

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))**

INTERNATIONAL BANKING ORDER, 2000

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No. S 53

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))**

INTERNATIONAL BANKING ORDER, 2000

In exercise of the power conferred by section 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the International Banking Order, 2000 and shall commence on a day to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

(2) The long title of this Order is "An Order to provide for the regulation and licensing of bodies carrying on the business of international banking, and for connected purposes".

Interpretation.

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

"the Authority" means such person or body as is appointed by His Majesty the Sultan and Yang Di-Pertuan to be the Authority for the purposes of this Order;

"bank" means an institution which carries on banking business; and for the purposes of this Order includes all branches and offices in Brunei Darussalam of such an institution;

"banking business", in relation to an institution, includes the taking of deposits from the public in the form of current or savings accounts and the granting of credits, and without limitation includes the issue of credit cards, money collections and transmissions, foreign exchange transactions, the issue of guarantees, trade finance, development finance and sectoral credits, consumer credit, investment banking and Islamic banking business, broking and risk management services whether such business is in any case conducted by

conventional practices or using Internet or other electronic technology and includes electronic banking;

"broking and risk management services" means on own or customers account in, from or within Brunei Darussalam trading in stocks, shares and securities undertaking money market, financial futures and options and foreign exchange transactions, interest rate transactions dealings in transferable securities of any description derivative instruments or derivative financial instruments or any risk management activities;

"capital funds" means paid-up capital and reserves and any other sources of capital as may be prescribed;

"controller" and references to different descriptions of controller shall be construed in accordance with Part I of the First Schedule;

"deposit" shall be construed in accordance with subsections (2) and (3), "deposit liability" means liability in respect of a deposit (as so construed), and "depositor" and related expressions shall be construed accordingly;

"director" includes any person occupying the position of director of a company, by whatever name called, and includes an alternate or substitute director;

"foreign international company" means a body corporate, however constituted, under the law of a country or territory outside Brunei Darussalam and duly registered under Part XI of the International Business Companies Order, 2000;

"full", "investment", "Islamic" and "restricted", in relation to a licence, shall be construed in accordance with section 7;

"institution" means a company incorporated or registered under the Companies Act (Chapter 39), an international business company or a foreign international company;

"international banking business" shall be construed in accordance with subsection (4);

"international business company" has the same meaning as in the International Business Companies Order, 2000;

"international investment banking business" means the business of —

- (a) providing consultancy and advisory services relating to corporate and investment matters, industrial strategy and related questions, and advice and services relating to mergers and restructuring and acquisitions, or making and managing investments on behalf of any person;
- (b) providing credit facilities including guarantees and commitments;

- (c) participation in stock, or share issues and the provision of services relating thereto; or
- (d) the arrangement and underwriting of debt and equity issues.

"international Islamic banking business" shall be construed in accordance with subsection (5);

"international limited partnership" has the same meaning as in the International Limited Partnerships Order, 2000;

"international trust" has the same meaning as in the International Trusts Order, 2000;

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

"licence" means a licence granted under section 6;

"licensee" means a bank which is for the time being the holder of a licence;

"minimum amount" means such amount of capital funds to be maintained by licensee as may be prescribed;

"the Minister" means the Minister of Finance;

"place of business", in relation to an institution, includes a head or main office, a branch, an agency, a representative office and any other office or place used by the institution (including one used only for a limited period) for the conduct of banking business;

"prescribed" means prescribed by regulations under section 31;

"written law" includes all Acts, Enactments and Proclamations, and subsidiary legislation, or any part thereof, but does not include any Act of Parliament not any Order of Her Britannic Majesty in Council, Royal Charter or Royal Letter Patent nor any law which no authority in Brunei Darussalam is empowered to amend;

(2) Subject to subsection (3), in this Order a "deposit" is a sum of money paid on terms under which it will be repaid (with or without interest margin, yield, mark-up or premium), and either on demand or on such terms at such time or in such circumstances agreed by or on behalf of the person making the payment and the person receiving it.

(3) Notwithstanding subsection (2), a sum of money is not a deposit if —

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

- (b) it is paid by way of security for payment for the provision of property or services provided or to be provided by the person by whom or on whose behalf the money is accepted;
- (c) it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or in any other manner;
- (d) it is a sum of money that is a loan made by a person in the course of a business of lending money carried on by him, to any other person, except a licensee or a bank which is licensed under the Banking Act (Chapter 95) or the Islamic Banking Act (Chapter 168); or
- (e) it is a sum of money that is paid by one institution to another at a time when one of them is a subsidiary or affiliate of the other or both are subsidiaries or affiliation of another institution in terms of the definition of subsidiary, parent, holding an affiliate institutions set forth in Part II of the First Schedule.

(4) For the purposes of this Order, "international banking business" is banking business which does not (except with the prior written consent of the Minister in each case given on such conditions as he considers desirable) involve —

- (a) taking deposits from, leading money to or otherwise conducting banking business with any person resident in Brunei Darussalam, other than —
 - (i) a licensee;
 - (ii) an international business company;
 - (iii) a foreign international company;
 - (iv) an international limited partnership;
 - (v) an international trust; or
 - (vi) a person licensed under the Registered Agents and Trustees Licensing Order, 2000; or
- (b) making available accounts denominated in, lending money in or otherwise conducting banking business in the currency of Brunei Darussalam.

(5) (a) For the purposes of this Order, "international Islamic banking business" is international banking business conducted by an institution which may be foreign-owned or controlled but whose aims or operations shall not be detrimental to the interests of Islamic banking business.

PART II

LICENSING OF INTERNATIONAL BANKING BUSINESS

International banking business restricted to licensees.

3. (1) Subject to Part VI no person shall provide, carry on, or purport to carry on, in or from within Brunei Darussalam, whether or not such business is carried on, or purports to be carried on, within or outside Brunei Darussalam, international banking business unless —

- (a) he holds for the time being a valid licence granted by the Authority under this Order authorising him to carry on such business; or
- (b) he is an exempt person under section 34(1); or
- (c) the business is an exempt activity under section 34(1).

(2) Without prejudice to the generality of subsection (1) and in addition to the prohibition set out there, no person other than a licensee shall, without the written consent of the Authority —

- (a) use any word, either in English or in any other language, in the name, description or title under which such person carried on business in or from within Brunei Darussalam or otherwise that, in the opinion of the Authority, connotes the business of international banking business as described in Order; or
- (b) make or continue to make any representation in any billhead, circular, letter, letterhead, paper, notice, advertisement or in any other manner that is likely to suggest that such person is licensed to carry on the business international banking business as described in this Order.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred thousand dollars and to imprisonment for a term not exceeding eighteen months and, in the case of a continuing offence, to a further fine not exceeding one thousand dollars for every day on which the offence continues after conviction.

Application for a licence.

4. (1) An institution which desires to carry on international banking business or international Islamic banking business in or from within Brunei Darussalam shall, in the prescribed form, make an application to the Authority for a licence, such application to contain or be accompanied by the prescribed application fee and —

- (a) the name of the institution, the names and home addresses of the directors and a copy of the Memorandum of Association and Articles of Association

or other instrument under which the institution is incorporated or constituted;

- (b) the identities of every person (if not referred to above) who is to be a director or controller of the institution or a manager of its business;
- (c) a copy of the audited financial statements and annual report of the institution for the three years preceding the application or such lesser period as the Authority may agree to where such accounts and reports are unavailable;
- (d) particulars of any name (other than that of the institution itself) under which it proposes to carry on its business;
- (e) an undertaking appropriate to the class of licence sought in a form acceptable to the Authority which may impose different undertakings for different circumstances as to the persons or description of persons (subject to section 2(5) of this Order being in either case persons not resident in Brunei Darussalam) to or for whom the institution proposes to provide international banking business, and as to the service and activities proposed to be offered to and with such persons;
- (f) a business plan in respect of the first three years of activities proposed under the license sought;
- (g) where applicable, the written approval of the home authority;
- (h) such other documents, if any, as may be prescribed.

(2) After receiving an application under subsection (1), the Authority may require the applicant to submit such further information as the Authority reasonably considers necessary or desirable to enable the application to be fully assessed for the purposes of this Order.

(3) Any person who, in connection with an application for a licence, wilfully knowingly or recklessly furnishes any document or information which is false in a material particular shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred thousand dollars, imprisonment for a term not exceeding two years or both.

Criteria for granting or refusing licences.

5. (1) In considering whether to grant a licence, the Authority shall have regard to —
- (a) the need to protect the interests of depositor, customers, other creditors, and potential depositors, customers and other creditors; and
 - (b) the need to protect the security, reputation and economic interests of Brunei Darussalam in relation to financial matters.

(2) Without prejudice to the generality of subsection (1), the Authority shall not grant a licence unless the Authority is satisfied that —

- (a) the applicant institution either enjoys a high reputation in the community or will be able to do so if a licence is granted;
- (b) in the case of an international Islamic bank, that the institution will comply with the doctrines of the Islamic Religion, and that proper provision is made in the institutions constituting documents for the appointment of and provision of advice by the appropriate Shari'ah Council;
- (c) the capital funds unimpaired by losses or otherwise of an applicant institution are such and will be maintained as may be prescribed;
- (d) every person who is or is to be a director, controller, of the institution or a manager, senior officer or financial controller of its business is a fit and proper person to hold that position;
- (e) the institution will maintain a place of business within Brunei Darussalam and that place of business will be managed by a person resident in Brunei Darussalam who is a director of the institution;
- (f) except as permitted by this Order the institution will conduct no banking business other than international banking business;
- (g) the institution has demonstrated it will be able to meet such minimum capital requirements as may be prescribed;
- (h) at least two of the persons referred to in paragraph (d) will effectively direct the business of the institution in Brunei Darussalam; and
- (i) the name of the institution and any other such name as is referred to in section 4(1)(d) is not such that it may in any respect mislead potential depositors or other creditors, that it is not for any other reason undesirable and that neither the Registrar of Companies nor the Registrar of International Business Companies objects to such name.

(3) In determining for the purposes of subsection (2)(d) whether a person is a fit and proper person to hold a position, regard shall be had to —

- (a) his probity;
- (b) his competence and soundness of judgment for fulfilling the responsibilities of the position;
- (c) leave in responsibilities including, without limitation, the due diligence he is likely to conduct and fulfil

- (i) in respect of customers, based on the principle of "know the client", and
- (ii) in respect of the sources, destination and application of customer funds; and
- (d) whether the interests of potential depositors, investors, customers and parties to transactions or the reputation of Brunei Darussalam are, or are likely to be, in any way prejudiced by his holding that position;

and, without prejudice to the generality of paragraphs (a) to (d), regard may be had to his previous experience, record, conduct and activities in business or financial matters.

(4) without prejudice to the generality of subsections (1) and (2), the Authority shall not grant a licence to an applicant institution if it appears to the Authority that —

- (a) the institution is closely linked with any person; and
- (b) those close links with that person or any matter relating to any laws of a jurisdiction outside Brunei Darussalam or administrative provisions to which that person is subject are such as would (were a licence to be granted to the institution) prevent the effective exercise by the Authority of the Authority's supervisory functions, whether exercisable within Brunei Darussalam or elsewhere in relation to the institution.

(5) For the purposes of subsection (4), an institution is closely linked with —

- (a) any person who is or, if he were an undertaking, would be its parent undertaking;
- (b) any undertaking which is a subsidiary undertaking of the institution;
- (c) any undertaking which is or, if any person falling within paragraph (a) were an undertaking, would be a fellow subsidiary undertaking (as defined in Part II of the First Schedule); and
- (b) any person in accordance with whose directions or instructions the directors of the institution are accustomed to act;

and any reference to the institution's close links with any person shall be construed accordingly.

Determination of application for a licence.

6. (1) On receipt of an application under section 4(1), the Authority shall within a period of three months issue a decision granting or refusing the licence applied for.

(2) A decision under subsection (1) shall be final and, where the decision is to refuse a licence —

- (a) no reason need be given for the refusal; and
- (b) no appeal shall lie against the refusal nor shall the decision be subject to proceedings by way of judicial review.

(3) Notwithstanding subsection (2) no refusal shall prejudice the ability of an applicant to make a fresh application, provided that no such fresh application is made within three months of the date of refusal.

Categories of licences and fees.

7. (1) A licence shall be one of the following four types —

- (a) a full international license for the purpose of carrying on international banking business generally;
- (b) an international investment banking licence for the purpose of carrying on international investment banking business,
- (c) an international Islamic banking licence for the purpose of carrying on international Islamic banking business, granted in respect of international banking business in terms of subsections (1)(a), (1)(b) or (1)(d) of this section.
- (d) a restricted international banking licence for the purpose of carrying on international banking business subject to the restriction that the licensee may not offer, conduct or provide such business except to or for persons named or described in the undertaking accompanying the application for the licence, as mentioned in section 4(1)(e).

(2) Subject to this Order, the grant of a licence under paragraphs (a), (b), (c) or (d) of subsection (1) shall in each case be subject to the restriction that the licensee may not offer, conduct or provide international banking business except in respect of the services named or described in the undertaking accompanying the application for the licence, as mentioned in section 4(1)(e).

(3) Every licensee shall pay such annual licence fee or fees as may be prescribed;

(4) The manner of payment of a licence fee shall be as specified by the Authority.

(5) Where a provision of this Order conflicts with Shari'ah law in relation to an Islamic Banking Licence of whatever class, the principles of Shari'ah specified by the appropriate Shari'ah Council shall, subject to sound banking practice, prevail.

Conditions of licences.

8. (1) In granting a licence, the Authority may impose such conditions as he thinks fit.
- (2) It shall be a condition of every licence —
- (a) that the Authority shall continue to be satisfied as to the matters in section 5;
 - (b) that the licensee shall obtain the written consent of the Authority in writing of any change in the licensee's place of business or of any director or manager respectively resident in Brunei Darussalam and directing or managing the business, as mentioned in section 5(2)(d);
 - (c) that the licensee will not open any account for any person without first conducting due diligence in respect of persons with whom the licensee is dealing and satisfying itself on a best endeavours basis that funds received or to be received are clear funds originating from a reputable source;
 - (d) that, in carrying on its business, the licensee will at all times maintain within Brunei Darussalam adequate accounting and other records of its business and adequate systems of control of its business and records; and
 - (e) that the licensee will comply with such requirements as may be prescribed with respect to such matters as the Authority may from time to time consider to be appropriate for the purposes of this Order.
- (3) Every undertaking given pursuant to section 4(1)(e) shall be deemed to be a condition of the licence to which it refers.
- (4) The Authority may at any time vary or revoke any conditions of a licence imposed under subsection (1) or impose conditions or additional conditions thereon.
- (5) Prior to taking action under subsection (4), the Authority shall notify this intention to take action to the licensee concerned and shall give the licensee an opportunity to submit within such period, being not less than fourteen days, as may be specified in the notification reasons why the conditions of the licence should not be so varied or revoked or, as the case may be, why conditions or additional conditions should not be so imposed.
- (6) A licensee which is aggrieved by any action taken by the Authority under subsection (4) may appeal to the High Court against the variation, revocation or, as the case may be, the imposition of the conditions or additional conditions.
- (7) A licensee which fails to comply with any of the conditions of its licence shall be guilty of an offence and liable on conviction to a fine not exceeding fifty thousand dollars and, in the case of a continuing offence, to a further fine of not exceeding one thousand dollars for every day on which the offence continues after conviction.

Notice of change of relevant particulars.

9. (1) Whenever, after a licence is granted, a material change occurs in the particulars which were contained or supplied in either case pursuant to section 4 in the application for the licence, the licensee shall, as soon as practicable, give notice in writing to the Authority specifying the nature and circumstances of the change.

(2) A licensee which contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding fifty thousand dollars and, in the case of a continuing offence, to a further fine not exceeding one thousand dollars for every day on which the offence continues after conviction.

Notification of becoming new or increased controller.

10. (1) Where the licensee is an international business company or is incorporated under the Companies Act (Chapter 39), no person shall become an indirect ten per cent, twenty per cent, thirty-three per cent, or majority controller of a licensee unless he has served on the Authority a written notice that he intends to become such a controller and the Authority has given its prior written approval.

(2) Where the licensee is a foreign international company or is registered under Part IX of the Companies Act (Chapter 39), a person who becomes, or ceases to be an indirect ten per cent, twenty per cent, thirty-three per cent, or a majority controller of a licensee shall prior to, or within thirty-one days of acquiring, disposes of such an interest, notify the Authority in writing of such acquisition or disposal, giving in every case the percentage of shares (if any) retained by him.

(3) In any case to which subsection (2) applies, the Authority may consider whether the criteria set forth in section 5 have been materially adversely affected. In the event that the Authority determines that such criteria have been so materially adversely affected, the Authority may exercise the powers set forth under subsection (2) of section 23, subject to the terms of subsections (3) to (7) inclusive of that section, and notwithstanding that none of the events referred to in subsection (1) of section 23 has occurred.

Contravention of section 10.

11. (1) A person shall be guilty of an offence if he knowingly contravenes section 10 by —

- (a) failing to seek the consent of the Authority or, as the case may be, failing to serve notice on the Authority as required by that section; or
- (b) becoming a controller of a description falling within that section without the consent of the Authority under section 10(1) or notifying the Authority in accordance with section 10(2).

(2) A person guilty of an offence under subsection (1) shall be liable on conviction to a fine not exceeding one hundred thousand dollars and to imprisonment for a term not exceeding two years.

Notification of controllers, etc., by licensee.

12. (1) At least once in each calendar year, every licensee shall give to the Authority written notice of the name of every person who, to the knowledge of the licensee, is, at the date of the notice, a controller of the licensee.

(2) In relation to each person named in a notice under subsection (1) as a controller of a licensee, the licensee shall state to the best of its knowledge —

- (a) whether he is an indirect ten per cent, twenty per cent, thirty-three per cent or majority controller;
- (b) what percentage of shares of the licensee he holds, either alone or with any associate or associates; and
- (c) what percentage of the voting power at a general meeting of the licensee he is entitled to exercise, or control the exercise of, either alone or with any associate.

(3) The Authority may at any time by notice in writing require a licensee —

- (a) to give such a notice as is referred to in subsection (1); or
- (b) to obtain from any shareholder of the licensee and to transmit to the Authority information —
 - (i) as to whether that shareholder holds voting shares in the licensee as beneficial owner or as trustee; and
 - (ii) if he holds them as trustee, to indicate as far as it can the person for whom he holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

(4) A licensee which fails to comply with subsection (1) or with a notice under subsection (3) shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand dollars.

Surrender of licence.

13. (1) if a licensee ceases to carry on the business in respect of which its licence was granted, the licensee may apply to the Authority to surrender its licence.

(2) On an application under subsection (1), the Authority may approve the surrender of the licence if —

- (a) it is satisfied, on evidence produced by the licensee or otherwise, that the licensee has repaid, assigned or otherwise disposed of (as may be appropriate) all deposits or other funds which it held or administered and has likewise appropriately diversified itself of any other property held other than in its own right; or
- (b) the licensee is being wound up voluntarily and the Authority is satisfied, on evidence produced by the licensee or otherwise, that the licensee is solvent and is able on demand to repay all deposits held by it and all its other creditors.

(3) If an application is made under subsection (1) in a case where the licensee is being wound up voluntarily, the Authority may stay that application and request the Attorney General to apply to the High Court for an order that the licensee be wound up in accordance with Part V of the Companies Act (Chapter 39), either by the Court or subject to the supervision of the Court (and in this subsection "the Court" has the same meaning as in that Act).

(4) In the case of a licensee which is an international business company, the reference in subsection (3) to Part V of the Companies Act is a reference to that Part as it applies to such a company by virtue of the International Business Companies Order, 2000.

PART III

ADMINISTRATIVE PROVISIONS

General functions of the Minister and the Authority.

14. (1) Under the supervision of the Minister, the Authority shall be responsible for ensuring the proper administration of this Order.

(2) In addition to any functions conferred on it by or under any other provisions of this Order, the Authority shall have the following functions —

- (a) where it thinks fit or when required to do so by or under this Order or any other written law, the Authority shall examine by way of the receipt of regular returns or in such other way as it thinks fit the affairs or business of any licensee for the purpose of determining that all the requirements of this Order are being met and that the licensee is carrying on its business in a satisfactory manner;
- (b) where it has reasonable grounds to believe that a licensee or any director or other officer of a licensee has or may have contravened any of the provisions

of this Order or any other of the laws of Brunei Darussalam, the Authority shall conduct or assist in the investigation of that contravention;

- (c) the Authority may examine the accounts of licensees of which copies are required to be sent to it under this Order,

(3) Subject to section 17, nothing in this Order authorises the Authority to inquire specifically into the identity, accounts or affairs of any specific customer of a licensee, and the following provisions of this Part shall be construed accordingly.

Powers to obtain information and documents, etc.

15. (1) The Authority may be notice served on a licensee —

- (a) require the licensee to provide the Authority, at such times or at such intervals or in respect of such period or periods as may be specified in the notice, with such information as the Authority may reasonably require for the performance of his functions under this Order;
- (b) require the licensee to provide the Authority with a report by a nominated or approved accountant, legal counsel or other person with relevant professional skill on, or on any aspect of, any matter about which the Authority has required or could require the licensee to provide information under paragraph (a);

and a notice under this subsection may require the information or report to be in such form as is specified in the notice.

(2) In subsection (1)(b) "nominated or approved" means nominated or approved by the Authority.

(3) The Authority may —

- (a) by notice in writing served on a licensee, a director or other officer require the licensee or such director or officer to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;
- (b) authorise a person appointed by the Authority (in this section referred to as "the appointee"), on production of his authority, to require the licensee to provide the appointee forthwith with such information or to produce to the appointee forthwith such documents as he may specify,

being such information or documents as the Authority may reasonably require for the performance of his functions under this Order.

(4) Where, by virtue of subsection (1), the Authority or any appointee has power to require the production of any documents from a licensee, the Authority or appointee shall have the same power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom production of any documents is required under this section claims a lien on documents produced by him, the production shall be without prejudice to that lien.

(5) Any power under this section to require a person to produce documents includes power —

- (a) if the documents are produced, to take copies of them or extracts from them and to require the person in question or, where that person is an institution, any other person who is a present or past director, controller or manager of, or is or was at any time employed by or acting as an employee of, that institution, to provide an explanation of them; and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) The Authority may by notice in writing served on any person who is or is to be a director, controller or manager of a licensee, require him to provide to the Authority, within such time as may be specified in the notice, with such information or documents as the Authority may reasonably require for determining whether he is a fit and proper person to hold the position which he holds or is to hold.

(7) A statement made by a person in compliance with a requirement imposed by this section may be used in evidence against him.

(8) Nothing in this section entitles the Authority to require any person to furnish information in circumstances which would give rise to a contravention by him of section 18(1).

Assistance to designated supervisory authority.

16. (1) The Authority may exercise any of the powers conferred by section 15 for the purpose of assisting a designated supervisory authority in the performance of any of its material supervisory function.

(2) Where subsection (1) applies —

- (a) any reference in section 15 to the functions of the Authority under this Order includes a reference to the material supervisory functions of the designated supervisory authority; and
- (b) the references in section 15(1)(a) to the Authority include a reference to a duly appointed senior officer or agent of a designated supervisory authority.

(3) Any reference in this Part to a designated supervisory authority is a reference to that authority which, in a country or territory designated by the Minister for the purposes of this Order, exercises in that country or territory functions corresponding to those of the Authority under this Order or the Minister under the Banking Act (Chapter 95) or the Islamic Banking Act (Chapter 168) and, in relation to such an authority, "material supervisory functions" means functions which so correspond.

(4) The Minister shall not designate any country or territory for the purposes of this Order unless he is satisfied that the supervisory authority there is subject to provisions of confidentiality which are at least equivalent to those which apply to the Authority, whether under this Order or otherwise.

(5) Any reference in section 15 to a licensee includes a reference to —

- (a) any institution which has been a licensee;
- (b) any person who is or was an associate, director, manager, officer or a controller of a licensee or former licensee;
- (c) any undertaking which is a parent or subsidiary undertaking of a licensee or former licensee; and
- (d) any undertaking with which a licensee or former licensee is closely linked.

Contravention of Order, serious crime, money-laundering.

17. (1) If it appears to the Authority that there are reasonable grounds for suspecting that there is or is likely to be a contravention of any provision of this Order, or of any other written law or if there is likely to be an offence in Brunei Darussalam to which the Emergency (Drug Trafficking) (Recovery of Proceeds) Order, 1996 (S12/96) or the Criminal Conduct (Recovery of Proceeds) Order, 2000 applies, or the Money-Laundering Order, 2000, he may apply to the High Court for an order under this section.

(2) An order under this section may confer on the Authority such powers as the High Court considers appropriate in the circumstances in order to protect the interests of depositors or other creditors, customers, investors and parties to transactions respectively of and with a licensee or to protect the reputation of Brunei Darussalam in relation to financial and security matters, or for any other reason.

(3) The High Court may make the exercise by the Authority of any powers conferred under this section subject to such conditions as the Court thinks fit, including conditions as to confidentiality, the making of reports or further applications to the Court.

(4) Any person who obstructs the exercise of any power conferred on the Authority under this section shall be guilty of an offence and liable on conviction to a fine not exceeding fifty thousand dollars and to imprisonment for a term not exceeding three years.

- (5) A person who knows or suspects that —
- (a) an investigation or search is being or is likely to be carried out under this section; or
 - (b) that information or documents are being or are likely to be required under sections 15 and 16 or otherwise,

shall be guilty of an offence if —

- (i) he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction of or disposal of, information or documents which he knows or suspects are or would be relevant to such an investigation or are or would be required or,
- (ii) knowing or suspecting that an investigation or requirement to require information documents to be produced as set forth in either (a) or (b) of this subsections, warns or advises, or attempts to warn or advise, any person who has any knowledge or information, or has access thereto, of an impending investigation or the seeking of documents or information,

unless he proves that he had no intention of concealing facts disclosed by the information or documents from persons carrying out such an investigation or requiring such information or documents. A person guilty of an offence under this subsection shall be liable on conviction to a fine not exceeding two hundred thousand dollars imprisonment for a term not exceeding two years or both.

Confidentiality of customer accounts.

18. (1) Except as provided by subsection (5) and section 19, not official of a licensee (including a director or an employee) and no person who, by reason of his professional relationship with a licensee, has by any means access to the records of a licensee or any registers or correspondence or material with regard to the account of an individual customer of that licensee shall, at any time (whether while he continues as such an official or while his professional relationship continues or thereafter) give, divulge or reveal any information whatsoever regarding the moneys or other relevant particulars of the account of that customer.

(2) In subsection (1), "professional relationship" includes a relationship between a bank and a computer bureau, being a relationship which has been approved by the Authority, and such other relationship with a bank as the Authority may from time to time decide.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred thousand dollars and to imprisonment for a term not exceeding two years, and any such contravention shall constitute

a breach of statutory duty actionable at the suit of any person who suffers loss or damage by virtue of the contravention.

(4) The provisions of this section and of sections 17 and 19 shall have effect in place of any rule, whether arising under the common law or otherwise, with respect to banking secrecy or confidentiality and the exceptions thereto.

(5) Subsection (1) does not apply where the information relates to credit facilities granted by a licensee incorporated outside Brunei Darussalam and is required by the Authority for the exercise of his functions under this Order in relation to the licensee.

Exceptions from confidentiality requirements.

19. (1) Section 18 does not apply to any information relating to the account of a customer of a licensee if —

- (a) the customer or his personal representative gives written permission to the disclosure of the information;
- (b) the customer is declared bankrupt or, if the customer is a company, is being wound up;
- (c) the disclosure of the information is ordered by the Court for the purposes of civil proceedings within Brunei Darussalam;
- (d) the officials of a licensee by compulsion of this Order or any relevant written law are required to give information to the Authority, or to a police officer or a public officer who is duly authorised under that law to obtain that information, or to a court in the investigation or prosecution of a criminal offence under any such law;
- (e) the licensee has been served with a garnishee order attaching moneys in the account of the customer;
- (f) the licensee is incorporated outside Brunei Darussalam and the information relates solely to —
 - (i) credit facilities granted by the licensee; or
 - (ii) foreign exchange, money market or any other transaction between the licensee and other banks, whether in or outside Brunei Darussalam, or such other financial institutions as may be determined by the Authority from time to time,

and the information is required by the head office of the licensee;

- (g) the information is required to assess the credit worthiness of a customer in connection with or relating to a *bona fide* commercial transaction or a

prospective commercial transaction so long as the information is of a general nature and in no way related to the details of the customer's account;

- (h) the customer has died, whether testate or intestate, and the information is required by his appointed personal representative or and person entitled to letters of administration, solely in connection with an application for a grant of probate or letters of administration;
- (i) a customer who has been issued with a credit or charge card by a bank has his card suspended or cancelled by the bank by reason of his default in payment and the bank discloses information relating to the customer's name and identity, the amount of his indebtedness and the date suspension or cancellation of his credit or charge card to other banks and financial institutions issuing credit or charge cards in Brunei Darussalam;
- (j) the information relates solely to credit facilities granted by a bank licensed hereunder or otherwise licensed in Brunei Darussalam and the information is required by another such bank; or
- (k) in accordance with such conditions as the Authority may determine, information of such class or classes as the Authority may from time to time approve is transmitted from the licensee to a parent undertaking incorporated under the law of a country or territory outside Brunei Darussalam, solely for the purposes of carrying out collation, synthesis or processing of the information by the parent undertaking for the licensee.

(2) In any such proceedings as are referred to in paragraphs (b), (c) or (e) of subsection (1) where information is likely to be disclosed in relation to a customer's bank account, the proceedings may, if the Court, of its own motion or on the application of any party to the proceedings, so orders, be held in camera and the information shall be confidential as between the Court and the parties thereto.

(3) Where an order is made under subsection (2) in relation to any proceedings, no person shall publish the name, address or photograph of any parties to the proceedings or any information likely to lead to the identification of the parties thereto either during the currency of the proceedings or at any time thereafter.

(4) A bank or other institution or any of its officers or employees, receiving any information pursuant to subsections 1(i) or 1(j) shall not disclose the information to any person.

(5) Any person who contravenes subsections (3) or (4) shall be guilty of an offence and liable on conviction to a fine not exceeding twenty thousand dollars and to imprisonment for a term not exceeding two years.

(6) Every decision of the Court in respect of any proceedings concerning the application or interpretation of this Order may be published or reported for the purposes of affording a record of those proceedings, provided that in every case —

- (a) the written decision of the Court shall be edited to such extent as shall be necessary to preserve confidentiality in respect of the identity of every interested party and of the subject matter of the proceedings; and
- (b) no such decision shall be reported or published unless or until a judge of the Court shall have ascertained the views of the parties to the proceedings as to the adequacy of any editing undertaken, and certified in writing to the Registrar of the Court that the decision as edited may be released for publication or reporting.

Administrative notices.

20. (1) The Authority shall cause to be published in the form of administrative notices statements setting out the criteria from time to time by reference to which the Authority proposes to exercise his functions under this Order, including, in particular, its powers to grant, refuse or revoke licences or to impose conditions of general application on licences.

(2) The Authority may also publish in the form of administrative notices criteria to facilitate compliance with any requirements prescribed under section 8(2)(e).

(3) An administrative notice published under this section shall be admissible in evidence in any proceedings arising out of or otherwise in connection with the operation or application of this Order.

Audited accounts to be sent to the Authority.

21. (1) Not later than the appropriate interval after the end of each of its financial years, every licensee shall send to the Authority a copy of its audited accounts for that year.

(2) In subsection (1) —

- (a) "the appropriate interval" means three months or such longer period as the Authority may allow in any particular case; and
- (b) "audited accounts" means the audited accounts required to be prepared for the purposes of the International Business Companies Order, 2000 or the Companies Act (Chapter 39) or, in the case of an institution incorporated otherwise than under that Act, accounts audited in a manner acceptable to the Authority.

(3) If the auditor of the accounts of a licensee for any financial year is different from the auditor of those accounts for the preceding financial year, the Authority may require the licensee to provide an explanation of the change together (if so required) with a statement by the former auditor or his representative of the circumstances of the change; and if such an explanation or statement is not produced, the licensee shall be regarded as having failed to comply with subsection (1).

Communications to the Authority by auditors.

22. (1) In the circumstances specified in subsection (2), an auditor of a licensee shall notify the Authority of any information which relates to the business or affairs of the licensee and of which he becomes aware —

- (a) in his capacity as auditor of the licensee or of a body with which it is closely linked; or
- (b) in preparing any report under this Order.

(2) The circumstances referred to in subsection (1) are those in which the information referred to in that subsection is —

- (a) such as to give the auditor reasonable cause to believe, as regards the licensee concerned —
 - (i) that there is or has been or may have been a failure to fulfil any of the criteria in section 5 and that the failure is likely to be of material significance;
 - (ii) that its licence should be revoked, or the Authority should take any other action under section 23;
 - (iii) that there is or has been, or may be or may have been, a contravention of any provision of this Order and that the contravention is likely to be of material significance; or
 - (iv) that the continuous functioning of the licensee may be affected; or
- (b) in a case where the auditor is the auditor of the licensee concerned, such as to lead to his refusal to certify the accounts or to the expression of reservations.

(3) In subsection (2), "of material significance" means of material significance for the exercise of the Authority's functions under this Order.

(4) No duty to which an auditor of a licensee may be subject shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information of which he becomes aware or opinion that he may form in his capacity as auditor and which —

- (a) relates to the business or affairs of the licensee or of a body with which the licensee is closely linked; and
- (b) is relevant to any function of the Authority under this Order.

(5) Subsection (5) of section 5 shall have effect for the construction of references in this section to a body with which a licensee is closely linked.

Regulatory powers of the Authority.

23. (1) If the Authority is satisfied that a licensee —

- (a) has ceased to carry on international banking business;
- (b) has gone into liquidation, is wound up or in the process of being wound up or is otherwise dissolved;
- (c) has made an arrangement or composition with its creditors;
- (d) is unable or appears likely to become unable to meet its obligations as they fall due;
- (e) is carrying on business in a manner detrimental to the public interest, the interests of its depositors or other creditors its customers or persons conducting transactions with it;
- (f) has failed to comply with any condition of its licence;
- (g) has failed to pay any fee due under this Order or has otherwise contravened any provision of this Order; or
- (h) has surrendered, had revoked or had suspended a banking licence in any other jurisdiction in circumstances which affect, or are likely to affect, the licensee's compliance with the criteria specified in section 5,

the Authority may take any one or more of the courses of action specified in subsection (2).

(2) The courses of action referred to in subsection (1) are —

- (a) the revocation of the licence;
- (b) the imposition of varied or additional conditions on the licence;
- (c) the substitution of any director or officer of the licensee;
- (d) the appointment, at the expense of the licensee, of a person to advise the licensee on the proper conduct of its affairs and to report to the Authority thereon within three months of his appointment;
- (e) the appointment, at the expense of the licensee, of a person to assume control of the licensee's affairs, being a person who shall have, *mutatis mutandis*, all the powers of a person appointed as a receiver or manager of a company

under the International Business Companies Order, 2000 of the Companies Act (Chapter 39);

- (f) where the licensee is incorporated under the laws of jurisdiction other than Brunei Darussalam, at the expense of the licensee to take such advice and steps in such jurisdiction as may be appropriate having regard to the needs specified in subsections 5(1)(a) and 5(1)(b), including the investigation of winding-up liquidation or analogous procedures or proceedings; and
- (g) to require the licensee to take such other action as the Authority considers necessary.

(3) Before taking any of the courses of action specified in subsection (2), the Authority shall give the licensee an opportunity to make representations why the course of action in question should not be taken; and, whether or not such representations are made, if the Authority does take a course of action under subsection (2), the licensee may appeal to the High Court against the taking of the action.

(4) A person appointed under paragraph (d) or paragraph (e) of subsection (2) (in the following provisions of this section referred to an "appointee") shall from time to time and in any case within three months of his appointment or, as the case may be, the extension of his appointment under subsection (5), prepare and furnish a report to the Authority on the affairs of the licensee and may make recommendations therein.

(5) On receipt of a report under subsection (4), the Authority may —

- (a) revoke the appointment of the appointee;
- (b) extend the period of the appointee's appointment;
- (c) subject to any condition which the Authority may impose, allow the licensee to reorganise its affairs in a manner approved by the Authority;
- (d) revoke the licence and request the Attorney General to apply to the High Court for an order that the licensee be wound up in accordance with Part V of the Companies Act (Chapter 39), either by the Court or subject to the supervision of the Court (and in this subsection "the Court" has the same meaning as in that Act).

(6) In the case of a licensee which is an international business company, the reference in subsection (5)(d) to Part V of the Companies Act (Chapter 39), is a reference to that Part as it applies to such a company by virtue of the International Business Companies Order, 2000.

(7) Whenever the Authority revokes a licence under subsection (2)(a) or subsection (5)(d), it shall cause notice of the revocation to be published in the *Gazette* and may also cause notice to be published, whether within Brunei Darussalam or elsewhere, in such newspaper or other publication as he may think fit in the circumstances.

Confidentiality of information received under this Order, etc.

24. (1) This section applies to information which —

- (a) the Authority or a person who works or has worked for the Authority; or
- (b) an auditor or expert instructed by the Authority,

has received in the course of discharging functions under this Order or otherwise pursuant to instructions from the Authority.

(2) Information to which this section applies shall not be disclosed either by any person referred to in subsection (1) or by any person receiving it directly or indirectly from such a person except —

- (a) with the consent of the person or, as the case may be, every person to who it relates;
- (b) where it is information that is a matter of public record or knowledge; or
- (c) in accordance with the following provisions of this section.

(3) Information to which this section applies may be disclosed in the following circumstances —

- (a) where the disclosure is to any person concerned with the administration of this Order or for the purpose of carrying this Order into effect;
- (b) where the disclosure is to any person qualified in law, accountancy or valuation or any other matter requiring the exercise of professional skill, in order to take advice from that qualified person for the purposes of this Order;
- (c) where the disclosure is with a view to the institution of, or otherwise for the purposes of, criminal proceedings, whether under this Order or otherwise;
- (d) where the disclosure is in relation to any other proceedings arising out of this Order or any winding-up or administration proceedings in respect of a licensee or former licensee; or
- (e) where the disclosure is in the form of a summary of information in such a manner as not to enable information relating to any particular licensee or other person to be ascertained from it.

(4) The Authority may provide information on the operations of a licensee which is incorporated in a country or territory outside Brunei Darussalam (including any report under section 15(1)(b)) to a designated supervisory authority in the country of incorporation for the purpose of its material supervisory functions.

(5) Subsection 22(3) applies in relation to this section as it applies to that.

(6) Any person who discloses information contrary to the provisions of this section shall be guilty of an offence and liable on conviction to a fine and to imprisonment for a term not exceeding five years.

PART IV

EXEMPTIONS FROM TAXATION AND DUTIES

Exemptions from taxes and duties.

25. (1) No income tax, tax on capital gains or other direct tax shall be levied, withheld or collected in respect of international banking business conducted under this Order —

(a) on or in respect of any dividends or earnings attributable to any share, debt or securities of a licensee; or

(b) on or in respect of any dividends, interest or other returns from any shares, securities, deposits or other borrowings of a licensee or any assets managed by a licensee, if the dividends, interest or other returns are shown to be in respect of shares, securities, deposits, borrowings or other assets beneficially owned by a person who either is not a resident or is a person falling within any of subparagraph (i) to (v) of section 2(5)(a).

(2) No estate, inheritance, succession or similar tax shall be levied in respect of any shares, securities or assets of a licensee or in respect of the transfer of any such shares, securities or assets.

(3) Notwithstanding anything in the Stamp Act (Chapter 34), duty shall not be chargeable on any of the following descriptions of instruments —

(a) instruments relating to transfers of any property to or by a licensee;

(b) instruments relating to transactions in respect of the shares, debt obligations or other securities of a licensee;

(c) instruments relating in any way to the assets or activities of a licensee.

(4) No filing or presentation of documents with or to any taxing or other analogous authority in Brunei Darussalam shall be required, notwithstanding any other law of Brunei Darussalam.

(5) If, with respect to any goods imported or to be imported by a licensee, the Minister is satisfied —

(a) that the goods are not being made or manufactured in Brunei Darussalam;

- (b) that the goods are essential as equipment or fixtures for the purposes of conducting international banking business in Brunei Darussalam and will be used exclusively for those purposes; and
- (c) that the licensee will notify the Minister prior to the sale transfer or disposal of the goods (whether within or outside Brunei Darussalam),

the Minister may be order exempt the licensee from all, or so much as he consider appropriate, of any customs duty which would otherwise be levied in respect of the goods.

(6) Expressions used in subsection (3) have the same meaning as in the Stamp Act (Chapter 34) and expressions used in subsection (4) have the same meaning as in the Customs Act (Chapter 36).

(7) No filing return or financial information shall be required from a licensee in relation to any taxation, duty or other levy in respect of which relief is granted under this section.

PART V

MISCELLANEOUS AND GENERAL

Recovery of fees, etc.

26. There shall be recoverable as a civil debt due to the Authority from the institution concerned —

- (a) the amount of any fee payable under this Order;
- (b) any remuneration and expenses payable to any person nominated or approved under section 29(1)(b); and
- (c) any remuneration and expenses payable to any person appointed under section 23(2)(d) or (e).

Indemnity.

27. Neither the Authority nor any of the following —

- (a) any member of the Authority;
- (b) any person nominated, approved or authorised by the Authority under subsection 19(2);
- (c) a person appointed under section 23(2)(d) or (e),

shall be liable, in damages or otherwise, as a result of anything done *bona fide* in the exercise of any power or the performance of any function or duty conferred or imposed by or under this Order.

Offences in relation to false statements.

28. (1) A person is guilty of an offence if, in connection with any application or any document required or made for the purpose of this Order, or in compliance or purported compliance with any requirement of this Order or otherwise for the purposes of this Order —

- (a) he wilfully makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
- (b) he recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular;
- (c) he wilfully produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
- (d) he recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular.

(2) A person guilty of an offence under this section shall be liable on conviction to a fine not exceeding two hundred thousand dollars and to imprisonment for a term not exceeding three years.

Offences by bodies corporate.

29. Where an offence under this Order committed by a licensee or other body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of —

- (a) any director, manager, secretary or other similar officer of that body, or any person who was purporting to act in that capacity; or
- (b) any other person who holds a controlling interest in that body,

he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

Power of Authority to compound.

30. The Authority may, without instituting proceedings against any person for any offence under this Order, or the regulations which is punishable only by a fine, demand and receive

the amount of the fine or such reduced amount as he thinks fit from that person, whereupon —

- (a) if that person pays the amount to the Authority within fourteen days after the demand, no proceedings shall be taken against him in relation to the offence;
- (b) if that person does not pay the amount so demanded, the Authority may cause proceedings to be instituted in relation to the offence.

Regulations.

31. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such regulations as he considers necessary or expedient for carrying into effect the provisions of this Order.

Consequential amendments.

32. (1) The Banking Act (Chapter 95) shall have effect subject to the amendments in the Second Schedule.

(2) In the Moneylenders Act (Chapter 62), in section 2(1) (interpretation) immediately after the words "Banking Act", there shall be added "or a licensee within the meaning of the International Banking Order, 2000".

(3) In the Finance Companies Act (Chapter 89), in section 38 (exemptions) in subsection (1)(a) immediately after the words "Islamic Banking Act", there shall be added "or the International Banking Order, 2000".

PART VI

TRANSITIONAL PROVISIONS, SAVINGS AND EXEMPTIONS

Transitional provisions.

33. Subject to section 34, any person who is at the commencement of this Order carrying on any business for which a licence is required under the provisions of this Order shall within a period of three months from the date of its commencement comply with the provisions of this Order.

Exemptions.

34. (1) Subject to the issue by the Authority of a letter of confirmation on such terms as the Authority may consider desirable and subject to compliance with any other Order or requirement relating to the licensing of entities or activities conducted in or from within

Brunei Darussalam the persons and activities specified in the Third Schedule are not required to be licensed under this Order.

(2) The Authority may in such manner and on such terms as it considers fit exempt any person, business or profession or class of persons or class of business or profession from any of the provisions of this Order.

(3) Any exemption given under subsection (2) may contain different provisions for different classes of person, business or profession, or international banking business, or with respect to any provisions of this Order.

Saving of private rights.

35. Nothing in this Order shall prejudice any right that a person interested or any other person may have to take civil proceedings or obtain relief against a licensee, former licensee, associate, director or employee of any licensee or former licensee or any other person connected in any way with international business.

FIRST SCHEDULE

Section 2

INTERPRETATION OF "CONTROLLER" ETC., AND "PARENT AND SUBSIDIARY" ETC.

PART I

CONTROLLERS

1. In this Order, "controller", in relation to an institution, means a person who, either alone or together with any associate or associates —

- (a) holds ten per cent or more of the shares in the institution or in another body of which the institution is a subsidiary undertaking;
- (b) is entitled to exercise or control the exercise of ten per cent or more of the voting power at any general meeting of the institution or of another body of which the institution is a subsidiary undertaking; or
- (c) is able to exercise a significant influence over the management of the institution or of another body of which the institution is a subsidiary undertaking by virtue either of a holding of shares in the institution or in the other body or of an entitlement to exercise, or control the exercise of, the voting power at a general meeting of the institution or the other body.

2. In this Order, an "indirect controller" means a controller falling within paragraph 3(c) and references to other descriptions of controller shall be construed as follows —

- (a) a "ten per cent controller" means a controller in whose case the percentage referred to in the relevant paragraph is ten or more but less than twenty;
- (b) a "twenty per cent controller" means a controller in whose case the percentage referred to in the relevant paragraph is twenty or more but less than thirty three;
- (c) a "thirty-three per cent controller" means a controller in whose case the percentage referred to in the relevant paragraph is thirty-three or more but less than fifty; and
- (d) a "majority controller" means a controller in whose case the percentage referred to in the relevant paragraph is fifty or more.

PART II

PARENT, SUBSIDIARY AND HOLDING INSTITUTIONS

Definition of subsidiary holding an affiliate companies, etc.

1. For the purposes of this Order, a company is a subsidiary of another company if —
 - (a) it is controlled by —
 - (i) that other company; or
 - (ii) that other company and one or more companies each of which is controlled by that other company; or
 - (iii) two or more companies, each of which is controlled by that other company; or
 - (b) it is a subsidiary of a subsidiary of that other company.
2. For the purposes of this Order, a company is the holding company of another only if that other company is its subsidiary.
3. For the purposes of this Order, one company is affiliated with another company only if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person.
4. For the purposes of this Order, a company is controlled by another company or person or by two or more companies only if —
 - (a) shares of the first-mentioned company carrying more than fifty per cent of the votes for the election of directors are held, otherwise than by way of security only,

by or for the benefit of that other company or person or by for the benefit of those other companies; and

(b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned company.

5. For the purposes of this Schedule "company" means a body corporate however constituted in any part of the world and includes an institution.

SECOND SCHEDULE

Section 32(1)

CONSEQUENTIAL AMENDMENTS TO THE BANKING ACT

1. In section 2 (interpretation), in subsection (1), immediately after the definition of "Islamic bank", there shall be inserted the following definition —

"international bank" means a licensee within the meaning of the International Banking Order, 2000".

2. In section 3 (Banking business to be transacted only by a company), in subsection (1) immediately after the words "a company", there shall be added the words "or an international bank".

3. In section 4 (Banking business to be transacted only by a company licensed for each purpose), in subsection (1), immediately after the words "no company", there shall be inserted the words "other than an international bank".

4. At the end of section 5 (Minima for authorised capital) there shall be added the following new subsection —

"(6) Nothing in the foregoing provisions of this section applies to an international bank".

5. In section 6 (Reserve Fund), in subsection (1) immediately after the word "Brunei", there shall be inserted the words "other than an international bank".

6. In section 6A (Minimum Cash Balances), in subsection (1) immediately after the words "banks" in the second line, there shall be inserted "other than international banks".

7. In section 6B (Liquid Assets), in subsection (1) immediately after the word "bank" in the second line, there shall be inserted "other than an international bank".

8. In section 7 (Restriction on use of word "bank") immediately after the word "Islamic Bank" there shall be inserted the words "and an international bank".

THIRD SCHEDULE

Section 34(1)

EXEMPT PERSONS AND EXEMPT ACTIVITIES

Introducers of business.

1. Persons who make arrangements or introductions, or who act an intermediary with a view to persons carrying on international banking business.

Brokers and Risk Managers.

2. Person who conduct broking and risk management services which are not conducted for any person resident in Brunei Darussalam other than those persons referred to in section 2(4)(a)(i) to (iv) of the Order, but only as regards the activities permitted by any written law regulating them.

Holders of a Mutual Funds licence.

3. Persons who hold a valid Mutual Funds licence granted under any law relating to mutual funds, but only as regards the activities permitted by such a licence.

Trust Companies.

4. Persons who hold a valid license granted under the Registered Agents and Trustees Licensing Order, 2000, but only as regards the activities permitted by such a licence.

Holders of advances, deposits, etc., by persons who hold a Banking licence, or by persons in connection with the supply of agents and services.

5. Persons who hold a valid banking licence granted under the Banking Act (Chapter 95) or under the Islamic Banking Act (Chapter 168), but only as regards the activities permitted by such a licence.

6. Person who hold money on trust in the course of a business of supplying goods or services by way of sale, or hire or other provision of goods and services which does not otherwise constitute international business.

7. For the purpose of paragraph 6, money is held on trust in the course of business of the description referred to if it is paid —

(a) by way of advance or part payment for the goods or services provided;

- (b) by way of security for performance by the customer of the agreement between the customer and the supplier or provider, or in respect of loss which may result from the non-performance of a contract by a customer; or
- (c) by way security for the delivery or return of any property by or from the customer, whether in a particular state of repair or otherwise.

8. (1) Entering into a transaction which would otherwise amount to the a carrying on of international banking business by one person with another person, if —

- (a) the persons are companies and the transaction is undertaken for the benefit of that other person in connection with its own business and not that of any third party;
- (b) the persons participate together in a joint enterprise and the transaction is undertaken for the benefit of that enterprise and not that of any third party; or
- (c) one of the persons is a director, other officer or employee of a licensee acting in that capacity and the other is that licensee or a connected company in relation to that company,

unless either person carries on international banking business or holds himself out as doing so.

(2) (a) For the purposes of sub-paragraphs 1(a) and 1(c), a company is connected with another company if it is a subsidiary, holding of the First Schedule or if they are in the same group.

- (b) For the purposes of sub-paragraph 1(b), "joint enterprise" means an enterprise into which the persons participating enter for commercial purposes related to a business other than international business carried on by such person; and where a person participating is a company, each company with which is connected shall also be regarded as a person participating in the enterprise.

Made this 21st. day of Safar, 1421 Hijriah corresponding to the 25th. day of May, 2000 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM