

LAWS OF BRUNEI

CHAPTER 89
FINANCE COMPANIES ACT

14 of 1972

Amended by
E 2 of 1973

1984 Ed. Cap. 89

Amended by
S 43/92
S 32/95
S 53/00

REVISED EDITION 2003

(1st July 2003)

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REVISED EDITION 2003

CHAPTER 89
FINANCE COMPANIES ACT

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FINANCE COMPANIES ACT

An Act to licence and control finance companies and for matters connected therewith

Commencement: 1st August 1973
[E 1/73]

PART I**PRELIMINARY****Citation.**

1. This Act may be cited as the Finance Companies Act.

Interpretation.

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

“auditor” means any person approved by the Minister as a finance company auditor for the purposes of this Act;

“company” means a company incorporated or registered under the Companies Act (Chapter 39);

“deposit” means a loan of money at interest or repayable at a premium but does not include a loan to a company or other body corporate upon terms involving the issue of debenture or other securities;

“depositor” means a person entitled, or prospectively entitled, to repayment of a deposit whether made by him or not;

“director” includes any person occupying the position of director of a finance company by whatever name called and includes a person in accordance with whose directions or instructions the directors of a finance company are accustomed to act and an alternate or substitute director;

“finance company” means any company licensed under this Act, to carry on financing business, and all branches and offices in

Brunei Darussalam of such a company shall be deemed to be one finance company for the purpose of this Act;

“financing business” means the business of —

(a) borrowing money from the public, by acceptance of deposits and issuing certificates or other documents acknowledging or evidencing indebtedness to the public and undertaking to repay the money on call or after an agreed maturity period;

(b) lending money to the public or to a company on the basis that the public or the company undertakes to repay the money, whether within an agreed period of time or not, or by instalments, and shall include the business of financing hire-purchase transactions arising out of hire-purchase agreements, where the money used, or to be used, for such business is borrowed from the public;

“Minister” means the Minister responsible for finance;

[S 32/95]

“public company” means a company incorporated in Brunei Darussalam other than a private company.

PART II

LICENSING OF FINANCE COMPANIES

Licensing of finance company.

3. (1) No financing business shall be transacted in Brunei Darussalam except by a company that is in possession of a valid licence granted by the Minister, authorising it to conduct financing business in accordance with the provisions of this Act.

(2) Any person who contravenes the provisions of subsection (1) of this section shall be guilty of an offence: Penalty, imprisonment for 5 years and a fine of \$20,000.

Use of words “finance company”.

4. No person or body of persons, whether incorporated or not, other than a finance company licensed under this Act shall, without the consent of the Minister, use the words “finance company” or any of its derivatives in any language, or any other words indicating that it transacts financial business, in the name, description or title under which such persons or body of persons is transacting business in Brunei Darussalam or make or continue to make any representations to such effect in any bill-head, letter paper, notice, advertisement or in any other manner whatsoever:

Provided that nothing in this section shall prohibit an association of finance companies formed for the protection of common interests from using the words “finance company” or any of its derivatives in any language as part of its name or description of its activities.

Examination of persons suspected of transacting financing business.

5. (1) Whenever the Minister has reason to believe that a person is conducting financing business without a licence, he may call for the books, accounts and records of such person in order to ascertain whether or not such person has violated or is violating, any provisions of this Act, and any person wilfully refusing to submit such books, accounts and records shall be guilty of an offence: Penalty, imprisonment for 2 years and a fine of \$4,000.

(2) Upon the conviction of any person under subsection (1) of this section a Magistrate’s Court shall have power to order the production of any books, accounts and records to the Minister and any person failing to comply with such order shall be guilty of an offence: Penalty, imprisonment for 2 years and to a fine of \$4,000 and, in the case of a continuing offence, to a fine of \$100 for each day during which the offence continues.

Application for licence.

6. (1) As from the date of the coming into operation of this Act, any public company proposing to conduct financing business in Brunei Darussalam shall, before commencing any such business, apply in writing to the Minister for a licence under this Act.

(2) In considering any application by a public company for a licence the Minister may require to be satisfied as to —

- (a) the financial condition of the company;

- (b) the character of the management of the company;
- (c) the adequacy of the capital structure and earning prospects of the company;
- (d) the objects of the company as disclosed in its memorandum of association;
- (e) the convenience and needs of the community to be served; and
- (f) whether the public interest will be served by the granting of a licence.

(3) The Minister, may grant a licence with or without conditions, or refuse to grant a licence.

(4) The Minister may at any time vary or revoke any existing conditions of a licence or impose additional conditions.

(5) Where a licence is granted subject to conditions the finance company shall comply with those conditions and any finance company that fails to comply with any conditions of its licence shall be guilty of an offence: Penalty, a fine of \$2,000.

Minimum capital requirements of a finance company.

7. Subject to the provisions of this Act, no finance company shall be granted or shall hold a licence unless its capital, issued and paid up in cash, and unimpaired by losses or otherwise, is not less than \$1,000,000.

Restriction on company opening of branches of a finance company.

8. (1) No finance company shall open any new branch, agency or office, whether inside or outside Brunei Darussalam without submitting an application in writing to the Minister.

(2) In considering such application, the Minister may require to be satisfied by an inspection under section 26 of this Act or otherwise, as to —

- (a) the financial condition of the company;
- (b) the general character of the management of the company;

(c) the adequacy of the capital structure and earning prospects of the company;

(d) the convenience and needs of the community to be served; and

(e) whether the public interest will be served by the opening or, as the case may be, change of location of the place of business.

(3) Upon being so satisfied as to the matters referred to in subsection (2) of this section, the Minister may —

(a) grant the application; or

(b) without assigning any reason therefor, refuse to grant the application,

and his decision thereon shall be final.

(4) Any finance company that fails to comply with subsection (1) of this section shall be guilty of an offence: Penalty, a fine of \$2,000 for every day during which the default continues.

Merger etc. of a finance company.

9. (1) No finance company carrying on business in Brunei Darussalam shall be merged or consolidated with or acquire a majority interest in any other finance company without the prior approval of the Minister.

(2) In considering such an application, the Minister shall have power to call for such information as he may require.

(3) The Minister may —

(a) approve the application; or

(b) refuse the application.

Amendment of constitution of a finance company.

10. (1) Every finance company that intends to alter its memorandum of association or articles of association shall before proposing any resolution in this regard, furnish to the Minister for his approval, particulars in writing (verified by a statutory declaration made by the secretary of the finance company) of that proposed alteration.

(2) The Minister may thereupon —

- (a) approve the proposed alteration without modification;
- (b) approve the proposed alteration with modification; or
- (c) refuse to approve the proposed alteration.

(3) If the Minister approves the proposed alteration with modification, the finance company shall adopt the proposed alteration as so modified or not proceed with the proposed alteration and if the Minister refuses to approve the proposed alteration he may request the finance company to withdraw the proposed alteration and the finance company shall comply with the Minister's request.

(4) Any finance company which fails to comply with the requirement of subsection (1) of this section or with any request by the Minister made under subsection (3) of this section shall be guilty of an offence: Penalty, a fine of \$1,500 for every day during which the default continues.

Revocation of licence.

11. (1) The Minister —

(a) shall, by order, revoke the licence of a finance company if the company ceases to carry on the business for which it has been licensed in Brunei Darussalam or goes into liquidation or is wound up or otherwise dissolved.

(b) may, in his discretion, by order, revoke the licence of a finance company if, in his opinion, the finance company —

- (i) is carrying on its business in a manner likely to be detrimental to the interests of its depositors;
- (ii) has insufficient assets to cover its liabilities to its depositors;
- (iii) carries on business while its paid-up capital (unimpaired by losses or otherwise) is less than \$1,000,000; or
- (iv) is contravening or has contravened the provisions of this Act; and

(c) may, also in his discretion, by order, revoke the licence of a company —

- (i) if the finance company or any person who is in a managerial or executive position in that finance company has been convicted of any offence under this Act; or
- (ii) if he considers it in the public interest to do so:

Provided that before revoking any licence, the Minister shall give the finance company notice in writing of his intention to do so, specifying a date, not less than 21 days after the date of the notice, upon which such revocation will take effect and calling upon the finance company to show cause to the Minister why such licence should not be revoked.

(2) Where the Minister has revoked a licence under the provisions of subsection (1) of this section, he shall forthwith inform the finance company by notice in writing of such revocation.

Publication of list of finance companies.

12. The Minister shall cause to be published in the *Gazette* in the month of April in each year a list of all finance companies to which licences have been issued under this Act and if any licence is issued or revoked during the interval between the publication of 2 such lists, notice thereof shall also be caused to be published in the *Gazette*.

PART III

RESERVE FUNDS, DIVIDENDS, BALANCE SHEETS AND INFORMATION

Maintenance of reserve fund by finance companies.

13. Every finance company shall —

- (a) maintain a reserve fund;

(b) if the paid-up capital of the finance company is not less than \$2 million, transfer to such reserve fund out of the net profits of each year after due provision has been made for taxation —

- (i) so long as the amount of the reserve fund is less than 50 per centum of the paid-up capital, a sum equal to not less than 30 per centum of the net profits;
- (ii) so long as the amount of the reserve fund is not less than 50 per centum but less than 100 per centum of the paid-up capital, a sum equal to not less than 15 per centum of the net profits;
- (iii) so long as the amount of the reserve fund is not less than 100 per centum of the paid-up capital, a sum equal to not less than 5 per centum of the net profits; and

(c) if the paid-up capital of the finance company is less than \$2 million, transfer to such reserve fund out of the net profits of each year after due provision has been made for taxation —

- (i) so long as the amount of the reserve fund is less than 50 per centum of the paid-up capital, a sum equal to not less than 50 per centum of the net profits;
- (ii) so long as the amount of the reserve fund is not less than 50 per centum but less than 100 per centum of the paid-up capital, a sum equal to not less than 25 per centum of the net profits;
- (iii) so long as the amount of the reserve fund is not less than 100 per centum of the paid-up capital, a sum equal to not less than 10 per centum of the net profits.

Minimum cash balances. [S 32/95]

13A. (1) The Minister may from time to time require finance company to maintain minimum cash balances, not exceeding 30 per cent of each finance companys' deposit and other liabilities, on deposit with the Minister as reserves against their deposit and other liabilities.

(2) Subject to the limit specified in subsection (1) of this section, the Minister may prescribe different ratios for different types of liabilities and

may further prescribe the method of computing the amount of the required reserves, but the ratios shall be uniform for all finance companies.

(3) Any prescription of, or change in, the minimum reserve requirements under subsection (1) or (2) of this section shall take effect only after the expiration of 30 days' notice to the finance companies of the Minister's intention to take such action.

(4) Where a finance company (in this section referred to as "the defaulting finance company") has failed to maintain sufficient minimum cash balances required under subsection (1) of this section, the Minister may by order in writing direct the defaulting finance company to make good the deficiency within the period specified in the order and the defaulting finance company shall comply with the requirements of the order.

(5) If the defaulting finance company fails to make good the deficiency within the period specified in the order referred to in subsection (4) of this section, it shall be lawful, notwithstanding the provisions of any other written law, for the Minister to serve a notice in writing upon any other finance company with which the defaulting finance company has a credit balance, whether in current or deposit account, directing that finance company to transfer to the Minister such amount (not exceeding such credit balance) as is specified in the notice as being equivalent to the amount of the deficiency in the minimum cash balances of the defaulting finance company required under subsection (1) of this section and the other finance company shall immediately comply with the requirements of that notice.

(6) No action shall lie against, and no liability shall attach to, any finance company that complies with the requirements of a notice referred to in subsection (5) of this section for any loss or damage suffered by the defaulting finance company as a result of the other finance company taking action in compliance with the requirements of that notice.

(7) The Minister may, in addition to any action taken under subsections (4) and (5) of this section, impose on any finance company that fails to maintain sufficient minimum cash balances required under subsection (1) of this section a penalty interest charge of \$1,000 per day or such larger amount as the Minister may determine for every day during which the deficiency continues.

(8) Any finance company that fails or refuses to pay a penalty interest charge under subsection (7) of this section shall be guilty of an offence under this Act, punishable under subsection (1) of section 34.

Restriction on payment of dividends by finance companies.

14. No finance company shall pay any dividend on its shares until all its capitalised expenditure (including preliminary expenses, organisation expenses, share selling commission, brokerage, amount of losses incurred and any item of expenditure not represented by tangible assets) has been completely written off.

Exhibition of balance sheet by finance companies.

15. Every finance company shall exhibit throughout the year, in a conspicuous position in every office and branch of that finance company, a copy of its last audited balance sheet together with the full and correct names of all persons who are directors of the finance company, as soon as such balance sheet is audited. A copy of such balance sheet shall be published in at least one of the local newspapers not later than 6 months after the end of each financial year.

Information and statistics to be furnished by finance companies.

16. (1) Every finance company shall furnish to the Minister at such time and in such manner as the Minister may prescribe, all such information and data as he may reasonably require for the proper discharge of his functions under the provisions of this Act.

(2) Every finance company that fails or neglects to furnish any information required by the Minister under subsection (1) of this section and within the time specified by the Minister shall be guilty of an offence: Penalty, a fine of \$4,000 for every day during which the default continues.

PART IV**REGULATION OF BUSINESS****Acknowledgement of indebtedness.**

17. Where a finance company has accepted money from any person as a deposit the company shall within 2 months after the acceptance of the money issue to that person a document which acknowledges or evidences or constitutes an acknowledgement of the indebtedness of the company in respect of that deposit.

Demand deposits, dealings in foreign exchange etc. by finance companies.

18. (1) No finance company shall —

(a) accept any deposit which is repayable on demand by cheque, draft or order drawn by a depositor on the finance company;

(b) deal in gold or foreign exchange of whatever kind; or

(c) grant unsecured advances, unsecured loans or unsecured credit facilities which in the aggregate and outstanding at any one time exceed 10 per centum of the paid-up share capital and published reserves of the finance company and which as regards —

(i) any individual director whether borrowing on his own account or jointly with another director;

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

(iii) any other person or body or persons whether incorporated or not,

exceed at any time the sum of \$5,000; and

(d) grant or permit to be outstanding to any customer any advances, loans or credit facilities, or give financial guarantees or incur any other liabilities on his behalf to an aggregate amount of such advances, loans or credit facilities, guarantees or liabilities in excess of 60 per centum of the paid-up share capital and published reserves of the finance company:

Provided that, with the approval of the Minister, the percentage referred to in this paragraph may be increased to 100 per centum of the paid-up share capital and published reserves of the finance company.

(2) In paragraph (c) of subsection (1) of this section, the expressions “unsecured advances”, “unsecured loans” or “unsecured credit facilities” mean advances, loans or credit facilities made without security or, in respect of any advance, loan or credit facility made with security, any part thereof which at any time exceeds the market value of the assets constituting that

security, or where the Minister is satisfied that there is no established market value, on the basis of a valuation approved by the Minister.

(3) In paragraph (c) of subsection (1) of this section the word “directors” includes the wife, husband, father, mother, son or daughter of a director.

(4) All the directors of a finance company shall be liable jointly and severally to indemnify a finance company against any loss arising from the making of any unsecured advance, loan or credit facility under subparagraph (ii) or (iii) of paragraph (c) of subsection (1) of this section.

Dealing by a finance company in its own shares etc.

19. (1) Except as is otherwise expressly provided by this Act, no finance company shall give, whether directly or indirectly and whether by means of a loan guarantee or the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of, or for, any shares in the finance company or, where such company is a subsidiary, in its holding company, or in any way purchase, deal in or lend money on its own shares.

(2) Nothing in subsection (1) of this section shall prohibit —

(a) the provision by a finance company, in accordance with any scheme for the time being in force, of money for the purchase of or subscription for fully-paid shares in the finance company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of such company, including any director holding a salaried employment or office in such company; or

(b) the giving of financial assistance by a finance company to persons, other than directors, *bona fide* in the employment of that company or of a subsidiary of that company with a view to enabling those persons to purchase fully-paid shares in the finance company to be held by themselves by way of beneficial ownership.

(3) If there is any contravention of this section, the finance company and every officer of such company who is in default shall be guilty of an offence: Penalty, imprisonment for 3 years or a fine of \$8,000.

(4) Nothing in this section shall operate to prevent the finance company from recovering the amount of any loan made in contravention of

this section or any amount for which it becomes liable on account of any financial assistance given in contravention of the provisions of this section.

Restrictions on trade by finance companies.

20. (1) No finance company shall engage, whether on its own account or on a commission basis, and whether alone or with others, in the wholesale or retail trade, including the import or export trade, except for the purpose of carrying on its financing business.

(2) Except as provided in this Act a licensed finance company shall not carry on any kind of business other than financing business.

Restrictions on investments by finance companies.

21. (1) No finance company shall acquire or hold any part of the share capital of, or otherwise have a direct interest in, any financial, commercial, agricultural, industrial or other undertaking exceeding in the aggregate 25 per centum of the paid-up share capital and published reserves of that finance company except such shareholding as the finance company may acquire in the course of realising debts due to it, which shareholding shall however, be disposed of at the earliest suitable moment.

(2) Notwithstanding the provisions of subsection (1) of this section, the percentage holding or interest referred to in that subsection may upon application of a finance company to the Minister, and with the consent of the Minister, be increased to not more than 50 per centum of the paid-up share capital and published reserves of that finance company.

Restriction on holding immovable property by finance companies.

22. (1) No finance company shall purchase or acquire any immovable property, or any right, title or interest therein, exceeding in the aggregate at any one time 25 per centum of the finance company's paid-up share capital and published reserves, except as may be reasonably necessary for the purpose of conducting its business or of housing or providing amenities for its staff but this shall not prevent a finance company —

(a) from letting part of any building which is used for the purpose of conducting its business; or

(b) from securing a debt on any immovable property and in the event of default in payment of such debt, from holding that

immovable property for realisation by sale or auction at the earliest suitable moment.

(2) This section shall not apply to such property as may from time to time be approved by the Minister.

Liquidation of prohibited transactions by finance companies.

23. Any company which, before the date of the coming into operation of this Act, had entered into any transaction prohibited by the provisions of sections 18, 19, 20, 21 and 22 of this Act shall, if it is licensed under this Act, within 6 months of that date, submit a statement of those transactions to the Minister and shall, furthermore, within the said time, or such further time as the Minister may specify, liquidate those transactions or failing liquidation of those transactions be subject to the restrictions specified in sections 18, 19, 20, 21 and 22 of this Act and be bound accordingly to dispose of any movable or immovable property, or any right, title or interest therein as may have been acquired as a result of those prohibited transactions.

Orders by the Minister.

24. (1) The Minister may, by order, prescribe —

(a) the maximum rates of interest that finance companies shall pay on different types or classes of deposits;

(b) the maximum amount or amounts, expressed as percentage or percentages, of total assets that finance companies may hold in one or more types or classes of loans, or advances;

(c) the minimum down payments and maximum maturity periods for different types or classes of loans or advances granted by finance companies;

(d) the maximum rates of interest or commission and other charges and the methods of computing such interest or commission and other charges that finance company may impose on different types of classes of loans, or advances granted by them; and

(e) the maximum amount of loans or advances which finance companies may grant to any person or class of persons.

(2) Any order made under subsection (1) of this section shall apply uniformly to all finance companies, or to any class or classes of finance

companies, and shall, together with its effective date, be published in the *Gazette*.

PART V

MINIMUM LIQUID ASSETS

Minimum holdings of liquid assets by finance companies.

25. (1) Every finance company shall maintain a minimum holding of liquid assets, as defined in subsection (4) of this section but a period of 6 months after the date of the coming into operation of this Act shall be allowed for compliance with this requirement.

(2) The minimum amount of liquid assets to be maintained by finance companies shall be determined from time to time by the Minister and shall be expressed as a percentage of the liabilities of each finance company on account of deposits.

(3) The Minister shall prescribe the method of computing the amount of liquid assets to be held by finance companies.

(4) For the purposes of this section “liquid assets” means all or any of the following —

- (a) notes and coins that are legal tender in Brunei Darussalam;
- (b) net balances at banks in Brunei Darussalam;
- (c) net money at call in Brunei Darussalam;
- (d) other assets that the Minister may prescribe.

(5) Any finance company that fails to comply with any requirements of this section shall be liable, on being called upon to do so by the Minister (in addition to any other penalty that may be imposed under this Act) to pay a penalty interest charge not less than one-fifteenth of one per centum of the amount of the deficiency for every day during which the default continues and shall not while the default continues accept any deposits or enter into new commitments without the approval of the Minister.

PART VI**INSPECTION OF FINANCE COMPANIES****Inspection of finance companies.**

26. (1) The Minister may, from time to time, inspect or cause to be inspected under conditions of secrecy, the books, accounts and transactions of any finance company and of any branch, agency or office outside Brunei Darussalam opened by a finance company incorporated in Brunei Darussalam.

(2) The Minister may make an investigation, under conditions of secrecy, of the books, accounts and transactions of a finance company, if he has reason to believe that such finance company is carrying on its business in a manner detrimental to the interest of its depositors and other creditors or has insufficient assets to cover its liabilities to the public, or is contravening the provisions of this Act.

(3) The Minister may appoint any auditor, other than the auditor appointed by the finance company under the provisions of section 131 of the Companies Act (Chapter 39) to exercise the powers of the Minister under subsections (1) and (2) of this section.

(4) For the purpose of an inspection or investigation under this section, a finance company shall afford the Minister access to its books, accounts and documents and shall give such information and facilities as may be required to conduct the investigation:

Provided that such books, accounts and documents shall not be required to be produced at such times and at such places as shall interfere with the proper conduct of the normal daily business of that finance company.

(5) If any book, account or document or information is not supplied in accordance with subsection (4) of this section, the finance company concerned shall be guilty of an offence: Penalty, a fine of \$8,000 and to a further fine of \$1,000 in respect of every day during which the default continues after conviction.

(6) The Minister shall be deemed to be a public servant within the meaning of the Penal Code (Chapter 22).

Powers of the Minister to issue orders after an inspection.

27. (1) If the Minister finds upon an inspection under section 26 that the affairs of a finance company are being conducted in a manner likely to be detrimental to the interests of the depositors or prejudicial to the interests of the finance company, the Minister may by order require the finance company to take such corrective action as the Minister considers to be necessary or require the finance company to discontinue such practices or procedures.

(2) No order shall be issued under subsection (1) of this section unless the finance company has been given a reasonable opportunity to present its views to the Minister.

(3) The Minister may, upon representation being made to him, or on his own motion, modify or cancel any order issued under subsection (1) of this section, and in so modifying or cancelling any order, may impose such conditions as he thinks fit.

PART VII**SUBMISSION OF ACCOUNTS AND AUDITOR'S
REPORT****Director to submit copy of profit and loss account and auditor to submit copy of his report to Minister.**

28. (1) The directors of a finance company shall submit to the Minister a copy of the profit and loss account and balance-sheet made out pursuant to section 122 of the Companies Act (Chapter 39).

(2) Every auditor of a finance company shall submit to the Minister a copy of his report as to every balance-sheet and profit and loss account (including every consolidated balance-sheet and consolidated profit and loss account) that he is required under section 133 of the Companies Act (Chapter 39) to make to members of the finance company.

PART VIII**MISCELLANEOUS****Indemnity.**

29. Neither the Government nor the Minister, nor any officer of the Government shall be subject to any action, claim or demand by or liability to any person in respect of anything done or omitted to be done in good faith in pursuance or in execution or intended execution or in connection with the execution of any power conferred upon the Government, the Minister, or any officer of the Government by this Act.

Finance Company unable to meet obligations to inform Minister.

30. Any finance company that considers that it is likely to become unable to meet its obligation or is about to suspend payments shall forthwith inform the Minister of such fact.

Moratorium.

31. (1) The Minister may, if he considers it to be in the interests of the depositors of a finance company, by order —

(a) prohibit a finance company from carrying on its business;
and

(b) stay the commencement or continuance of any actions or proceedings against a finance company in regard to its business for a specified period of time on such terms and conditions as he deems reasonable, and may from time to time extend the period up to a total period of moratorium of not more than 6 months.

(2) So long as an order under subsection (1) of this section remains in force, any licence granted to such finance company under this Act shall be suspended.

Memorandum and articles of association of a finance company.

32. (1) Every company that was not carrying on financing business in Brunei Darussalam before the date of the coming into operation of this Act shall, before it is granted a licence by the Minister to carry on financing

business under this Act, include in its memorandum of association or articles of association the restrictions, limitations and prohibitions contained in sections 18, 19, 20, 21 and 22 of this Act.

(2) Every company that —

(a) has carried on financing business in Brunei Darussalam before the date of the coming into operation of this Act; and

(b) is licensed under this Act,

but whose memorandum of association or articles of association not include all or any of the restrictions, limitations or prohibitions contained in sections 18, 19, 20, 21 and 22 of this Act, shall be deemed to have included in its memorandum of association or articles of association all or any of such restrictions, limitations or prohibitions as are not so included.

(3) To the extent that any such restriction, limitation or prohibition so deemed to have been included in these memorandum of association or articles of association under subsection (2) of this section, is inconsistent with any provisions already included in the memorandum of association or articles of association that restriction, limitation or prohibition shall prevail over such provision.

Disqualification of directors of a finance company.

33. (1) Without prejudice to anything contained in the Companies Act (Chapter 39), any person who is a director, manager or other officer concerned with the management of a finance company shall cease to hold office —

(a) if he becomes bankrupt, suspends payments or compounds with his creditors; or

(b) if he is convicted of an offence involving dishonesty or fraud.

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

(3) Any person acting in contravention of subsection (1) or (2) of this section shall be guilty of an offence: Penalty, imprisonment for 5 years and a fine of \$20,000.

Penalty for offences not otherwise provided for.

34. (1) Any finance company which, or person who, contravenes or fails to comply with any provisions of this Act or any order made under this Act for which no penalty is expressly provided shall be guilty of an offence: Penalty, imprisonment for 5 years and a fine of \$20,000.

(2) The Minister may, without instituting proceedings against any person for any offence under this Act, or any regulations made thereunder, which is punishable only by a fine or a default penalty, demand and receive the amount of such fine or default penalty or such reduced amount as he thinks fit from such person, whereupon —

(a) if such person pays such amount to the Minister within 14 days after the demand, no proceedings shall be taken against him in relation to the offence; and

(b) if such person does not so pay the amount so demanded, the Minister may cause proceedings to be instituted in relation to the offence.

Offences by directors or managers.

35. (1) Any person who, being a director, managing director or manager of a finance company —

(a) fails to comply, or to take all reasonable steps to secure compliance by the finance company, with the provisions of this Act or any order made under this Act or any other law relating to finance companies in force in Brunei Darussalam; or

(b) fails to ensure or to take all reasonable steps to ensure the accuracy and correctness of any statement or information submitted under this Act or of any other law relating to finance companies in force in Brunei Darussalam,

shall be guilty of an offence: Penalty, a fine of \$20,000 and imprisonment for 5 years.

(2) In any proceedings against a person under subsection (1) of this section it shall be a defence to prove that he had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of securing compliance with the provisions of this Act or any order made under this Act or any other written law relating to finance companies in Brunei Darussalam or with the duty of securing that those statements were accurate and correct and that the person was in a position to discharge that duty.

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

Holding out as finance company.

36. Where any public or private company or firm holds itself out to be a licensed finance company when it is not licensed under this Act, such company or firm shall be guilty of an offence under this Act and every director, manager or every officer of such company and the proprietor or every partner or officer of such firm shall, unless he proves that such holding out by the company or firm was made without his knowledge or consent, be guilty of an offence: Penalty, a fine of \$20,000 and imprisonment for 5 years.

Fiat of Attorney General.

37. No prosecution in respect of any offence under this Act shall be instituted except by, or under the direction of, the Attorney General acting upon a complaint made by the Minister.

Exemptions.

38. (1) This Act shall not apply to —

(a) any bank licensed under the Banking Act (Chapter 95) or Islamic Banking Act (Chapter 168) or the International Banking Order, 2000;

[S 43/92; S 53/00]

(b) any co-operative society registered under any law of Brunei Darussalam; or

(c) any business of pawnbroking carried on by a person licensed under the Pawnbrokers Act (Chapter 63).

(2) Notwithstanding any provisions in this Act, the Minister with the approval of His Majesty the Sultan and Yang Di-Pertuan may exempt any finance company from any or all of the provisions of this Act.

[S 32/95]

Winding-up provisions.

39. (1) Without prejudice to the provision of the Companies Act (Chapter 39) —

(a) a company (whether or not it is being wound-up voluntarily) may be wound-up under an order of the Court on the petition of the Minister; and

(b) the Court may order the winding-up of a company if —

(i) the company has held a licence under this Act and that licence has expired or has been revoked; or

(ii) the company has carried on financing business in Brunei Darussalam in contravention of the provisions of this Act.

(2) In the winding-up of a company that has been carrying on financing business, the depositors shall be deemed to be holders of debentures issued to them by the company and secured by a floating charge over all the property and undertaking of the company.

Liquidation of securities by finance company.

40. (1) As soon as practicable after the making of an order for the winding-up of a finance company, the liquidator of such company shall publish in the *Gazette* a notice requiring every debtor of the finance company to redeem any property he has deposited with the company as security for any loan that he has obtained from the finance company, and shall also send by registered post such notice to every debtor whose security is held by the finance company and whose name is mentioned in the statement of affairs made out under section 175 of the Companies Act (Chapter 39).

(2) The notice shall specify the latest date up to which any security may be redeemed, which date shall not be less than 3 months from the date of the notice.

(3) After the latest date for redeeming any security held by the finance company specified in the notice, the liquidator may proceed to realise any security held by the finance company forthwith, notwithstanding any agreement setting out any other period of redemption previously entered into between the finance company and the debtor.

Operation of Act not to affect Companies Act.

41. Nothing in this Act shall affect the operation of the Companies Act (Chapter 39), and any company that is liable to be incorporated under that Act shall continue to be so liable as if this Act had not been passed but in case of conflict between that Act and this Act the provisions of this Act shall prevail unless otherwise provided in this Act.

Regulations.

42. (1) His Majesty in Council* may, from time to time, make such regulations for, or in respect of, every purpose which is deemed by him necessary for carrying out the provisions of this Act and for the prescribing of any matter which is authorised or required under this Act to be so prescribed.

(2) Without prejudice to the generality of subsection (1) of this section His Majesty in Council* may by such regulations —

- (a) prescribe fees to be charged under this Act; and
- (b) regulate advertisement of finance companies.

Magistrate to have full jurisdiction.

43. Notwithstanding the provisions of any written law to the contrary, a magistrate shall have jurisdiction to try any offence under this Act and to award the full punishment for any such offence.

* Transferred to the Minister with the approval of His Majesty the Sultan and Yang Di-Pertuan w.e.f. 1st January 1994 — [S 19/94]

