

Financial Institutions Law
(Pyidaungsu Hluttaw Law No. 20, 2016)
1st Waning of Pyatho 1377 ME
(January 25, 2016)

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Pyidaungsu Hluttaw hereby enacts this Law.

CHAPTER I
TITLE AND DEFINITION

1. This Law shall be called the Financial Institutions Law.
2. The following expression contained in this Law shall have the meanings given hereunder:-
 - (a) **State** means the Republic of the Union of Myanmar.
 - (b) **Financial Institution** means banks, non-bank financial institutions and scheduled institutions.
 - (c) **Bank** means an entity licensed by the Central Bank under this law to carry on banking business. In which commercial bank, development bank and foreign bank branch licensed under this Law are also included.
 - (d) **Banking business** means the business of commercial banking or development banking.
 - (e) **Entity** means a company established under the Myanmar Companies Act or Special Company Act and State-owned Financial Institutions.
 - (f) **Commercial Banking Business** means the business of;
 - (1) accepting or receiving various kinds of deposits ;
 - (2) paying and collecting cheques drawn by or paid in by customers;
 - (3) providing credit facilities; and
 - (4) such other banking business as the Central Bank may prescribe under Section 52.
 - (g) **Commercial Bank** means a bank licensed by the Central Bank under this Law to carry on commercial banking business.
 - (h) **Development Banking Business** means the business of accepting fixed deposits with terms exceeding one year and financing of specific economic sectors at terms consistent with the terms of the resources collected by such banks or funds provided by the Government.
 - (i) **Development Bank** means a bank licensed by the Central Bank under this Law to carry on development banking business.
 - (j) **Non-Bank Financial Institution** means an entity that is registered under Section 20 to carry on one or more of the following businesses-
 - (1) finance company;
 - (2) leasing;

- (3) factoring;
 - (4) credit token;
 - (5) money services;
 - (6) any other credit services the Central Bank may prescribe.
- (k) Holding company** means a company that owns 51% or more of the shares of a bank or has the power to elect a majority of the directors of the bank or exercises a significant influence over the management, operations and policies of the bank.
- (l) Board of Directors** means the Board of Directors of a financial institution.
- (m) Bank Branch**, in relation to a bank, includes the principal place of business, a branch, a pay office or sub-pay office, an agency and a place of business set up and maintained for a limited period only.
- (n) Business day** means any calendar day other than a Saturday, Sunday, public holiday and bank holiday.
- (o) Capital funds** means-
- (1) in the case of a bank established in Myanmar, its capital used for the purposes of calculating its capital adequacy ratio prescribed by the Central Bank; and the aggregate of its paid-up capital and its published reserves, deduction having been made for any loss appearing in the accounts of the bank and
 - (2) in the case of a foreign bank branch licensed in Myanmar, its initial paid-up capital and its capital used for the purposes of calculating its capital adequacy ratio prescribed by the Central Bank from time to time.
- (p) Central Bank** means the Central Bank of Myanmar established under the Central Bank of Myanmar Law.
- (q) Chief Executive**, in relation to a financial institution, means a person who is principally responsible for the management and conduct of the business of the financial institutions, in which in the direct employment of, or acting for or by arrangement with, the financial institution also included.
- (r) Company** has the same meaning as defined in Myanmar Companies Act.
- (s) Subsidiary company** has the same meaning as defined in the Myanmar Companies Act.
- (t) Credit facility** means –
- (1) the granting by a financial institution of advances, loans and other facilities where by a customer of the financial institution has access to funds or financial guarantees; or
 - (2) the incurring by a financial institution of other liabilities on behalf of a customer.
- (u) Credit societies business** means the business of engaging primarily in financing to individuals who are members for consumption, production or commerce, using funds collected in member's accounts.

- (v) Credit token business** means the activity of issuing a token being a credit card, debit card, charge card or stored value card and such other card or device prescribed by the Central Bank.
- (w) Credit bureau** means an entity specialized in the collection and sale of credit performance information for individuals and companies.
- (x) Deposit** means a sum of money paid on terms under which it will be repaid or it is repayable, either wholly or in part, with any consideration in money or money's worth and such repayment being either, on demand or at a time or in circumstances agreed by the person or an entity making the payment and the person receiving it.
- (y) Document** includes –
 - (1) any matter expressed or described on any material in any form;
 - (2) any visual or sound recording, electronic, magnetic or mechanical .
- (z) Employee** means an employee of the financial institution and includes an individual seconded or temporarily transferred from another employer.
- (ya) Factoring business** means the business of financing accounts receivables.
- (la) Fit and proper** means probity, integrity, diligence, competence, banking and business experience of a person and set of criteria prescribed by the Central Bank for the purposes of this Law.
- (wa) Finance Company business** means business engaging primarily in financing the purchase of goods or services with funding other than deposits from the public.
- (tha) Foreign bank branch** means a branch of a foreign bank licensed by the Central Bank to carry out banking business in Myanmar.
- (ha) Government** means the Union Government of the Republic of the Union of Myanmar.
- (lagyi) Leasing business** means the business of letting or sub-letting movable property on hire, regardless whether the letting is with or without an option to purchase the property.
- (aha) License** means the authorization issued by the Central Bank to carry on banking business under this Law.
- (aa) Registration Certificate** means the approval issued by the Central Bank to NBFIs to carry on business under this Law.
- (bb) Ministry** means the Union Ministry of Finance.
- (cc) Money services business** means the business of-
 - (1) money transmission;
 - (2) issuance and management of payment instrument;
 - (3) cashing of cheques;
 - (4) issuing and selling of traveler's checks or money orders.
- (dd) Officer in relation to a financial institution,** includes–
 - (1) the chief executive, or his deputies;
 - (2) the chief financial officer;
 - (3) such other person performing executive functions at the financial institution.

- (ee) Payment system** means any system or arrangement for the transfer, clearing or settlement of funds or securities, but excludes—
- (1) an in-house payment system operated by a person solely for own administrative purposes;
 - (2) such other systems or arrangements as may be prescribed by the Central Bank.
- (ff) Payment instrument** means any instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to otherwise make payment.
- (gg) Place of business** means a branch or an office of a financial institution.
- (hh) Relative** in relation to a person means his spouse, brother or sister of the individual, brother or sister of the spouse of the individual, any lineal ascendant and descendant of the individual or spouse of the individual and his dependents; and any such relationship created through adoption.
- (ii) Related party in relation to a financial institution** means-
- (1) a person who has substantial interest in the financial institution or the financial institution has significant interest in the person;
 - (2) a director or officer of the financial institution or of a body corporate that controls the financial institution;
 - (3) a relative of a natural person covered in paragraphs (1) and (2);
 - (4) an entity that is controlled by a person described in paragraphs (1), (2) and (3);
 - (5) a person or class of persons who has been designated by the Central Bank as a related party because of its past or present interest in or relationship with the financial institution.
- (jj) Scheduled Institutions** means institutions not established under this law, but under another law, that provide financial services for a specific group or a community that include;
- (1) Rural Development Bank;
 - (2) Agricultural Bank;
 - (3) Micro Finance Institutions licensed under the Microfinance Business Law;
 - (4) Credit Societies;
 - (5) Postal Savings Bank.
- (kk) Securities** include securities as defined in the Securities Exchange Law.
- (ll) Substantial interest** means owning, directly or indirectly, ten percent or more of the capital or of the voting rights of a financial institution or, directly or indirectly, exercising control over the management of the financial institution, as the Central Bank may determine.
- (mm) Associate company** means a company where not less than twenty per centum and not more than fifty per centum of that company's shares are held by another company.

CHAPTER II OBJECTIVES

3. The aim of this Law is-
- (a) to obtain sustainable economic development of the State;
 - (b) to develop the financial sector of the State;
 - (c) to ensure that financial Institution within the State carry on financial services activities in line with the international standards ;
 - (d) to enable the Central Bank to effectively regulate and supervise the financial institutions in accordance with the international standards; and
 - (e) to maintain the stability, safety and soundness of the financial system and to protect the depositors' interest.

CHAPTER III ESTABLISHMENT

4. The financial institutions shall be established as limited liability company in accordance with the Myanmar Companies Act or with the Special Company Act. In the case of state-owned financial institutions, it shall be deemed to have been established under this Law.

CHAPTER IV GENERAL POWERS AND DUTIES OF THE CENTRAL BANK OF MYANMAR IN RELATION TO FINANCIAL INSTITUTIONS

General Powers

5. The Central Bank in relation to the financial institution, shall have power to -
- (a) grant licenses;
 - (b) provide registration, approval and authorization;
 - (c) carry out regulation and supervision of bank and NBFIs under this Law;
 - (d) require any bank and NBFIs to comply with any order, regulation, directive and guideline issued under this Law;
 - (e) require any bank and NBFIs to provide any information and periodical written reports as may be prescribed by the Central Bank;
 - (f) promote, implement and enforce consumer protection in the banking and payment system; and
 - (g) such other power conferred on it under this Law.

Delegation of Powers

6. In implementing its duties under this Law, the Central Bank-
- (a) may also authorise or instruct its officer or employee to perform any functions, exercise any powers, or discharge any duties;
 - (b) may appoint any person who is not its officer or employee to perform any functions, exercise any powers, or discharge any duties, as determined by Board of Directors.

Cooperation with Regulators

7. In carrying out functions under this Law the Central Bank may-
- (a) cooperate with regulators of financial institutions not governed under this Law and relevant domestic and international authorities and exchange information relating to any bank or NBFi.
 - (b) the Central Bank may enter into memorandum of understanding and other suitable arrangements with other financial regulators to ensure the safety and soundness of the financial system.
 - (c) In regulating and supervising representative offices of foreign banks, and bank and NBFIs, in which foreign banks or foreign investor has a substantial interest, cooperate with the foreign regulators concerned, on the basis of reciprocity and ensuring timely exchanges of information adequate to discharge its regulatory and supervisory responsibilities.
 - (d) have the power to enter into cooperative arrangements and shall provide for the confidential treatment of the information received pursuant to the memorandum of understanding and other arrangements.

CHAPTER V

LICENSE

Application for License

8. (a) Any person wishing to conduct banking business under this Law must apply to the Central Bank for a license in the prescribed form together with the following documents-
- (1) document evidencing that proposed applicant is a company or an entity incorporated under the Laws of Myanmar;
 - (2) a copy of the proposed applicant's Memorandum of Association, its Articles of Association and any other document associated with its formation;
 - (3) the proposed location of the principal place of business and the branch offices of the proposed bank;
 - (4) copies of the audited balance sheets and profit and loss accounts of the applicant;
 - (5) the amounts of the authorized and subscribed capital of the proposed institution;
 - (6) a business plan for the proposed institution, setting out the types of activities envisaged for and the structural organization of the proposed institution;
 - (7) the qualification and experience, business or profession, the financial condition of owners of substantial interest in the proposed institution;
 - (8) the qualification and experience, the directors and chief executive of the proposed institution;
 - (9) an authorization of the applicant permitting the Central Bank to carry out financial, criminal and professional background checks on the applicant, its directors and chief executive and affiliated persons;

- (10) an authorization of the owners, directors and chief executive of the proposed institutions, permitting the Central Bank to carry out financial, criminal and professional background checks on them and affiliated persons;
 - (11) such additional information as shall be prescribed by regulation of the Central Bank.
- (b) The State-owned bank established under any written Laws of Myanmar before this Law shall reapply its license under this Law in accordance with section 176 of this Law.

Documents required for Licensing

9. In addition to the documents listed in section 8 of this Law, the following documents shall accompany the application by a foreign bank for a license to carry on banking business in Myanmar through a subsidiary or branch –

- (a) a credit rating report by an international credit rating agency;
- (b) a statement of its capital position, its ranking by total assets and capital in its home country and globally;
- (c) a written undertaking of the foreign bank, to provide such funds as may be necessary to meet all its obligations relating to the business activities of its subsidiary or branch in Myanmar;
- (d) a written statement from the bank regulator of the country where the foreign bank maintains its principal place of business certifying that:
 - (1) the foreign bank has a valid license to carry on banking business in that country;
 - (2) the foreign bank is authorized under the law of that country to establish a subsidiary or a branch in Myanmar;
 - (3) no facts are known to the regulator showing that any director or officer of the said foreign bank are not fit and proper.

Approval or Rejection of Application

10. (a) The Central Bank shall, on an application having been duly made in accordance with section 8 and 9, approve the application for license if the licensing requirements under this Law are met.
- (b) The Central Bank shall reject an application for a license if it is satisfied that any of the following circumstances apply –
- (1) the licensing requirements under this Law has not been met;
 - (2) any information contained in the application for a license or any information submitted in connection there with is found to be false, misleading or inaccurate;
 - (3) the Central Bank has determined that there are indications that the applicant would not comply with any of the requirements under this Law or any other Laws in Myanmar;
 - (4) the Central Bank has determined that there are indication that the influence that would be exercised on the applicant by any person who has a substantial

- interest in the proposed institution would threaten the sound and prudent management of the applicant;
- (5) the Central Bank has determined that the applicant would be connected to a group of persons that would pose a threat to the sound and prudent management of the applicant or hinder the Central Bank in the discharge of its regulatory and supervisory responsibilities;
 - (6) the Central Bank has determined that current domestic economic or financial conditions in Myanmar warrant the rejection of the application for a license.

Notification by Central Bank

11. The Central Bank-
- (a) shall notify the applicant in writing of its decision whether to issue or refuse a license within a period of not later than six months from date of the receipt of a complete application.
 - (b) shall return any incomplete application to fulfill the licensing requirements. Where any additional information or document required by the Central Bank is not provided by the applicant within the specified period, the application shall be deemed to have been withdrawn.
 - (c) The Central Bank may make changes to the conditions and restrictions in a license that has been issued, in light of any factors that may undermine the efficient and stable operation of the bank or the financial system or the interests of depositors.
 - (d) shall determine the rules and regulations on licensing, and publish the list of banks licensed annually.

Requirement for Licensing

12. Any person wishing to carry out banking business shall be –
- (a) a company incorporated under written Laws in Myanmar and has a valid license issued by the Central Bank;
 - (b) a foreign bank subsidiary or branch with a valid license issued by the Central Bank;
 - (c) a person who is exempted under section 19.

Compliance with Terms and Conditions

13. Any bank, holding a license issued by the Central Bank, shall –
- (a) comply with all conditions and restrictions imposed by the Central Bank ;
 - (b) commence its operations within one year from the date of receipt of its license to operate;
 - (c) not carry on any activity other than the activities permitted under this Law; and
 - (d) conspicuously display a copy of its license at each of its place of business.

Fees for Banks

14. (a) The Central Bank may prescribe different fees for licenses issued for different businesses or for different classes or categories of banks.

- (b) Every bank shall pay the following fees not less than one month before the anniversary date of the issue of the license –
- (1) a license fee upon being licensed;
 - (2) a fee for opening any office in Myanmar other than the office at the principal place of business;
 - (3) an annual fee on the license so issued and in respect of each office, including the office at the principal place of business.

Revocation of License

15. (a) The Central Bank may revoke the license of a bank if:
- (1) failing, within the period specified, to deposit the modified minimum capital requirements prescribed for banks;
 - (2) failing, within the period specified, to restore the minimum capital required following losses in business;
 - (3) failing, within the period specified, to refrain from activities which violate the existing laws or fail to comply with the terms and conditions prescribed by the Central Bank;
 - (4) liquidating voluntarily or involuntarily or bankruptcy;
 - (5) extinguishing of the original legal entity as a result of a merger, amalgamation or division;
 - (6) Central Bank is satisfied that the revocation of the license would not be contrary to the national interest and interests of the depositors of the bank;
 - (7) the bank provided, in connection with its application for the license, information that was false or misleading in a material particular;
 - (8) the bank fails to commence permitted activities within one year from the date of receipt of the license;
 - (9) the bank ceases to conduct permitted activities without having any sound reasons for more than three months continuously;
 - (10) the bank conducts permitted activities in a manner detrimental to the rights and interests of depositors;
 - (11) it would be contrary to the national interest for the license to remain in force;
 - (12) it would be contrary to financial system stability in Myanmar for the license to remain in force;
 - (13) the bank acts in contravention of the Central Bank of Myanmar Law or this Law, or the rules and regulations framed there under;
 - (14) the bank fails to comply with the orders or directives issued by the Central Bank;
 - (15) the bank becomes insolvent or is unlikely to return to solvency within a reasonable period of time;
 - (16) the bank is merged or amalgamated with any other bank without having prior approval of the Central Bank;
 - (17) the bank requests the Central Bank to revoke its license.

Decision on Revocation

16. The Central Bank -
- (a) shall make a decision on the revocation within ninety days from the date of above circumstances occurred under section 15;
 - (b) Information concerning the decision taken under sub-section (a) and the grounds on which the decision is based shall be furnished in writing to the concerned bank.

Notification of Revocation of License

17. Where the decision has been made to revoke a license under section 15 and 16, the Central Bank shall publish a notification for public information.

Alteration of Constituent Documents

18. Any bank incorporated in Myanmar seeking to alter its Memorandum of Association or its Articles of Association shall get the prior written authorization of the Central Bank.

Scheduled Institutions

19. (a) This Law shall not apply to scheduled institutions.
- (b) Notwithstanding sub-section (a), scheduled institutions shall be subject to the whole or any part of this Law, if the Ministry upon the recommendation of the Central Bank decides that-
- (1) it is in the interest of the depositors or public; or
 - (2) the total assets of the scheduled institutions exceeds the amount prescribed by the Central Bank in a regulation for purposes of this section; or
 - (3) the said institution poses a threat to stability and soundness of the banking system or the financial system as a whole; or
 - (4) the said institution is operated for the sole purpose of avoiding being licensed or registered as a bank, or NBFIs under this Law.
- (c) The Ministry shall publish an order to give effect to the decision in sub-section (b).
- (d) It shall not be necessary for the Ministry or Central Bank to give an opportunity to the scheduled institution concerned to make any representation prior to the order.
- (e) An order of the Ministry under subsection (b) shall be deemed to be an integral part of this Law and be read as one with this law.
- (f) The Ministry may issue the necessary regulations and the Central Bank may issue necessary notification, order, directive and procedures to give effect to this section.
- (g) The provisions of this section and any regulations or order made hereunder shall have full force and effect notwithstanding anything contained in the written Law under which the scheduled institution is established and anything contained in any other written Law.

CHAPTER VI

Non-BANK FINANCIAL INSTITUTIONS (NBFIs) and FOREIGN BANK REPRESENTATIVE OFFICE

Application for Registration Certificate

20. (a) A company wishing to carry on NBFIs business shall apply to the Central Bank for the registration certificate as prescribed by the Central Bank.
- (b) Persons carrying on NBFIs business prior to the effective date of this Law shall apply to the Central Bank within 6 months of the effective date to obtain a registration certificate from the Central Bank to carry on NBFIs business.

Issuance of Registration Certificate

21. The Central Bank shall issue the registration certificate to the applicant under section 20 with the terms and conditions as it may deem fit.

Regulations and Directives on NBFIs

22. The Central Bank may issue regulations and directives to NBFIs on matters pertaining to-
- (a) governance requirements;
 - (b) transparency and disclosure requirements;
 - (c) consumer protection;
 - (d) reporting requirements; and
 - (e) such other matters relating to regulation and oversight of the NBFIs.

NBFIs Business

23. A NBFIs may engage in one or all of the following activities subject to any conditions and restriction imposed by the Central Bank-
- (a) finance company business;
 - (b) leasing business;
 - (c) factoring business;
 - (d) credit card business;
 - (e) money services business;
 - (f) any other credit services the Central Bank may prescribe;
 - (g) such other activities determined by the Central Bank.

Representative Office

24. Foreign financial institution seeking to set up a representative office in Myanmar shall obtain the registration certificate of the Central Bank.

Issuance or Refusal of Registration Certificate

25. The Central Bank -
- (a) upon receipt of complete application under section 24, having assessed the application, may grant or refuse the registration certificate subject to terms and conditions;

- (b) may issue rule and regulations relating to representative office in Myanmar.

Activities of Representative Office

- 26. (a) A representative office shall only carry on activities or business as may be specified by the Central Bank;
- (b) No foreign financial institution shall, through its representative office, carry on within Myanmar any banking, development banking or NBFi business.

Fees for NBFi

- 27. A NBFi and a foreign institution respectively upon receipt of the registration certificate shall –
 - (a) pay fees as may be prescribed by the Central Bank;
 - (b) at any time submit information relating to its business or affairs, and such periodical returns as the Central Bank may specify.

Amendment of Constituent Documents

- 28. (a) Every NBFi, or every representative office shall, within three months notify the Central Bank of any amendment or alteration to any of its constituent documents;
- (b) The notification in sub-section (a) must be duly verified by a statutory declaration made by a director of the NBFi or representative office.

Extension of this Law to NBFi and Representative Office

- 29. (a) the Central Bank may by an order published in the gazette, declare that any or all of the provisions of this Law shall apply to a particular NBFi, or representative office, or to such class, category of NBFi, business or representative offices generally if it is necessary to –
 - (1) promote monetary stability and a sound financial structure; or
 - (2) influence the credit situation to the advantage of State; or
 - (3) protect the interest of the public in respect of the business or activities carried on by the NBFi, or representative office.
- (b) Where an order under sub-section (a) is published the provisions of this Law made applicable to such NBFi, or representative office, or such class, category of NBFi business or representative offices, shall apply as if the references therein to a bank were references to such particular NBFi, or representative office, or to such class, category or description of NBFi business, or representative offices.

Publication of List of NBFi and Representative Office

- 30. The Central Bank shall publish annually a list of all NBFis and representative office mentioned in section 29.

CHAPTER VII
RESTRICTIONS RELATING TO ACCEPTANCE AND SOLICITATION OF DEPOSITS

Restriction on Acceptance of Deposit

31. Only persons having a valid license granted by the Central Bank may carry on the business of accepting deposit.

Restriction on Unsolicited Calls

32. Except with the written consent of the Central Bank, no financial institutions or person can make unsolicited calls for the purposes of-

- (1) soliciting or procuring for the making of deposit in Myanmar; or
- (2) entering into or offering to enter into any agreement with a view to the acceptance of deposit in Myanmar.

False, Deceptive Offensive and Misleading Advertisement

33. (a) If the Central Bank is of the opinion that any statement made in an advertisement issued by a bank is false, deceptive offensive or misleading, the Central Bank may by notice in writing direct the bank to do all or any of the following :

- (1) cease the continued issue of the advertisement;
- (2) modify the advertisement in such manner as may be specified by the Central Bank;
- (3) take all practical steps to retract or withdraw the advertisement from every and all publication or display of it.

(b) The Central Bank may vary, amend or revoke any directions issued under sub-section (a).

CHAPTER VIII
CAPITAL, RESERVES AND SIGNIFICANT OWNERSHIP

Maintenance of Capital Funds

34. (a) Banks shall hold capital in the following manner-

- (1) in the case of a bank incorporated in Myanmar, its paid-up capital is not less than twenty billion kyat;
- (2) in the case of branch or subsidiary of foreign bank, its paid-up capital is not less than the equivalent of seventy five million US dollars.

(b) The paid-up capital in sub-section (a) may be increased from time to time by the Central Bank as prescribed in a regulation.

(c) A bank shall maintain at all times, net capital funds unimpaired by losses, in such ratio specified by the Central Bank in a regulation.

(d) For the purposes of this Law, the initial capital funds of a bank shall be the amount of subscribed and paid-up capital.

- (e) A bank seeking to reduce its share capital shall obtain the prior written approval of the Central Bank.
- (f) The Central Bank may require a bank with a subsidiary to calculate and maintain the minimum capital adequacy ratio on a consolidated basis.
- (g) For the purposes of this Law-
 - (1) **Core capital or Tier 1 Capital** means permanent shareholders' equity in the form of issued and fully paid ordinary shares, and perpetual non-cumulative preference shares, capital grants and disclosed reserves less year to date losses, goodwill, pre-operating expenses and/or prepaid expenses, deferred taxes, capitalized leasehold rights and any other intangible assets;
 - (2) **Supplementary capital or Tier 2 capital** means general provisions which are held against future, presently unidentified losses and are freely available to meet losses which subsequently materialize, subordinated debts, cumulative and redeemable preferred stocks, and any other form of capital as may be determined and specified from time to time by the Central Bank;
 - (3) **Total capital** means the sum of core capital and supplementary capital; and
 - (4) **Total risk weighted assets and off-balance sheet exposures** means total assets and off-balance sheet exposures adjusted in relation to the risks of the different categories of assets and off-balance sheet exposures as may be prescribed by the Central Bank.

Maintenance of Reserve Funds

- 35. (a) A bank shall maintain a reserve fund and a sum equal to twenty five per centum of the net profits of that year shall be transferred to its reserve fund. Such transfer shall be made so long as the amount of the reserve fund is equal to one hundred per centum of its paid-up capital; and
- (b) Notwithstanding sub-section (a), the Central Bank may from time to time specify a different portion of the net profits of each year, to be transferred to the reserve fund of a bank.

Maintenance of Liquid Assets

- 36. A bank shall hold such minimum, or minimum average amount of liquid assets in Myanmar at all times or over such time as may be specified by the Central Bank in a regulation.

Maintenance of Assets in Myanmar

- 37. A bank shall maintain at all times, such minimum amount of assets in Myanmar as may be specified by the Central Bank in a regulation.

Assigned Capital of Foreign Bank Branch

- 38. (a) A foreign bank shall maintain for its bank branch, a minimum amount of assigned capital, which amount shall be the same as the minimum amount of initial capital

funds to be maintained if such foreign bank branch was established and licensed as a domestic bank.

- (b) The assigned capital to be maintained by a foreign bank for its branch shall be kept in the form and manner as may be specified by the Central Bank in a regulation.

Provisions for Loans and Other Assets

39. Every bank shall-

- (a) make provision for loans, advances and other assets before any profit or loss is declared;
- (b) ensure that the provision for loans, advances and other assets made under sub-section (a) is adequate according to such regulations as may be specified by the Central Bank.

Payment of Dividends

40. (a) A bank shall only pay dividends or make any form of distribution to its shareholders from its profits.

- (b) No bank shall declare or pay any dividend or make any form of distribution to its shareholders—

- (1) until all its capitalized expenses, including preliminary expenses, other items of expenditure, and tangible assets, have been completely written off;
- (2) if, as a result thereof, the aggregate book value of its assets would be less than the sum of the book values of its liabilities and unimpaired capital funds;
- (3) as long as the bank is in breach of a requirement imposed by or under any provision of this Law.

Prescription on Assets, Liabilities and Provisions

41. The Central bank may prescribe-

- (a) different minimum amounts of assets to be held by different classes or categories of banks;
- (b) different type of assets to be classified as assets, and different type of liabilities to be classified as liabilities, for different classes or categories of banks; and
- (c) different provisions for different classes or categories of banks in relation to any matter provided under this Law.

Acquisition of Substantial Interests

42. (a) Any person, alone or in concert acquiring the substantial interest of a bank shall submit to the Central Bank a written application accompanied by any other supporting documents as may be specified in the regulations issued by the Central Bank.

- (b) The Central Bank shall be authorized to carry out the background checks referred to in sub-section (a) and may require any additional documents and information in relation to an application made.

- (c) The Central Bank shall not grant an approval to an application made under sub-section (a) and (b), if it determines that one or more of the following circumstances apply:
 - (1) the applicant, being an individual, is not a fit and proper person;
 - (2) the applicant, being a body corporate, has one or more directors or chief executive who are not fit and proper persons;
 - (3) facts are known to the Central Bank to indicate that the person making the acquisition would exercise significant influence on the bank that would threaten the sound and prudent management of the bank.
- (d) The Central Bank shall have power to approve or reject any application made under sub-section (a).

Approval to Continue to be Substantial Shareholder

43. No person who is a substantial shareholder of a bank shall, upon the coming into force of this Law, continue to be such a shareholder unless, within 6 months after effective date, apply to the Central Bank for approval to continue to be such a shareholder.

Reporting on Substantial Interest

44. Each bank shall submit an annual report to the Central Bank of the names and addresses of shareholders having substantial interest in the bank and the number of voting shares held by such persons.

Approval to Acquire Substantial Interest

45. No person shall, alone or in concert with one or more persons, enter into any agreement or arrangement to acquire substantial interest in a bank without the prior approval of the Central Bank.

Disapplication of Restriction on Substantial Interest

- 46. (a) The provisions of sections 43 and 45 shall not apply to-
 - (1) Voting shares of a bank acquired-
 - (aa) in lieu of shares for the repayment of credit granted by the bank;
 - (bb) under an underwriting arrangement, in which case the bank shall dispose of such voting shares within one year or such longer period as the Central Bank in exceptional circumstances may approve;
 - (2) Voting shares of a bank held as an agent, trustee or custodian.
- (b) A bank which has acquired voting shares of another bank under paragraph 1(aa) of sub-section (a) shall inform the Central Bank upon its acquisition of such voting shares.

Breach of Restriction on Substantial Interest and Maximum Shareholding

- 47. (a) Where the Central Bank is satisfied that any person has contravened the provisions of sections 42,43,44 and 45 or the regulations made under section 50, the Central Bank may impose administrative penalties under a directive as follows-

- (1) in respect of any voting shares which are the subject of the contravention prohibit the transfer of, or the carrying out of the agreement or arrangement to transfer, such shares;
 - (2) prohibit the exercise of any voting rights in respect of such shares;
 - (3) prohibit the issue of further shares or pursue any offer made to their holder;
 - (4) except in a liquidation, prohibit the payment of any sums due from the bank on such shares;
 - (5) in respect of the defaulting person, the Central Bank direct such person to sell such shares by public auction.
- (b) A directive made under sub-section (a) shall be served on the defaulting person as soon as practicable, and may be publicized in such manner as the Central Bank deems fit.
 - (c) Any defaulting person against whom a directive has been made under sub-section (a) may, within fourteen days of the service of the directive, make representations in writing to the Central Bank applying for a revocation or for a modification of the order.
 - (d) The Central Bank may, after considering the representations made under sub-section (c), either confirm the directive, or revoke it, or vary it in such manner.
 - (e) The Central Bank may give directions to the directors or officers of a bank as may be necessary to give effect to any directive made under sub-section (a).

Merger of banks

48. (a) With the prior written approval of the Central Bank, banks shall carry on the following-
 - (1) for a bank to acquire the business or a substantial part of the business of another bank or to sell all or a substantial part of its own business;
 - (2) for the amalgamation or merger of a bank with another bank;
 - (3) for a foreign bank to acquire the business or a substantial part of the business of a bank in Myanmar or to sell all or a substantial part of its own business in Myanmar;
 - (4) which will result in a change in the control of a bank or its holding company.
- (b) An application for the approval in sub-section (a) shall be submitted to Central Bank together with a copy of the proposed agreement and all other relevant information and documents.
- (c) At any time after receiving an application the Central Bank, may by written notice, require the applicants or any of them to provide any additional information and documents.
- (d) The Central Bank shall, on an application having been duly made under this section approve or refuse the application and make necessary modifications, or impose conditions in approving the application.
- (e) In relation to the sub-section (a)(4) , the term “control” includes-
 - (1) the ability to influence, whether directly or indirectly, the composition of the board of directors of a company or any other body corporate;

- (2) holding, directly or indirectly, whether personally or through a holding company or companies or subsidiaries thereof, or in any other way, an aggregate of twenty per centum or more of the voting power of a company or body corporate.

Merger Procedures

49. (a) Where Central Bank has granted approval to an application in respect of an agreement under section 48, the institution whose business is to be transferred (transferor) and the person to whom the transfer is to be made (transferee) may make a joint application to the High Court of the Region or High Court of the State by way of an ex-parte originating summons for such order of the High Court of the Region or High Court of the State as may be required to facilitate or enable the agreement being given effect to.
- (b) On the hearing of an application under sub-section (a), the concerned High Court of the Region or High Court of the State may grant an order in the terms applied for or with such modifications or variations as the High Court of the Region or High Court of the State deems just or proper in the circumstances of the case.
- (c) The order of concerned the High Court of the Region or High Court of the State made under sub-section (b) shall be published by the transferee for public information.
- (d) The transferor shall lodge, within thirty days of the making of the order of the concerned High Court of the Region or High Court of the State under sub-section (b), an authenticated copy of such order together with an authenticated copy of the agreement or arrangement approved by Central Bank with-
 - (1) the Registrar of Companies; and
 - (2) the appropriate authority, if any, concerned with the registration or recording of dealings in any movable property, or any interest in movable property transferred pursuant to the order.
- (e) The concerned High Court of the Region or High Court of the State shall, where an order of the High Court of the Region or High Court of the State under sub-section (a) vests any alienated land, or any share or interest in any alienated land in the transferee cause a copy of the order to be served on the Land Administrator, immediately after the making of the order so that the Land Administrator, gives effect to the provisions of the said section.
- (f) An order of the High Court of the Region or High Court of the State under sub-section (b) may relate to any property or business of the transferor outside Myanmar and, if it so relates, effect may be given to it either in accordance with any reciprocal arrangements relating to enforcement of judgments that may exist between Myanmar and the country, in which such property or business is, or where there are no such arrangements, in accordance with the Law applicable in such country.

Regulation on Maximum Shareholding

50. The Central Bank may make regulations specifying-
- (a) the maximum percentage of the voting shares of a bank that may be held by any person; and
 - (b) maximum percentages under sub-section (a) with respect to any class of companies, body corporate or individuals.

CHAPTER IX PERMITTED ACTIVITIES

Conditions of Permitted Activities

51. Each bank may carry on the activities permitted by this Law, subject to the provisions of its Memorandum of Association and Articles of Association and to the conditions and restrictions of its license.

Permissible Banking Activities

52. A commercial bank may carry on and may engage in any or all of the following activities, subject to any conditions and restriction in the license issued to such bank-

- (a) acceptance of deposits;
- (b) lending;
- (c) leasing;
- (d) factoring;
- (e) money services;
- (f) credit token business;
- (g) foreign exchange business;
- (h) issuing and administering payment instruments such as credit cards, travellers' cheques and bankers' drafts (payment orders);
- (i) issuing of guarantees and commitments;
- (j) trading for own account or for account of customers in, money market instruments such as cheques, bills and certificates of deposit; foreign exchange; currency forward and spot contracts, swaps and exchange and interest-rate instruments; and transferable securities;
- (k) providing corporate advise;
- (l) money broking;
- (m) portfolio management and advice;
- (n) trustee services;
- (o) credit reference services;
- (p) e- banking;
- (q) mobile banking;
- (r) safe custody services;
- (s) development banking business;

- (t) mortgage financing;
- (u) other banking activities determined by the Central Bank.

Requirement for Subsidiary

53. Through as separately incorporated subsidiary, a bank may engage in-
- (a) insurance business;
 - (b) securities broking business;
 - (c) any other activity related to banking business as approved by the Central Bank.

Permissible Activities of Development Bank

54. A development bank may engage in one or all of the following activities subject to any conditions and restriction in the license -
- (a) providing long term finance;
 - (b) issuing guarantees and commitments;
 - (c) such other activities prescribed by the Central Bank.

Subsidiaries and Consolidated Supervision

55. Any such subsidiaries shall be subject to supervision to the same extent as the bank and the Central Bank may require any information otherwise required with respect to such bank and its subsidiary to be reported separately for each entity and on a consolidated basis.

Restriction on Trade

56. No bank shall engage, whether on its own account or on a commission basis, in wholesale or retail trade including import and export trade, unless –
- (a) in the course of satisfaction of debts due to it;
 - (b) purchasing or selling of gold or foreign currency by the bank.

Restriction on Investment in Immovable Property

57. A bank shall not purchase or in any other way acquire any immovable property therein, exceeding such percentage of its capital funds as may be determined by the Central Bank, unless-
- (a) required for the purpose of conducting its banking business or of providing housing or other amenities for its staff;
 - (b) accepting any immovable property as security for a debt.

Requirements relating to credit facilities

58. (a) Every bank shall ensure that the bank has established and maintained-
- (1) adequate internal policies, practices and procedures relating to the granting of credit facilities, making of investments and the ongoing management of the loan and investment portfolio;
 - (2) adequate internal policies, practices and procedures for evaluating the quality of assets and the adequacy of loans loss provisions and loan loss reserves.

- (b) A director, chief executive or officer of a bank shall not give any credit facility in contravention of any credit limit imposed on him, and any agreement made with him, by the bank.
- (c) The Central Bank may direct a bank to-
 - (1) submit any information relating to its policies and procedures for the giving of any credit facility;
 - (2) submit a report on the limit or the terms and conditions imposed on every director, chief executive or officer of the bank in relation to granting of credit facilities;
- (d) The Central Bank may make such modification to the policies or procedures of the credit facilities submitted by the bank as it deems fit.

Large exposures

59. (a) A bank shall not take on financial exposure in respect of a person or a single counterparty or group of connected counterparties which constitutes in the aggregate a liability amounting to more than twenty per centum of the core capital of the bank. Such restriction shall not be applied to the exposure related to the Government policy by the state-owned banks.
- (b) The limit in sub-section (a) does not apply to transactions between banks unless otherwise specified by the Central Bank and subject to such terms and conditions imposed by the Central Bank.
- (c) The Central Bank may establish additional limits for unsecured, partially secured and secured financial exposures of a bank.
- (d) A bank shall report to the Central Bank, the particulars of each large financial exposure, in the form and at the intervals that the Central Bank may require.
- (e) The Central Bank may specify the group of connected counterparties, aggregate exposure, additional limits and such other requirements as it deems necessary.
- (f) For the purpose of this section, "financial exposure " means a credit facility given by a bank to or on behalf of any person which credit facility may include loans, advances, overdrafts, lease financing, acceptances, guarantees, letters of credit, performance bonds, foreign exchange contracts and any other form of direct or indirect financial obligation to a bank as defined by the bank, including any off-balance sheet credit facility.

Restrictions on Investments

60. (a) A bank shall not acquire or hold shares in any company or enterprise-
- (1) that is not a public company and that does not meet the criteria determined by the Central Bank;
 - (2) that carries on the type of business that is declared ineligible by the Central Bank.

- (b) A bank shall not acquire or hold shares of, in any company or enterprise to an aggregate value in excess of ten per centum of the unimpaired capital funds of the bank.

Restriction on Cross Holding

61. (a) A bank may acquire or hold shares-
- (1) in another bank, up to a value of five per centum of the unimpaired capital funds of the other bank;
 - (2) in any company or enterprise carrying on a NBFBI business, up to a value of five per centum of the unimpaired capital funds of that company or enterprise.
- (b) The limit in section 60 sub-section (b) shall not apply-
- (1) where the bank acquires or holds any shares of any company or enterprise under an underwriting or sub-underwriting contract for a period not exceeding seven business days, or such further period as the Central Bank may approve;
 - (2) to any acquisition or holding of shares approved in writing by the Central Bank in another bank under Chapter XIV and XV of this Law or a company that is a wholly owned subsidiary of the bank;
 - (3) to any acquisition or holding of shares in the course of the satisfaction of any debt due to the bank provided such acquisition or holding is declared in writing to the Central Bank and is disposed of within two years from the date of acquisition.
- (c) Any bank acquiring or holding shares under this section shall keep a register of such holdings available for inspection at all times.
- (d) For the purposes of this section, the Central Bank may by regulations specify the terms and conditions of-
- (1) an acquisition or holding by a bank in an enterprise that may be made by such bank; and
 - (2) the nature and maximum value of shares any person and aggregate value of all shares that may be acquired or held by a bank.
- (e) Where a bank has contravened the provisions of this section or any regulations made there under, the Central Bank may-
- (1) prohibit such bank from increasing the amount of shares in that company or enterprise; and
 - (2) require such bank to decrease the amount of its shares in that company or enterprise to specified limit within a specified time.

Disapplication of Sections 60 and 61

62. The provisions of section 60 and 61 shall not apply to foreign bank and their foreign bank branches.

Restriction on Credit for Purchase of Own Shares and Debt Securities

63. (a) No bank shall grant credit for the acquisition of its own shares or for the purchase of debt securities with respect to which the bank has an unconditional or contingent liability.
- (b) No bank shall grant credit against the security of its own shares or shares of a company that has substantial interest in the bank.
- (c) the provision in sub-section (a) and (b) shall not apply to a bank from providing money or granting credit facility secured by its own shares to an employee stock ownership plan to finance the purchase of shares of the bank: Provided that the sum of the amounts of funds so provided shall not exceed the equivalent of five per centum of the total nominal amount of the subscribed and paid in share capital of the bank.

Lending to related party

64. (a) No bank shall provide any credit facility to its directors, managers or shareholders holding more than five per centum of the voting shares of the bank.
- (b) No bank shall enter, directly or indirectly, with a related party of the financial institutions into any transaction on terms and conditions that are less favorable to the bank than market terms and conditions.
- (c) A bank shall enter into a transaction with a related party if the following is satisfied-
- (1) such transaction has been approved at a meeting of the Board of Directors of the bank by the votes of not less than two thirds of the number of its directors other than any director concerned;
 - (2) such transaction is secured by collateral.
- (d) No bank shall grant any credit facility to a related party if as a result thereof a limit specified by regulation of the Central Bank would be exceeded.
- (e) Central Bank may specify the following-
- (1) the principal amount of any credit facility;
 - (2) the aggregate principal amount outstanding on all credit facility or any class of credit facility by a bank to any single related party or a single member of a stated class of related party.
- (f) All credit to related party shall be disclosed in the accounts for that financial year and for each subsequent financial year till such credit facility has been repaid or settled in full.
- (g) Any transaction of a bank with a related party that is in breach of this section shall be promptly reported to the Central Bank describing the transaction and specifying its terms and conditions.
- (h) If a bank enters into a transaction that is in breach of this section, the Central Bank may issue a directive within thirty days, to secure repayment of all amounts due or impose such other conditions as it deems fit.
- (i) this section shall not apply to a director or officer who is an employee of the bank at the time that the credit facility is granted if the credit facility is granted under the scheme applicable to the employees.

Regulation on Maximum Foreign Currency Exposure

65. The Central Bank may issue regulations to set the maximum foreign currency exposure which bank may incur in foreign currency generally or in any specified currency or currencies.

Regulation on Prudential Requirements

66. (a) The Central Bank shall issue regulations in accordance with the provisions of this Law to specify the prudential requirements for banks.
- (b) Prudential requirements may be specified for all banks or may be specified for one or more classes or categories of banks based on the differences in the purpose, nature and size of business and the origin of financial resources, of such banks.
- (c) Any banks that fail to comply with a requirement prescribed under this section shall pay to the Central Bank, within such time as may be determined by the Central Bank, a fine at such rate specified in a regulation of the Central Bank.

Records of Transactions and Commitments

67. (a) Banks shall keep on file the pertinent documents for every transaction and commitments of the institution, in such form as shall render the documents admissible as evidence in a court of law.
- (b) The Central Bank may in a regulation specify the terms and conditions on record keeping and record retention including-
- (1) the types of documents;
 - (2) the manner of retention;
 - (3) the duration of retention;
 - (4) such other requirements deemed necessary to give effect to this section.

Money Laundering and the Reporting of suspicious transactions

68. The Central Bank shall make regulations prescribing the specific procedures including reporting requirements under Anti-money Laundering Law, Counter Terrorism Law and other related Laws.

Control of establishment or acquisition of subsidiaries

69. A bank shall obtain the prior written consent of the Central Bank on the followings-
- (a) establish or acquire any subsidiary within or outside Myanmar;
 - (b) any office in or outside Myanmar.

Establishment of correspondent banking relationship

70. (a) Bank may establish correspondent banking relationship with any bank outside Myanmar.
- (b) The Central Bank may prescribe by regulation the terms and conditions for the establishment of correspondent banking relationship with financial institution outside Myanmar.

Consumer Protection

71. (a) It shall be the responsibility and duty of the Central Bank to promote consumer protection and financial capability of the bank consumers and financial consumers generally.
- (b) For the purposes of carrying out the responsibility and duty under sub-section (a), the Central Bank shall be empowered to-
- (1) plan, formulate and implement a strategy for financial consumer protection in Myanmar;
 - (2) co-ordinate consumer protection measures carried out by other financial sector regulators;
 - (3) receive all necessary information from other financial sector regulators and financial institutions;
 - (4) issue directions to the general financial sector in areas that are not supervised by the other financial sector regulators and where there are gaps;
 - (5) promote an out of court dispute resolution system to deal with disputes between financial institution and its customers;
 - (6) promote and consolidate consumer research and data collection;
 - (7) create an effective financial literacy network of stakeholders;
 - (8) keep the Government and public informed of the activities and issues in the area of financial consumer protection.
- (c) The Central Bank may issue regulations necessary to give effect to sub-section (a) and (b).

Anti-Competitive practices

72. A bank shall be prohibited from-
- (a) entering into contracts or agreements or adopting practices of any kind which would secure them a position of dominance in the financial markets;
 - (b) engaging in manipulative practices in order to obtain an unfair advantage for themselves or for third parties.

CHAPTER X

BOARD OF DIRECTORS, CHIEF EXECUTIVE

Board of Directors

73. (a) Every bank shall have a Board of Directors consisting of not less than five who shall be elected by the general meeting of the shareholders of the bank.
- (b) A meeting of the Board of Directors of a bank shall not be duly constituted although the number of directors required to constitute the quorum at such meeting is present, unless at least one independent non-executive director is present at such meeting.
- (c) The provisions of this section shall not apply to foreign bank branches.

Functions, Duties and Powers of the Board

74. (a) All functions to be performed and all powers to be exercised by the bank, other than those to be performed by the general meeting of shareholders, shall be performed and exercised by the Board of Directors subject to this Law.
- (b) The Board of Directors may frame necessary by-laws in order to systematically perform the functions to be performed by it under sub-section (a).
- (c) The responsibilities of the Board of Directors shall include the overseeing of the management of the affairs of the bank and include –
- (1) adopting and reviewing a comprehensive risk management process;
 - (2) establishing and reviewing the system and procedures of control and risk management;
 - (3) adopting policies for organizational arrangements for delegating authority and responsibility;
 - (4) adopting adequate internal practices and procedures that promote ethical and professional standards;
 - (5) adopting and reviewing the system of internal controls of the bank;
 - (6) ensuring that the bank complies with the requirements of this Law and rules and regulations, directives, and guidelines issued thereunder.

Power to Form Committee

75. (a) The Board of Directors may form one or more committees or sub-committees according to need for specific purposes including -
- (1) Risk Management Committee;
 - (2) Credit Committee;
 - (3) Remuneration Committee;
 - (4) Audit Committee;
 - (5) Assets and Liability Management Committee.
- (b) The functions, duties, powers and working procedure of a committee or sub-committee formed under sub-section (a), and the remuneration or allowances to be paid to its members shall be as determined by the Board of Directors.

Fit and Proper Criteria

76. (a) A person shall be eligible to be appointed, elected or nominated as a director, chief executive or manager of a bank only if the person is a fit and proper person to hold office and the person is not prevented from doing so by any provision of this Law.
- (b) In determining whether a person is a fit and proper person under this Law, in addition to such other matters that may be prescribed by the Central Bank, the following matters shall be taken into consideration -
- (1) the academic or professional qualifications or effective experience in banking, finance, business or administration or any other relevant discipline of the person concerned;

- (2) whether such person is or has been subject to any investigation or inquiry in relation to fraud, deceit, dishonesty or any other improper conduct by any regulatory body, professional association, or any other body established by Law within or outside Myanmar;
 - (3) whether such person has been convicted by any court in Myanmar or abroad in respect of a crime committed in connection with financial management.
 - (4) whether such person is an un-discharged bankrupt or has been declared a bankrupt in Myanmar or abroad;
 - (5) whether such person has failed to satisfy any judgment or order of any court whether in Myanmar or abroad including the repayment of a debt;
 - (6) whether such person has been declared by a court in Myanmar or abroad or an official medical board in Myanmar to be of unsound mind;
 - (7) whether such person has been removed or suspended by a regulatory action or Central Bank from serving as a director or officer in any bank or financial institution or corporate body in Myanmar or abroad; or
 - (8) whether such person has been a substantial shareholder, director, chief executive of any financial institution in Myanmar or elsewhere whose license has been suspended or has been cancelled.
- (c) Without prejudice to sub-section (b), a director, chief executive or manager of a bank shall not simultaneously hold office as a director or officer of another bank or financial institution except where such other institution is a subsidiary or a holding company of the bank.
- (d) No person shall be nominated, appointed and elected as a director of a bank before the bank has given the Central Bank written notice of intent thereof within 30 days of the appointment.
- (e) The written notice shall be in such form as may be prescribed by the Central Bank and be accompanied by the relevant documents and information as required by the Central Bank.
- (f) The Central Bank is authorized under this Law to carry out any such background checks as it considers appropriate in confirming any of the matters referred to in sub-sections (b), (c) and (d).

Appointment of Chief Executive and Conditions of Services

77. (a) The Board shall appoint a Chief Executive of the bank subject to this Law and the Memorandum and Articles of Association.
- (b) No person shall be nominated or appointed as chief executive of a bank unless the bank has complied with section 76(d).
- (c) The Central Bank may, either approve or disapprove the proposed appointment or nomination as chief executive and shall, within thirty days after receipt of the notice of intent, notify the bank of the decision.

- (d) Any person aggrieved by a notice of disapproval by the Central Bank under sub-section (c) may within fifteen days of the date of receipt of the notice, appeal to the Central Bank.
- (e) On receipt of a notice of appeal under sub-section (d), the Central Bank may within thirty days of receipt either confirm the nomination or appointment or reject the appeal.
- (f) The decision of the Central Bank is final.

Disqualification and Removal from Office

78. (a) A person shall be ineligible to hold office as a director or chief executive if-
- (1) the person is not a fit and proper person to continue in office;
 - (2) the person whose appointment, election or nomination had not been properly notified to the Central Bank under section 76(d);
 - (3) the person whose appointment or nomination has been disapproved by the Central Bank under section 77(c);
 - (4) the person has become disqualified and permanently incapable of performing duties with the bank;
 - (5) the person has otherwise acted in a way that is manifestly opposed to the objectives and interests of the bank or its depositors.
- (b) A bank shall, within fifteen days of becoming aware that one of its directors or chief executive is ineligible to hold the office, cause the removal of the ineligible director or chief executive and notify the Central Bank in writing accordingly.
- (c) Where the Central Bank is satisfied that any of the directors or chief executive of a bank who is ineligible under sub-section (a), continues to hold office, the Central Bank may -
- (1) direct the bank in writing to remove such person from the office within such period as may be specified in such direction; and
 - (2) notify in writing the person whose removal is required of such a direction with a copy of the direction.
- (d) The bank shall within the period specified in the direction, remove the person identified from the office and notify such person in writing of his removal from office and shall take any such other steps as are necessary to inform the shareholders of the bank and the Registrar of Companies of such removal.
- (e) The removal of the director or officer in accordance with the directions given under sub-section (c) shall take effect from the date of receipt by the director of the notification of removal, notwithstanding the provisions of any other Law or the Memorandum of Association and Articles of Association of the bank.
- (f) A bank which fails to comply with any direction given under sub-section (c) (1) within the period specified and any director or officer who has been served with a notice under sub-section (c) (2) who continues to act as a director or officer, shall each be guilty of an offence under this Law.

- (g) Any bank that is aggrieved by the removal of a person from the office of director or officer of that bank under this sub-section (c), or the person concerned, may appeal to the Central Bank in which case, the procedures provided for under section 77(d) and (e) shall apply.

Disclosure of Interests

- 79. (a) Every director and officer shall disclose in full to the Board of Directors of the bank any substantial financial and commercial interest that the person or any relatives may have either directly or indirectly.
- (b) Such disclosure referred to in sub-section (a), shall be made upon first becoming a director, chief executive or manager of the bank and annually thereafter.
- (c) Whenever any matter related to such an interest, arises for discussion in a meeting of the Board of Directors, the director or officer shall disclose the interest and shall not attend any deliberations or vote on the decision on such a matter.

Liability of Directors and Officers

- 80. (a) In addition to any liability imposed by other provisions of this Law or any other Law, any director, chief executive or officer of a bank shall be liable for any loss or damage sustained by the bank, any depositor of the bank or any other person as a result of his gross negligence or willful misconduct in the performance of his/her functions or duties as director, chief executive or officer of that bank.
- (b) For the purpose of this section, any person authorizing or willfully permitting gross negligence or willful misconduct by another person shall be jointly with such other person and severally liable for any loss or damage sustained as a result thereof.
- (c) Actions to recover damages from a director or officer under this section shall be commenced within three years after occurrence of the negligence or misconduct.

Duty to Maintain Secrecy

- 81. (a) A bank shall keep secret the information relating to the affairs or the account, record, and transaction of a customer of a bank.
- (b) No director, officer or employee of any bank licensed institution whether during his tenure of office, or thereafter, and no person who has by any means, access to customer information, shall provide or otherwise disclose to any person, such customer information.
- (c) No person who has any information or document which to the person's knowledge was disclosed in contravention of sub-section (a) shall disclose the same to any other person.

Exceptions to Duty of Secrecy

- 82. (a) The provisions of section 81 shall not apply to the disclosure of customer information-
 - (1) to the Central Bank, or to any director, officer or employee of the Central Bank, or to any person appointed by the Central Bank under this Law, where the

- disclosure is for the purpose of the exercise of powers and duties of the Central Bank;
- (2) to any person rendering professional services to the Central Bank where the person is authorized in writing by the Central Bank to obtain the information from the bank;
 - (3) which the customer, or his personal representative, has given permission in writing to disclose;
 - (4) in a case where the customer is declared bankrupt, or, if the customer is a company, the company is being or has been wound up, in Myanmar or outside Myanmar;
 - (5) where the information is required by a party to a *bona fide* commercial transaction, to assess the creditworthiness of the customer relating to such transaction;
 - (6) where the information is required for the purposes of any criminal proceedings or in respect of any civil proceedings between a bank and its customer or his guarantor relating the customer's transaction; or between the bank and two or more parties making adverse claims to money in a customer's account;
 - (7) in accordance with the order of a court of law;
 - (8) where the disclosure is solely in connection with the conduct of internal audit of the bank or the performance of risk management;
 - (9) to credit bureaus licensed by the Central Bank;
 - (10) where disclosure is solely in connection with the performance of operational functions of the bank, where such operational functions have been out-sourced;
 - (11) where disclosure is in relation to the merger or proposed merger of the bank with another financial institutions;
 - (12) where the disclosure is solely in connection with the transfer or proposed transfer of the business of the bank to another bank;
 - (13) where the disclosure is solely in connection with the restructure, transfer or sale of a bank under Chapters XIV and XV; and
 - (14) where such disclosure is made under the Anti-money Laundering Law and Counter Terrorism Law.
- (b) In any civil proceedings under sub-section (a) (6) and (7) where any information or document is likely to be disclosed in relation to a customer's account, such proceedings may, if the court, of its own motion, or on the application of a party to the proceedings, so orders, be held in camera and in such case, the information or document shall be secret as between the court and the parties thereto, and no such party shall disclose such information or document to any other person.
- (c) Unless the court otherwise orders, no person shall publish the name, address or photograph of any parties to such civil proceedings as are referred to in sub-section (b), or any information likely to lead to the identification of the parties thereto, either during the currency of the proceedings or at any time after they have been concluded.

Further exception to Duty of Secrecy

83. Notwithstanding the provisions of any other section, the Central Bank may-
- (a) publish information obtained by it from the banks, in a consolidated form as it considers fit in the public interest;
 - (b) share supervisory information, on a confidential basis, with financial supervisory and regulatory agencies, both domestic and foreign, responsible for the safety and soundness of the financial system, if the information is used only for purposes related to the effective supervision of the institutions concerned.

CHAPTER XI

ACCOUNTING, AUDITING AND FINANCIAL STATEMENTS

Accounts and Financial Statements

84. (a) Every bank shall maintain accounts and records, and prepare periodic financial statements, adequate to reflect its operations and financial condition, in accordance with such internationally accepted accounting standards, as prescribed by regulations made by the Central Bank.
- (b) Compliance with such regulations shall be deemed to be in compliance with the accounting standards specified in or under any other written law.
- (c) Without limiting the generality of the provisions of sub-section (a), each foreign bank branch shall maintain separate books, accounts and records, and shall prepare financial statements, including profit and loss accounts, reflecting only the assets, liabilities, income and expenses of the foreign bank branch, that are segregated from the other books, accounts, records and financial statements of the foreign bank to which it belongs.

Audit Committee

85. (a) Every bank is required to set up an Audit Committee.
- (b) The Audit Committee shall consist of three members appointed by the general meeting of shareholders of the bank for periods of four years.
- (c) Any member of the Board of Directors who is a non-executive independent director shall lead the Audit Committee and the management shall not concurrently serve on the Audit Committee.
- (d) The Audit Committee shall –
- (1) establish appropriate accounting procedures and accounting controls for the bank, supervise compliance with such procedures, and audit the bank's accounts and records;
 - (2) monitor compliance with the laws and regulations applicable to the bank and report to the Board of Directors thereon;
 - (3) deliver opinions on any matters submitted to it by the Board of Directors.

- (e) The Audit Committee shall meet ordinarily once every three months and whenever convened by the Board of Directors.

Balance Sheet and Profit and Loss Account

86. (a) Every bank shall prepare at the expiration of each financial year-
- (1) a balance sheet as at the last working day of such financial year;
 - (2) a profit and loss account in respect of such year;
 - (3) such other financial statements as required by the Central Bank.
- (b) The balance sheets and profit and loss accounts of a bank shall reflect its operations and financial condition and those of its subsidiaries, both on an individual and on a consolidated basis.
- (c) Every bank shall transmit the financial statements to the Central Bank within three months after the close of the financial year.
- (d) Every bank shall publish its audited financial statement for such financial year in at least one widely read newspaper in Myanmar or in such other manner permitted by the Central Bank.
- (e) The audited financial statement shall be exhibited in a conspicuous place of each bank branch.
- (f) The Central Bank may prescribe the form, content and certification of the balance sheet and profit and loss account including any disclosure requirements to be made.
- (g) Where the Central Bank determines that a disclosure statement published by a bank under sub-section (f) does not contain information which it is required to contain or is otherwise false or misleading, the Central Bank may, by notice in writing to the bank, require the bank-
- (1) to publish a disclosure statement that contains the information that was omitted;
 - (2) to publish a disclosure statement that does not contain false or misleading information; or
 - (3) to take such other corrective action as the Central Bank may specify in the notice.

Periodic Returns to Central Bank

87. (a) Every bank shall prepare and submit to the Central Bank periodic financial returns.
- (b) Each return required under sub-section (a) shall be-
- (1) submitted in such form, and at such intervals as may be prescribed by the Central Bank;
 - (2) certified as to its accuracy by the chief executive and the chief financial officer of the bank.
- (c) Returns to be so submitted by a licensed foreign bank branch shall cover only the assets, liabilities, income, expenses, administration and operations of its foreign bank branch.

- (d) Failure to submit any return as required by or under this section shall be an offence under this Law.

External Auditors

- 88. (a) The general meeting of the concerned bank shall appoint suitable external auditor for auditing its accounts.
- (b) Banks shall replace their external auditors at least once every five years and may not appoint the same auditor for more than three consecutive times or such other period as may be prescribed by the Central Bank.
- (c) Each bank shall, promptly after appointing external auditors, inform the Central Bank of the names, business address, qualifications and experience of the auditors.
- (d) External auditors shall be regarded as suitable, unless the Central Bank has given a written notice that for reasons explained in the notice, the external auditors employed by the bank are not suitable, in which case the bank shall promptly replace its external auditors.
- (e) Only fit and proper person shall be appointed as auditors and no related party and employee of a bank shall be eligible for appointment as external auditor for that bank.
- (f) Any person appointed as external auditor who shall after such appointment become a related person or employee of the bank shall immediately cease to act as its external auditor.
- (g) If a bank fails to appoint external auditors under sub-section (a), the Central Bank shall have the power to appoint external auditors for such bank to carry out the tasks specified by section 89 at the expense of the bank.
- (h) Every external auditor appointed by a bank under sub-section (a) or (e) shall have a right of access at all times to the books, accounts and vouchers and all documents and records belonging to the bank, which he considers necessary for the performance of his duties, and he shall be entitled to require from the directors and officers of the bank such information and explanations as he thinks necessary for the performance and proper discharge of his duties and functions as auditor.
- (i) The Central Bank may issue regulation on the criteria for external auditors and related matters.

Audit Report

- 89. (a) Every audit report, which shall be completed within three months of the end of the financial year shall contain the following statement by the auditors-
 - (1) whether in their opinion the balance sheet and profit and loss account are full and fair and properly drawn up;
 - (2) whether they exhibit a true and correct statement of affairs of the bank;
 - (3) whether the information obtained from the officers or agents of such bank is satisfactory;
 - (4) such other relevant matters as may be prescribed by the Central Bank.

- (b) For banks, the report of the auditors made in accordance with sub-section (a) shall be read together with the report of the Board of Directors of the bank at the annual general meeting of their shareholders.
- (c) Upon its completion, but not later than three months after the end of the financial year, the audit report of the auditors made under sub-section (a), together with the auditors' management letter, shall be transmitted to the Central Bank.
- (d) Where the Central Bank is of the opinion that the audited financial statements do not exhibit a true and correct statement of affairs of the bank or that the auditors' report or management letter are otherwise unsatisfactory, it may order the bank to require the auditor or newly appointed external auditor to submit a fresh report at the expense of the bank.
- (e) an auditor, shall immediately report the matter to the Central Bank if, in the course of the performance of his duties as an auditor of a bank, he is satisfied of the following-
 - (1) there has been a serious breach or non-observance of the provisions of this Law or that otherwise a criminal offence involving fraud or dishonesty has been committed;
 - (2) losses have been incurred which reduce the capital funds of the bank by fifty percent;
 - (3) serious irregularities have occurred, including irregularities that jeopardize the security of the creditors; or
 - (4) he is unable to confirm that the claims of creditors are still covered by the assets.

Submission of Audit Report

90. (a) The auditor must submit the audit report to both the concerned bank and financial institution and the Central Bank.
- (b) While submitting the audit report to the Central Bank under sub-section (a), the auditor must attach thereto the other reports connected with the audit of the concerned bank, as well as the documents prescribed by the Central Bank.

CHAPTER XII REGULATION, INSPECTION AND SUPERVISION

On-Site Examinations of bank

91. (a) The Central Bank shall cause an on-site examination to be made of each bank at intervals not exceeding two years.
- (b) The Central Bank may –
 - (1) conduct any on-site examination of a bank under examination jointly with other persons.
 - (2) select, appoint and authorize any chartered accountant or firm of chartered accountants to be an examiner.

- (c) It shall be lawful for any examiner -
 - (1) to require any director, officer, employee or auditor of a bank under examination to furnish all such information relating to the affairs of the bank, as such examiner may consider necessary;
 - (2) to require any director, officer, employee or auditor of a bank under examination to produce for inspection any documents, cash, securities and other assets of the bank, in his possession or custody;
 - (3) in the case where there is evidence of mismanagement by a bank under examination, to require-
 - (aa) any director, officer or employee to submit the accounts of the bank for audit by an auditor authorized by the Central Bank;
 - (bb) the bank under examination to furnish to the auditor such information;
 - (cc) inspection by the auditor of any documents, cash, securities and other assets of the bank, or in its possession or custody.
- (d) It shall be the duty of every director, officer, employee and auditor of a bank under examination to comply with the requirements imposed under section 91 and to provide access to, the offices of the bank and to any directors, officers or employees of the bank.
- (e) Where the Central Bank considers it necessary to determine whether a bank is carrying on business in a manner detrimental to its present or future depositors, it may by notice in writing, require any person whom it considers to have information relating to the bank, to furnish such information to the Central Bank or to any examiner.
- (f) A person required to furnish information to the Central Bank under sub-section (e) shall do so, unless such person is prevented by a court order to furnish such information to the Central Bank.
- (g) For the purpose of ascertaining the true condition of the affairs of a bank under examination of section 91, also examine the business of any company, which is or has at any relevant time been—
 - (1) a holding company or subsidiary company of the bank under examination;
 - (2) a subsidiary company of a holding company of the bank under examination;
 - (3) an associate company of the bank under examination.
- (h) A person referred to in this section shall comply with all requirements imposed on him by the Central Bank under section 91.

Inspections made by Foreign Banks

- 92. (a) A foreign bank may inspect its office established in the Myanmar after securing the approval of the Central Bank under this Law and subject to the conditions prescribed by the Central Bank.
- (b) The concerned foreign bank must submit to the Central Bank a copy of the inspection report prepared by it after conducting inspection under sub-section (a).

CHAPTER XIII
CORRECTIVE ACTION AND BANK RESOLUTION MEASURES

Responsibility of Central Bank concerning compliance by banks

93. It shall be the responsibility and duty of the Central Bank to systematically monitor the performance of all banks so as to ensure their compliance with all applicable criteria, standards, rules, regulations and provisions of this Law.

Corrective actions taken by the Central Bank

94. (a) The Central Bank may implement corrective actions where-
- (1) a bank informs the Central Bank that it is insolvent or that it is likely to become unable to meet its obligations to a material extent or that it is about to suspend payment to any extent; or
 - (2) whether after an inspection under section 91, or otherwise, the Central Bank is satisfied that a bank-
 - (aa) is carrying on its business in a manner detrimental to the interests of its depositors, creditors or the public;
 - (bb) is not paying its financial obligations as they fall due;
 - (cc) has become or is likely to become unable to meet all or any of its obligations to a material extent, or is about to suspend payment to any extent;
 - (dd) has contravened any provision of this Law or any condition of its license, or any provision of any written Law, regardless that there has been no prosecution in respect thereof;
 - (ee) has obtained its license on the ground of false or fraudulent statements made by it in connection with the license application;
 - (ff) the association of any director, chief executive or officers of a bank is or is likely to be detrimental to the interests of the bank or its depositors;
 - (gg) the Central Bank is being hindered in supervising the bank because all or a significant part of the administration, operation and books or records of the bank have been moved outside of Myanmar without the prior consent of the Central Bank;
 - (hh) has failed to carry out any direction given to it by the Central Bank;
 - (ii) has failed to meet the Central Bank standards relating to asset quality management, earning, liquidity or sensitivity to market risk;
 - (jj) has failed to meet or is in danger of failing to meet any capital requirements in this Law or any regulation of the Central Bank;
 - (kk) engaging in practices, operations or activities that could pose risks to the depositors of the banking system in whole or in part;
 - (ll) is insolvent and the value of total assets is less than the value of total liabilities;

- (mm) is facing legal action for relief by a custodian, receiver or liquidator under any Bankruptcy Law or any Law that provides for relief of debtors;
 - (nn) has engaged in or been used for criminal activities and the bank has not taken measures adequate to prevent it;
 - (oo) consist of one or more foreign bank which have gone into voluntary liquidation, or in respect of which a custodian, receiver or liquidator has been appointed, or whose license to carry on banking business in the country of its principal place of business has been cancelled;
 - (pp) is otherwise in a situation which the Central Bank considers may materially impair the ability of the bank to meet its obligations or otherwise continue its operations;
 - (qq) has incurred losses in its banking operation for three financial year continuously.
- (b) Notwithstanding sub-section (a), where the Central Bank determines that the giving of a warning notice under section 95 would jeopardize the interest of depositors or creditors, , the Central Bank may proceed to take any of the corrective actions under section 96 without giving a warning notice.

Warning notice issued by the Central Bank

95. (a) Where the Central Bank has made a determination that any of the circumstances described in section 94 exists in respect of a bank, the Central Bank shall issue a warning notice to the bank.
- (b) Upon being served a notice under sub-section (a), the bank shall, within two weeks of being served the notice, submit to the Central Bank in writing its plan of action and commitment to address the weaknesses or lapses specified in the notice.
- (c) A plan of action referred to in sub-section (b) shall-
- (1) give details of remedial measures to address the underlying weaknesses or lapses in the bank;
 - (2) be approved by the Board of Directors of the bank concerned;
 - (3) specify the timeframe within which the weaknesses or lapses would be satisfactorily addressed;
 - (4) explain the monitoring mechanisms for the implementation of the remedial measures.
- (d) A bank which has submitted a plan of action to the Central Bank shall submit to the Central Bank such updates or other reports as may be required.
- (e) If a bank fails to submit a plan of action within the specified time or if the Central Bank determines that the plan of action submitted by the bank is inadequate, or if the bank fails to implement the plan submitted, the Central Bank shall take any such corrective actions specified in section 96.

Power of Central Bank to ensure corrective actions taken by banks

96. (a) The Central Bank may take one or more of the following actions against a bank to which a notice has been issued under section 95(a) or a bank falling within any one or more of the circumstances mentioned in section 94-
- (1) caution or prohibit the bank against entering into any particular transaction or class of transactions;
 - (2) direct the bank to cease and desist from any unsafe or unsound practice or contravention;
 - (3) require the bank to take appropriate action as may be directed by the Central Bank;
 - (4) during the course, or after the completion, of any inspection of a bank under section 91, the Central Bank shall –
 - (aa) require the bank to call a meeting of its directors for the purpose of considering any matter relating to the affairs of the bank;
 - (bb) require an officer of the bank to discuss any such matter with the Central Bank;
 - (cc) require the Board of Directors of the bank to give in writing to any officer specified by the Central Bank all notices of, and other communications relating to, any meeting of the Board and the committee;
 - (dd) appoint one or more of the officers of the Central Bank to observe the manner in which the affairs of the bank or of its offices or branches are being conducted and make a report thereof;
 - (ee) require the bank to make, within such time as may be specified by the Central Bank, such changes in the management as the Central Bank may consider necessary based on the state of affairs disclosed during or by the inspection;
 - (5) require the bank to increase its paid-up capital either through the issue of new shares or a call on the unpaid portion of the issued capital;
 - (6) require the bank to maintain higher capital adequacy or liquidity ratios or place other restrictions or conditions on the business conducted by the bank;
 - (7) suspend in whole or part of the business of the bank;
 - (8) suspend in whole or part of the shareholders' rights, including voting rights, in the bank and/ or prohibit the distribution of profits or other withdrawals by shareholders of the bank;
 - (9) suspend or permanently bar from office of the bank, any director, chief executive, or officer;
 - (10) restrict the powers of any director, chief executive, officer and employee of the bank;
 - (11) limit the compensation, (including management fees and bonuses) paid to directors and senior officers of the bank;

- (12) prohibit or impose limitations on the acceptance of deposits and the granting of loans or advances or the making of investments by the bank;
 - (13) require the bank to enhance its governance, internal controls and risk management systems;
 - (14) require the downsizing of operations, restrict the expansion of branches or offices or the closing of branches or offices in Myanmar or abroad, of the bank;
 - (15) enhance provisioning for assets of doubtful quality;
 - (16) prohibit principal or interest payments on subordinated debt provided by the shareholders of the bank;
 - (17) other than state-owned bank by order in writing made by the Central Bank, remove from office, any director, chief executive or officer of the bank and if state-owned bank, notify concerned authority to take necessary action on it;
 - (18) by order in writing made by the Central Bank, suspend the Board of Directors and take control of the bank and operate its business through the appointment of "Administrator", selected by the Central Bank as being fit and proper to manage the bank;
 - (19) by order in writing made by the Central Bank, require the bank to apply for de-listing from any stock exchange on which it is listed.
- (b) In the case of an order under paragraphs (9) and (17) of sub-section (a), the director, chief executive or officer to be removed from office, have been given a reasonable opportunity to make representations to the Central Bank in respect of the proposed order: Provided that if in the opinion of the Central Bank, in the case of an order to be made by the Central Bank under paragraphs (9) and (17) of sub-section (a), any delay would be detrimental to the interests of the bank, or its depositors, creditors or the public generally, the order may be made immediately and the opportunity to make representations be given as soon as possible after the order has been made.
 - (c) The order may, in consequence of such representations be confirmed, modified, amended, replaced or revoked subject to such conditions, as the Central Bank may specify.
 - (d) An order made under paragraph (18) of sub-section (a), shall be valid for a period not exceeding 2 years unless extended by subsequent order issued by the Central Bank.
 - (e) The Central Bank shall provide an initial report to Cabinet as soon as practicable after the control of a bank has been taken over by an Administrator appointed under paragraph (18) of sub-section (a) and a yearly report thereafter.
 - (f) An order of the Central Bank made under paragraph (18) of sub-section (a) may at any time be revoked by an order and such order may contain directions or provisions of an incidental, ancillary, or consequential nature, as deemed necessary or expedient by the Central Bank.
 - (g) Any director, chief executive or officer removed from office under paragraph (17) of sub-section (a) shall cease to hold the office with effect from the date set out in the order and shall not thereafter hold any other office in that bank or, in any manner, whether directly or indirectly, engage in, any affairs or business of the bank.

- (h) The removal of any director, chief executive or officer under paragraph (17) of sub-section (a) shall be lawful and valid notwithstanding anything contained in any contract of service or agreement or contract, and whether or not made or provided for under any law, and any person so removed from office shall not be entitled to claim any compensation for the loss or termination of office.
- (i) The provisions of this section shall apply to the foreign bank branch.
- (j) All assets, liabilities, acts and omissions of the foreign bank resulting from or otherwise relating to the business of any of its bank branch office shall be attributed to that single entity in applying the provisions of this Chapter.
- (k) For the purposes of this Chapter, the capital and value of assets of a bank shall be determined in accordance with standards and procedures specified in the regulations made by the Central Bank.

CHAPTER XIV

ADMINISTRATORSHIP

Appointment of an Administrator

97. (a) Administrators shall be appointed by an order of the Central Bank under of section 96(a) (18).
- (b) For the purposes of sub-section (a), only fit and proper persons are eligible to serve as Administrator for a bank.
- (c) If at any time an Administrator becomes ineligible to serve, the Administrator shall be replaced by the Central Bank.
- (d) An Administrator shall be appointed for a term not exceeding twenty four months as specified in the appointment, which may be extended once for another period not exceeding twenty four months.
- (e) The Administrator shall be employed by the Central Bank and receive remuneration from the Central Bank.
- (f) All costs incurred by the Central Bank on account of the administratorship, including the remuneration of the Administrator, shall be borne by and charged to the bank for which the Administrator is appointed.
- (g) The decision by the Central Bank appointing an Administrator or extending the term of appointment of an Administrator shall be in writing, specifying the grounds for its decision.

Review of appointment

98. (a) Within five business days from the date of service of the decision appointing the Administrator for a bank, the Board of Directors of the bank may make written representations on behalf of the bank to the Central Bank objecting to the appointment of the Administrator.
- (b) In the event that no such objection is made within the five business days, the bank shall be deemed to have consented to the appointment of the Administrator.

- (c) Upon the timely receipt of such objection, the Central Bank shall review the appointment of the Administrator and decide either to affirm the appointment or to terminate the appointment, giving the grounds for its decision in writing.
- (d) The decision made under sub-section (c) shall be final and served promptly on the chairman of the Board of Directors of the bank.
- (e) If the appointment of the Administrator is terminated, the Administrator shall immediately return control of the bank and its assets, books and records to the authorized manager of the bank.

Effect of taking control

99. (a) Upon the appointment of an Administrator the bank and its directors, chief executive and officers shall submit the property, business and affairs of the bank to the control of the Administrator, and shall provide the Administrator with all such facilities as may be required to carry on the business and affairs of the bank.
- (b) The Administrator shall assume control of the property, business and affairs of the bank concerned, and carry on the business and affairs of that bank in the name and on behalf of the bank, for such time as may be specified in the order or until such time when the order is revoked.
- (c) Throughout the period of the order that is in force, all the powers of the bank, and of its directors and shareholders under the constituent documents or memorandum and articles of the bank, or exercisable by the bank or its directors under any written law, or otherwise, shall be vested in the Administrator.
- (d) While the order is in force, no director, chief executive or officer of a bank shall, either directly or indirectly, engage in any activity in relation to the bank, except as may be required or authorized by the Administrator.
- (e) No remuneration of whatever nature shall accrue or be payable to any director, chief executive or officer of the bank, except that which is approved in writing by the Administrator.

Remedial actions that can be taken by the Administrator

100. An Administrator may with the approval of the Central Bank, and notwithstanding any provisions of the Myanmar Companies Act and Special Companies Act or any other Law, take any one or more of the following measures for the purpose of carrying out the rehabilitation of a bank–

- (a) suspend, terminate and wind up, any part of the bank's activities in or outside Myanmar;
- (b) sell the assets of the bank to any other bank or entity on such terms and conditions as may be approved by the Central Bank;
- (c) terminate the employment of any officers or employee, or replace any officers and employee of the bank;
- (d) if the officers or employees mentioned in sub-section (c) are from state-owned banks, notify relevant authority to take necessary action;

- (e) make such arrangements as the Administrator considers necessary for the merger of the bank with another bank;
- (f) re-organize the bank by increasing its capital and selling shares to new shareholders and reconstituting the Board of Directors of the bank;
- (g) re-construct the bank in any such manner as the Administrator considers to be in the interest of depositors, including the closing down of unviable business or the bank or re-organizing its management;
- (h) take any such other measures as may be approved by the Central Bank to rehabilitate the bank.

Report of the Administrator

101. (a) The Administrator shall prepare and present to the Central Bank a report on the financial condition and future prospects of the bank for which the Administrator has been appointed within the time specified by the Central Bank.
- (b) The Administrator shall include in the report an assessment of the amount of assets likely to be realized in a liquidation of the bank.
- (c) The report shall be accompanied by a proposed action plan, where relevant, that shall discuss the relative costs and benefits associated with-
- (1) returning the bank to compliance by carrying out an action plan;
 - (2) rehabilitation of the bank under the procedure set forth in Chapter XV;
 - (3) a voluntary liquidation under Chapter XVII;
 - (4) revocation of the license and liquidation of the bank; and
 - (5) commencement of insolvency proceedings against the bank.

Termination of Administratorship

102. (a) The appointment of an Administrator shall terminate upon the earlier of-
- (1) completion of the term specified in appointment the Administrator and extension thereof;
 - (2) the date of the decision of the Central Bank;
 - (3) the date of the decision of the court of law to that effect;
- (b) Within twenty business days of the termination of the appointment, the Administrator shall prepare and submit to the Central Bank a final report of the Administratorship.

Financial Support by Central Bank

103. During the administratorship, the Central Bank may provide financial support to banks under conditions to be prescribed in an order to provide for any temporary liquidity support.

CHAPTER XV
REHABILITATION OF BANK

Action available to the Central Bank

104. (a) The Central Bank shall, within one year of placing a bank under the control of an Administrator audit or cause to audit the accounts of the bank concerned.
- (b) Based on the report of the Administrator and the auditor, the Central Bank may take any one or more of the following actions with regard to a bank-
- (1) release the suspension of the Board of Directors of the bank made under section 96(a) (18) and order the same Board of Directors to operate the business of the bank;
 - (2) dismiss the Board of Directors of the bank and direct the convening of a general meeting of the bank to elect a new Board of Directors;
 - (3) carry out a capital reduction exercise and cancel any portion of the shares of the bank which is lost or unrepresented by available assets;
 - (4) dilute the participation of the existing shareholders by issuing shares to such persons and at such consideration as may be determined by the Central Bank;
 - (5) file an application in the concerned High Court of the Region or High Court of the State for the liquidation of the bank.
- (c) Without prejudice to the powers conferred under section 96, or sub-section (b), and in addition to the powers conferred under the Central Bank of Myanmar Law-
- (1) the Central Bank may by order-
 - (aa) direct any shareholder of the bank to divest or transfer the shares owned by him to a fit and proper person for such consideration as may be determined by the Central Bank;
 - (bb) transfer any assets or liabilities, in whole or part, from the bank to another bank or financial institution, on such terms and conditions as may be determined by the Central Bank;
 - (cc) subject to section 107, vest all or part of the assets and liabilities of the bank in another bank or financial institution, as may be considered appropriate by the Central Bank;
 - (2) the Central Bank may with the consent of the Union Parliament through Union Government do one or more of the following-
 - (aa) purchase any shares of the bank financed by the Union Government Budget for the purpose of controlling the business of that bank;
 - (bb) provide soft loans to the bank, financed by the Union Government Budget for the purpose of ensuring stability of the bank and the financial system as a whole.
 - (cc) establish a new bank to be capitalized by the Union Government Budget to acquire the assets and liabilities of the bank.

- (d) In deciding on the appropriate action to be taken under sub-section (b) or sub-section (c), the Central Bank shall have due consideration to the latest audit report of the bank and any report prepared by the Administrator.
- (e) No action under sub-section (b), or sub-section (c), shall be taken unless the bank in respect of which the action is to be taken has been given a reasonable opportunity to make representations to the Central Bank in respect of the proposed order: Provided that if in the opinion of the Central Bank any delay would be detrimental to the interests of the bank, or its depositors, creditors or the public generally, the action may be taken immediately and the opportunity to make representations shall be given as soon as possible after the action has been taken.
- (f) As a consequence of such representations, the action of the Central Bank shall be confirmed, modified, amended, altered, varied, replaced or revoked subject to such conditions, as the Central Bank may specify.
- (g) The Central Bank may for the purposes of this section, disclose information relating to the bank to any potential acquirer and the recipient shall hold such information in confidence and use it solely for purpose of making a decision on the acquisition.

Shareholder Representations

105. (a) For the purposes of this Chapter, only the owners' representative of a bank may make representations to the Central Bank against any action taken by the Central Bank.
- (b) The owners representative means-
- (1) the person appointed by a decision taken by a simple majority vote of the owners of the bank to be the representative;
 - (2) the person holding for the time being the office of Chairman of the Board of Directors of the bank or his duly authorized representative.
- (c) Within fourteen days from the date of service of an order made by the Central Bank under section 104(b) and (c), the owners of the bank may make objections in writing to the Central Bank against the decision.
- (d) The owners shall be deemed to have consented to the decision taken if the Central Bank does not receive the objection on time.
- (e) The Central Bank shall within fourteen days of the receipt of timely objection, review the objection and either confirm, modify or terminate the order of the Bank as it considers appropriate giving the grounds for the decision.
- (f) The decision of the Central Bank shall be served promptly on the owners' representative of the bank.
- (g) All action taken by the Central Bank shall remain in full force and effect during such period unless or until otherwise terminated by the Central Bank.
- (h) The order confirmed, modified or terminated decision issued by the Central Bank shall be final and conclusive.

Capital reduction and cancellation of shares

106. (a) Where the paid-up capital of a bank has been lost or is un-represented by available assets, the Central Bank may, on notice being published for public information, through an application to the concerned High Court of the Region or High Court of the State, reduce the share capital of the bank by canceling such portion of its paid-up capital that has been lost or un-represented by available assets.
- (b) Where the assets or liabilities of the bank have been transferred to another person under section 104(c)(1)(bb) and (cc) , the Central Bank may on notice being published for public information, through an application to the concerned High Court of the Region or High Court of the State, cancel the residual share capital of the bank.
- (c) Where the Central Bank issues an order under sub-section (a) to reduce the share capital of a bank, if on the expiry of ninety days from the date of any call made by the bank on its members to pay on their respective shares and payment on any such shares has not been made, the Central Bank may proceed to apply to the concerned High Court of the Region or High Court of the State for the cancellation of such shares for which payment has not been made.
- (d) Where the share capital of a bank is reduced pursuant to sub-section (a), or any of its shares is cancelled pursuant to sub-section (b), the Central Bank may require the constituent documents or memorandum and articles of association of the bank to be altered, and any company records or registers amended accordingly.

Vesting of Assets and Liabilities

107. Where all or part of the assets and liabilities of a bank are to be vested or transferred to another bank or financial institution under section 104, the Central Bank may by order published for public information, vest or transfer the assets and liabilities specified to the acquiring institution on such terms and conditions as it may consider appropriate. The order of the Central Bank issued under this section shall be final and conclusive.

Conditions for Vesting

108. The vesting order shall only be made if–
- (a) the vesting of assets and liabilities of the bank to which an order under section 107 applies in the acquiring institution is justified by the interests of the depositors and creditors of the transferee institution or the public interest;
- (b) the acquiring institution is capable of carrying on in a competent manner the business of the bank; and
- (c) the acquiring institution agrees in writing to comply with such terms and conditions as may be specified by the Central Bank relating to the manner in which the assets to be vested are to be used and any existing liabilities are to be met.

Effect of Vesting Order

109. (a) With effect from the relevant date specified in the vesting order issued under section 107 –

- (1) all rights of the transferee institution to the assets vested and all obligations under the liabilities vested shall be deemed to have been transferred to and acquired by the acquiring institution, and notwithstanding the provisions of any other Law to the contrary no other action shall be required to perfect such transfer or acquisition;
 - (2) all entries in all the Official Registers in Myanmar recording assets or liabilities so vested shall be changed by replacing the name of the transferee institution with the name of the acquiring institution, provided however, that no failure to make such change shall affect any right or obligation transferred and acquired by the acquiring institution under the vesting order;
 - (3) the acquiring institution shall comply with the terms and conditions of the vesting that the acquiring institution has consented to in writing and with any such other directions as the Central Bank may issue under this Law or the Myanmar Companies Act or the Special Company Act;
 - (4) the license issued to the transferee institution shall be modified to the extent necessary to accommodate the effects of the vesting order on the business of such transferee institution;
 - (5) if all assets and liabilities of the transferee institution deriving from domestic banking business and banking business outside Myanmar are vested in the acquiring institution, the license to the transferee institution shall be cancelled by the Central Bank.
- (b) Unless otherwise specified by the Central Bank and as may be set out in the vesting order issued under section 107, with effect from the relevant date-
- (1) all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature pertaining or relating to the vested assets or liabilities of the transferee institution and subsisting, or having effect on the day immediately preceding the relevant date and to which the transferee institution is a party or which are in favor of the transferee institution, shall be deemed with effect from the relevant date to be contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation or other instruments entered in to or granted, as the case may be, by the acquiring institution;
 - (2) all actions and proceedings of whatever nature instituted by or against the transferee institution pertaining or relating to the vested assets or liabilities of the transferee institution and pending on the day immediately preceding the relevant date, shall be deemed with effect from the relevant date to be actions and proceedings instituted by or against the acquiring institution, and may be continued or prosecuted accordingly.
- (c) For the purposes of this section-
- (1) 'relevant date' means the date the vesting order is published;
 - (2) "Official Registries" means a registry established under the Law of Myanmar that records the creation of interests, ownership, transfers and dealings in

properties whether movable or immovable of individuals and bodies corporate in Myanmar.

Taxes and fees

110. Exemption from taxes, fees or charges due and owing on any transfer of an asset or liability can be applied to the Ministry under this Chapter. No consent of creditor, depositor, borrower or shareholder shall be applicable to any transaction under this Chapter.

Moratorium

111. (a) In addition to the powers in this Chapter, the Central Bank may, if it considers it to be in the interest of the bank, or if it is necessary to protect the interests of depositors or maintain stability of the financial system, by order published for public information-
- (1) prohibit any bank from carrying on all its banking business, or such part of it, as may be set out in the order;
 - (2) prohibit the bank from doing or performing any act or function connected with all its banking business, or such part of it, as may be set out in the order;
 - (3) suspend the license granted to the bank under this Law to such extent and for such period as may be necessary to give effect to the prohibitions under sub-section(1) or sub-section(2);
 - (4) provide for all such matters of an incidental or consequential nature, in order to give effect to the matters under the foregoing paragraphs, including provisions for the taking into the custody or control of the Central Bank the property, books, documents or effects of the bank.
- (b) An order under sub-section (a) may, from time to time, be modified, amended, altered, varied or replaced either prospectively, or where it is not impracticable or unjust to do so, retrospectively, by a further order under sub-section (a).
- (c) An order made under sub-section (a), and a further order under sub-section (b) may be revoked by the Central Bank and any such order may contain all such incidental and consequential orders and directions deemed necessary by the Central Bank.

CHAPTER XVI

REHABILITATION OF NBF AND SCHEDULED INSTITUTION

112. A NBF or scheduled institution may be rehabilitated in accordance with the regulations and procedures prescribed by the Central Bank.

CHAPTER XVII

LIQUIDATION OF BANKS, PRIOR APPROVAL NEEDED FOR VOLUNTARY WINDING-UP AND LIQUIDATION OF A BANK

Prior Approval of Central Bank for Voluntary Winding-up and Liquidation

113. (a) No person shall petition to High Court for the voluntary winding-up and the liquidation of a bank, without the written approval of the Central Bank.

- (b) An approval under sub-section (a) shall not be granted unless the Central Bank is satisfied-
 - (1) that the incumbent bank is solvent and has the ability to repay its depositors and other creditors without delay;
 - (2) that the winding-up, liquidation of the incumbent bank has been approved at a meeting of the shareholders of the banking by an affirmative vote representing not less than three fourths of the outstanding shares entitled to vote.
- (c) Provided that no such authority may be granted by the Central Bank for the winding-up or liquidation of a domestic bank being a state-owned corporation without the prior written approval by the Government, or for the liquidation of a branch in Myanmar of a foreign financial institution without the written request by the management of the foreign financial institution to which the branch belongs.

Conditions for Voluntary Winding -up or Liquidation

114. (a) Before the Central Bank grants an approval under section 113(b) and (c), it shall ensure that the incumbent bank seeking winding-up or voluntary liquidation has-
- (1) repaid its depositors;
 - (2) paid all financial liability or obligations incurred under this Law and returned all funds and other property held by it in a fiduciary capacity.
- (b) In addition to the requirements in sub-section (a), an incumbent bank must-
- (1) have wound- up all operations undertaken;
 - (2) immediately ceased to carry on the business to be liquidated, exercising only such powers as are necessary to effect an orderly liquidation.
- (c) The Central Bank may request for reports, documents and such other information concerning the person seeking the approval and the incumbent bank, including its winding-up and liquidation plan.
- (d) The Central Bank may issue such direction as it deems fit to any person seeking the approval of the Central Bank and the incumbent bank to ensure that the requirements in sub-section (a) are met.
- (e) If an incumbent bank is unable to meet the requirements of section 113 and this section, the Central Bank shall appoint an Administrator under section 97 of this Law.

Notice of Voluntary Liquidation

115. (a) The incumbent bank shall cause a notice of the winding-up or voluntary liquidation –
- (1) to be sent to the Registrar of Companies within fourteen days of the receipt of the approval under section 113, from the Central Bank;
 - (2) to be sent to all depositors and other creditors, and persons otherwise entitled to the funds or property held by such bank as a fiduciary, lessor of a safe deposit box or bailee;
 - (3) to be notified to the debtors of the bank to repay their debt immediately;
 - (4) to be published once in at least two widely circulated newspapers in Myanmar;

- (5) to be displayed in a conspicuous place at its principal place of business and each of its other offices.
- (b) The Central Bank shall specify the information to be included in the notice referred to in sub-section (a).
- (c) The Central Bank may exempt an incumbent bank from sending a notice under sub-section(a) (2) to any person where the Central Bank is satisfied that-
 - (1) it is impracticable to do so;
 - (2) the person has otherwise had adequate notice of the winding up and liquidation.

Rights of Creditors

- 116. (a) The approval to go into winding-up or voluntary liquidation shall not prejudice the rights of a depositor or other creditor of an incumbent bank to payment in full of any claim, or the rights of an owner of funds or other property held by the bank.
- (b) All lawful claims shall be paid promptly and all funds or other property held by the incumbent bank shall be returned to their rightful owners within such maximum period as the Central Bank may determine.

Cancellation of License and Distribution of Assets

- 117. (a) Upon completion of the winding-up and liquidation, the incumbent bank shall prepare and submit to the Central Bank an audited statement of accounts and a report of liquidation certified by an opinion of an external auditor acceptable to the bank.
- (b) The opinion of the auditor submitted under sub-section (a), shall state-
 - (1) whether the statement of accounts are full and fair and have been properly drawn up;
 - (2) whether the report of winding-up or liquidation exhibits a true and correct statement of the liquidation of the incumbent bank;
 - (3) where the auditor has called for any explanation or information from the incumbent bank, whether the explanation or information received by the auditor is satisfactory;
 - (4) whether the voluntary winding-up and liquidation was carried out in compliance with the directions given by the Central Bank.
- (c) Where the Central Bank is of the opinion, based on the documents submitted under sub-section (a) that the incumbent bank has discharged all its obligations as referred to in section 114:
 - (1) the Central Bank shall cancel the license of the incumbent bank and notify the cancellation in accordance with the provisions of section 115 of this Law;
 - (2) the bank shall distribute its remaining assets among its rightful owners in proportion to their respective rights.
- (d) No distribution under sub-section (c)(2) shall be made before the incumbent bank has-

- (1) transmitted to the Central Bank funds sufficient to meet any disputed claim to payment or return of funds or property that may be determined by the court;
 - (2) transmitted to the Central Bank funds payable to all depositors, other creditors or persons entitled thereto who have not claimed such funds;
 - (3) complied with section 152 with regards to other funds and property held by the bank which cannot be distributed to the persons under sub-section (c)(2).
- (e) All costs, charges and expenses properly incurred in the liquidation are payable out of the assets of the bank in voluntary liquidation.
 - (f) On receipt from the incumbent bank of a notice of approval of the audited statement of accounts and the report of liquidation submitted under sub-section (a), the incumbent bank shall cause the notice to be published for public information.
 - (g) Upon the publication of such notice of approval under sub-section (f), the Registrar of Companies, to strike-off the name of the company from the Register of Companies.
 - (h) From the date of the notice in sub-section (f), the bank shall stand dissolved.
 - (i) The dissolution of a bank under sub-section (g) shall not affect the liability under this Law or any written Law of any owner, director, chief executive or other officer of the bank and that liability shall continue and may be enforced as if the bank had not been dissolved.

Compulsory liquidation

118. A bank may be compulsorily wound-up or liquidated by the Central Bank, if one or more of the following grounds are present:

- (a) the bank is not paying its financial obligations as they fall due;
- (b) the Central Bank determines that the capital of the banking is less than one-half of the minimum capital to be maintained by the bank under this Law;
- (c) the Central Bank determines that the value of the assets of the bank is less than the value of the debts or is insolvent;
- (d) the Administrator appointed under section 97 recommends that the bank be liquidated.

Representative of Owners in Liquidation Proceedings

119. For the purposes of the procedures set out hereinafter, the owners of a bank shall be represented by a representative who shall be-

- (a) for a domestic bank not being a state-owned bank, the person holding for the time being the office of Chairman of the Board of Directors of the bank or his duly authorized representative, unless another person is appointed as owners' representative by the owners of the bank;
- (b) for a domestic bank being a state-owned bank, Government or its duly authorized representative;
- (c) for a branch or a subsidiary of a foreign bank, the chief executive or his deputy of the foreign bank.

Petition for commencing liquidation proceedings

120. The Central Bank may petition the concerned High Court of the Region or High Court of the State to commence liquidation proceedings against a bank.

Rejection of Petition

121. A petition for commencing liquidation proceedings against a bank shall be rejected by the High Court if -

- (a) none of the grounds of section 118(a) applies;
- (b) the petition is not accompanied by the required documents for commencement of the liquidation;
- (c) any document or other evidence submitted to the High Court of the Region or High Court of the State in support of the petition is manifestly false or inaccurate and without such document the petition does not meet the requirements of the law;
- (d) the owners' representative for the bank shows, with the concurrence of the Central Bank, that capital funds have been made to the bank and such funds are immediately available and sufficient to eliminate the grounds for commencing liquidation proceedings against the bank;
- (e) the petition concerns a domestic bank being a state-owned and the Government provides a written guarantee for the due payment of all liabilities of the bank;
- (f) the petition does not meet any other requirement of the law.

Appointment of Liquidator

122. By its decision to commence liquidation proceedings against a bank, the relevant High Court of the Region or High Court of the State shall appoint the Central Bank or a person or persons nominated by the Central Bank to act on its behalf as the liquidator.

Negotiated Settlements

123. (a) The liquidator for a bank in liquidation may enter into and carry out negotiated settlements of claims with any creditor and debtor of the bank, with the prior approval of the Central Bank.
- (b) No such settlement shall be subject to opposition, review or appeal.

Priority of Payment

124. The assets of a bank shall be distributed among its creditors in the following order of priority-
- (a) secured debt (guaranteed debt);
 - (b) all costs and expenses on account of the administration of the insolvency;
 - (c) claims with regard to deposits that are not in the form of debt securities;
 - (d) liabilities of the bank on account of Administration, rehabilitation and any liabilities due and owing to the Central Bank;
 - (e) national and local taxes due over a period of not more than one year preceding the date of the liquidation decision;
 - (f) salary payments to employees of the bank, excluding any remuneration of members

of the board of directors, as accrued to the date of the decision to open liquidation proceedings;

- (g) claims of unsecured creditors;
- (h) any other claims not paid under paragraphs (a) to (f).

Cross Border Insolvency

125. (a) In order to promote equal access of resident and non-resident creditors to a universal pool of assets of a banks in liquidation that engaged in cross border activities-
- (1) if a bank in liquidation has branch in a foreign country, the bank shall cooperate with the authorities of that country;
 - (2) if a creditor of a bank in liquidation has received partial payment on his claims in a foreign country, the balance of his claims may be presented for payment together with costs incurred in the liquidation proceedings before the concerned High Court of the Region or High Court of the State;
 - (3) the relevant High Court may decide the extent to which foreign financial insolvency resolution measures against foreign bank should be recognized in liquidation proceedings commenced by the relevant High Court concerning their foreign bank branch in Myanmar;
 - (4) if a foreign bank is in liquidation in the country where its principal place of business is located, the relevant High Court may at the request of the foreign financial institution, authorize the transfer to the liquidator in that country such assets of the foreign bank branch in Myanmar, as the foreign bank branch shall deem advisable and in the interest of the depositors and creditors of that foreign bank branch in Myanmar.
- (b) Claims of non-resident creditors of a foreign bank branch shall not be recognized for the purpose of the set-off or netting of obligations and shall not otherwise be admitted in liquidation proceedings commenced against a foreign bank branch.
- (c) Liquidation proceedings in Myanmar commenced against a foreign bank branch shall not limit the rights of creditors of the foreign bank to which the branch belongs to pursue action of their claims against foreign assets held by the foreign bank outside Myanmar.

Power of Central Bank to make Regulation on Liquidation

126. The Central Bank may prescribe by regulations, the following;
- (a) process and procedures for liquidation;
 - (b) terms and conditions of liquidator and its duties and power;
 - (c) finality in payment, clearing and settlement system;
 - (d) set off and netting;
 - (e) process for distribution;
 - (f) liquidation proceedings concerning foreign bank branch;
 - (g) termination of liquidation proceeding.

Disapplication of other Laws Relating to Insolvency

127. (a) The provisions of the Myanmar Companies Act, Special Companies Act and any Law relating to insolvency of companies shall not apply to a bank, unless otherwise specified in this Chapter.
- (b) Notwithstanding the provisions of any written Law, any petition against a bank for a winding-up order or the appointment of a custodian, liquidator shall only be brought in the relevant High Court of the Region or High Court of the State.

CHAPTER XVIII

E-MONEY, E-BANKING AND MOBILE BANKING

Interpretation

128. "E- Money" means monetary value as represented by a claim on the issuer which is –
- (a) stored on an e- device including a card;
- (b) issued on receipt of funds of an amount not less than the monetary value issued;
- (c) accepted as means of payment by persons other than the issuer.

Issue of E-Money and Credit Token Restricted

129. (a) No person may issue E-money or credit token, to the public unless such person is-
- (1) a bank; or
- (2) a financial institution that has been registered for that purpose by the Central Bank.
- (b) E-money and credit token may be issued under a written contract between the issuer and the receiver of e-money or credit token that clearly states the period of validity of the e-money or credit token issued under the contract and the conditions for redemption of any e-money or credit token issued under the contract.

Regulation on E- Money and Credit Token

130. The Central Bank may by regulation-
- (a) specify conditions and requirements for obtaining registration from the Central Bank before a person may issue e- money or credit token to the public, and the circumstances in which such registration shall or may be revoked by the Central Bank;
- (b) impose on the issuers of e-money or credit token to the public, prudential requirements, and such other requirements including those relating to safety of customers' funds, and accounting and reporting;
- (c) issue requirements applicable to contractual conditions, arrangements and payment procedures between the various parties that issue, use in payment, and accept e-money or credit token in payment;
- (d) impose on issuers of e- money or credit token to the public, rules and procedures designed to facilitate inspection of their e- money business by the Central Bank.

Violation

131. Any person who issues e- money or credit token to the public while he is in violation of a provision of this Law or a regulation issued under this Chapter shall be guilty of an offence under this Law.

E- Banking Services

132. (a) The Central Bank is responsible for regulating the establishment of systems and practices for internet banking services, mobile banking and other forms of electronic banking collectively called e-banking services in Myanmar.
- (b) For the purposes of the following, the Central Bank may issue necessary regulations and guidelines-
- (1) to limit systemic and other risks that could threaten the stability of financial markets or undermine confidence in the payment system;
 - (2) to encourage institutions to educate customers about their rights and responsibilities and how to protect their own privacy;
 - (3) to encourage the development of effective, low risk, low cost and convenient payment and financial services to customers and businesses through e-services.
 - (4) on minimum standards that the institutions must observe regarding e-banking services;
 - (5) on conditions and processes for establishing of e-banking services.

CHAPTER XIX

OVERSIGHT OF PAYMENT AND SETTLEMENT SYSTEM

Payment System Policy

133. (a) In addition to the powers provided in the Central Bank of Myanmar Law, the Central Bank shall have the power to formulate, adopt and monitor the implementation of a payment system policy for Myanmar.
- (b) In promoting safety and efficiency of the payment system, the Central Bank shall cooperate with other central banks or equivalent entities of other countries and with other relevant domestic or foreign authorities.

Powers of the Central Bank

134. The Central Bank shall have the powers-
- (a) to regulate, supervise and monitor payment, clearing and settlement systems ;
 - (b) to provide for the settlement of securities in securities accounts maintained at the Central Bank;
 - (c) to provide for the regulation, supervision and monitoring of providers of money service and other form of payment instruments to the general public ;
 - (d) to facilitate the electronic presentment of cheques.

Power of Central Bank to Establish, Operate and Supervise Payment Systems

135. The Central Bank may establish, operate, organize, promote, participate or assist in the establishment, operation, organization and promotion of, and regulate and supervise-

- (a) any system for the clearing and settlement of payments and other arrangements for the making or exchange of payments in domestic or foreign currencies;
- (b) any system for the clearing and settlement of securities and other arrangements for the exchange of securities;
- (c) any system to facilitate the clearing and settlement including other arrangements for the making or exchange of payments or the exchange of securities in any currency against other payments or securities in another currency.

Additional Power of Central Bank on Payment Systems

136. (a) In order to facilitate the clearing of cheques and other electronic instruments used as means of payment, the Central Bank may, in cooperation with financial institutions, establish clearing houses in such places as it shall deem necessary.

- (b) The Central Bank shall have the power to do all or any of the following in relation to a clearing and settlement system and its clearing house:
 - (1) be a participant, participate and act as a central counter-party, including in a loss-sharing mechanism;
 - (2) act as a custodian of financial assets, or settlement agent, or both;
 - (3) accept and pay interest on deposits from clearing house, a participant or the central counter-party;
 - (4) provide intra-day liquidity to the participants.

Validity of Netting Agreements

137. Where a financial institution or the Central Bank is a party to a netting agreement, the financial institution or the Central Bank may enforce the agreement.

Interpretation

138. "Payment service provider" includes money service providers, payment instrument issuers and payment system operators.

Legality of Settlement Rules

139. (a) The settlement rules of a clearing and settlement system are valid and binding on the clearing house, the participants, the central counter-party.

- (b) The rights and remedies of a participant, a clearing house, a central counter-party or the Central Bank, with respect to collateral granted to it as security for a payment or the performance of an obligation incurred in a designated clearing and settlement system, may not be affected by insolvency proceedings and may not be the subject of any stay provision or order affecting the ability of creditors to exercise rights and remedies with respect to the collateral.

Electronic Presentment of Cheques

140. (a) A bank may present a cheque by electronic means for payment to the bank on whom it is drawn.
- (b) In making the electronic presentment of a cheque under sub-section(a), a bank may act in whole or in part through a third party service provider, including another bank or the clearing house, and such service provider is deemed to be an agent of the bank.
- (c) A cheque image or truncated cheque will be recognized as the equivalent of the paper cheque that it represents, in any court of law.
- (d) Once the transfer of funds takes place on a cheque image, or truncated cheque, the original cheque will no longer be negotiable.

Regulation on Cheques

141. The Central Bank may prescribe regulations on dishonored cheque, retention of cheque image and physical cheque, system rules on electronic presentment and implementation of the provisions of this Law.

CHAPTER XX CREDIT INFORMATION

Powers of the Central Bank regarding Credit Bureau

142. (a) In addition to section 75 of the Central Bank of Myanmar Law, the provisions of this Chapter shall apply to matters relating to credit information.
- (b) The Central Bank may establish or authorize the establishment of a credit bureau designed to collect and provide information on the payment record of the clients of all bank, NBFIs and other financial institutions in Myanmar.
- (c) The Central Bank may require any credit institution and any other entities engaged in the extension of credit to report any information required by the credit reference system.
- (d) Banks, NBFIs and other institutions shall ensure the veracity of the credit information of its clients submitted to the system.

Regulation of Private credit bureaus

143. (a) The Central Bank shall have the powers to license and regulate the operations of private credit bureaus that access information from banks, NBFIs and scheduled institutions.
- (b) No person shall operate a private credit bureau without a valid authorization issued by the Central Bank.

Right of Central Bank to obtain Information

144. The Central Bank may obtain necessary information from a credit bureau.

CHAPTER XXI

POWER TO EXEMPT, RECOVERY OF FEES, BANK HOLIDAYS AND JUDICIAL REVIEW

Recovery of fees, expenses, etc.

145. (a) There shall be recoverable as a debt due to the Central Bank from the bank concerned-
- (1) the amount of any fees payable under section 14(b);
 - (2) any remuneration and expenses payable by the bank to-
 - (aa) an auditor appointed;
 - (bb) an administrator appointed under section 96(a)(18);
 - (3) any financial penalty payable by the bank under this Law.
- (b) An action to recover any financial penalty recoverable under this section shall not be brought after the expiration of 6 years from the date on which the cause of action accrued.

Declaration of holidays

146. (a) The Central Bank may, at any time by notice to the public, declare any day or days to be a bank holiday or holidays.
- (b) No bank in Myanmar shall do any business without the approval of the Central Bank on any day declared a bank holiday under sub-section (a).

Judicial Review

147. (a) Any court having to adjudge a case filed in relation to the Central Bank or any action taken by the Central Bank or any person appointed by the Central Bank to act on its behalf, employee, or agent of the Bank, the sole question before the court shall be whether -
- (1) the Central Bank exceeded its legal authority;
 - (2) the procedures followed by the Central Bank in making its decision were materially inconsistent with the procedures prescribed by this Law;
 - (3) the notification, or publication of the rules and regulation of the Central Bank fails to meet this Law;
 - (4) the decision of the Central Bank is manifestly inconsistent with the provisions of this Law or the Central Bank of Myanmar Law.
- (b) Notwithstanding anything in any other law, any action taken by the Central Bank shall remain in effect without stay or restriction during the period of any legal action by any person or appeal and any further appeal or other judicial proceedings related to the appeal.
- (c) Any relief or redress granted by any court against any action taken by the Central Bank shall be confined to compensation in monetary form.
- (d) The competent court to hear any action or suit against the Central Bank or any person indicated under sub-section (a) shall be the relevant High Court.

Exemption of certain transactions from stamp duties

148. Exemption from stamp duty imposed by the prevailing Law on stamp duties or tax shall be determined by the Ministry in respect of the transfer of shares and assets of a bank or any of its subsidiary companies, sold or disposed by the bank if such sale or disposal has been approved by the Central Bank under section 107.

CHAPTER XXII ELECTRONIC EVIDENCE

Authentication of electronic documents

149. Notwithstanding the provisions of the Evidence Act, any person seeking to admit an electronic document as evidence has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic document is that which it is purported to be.

Application of evidence rule for electronic documents

150. (a) The best evidence rule in respect of an electronic document is satisfied-
- (1) on proof of the integrity of the electronic documents system by or in which the electronic document was recorded or stored; or
 - (2) if an evidentiary presumption exists under this Law.
- (b) Despite sub-section (a), in the absence of evidence to the contrary, an electronic document in the form of a print out satisfies the best evidence rule if the print out has been manifestly or consistently acted on, relied on or used as a record of the information recorded or stored in the print out.

Presumption of integrity of electronic document

151. In the absence of evidence to the contrary, the integrity of an electronic documents system by or in which an electronic document is recorded or stored is proven –
- (a) by evidence capable of supporting a finding that at all material times the computer system or other similar device used by the electronic documents system was operating properly or, if it was not, the fact of its not operating properly did not affect the integrity of the electronic document and there are no other reasonable grounds to doubt the integrity of the electronic documents system;
 - (b) if it is established that the electronic document was recorded or stored by a party who is adverse in interest to the party seeking to introduce it;
 - (c) if it is established that the electronic document was recorded or stored in the usual and ordinary course of business by a person who is not a party and who did not record or store it under the control of the party seeking to introduce it.

Standards may be considered

152. (a) A court for the purpose of determining under any rule of law whether an electronic document is admissible, evidence may be presented in respect of any standard, procedure, usage or practice concerning the manner in which electronic documents

are to be recorded or stored, having regard to the type of business, enterprise or endeavor that used, recorded or stored the electronic document and the nature and purpose of the electronic document.

- (b) An electronic document includes any information in digital form, where information may include data, text, sounds, codes, computer programs, software, or databases.

CHAPTER XXIII

PARTICULARS OF UNCLAIMED MONEYS OR DORMANT ACCOUNTS

- 153. (a) Every bank must submit to the Central Bank particulars of accounts which have remained dormant for more than seven years, within the first month of every fiscal year.
- (b) The Central Bank may issue guidelines on unclaimed moneys and dormant accounts as it deems necessary.

CHAPTER XXIV

ADMINISTRATIVE PENALTIES

Imposition of Penalties

154. The financial institutions, its directors, members, executive officers, shareholders, management, managers and staff who violate any of the provisions of this Law or any regulations, by-law, order, directive, procedures under this Law shall be subject to the followings administrative penalties imposed by the Central Bank –

- (a) warnings;
- (b) fines;
- (c) orders including those restricting the operations of financial institutions;
- (d) suspension or permanent termination from duties in the financial institutions.

Appeal against Penalties

- 155. (a) Under section 154 any person aggrieved by the imposition of the penalty may appeal to the Board of Directors of the Central Bank, within thirty days from the date the penalty is imposed.
- (b) The decision by the Board of Directors of the Central Bank on the appeal under subsection (a) shall be final.

Criminal or Civil Action not Precluded

156. The administrative penalties provided in this Law shall not preclude taking criminal action or civil action.

Liability for Damages

157. Imposition of penalties under section 154 shall make the party guilty of the offence immediately liable to pay for any damages caused to the institution or to other parties.

CHAPTER XXV PROHIBITIONS

Prohibition on carrying on banking business

158. No person shall establish a bank and carry on the banking business unless a license granted by the Central Bank.

Prohibition on carrying on NBFi business

159. No person shall establish a NBFi and carry on NBFi business unless it has a registration certificate issued by the Central Bank.

Offence of Submission of False or Misleading Information

160. No person shall submit false or misleading information in connection with an application for license to the Central Bank.

Prohibition on use of words "bank", etc

161. No person other than the following institutions shall use as part of its name or its description any of the words " bank ", " commercial bank", "development bank", " banker ", or " banking " unless it has a license or prior written approval of the Central Bank –

- (a) an association of bank;
- (b) an institution with respect to which such usage is established or recognized by law or international agreement;
- (c) the representative or office of a foreign bank;
- (d) any institution acting on behalf of the Government which carries on banking;
- (e) any persons exempted by the Central Bank, by notification.

Prohibition on establishment of Representative Office

162. No foreign financial institutions shall establish the representative office unless it has a registration certificate issued by the Central Bank.

Prohibition of illegal deposit taking

163. No person shall receive, take, or accept deposits unless it has a valid license under this Law.

Prohibition on use of words "Finance Company", etc

164. No person shall assume or use the words "finance company ", "leasing", "factoring", "credit token", "money services", or any derivatives of these words in any language, unless it has a registration certificate or prior written consent issued by the Central Bank.

Prohibition of Unsolicited Calls

165. No financial institution or person shall, without the written consent of the Central Bank, make unsolicited calls from any person in Myanmar or outside Myanmar by soliciting or procuring for the making of deposit; or entering into or offering to enter into any agreement with a view to the acceptance of deposit.

Prohibition on Advertisement

166. No financial institutions shall make a false, deceptive, offensive or misleading advertisement in connection with its permitted activities.

Prohibition of Transfer of License

167. No licensee shall transfer its license to another person.

Prohibition on Merger and Amalgamation of bank business

168. Except with the prior written approval of the Central Bank, no bank shall-

- (a) sell all or a substantial part of its own business;
- (b) acquire the business or a substantial part of the business of another bank;
- (c) amalgamate or merge with another bank;
- (d) in the case of a foreign bank to acquire the business or a substantial part of the business of a bank in Myanmar; and
- (e) in the case of a foreign bank to sell all or a substantial part of its own business in Myanmar.

Offence Relating to E-money and Credit Token

169. No person who issues e- money or credit token to the public shall violate any provision of this Law or a regulation issued under this Law.

Offence Relating to Private Credit Bureau

170. No private credit bureau shall violate any consumer protection regulations or fail to furnish correct information that may be required by the credit reference system.

CHAPTER XXVI

OFFENCES AND PUNISHMENT

Offences against Sections 158, etc

171. Any person who contravenes the provisions of sections 158, 159, 160, 162, 163, 167 and 168 of this Law shall upon conviction be punished with an imprisonment of two years to not more than five years and a fine of five hundred million Kyats.

Offences against Sections 161, etc

172. Any person that who contravenes the provisions of sections 161, 164, 165, 166, 169 and 170 of this Law shall upon conviction be punished with an imprisonment of not more than two years and a fine of one hundred million Kyats.

Power to Compound Offences

173. (a) The Governor may with the consent in writing of the Public Prosecutor, offer to compound any offence under any provision of this Law or under regulations made under this Law by accepting from the person reasonably suspected of having committed the offence such amount not exceeding fifty per centum of the amount of

the maximum fine, including the daily fine, if any, in the case of a continuing offence, to which that person would have been liable if he had been convicted of the offence, within such time as may be specified in the offer.

- (b) An offer under sub-section (a) may be made at any time after the offence has been committed and where the amount specified in the offer is not paid within the time specified in the offer, or such extended time as the Governor may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.
- (c) Upon receipt of the amount under sub-section (a), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made.
- (d) Nothing in this section shall authorize the compounding of any repeated offence.
- (e) Any monies paid to the Central Bank pursuant to the provisions of sub-section (a) shall be paid into and form part of the consolidated fund.

Abetting, Attempt or Conspiracy

174. Whoever abets, attempts, or conspires in the commission of any offence under this Law shall be liable to the punishment provided in this Law for such offence.

CHAPTER XXVII

GENERAL

Conflict of Law

175. If any provision in this Law conflict with the provisions of the Myanmar Companies Act or Special Companies Act, the provision of this Law shall prevail.

Surrender and Reissuance of License

176. Every bank that holds license issued under repealed Law shall surrender its license to the Central Bank within six months of the effective date. The Central Bank shall issue new license to the bank under section 11 of this Law subject to such terms and conditions imposed by the Central Bank.

Requirement to provide information for reissuance of License

177. Every bank on the date that this Law enters into force, shall provide the Central Bank with a list of shareholders, and for each owner of a substantial interest, including the ultimate beneficial owner of such substantial interest and such other information on their owners, in particular owners of a substantial interest, as requested by the Central Bank, within one year of the entry into force of this Law.

Preservation of Central Bank Actions

178. Every action of the Central Bank taken under the repealed Law shall continue in full force and effect unless expressly revised or withdrawn by the Central Bank under this Law.

Preservation of Rules, Regulations, etc

179. All rules, regulations, orders, direction, notifications and other subsidiary legislation made or issued under or by virtue of the repealed Law, shall be deemed to have been made or issued under or by virtue of this Law, and shall continue to remain in full force and effect in relation to the persons to whom they apply until amended, repealed or replace under or by virtue of this Law.

Preservation of Pending Application and Appeal

180. Any application for a license, approval or consent, or for any other purpose whatsoever, or any appeal, made by any person to the Central Bank under the repealed Law and pending immediately before the effective date, shall, if there is a corresponding provision in this Law, be dealt with as if it was made under that provision and, if there is no such corresponding provision in this Law, such application or appeal shall lapse on the coming into force of this Law.

Preservation of Transactions and Dealings

181. All transactions or dealings lawfully executed or entered into, and all business lawfully done, under or in accordance with any of the repealed Law by a person who was licensed under the repealed law with any depositor or other customer, creditor, debtor, or other person, shall be deemed to have been lawfully and validly executed, entered into, or done, under and in accordance with this Law, and, accordingly, any right or liability under such transaction, dealing or business existing, immediately before the coming into force of this Law, shall be deemed to continue to be lawful and valid under this Law.

Cognizable Offences

182. Offences prosecuted under this Law are prescribed as cognizable offences.

Legal Protection

183. (a) A person who carries out the assigned duties under this Law in good faith shall not be taken criminal action or civil action in implementing the provisions of this Law.
- (b) The Central Bank shall indemnify the persons who assigned by the Central Bank to perform its duties, for any liability that arises from the exercise or purported exercise of, or omission to exercise, any power conferred by this Law.

Power of Central Bank to issue Regulation, etc

184. For the purpose of implementing the provisions of this Law, the Central Bank may issue regulations, by-laws, notifications, orders, directives, guideline and procedures as may be necessary.

Repeal

185. The Financial Institutions of Myanmar Law (The SLORC Law No.16/90) (hereinafter referred to as “repealed law”), is hereby repealed.

I hereby sign this Law under the Constitutions of the Republic of the Union of Myanmar.

(sd) Thein Sein
President
The Republic of the Union of Myanmar