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## **BANKING LAWS IN MALAYSIA: THE PATH TO THE FUTURE\***

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### **1. Introduction to Existing Banking Laws in Malaysia**

The banking system in Malaysia consists of two tiers. The first tier is the Central Bank of Malaysia, which is locally known as "Bank Negara Malaysia".<sup>1</sup> BNM is set up pursuant to the Central Bank of Malaysia Act 1958.<sup>2</sup> The role of BNM is set out in section 4 of the aforesaid Act. BNM is basically a bank to the Government and acts as a watchdog over commercial banks and financial institutions.

The second tier consists of commercial banks and other types of financial institutions. As at the end of June 1999, there were:

- (i) 21 commercial banks;
- (ii) 1 Islamic bank (Bank Islam Malaysia Berhad); and
- (iii) 13 locally incorporated foreign banks.<sup>3</sup>

The total of 34 commercial banks (excluding Bank Islam Malaysia Berhad) operated with 1,735 branches nationwide. The commercial banks are governed by the Banking and Financial Institutions Act 1989<sup>4</sup> or popularly known by its acronym, BAFIA. Bank Islam Malaysia Berhad (and currently Bank Muamalat Malaysia Berhad) is governed by the Islamic Banking Act 1983.<sup>5</sup>

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\*This paper was presented at the C19th Colonial Commercial Law in the C21st Asia Conference at the Faculty of Law, University of Hong Kong on 2 June 2000.

<sup>1</sup>Hereinafter referred to as 'BNM'. Refer to Figure 1.

<sup>2</sup>Act 519.

<sup>3</sup>See *The Central Bank and the Financial System in Malaysia, A Decade of Change 1989-1999*, Bank Negara Malaysia, Kuala Lumpur, 1999, at pages 390-391 and Figure 2.

<sup>4</sup>Act 372.

<sup>5</sup>Act 276.

The off-shore banks operating in the International Offshore Financial Centre<sup>6</sup> in Labuan (East Malaysia) are under the supervision of the Labuan Offshore Services Authority. As at the end of August 1999 there were 35 representative offices of foreign banks and 63 offshore banks in the Labuan IOFC. The offshore banks are governed by the Offshore Banking Act 1990. The Act is a 'diluted' version of the BAFIA.<sup>7</sup>

The other pieces of legislation that govern the banking industry are as follows:

- (i) the Bankers' Book Evidence Act 1949;<sup>8</sup>
- (ii) the Bills of Exchange Act 1949;<sup>9</sup> and
- (iii) the Exchange Control Act 1953.<sup>10</sup>

The common law principles as at 7 April 1956 apply if there are no statutes stating otherwise or when there is a *lacunae* in the law.<sup>11</sup> The common law principles of banking are applied especially in the area of the banker-customer relationship. This is because BAFIA is a regulatory statute and does not contain many substantive provisions on banking laws.

The abovestated banking legislation and principles of law originated from the colonial era and can be traced to as far back as 70-100 years ago. This paper seeks to examine the adequacy of the current laws in light of the changing trends in the banking industry. The writer will also examine other forms of legislation introduced to cope with the recent economic crisis in Malaysia. In addition, this paper will attempt to look at the future technological changes to the banking industry and the corresponding need for the law to regulate these changes.

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<sup>6</sup>Hereinafter referred to as 'IOFC'.

<sup>7</sup>*Ibid.*, at page 68 and refer to Figure 1. Note however, this paper will only examine the laws relating to the domestic commercial banks in Malaysia.

<sup>8</sup>Revised 1971.

<sup>9</sup>Revised 1978.

<sup>10</sup>Act 17.

<sup>11</sup>Refer to sections 5(1) and 5(2) of the Civil Law Act 1956 (Act 56 - Revised 1972).

## 2. The Recent Banking Crisis in Malaysia

The recent banking crisis in Malaysia led the Government to set up the National Economic Action Council<sup>12</sup> on 7 January 1998. The role of NEAC is to prevent the country from heading towards an economic recession and to introduce policies to revive the economy, for example, countering the decline in the value of the ringgit and the plunges in the share market. Among the measures taken by NEAC, especially to aid ailing banks, are:

- (i) Danaharta, the national asset company established on 20 June 1998 to administer the non-performing loans<sup>13</sup> that are sinking banks;
- (ii) Danamodal, an interim funding vehicle established in August 1999 to aid banking institutions that are unable to directly raise capital - Danamodal invests in and restructures banking institutions in order to strengthen and enable such institutions to generate new lending activities; and
- (iii) the Corporate Debt Restructuring Committee<sup>14</sup> which provides an avenue for borrowers and banking institutions to arrange debt restructuring schemes without the need to resort to court proceedings.<sup>15</sup>

The need to establish the abovestated complementary bodies to counter the banking crisis has led to the introduction of new legislation. New legislation was introduced in the form of the Pengurusan Danaharta Nasional Berhad Act 1998.<sup>16</sup>

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<sup>12</sup>Hereinafter referred to as 'NEAC'.

<sup>13</sup>Hereinafter referred to as 'NPLs'. NPLs are loans that are in default for a period of six months. Prior to the crisis, the time span for default was three months.

<sup>14</sup>Hereinafter referred to as 'CDRC'.

<sup>15</sup>See Figure 3.

<sup>16</sup>Hereinafter referred to as the 'Danaharta Act'.

The Danaharta Act confers two special powers on Danaharta, being:

- (i) the ability to acquire NPLs through statutory vesting; and
- (ii) the ability to appoint Special Administrators to manage distressed corporate borrowers or security providers.<sup>17</sup>

The National Land Code 1965 was also amended to facilitate the implementation of the Danaharta Act.<sup>18</sup> Recently the Danaharta Act was further amended by the Pengurusan Danaharta Nasional Berhad (Amendment) Act 2000. The recent amendments seek to clarify the existing Danaharta Act and is aimed at overcoming practical difficulties faced by Danaharta in its early years of operation.<sup>19</sup>

Overall, Danaharta's approach to the management of loans is to use either the loan management or asset management strategies.<sup>20</sup> It applies the loan management strategy for viable loans and has formulated a set of principles and guidelines to assist in the restructuring of these loans. The guidelines are known as the Loan Restructuring Principles and Guidelines.

The introduction of the Danaharta Act and the consequent setting up of Danaharta Berhad has played an important role in the country's effort to rebuild the banking system.

Danaharta has removed RM38.17 billion<sup>21</sup> in gross value of NPLs from the banking system.<sup>22</sup> As at 30 September 2000, Danaharta had resolved the debts of 30 companies totalling RM24.04 billion.<sup>23</sup>

Danamodal which operates within existing regulatory framework, has recapitalised 10 banking institutions with RM7.59 billion. The recent improvement to the economic situation has enabled 5 recapitalised banking institutions to fully repay Danamodal. The amount of

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<sup>17</sup>Refer to Figure 4 - provided by Danaharta Bhd.

<sup>18</sup>Refer to Figure 5 - provided by Danaharta Bhd.

<sup>19</sup>See the Explanatory Statement to the Pengurusan Danaharta Nasional Berhad (Amendment) Act 2000.

<sup>20</sup>Refer to Figure 6 - provided by Danaharta Bhd.

<sup>21</sup>As at 30 June 2000.

<sup>22</sup>Danaharta Operations Report, 30 June 2000.

<sup>23</sup>See the Statistics Report, CDRC, Malaysia.

investment by Danamodal in the remaining five institutions is RM5.2 billion.<sup>24</sup>

Overall, the abovestated three complementary bodies have made a favourable impact on the banking system in Malaysia.<sup>25</sup>

The next phase of reform in the banking industry are bank mergers or in the words of a local banker, "shotgun marriages". On 29 July 1999, BNM announced a merger or consolidation programme for the banking sector. The BNM programme is known as the "Merger Programme for Domestic Institutions".

The existing commercial banks in Malaysia are to be merged into 10 anchor banks.<sup>26</sup> In this context, Danamodal as a potential or strategic shareholder in recapitalised banking institutions will together with BNM, guide the consolidation and merger of the banking system.<sup>27</sup>

Banks, being essentially companies, can use several methods to merge. Nevertheless the merger groupings are subject to the ultimate approval of BNM. BNM issued a circular to all banking institutions on 21 October 1999, to outline the operational details of the merger exercise. The banking institutions are to sign a Memorandum of Understanding to facilitate the merger process. The banking groups are to form a Steering Committee to be chaired by the anchor bank and consisting of all the other banks in the group. The Steering Committee is to co-ordinate the merger activities and monitor the level of loan activities within the group.<sup>28</sup>

The anchor banks are to submit monthly reports on the progress of the mergers to BNM. BNM has set a deadline by the end of December 2000 for banks to complete the mergers and obtain the court's vesting orders.

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<sup>24</sup>See *Danamodal Operations Report*, 29 March 2000.

<sup>25</sup>See paper by Encik Mohd Nasir bin Ali, CEO, Kuala Lumpur City Securities Sdn Bhd, titled *The Role of the Banking Sector in Consolidating Economic Recovery and Strengthening National Economy* at the Second National Banking Summit 2000.

<sup>26</sup>See Figure 7.

<sup>27</sup>See *Danamodal Reports*, 1999.

<sup>28</sup>See BNM Press Release: 'Meeting with Anchor Banks', 26 February 2000.

According to the recent press release by BNM, all banking institutions involved in the merger programme have signed the relevant Sale and Purchase Agreements by 31 August 2000. Therefore, the banks are entitled to certain incentives, that is, exemptions from stamp duty, real property gains tax and tax allowance on 50% of the accumulated losses of banking institutions which are to be acquired.<sup>29</sup>

This merger programme has brought about many positive and negative views. According to BNM, such mergers will strengthen local banks and enable them to compete internationally in a more liberalised and globalised environment. Malaysia is a signatory to the GATS under WTO and AFTA and therefore would, by the year 2003, face foreign competition.

The National Union of Banking Employees<sup>30</sup> is of course concerned that the proposed mergers would result in the retrenchment of workers.<sup>31</sup> The 10 anchor banks have about 77,000 employees. BNM has requested banks to use the 'Voluntary Separation Scheme' (VSS) to down-size employees and not to have any forced retrenchments.<sup>32</sup>

The merger of different bank cultures are bound to have some teething problems. If a big bank buys out a smaller bank, the larger bank may decree that the smaller bank's IT system be thrown out. The integration of IT systems in a merger of banks is a 'minefield' that should be handled properly.<sup>33</sup> Some bankers feel that 'BIG' is not necessarily beautiful. During the recent financial crisis, some small banks were well managed and had only a small portfolio of NPLs. Therefore, it may be important to grow in skill and not size.

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<sup>29</sup>See BNM Press Release: 'All Banking Institutions Have Successfully Signed the Sales and Purchase Agreements', 1 September 2000.

<sup>30</sup>Hereinafter referred to as NUBE.

<sup>31</sup>See paper by G. Gopala Krishnan, General Secretary, National Union of Banking Employees (NUBE) titled *Managing Customer Perspectives in the Banking Industry* at the Second Banking Summit 2000.

<sup>32</sup>*Ibid.*, at page 8, NUBE feels that the formulation of the VSS guidelines should be a task undertaken by the union and other related bodies.

<sup>33</sup>Lee Min Keong, Malaysia's bank mergers open up tech minefields, CNET Malaysia, 19 November, 1999.

Nevertheless, the merger of banks into 10 anchor banks is inevitable. The banks have made a commitment to BNM to capitalise on the merger programme to improve their efficiency, effectiveness and competitiveness. The merger will be complemented with other initiatives to ensure that the banks are well positioned to face future challenges in a more competitive environment.<sup>34</sup>

### 3. Internet Banking in Malaysia

The advent of new technology has introduced computers as a channel to conduct businesses. As far as banking laws are concerned, the use of computers will change the traditional principles and existing legislation that govern traditional banking businesses.

BNM has officially announced that local banks can start providing a full range of Internet banking services from 1 June 2000.<sup>35</sup> The then governor of BNM (Tan Sri Ali Abul Hassan Sulaiman) stated that this move was part of BNM's efforts to assist local banks to prepare for the challenges of globalisation.<sup>36</sup>

BNM has issued a consultative paper on the *minimum* guidelines on the provision of Internet banking services. The consultative paper is aimed at regulating this area and the domestic banks are to provide their feedback on the guidelines stated therein. Note that these are only minimum guidelines and banks can adopt more stringent measures and are expected to keep abreast with technological developments as well as the needs of customers.<sup>37</sup>

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<sup>34</sup>*Op. cit.*, BNM Press Release, at page 2.

<sup>35</sup>Refer to Pauline S.C. Ng, 'Go e-banking', *The Star*, 13 April 2000, at pages 1 and 3.

<sup>36</sup>Local banks have been given an 18 months head-start to begin Internet banking before locally incorporated foreign banks. Foreign banks can only start their web sites from 1 January 2002.

<sup>37</sup>Refer to the Foreword, 'Minimum guidelines on the Provision of Internet Banking Services by Licensed Banking Institutions', BNM (hereinafter referred to as 'the Guidelines'). The Guidelines are as on the date the writer presented this paper.

The minimum guidelines defines 'internet banking' as banking products and services offered by banking institutions on the Internet through access devices including personal computers and other intelligent devices.<sup>38</sup>

The minimum guidelines state that Communicative or Transactional Websites require BNM's approval and any applications to start such websites should reach BNM one month prior to its launching together with the following information:<sup>39</sup>

- (i) confirmation by the Chairman of the banking institution (CEO for foreign banks) that the institution is ready to provide Internet banking;
- (ii) cost-benefit analysis on internet banking;
- (iii) internet security arrangements and policy;
- (iv) risk management practices;
- (v) contractual liability arrangements between the banking institutions and its customers;
- (vi) client charter on internet banking;
- (vii) privacy policy statements; and
- (viii) any outsourcing web links arrangements, strategic alliances or partnerships with third parties that have been finalised.

In view of the abovestated Guidelines, the bank's top management is given the responsibility to ensure that its system complies with all the relevant regulations and laws. The bank is to finalise terms and conditions of the internet banking agreement between the institution and the customer(s). The agreement should define the procedures for a valid and authentic electronic communications between the bank and its customer. The agreement should also most importantly contain a verification clause for the trail of transactions so that the bank can prove the authenticity of these transactions. This is in order to avoid any claims of repudiation by customers.

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<sup>38</sup>Refer to 1.1 of the Guidelines.

<sup>39</sup>The Guidelines, at page 2, Informational Websites do not need the specific approval of BNM and only requires two weeks notification to BNM prior to implementation.



The banks are allowed to outsource their internet banking systems to resident service providers and software vendors. However, all relevant banking records should at all times remain with the banks. The outsourcing vendors should also give an undertaking to the banks that they will comply with the secrecy provision in section 97 of the BAFIA.

The abovestated Guidelines are issued pursuant to section 126 of the Parent Act, that is, BAFIA. At this stage, the aforesaid *minimum* guidelines appear to be a preliminary attempt by BNM to introduce a regulatory framework for internet banking.

The Parent Act, BAFIA is based on traditional common law principles and paper-based transactions. It has only one basic and wide section, namely section 119 which is, titled electronic fund transfers. The Bills of Exchange Act 1949 is on similar footing. The Bills of Exchange Act 1949 was amended in 1998,<sup>40</sup> to include section 74A on the presentment of cheques through a document image processing system. The Islamic Banking Act 1983 is still in its traditional state without even an electronic fund transfers clause (no doubt BNM had issued guidelines on 29 March 2000 for ATM services). Evidently the Parent Acts, being the main legal framework, are in need of legislative reform to keep abreast with the technological changes in the 21st century.

As of date, there are two parliamentary Acts on Cyber laws, that is the Digital Signature Act 1997<sup>41</sup> and the Computer Crimes Act 1997.<sup>42</sup> The Digital Signatures Act 1997 regulates the use of digital signatures and Part V therein states its validity, enforceability and effectiveness as if it had been written on paper for the purposes of any other applicable law.

The Computer Crimes Act 1997 is regulatory in nature and contains Part II on 'Offences' relating to the illegal accesses to computers. Hackers who attempt to hack through confidential data in banks would probably fall within the purview of this Act. However it should be noted that the aforesaid two Cyber laws contain general provisions and were not specifically drafted for banks. Nevertheless the existing banking laws will have to take into account the effect of the Cyber laws.

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<sup>40</sup>Act A1012.

<sup>41</sup>Act 562.

<sup>42</sup>Act 563.

#### 4. Islamic Banking

The banking system in Malaysia is unique because there co-exists a conventional banking system together with an Islamic banking system. For the past two decades, the Islamic banking system has flourished. There has also been the growth of Islamic banking laws, mainly through landmark cases in this area.

The Islamic Banking Act 1983<sup>43</sup> is actually based on the earlier Banking Act of 1973. It is basically a regulatory tool for BNM and does not contain any substantive Islamic laws or syariah principles.

The IBA, though, contains the definitions of:

- (i) "Islamic bank" - which means any company which carries on Islamic banking business and holds a valid licence and all the offices and branches in Malaysia of such a bank shall be deemed to be one bank; and
- (ii) "Islamic banking business" - which means banking business whose aims and operations do not involve any element which is not approved by the Religion of Islam.<sup>44</sup>

The definition of "Islamic banking business" in IBA is wide and there is no definition of what constitutes "banking business".<sup>45</sup>

Nevertheless it is clear that Islamic banking business does not contain the element of '*riba*' (interest). Islam prohibits the levy of interest.<sup>46</sup> The Islamic banking business has certain underlying features:

- (i) money does not earn money without a collaboration between capital and effort;

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<sup>43</sup>Hereinafter referred to as 'IBA'.

<sup>44</sup>See section 2, IBA 1983.

<sup>45</sup>Note there is a definition of 'banking business' in section 2 BAFIA 1989. However this is a definition on conventional banking business.

<sup>46</sup>The prohibition is in the Al Quran:

- (i) *Surah Ar Rum* - Verse 39,
- (ii) *Surah An Nisa'* - Verse 161,
- (iii) *Surah Ali Imran* - Verse 130, and
- (iv) *Surah Al Baqarah* - Verses 275-281.

- (ii) gain is associated with risk;
- (iii) trade and partnership are the basis of Islamic banking; and
- (iv) there is no debtor-creditor relationship.

The first Islamic Bank in Malaysia is Bank Islam Malaysia Berhad<sup>47</sup> which was established in July 1983. BIMB offers several products based on syariah principles, such as:

- (i) current deposits and savings deposits under the concept of *Al-Wadiah* (guaranteed custody);
- (ii) investment deposits under the concept of *Al-Mudharabah* (trustee profit-sharing);
- (iii) working capital financing under *Al-Murabahah* (cost plus);
- (iv) house financing under *Bai' Bithamin Ajil* (deferred payment sale);
- (v) leasing under the concept of *Al-Ijarah*; and
- (vi) project financing under the concept of *Al-Musyarakah* (joint venture profit and loss sharing).<sup>48</sup>

The Articles of Association of BIMB provides for the setting up of a Syariah Supervisory Council. The Syariah Supervisory Council is to assist BIMB in its operations especially to clarify or solve any uncertainty in the interpretation of syariah principles.

The positive development of Islamic Banking motivated the Finance Minister to launch 'Interest Free Banking System'<sup>49</sup> on 4 March 1993. The Interest Free Banking Counters are counters opened in conventional banks to conduct Islamic Banking.

Bank Negara had pursuant to section 126 of the BAFIA issued Guidelines on SPTF which came into effect on 5 July 1993. However only in 1996, BAFIA was amended to an elaborate section 124 on Islamic Banking.<sup>50</sup> On 1 December 1998, the term SPTF was replaced

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<sup>47</sup>Hereinafter referred to as 'BIMB'.

<sup>48</sup>For more detailed explanation about the BIMB products offered, see 'Islamic Banking Practice, from the Practitioner's Perspective', BIMB, 1994.

<sup>49</sup>Hereinafter referred to as 'SPTF'.

<sup>50</sup>Refer to Appendix and article by paper writer, Kalavathy Maruthavanar, 'The SPTF Banking System in Malaysia', *Current Legal Problems in Malaysia*, University of Malaya Press, page 75, at pages 76-81.

with the term 'Islamic Banking Scheme' (SPI) by conventional banks.<sup>51</sup> The reason being the term 'Interest Free' did not accurately portray the Islamic banking operations conducted by conventional banks.<sup>52</sup> Together with the image change to 'Islamic Banking Scheme' (SPI), the original Islamic Banking Unit (IBU) in conventional banks was up-graded to an Islamic Banking Division (IBD) on 2 January 1999.<sup>53</sup>

The new Guidelines for SPI, requires conventional banks to appoint a Syariah Consultant to assist in its operations.<sup>54</sup>

On October 1999, the second fully-fledged Islamic bank in Malaysia commenced its operations. The bank is called Bank Muamalat Malaysia Berhad and is a by-product of the merger between Bank Bumiputra Malaysia Berhad and the Bank of Commerce (M) Berhad (BOC). The SPI Division of both banks and its finance company merged into Bank Muamalat Malaysia Berhad.

Bank Muamalat Malaysia Berhad and BIMB (the two Islamic Banks) fall under the purview of the IBA 1983, and the SPI by conventional banks fall under the BAFIA 1989.<sup>55</sup> Currently in Malaysia, the aforesaid two separate statutes govern the regulatory aspect of Islamic Banking. Possibly, in the future, it would be best to introduce one statute for both systems.

As far as case law is concerned, there have been several landmark decisions in this area of the law. The cases are as follows:

- (i) *Tinta Press Sdn Bhd v BIMB*<sup>56</sup> - endorses the validity of the *Al-Ijarah* as a leasing transaction and not a loan transaction; and
- (ii) *BIMB v Adnan bin Omar*<sup>57</sup> - the court used its *inherent power* under the Rules of High Court 1980 to modify the existing rules

<sup>51</sup>Refer to the Central Bank and the Financial System, BNM, 1999, at page 245.

<sup>52</sup>Islamic banking operations is more than just being 'interest-free'.

<sup>53</sup>*Op. cit.*, at pages 246-247.

<sup>54</sup>Note that in May 1997, a National Syariah Advisory Council (NSAC) was set up as the highest authoritative body to advise BNM, analyse Islamic issues and evaluate new products or schemes submitted by all banking institutions.

<sup>55</sup>See Figure 8.

<sup>56</sup>[1984] 2 MLJ 192.

<sup>57</sup>[1994] 2 CLJ 735, High Court; Supreme Civil Court, Civil Appeal No. 02-390-94.

to suit a *Bai' Bithamin Ajil* (deferred instalment sale) transaction.

This case is an example of the inadequacy of the present civil court rules to provide for Islamic banking transactions.

- (iii) *Dato Haji Nik Mahmud bin Daud v BIMB*<sup>58</sup> - this case endorsed the validity of the *Bai' Bithamin Ajil* (BBA) banking documents in light of the restrictions contained in the Kelantan Malay Reservations Enactment 1930. The Property Purchase Agreement and the Property Sale Agreement being documents to facilitate the *Bai' Bithamin Ajil* transaction is not an 'actual sale' to BIMB, contrary to the sale restrictions in the aforesaid Enactment.

The abovestated cases have all been adjudicated in civil courts and not in the Syariah courts. Some Islamic scholars feel that since Islamic banking transactions contain the element of Islam, it should be adjudicated in Islamic courts, by judges specially trained in Islamic law. The current existing common law based statutes are also ill-suited for Islamic banking transactions and there should be reform in this area of the law.<sup>59</sup>

## 5. Conclusion

Viewed from a broad perspective, the banking system in Malaysia has undergone several changes and is now heading towards a new era. BNM is formulating a Master Plan for the banking institutions in the 21st Century. The banking scene in the 21st Century will be shaped by a number of factors, namely:<sup>60</sup>

- (i) greater reliance on market forces to determine business outcome;
- (ii) less protection by government for individual institutions;
- (iii) more demanding customers for new products and quality service;

<sup>58</sup>[1996] 1 CLJ 576 (High Court); [1998] 3 MLJ 393 (Court of Appeal).

<sup>59</sup>For example, the Rules of High Court 1980, the Contracts Act 1950 and the National Land Code 1965. See also article by Mohamed Ismail Shariff, 'The Development of Islamic Laws in Malaysia', [1998] 2 MLJ cxlv.

<sup>60</sup>See Keynote Address by BNM Governor, titled *Malaysian Banking Scenario in the 21st Century: Excelling in a Globally Competitive Market* at the Second National Banking Summit, 24 April 2000.

- (iv) greater competition from within and outside the country;
- (v) greater dis-intermediation process away from banking; and
- (vi) increasing role of technology, specialised skills and good human resource development in determining the winners among players in the financial industry.

In the future banks may have to be a 'one stop financial centre' that offers a variety of businesses or transactions and not just traditional banking activities. Reform of laws would eventually be in motion to suit future needs of banks and its customers. The key element that should not change as banks walk the path to the future is good corporate governance and entrenched good values.

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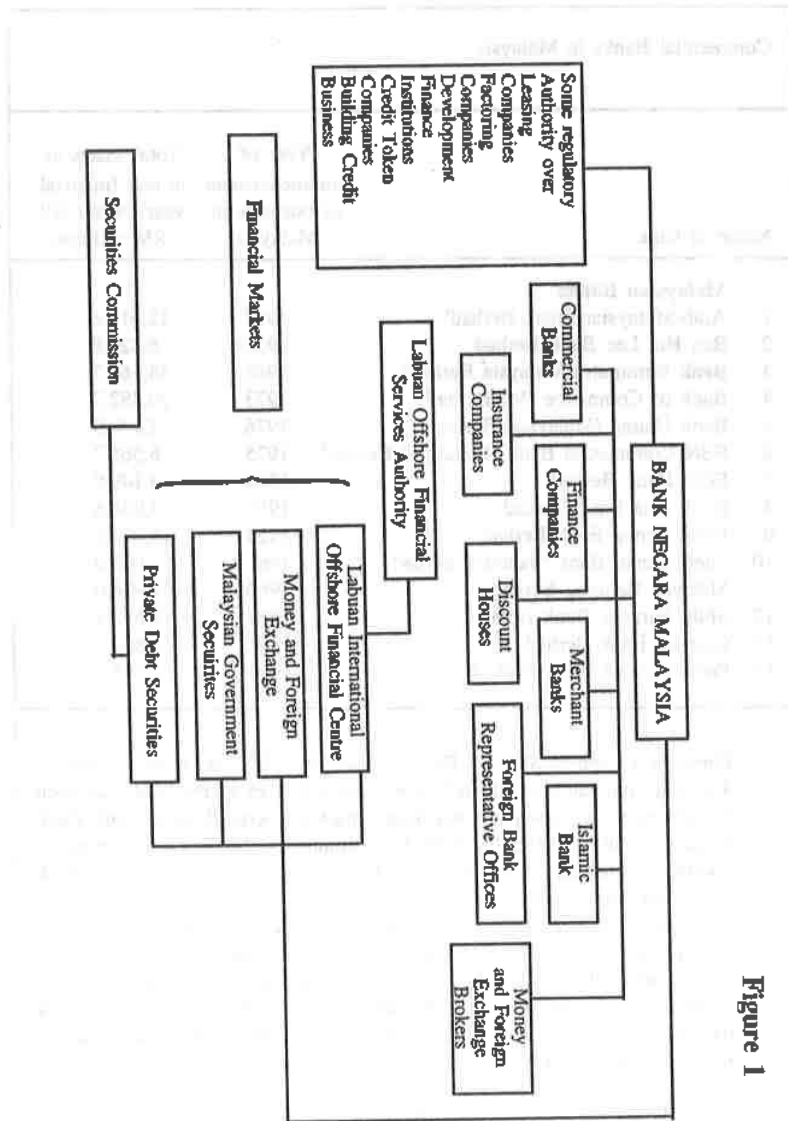


Figure 1

Figure 2

Commercial Banks in Malaysia		
Name of bank	Year of commencement of business in Malaysia	Total assets as at end financial year 1998/1999 (RM million)
<b>Malaysian Banks</b>		
1 Arab-Malaysian Bank Berhad <sup>1</sup>	1957	12,614.6
2 Ban Hin Lee Bank Berhad	1935	6,820.8
3 Bank Bumiputra Malaysia Berhad <sup>2</sup>	1966	38,164.7
4 Bank of Commerce (M) Berhad <sup>3</sup>	1973	20,382.7
5 Bank Utama (Malaysia) Berhad	1976	7,140.9
6 BSN Commercial Bank (Malaysia) Berhad <sup>4</sup>	1975	6,565.7
7 EON Bank Berhad <sup>5</sup>	1964	9,149.0
8 Hock Hua Bank Berhad	1951	4,934.6
9 Hong Leong Bank Berhad <sup>6</sup>	1923	15,094.5
10 International Bank Malaysia Berhad <sup>7</sup>	1961	969.0
11 Malayan Banking Berhad	1960	77,896.0
12 Multi-Purpose Bank Berhad <sup>8</sup>	1957	7,658.5
13 Oriental Bank Berhad	1937	8,866.7
14 Perwira Affin Bank Berhad	1976	15,343.1

<sup>1</sup> Formerly known as Security Pacific Asian Bank Limited prior to 1994.

<sup>2</sup> The conventional (non-Islamic) assets and liabilities of the bank had been transferred to the newly merged Bumiputra-Commerce Bank Berhad which began operation on 1 October 1999. Bank Bumiputra Malaysia Berhad remains involved exclusively in the Islamic banking sector under the name of Bank Muamalat Malaysia Berhad.

<sup>3</sup> Bank of Commerce Berhad (BCB) and United Asian Bank Berhad (UAB) were merged in 1991. UAB's name was changed to Bank of Commerce (M) Berhad while the banking licence of BCB was surrendered. On 1 October 1999, the bank was renamed Bumiputra-Commerce Bank Berhad following the absorption of the conventional (non-Islamic) assets and liabilities of Bank Bumiputra Malaysia Berhad.

<sup>4</sup> Formerly known as Bank Buruh (Malaysia) Berhad prior to 1995.

<sup>5</sup> Formerly known as Kong Ming Bank Berhad prior to 1992.

<sup>6</sup> Formerly known as MUI Bank Berhad prior to 1994.

<sup>7</sup> Formerly known as Hock Hua Bank (Sabah) Berhad prior to 1997.

<sup>8</sup> Formerly known as Malaysian French Bank Berhad prior to 1996.



15	Phileo Allied Bank (Malaysia) Berhad <sup>9</sup>	1966	10,605.8
16	Public Bank Berhad	1966	31,581.9
17	RHB Bank Berhad <sup>10</sup>	1965	51,285.2
18	Sabah Bank Berhad	1979	2,670.1
19	Southern Bank Berhad	1965	8,193.1
20	The Pacific Bank Berhad	1922	10,955.7
21	Wah Tat Bank Berhad	1955	724.7
22	Bank Islam Malaysia Berhad	1983	5,698.4
<b>Foreign Banks</b>			
1	ABN AMRO Bank Berhad	1888	1,830.5
2	Bangkok Bank Berhad	1959	699.9
3	Bank of America Malaysia Berhad	1959	1,597.0
4	Bank of Tokyo-Mitsubishi (Malaysia) Berhad	1959	2,711.7
5	Citibank Berhad	1959	13,719.5
6	Deutsche Bank (Malaysia) Berhad	1968	1,879.8
7	HSBC Bank Malaysia Berhad	1884	25,187.3
8	OCBC Bank (Malaysia) Berhad	1932	15,882.4
9	Overseas Union Bank (Malaysia) Berhad	1958	6,460.4
10	Standard Chartered Bank Malaysia Berhad	1875	17,009.1
11	The Bank of Nova Scotia Berhad	1973	1,261.1
12	The Chase Manhattan Bank (M) Berhad	1964	1,126.1
13	United Overseas Bank (Malaysia) Bhd. <sup>11</sup>	1956	10,911.6
<p><sup>9</sup> Formerly known as United Overseas Bank Limited prior to 1994 and Allied Bank (Malaysia) Bhd. prior to 1997.</p> <p><sup>10</sup> Kwong Yik Bank Berhad and DCB Bank Berhad (DCB) were merged in 1997, after which DCB was renamed as RHB Bank Berhad.</p> <p><sup>11</sup> Formerly known as Lee Wah Bank Limited prior to 1994. Chung Khiaw Bank (Malaysia) Berhad (CKB) merged with United Overseas Bank (Malaysia) Berhad in 1997.</p>			

Figure 3

**OVERVIEW OF DANAHARTA, DANAMODAL & CDRC**

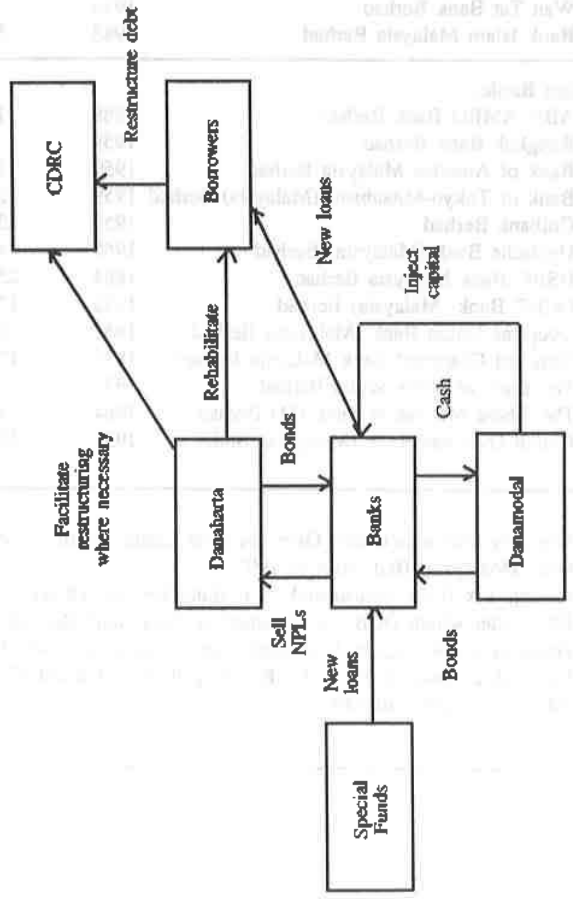


Figure 4

**THE DANAHARTA ACT 1998****2 Main Principles:**

- ▶ **Ability to acquire NPLs via statutory vesting**
  - Danaharta takes clear title of NPLs but subject to registered interests and disclosed claims
  - Steps into shoes of selling institution e.g. same priority standing
  - Assets transferred without borrowers' consent
  
- ▶ **Ability to manage**
  - Can appoint Special Administrator (SA) with consent of Oversight Committee
  - 12 month moratorium from claims
  - SA workout proposals reviewed by Independent Adviser
  - Approval of secured creditors
  - Implementation subject to usual regulatory approvals

*Definitive Guide*

Figure 5

Figure 5

THE DANAHARTA ACT 1998

**DANAHARTA**  
Danaharta Act 1998

**NATIONAL LAND CODE (AMENDMENT) ACT 1998**

**Added Schedule 15:**

- Ability to foreclose on assets and sell through private treaty
- Only 30 days notice to borrowers
- Bypass court auction process

*Definitive Guide*

Figure 6

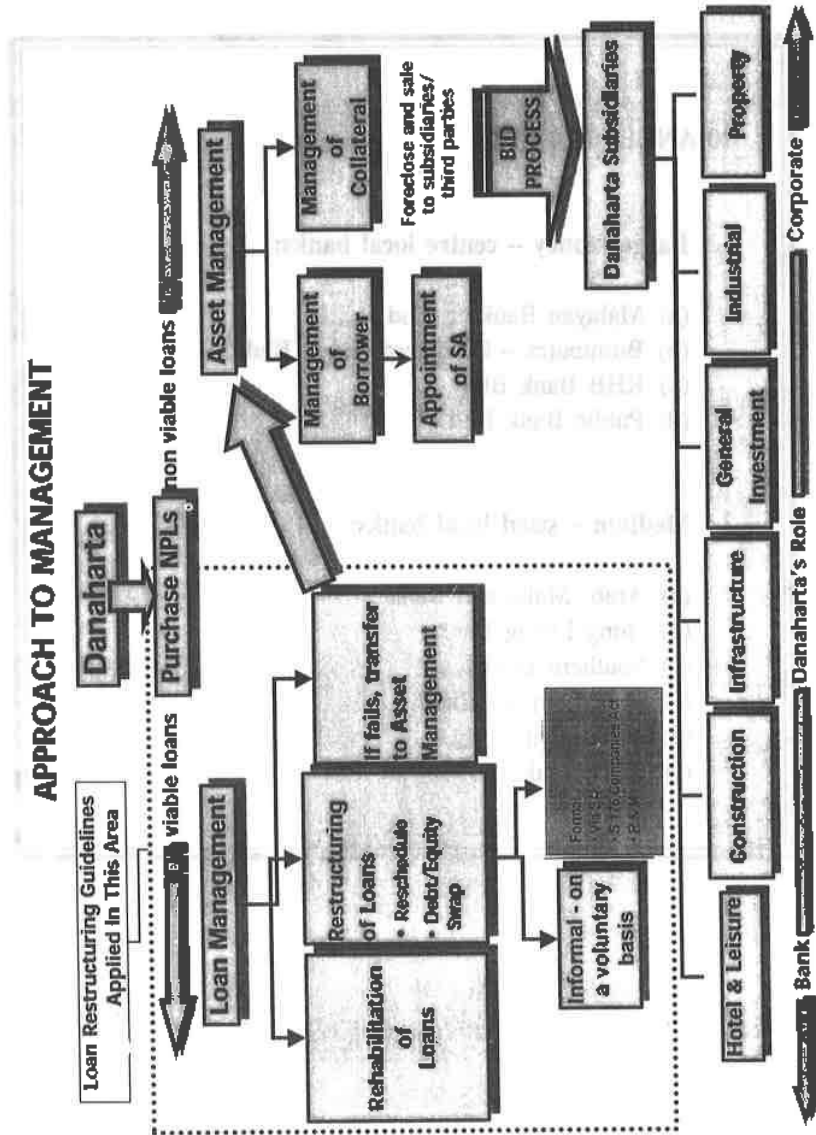


Figure 7

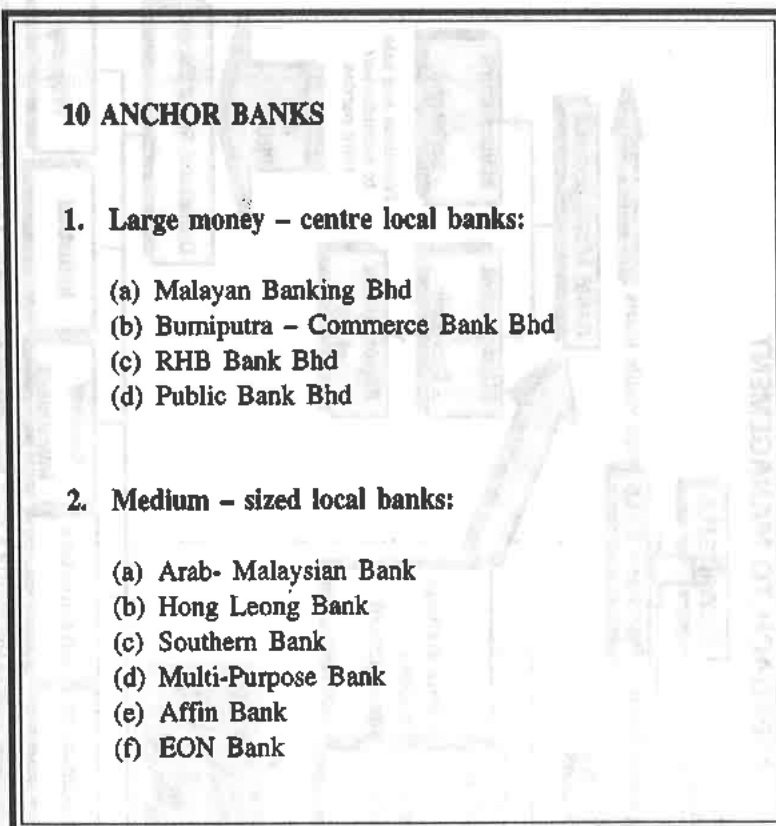
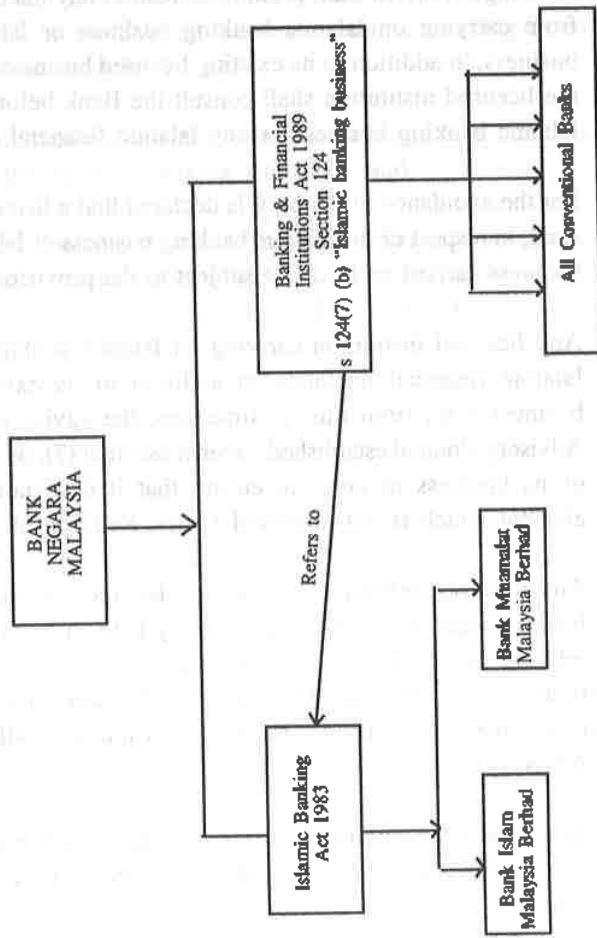


Figure 8

**ISLAMIC BANKING LEGISLATION IN MALAYSIA**



**Appendix****S. 124. Islamic banking or financial business**

- (1) Except as provided in section 33, nothing in this Act or the Islamic Banking Act 1983 shall prohibit or restrict any licensed institution from carrying on Islamic banking business or Islamic financial business, in addition to its existing licensed business, provided that the licensed institution shall consult the Bank before it carries on Islamic banking business or any Islamic financial business.
- (2) For the avoidance of doubt, it is declared that a licensed institution shall, in respect of the Islamic banking business or Islamic financial business carried on by it, be subject to the provisions of this Act.
- (3) Any licensed institution carrying on Islamic banking business or Islamic financial business, in addition to its existing licensed business may, from time to time seek the advice of the Syariah Advisory Council established under subsection (7), on the operations of its business in order to ensure that it does not involve any element which is not approved by the Religion of Islam.
- (4) Any licensed institution carrying on Islamic banking business or Islamic financial business shall comply with any written directions relating to the Islamic banking business or any other Islamic financial business, carried on by such licensed institution, issued from time to time by the Bank, in consultation with the Syariah Advisory Council.
- (5) Any licensed institution carrying on Islamic banking business or Islamic financial business shall be deemed to be not an Islamic bank.



(6) This Act shall not apply to an Islamic bank.

(7) For the purposes of this section -

- (a) there shall be established a Syariah Advisory Council which shall consist of such members, and shall have such functions, powers and duties as may be specified by the Bank to advise the Bank on the Syariah relating to Islamic banking business or Islamic financial business;
- (b) "Islamic banking business" has the meaning assigned thereto under the Islamic Banking Act 1983; and
- (c) "Islamic financial business" means any financial business, the aims and operations of which, do not involve any element which is not approved by the Religion of Islam.



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## THE COMPANIES ACT 1965: SOME RECENT AMENDMENTS

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Law is not static. From time to time, it is altered by Parliament as a result of, *inter alia*, changes in circumstances, decisions made by the courts and also to better reflect the intention of the legislature.

The Companies Act, which was enacted in 1965<sup>1</sup> and came into force on 15 April 1966, is of no difference. In fact, it is one of the most frequently amended statutes in Malaysia. In 1997 and 1998, there were three amendments to the Act. They are:

- (a) Companies (Amendment) Act 1997<sup>2</sup> which took effect on 1 September 1997;
- (b) Companies (Amendment) Act 1998<sup>3</sup> which took effect on 1 September 1998; and
- (c) Companies (Amendment) Act 1998<sup>4</sup> which took effect in two stages, that is, on 1 November 1998 and 1 December 1998 respectively.

The amendments made are vast and wide. In this article, it is proposed to highlight some of the major changes, in particular, on the procedures with regards to the registration of a company, the powers of a company in general and in particular with regards to the purchase of its own shares, disclosure of shareholding, the appointment and resignation of a company secretary and restraining order granted by the court pending the formalisation of a scheme of compromise or arrangement between a company and its creditors.

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<sup>1</sup>Act 125.

<sup>2</sup>Act A1007.

<sup>3</sup>Act A1022.

<sup>4</sup>Act A1043.