



LAWS OF MALAYSIA

ACT 545

LABUAN FINANCIAL SERVICES AUTHORITY ACT 1996

Incorporating latest amendment - A1365 of the year 2010

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LAWS OF MALAYSIA
ACT 545

An Act to establish the Labuan Financial Services Authority and to provide for its functions and powers, and for matters connected therewith.

[15 February 1996, P.U.(B) 66/1996]
[Am. Act A1365:s.2]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I
PRELIMINARY

1. Short title, and commencement.

This Act may be cited as the **Labuan Financial Services Authority Act 1996** and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint; and the Minister may appoint different dates for the coming into force of different provisions of this Act.

[Am. Act A1365:s.3]

2. Interpretation.

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

"Accounting officer" includes every officer and servant who is charged with the duty of collecting, receiving, or accounting for, or who in fact collects, receives or accounts for, any money of the Fund, or who is charged with the receipt, custody or disposal of, or the accounting for, any store and property of the Authority or who in fact receives, holds or disposes of such store and property;

"Authority" means the Labuan Financial Services Authority established under section 3;

[Am. Act A1365:s.4]

"Bank" means the Central Bank of Malaysia established under the Central Bank of Malaysia Act 1958 *[Act 519]*;

"Chairman" means the Chairman appointed under section 5;

"committee" means any committee established by the Authority under subsection 15(1);

“corporation” means any body corporate formed or incorporated or existing within Malaysia or outside Malaysia and includes any foreign Labuan company as defined in the Labuan Companies Act 1990 [Act 441] but does not include—

(a) any corporation sole;

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

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

[Ins. Act A1365:s.4]

"dependant", in relation to an officer or servant of the Authority, means the spouse, parent, children, including adopted children or step-children, or such other person as may be specified by the Authority with the consent of the Minister from time to time by notice published in the *Gazette*;

“Director General” means the Director General appointed under section 5;

[Ins. Act A1365:s.4]

"Fund" means the Fund established under subsection 29(1);

"Labuan" means the Federal Territory of Labuan;

[Subs. Act A1365:s.4]

“Labuan financial institution” means any person—

(a) providing Labuan financial services; or

(b) incorporated, registered or established under the laws specified in the Schedule;

[Ins. Act A1365:s.4]

“Labuan financial services” means any service provided by any person under any of the laws specified in the Schedule;

[Ins. Act A1365:s.4]

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

"offshore financial institution" [Deleted Act A1365:s.4];

"offshore financial services" [Deleted Act A1365:s.4];

"Registrar" means the Registrar of Companies under the Companies Act 1965 [Act 125], and includes any Regional Registrar, Deputy Registrar or Assistant Registrar of Companies.

(2) [Deleted Act A1365:s.4];

PART II THE AUTHORITY

3. The Authority and its objectives.

(1) (1) There is hereby established a body corporate by the name of "Labuan Financial Services Authority" with perpetual succession and a common seal, which may sue and be sued in its name and, subject to and for the purposes of this Act, may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description and may convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property or any interest therein vested in the Authority upon such terms as it deems fit.

(2) The objectives of the Authority are-

(a) to promote and develop Labuan as an international centre for business and financial services;

(b) to develop national objectives, policies and priorities for the orderly development and administration of the international business and financial services in Labuan; and

[Am. Act A1365:s.4]

(c) to act as the central regulatory, supervisory and enforcement authority of the international business and financial services industry in Labuan.

[(c) Ins. Act A1365:s.4]

4. Functions and powers of the Authority

(1) The functions of the Authority shall be-

(a) to administer, enforce, carry out and give effect to the provisions of this Act and the laws specified in the Schedule and anything incidental to such laws and to ensure that such laws are complied with;

[(a) Subs. Act A1365:s.6]

(b) to exercise, discharge and perform such powers, duties and functions under the laws referred to in paragraph (a);

(c) to maintain the good repute of Labuan as an international business and financial centre;

[(c) Subs. Act A1365:s.6]

(d) to carry out research and commission studies on financial services in Labuan;

(e) to make recommendations for the creation and improvement of any facility likely to enhance the attraction of Labuan as a centre for financial services;

[(d)&(e) Am. Act A1365:s.6]

(f) to co-operate with Labuan financial institutions and professional and industry associations in Labuan to promote and provide financial services and to foster high standards for Labuan financial services;

[(f) Subs. Act A1365:s.6]

(g) to advise and make recommendations to the Minister on matters relating to Labuan financial services; and

[(g) Subs. Act A1365:s.6]

(h) to carry out all such activities and to do all such things as are necessary or advantageous and proper for the administration of the Authority, or for such other purposes as may be directed by the Minister;

[(h) Ins. Act A1365:s.6]

(2) The Authority shall have power to do all things expedient or reasonably necessary for, or incidental to, the performance of its functions and, in particular, but without prejudice to the generality of the foregoing-

(a) to appoint such agents as it deems fit for the purpose of performing its functions;

(b) to impose fees or any other charges it deems fit for giving effect to any of its functions or powers;

(c) to do such other things as it deems fit to enable it to carry out its functions and powers effectively.

(3) *[Deleted Act A1365:s.6]*

(4) The Authority may, with the written approval of the Minister, establish or participate in any body corporate-

(a) for the purpose of promoting research and training in relation to offshore financial services;

(b) for the purpose of enhancing the development of offshore financial services;
or

(c) if such establishment or participation is expedient or reasonably necessary for, or incidental to, the performance of the Authority's functions provided under this Act or the laws specified in the Schedule.

[(c)Am. Act A1365:s.6]

(5) *[Deleted Act A1365:s.6]*

(6) *[Deleted Act A1365:s.6]*

4A. Power to issue guidelines.

(1) The Authority may, in respect of this Act or the laws specified in the Schedule or any other matter relating to Labuan financial services, issue guidelines to clarify any provision of this Act or the laws specified in the Schedule to facilitate compliance with the law by a Labuan financial institution or any other matters relating to Labuan financial services.

(2) The Authority may amend or revoke any guideline issued under this section.

[Ins. Act A1365:s.7]

4B. Power to issue directions.

(1) Notwithstanding any provision to the contrary in any other law relating to Labuan financial services, when the Authority is satisfied that it is necessary to do so for the purpose of giving effect to the objectives of the Authority, the Authority may issue directions to a Labuan financial institution in respect of all or any of the following matters:

(a) the policy to be followed by the Labuan financial institution relating to the conduct of the institution's business in Labuan;

(b) the supervision and regulation of the Labuan financial institution pursuant to the laws relating to Labuan financial services;

(c) the monetary policy to be given effect to by the Labuan financial institution;
and

(d) the action to be taken by the Labuan financial institution relating to its members or servants.

(2) Any Labuan financial institution who fails to comply with any direction issued under subsection (1) shall be guilty of an offence and shall be liable, on conviction—

(a) in the case of an individual person—

(i) to a fine not exceeding two hundred and fifty thousand ringgit; and

(ii) for a continuing offence, to a fine not exceeding two thousand and five hundred ringgit for every day during which the offence continues after conviction; and

(b) in the case of a body corporate or partnership—

(i) to a fine not exceeding five hundred thousand ringgit; and

(ii) for a continuing offence, to a fine not exceeding five thousand ringgit for every day during which the offence continues after conviction.

[Ins. Act A1365:s.7]

4C. Power to publish information

(1) The Authority may publish any information with respect to any matter relating to Labuan financial services or any other information deemed by the Authority to be of public interest.

(2) Without prejudice to the generality of subsection (1), the Authority may publish any information relating to any action taken by the Authority against any Labuan financial institution.

[Ins. Act A1365:s.7]

5. Membership of the Authority.

(1) The Authority shall consist of the following members who shall be appointed by the Minister:

(a) a Chairman;

(b) the Director General; and

(c) not less than three and not more than seven other persons, two of whom shall be from the public sector.

(2) The members appointed under paragraph (1)(c) shall be from amongst persons who possess relevant experience in financial, commercial or legal matters.

(3) The Director General shall be the chief executive officer of the Authority and shall be entrusted with the day-to-day administration of the Authority.

(4) In the event of the Director General being absent or unable to act due to illness or any other cause, the Chairman shall appoint any member of the Authority to carry out the functions of the Director General.

6. Tenure of office

Subject to such conditions as may be specified in his instrument of appointment, a member of the Authority shall, unless he sooner resigns or vacates his office or his appointment is sooner revoked, hold office for a term not exceeding three years and is eligible for reappointment.

7. Resignation and revocation.

(1) The appointment of any member may at any time be revoked by the Minister.

(2) A member may at any time resign his office by a written notice addressed to the Minister.

8 . Vacation of office

The office of a member of the Authority shall be vacated -

(a) if he dies;

(b) if he has been convicted of any offence under any law;

(c) if he becomes a bankrupt;

(d) if he is of unsound mind or is otherwise incapable of discharging his duties; or

(e) if he absents himself from three consecutive meetings of the Authority without leave of the Chairman or in the case of the Chairman, without leave of the Minister.

9. Power of the Minister to give directions and require information

1) The Minister may, from time to time, give to the Authority directions of a general character not inconsistent with the provisions of this Act and such directions shall be binding on the Authority.

(2) The Minister may, from time to time, require the Authority to furnish the Minister with such returns, accounts and information with respect to the performance of any of its functions under this Act and any other law relating to Labuan financial services and the Authority shall comply with such requirement.

[(2) Am. Act A1365:s.8]

10 . Authority to determine its own procedure.

Subject to this Act and the approval of the Minister, the Authority shall determine its own procedure.

11. Authority may invite others to meetings.

The Authority may invite any person to attend any meeting or deliberation of the Authority for the purpose of advising it on any matter under discussion, but any person so attending shall have no right to vote at the said meeting or deliberation.

12. Remuneration or allowance.

Members of the Authority or any person invited to attend any meeting or deliberation of the Authority under section 11 may be paid such remuneration or allowance as the Minister may determine.

13. Common seal.

(1) The Authority shall have a common seal and such seal may from time to time be broken, changed, altered and made anew as the Authority thinks fit.

(2) Until a seal is provided by the Authority, a stamp bearing the words "Labuan Financial Services Authority" may be used and shall be deemed to be the common seal of the Authority.

[(2) Am. Act A1365:s.9]

(3) The common seal shall be kept in the custody of the Chairman or such other person as may be authorized by the Authority, and shall be authenticated by either the Chairman or such authorized person or by any officer authorized by the Chairman in writing; and all deeds, documents and other instruments purporting to be sealed with the said seal, authenticated as aforesaid, shall, until the contrary is proven, be deemed to have been validly executed:

Provided that any document or instrument which, if executed by a person not being a body corporate, would not be required to be under seal may in like manner be executed by the Authority, and any such document or instrument may be executed on behalf of the Authority by any officer or servant of the Authority generally or specially authorized by the Authority in that behalf.

(4) The common seal of the Authority shall be taken judicial notice of for all official purposes.

14. Delegation of Authority's function or powers.

(1) The Authority may delegate any of its functions or powers to-

- (a) any member of the Authority;
- (b) any committee established by the Authority; or
- (c) any officer or servant of the Authority.

(2) A delegation under this section shall not preclude the Authority itself from performing or exercising at any time any of the functions or powers under this Act or the laws specified in the Schedule so delegated.

[(2) Am. Act A1365:s.10]

15. Authority may establish committees.

(1) The Authority may establish such committees as it considers necessary or expedient to assist it in the performance of its functions under this Act or the laws specified in the Schedule;

[Am. Act A1365:s.11]

(2) The Authority may appoint any person to be a member of any committee established under subsection (1).

(3) A committee established under this section may elect any of its members to be chairman and may regulate its own procedure and, in the exercise of its powers under this subsection, such committee shall be subject to and act in accordance with any direction given to the committee by the Authority.

(4) Meetings of a committee established under this section shall be held at such times and places as the chairman of the committee may, subject to subsection (3), determine.

(5) A committee may invite any person, for the purpose of advising it on any matter under discussion, to attend any meeting of the committee but the person so invited shall not be entitled to vote at any such meeting.

(6) Members of a committee or any person invited to attend any meeting of a committee may be paid such allowances and other expenses as the Authority may determine.

(7) A member of a committee shall hold office for such term as may be specified in his letter of appointment and is eligible for reappointment.

(8) The Authority may revoke the appointment of any member of a committee without assigning any reason therefor.

(9) A member of a committee may at any time resign by giving notice in writing to the Chairman of the Authority.

16. Minutes

(1) The Authority or a committee shall cause minutes of all their meetings to be maintained and kept in proper form.

(2) Any minutes made of meetings of the Authority or a committee, if duly signed, shall, in any legal proceedings, be admissible as *prima facie* evidence of the facts stated therein and every meeting of the Authority or a committee in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held and all members thereof to have been duly qualified to act.

17. Disclosure of interest

(1) Any member of the Authority or a committee who has or acquires, directly or indirectly, by himself, or his spouse or children, or his partner or his agent-

(a) any share or interest in any Labuan financial institution;

[(a) Am. Act A1365:s.12]

(b) any share or interest-

(i) in any contract made with the Authority;

(ii) in any work done for the Authority; or

(iii) in any company or firm with which the Authority proposes to enter into a contract in respect of any undertaking; or

(c) any beneficial interest in land proposed to be acquired, purchased, leased or otherwise dealt with by the Authority, which he knows to be affected or is likely to be affected by any project, scheme or enterprise approved or proposed to be approved by the Authority,

shall declare the nature and extent of his share or interest to the Authority or the committee, as the case may be.

(2) Subject to subsection (7), the declaration required to be made by a member under subsection (1) shall be made-

(a) in the case of paragraph (1)(a), at the first meeting of the Authority or committee held after he acquires such share or interest;

(b) in the case of paragraphs (1)(b) and (c)-

(i) at a meeting of the Authority or committee at which any question relating to the contract, acquisition, purchase, lease, dealing, project or scheme referred to in those paragraphs is first taken into consideration;

(ii) if the member does not have any such share or interest as is referred to in subparagraph (i) at the date of the meeting mentioned in that subparagraph, at the next such meeting held after he acquires such share or interest; or

(iii) if a member acquires any share or interest in any contract with the Authority after it has been made, at the first meeting held after that member acquires such share or interest.

(3) For the purposes of this section, a general notice given to the other members by a member to the effect that he is a shareholder or director of any specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with or by that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

(4) A notice given under subsection (3) shall be of no effect unless it is given at a meeting of the Authority or the committee, as the case may be, or the member concerned takes reasonable steps to secure that it is brought up and read at the next meeting of the Authority or the committee after it is given.

(5) Every declaration made in pursuance of subsection (1) shall be recorded in the minutes of the meeting at which it was made or read.

(6) No member of the Authority or committee shall-

(a) take part in any deliberation (except by invitation of the Authority or the committee, as the case may be) on any matter affecting any Labuan financial institution in which he has any share or interest, whether or not he has declared his share or interest, or in any decision relating thereto or in any matter incidental thereto; or

[(6) (a) Am. Act A1365:s.12]

(b) vote upon any resolution or question relating to any contract, acquisition, purchase, lease, dealing, project or scheme in which he has any share or interest, whether or not he has declared his share or interest, or take part in any deliberation (except by invitation of the Authority or the committee, as the case may be) or any decision relating thereto or any matter incidental thereto,

and if he does so-

(aa) his vote shall not be counted; and

(bb) he shall not be counted in the quorum present at the meeting of such deliberation, resolution or question.

(7) A member who, before his appointment as a member of the Authority or a committee, has already acquired the share or interest referred to in subsection (1) shall declare the nature and extent of his share or interest to the Authority or committee, as the case may be, immediately upon his appointment by a general notice to be given to the Authority or the committee.

(8) Any member of the Authority or a committee who fails to disclose his share or interest as provided under this section shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

17A. Preservation of secrecy.

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

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

[Ins. Act A1337:s.4]

18. Appointment of officers and servants of the Authority

(1) The Authority may, from time to time, employ persons who shall be paid such remuneration and allowances and shall hold their employment on such other terms and conditions as the Authority may determine.

(2) The Authority may make arrangements for the payment to its officers and servants and their dependants of such retirement benefits, gratuities or other allowances as it may determine.

18A. Establishment of staff welfare fund.

(1) The Authority may, with the written approval of the Minister, out of the funds of the Authority, create and maintain a trust account to be known as the "Labuan Financial

Services Authority Staff Welfare Fund" for the benefits of its officers and employees including their dependants.

(2) The Labuan Financial Services Authority Staff Welfare Fund shall be utilized for such purposes conducive to the welfare of the officers and employees of the Authority, including their dependants, as may from time to time be provided in trust directions to be issued by the Authority with the approval of the Minister, and such directions may provide for the manner and the procedure for the making of the grant, loans or other payments from such Fund.

[Ins. Act A1036:s.4; Am. Act A1365:s.13]

19. Power to grant loans and make advances to its officers and servants.

The Authority may grant loans and make advances to its officers and servants on such terms and conditions as the Authority may determine.

20. Disciplinary committees

(1) The Authority shall have disciplinary authority over all its officers and servants and shall exercise disciplinary control in respect of all such persons in accordance with this Act and any regulations made under section 22.

(2) For the purposes of this section-

(a) there shall be established a disciplinary committee of the Authority in respect of the Director General consisting of-

(i) the Chairman, who shall be the chairman of the committee; and

(ii) at least two members of the Authority, which shall not include the Director General, as shall be determined among the members themselves; and

(b) the Authority may, by notification in the *Gazette*, establish different disciplinary committees for different categories of officers or servants of the Authority.

(3) The following shall apply to any disciplinary committee established pursuant to paragraph (2)(b):

(a) such committee shall consist of any number of members of the Authority, other than the Chairman of the Authority, or officers of the Authority, or any combination of such members and officers; and

(b) an officer who is a member of a disciplinary committee shall not be lower in rank than any officer or servant over whom the committee of which he is a member has disciplinary authority.

(4) The committee established pursuant to paragraph (2)(b) shall exercise its powers in all matters relating to the discipline of officers and servants placed under its jurisdiction.

(5) In the exercise of its disciplinary functions and powers, a disciplinary committee referred to under subsection (2) shall have the power to take disciplinary action and impose any disciplinary punishment or any combination of two or more disciplinary punishments as may be provided for under any regulations made under section 22.

21. Appeal against decision of disciplinary committee.

(1) A decision of the disciplinary committee under paragraph 20(2)(a) shall be appealable to the Minister.

(2) A decision of the disciplinary committee under paragraph 20(2)(b) shall be appealable to the Disciplinary Appeal Board which shall consist of the following members:

(a) the Chairman of the Authority, who shall be the chairman of the Disciplinary Appeal Board and having a casting vote; and

(b) three members of the Authority, not being members of the disciplinary committee whose decision is the subject matter of the appeal, to be appointed by the chairman of the Disciplinary Appeal Board with the approval of the Authority for the purpose of the appeal.

(3) The Minister or the Disciplinary Appeal Board, as the case may be, may confirm, reverse or vary the decision of the disciplinary committee.

(4) When the Disciplinary Appeal Board considers an appeal under subsection (2), a member of the disciplinary committee against whose decision the appeal is made who is also a member of the Authority shall not be present or in any way participate in any proceedings relating to that appeal.

(5) The decision of the Minister or the Disciplinary Appeal Board under subsection (3) shall be final and conclusive.

22. Power to make disciplinary regulations.

(1) The Authority may, with the approval of the Minister, make such regulations as it deems necessary or expedient to provide for the discipline of the officers and servants of the Authority.

(2) The disciplinary regulations made under this section-

(a) may create disciplinary offences;

(b) may provide for disciplinary punishments as the Authority may deem appropriate, and the punishments may extend to warning, fine, forfeiture of emoluments, a deferment of salary movement, reduction of salary, reduction in rank and dismissal;

(c) shall provide for an opportunity to the person against whom disciplinary proceedings are taken to make representations against the disciplinary charge laid against him before a decision is arrived at by the disciplinary committee except in the following cases:

(i) where an officer or servant of the Authority is dismissed or reduced in rank on the ground of conduct in respect of which a criminal charge has been proved against him;

(ii) where the Authority, on the recommendations of the Minister charged with home affairs, is satisfied that in the interest of the security of the Federation or any part thereof it is not expedient to carry out the requirements of this paragraph; or

(iii) where there has been made against an officer or servant of the Authority any order of detention, supervision, restricted residence, banishment or deportation, or where there has been imposed on such officer or servant of the Authority any form of restriction or supervision by bond or otherwise, under any law relating to the security of the Federation or any part thereof, prevention of crime, preventive detention, restricted residence, banishment, immigration, or protection of women and girls;

(d) may provide for the interdiction with reduced emoluments of an officer or servant of the Authority during the pendency of a criminal proceedings against him or disciplinary proceedings against him with the view to his dismissal or reduction in rank; and

(e) may provide for the suspension without emoluments of an officer or servant of the Authority where the officer or servant has been convicted by any criminal court or where an order of detention or restriction has been made in respect of or imposed on the officer or servant.

23. Imposition of surcharge.

(1) A person who is or was in the employment of the Authority may be surcharged if it appears to the Authority that the person-

(a) has failed to collect money owing to the Authority for the collection of which he is or was responsible;

(b) is or was responsible for any improper payment of money from the Authority or for any payment of money which is not duly approved;

(c) is or was responsible, directly or indirectly, for any deficiency in, or for the destruction of, any money, store or other property of the Authority;

(d) being or having been an accounting officer, fails or has failed to keep proper accounts or records; or

(e) has failed to make any payment, or is or was responsible for any delay in the payment from the Authority, of money to any person to whom such payment is due under any law or under any contract, agreement or arrangement entered into between that person and the Authority.

(2) The Authority shall, before the person is surcharged, serve on him a written notice calling on him to show cause why he should not be surcharged.

(3) If a satisfactory explanation is not received within fourteen days from the date of service of the aforesaid notice, the Authority may-

(a) in the case of paragraphs (1)(a), (b) and (c), surcharge against the person a sum not exceeding the amount not collected, or of the improper payment made, or of the deficiency in or destruction of the property caused; and

(b) in the case of paragraphs (1)(d) and (e), surcharge against the person, such sum as the Authority may think fit.

24. Notification of surcharge.

The Authority shall notify the person surcharged in respect of any surcharge made under subsection 23(3).

25. Withdrawal of surcharge.

Notwithstanding subsection 23(3) and section 24, the Authority may at any time withdraw any surcharge in respect of which a satisfactory explanation has been received or if it otherwise appears that no surcharge should have been made, and the Authority shall forthwith notify the person surcharged of the withdrawal.

26. Recovery of surcharge.

The amount of any surcharge made under subsection 23(3) and not withdrawn under section 25 shall be a debt due to the Authority from the person surcharged and may be sued for and recovered in any court at the suit of the Authority and may also, if the Authority so directs, be recovered by deduction-

(a) from the salary of the person surcharged; or

(b) from the pension of the person surcharged,
by equal monthly instalments not exceeding one-fourth of the total monthly salary or pension, as the case may be, of that person.

27. Composition of the Authority in special cases.

In any action for surcharge against the Director General, the composition of the Authority for the purposes of sections 23 to 26 shall not include the Director General.

28. Public servants.

All members of the Authority or any of its committees or any officer, servant or agent of the Authority while discharging their duties as such member, officer, servant or agent shall be deemed to be public servants within the meaning of the Penal Code.*[Act 574]*.

**PART IIA
ENFORCEMENT POWERS AND PRESERVATION OF INFORMATION**

28A. Interpretation in relation to Part IIA.

In this Part, unless the context otherwise requires-

"authority" means any authority vested with supervisory and regulatory or enforcement powers situated within or outside Malaysia;

[Am. Act A1365:s.15]

"credit facility" *[Deleted Act A1365:s.15]*

"criminal offence" means any offence under-

(a) any law in Malaysia relating to offshore financial services;

[Am. Act A1337:s. 5]

(b) the Penal Code;

(c) the Dangerous Drugs Act 1952; *[Act 234]*

(d) the Dangerous Drugs (Forfeiture of Property) Act 1988; *[Act 340]*

[Am. Act A1337:s. 5]

(e) the Kidnapping Act 1961; or

[Am. Act A1337:s. 5]

(f) any other written law in Malaysia that is punishable with imprisonment;

[Ins. Act A1337:s. 5]

"depositor" *[Deleted Act A1365:s.15]*

"domestic law enforcement agency" includes a body or agency that is for the time being responsible in Malaysia for the enforcement of laws relating to the prevention, detection and investigation of any criminal offence;

[Subs. Act A1337:s. 5]

"financial institution" *[Deleted Act A1337:s. 5];*

"fund manager" *[Deleted Act A1365:s.15]*

"home monetary authority" *[Deleted Act A1337:s. 5]*

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

[Subs. Act A1337:s. 5]

"licensed offshore bank" has the meaning assigned to it in the Offshore Banking Act 1990;

"police officer" means any member of the Royal Malaysia Police as defined in the Police Act 1967 *[Act 344];*

[Ins. Act A1365:s.15]

"property" means—

(a) assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible, however acquired; and

(b) legal documents or instruments in any form evidencing title to or interest in the assets referred to in paragraph (a), including bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.’

[Ins. Act A1365:s.15]

"licensee" *[Deleted Act A1365:s.15]*

"trust company" *[Deleted Act A1365:s.15]*

28B. Submission of information.

(1) The Authority may, in the exercise of its supervisory functions under this Act or the laws specified in the Schedule, require any offshore financial institution or any corporation related to the offshore financial institution to submit to the Authority any information—

[Am. Act A1365:s.16]

(a) relating to the identity, affairs, account or particulars of any person who is a customer of the offshore financial institution or any corporation related to the offshore financial institution, or his nominee or beneficiary;

(b) relating to the identity, affairs or particulars of a beneficial owner of an account opened with the offshore financial institution or any corporation related to the offshore financial institution, or relating to such account; or

(c) which the Authority deems necessary or expedient for the performance of such supervisory functions;

[Subs. Act A1337:s.6]

(2) *[Deleted Act A1365:s.16]*

(3) *[Deleted Act A1337:s.6]*

(4) *[Deleted Act A1365:s.16].*

(5) Any information obtained by the Authority under subsection (1) or any other provision of this Act or the laws specified in the Schedule shall be confidential and a secret between the Authority and the person supplying it, and no person who has any information or document which to his knowledge has been disclosed in contravention of this subsection shall in any manner disclose the information or document to any other person.

(6) Notwithstanding subsection (5), the Authority may give, divulge, reveal, publish or otherwise disclose any information submitted under subsection (1)—

(a) to any person in a consolidated or aggregated manner if it deems fit to do so, and such disclosure shall be confined to such information which does not relate to an individual Labuan financial institution;

(b) to the home supervisory authority of the Labuan financial institution and the disclosure may include any information which relates to an individual Labuan financial institution under the supervision of the home supervisory authority if the home supervisory authority has the necessary provision in its constituent

documents or corresponding laws to safeguard such information from unlawful disclosure;

(c) to the domestic law enforcement agency, when there is reasonable suspicion based on the evidence made available to the Authority that a criminal offence is about to be committed or is being committed or has been committed provided that the domestic law enforcement agency has executed a secrecy undertaking in favour of the Authority relating to any information provided under this subsection;

(d) pursuant to an order by any court of competent jurisdiction in any proceedings, where the order obtained has been obtained by an *ex parte* application, the Authority may notify the person affected by the order and upon receipt of such notification, the affected person may file in the necessary application to the court to contest the order or otherwise comply with the order accordingly;

(e) with the consent of the Labuan financial institution or the customer of such Labuan financial institution; or

(f) in giving effect to any legal arrangement or memorandum of understanding or agreement with any foreign government or home supervisory authority entered into by—

(i) the Government of Malaysia;

(ii) the Authority with the approval of the Minister; or

(iii) any relevant domestic law enforcement agency with the approval of the relevant minister.

(7) Without prejudice to any other provision in this Act or the laws specified in the Schedule, the Authority may receive any information from any person or authority in the course of carrying out any power or duty under this Act or the laws specified in the Schedule.

[(5), (6), (7), Subs. Act A1365:s.16]

(8) *[Deleted Act A1365:s.16].*

(9) *[Deleted Act A1365:s.16].*

(10) Any person who submits false or misleading or inaccurate information to the Authority or fails to comply with this section shall be guilty of an offence and shall be liable, on conviction—

(a) in the case of an individual person to a fine not exceeding one million and five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both; and

(b) in the case of a corporation or partnership to a fine not exceeding three million ringgit;

[(10) Subs .Act A1365:s.16]

(11) Any person who fails to keep information secret as required under subsection

(5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.

[(11) Am. Act A1365:s.16]

28BA. Power to report suspected offence and adverse conditions.

(1) Where the Authority in the course of the exercise of any of its powers, or the discharge of any of its duties, or the performance of any of its functions, under this Act or the laws specified in the Schedule, suspects any person to have committed any offence under this Act or under the laws specified in the Schedule, it shall be lawful for the Authority to give information of such commission to a police officer in charge of a police station or to any other police officer, or to convey any information in relation to such offence to any banking institution, or to any other financial institution or other person affected by such offence, or to any authority or person having power to investigate under, or enforce, the provision of the law under which the offence is suspected by the Authority to have been committed.

(2) The Authority may inform the home supervisory authority, under condition of secrecy, of any adverse conditions in a Labuan financial institution if the Authority is satisfied that such information is necessary for the supervisory functions of the home supervisory authority.

(3) Subsection (1) shall have full force and effect, notwithstanding anything inconsistent therewith, or contrary thereto, in this Act or the laws specified in the Schedule or in any other written law.

[Ins. Act A1365:s.17]

28C. Examination

(1) The Director General or any person authorized by the Authority shall, for the purposes of administering, enforcing, carrying out and giving effect to the provisions of this Act or the laws specified in the Schedule, have the power—

(a) to request, inquire, examine and inspect; or

(b) to make copies of or take extracts from,

any record, report or document from any Labuan financial institution or any corporation related to any Labuan financial institution.

(2) Any Labuan financial institution who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both.

[Subs. Act A1365:s.18]

28D. Appointment of investigating officer, powers, functions and duties.

(1) For the purposes of carrying out investigation of any offence under this Act or under the laws specified in the Schedule, the Authority may appoint, by an instrument in writing, any officer or employee of the Authority or any other suitable person to be an investigating officer.

[Am. Act A1365:s.19]

(2) Subject to subsection (3), an investigating officer appointed under subsection (1) shall have all the powers, functions, and duties conferred on an investigating officer under this Act, or the laws specified in the Schedule and where such investigating officer is not an officer or employee of the Authority, he shall, in relation to such powers, functions and duties-

[Am. Act A1365:s.19]

(a) be subject to; and

(b) enjoy such rights, privileges, protections, immunities and indemnities as may be specified in,

the provisions of this Act or other written law applicable to an officer or employee of the Authority.

(3) An investigating officer shall be subject to the direction and control of the Authority or of such other officer of the Authority as may be authorized by the Authority to act on behalf of the Authority, and of any other investigating officer or officers superior to him in rank, and shall exercise his powers, perform his functions, and discharge his duties referred to in subsection (2) in compliance with such directions, instructions, conditions, restrictions or limitations as the Authority or an officer of the Authority authorized to act on behalf of the Authority or an investigating officer superior

to him in rank, may specify orally or in writing, either generally, or in any particular case or circumstance.

[Am. Act A1365:s.19]

(4) The Director General shall have all the powers, functions and duties of an investigating officer.

(5) *[Deleted Act A1365:s.19]*

(6) *[Deleted Act A1365:s.19]*

[Ins. Act A1036:s.5]

28E. Powers of entry, search and seizure.

(1) Where an investigating officer is satisfied, or has reason to suspect, that a person has committed any offence under this Act or the laws specified in the Schedule, he may, if in his opinion it is reasonably necessary to do so for the purpose of investigating into such offence—

(a) enter any premises of a Labuan financial institution or any corporation related to any Labuan financial institution;

(b) search the premises for any property, record, report, object, article, material, thing, book, minute book, account, register or document;

(c) inspect, make copies of or take extracts from any record, report, object, article, material, thing, book, minute book, account, register or document so seized and detained;

(d) take possession of and remove from the premises, any property, record, report, object, article, material, thing, book, minute book, account, register or document so seized and detained and detain it for such periods as he deems necessary;

(e) search any person who is in, or on, such premises, if the investigating officer has reason to suspect that, that person has on his person any property, record, report, object, article, material, thing, book, minute book, account, register or document, including personal documents, necessary, in the investigating officer's opinion, for the purpose of investigating into any criminal offence;

(f) break open, examine and search any article, container or receptacle; or

(g) stop, detain or search any conveyance.

(2) An investigating officer may, if it is necessary to do so—

(a) break open any outer or inner door of such premises or conveyance and enter such premises or conveyance;

(b) remove by force any obstruction to such entry, search, seizure, detention or removal as he is empowered to effect; or

(c) detain any person found on such premises, or in such conveyance, until the search is completed.

(3) Notwithstanding any provision under this Act to the contrary, any detention of any person under this section shall not be for more than twenty four hours without the authorisation of a Magistrate.

(4) An investigating officer may seize, take possession of, and detain for such duration as he thinks necessary, any property, record, report, object, article, material, thing, book, minute book, account, register or document produced before him in the course of his investigation or found on the person who is being searched by him.

(5) A list of all things seized in the course of a search made under this section and of the premises in which they are respectively found shall be prepared by the investigating officer conducting the search and signed by him.

(6) The occupant of the premises entered under subsection (1), or some person on his behalf, shall be permitted to attend during the search, and a copy of the list prepared and signed under this section shall be delivered to such occupant or person at his request.

(7) Notwithstanding the foregoing provisions, no investigating officer of the Authority shall enter any premises by the use of force without a search warrant by a Magistrate unless he has reasonable grounds for believing that, by reason of the delay in obtaining a search warrant, any property, record, report, object, article, material, thing, book, minute book, account, register or document may be interfered with or destroyed or the object of any entry is likely to be frustrated.

(8) An investigating officer shall, unless otherwise ordered by any court—

(a) on the close of investigations or any proceedings arising therefrom; or

(b) with the prior written consent of his superior officer, at any time before the close of investigations,

release any property, record, report, object, article, material, thing, book, minute book, account, register or document seized, detained or removed by him, to such person as he determines to be lawfully entitled to the property, record, report, object, article, material, thing, book, minute book, account, register or document if he is satisfied that it is not required for the purpose of any prosecution or proceedings under this Act, or for the purpose of any prosecution under any other written law.

(9) A record in writing shall be made by the officer effecting any release of any property, record, report, object, article, material, thing, book, minute book, account, register or document under subsection (8) in respect of such release specifying therein in detail the circumstances of, and the reason for, such release.

(10) Where the investigating officer is unable to determine the person who is lawfully entitled to the property, record, report, object, article, material, thing, book, minute book, account, register or document or where there is more than one claimant to such property, record, report, object, article, material, thing, book, minute book, account, register or document, the investigating officer shall report the matter to a Magistrate who shall then deal with the property, record, report, object, article, material, thing, book, minute book, account, register or document as provided for in subsections 413(2), (3) and (4), sections 414, 415 and 416 of the Criminal Procedure Code.

[Ins. Act A1365:s.20]

28F. Powers to examine persons.

(1) Notwithstanding any written law, or oath, undertaking or requirement of secrecy or confidentiality to the contrary, or an obligation under an agreement or arrangement, express or implied, to the contrary, an investigating officer conducting an investigation shall have the power to administer an oath or affirmation to the person being examined.

(2) An investigation officer investigating an offence may—

(a) order any person to attend before him for the purpose of being examined orally in relation to any matter which may, in his opinion, assist in the investigation into the offence;

(b) order any person to produce before him any property, record, report, object, article, material, thing, book, minute book, account, register or document or any certified copy thereof, or any other article which may, in his opinion assist in the investigation into the offence; or

(c) by written notice require any person to furnish a statement in writing made on oath or affirmation setting out therein all such information which may be required under the notice, being information which, in such officer's opinion, would be of assistance on the investigation into the offence.

(3) Paragraph (2)(b) shall not apply to ledgers, day books, cash books, account books and all other books and documents used in the ordinary course of business of a bank.

(4) A person to whom an order under paragraph (2)(a) has been given shall—

(a) attend in accordance with the terms of the order to be examined, and shall continue to attend from day to day where so directed until the examination is completed; and

- (b) during such examination, disclose all information which is within his knowledge, or which is available to him, in respect of the matter in relation to which he is being examined, and answer any question put to him truthfully and to the best of his knowledge and belief, and shall not refuse to answer any question on the ground that it tends to incriminate him or his spouse.
- (5) A person to whom an order has been given under paragraph (2)(b) shall not conceal, destroy, alter, remove from Malaysia, or deal with, expend, or dispose of, any book, record, report, document or article specified in the order, or alter or deface any entry in any such book or document, or cause such act to be done, or assist or conspire to do such act.
- (6) A person to whom a written notice has been given under paragraph (2)(c) shall, in his statement, furnish and disclose truthfully all information required under the notice which is within his knowledge, or which is available to him, or which is capable of being obtained by him, and shall not refuse to furnish or disclose the information on the ground that it tends to incriminate him or his spouse.
- (7) A person to whom an order or a notice is given under subsection (2) shall comply with such order or notice and with subsections (4), (5) and (6) notwithstanding any written law or rule of law to the contrary.
- (8) Where any person discloses any information or produces any book, record, report, document or article pursuant to subsections (2), (4) and (6), neither the first mentioned person, nor any other person on whose behalf or direction or as whose agent or employee the first mentioned person may be acting, shall, on account of such disclosure or production, be liable to any prosecution for any offence under or by virtue of any written law, or to any proceeding or claim by any person under or by virtue of any contract, agreement or arrangement, or otherwise.
- (9) An investigating officer examining a person under paragraph (2)(a) shall record in writing any statement made by the person and the statement so recorded shall be read to and signed by the person, and where such person refuses to sign the record, the officer shall endorse thereon under his hand the fact of such refusal and the reasons therefore, if any, stated by the person examined.
- (10) The record of an examination under paragraph (2)(a), or a written statement on oath or affirmation made pursuant to paragraph (2)(c), or any book, record, report, document or article produced under paragraph (2)(b) or otherwise in the course of an examination under paragraph (2)(a), or under a written statement on oath or affirmation made pursuant to paragraph (2)(c), shall, notwithstanding any written law or rule of law to the contrary, be admissible in evidence in any proceedings in any court for an offence under this Act or the laws specified in the Schedule, regardless whether such proceedings are against the person who was examined, or who produced the book, record, report, document or article, or who made the written statement on oath or affirmation, or against any other person.

(11) Any person who contravenes this section commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

[Ins. Act A1365:s.20]

28G. Search of a person.

(1) An investigating officer searching any person under subsection 28E(1) may detain the person for such period as may be necessary to have the search carried out, which shall not in any case exceed twenty-four hours without the authorization of a Magistrate, and may, if necessary, remove the person in custody to another place to facilitate such search.

(2) No person shall be searched under this Part except by an investigating officer of the same gender and such search shall be carried out with strict regard to decency.

[Ins. Act A1365:s.20]

28H. Obstruction to exercise of powers by an investigating officer.

(1) Any person who—

(a) refuses any investigating officer access to any premises, or fails to submit to the search of his person;

(b) assaults, obstructs, hinders or delays an investigating officer in effecting any entrance which he is entitled to effect;

(c) fails to comply with any lawful demands of any investigating officer in the execution of his duties under this Part;

(d) refuses to give to an investigating officer any property, document or information which may reasonably be required of him and which he has in his power to give;

(e) fails to produce to, or conceal or attempt to conceal from, an investigating officer, any property, record, report or document, which the investigating officer requires;

(f) rescues or attempts to rescue any thing which has been duly seized;

(g) furnishes to an investigating officer as true any information which he knows or has reason to believe to be false; or

(h) before or after any search or seizure, breaks or otherwise destroys any thing to prevent its seizure, or the securing of the property, record, report or document,

commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence continues after conviction.

[Ins. Act A1365:s.20]

28I. Tipping off.

(1) Any person who—

(a) knows or has reason to suspect that an investigating officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act or the laws specified in the Schedule and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or

(b) knows or has reason to suspect that a disclosure has been made to an investigating officer under this Act or the laws specified in the Schedule and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

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

(2) Nothing in subsection (1) makes it an offence for an advocate and solicitor or his employee to disclose any information or other matter—

(a) to his client or the client's representative in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the advocate and solicitor; or

(b) to any person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that—

(a) he did not know or suspect that the disclosure made under paragraph (2)(b) was likely to prejudice the investigation; or

(b) he had lawful authority or reasonable excuse for making the disclosure.

[Ins. Act A1365:s.20]

28J. Admissibility of statements by accused persons.

(1) In any trial or inquiry by a court into a criminal offence under this Act or under the laws specified in the Schedule, any statement, whether the statement amounts to a confession or not or is oral or in writing, made at any time, whether before or after the person is charged and whether in the course of an investigation or not and whether or not wholly or partly in answer to questions, by an accused person to or in the hearing of any investigating officer of the Authority, whether or not interpreted to him by any officer of the Authority or any other person, whether concerned or not in the arrest of that person, shall, notwithstanding any written law or rule of law to the contrary, be admissible at his trial in evidence and, if that person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit.

(2) No statement made under subsection (1) shall be admissible or used as provided for in that subsection if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the person, proceeding from a person in the Authority and sufficient in the opinion of the court to give that person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

(3) Where any person is arrested or is informed that he may be prosecuted for any criminal offence, he shall be served with a notice in writing, which shall be explained or interpreted to him, as the case may be, to the following effect:

“You have been arrested/informed that you may be prosecuted for (the possible criminal offence). Do you wish to say anything? If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you hold it back till you go to court, your evidence may be less likely to be believed and this may have an adverse effect on your case in general. If you wish to mention any fact now, and you would like it written down, this will be done.”.

(4) Notwithstanding subsection (3), a statement by any person accused of any offence made before there is time to serve a notice under that subsection shall not be rendered inadmissible in evidence merely by reason of no such notice having been served on him if such notice has been served on him as soon as is reasonably possible after the statement is made.

(5) No statement made by an accused person in answer to a written notice served on him pursuant to subsection (3) shall be construed as a statement caused by any inducement, threat or promise as is described in subsection (2), if it is otherwise voluntary.

(6) Where in any criminal proceedings against a person for an offence, evidence is given that the accused, on being informed that he might be prosecuted for it, failed to mention any such fact, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so informed, the court, in determining whether the prosecution has made out a *prima facie* case against the accused and in determining whether the accused is guilty of the offence charged, may draw such inferences from the failure as appear proper; and the failure may, on the basis of those inferences, be treated as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure is material.

(7) Nothing in subsection (6) shall in any criminal proceedings—

(a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his presence relating to the conduct in respect of which he is charged, in so far as evidence of it would be admissible apart from that subsection; or

(b) be taken to preclude the drawing of any inference from any such silence or other reaction of the accused which could be drawn apart from that subsection.

[Ins. Act A1365:s.20]

28K. Admissibility of statements and documents of persons who are dead or cannot be traced.

Notwithstanding any written law to the contrary, in any proceedings against any person for an offence under this Act or the laws specified in the Schedule—

(a) any statement made by any person to an investigating officer in the course of an investigation into any offence under this Act or the laws specified in the Schedule; and

(b) any document, or copy of any document, seized from any person by an investigating officer of the Authority in exercise of his powers under this Act or the laws specified in the Schedule,

shall be admissible in evidence in any proceedings in Malaysia before any court, where the person who made the statement or the document or the copy of the document is dead, or cannot be traced or found, or has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which appears to the court unreasonable.

[Ins. Act A1365:s.20]

28L. Admissibility of translation of documents.

(1) Where any document which is to be used in any proceedings against any person is in a language other than the national language or English language, a translation of such document into the national language or English language shall be admissible in evidence where the translation is accompanied by a certificate of the person who translated the document setting out that it is an accurate, faithful and true translation and the translation had been done by such person at the instance of the officer authorized by the Authority, the Public Prosecutor or an officer of any domestic law enforcement agency.

(2) Subsection (1) shall apply to a document which is translated, regardless whether the document was made in or outside Malaysia, or whether the translation was done in or outside Malaysia, or whether possession of such document was obtained by the authorized officer of the Authority, the Public Prosecutor or an officer of any domestic law enforcement agency in or home supervisory authority outside Malaysia.

[Ins. Act A1365:s.20]

28M. Evidence taken in foreign states.

(1) Where any evidence is obtained by the Authority in any Malaysian embassy, such evidence shall be admissible for any legal proceedings in Malaysia and such evidence shall be deemed to be obtained in Malaysia, notwithstanding anything to the contrary in any written law.

(2) For the purposes of this section, “Malaysian embassy” means such embassy established by the Malaysian Government in any foreign state.

[Ins. Act A1365:s.20]

28N. Admissibility of statements.

The record of an examination, any property, record, report or document produced, or any statement recorded by the Authority under this Act shall, notwithstanding any written law or rule of law to the contrary, be admissible as evidence in any proceedings in any court for, or in relation to, an offence or any other matter under this Act or any offence under any other written law, regardless whether such proceedings are against the person who was examined, or who produced the property, record, report or document, or who made the written statement on oath or affirmation, or against any other person.

[Ins. Act A1365:s.20]

28O. Protection of informers.

(1) Subject to subsection (2), where any complaint made by an officer of the Authority states that the complaint is made in consequence of information received by the officer making the complaint, the identity of the person from whom such information is received shall be secret between the officer who made the complaint and the person who gave the information, and everything contained in such information relating to the identity of the person who gave the information, shall not be disclosed or be ordered or required to be disclosed in any civil, criminal or other proceedings in any court, tribunal or other authority.

(2) If any book, paper or other document, or any visual or sound recording, or other matter or material which is given in evidence or liable to inspection in any civil, criminal or other proceedings in any court, tribunal or other authority as are referred to in subsection (1) contains any entry or other matter in which any person who gave the information is named or described or shown, or which might lead to his discovery, the court before which the proceedings are held shall cause all such parts thereof or passages therein to be concealed from view or to be obliterated or otherwise removed so far as is necessary to protect such person from discovery.

(3) Any person who gives the information referred to in subsection (1) knowing that the information is false shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding three years, and shall also be liable to a fine not exceeding one million ringgit; and for the purposes of any investigation into, or prosecution of, any offence under this subsection, subsections (1) and (2) shall not apply.

[Ins. Act A1365:s.20]

28P. Assistance to other authority.

(1) The Authority may on its own initiative, or upon the lawful request of any authority—

(a) supply to the requesting authority a copy of any property, record, report, object, article, material, thing, book, minute book, account, register or document seized, detained or taken possession of under section 28E or produced under paragraph 28F(2)(b), or of any written statement on oath or affirmation made under paragraph 28F(2)(c), or any record of examination made under subsection 28F(9), or otherwise in the course of any examination under section 28F, and such requesting authority may make use of such copy of such property, record, report, object, article, material, thing, book, minute book, account, register or document, statement or examination record as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person; or

(b) allow the requesting authority to have access to and inspect any property record, report, object, article, material, thing, book, minute book, account, register

or document which had been produced before, or seized, detained or taken possession of, by an investigating officer under this Act or the laws specified in the Schedule, and such requesting authority may make use of any knowledge gained by such access or inspection as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person.

(2) Where the Authority agrees to provide such assistance to the requesting authority, the Authority may exercise all or any part of the power of the investigating officer as provided under this Act or the law as specified in the Schedule or under the laws administered by the requesting authority.

(3) Nothing in this Act shall be construed to empower the requesting authority to divulge, disclose or otherwise publish the information or material provided under subsection (1) without the consent of the Authority.

[Ins. Act A1365:s.20]

PART III FINANCE

29. The Fund.

(1) There is hereby established, for the purposes of this Act, a fund to be administered and controlled by the Authority.

(2) The Fund shall consist of –

(a) such sums as may be provided from time to time for the purposes of this Act by Parliament;

(b) sums borrowed by the Authority for the purposes of meeting any of its obligations or discharging any of its duties;

(c) levies payable under section 32;

(d) fees, costs or other charges imposed by the Authority under this Act or other laws relating to offshore financial services;

[Am. Act A1036:s.6]

(e) any compound paid under this Act or other laws relating to offshore financial services;

[Am. Act A1036:s.6; Am. Act A1365:s.21]

(ea) all monies collected by the Authority for any administrative penalties under section 36G or under the laws specified in the Schedule;

[(ea) Ins. Act A1365:s.21]

(f) all other sums or property which may in any manner become payable to or vested in the Authority in respect of any matter incidental to its functions and powers.

30. Expenditure to be charged on the Fund.

The Fund shall be expended for the purpose of –

(a) paying any expenditure lawfully incurred by the Authority, including legal fees and costs and other fees and costs, and the remuneration of officers and servants of the Authority, including the granting of loans, superannuation allowances or gratuities;

(b) paying any other expenses, costs or expenditure properly incurred or accepted by the Authority in the performance of its functions or the exercise of its powers under this Act;

(c) purchasing or hiring equipment, machinery and any other materials, acquiring land and erecting buildings, and carrying out any other works and undertakings in the performance of its functions or the exercise of its powers under this Act;

(d) repaying any moneys borrowed under this Act and the interest due thereon; and

(e) generally, paying any expenses for carrying into effect the provisions of this Act.

31. Conservation of Fund.

It shall be the duty of the Authority to conserve the Fund by so performing its functions and exercising its powers under this Act as to secure that the total revenues of the Authority are sufficient to meet all sums properly chargeable to its revenue account including depreciation and interest on capital taking one year with another.

32. Levies

(1) A Labuan financial institution shall be liable, in the case of any Labuan financial service provided by it, to pay a levy to the Authority.

(2) For the purpose of subsection (1), the Minister may, by order published in the *Gazette*, specify such rates of levy as is necessary to meet the administrative and operating costs of the Authority; and different rates may be specified in respect of different classes of Labuan financial services.

(3) The amount of any levy payable under this section shall be recoverable as a civil debt due to the Authority.

(4) The Minister may make regulations providing for –

(a) the payment of levies under this section;

(b) subject to the provisions relating to secrecy under any written law relating to Labuan financial institutions, the keeping, examination and audit of the accounts of the Labuan financial institutions relating to the collection of such levies.

[Am. Act A1365:s.22]

32A. Power to impose and collect fee.

Notwithstanding any provision under any other law relating to Labuan financial services, the Authority may, with the approval of the Minister, by order published in the *Gazette*, impose and collect any fee for any service provided by or on behalf of the Authority under this Act or any other law relating to Labuan financial services and for the grant or issuance of any licence, permit, registration, approval or exemption which the Authority may grant or issue under any law.

[Ins. Act A1036:s.7] ; Am. Act A1365:s.22]

33. Accounts and reports.

(1) The Authority shall cause proper accounts of the Fund and proper reports of its activities to be kept and shall, as soon as practicable after the end of each financial year, cause to be prepared –

(a) a statement of accounts of the Authority which shall include a balance sheet and an account of income and expenditure; and

(b) a statement of its activities,

for that financial year.

(2) The Authority shall as soon as possible send a copy of the statement of accounts certified by the auditors and a copy of the auditor's report to the Minister who shall cause them to be laid before both Houses of Parliament.

(3) The Statutory Bodies (Accounts and Annual Reports) Act 1980 shall apply to the Authority.

34. Power to borrow.

The Authority may from time to time, with the approval of the Minister, borrow, at such rate of interest and for such period and upon such terms as to the time and method of repayment and otherwise as the Minister may approve, any sums required by the Authority for meeting any of its obligations or performing any of its functions under this Act.

35. Investment

The moneys of the Authority shall, in so far as they are not required to be expended by the Authority under this Act, be invested in such manner as the Authority deems fit.

PART IV GENERAL

36. Protection against suit and legal proceedings.

(1) No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any court or before any other authority against—

(a) the Minister;

(b) the Authority;

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

(d) any other person lawfully acting on behalf of, or in compliance with instructions of the Authority,

for or on account of, or in respect of, any act done or statement made or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance or in execution of, or intended pursuance of or execution of, this Act or the laws specified in the Schedule, or any guideline, direction, information or other thing issued under this Act or the laws specified in the Schedule if such act or statement was done or made, or was omitted to be done or made, in good faith.

(2) For the purposes of Part IIA, no action, suit or prosecution or other proceeding shall lie or be brought or maintained in any court or before any other authority against any person for complying with any provision under Part IIA.

(3) The foregoing provisions shall be in addition to, and not in derogation of, the Public Authorities Protection Act 1948 [*Act 198*], and for the purposes of that Act, every person

mentioned in the foregoing provisions shall be deemed to be a public officer or a person engaged or employed in the performance of a public duty.

[Subs. Act A1365:s.23]

36A. Representation in civil proceedings.

(1) Notwithstanding any other written law—

(a) in any civil proceedings by or against the Authority; or

(b) in any other civil proceedings in which the Authority is required or permitted by the court to be represented or to be heard, or is otherwise entitled to be represented or to be heard,

any person authorized in writing by the Authority for such purpose may, on behalf of the Authority, institute such proceedings or appear in such proceedings and may make all appearances and applications and do all acts in respect of such proceedings on behalf of the Authority.

(2) For the purposes of this section, any person shall include—

(a) any director, officer or employee of the Authority who has been admitted as an advocate and solicitor under the Legal Profession Act 1976 [Act 166];

(b) any advocate and solicitor of the High Court of Malaya or the High Court of Sabah and Sarawak; or

(c) a federal counsel or senior federal counsel in the Attorney General's Chambers.

[Subs. Act A1365:s.24]

36AA. Additional powers of the Authority.

(1) Without prejudice to any provision under any written law, the Authority shall have the *locus standi* or legal right—

(a) to appear, institute and conduct proceedings (whether civil or criminal) in any court in respect of any matter relating to its functions and powers under this Act or any laws specified in the Schedule;

(b) to apply and obtain such relief available to any civil litigant including but not limited to the relief under the Specific Relief Act 1950 [Act 137];

(c) to seek guidance and directions from the High Court on any point of law or as to the interpretation or implementation of any provisions of this Act or the laws specified in the Schedule; and

(d) to intervene in any proceedings in which a Labuan financial institution is a party.

(2) Notwithstanding subsection (1), the Authority may claim for the recovery of fees, sum of money payable under this Act or legal costs incurred in the exercise of its powers under this Act from the relevant person or Labuan financial institution, as the case may be.

[Ins. Act A1365:s.25]

36B. Compounding of offences.

(1) The Authority may, with the written consent of the Public Prosecutor, in a case where he deems it fit and proper so to do, compound any offence committed by any person which is punishable under this Act by making a written offer to such person to compound the offence on payment to the Authority, within such time as may be specified in the offer, of an amount which shall not exceed fifty per centum of the amount of the maximum fine to which that person would have been liable if he had been convicted of the offence.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted.

(3) Where the amount specified in the offer under subsection (1) is not paid within the time specified in the offer, or within such extended period as the Authority may grant, prosecution of the offence may be instituted at any time after that against the person to whom the offer was made.

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

[Ins. Act A1036:s.9] ;Am. Act A1365:s.26]

36C. Liability of director, officer, controller, etc.

Where any offence against any provision of this Act has been committed by any Labuan financial institution, any person who at the time of the commission of the offence was a director, officer, or controller, of the Labuan financial institution or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the

management of any of the affairs of such Labuan financial institution, or was assisting in such management, shall be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

[Ins. Act A1036:s.9]; Am. Act A1365:s.27]

36D. Power to prosecute offences.

(1) Any person authorized by the Authority may, with the written authorization of the Public Prosecutor, prosecute in any court any case in respect of any offence committed under this Act or any offences committed under the laws specified in the Schedule.

(2) For the purposes of section 380 of the Criminal Procedure Code [*Act 593*], an officer or employee of the Authority authorized under subsection (1) shall be deemed to be a public officer.

(3) For the purposes of this section, any person shall include—

(a) any director, officer or employee of the Authority who has been admitted as an advocate and solicitor under the Legal Profession Act 1976; or

(b) any advocate and solicitor of the High Court of Malaya or the High Court of Sabah and Sarawak, as the case may be.

[Ins. Act A1365:s.28]

36E. Application for winding up.

(1) Notwithstanding the provisions of the Companies Act 1965 or the laws specified in the Schedule, any corporation registered under the Labuan Companies Act 1990 [*Act 441*], whether or not the corporation is being wound up voluntarily, may be wound up under an order of the court on the petition of the Authority, in accordance with the provisions of the Labuan Companies Act 1990.

(2) The court may order the winding up on a petition made under subsection (1) if the corporation referred to in subsection (1)—

(a) has been registered under the Labuan Companies Act 1990, and that registration has been revoked or surrendered; or

(b) has contravened any provisions of this Act or the laws specified in the Schedule, whether or not the corporation has been charged with an offence in respect of the contravention, or whether or not the contravention has been proved in a prosecution.

[Ins. Act A1365:s.28]

36F. Additional monetary punishment.

Where a person has been convicted of an offence under this Act or the laws specified in the Schedule, the court may, where it is satisfied that as a result of the commission of the offence the convicted person acquired a monetary benefit or that monetary benefit accrued to the benefit of such person, order the convicted person to pay, notwithstanding the maximum amount of any fine that may otherwise be imposed under this Act or the laws specified in the Schedule, an additional fine in an amount equal to the court's estimation of the amount of the monetary benefit.

[Ins. Act A1365:s.28]

36G. Power to impose administrative penalties.

(1) The Authority may impose an administrative penalty on any person who fails to comply with any provision of this Act or the laws specified in the Schedule.

(2) The Authority shall, before making a decision to impose an administrative penalty on a person, serve on him a written notice calling on him to show cause why the administrative penalty should not be imposed upon him.

(3) If a satisfactory explanation is not received within such period as may be specified in the written notice, the Authority may impose an administrative penalty in an amount not exceeding five hundred ringgit for each day of the non-compliance and such amount shall not in total exceed the sum of ten thousand ringgit.

(4) Where a person has failed to pay an administrative penalty imposed by the Authority under subsection (3), the penalty imposed by the Authority may be sued for and recovered as a debt due to the Authority.

[Ins. Act A1365:s.28]

36H. Injunctions or other relief.

(1) The Authority may apply to the Judge in Chambers or to any court of competent jurisdiction for an order in respect of any matter relating to its functions under section 4.

(2) Without prejudice to subsection (1), an order under that subsection may direct the person to do any specified act or refrain from doing any specified act, for the purposes of—

(a) preventing or desisting any contravention of the provisions of this Act or the laws specified in the Schedule;

(b) compelling any person to comply with any directions issued under section 4B;

(c) remedying the effects of any contravention of the provisions of this Act or the laws specified in the Schedule;

(d) preservation of assets; or

(e) compensating persons who have suffered loss as a result of a contravention.

(3) Where the Authority makes an application to the court for the grant of an injunction or an order under this section, the court may, if it deems just and equitable to do so, not require the Authority, as a condition of granting the injunction or order, to give any undertaking as to damages.

(4) Any person who contravenes an injunction or an order granted by the court under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding two years or both.

(5) Where the court has granted an injunction or an order under this section, the court may, on application by any person affected by the injunction or order, rescind or vary the injunction or order.

(6) Subsection (4) shall not affect the powers of the court in relation to the punishment for contempt of court.

(7) Pending an injunction or an order by the court under this section, the Authority may, where it has reasonable grounds to believe that a Labuan financial institution—

(a) would not be able to maintain the status quo of the property in or under its possession or control;

(b) would abscond with the property or do any act to such effect;

(c) would move the property to any place, location or jurisdiction to frustrate any impending proceeding or its judgment thereof; or

(d) would manage the property in the manner detrimental to any interested party including its investors, beneficiary and the Authority,

issue an order freezing any property of that person, as the case may be, wherever the property may be, or in his possession, under his control or due from any source to him.

(8) An order under subsection (7) may include—

(a) an order to direct that the property, or such part of the property as is specified in the order, is not to be disposed of, or otherwise dealt with, by any person, except in such manner and in such circumstances, if any, as are specified in the order; and

(b) an order to authorize any of its officers to take custody and control of the property, or such part of the property as is specified in the order if the Authority is satisfied that the circumstances so require.

(9) An order made under subsection (7) shall cease to have effect after thirty days from the date of the order.

(10) Nothing in this section shall limit the powers of the court, upon the application of any person aggrieved by the order issued under subsection (7), to set aside the order issued under subsection (7).

(11) At the expiry of the order issued under subsection (7), the Authority may apply to the court to extend the validity of the order to such duration as the court deems fit.

(12) The Authority shall not be liable for any damages or cost arising directly or indirectly from the making of an order under this section unless it can be proved that the order under subsection (7) was not made in good faith.

[Ins. Act A1365:s.28]

36I. Special audit.

(1) Where there is a failure on the part of any Labuan financial institution or any person to comply with the provisions of this Act or the laws specified in the Schedule, the Authority may issue a direction under section 4B to compel such Labuan financial institution to appoint a special auditor to carry out a special audit of the Labuan financial institution.

(2) The special auditor appointed under this section shall submit his report to the Authority within such time as the Authority may determine.

(3) A special auditor under this section shall include an “approved auditor” defined under section 2 of the Labuan Companies Act 1990.

[Ins. Act A1365:s.28]

37. Power to make regulations.

(1) The Minister may, on the recommendation of the Authority, make such regulations as may be expedient or necessary for carrying out or giving effect to the provisions of this Act.

[Am. Act A1365:s.29]

(2) Regulations made under this section -

(a) may provide that any contravention of any provision thereof shall be an offence; and

(b) may provide for the imposition of penalties which shall not exceed twenty-five thousand ringgit for any offence thereunder.

38. Power of the Minister to make modifications.

(1) Subject to subsection (2), the Minister may, whenever it appears to him necessary or expedient so to do whether for the purpose of removing difficulties or in consequence of the passing of this Act, by order make such modifications to any provision in any law relating to offshore financial services as he may think fit.

(2) The Minister shall not exercise the power conferred under subsection (1) after the expiration of two years from the commencement of this Act.

38A. Power to amend Schedule

The Minister may, on the recommendation of the Authority, by order published in the *Gazette*, amend the Schedule.

[Ins. Act A1365:s.30]

38B. Service of documents on Labuan financial institutions.

1) Any document or notice required to be served by the Authority on a Labuan financial institution may be effected by—

(a) leaving it at the registered office of the Labuan financial institution; or

(b) sending it by post to the registered office of the Labuan financial institution.

(2) Where a document or notice has been served in accordance with subsection (1), the document or notice is deemed to have been properly served on the Labuan financial institution.

[Ins. Act A1365:s.30]

38C. Public Authorities Protection Act 1948.

(1) The Public Authorities Protection Act 1948 shall apply to any action, suit, prosecution or proceedings against the Authority or against any member of the Authority, any member of a committee, or any officer, servant or agent of the Authority in respect of any act, or omission done or omitted by it or him in such capacity.

(2) The person referred to in subsection (1) shall for the purposes of the application of the Public Authorities Protection Act 1948, be deemed to be a public officer or a person engaged or employed in the performance of a public duty.

[Ins. Act A1365:s.30]

38D. Conflict between laws.

Where there is a conflict between the provisions of this Act and the provisions of any other law relating to Labuan financial services, the provisions of this Act shall prevail.

[Ins. Act A1365:s.30]

38E. Procedure where none laid down.

In the event that any act or step is required or permitted to be done or taken under this Act or the laws specified in the Schedule and no form is prescribed or procedure laid down either in this Act or the regulations, application may be made to the Authority for directions as to the manner in which the same may be done or taken, and any act or step done or taken in accordance with the directions of the Authority shall be a valid performance of such act or step.

[Ins. Act A1365:s.30]

39. Savings and transitional

(1) All regulations, instructions, directions, orders or decisions made by the Registrar or the Bank, as the case may be, under any law relating to offshore financial services existing before the commencement of this Act shall be deemed to have been made by the Authority unless amended or revoked or until the date upon which they expire.

(2) All regulations, instructions, directions, orders or decisions made by the Minister responsible for the Offshore Companies Act 1990 and the Labuan Trust Companies Act 1990 under those Acts existing before the commencement of this Act shall be deemed to have been made by the Minister charged with the responsibility for finance unless amended or revoked or until the date upon which they expire.

(3) All applications, approvals or decisions pending before the Registrar or the Bank, as the case may be, under any law relating to offshore financial services shall, upon the commencement of this Act, be dealt with by the Authority.

(4) All applications, approvals or decisions pending before the Minister responsible for the Offshore Companies Act 1990 and the Labuan Trust Companies Act 1990 under those Acts shall, upon the commencement of this Act, be dealt with by the Minister charged with the responsibility for finance.

(5) All instruments, certificates or documents lodged with the Registrar or the Bank, as the case may be, under any law relating to offshore financial services before the commencement of this Act shall, upon the commencement of this Act, be deemed to be lodged with the Authority.

SCHEDULE

1. Labuan Companies Act 1990 [*Act 441*]
2. Labuan Business Activity Tax Act 1990 [*Act 445*]
3. Labuan Trusts Act 1996 [*Act 554*]
4. Labuan Foundations Act 2010
5. Labuan Islamic Financial Services and Securities Act 2010
6. Labuan Limited Partnerships and Limited Liability Partnerships Act 2010
7. Labuan Financial Services and Securities Act 2010

[Ins. Act A1365:s.31]

NOTE: Change of name of Authority and Staff Welfare Fund [Act A1365]

Change of name of Authority and Staff Welfare Fund

(1) All references to the Labuan Offshore Financial Services Authority in any written law or document shall, on the date of the coming into operation of this Act, be construed as references to the Labuan Financial Services Authority.

(2) The change of name of “Labuan Offshore Financial Services Authority” to “Labuan Financial Services Authority” upon the coming into operation of this Act shall not affect any rights or obligations of the Authority or render defective any legal proceedings by or against it, and any legal proceedings that could have been continued or commenced by or against it before the date of coming into operation of this Act may be continued or commenced under its new name.

(3) All actions, regulations, orders, directions, notifications, approvals, decisions, guidelines and other executive acts made, given or done under, or in accordance with, or by virtue of the principal Act before the date of the coming into operation of this Act shall be deemed to have been made, given or done under, or in accordance with, or by virtue of, the corresponding provision introduced or amended by this Act, and shall continue to remain in full force and effect in relation to the persons to whom they apply until amended, repealed or rescinded under, in accordance with, or by virtue of, the corresponding provision introduced or amended by this Act.

(4) All deeds, documents and other instruments executed by the Authority under the common seal of “Labuan Offshore Financial Services Authority” before the date of the coming into operation of this Act shall continue to remain in full force and effect on the date of the coming into operation of this Act.

(5) All moneys contained in or due to be paid into the Labuan Offshore Financial Services Authority Staff Welfare Fund established under section 18A of the principal Act shall, on the coming into operation of this Act, be transferred to and be deemed to be part of the Labuan Financial Services Authority Staff Welfare Fund.

LIST OF AMENDMENTS

<i>Amending law</i>	<i>Short title</i>	<i>In force from</i>
Act A1036	Labuan Offshore Financial Services Authority (Amendment) Act 1998	15-10-1998 [<i>P.U. (B) 427/1998</i>]
Act A1337	Labuan Offshore Financial Services Authority (Amendment) Act 2008	15-06-2009 [<i>P.U. (B) 192/2009</i>]
Act A1365	Labuan Offshore Financial Services Authority (Amendment) Act 2010	11-02-2010 [<i>P.U. (B) 62/2010</i>]