licensee, Islamic securities licensee and, fund manager regulated under Part IV, to the Authority under this Act or under the relevant Act, as the case may be.

Internal audit

134. (1) Every Islamic bank licensee and takaful 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 an Islamic bank licensee or a takaful 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 an Islamic bank licensee or the takaful licensee respectively and shall, at all times, be subjected to the requirements of section 139.

(3) An internal audit may be carried on by any persons except an external auditor of the Islamic bank licensee or takaful licensee, as the case may be, under section 135.

(4) An internal auditor shall immediately report to the Authority if, in the course of his duties as an internal auditor of an Islamic bank licensee or takaful 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 Islamic bank licensee or takaful licensee or any of its officers or employees; or

(b) any irregularity which jeopardizes the interests of the creditors of the Islamic bank licensee or the takaful licensee, or, in the case of the takaful licensee, the interests of the policy owners, or any other serious irregularity, has occurred.

(5) Any persons 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

135. (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) 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.

(3) 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.

(4) 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 VII), or creditors of the licensed entity, or any other serious irregularity, has occurred.

(5) For the purposes of this section, the Authority shall maintain a list of auditors.

(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.

Payment systems

136. (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 think 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) For the avoidance of doubt, no Labuan Islamic licensed institution shall be granted an approval to operate any payment system under this section.

Accounts and records

137. (1) A licensed entity under this Act shall cause to be kept proper accounting and other records as are sufficient to explain its transactions and disclose with reasonable accuracy, at any time, the 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 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 given to the director 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 wilful act, been the cause of any default by the licensed entity under this section, commits an offence under this Act.

(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 takes 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 prescribed by the Authority.

(7) Notwithstanding subsection (3), the Authority may in writing allow a licensed entity to keep accounting and other records outside of 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.

Examination and inspection of books and documents of licensed entities

138. (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 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 inspection carried out under paragraph (1)*(a)*.

Secrecy

139. (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) an Islamic mutual fund under Part IV;

(b) any customer of an Islamic bank licensee under Part VI;

(c) any policy owner under Part VII;

(d) an Islamic self-regulatory organization established under Part XI;

(e) 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) with respect to information relating to an Islamic mutual fund under Part IV, with the prior consent of the Islamic mutual fund and its investors concerned;

(d) with respect to information relating to the customers of an Islamic bank licensee under Part VI, with the prior written consent of the relevant customer or his personal representative;

(e) with respect to information of policy owners under Part VII, with the prior written consent of the relevant policy owner or his personal representative or in the course of placement of retakaful business; and

(f) with respect to the information relating to a licensed entity, with the prior written consent of the relevant 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 an Islamic 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.

Secrecy in relation to the Syariah Supervisory Council

140. (1) No member, officer, servant or agent of the Syariah Supervisory Council or person who has by any means access to any record, book, register, correspondence, document, material or information, relating to the business and affairs of the Syariah Supervisory Council in the performance of his duties or the exercise of his functions, shall give, divulge, reveal, publish or otherwise disclose to any person such record, book, register, correspondence, document, material or information unless he is lawfully required to do so by any court or under any written law.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Translation

141. 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 *Exchange Control Act 1953

142. (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 an Islamic 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 provisions of 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 under the *Exchange Control Act 1953.

**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* section 271 and 272 of Act 758.

Application of Capital Markets and Services Act 2007

143. (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 otf 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 transaction or activity that forms part of its activities licensed under this Act, when such transaction or activity is carried out in Labuan or outside Malaysia.

Application of Labuan Companies Act 1990 and *Companies Act 1965

144. (1) In addition to, and not in derogation of, the provisions of this Act—

(a) the Labuan Companies Act 1990 shall apply to—

(i) an Islamic bank licensee under this Part which is not a Malaysian Islamic bank licensee; and

(ii) a takaful licensee which is a Labuan company or a foreign Labuan company; and

(b) the *Companies Act 1965 shall apply to—

(i) a Malaysian Islamic bank licensee which is an office of a Malaysian bank established under that Act; and

(ii) a takaful licensee which is a branch of a Malaysian takaful operator.

**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.

(2) Where there is any conflict or inconsistency between the provisions of this Act and the Acts referred to in subsection (1) in their respective application to the respective licensed entity, 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 licensee, or any particular matter or circumstances, or generally, the Authority may resolve the same by a direction in writing.

Application of Labuan Financial Services Authority Act 1996

145. In the event of any inconsistencies between any provision of this Act and the provisions in the Labuan Financial Services Authority Act 1996, the latter shall prevail.

Non-application of certain laws

146. (1) No Islamic 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.

(2) No takaful 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 [*Act 553*] and the **Takaful Act 1984.

Protection against suit and legal proceedings

147. (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:

(a) the Minister;

(b) the Authority, any authorized officer, agent or servant of the Authority;

**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 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.

(c) any member, officer or committee of the Authority;

(d) the Syariah Supervisory Council; and

(e) 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 in 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, default done or omitted by it or him in such capacity.

General penalty

148. (1) A person who commits an offence under this Act or any regulations made under this Act for which no penalty is expressly provided shall, on conviction, 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.

(2) 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.

Offence by body corporate

149. 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, manager, secretary 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

150. (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.

(4) Any fees and penalties collected by or paid to the Authority under this Act shall form part of and credited into the fund established under section 29 of the Labuan Financial Services Authority Act 1996.

Procedure where none laid down

151. In the event that any act or step is required or permitted to be done or taken under this Act and no form is prescribed or procedure laid down either in this Act or the regulations made under this Act, 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 its directions shall be a valid performance of such act or step.

Misrepresentation

152. A person who—

(a) wilfully or recklessly makes a misrepresentation in any document, material or record 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 wilfully neglects to comply with any lawful direction given under such provisions,

commits an offence under this Act and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a period not exceeding three years or to both.

Enforcement

153. (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) any 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) any 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 terms, conditions, restrictions or limitations which have already been imposed;

(B) require the removal of any of the licensed entity's principal officer, officer 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

154. (1) The Authority may, with the written consent of the Public Prosecutor, compound any offence committed by any person under this Act by making a written offer to such person

to compound the offence upon payment to the Authority, within such time as may be specified in the offer, such amount not exceeding fifty per centum of the amount of the maximum fine for that 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) If 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 for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (1), no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made.

(5) Any money received by the Authority 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.

Service of documents

155. (1) Any document or notice required to be served by the Authority to a licensed entity, Islamic mutual fund, Labuan Islamic trust, Labuan Islamic foundation, Labuan Islamic limited partnership, Labuan Islamic limited liability partnership or Islamic self-regulatory organization may be served by leaving it at, or sending it by post, to the registered office of the licensed entity, Islamic mutual fund, Labuan Islamic trust, Labuan Islamic foundation, Labuan Islamic limited partnership, Labuan Islamic limited liability partnership or Islamic self-regulatory organization.

(2) Where document or notice has been served in accordance with subsection (1), the document or notice is deemed to have been properly served on the licensed entity, Islamic mutual fund, Labuan Islamic trust, Labuan Islamic foundation, Labuan Islamic limited partnership, Labuan Islamic limited liability partnership or Islamic self-regulatory organization.

Power of the Minister to make regulations

156. The Minister may 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

157. (1) The Minister may, on the written recommendation of the Authority, issue by notification in the *Gazette*, a direction—

(a) prohibiting the formation of any business or activities, including any class of business or activities thereof; or

(b) directing any 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

158. (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 in this Act and upon such publication, 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

159. The Minister may, on the recommendation of the Authority, exempt any licensed entity regulated under this Act or any person or any class of persons or any class of licensees or entities regulated under this Act 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*

160. 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 notice shall not in any manner affect the validity of the content, notification or order made therein.

Savings and transitional

161. (1) All regulations, orders, directions, notifications, exemptions and other subsidiary legislation, howsoever called, and 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 any law relating to Islamic financial services in Labuan before the commencement of this Act 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.

(2) Every direction, notice, guideline or circular issued by the Authority or the Minister under any law relating to Islamic financial services in Labuan before the commencement of this Act and in force immediately before the commencement of this Act, shall be deemed to have been lawfully issued under this Act in relation to the particular provision of this Act corresponding to the matter deal 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.

(3) 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 any law relating to Islamic financial services in Labuan before the commencement of this Act, and pending immediately before the commencement of this Act, 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 commencement of this Act.

(4) All transactions or dealings lawfully executed or entered into, and all business lawfully done, under or in accordance with any written law relating to Islamic financial services in Labuan before the commencement of this Act by a person who is approved or registered under any written law relating to Islamic financial services in Labuan before the commencement of this Act, 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 commencement of this Act, shall be deemed to continue to be lawful and valid under this Act.

(5) All legal proceedings, whether civil or criminal and agreements, contracts or any other legal binding arrangements made by the Authority, before the commencement of the Labuan Financial Services Authority (Amendment) Act 2008 [*Act A1337*], shall be deemed to have been made by the Authority.

(6) For the avoidance of doubt, the change of name of the Authority shall not affect the identity of the Authority or any rights or obligations of the Authority or render defective any proceedings by or against the Authority, and any legal proceedings that might have been continued or commenced by or against the Authority by the former name may be continued or commenced by or against the Authority by its new name.

(7) The existing Syariah Advisory Council of the Authority which was appointed by the Authority is deemed to have been validly appointed and shall continue to perform the functions for which it was appointed until a Syariah Supervisory Council is appointed in accordance with section 7.

(8) Any guideline, direction, directive, advisory, notice or circular issued or any act or thing done by the Authority in relation to Labuan Islamic banking business, Labuan takaful business or any other business which is in compliance with Syariah principles and is supervised and regulated by the Authority is deemed to have been validly issued or done.

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

First Column *(person)*	Second Column *(director)*	Third Column *(established)*	Fourth Column *(participant)*
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
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

First Column *(person)*	Second Column *(director)*	Third Column *(established)*	Fourth Column *(participant)*
Any other body, association or group of persons whether corporated 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

THIRD SCHEDULE

[sections 74 and 87]

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

Part A: Islamic bank licensee

(a) **Financial statements**

Within six month after the close of each financial year of an Islamic bank licensee, or such further period as the Authority may approve, an Islamic 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.

(b) **Statistics and information**

(1) Every Islamic bank licensee, at such frequency as may be specified by the Authority from time to time, shall submit to the Authority a statement showing the assets and liabilities of the Islamic bank licensee in relation to its Labuan Islamic banking business or Labuan Islamic investment banking business, as the case may be.

(2) A statement to be submitted under subsection (1) shall include—

(a) a statement specifying the total amount of financing facilities granted by the Islamic bank licensee to such customers of the Islamic bank licensee as may be specified by the Authority;

(b) a statement specifying the class, category or description of financing facilities given and the business or industry in which the customers of the Islamic bank licensee are involved;

(c) a statement showing that the Islamic bank licensee has complied with the requirements imposed upon it by section 74; 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 Islamic bank licensee as the Authority deems appropriate, aggregating the figures in the returns submitted under paragraph (1):

Provided that nothing in this subsection shall authorize the Authority to designate any particular Islamic bank licensee to constitute a category, class or description of Islamic bank licensee for the purposes of this subsection.

(4) Where any person is required by or under this Part to submit, produce or provide to the Authority any information, statistic, 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: Takaful licensee

(a) **Financial statements**

(1) Every Labuan takaful operator 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 takaful operations, four copies each of its audited annual balance sheet, profit and loss account, revenue account and, in respect of its family takaful business, a report setting out the actuarial valuation of its assets and liabilities as approved in accordance with its constituent documents.

(2) Every Labuan takaful operator 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 takaful operator 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 takaful manager, licensed Labuan takaful underwriting manager and licensed Labuan takaful 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 a takaful 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 705

LABUAN ISLAMIC FINANCIAL SERVICES AND SECURITIES ACT 2010

LIST OF AMENDMENTS

Amending law	Short title	In force from
A1655	Labuan Islamic Financial Services and Securities (Amendment) Act 2022	01-01-2019

LAWS OF MALAYSIA

Act 705

LABUAN ISLAMIC FINANCIAL SERVICES AND SECURITIES ACT 2010

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
13	A1655	01-01-2019
76	A1655	01-01-2019
90	A1655	01-01-2019

Hakcipta Pencetak (H)
PERCETAKAN NASIONAL MALAYSIA BERHAD
Semua Hak Terpelihara. Tiada mana-mana bahagian jua daripada penerbitan ini boleh diterbitkan semula atau disimpan di dalam bentuk yang boleh diperolehi semula atau disiarkan dalam sebarang bentuk dengan apa jua cara elektronik, mekanikal, fotokopi, rakaman dan/atau sebaliknya tanpa mendapat izin daripada **Percetakan Nasional Malaysia Berhad (Pencetak kepada Kerajaan Malaysia yang dilantik)**.

DICETAK OLEH
PERCETAKAN NASIONAL MALAYSIA BERHAD,
KUALA LUMPUR
BAGI PIHAK DAN DENGAN PERINTAH KERAJAAN MALAYSIA
WJW21/0876 27-07-2021