

Financial Institutions Law**(2016, Pyidaungsu Hluttaw Law No. 20)****The 1st Waning Day of PyarTho, 1377 ME****(25th January, 2016)**

Pyidaungsu Hluttaw hereby enacted this Law.

Chapter (1)**Title and Definition**

1. This law shall be known as Financial Institution Law.
2. The expressions in this law shall have the meaning hereunder :-
 - (a) **Union** means the Republic of the Union of Myanmar.
 - (b) **Financial Institution** means banks, financial institutions which are not banks (Non- Bank Financial Institution “NBFI”) and the institutions on the listed.
 - (c) **Bank** means an institution licensed under this law by the Central Bank of Myanmar, to carry out banking business. In this expression, commercial bank, development bank and a branch of a foreign bank that has obtained license are included.
 - (d) **Banking business** means the business of commercial banking or development banking.
 - (e) **Institution** means the companies and State-owned financial institution formed under Myanmar Companies Act or Special Companies Act.
 - (f) **Commercial Banking Business** means the following businesses :-
 - (1) Business of accepting or receiving various kinds of deposits;
 - (2) Business of paying and collecting cheques drawn by or paid in by customers;
 - (3) Business of providing credit facilities; and
 - (4) Such other banking businesses contained in section 52 as the Central Bank of Myanmar may prescribe and allowed.

- (g) **Commercial Bank** means the bank licensed under this law by the Central Bank of Myanmar in order to carry out the commercial banking business.
- (h) **Development Banking Business** means the business which accepts the 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 the bank licensed under this law by the Central Bank of Myanmar in order to carry out the development banking business.
- (j) **Financial Institution which are not bank (Non-Bank Financial Institution)** means the financial institutions which have registered subject to section 20 in order to carry out one or more of following businesses :-
- (1) Financial company;
 - (2) Leasing business;
 - (3) Factoring business;
 - (4) Credit token business;
 - (5) Financial service business;
 - (6) Any other credit service business prescribed by the Central Bank of Myanmar.
- (k) **Holding Company** means a company that owns fifty one percent (51%) or more of the shares of a bank and controls over right to elect a majority of the directors of the bank or exercises a significant influence over the management, operations or policies of the bank.
- (l) **Board of Directors** means the board of directors of a financial institution.
- (m) **Branch of a bank** means the principal office carries out business of the bank, a branch carries out business, a pay office, a sub-pay office, an agency and an office set up and maintained for a limited period only.
- (n) **Business day** means any calendar day other than a Saturday, Sunday, public holiday or bank holiday.
- (o) **Capital funds** means :-
- (1) In case of a bank formed in Myanmar, its capital, which shall be contributed to meet the capital adequacy ratio requirement 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 licensed institution.
 - (2) In case of a branch of a foreign bank obtained license in Myanmar, capital prescribed by the Central Bank and capital which shall be contributed to meet capital adequacy ratio requirement as may be prescribed accordingly by the Central Bank.

- (p) **Central Bank** means the Central Bank of Myanmar established under the Central Bank of Myanmar Law.
- (q) **Chief Executive Officer** means a person who is principally responsible for the management and activities of the business of the financial institution. In this expression, in the direct employment of, or acting temporarily for or by arrangement with the financial institution also included.
- (r) **Company** has the meaning the same as defined in Myanmar Companies Act.
- (s) **Subsidiary Company** has the meaning as the same as defined in Myanmar Companies Act.
- (t) **Business of providing credit facilities** means :-
- (1) Granting by a financial institution of loans, advances and other facilities whereby a customer of the financial institution has access to fund or financial guarantees; or
 - (2) Incurring by a financial institution of other liabilities on behalf of a customer.
- (u) **Saving and Credit Societies business** means the business of engaging primarily in financing to individuals who are members for the purpose of consumption, production or commerce by using funds collected in members' 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 methods prescribed by the Central Bank.
- (w) **Credit Information Bureau** means the entity specialized in the collection credit performance information and providing such information with fees for individuals or companies.
- (x) **Deposit** means a sum of money deposit by an individual or an organization on terms under which it will be repaid or it is repayable, either wholly or partly on demand of such depositor or at a time period agreed by the person making the deposit and the person receiving it.
- (y) **Documentary record** includes followings :-
- (1) Any material illustrated or described in any form;
 - (2) Any visual or sound recording in motion (film) or motionless (still picture) made by the way of electronic or magnetic or mechanical;
- (z) **Employee** means the employee of the financial institution and it includes an individual seconded or temporarily transferred from another employer.
- (aa) **Factoring business** means the business of financial transaction in which the financial institution purchases the accounts receivable of a person at a discount.
- (bb) **Fit and proper** means the criteria applicable to the persons under this law set by this rules by the Central Bank. In this expression, honesty, integrity, diligence, competence, and having experience of banking business or commercial business of a person are included.

- (cc) **Financial Company Business** means engaging primarily in financing the purchase of goods or services with funding received by other means and not accepting deposits from public.
- (dd) **Branch of foreign Bank** means a branch of a foreign bank licensed by the Central Bank of Myanmar in order to carry out banking business in Myanmar.
- (ee) **Union Government** means the Union Government of the Republic of the Union of Myanmar.
- (ff) **Leasing Business** means the business of leasing movable property on hire, regardless whether the leasing is with or without an option to purchase the property. In this expression, sub-leasing business is also included too.
- (gg) **Licence** means the permit granted under this law by the Central Bank in order to do banking business.
- (hh) **Registration Certificate** means the permit granted to Non-Bank Financial Institutions under this law by the Central Bank, to carry out business.
- (ii) **Ministry** means the Ministry of Finance of the Union Government.
- (jj) **Monetary Service Business** means the business which carries out one of the following :-
- (1) Money Transmission;
 - (2) Issuance and management of payment instrument;
 - (3) Cashing of Cheques; and
 - (4) Issuing and selling of travelers' cheques or money order.
- (kk) **Officer in relation to a financial institution;** the expression includes :-
- (1) Chief Executive Officer or Deputy Executive Officer;
 - (2) Chief Financial Officer;
 - (3) Such other employees performing management functions at the financial institution.
- (ll) **Payment System** means any system or arrangement for the transfer, clearing or settlement of funds or securities other than the followings :-
- (1) An in-department payment system operated by a person solely for own administrative purpose;
 - (2) Such other systems or arrangements as may be prescribed by the Central Bank.
- (mm) **Payment instrument** means any instrument, whether tangible or intangible, that enables a person to obtain money or goods or services or to otherwise make payment.
- (nn) **Location of Business** means an office or a branch office of relevant financial institution.
- (oo) **Relatives** means a spouse, brother or sister of a person, brother or sister of the spouse of such person, parent, ancestor and lineal descendant of such person and such spouse, their dependents and any such relationship created through adoption.

- (pp) **Related party in relation to a financial institution** means :-
- (1) A person who has substantial interest in the financial institution or 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 stated in clause (1) and (2);
 - (4) An entity that is controlled by a person mentioned in clause (1), (2) and (3);
 - (5) A person who has been designated by the Central Bank as a related party due to his past or present substantial interest in or relationship with the financial institution;
- (qq) **Institutions on the list** means following institutions established under other particular law and not under this law that provide financial services for a particular group and a community :-
- (1) Rural Development Bank;
 - (2) Agricultural Bank;
 - (3) Microfinance Institutions licensed under the Microfinance Business Law;
 - (4) Saving and Credits Societies;
 - (5) Postal Saving Bank.
- (rr) **Securities** has the meaning as the same as defined in Securities Exchange Certificate Transaction Law.
- (ss) **Substantial Interest** means either the ownership, directly or indirectly, of ten percent or more of the capital or the voting rights of the financial institution or control over, directly or indirectly, the management of the financial institution, as the Central Bank may determine.
- (tt) **Related Company** means the other company which owns and controls not less than 20 percent and not more than 50 percent of the shares of a company.

Chapter (2)

Objectives

3. The objectives of this Law are as follows :-
- (a) To develop the sustainable economic growth of the Union;
 - (b) To develop the financial sector of the Union;

- (c) To ensure that the banks and financial institutions of the Union, are able to carry out financial service businesses in accordance with the International standard which are being complied;
- (d) To ensure that the Central Bank is able to regulate and supervise effectively the financial institutions in compliance with the international standards;
- (e) To protect the interests of the depositors and to maintain the stability, safety and soundness of the financial system.

Chapter (3)

Establishment

- 4. The financial institutions shall be established as limited liability Company in accordance with the Myanmar Companies Act as well as with the Special Companies Act. In the case of State-owned Financial Institution, shall be deemed as the financial institution has been established under this law.

Chapter (4)

General Obligations and Powers of the Central Bank in connection with the financial institutions

- 5. Obligations and Powers of the Central Bank in connection with the financial institutions are as follows :-
 - (a) Granting License;
 - (b) Providing registration, approval and authorization;
 - (c) Supervision and inspecting banks and non-bank financial institutions in accordance with this law;
 - (d) Ensuring that banks and non-bank financial institutions have complied the orders, rules, directives and guidelines issued under this law;
 - (e) Ensuring that banks and non-bank financial institutions are submitting monthly reports and information in line with the stipulations;
 - (f) Promoting, implementing and taking action the protection of the financial service customer at banking system and payment system;
 - (g) Such other Powers conferred under this Law.
- 6. The Central Bank, in implementing any of its obligation contained in this Law :-

- (a) May assign any of its employee in accordance with the stipulations;
 - (b) Any person who are not its employee may be appointed with terms and conditions by board of directors in order to carry out any of the functions or to exercise any of the powers or to undertake any of the obligations of the Central Bank;
7. The Central Bank, in carrying out its functions :-
- (a) May co-operate with the organizations that regulate the financial institution not governed under this law and relevant domestic and international supervisory organizations of financial institutions. May also exchange information in connection with the banks or non-bank financial institutions.
 - (b) May enter into memorandum of understanding and other appropriate contracts with financial regulators in order to ensure the safety and soundness of the financial system.
 - (c) May co-operate on the basis of mutual reciprocity with the foreign regulators concerned to be able to exchange information time by time in regulating and supervising branches of foreign banks and banks and non-bank financial institutions in which the foreign banks or foreign investor has a substantial interests.
 - (d) May enter into co-operation arrangements and the term that is to keep information obtained under memorandum of understanding and other arrangements, as confidential, shall be included in such co-operation arrangements.

Chapter (5)

License

8. (a) Subject to this Law, any person desirous to carry out banking business shall submit application in specified form attaching following documents, in order to obtain license;
- (1) Valid document that shows the company is incorporated in accordance with the law in Union of Myanmar;
 - (2) A copy of memorandum of association, article of association and any other document related to incorporation of proposer;
 - (3) Proposed location and branch offices of proposed bank which are aimed to carry out major business;
 - (4) Copies of financial statements and profit and loss statements which had been audited of the proposer;
 - (5) Authorized and subscribed capital of proposed organization;

- (6) Organizational Structure and specification of the objective type of business to carry out of proposed organization;
 - (7) Qualifications and experiences, business or professional and financial status of the owner who owns substantial interest of the proposed organization;
 - (8) Qualifications and experiences of the directors and chief executive officer of the proposed organization;
 - (9) An authorization of the proposer permitting the Central Bank to carry out financial, criminal and professional background inspections on the proposer himself and directors and executive officer, and affiliated persons;
 - (10) An authorization of the owners, directors and chief executive officer permitting the Central Bank to carry out financial, criminal and professional background inspections on themselves and affiliated persons of them.
 - (11) Such other information as may be prescribed under regulation by the Central Bank.
 - (b) State-owned banks, which had been established under any law before this law is enacted, shall carry out the re-applying the license in accordance with the provision in section 176 under this law.
9. Any foreign bank shall apply in specific form to the Central Bank to obtain license in order to open up a subsidiary bank or any of its bank branch for carrying out the banking business. In such applying, documents mentioned in section 8 above as well as the following documents shall be attached and submitted :-
- (a) A credit rating report by an international credit rating agency;
 - (b) A statement of its capital status and its ranking subject to its total assets and capital in its home country and globally;
 - (c) A guarantee letter of foreign bank, stated that it shall contribute a fund as it may covers all the obligations with respect to business activities of its subsidiary bank or branch in the Union of Myanmar;
 - (d) A recommendation letter for the followings from the bank regulator of the country in which principal place of business of such foreign bank is located;
 - (1) The foreign bank has a valid license to carry out 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 the Union of 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;

10. (a) The Central Bank, on a license application having been duly made and requirements are accomplished after scrutinizing it that had been applied in accordance with section 8 and 9, may grant the license application.
- (b) The Central Bank shall reject the application if ascertained any of the circumstances are occurred :-
- (1) Not accomplished the requirements to license issuance under this law;
 - (2) Being ascertaining any information contained in such license application or any information attached to it are false, misleading or inaccurate;
 - (3) The Central Bank has determined that there are indications that the applicant may not comply with the requirements under this law or any other laws of the Union of Myanmar;
 - (4) The Central Bank has determined that power of a person who has the substantial interest at proposed organization, is influenced over the applicant that might affect the management of the applicant;
 - (5) The Central Bank has determined that the applicant would be connected to a group or an association that would affect the management of the applicant or hinder the Central Bank in undertaking the regulation and supervision;
 - (6) The Central Bank has determined that license application of the applicant should be rejected as per the current economic and financial circumstances of the Union of Myanmar.
11. (a) The Central Bank, on receiving the complete application and after scrutinizing it again in compliance with the stipulations, shall notify the applicant in writing of its decision whether to issue or reject the license within a period of not later than six months from the date of the receipt of an application; and
- (b) Shall give the uncompleted application back in order to accomplish the requirements again; and shall notify in writing that rejected to issue license in connection with the application that could not been performed to meet the requirements within the defined period.
- (c) In case that it has determined to accept the application, shall regulate and mention necessary rules and regulations. The Central Bank may amend or modify any of the rules and regulations accordingly if any matter that may affect stable and sound operation or financial system of a bank or interests of the depositors is arise.
- (d) The Central Bank shall publish the list of the banks granted license for public awareness.
12. The bank operator shall be conformity with the following specifications :-

- (a) The company is established under the law in the Union of Myanmar and has obtained the valid license issued by the Central Bank.
 - (b) It is a subsidiary bank or a branch of a foreign bank and has obtained valid licence issued by the Central Bank.
 - (c) It is a person, who has granted relief under section 19.
13. Banks which has obtained licenses :-
- (a) Shall comply the terms and conditions contained in license specified by the Central Bank;
 - (b) Shall commence its operation within one year from the date of its license is obtained.
 - (c) Shall not carry out any other businesses other than the banking businesses in accordance with the stipulated rules and regulations granted under this law;
 - (d) Shall prominently display a copy of its license at its business place or every other business places in the Union of Myanmar, in which operation is carried out.
14. (a) Bank shall impose variable license fees for the different kind of operations or variety of classes or categories.
- (b) The banks which has obtained the license, shall pay the following not later than a month before the anniversary date of its license obtained :-
 - (1) License fee on receiving the license;
 - (2) Charge for opening up an office within the Union besides the principal office in which major operation is performed.
 - (3) Annual license fee issued for each offices including principal office in which major operation is performed.
15. The Central Bank, in the event that any of the following circumstances is occurs, shall revoke its license issued to any bank :-
- (a) Failure to contribute the modified minimum capital prescribed for the banks within the defined period;
 - (b) Failure to restore the decreased minimum capital requirement following losses in business;
 - (c) Violating the existing law as the bank and failure to comply the stipulation of the Central Bank within the defined period;
 - (d) Liquidating on one's own or being liquidated or bankruptcy;
 - (e) Extinguishing of the original legal entity as a result of a merger, amalgamation or division;
 - (f) Central Bank is satisfied and trusted that the revocation of the license would not be affect to the national interest and depositors' interest of the bank;

- (g) The bank provided, in connection with its application for the license, information that was false or misleading in a material particular;
 - (h) The bank failed to commence permitted activities within one year from the date of receipt of the license;
 - (i) The bank failed to perform the permitted activities three consecutive month without any affirmative reason within the operation;
 - (j) The bank conducted permitted activities in a manner detrimental to the rights and interests of the depositors;
 - (k) It would be affect to the national interest for the license to remain in force;
 - (l) It would be affect to financial system stability in the Union of Myanmar for the license to remain in force;
 - (m) The bank failed acted in contravention of the Central Bank of Myanmar Law or this Law or the rules and regulations framed thereunder;
 - (n) The bank failed to comply with the order, directives issued by the Central Bank.
 - (o) The bank becomes insolvent or ins unlikely to return to solvency within a reasonable period of time;
 - (p) The bank is merged or amalgamated with any other bank without the permission of the Central Bank;
 - (q) Whenever a bank applied for the revocation of its license for it has desire to keep no longer carry on its banking business.
16. The Central Bank :-
- (a) Shall make a decision of license revocation within ninety (90) days from the date that any of the following circumstances occur:-
 - (b) Shall reply in writing the information about the decision taken under subsection (a) and the grounds on which the decision is based to the concerned bank.
17. The Central bank shall publish a notification for public to be aware where the decision has been made to revoke a license under section 15 and 16.
18. Bank shall obtain in writing the prior permission of the Central Bank if it desires to amend its memorandum of the association or articles of the association.
19. (a) This law shall not be applied to the institutions on the listed.
- (b) Notwithstanding anything stated in sub-section (a), the institutions on the list, shall be applicable to in whole or in part of this law if the Ministry decided with the recommendation of the Central Bank according to any of the following specification:
 - (1) It is necessary to protect the interest of the depositors or public;

- (2) The total liabilities of the institution on the list are exceeding over the extent prescribed by the Central Bank for the purpose of this section;
- (3) Such institution may affect the stability and soundness of banking operation system or financial system in whole;
- (4) Such institution is carrying out with the purpose to avoid the registration or obtaining license as bank or non-bank financial institution under this law.
- (c) The Ministry shall publish an order for public awareness in order to make effect on decision mentioned in subsection (b).
- (d) The Ministry or the Central Bank shall not necessary to give a chance so as the institution on the list to represent before the order is issued.
- (e) Any order issued by the Ministry under subsection (b) is a part of this law and shall also be deemed as it is already contained in this law.
- (f) For the purpose of the provisions contained in this law, the Ministry may issue necessary rules or the Central Bank may issue necessary notifications, orders, directives and procedures accordingly.
- (g) Notwithstanding any provisions contained in any of the law enacted for the purpose of establishing the institutions on the list or any of the existing law, any rules or any order under this section and the provision of this law shall be fully effective.

Chapter (6)

Non-Bank Financial Institutions and Representative Offices of the Foreign Banks

- 20. (a) In case of a company which is established in accordance with the law, desirous to set up as non-bank financial institution, shall apply in compliance with the stipulations to the Central Bank to obtain a registration certificate of the Central Bank.
- (b) In case of persons who have been doing non-bank financial institutions, desirous to carry on it, shall apply in accordance with the stipulations of the Central Bank within six months from the date of enactment of this law to obtain registration certificate of the Central Bank.
- 21. The Central Bank shall issue registration certificate to the applicant applied under section 20 after scrutinizing in accordance with the stipulations.
- 22. The Central Bank, with respect to the following matters, may stipulate necessary requirements :-
 - (a) Requirements for Administration;

- (b) Requirements for Transparency and Disclosure ;
 - (c) Matters related to Protection of financial service customer;
 - (d) Requirements related to submitting reports;
 - (e) Matters related to supervising non-bank financial institutions.
23. Non-bank financial institution may involve in one or all of following businesses in accordance with rules and regulations regulated by the Central Bank :-
- (a) Financial Company Businesses;
 - (b) Leasing Businesses;
 - (c) Factoring Businesses;
 - (d) Credit Cards Businesses;
 - (e) Financial Service Businesses;
 - (f) Such other Credit service Businesses as may be prescribed by the Central Bank;
 - (g) Such other Businesses as may be permitted accordingly by the Central Bank;
24. If a foreign financial institution desires to open up a representative office under this law in the Union of Myanmar, shall apply in accordance with the stipulations to the Central Bank to obtain registration certificate.
25. The Central Bank :-
- (a) May make a decision or reject to issue registration certificate after scrutinizing in accordance with the stipulations on receiving the application under section 34.
 - (b) In the event that the Central Bank granted to open up a representative office of foreign financial institution, shall issue registration certificate to the applicant by stipulating necessary rules and regulations.
26. (a) The representative office which have obtained the registration certificate, shall carry out only the defined business functions or granted businesses by the Central Bank.
- (b) None of the foreign financial institution shall carry out any banking business or non-bank financial institution business through its representative office in the Union of Myanmar.
27. Each of non-bank financial institution and foreign financial institution, when the Central Bank issues registration certificate :-
- (a) Shall pay prescribed fees to the Central Bank;
 - (b) Shall submit report the information related to its business or matters at any time as may be defined and required by the Central Bank accordingly.
28. (a) Non-bank financial institution or the representative office shall inform to the Central Bank within three months if any amendment or change is made in any of its memorandum and articles of association.

- (b) The notification mentioned in subsection (a) above, shall be affirmed by making announcement in accordance with the law by a director of a non-bank financial institution or a representative office.
29. (a) The Central Bank, if deems necessary for the following matter, may announce by releasing order in gazette that all or certain provisions of this law shall apply in general to non-bank financial institution or any representative office or non-bank financial institution business or any class or type of representative office:-
- (1) Promoting financial stability and financial system soundness;
 - (2) Influencing the credit situation for the interest of the Union;
 - (3) Protecting the interest of the public relating to business operation or activities carried out by the non-bank financial institution or the representative office;
- (b) In the event of announcing any of the order under subsection (a) for public awareness, the provisions of this law which is applicable to such non-bank financial institution, representative office, class or type of such non-bank financial institution or representative office, shall apply to such non-bank financial institution, representative office, class or type of such non-bank financial institution or representative office as it does the same to the Bank.
30. The Central Bank shall announce all the list of non-bank financial institutions and representative offices annually, which are mentioned in section 29 above.

Chapter (7)

Restrictions concerned to Accepting deposit and Calling deposit

31. The business of accepting deposit shall be carried out only by the license holder granted by the Central Bank.
32. Financial institution or person shall be able to execute following performance to obtain deposit money from a domestic or foreign person only when the permission in writing of the Central Bank has obtained in advance.
- (a) Attracts to obtain deposit or accepts deposit;
 - (b) Enters into an agreement or offers to do so for obtaining deposit.
33. (a) If any of the statements contained in notification made by a bank is deemed as false, misleading or deceptive by the Central Bank, the Central Bank may direct following by sending notice to such bank :-
- (1) To cease the continuous making of announcement;

- (2) To modify the announcement in such manner as may be defined by the Central Bank;
- (3) To take all practical steps to retract or withdraw all the announcements or advertisement display to make modified announcement.
- (b) The Central Bank may change, amend or revoke any of the directives issued under subsection (a).

Chapter (8)

Capital, Reserve Fund and Significant Ownership

34. (a) The banks shall maintain its capital as follows :-
- (1) in the case of a bank incorporated in Myanmar, its paid-up capital is not less than twenty billion kyat; and
 - (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 subsection (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) Bank, if desire to reduce its share capital, shall obtain the prior written approval of the Central Bank.
- (f) A bank with a subsidiary shall calculate and maintain the minimum capital adequacy ratio on a consolidated basis.
- (g) For the purpose of this Law :-
- (1) **Core capital or Tier 1 Capital** means the reserved funds that is published to public after 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 organization, pre-operating expenses, prepaid expenses, deferred charges, leasehold rights and any other intangible assets are having been deducted; and
 - (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.

35. (a) Bank shall maintain a reserve fund and transfer the twenty five per cent out of the net profits of each year to general reserve fund account annually so long as the amount of the reserve fund is equivalence to hundred per cent of its paid-up capital.

(b) Notwithstanding anything mentioned in subsection (a) above, 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.

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.

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

38. (a) A foreign bank shall maintain a minimum amount of assigned capital for its bank branch, 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.

39. The Bank :-

(a) Shall make plans to cover the loss for loans, advances and other assets before any profit or loss is declared;

(b) Shall fully observe the plans for the loans, advances and other assets made under subsection (a) in accordance with the regulations stipulated by the Central Bank.

Allotment of Dividends

40. (a) The Bank shall only pay dividends or makes any form of distribution to its shareholders from its profits.

(b) The bank shall not pay dividends or make any form of distribution under the following circumstances :-

- (1) Until all its capitalized expenses, including preliminary expenses and other items of expenditure not represented by tangible assets, have been 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 licensed institution is in breach of a requirement imposed by or under a provision of this Law.

Defining Assets, Liabilities and Earmarks

41. The Central Bank may define followings :-

- (a) Various minimum amount of assets as may be maintained as per different classes or categories of the Bank;
- (b) Assets and liabilities as per different class or categories of the Bank;
- (c) Earmarks as may be maintained as per different class or categories of the Bank.

Acquisition of Substantial Interests

42. (a) Any person desirous to acquire a substantial interest of a bank shall apply to the Central Bank attaching documentations and other evidences as may be required by the Central Bank.
- (b) The Central Bank shall be entitled to inspect the documentations attached as mentioned in subsection (a) and background of the applicant; and may require additional documentary evidences and information.
- (c) The Central Bank shall not grant an approval if it determines that one or more of the following circumstances apply :-
- (1) The applicant, being an individual is not a fit or proper person;
 - (2) The applicant, being a body corporate, has one or more directors or chief executives 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 affect the management of the bank.
- (d) The Central Bank shall have power to approve or reject any application made under subsection (a).

43. Any person, who is a substantial shareholder, shall apply within six months for the date of enforcement of this law to obtain the approval of the Central Bank in order to be as such substantial shareholder continuously. Only when the approval of the Central Bank is obtained, be able to be as such substantial shareholder continuously.
44. Each bank shall submit a report in which name, address, of the shareholders having the substantial interests in the bank and the number of voting shares held by such persons are contained.
45. A person, an individual or a group, acting in concert, desirous to enter into an agreement contract or make arrangement for a common objective or purpose of acquiring substantial interests of a bank, shall obtain prior written approval of the Central Bank.
46. (a) The provisions contained in section 43 and 45 shall not be applicable to the followings :-
- (1) Shares having voting rights owned by the bank for the followings :-
 - (aa) Shares received for the receivable credits;
 - (bb) Shares under an underwriting arrangement, in which case such voting shares to be disposed within one year or such longer period as the Central Bank in exceptional circumstances may approve;
 - (2) Acquisition of the share having voting right as an agent, trustee or custodian.
 - (b) A bank which has acquired voting shares of another bank under paragraph 1(aa) of subsection (a) shall inform the Central Bank upon its acquisition of such voting shares.
47. The Central Bank, if ascertained that any person is not comply the provisions under section 42, 43, 44 and 45 or the stipulations regulated under section 50, may take action by any of the following administrative means:-
- (1) Regarding with the voting shares of the default person, prohibiting not to transfer such share or not to transfer the agreement or arrangement to transfer the share;
 - (2) Regarding with such share prohibiting the exercise of voting right;
 - (3) Prohibiting the further issuance of the shares or sale offer made to such shareholder;
 - (4) Prohibiting the payment from the bank upon such share other than the liquidation;
 - (5) Directing such person to dispose such share by public auction concerning with the default person.
 - (b) The Central Bank, shall dispatch the directive issued under subsection (a) to default person as soon as practicable, and may publicize in such manner as it deems fit.
 - (c) Any defaulting person against whom a directive has been made under subsection (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 representatives made under subsection (c), either confirm the directive or revoke it, or vary it in such manner as it deems fit.

Merger of the Banks

48. (a) A Bank may execute the following only when the prior written approval of the Central Bank :-

- (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 or a bank in Union of 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 subsection (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 or 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 as deemed fit in approving the application.

(e) Respect of subsection (4) of section (a), 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 percent or more of the voting power of a company or body corporate, whether alone or with related parties or with other related parties of the company or body corporate;

49. (a) Where the Central Bank has granted approval to an application in respect of an agreement under section 48, institution whose business is to be transferred and the other person to whom the transfer may make a joint application to the High Court of relevant Regional or State to pass necessary order for the purpose of effective agreement.

- (b) On the hearing of an application under sub-section (a), the concerned state/regional High Court may grant an order in the terms applied for or with such modifications or variations as the High Court deems just or proper in the circumstances of the case.
- (c) The order of concerned state/regional the High Court 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 state/regional High Court under sub-section (a), 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 State/Regional High Court shall, where an order of the High Court 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 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.

Limiting on maximum shareholding

50. The Central Bank may regulate the following :-

- (a) The maximum percentage of the voting shares of a bank that may be held by any person;
- (b) Maximum percentages under subsection (a) with respect to any class of companies, body corporate or individuals.

Chapter (9)

Permitted Activities of the Bank

51. The Bank may carry on the activities permitted by this Law, subject to the provisions of its Memorandum of Association and Article of Association and to the conditions and restrictions of its licence.
52. The commercial bank may carry out one or all of the following activities subject to the conditions in the licence :
- (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;
 - (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 financing business;
 - (t) mortgage financing; and
 - (u) other activities determined by the Central Bank to be customary banking practices or incidental to the banking business;
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;
54. A development finance bank may engage in one or all of the following activities subject to any conditions and restriction in the license issued to such development finance bank-
- (a) providing long term finance
 - (b) issuing guarantees and commitments;
 - (c) such other activities prescribed by the Central Bank
55. Any such subsidiaries shall be subject to supervision under this Law 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.
56. None of the bank shall engage in whole or retail commercial trades including exporting and importing on account of bank or receiving a commission fee :-
- (a) Disposing securities of the bank currently holding;
 - (b) Sale or purchase of gold or foreign currency by the bank.
57. None of the bank shall not purchase or in any other way acquire any immovable property or any right therein, exceeding such percentage of its capital funds as may be determined by the Central Bank.
- (a) reasonably 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) The Bank shall execute and maintain :-
- (1) adequate internal policies, practices and procedures relating to the granting of credit facilities, making of investments and the on-going management of the loan and investment portfolio; and
 - (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 licensed institution shall give any credit facility within any credit limit imposed on the credit taker, and any agreement made between credit taker and the bank.

- (c) The Bank shall submit to the Central bank the followings :-
 - (1) Information with respect to its policies and procedures for the giving of any credit facility;
 - (2) A report on the limit or the terms and conditions imposed on every director, chief executive or officer of the bank licensed institution in relation to granting of credit facilities.
- (d) The Central Bank may make such modification to the policies or procedures of any credit facility submitted by the relevant bank.

Large Exposure

59. (a) The bank shall not take on financial exposure in respect of a single counterparty or group of connected counterparties which constitutes in the aggregate a liability amounting to more than twenty per cent of the core capital of the bank. Such restriction shall not apply to transaction related to government policy of the State-owned banks.
- (b) The limit in subsection (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 for purposes of this section.
 - (b) 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.

Restriction 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; or
 - (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 cent of the unimpaired capital funds of the bank.
61. (a) A bank may acquire or hold shares-
- (1) in another bank, up to a value of five per cent of the unimpaired capital funds of the other bank; and
 - (2) in any company or enterprise carrying on a NBFI business, up to a value of five per cent of the unimpaired capital funds of that company or enterprise.
- (b) The limit in subsection (b) of the section 60 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 licensed institution under Chapter (14) and (15) of this Law or a company that is a wholly owned subsidiary of the bank; and
 - (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 licensed institution 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-
- (1) any term and condition under which an acquisition or holding in an enterprise 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 such 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.
62. The provisions of this section shall not apply to foreign bank licensed institution and their foreign bank branches.
63. (a) None of the 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) None of the 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 contained in subsection (a) and (b) shall not apply to 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 paid-up capital of the bank.

Giving Loan to related party

64. (a) A bank shall not provide any credit facility to its directors, officer or shareholders holding more than five per cent of the voting shares of the bank.
- (b) No bank licensed institution shall enter, directly or indirectly, with a related party into any transaction on terms and conditions that are less favourable than market terms and conditions.
- (c) A bank shall enter into a transaction with a related party unless the following conditions are met :-
 - (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; and
 - (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) The Central Bank may regulate 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 such related party.
- (f) All liable 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) A bank shall, in the event of any transaction of a bank with a related party person breach of the terms and conditions stated in this section, promptly reported to the Central Bank describing the default person.
- (h) If a bank would not take any arrangement 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) Giving loan enacted in this section shall, if the credit facility is granted under a scheme applicable to the employees of such bank, not apply to a director or officer who is an employee of the bank.
65. The Central Bank may issue regulations to set the maximum foreign currency exposure for the banks, in specified foreign currency or currencies through regulations.
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 or the origin of financial resources, of such banks.
- (c) Any banks that fail to comply with a requirement prescribe 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) Bank shall keep on file the pertinent documents for every transaction and commitments of its, 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) Types of documents;
- (2) Manner and System of retention;

- (3) Duration of retention; and
- (4) Such other requirements deemed necessary to give effect to this section.

Money Laundering and the Reporting of suspicious transactions

68. The Central Bank may prescribe procedures that bank and non-bank financial institution shall perform related to the information to be reported to respective entity pursuant to the laws enacted by Pyidaungsu Hluttaw and the requirements in anti-money laundry law and anti-terrorism law.

Control of establishment or acquisition of subsidiaries

69. A bank shall obtain prior approval of the Central Bank for the followings :-

- (a) Establishing or acquiring subsidiaries within or outside the Union of Myanmar;
- (b) Opening any office in or outside the Union of Myanmar.

Establishment of correspondent banking relationship

70. (a) The bank may establish a correspondent banking relationship with any financial institution outside the Union of Myanmar.
- (b) The Central Bank may, regarding with the establishment of correspondent banking relationship with the financial institution outside of Union of Myanmar, regulate the terms and conditions.

Protection of the financial service customers

71. (a) The bank shall be responsible to protect the financial service customers and promote the financial capability of the banks.
- (b) For the purpose of carrying out the responsibility and duty under subsection (a), the Central Bank shall be empowered :-
- (1) To plan formulate an implement a national strategy for financial consumer protection in Myanmar;
 - (2) To co-ordinate consumer protection measures carried out by other financial sector regulators;

- (3) To receive all necessary information from other financial sector regulators and financial institutions;
 - (4) To 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) To promote an out of court dispute resolution system to deal with disputes between financial institution and its customers;
 - (6) To promote and consolidate customer research and data collection;
 - (7) To create an effective financial literacy network of stakeholders; and
 - (8) To keep the Government and public informed of the activities and issues in the area of financial customer protection.
- (c) The Central Bank may issue regulations necessary to give effect to this subsection (a) and (b).

Anti-Competitive practices

72. The Bank shall not carry out the followings :-

- (a) Entering into contracts or agreements or adopting practices of any kind which would secure them a position of dominance on the money, financial or exchange markets;
- (b) Engaging in manipulative practices in order to obtain an unfair advantage for themselves or for third parties.

Chapter (10)

Board of Directors and Chief Executive Officer of the Bank

73. (a) 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.

74. (a) All function to be performed and all powers to be exercised by the bank, besides those given to be performed by the general meeting of the shareholders, shall be performed and exercised by the Board of Directors subject to this Law.
- (b) The Board of Directors may frame necessary bye-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 followings :-
- (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) Ensuring that the bank comply with the requirements of this law and rules, regulations, directives and guidelines issued there under.
75. (a) The Board of Directors may form one or more committees or sub-committees according to need for specific purpose including :-
- (1) Risk management committee;
 - (2) Credit committee;
 - (3) Remuneration committee;
 - (4) Auditing committee; and
 - (5) Liabilities and assets management committee.
- (b) The functions, duties, powers and working procedures of a committee or sub-committee formed under sub-section (1) and the remuneration or allowances to be paid to its members shall be as determined by the Board of Directors.
76. (a) Any person shall be eligible to be appointed, elected or nominated as a director, chief executive or manager of a bank as long as that person is a fit and proper person to hold office and he 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 of 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 judgement 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 under law in Myanmar or abroad;
 - (8) Whether such person has been a substantial shareholder, director, chief executive officer of any bank or financial institution in Myanmar or elsewhere whose licence has been suspended or has been cancelled.
- (c) Without prejudice to sub-section (b), a director, chief executive officer 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 or elected as a director of a bank licensed institution before the bank licensed institution 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-section (b), (c) and (d).

Appointment and Conditions of Service of Chief Executive

77. (a) The Board of Directors 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 licensed institution unless the bank licensed institution has complied with Section 76 (d).
- (c) The Central Bank may, either approve or disapprove the proposed appointment or nomination as Chief Executive 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 subsection (c) may within fifteen days of the date receipt of the notice, appeal to the Central Bank.
- (e) On receipt of a notice of appeal under subsection (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 shall be final and binding.

Disqualification and Removal from Office of Directors and Officers

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 65 (d);
 - (3) The person whose appointment or nomination has been disapproved by the Central Bank under section 77 (c);
 - (4) The person has become permanently incapable of performing duties with the bank; or
 - (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) The Central Bank may, where any of the directors or chief executive of a bank is found to be ineligible under subsection (a), continues to hold office :-
- (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 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 subsection (c) shall take effect from the date of receipt by the director of the notification of removal given by the Central Bank, notwithstanding the provisions of any other law or the Articles of Association of the bank.
- (f) A bank which fails to comply with any direction given under paragraph (1) of subsection (c) within the period specified and any director or officer who has been served with a notice under paragraph (2) of subsection (c) 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 subsection (c), or the person concerned, may appeal to the Central Bank in which case, the procedures provided for under sections 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 or commercial interest that the person or any relatives may have either directly or indirectly.
- (b) Such disclosure pertained under subsection (a), shall be made upon first becoming a director, chief executive or manager of the bank and annually thereafter and in accordance with any regulations as may be prescribed by the Central Bank.
- (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 liabilities imposed by the 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 wilful 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 wilfully permitting gross negligence or wilful 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, transaction of a customer of a bank.
- (b) No director, officer or employee of any bank, 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 subsection (a) shall disclose the same to any other person.

Duty to maintain Secrecy

82. (a) The provisions of section 70 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 licensed institution 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 bank;
 - (12) where the disclosure is solely in connection with the transfer or proposed transfer of the business of the bank licensed institution to another bank;
 - (13) where the disclosure is solely in connection with the restructure, transfer or sale of a bank licensed institution under Chapters (14) and (15); and
 - (14) where such disclosure is authorized under the law relating to anti-money laundering and anti-terrorism law.
- (b) In any civil proceedings under subsection (a) (6) or (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 closed-door hearing 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 subsection (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, and
- (b) share supervisory information, on a confidential basis, with other official 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 (11)**Accounts, Audit and Financial Statements****Accounts and Financial Statements Reports**

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 licensed 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 licensed institution for periods of four years.
- (c) A member of the Board of Director shall lead the Audit committee. 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 licensed institution, supervise compliance with such procedures, and audit the bank licensed institution's accounts and records;
 - (2) monitor compliance with the laws and regulations applicable to the bank licensed institution and report to the Board of Directors thereon; and
 - (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 shall prepare at the expiration of each financial year :-
- (1) a balance sheet as at the last working day of such financial year; and
 - (2) a profit and loss account in respect of such year; and
 - (3) such other financial statements as required by the Central Bank.
- (b) The balance sheets and profit and loss 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) A 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 licensed.
- (f) A bank shall prepare the balance sheet and profit and loss account in such form contained conditions prescribed by the Central Bank and shall perform in a manner subject to stipulations of the Central Bank regarding with the approval issuance and publishing to public.

- (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 licensed institution, require the bank licensed institution :-
- (1) to publish a disclosure statement that contains the information that was omitted; or
 - (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) Each bank shall prepare and submit to the Central Bank periodic financial returns.
- (b) Each return required under subsection (a) shall be –
 - (i) submitted in such form within the period prescribed by the Central Bank,
 - (ii) Certified as to its accuracy by the chief executive and the chief financial officer of the bank licensed institution.
- (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; and
- (d) Failure to submit any return as required by or under this section shall be an offence under this Act.

External Auditors

88.

- (a) Each bank shall be liable to appoint suitable external auditor for auditing its accounts through holding the general meeting;

- (b) Banks shall replace their external auditors at least once every five years but shall not appoint the same auditor for more than three consecutive times or such period shall be as set forth 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 licensed institution 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; and
- (i) The Central Bank may issue regulation on the criteria for external auditors and related matters.

89.

- (a) Every audit report, which shall be completed within three months of the end of the financial year, shall contain a statement by the auditors as to whether –
 - (i) in their opinion, the balance sheet and profit and loss account are full and fair and properly drawn up,

- (ii) whether they exhibit a true and correct statement of affairs of the bank,
 - (iii) the information obtained from the officers or agents of such bank is satisfactory, and
 - (iv) Such other relevant matters as may be prescribed by the Central Bank.
- (b) For bank, 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) If an auditor, in the course of the performance of his duties as an auditor of a bank, is found out any of the following acts, he shall report the Central Bank of Myanmar promptly:-
- (i) 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,
 - (ii) losses have been incurred which reduce the capital funds of the bank by fifty percent,
 - (iii) serious irregularities have occurred, including irregularities that jeopardize the security of the creditor, or
 - (iv) he is unable to confirm that the claims of creditors are still covered by the assets.

90.

- (a) The external auditor must submit the audit report to both the concerned bank and the Central Bank.

- (b) While submitting the audit report to the Central Bank under sub-Section (a), the external 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 (12)

REGULATION, INSPECTION AND SUPERVISION

On-Site Examinations of bank licensed institution

91.

- (a) The Central Bank shall carry out an on-site examination to each bank at least once in every two years;
- (b) The Central Bank may –
- (i) conduct any on-site examination of a bank under examination jointly with other persons.
 - (ii) select, appoint and authorize any chartered accountant or firm of chartered accountants to be an examiner.
- (c) It shall be lawful for any examiner –
- (i) to require any director, officer, other 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;
 - (ii) to require any director, officer, other employee or auditor of a bank under examination to produce for inspection any documents and cash, securities and other assets, of the bank, in his possession or custody;
 - (iii) in any case where there is evidence of mismanagement by a bank under examination, to request-
 - (aa) to submit the accounts of the institution for audit by an auditor authorized by the Central Bank;
 - (bb) to furnish to the auditor such information; and

- (cc) to produce any documents and cash, securities and other assets of the bank licensed institution or in its possession or custody (examiner's) for inspection by the auditor, or
- (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 this section;
- (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;
- (f) A person required to furnish information to the Central Bank under subsection (e) shall do so, notwithstanding any legal requirement to keep such information secret, 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, the Central Bank may for the purpose of an examination under this section also examine the business of any company, which is related to such bank:-
- (i) a holding company or subsidiary company of the bank under examination,
 - (ii) a subsidiary company of a holding company of the bank under examination, and
 - (iii) an associate company of the bank under examination.
- (h) No person is allowed to fails to comply with any requirement of this section, or imposed on him by the Central Bank under this section.

Inspections made by Foreign Banks

92.

- (a) A foreign bank may inspect its branch office of the company and bank established in the Myanmar after securing the approval of the Central Bank and subject to the conditions prescribed by the Central Bank; and
- (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 (13)**CORRECTIVE ACTION AND BANK RESOLUTION MEASURES****Responsibility of Central Bank concerning compliance by bank**

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.

Circumstances under which corrective actions may be taken by the Central Bank

94.

(a) The Central Bank may set up corrective action plans to carry out the followings where-

(i) a bank informs the Central Bank that it is insolvent or that it is likely to become unable to meet all or any of its obligations to a material extent or that it is about to suspend payment to any extent; or

(ii) whether after an inspection under Section 91, or otherwise, the Central Bank shall inform a bank upon finding out any of the following occurrence:-

(aa) is carrying on its business in a manner detrimental to the interests of its depositors, creditors or the public generally;

(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) Central Bank is being hindered in supervising the bank under this Law 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 whose license to carry on banking business in the country of its principal place of business has been cancelled; or
- (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) having loss in business for three fiscal years consecutively.
- (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, or prejudice the interests of the bank, the Central Bank may proceed to take any of the corrective actions under section 96 without giving a warning notice.

Warning notice to be issued by Central Bank

95.

- (a) Where the Central Bank has made a determination that any of the circumstances described in section 84 exists in respect of a bank licensed institution, the Central Bank shall issue a warning notice to the bank licensed institution.
- (b) Upon being served a notice under sub-section (a), the bank licensed institution 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-
 - (i) give details of remedial measures to address the underlying weaknesses or lapses in the bank licensed institution;
 - (ii) be approved by the Board of Directors of the bank licensed institution concerned;
 - (iii) specify the timeframe within which the weaknesses or lapses would be satisfactorily addressed; and
 - (iv) explain the monitoring mechanisms for the implementation of the remedial measures.
- (d) A bank licensed institution 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 licensed institution fails to submit a plan of action as required under sub-section (b) within the specified time or if the Central Bank determines that the plan of action submitted by the bank licensed institution is inadequate, or if the bank licensed institution fails to implement the plan submitted under sub-section (b), the Central Bank may take any such corrective actions specified in section 86.

Power of Central Bank to ensure corrective actions taken by bank licensed institution

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-
- (i) give warning or prohibit the bank against entering into any particular transaction or class of transactions;
 - (ii) direct the bank to cease and desist from any unsafe or unsound practice or contravention;
 - (iii) direct the bank to take appropriate action as may be directed by the Central Bank;
 - (iv) during the course, or after the completion, of any inspection of a bank under section 91,
 - (aa) direct the bank to call a meeting of its directors for the purpose of considering any matter relating to the affairs of the bank;
 - (bb) direct an officer of the bank licensed institution to discuss any such matter with the Central Bank;
 - (cc) require the Board of Directors of the bank licensed institution or any committee 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 licensed institution or of its offices or branches are being conducted and make a report thereof; or
 - (ee) require the bank licensed institution 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;
 - (v) direct 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;

- (vi) direct the bank licensed institution to maintain higher capital adequacy or liquidity ratios or place other restrictions or conditions on the business conducted by the bank;
- (vii) suspend in whole or part of the business of the bank;
- (viii) 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;
- (ix) suspend or permanently bar from office of the bank, any director, chief executive, or officer;
- (x) restrict the powers of any director, chief executive, officer and employee of the bank;
- (xi) limit the compensation, including management fees and bonuses paid to directors and senior officers of the bank;
- (xii) prohibit or impose limitations the acceptance of deposits and the granting of loans or advances or the making of investments by the bank;
- (xiii) direct the bank to enhance its governance, internal controls and risk management systems;
- (xiv) direct to downsize operations and sale of assets, restrict the expansion of branches or offices or close branches or offices in Myanmar or abroad, of the bank;
- (xv) enhance provisioning for assets of doubtful quality;
- (xvi) prohibit principal or interest payments on subordinated debt provided by the shareholders of the bank;
- (xvii) by order in writing made by the Central Bank, remove from office, any director, chief executive or officer of the bank other than of the State owned bank. However, if they are from the State owned bank, the Central Bank shall inform the relevant authority in order to take necessary action;

- (xviii) terminate the Board of Directors and take control of the bank and operate its business through the appointment of any person as an Administrator, selected by the Central Bank as being appropriate to manage the bank, and
 - (xix) 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), (17) and (18) 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 the government 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 chief executive officer or officer removed from office in a bank 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 that bank.
- (h) The removal of any director, chief executive officer 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 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 (14)

ADMINISTRATORSHIP

Appointment of an Administrator under this Law

97.

- (a) Administrators shall be appointed by an order of the Central Bank under of section 96(a) (18).
- (b) For the purposes of subsection (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 objection letter on behalf of the bank to the Central Bank objecting 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 an objection letter, the Central Bank shall review the appointment of the Administrator decide either to affirm the appointment or to terminate the appointment, giving the grounds for its decision in writing.
- (d) The decision made under paragraph (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 that bank, for such time as may be specified in the order or until such time when the order is revoked.
- (c) Throughout the period the order is in force, all the powers of the bank, and of its directors and shareholders, under the constituent documents or memorandum or articles of the bank, or exercisable by the bank or its directors under any written law, or otherwise, there 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 prevailing Companies Law or any other law, take any one or more of the following measures for the purpose of carrying out the rehabilitation of the bank—

- (a) suspend, terminate and wind up, any part of the banks' 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) inform to relevant departments and organizations to take necessary actions if persons prescribed in sub-section (c) are from State-owned banks;
- (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; or
- (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 and action plan

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-
 - (i) returning the bank to compliance by carrying out an action plan;
 - (ii) rehabilitation of the bank under the procedure set forth in Chapter XV;
 - (iii) a voluntary liquidation under Chapter XVII;
 - (iv) revocation of the license and liquidation of the bank; and
 - (v) commencement of insolvency proceedings against the bank.

Termination of Administratorship

102.

- (a) The appointment of an Administrator shall terminate upon the earlier of-
 - (i) completion of the term specified in appointment the Administrator and extension thereof; or

(ii) a decision by the Central Bank; or

(iii) the decision of a 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.

103. The Central Bank may provide loans to relevant financial institutions by prescribing terms and conditions in order to support temporary dilution of liquidity during the term of the Administrator.

CHAPTER (15)

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 audit, the Central Bank may take any one or more of the following actions with regard to a bank -

(i) 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 licensed institution;

(ii) 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;

(iii) carry out a capital reduction exercise and cancel any portion of the shares of the bank which is lost or unrepresented by available assets;

(iv) 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; or

- (v) file an application in the concerned State/Regional High Court 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 -
 - (i) the Central Bank may publish the following for public information,
 - (aa) direct any shareholder of the bank to divest or transfer the shares owned by him to a fit and proper person;
 - (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; or
 - (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; and
 - (ii) the Central Bank may with the consent of the Union Parliament via Union Government do one or more of the following-
 - (aa) purchase any shares of the bank financed by the Union fund for the purpose of controlling the business of that bank; or
 - (bb) provide soft loans to the bank licensed institution, financed by the Union fund for the purpose of ensuring stability of the bank licensed institution and the financial system as a whole.
 - (cc) establish a new bank to be capitalized by the Union fund to acquire the assets and liabilities of the bank.
- (d) In deciding on the appropriate action to be taken under subsection (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 licensed institution, 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 confidential 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-
- (i) the person appointed by a decision taken by a simple majority vote of the owners of the bank to be the representative; or
 - (ii) 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 licensed institution 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 objections, review the objections 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 such 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 State/Regional High Court, 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 licensed institution have been transferred to another person under paragraph section 104(c)(1)(bb) and (cc) , the Central Bank may on notice being published for public information, through an application to the concerned State/Regional High Court cancel the residual share capital of the bank.
- (c) Where the Central Bank issues an order under subsection (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, payment on any such shares has not been made, the Central Bank may proceed to apply to the concerned State/Regional High Court for the cancellation of such shares for which payment has not been made.
- (d) Where the share capital of a bank licensed institution is reduced pursuant to subsection (a), or any of its shares is cancelled pursuant to subsection (b), the Central Bank may require the

constituent documents or memorandum of articles of the bank licensed institution to be altered at the company registration office through application.

Vesting of Assets and Liabilities

107. Where all or part of the assets and liabilities of a bank licensed institution are to be vested or transferred to another bank licensed institution or financial institution under section 104, the Central Bank may by order published for public information. This order shall be final and conclusive.

Conditions for Vesting

108. No vesting order shall be made unless-

- (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 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—
 - (i) 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 even though no other action shall be required to perfect such transfer or acquisition;

- (ii) 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;
 - (iii) 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 prevailing Companies Law;
 - (iv) 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; and
 - (v) if all assets and liabilities of the transferee institution 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—
- (i) when the transferee institution transfers all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments relating to the vested assets or liabilities thereof to the acquiring institution, such transfer shall be deemed as being completed starting from the date when the transferee institution is permitted to do so,
 - (ii) 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 shall be deemed with effect from the relevant date to be actions and proceedings instituted by or against the acquiring institution.
- (c) For the purposes of this section-
- (i) 'relevant date' means the date the vesting order is published,

- (ii) “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 of taxes and fees regarding any transferring of assets or liabilities may be applied at the Ministry under the provisions of 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.
- (i) prohibit any bank from carrying on all its banking business, or such part of it, as may be set out in the order;
 - (ii) 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;
 - (iii) 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 paragraph (1) or paragraph (2); or
 - (iv) 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 subsection (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 subsection (a).

- (c) An order made under subsection (a), and a further order under subsection (b) may be revoked by the Central Bank at any time and any such order may contain all such incidental and consequential orders and directions deemed necessary by the Central Bank.

CHAPTER (16)

REHABILITATION OF NON-BANK FINANCIAL INSTITUTION AND SCHEDULED INSTITUTION

112. Non-bank financial institution and scheduled institution shall be rehabilitated in accordance with procedures.

CHAPTER (17)

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

113.

- (a) No person shall file a petition to Regional or State High Court for the voluntary winding-up or the liquidation of an incumbent bank without the written approval of the Central Bank.
- (b) An approval under subsection (a) shall not be granted unless the Central Bank is satisfied –
- (i) that the incumbent bank is solvent and has the ability to repay its depositors and other creditors without delay; and
 - (ii) 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) 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 voluntary liquidation has –
- (i) repaid its depositors; and
 - (ii) paid all financial liability or obligations incurred under this Law and return all funds and other property held by it in a fiduciary capacity.
- (b) In addition to the requirement in subsection (a), an incumbent financial institution has
- (i) wound- up all operations undertaken; and
 - (ii) immediately cease to carry on the business to be liquidated, exercising only such powers as are necessary to effect an orderly liquidation; and
- (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 subsection (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 licensed institution shall cause a notice of the winding-up or voluntary liquidation –
- (i) to be sent to the Registrar of Companies within fourteen days of the receipt of the approval under section 113, from the Central Bank;

- (ii) 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;
 - (iii) to send intimation to creditors acquiring bank loans to return all of their loans as quickly as possible,
 - (iv) to be published once in one widely circulated newspapers in Myanmar; and
 - (v) 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-
 - (i) it is impracticable to do so; and
 - (ii) the person has otherwise had adequate notice of the winding up and liquidation.

Rights of Creditors in winding up or Voluntary Liquidation

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 and 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 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-
- (i) whether in the statement of accounts are full and fair and have been properly drawn up;
 - (ii) whether the report of winding up or liquidation exhibits a true and correct statement of the liquidation of the incumbent bank;
 - (iii) 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; and
 - (iv) 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:
- (i) 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; and
 - (ii) 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-
- (i) 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;
 - (ii) transmitted to the Central Bank funds payable to all depositors, other creditors or persons entitled thereto who have not claimed such funds; and
 - (iii) 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 officer 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; or
- (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; or
- (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; or
- (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 ("owners' representative") who shall be—

- (a) for a domestic bank not being a state owned corporation, 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 corporation, Government or his duly authorized representative; and
- (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 State/Regional High Court 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 State/Regional High Court if -

- (a) none of the grounds of section 118 (a) applies; or
- (b) the petition is not accompanied by the documents required; or
- (c) any document or other evidence submitted to the High Court in support of the petition is manifestly false or inaccurate and without such document the petition does not meet the requirements of the law; or
- (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; or
- (e) the petition concerns a domestic bank being a state owned and the a written guarantee is provided for the due payment of all liabilities of the bank; or
- (f) the petition does not meet any other requirement of the law.

Appointment of Liquidator

122. By its decision to commence liquidation proceedings against bank, concerned State/Regional High Court shall appoint the Central Bank or a person or persons nominated by the Central Bank to act on its behalf ("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; and
- (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 bank in liquidation that engaged in cross border activities-
 - (i) if a bank in liquidation has branch in a foreign country, it shall cooperate with the authorities of that country;
 - (ii) 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 State/Regional High Court;
 - (iii) the Concerned State/Regional High Court may decide to what extent foreign financial insolvency resolution measures against foreign bank should be recognized in liquidation proceedings commenced by the concerned State/Regional High Court concerning their foreign bank branch in Myanmar; and
 - (iv) if a foreign bank is in liquidation in the country where its principal place of business is located, the High Court may at the request of the foreign bank, authorize the transfer to the liquidator in that country such assets of the foreign bank branch in Myanmar, as the foreign bank 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.

126. The Central Bank shall set forth as follows:-

- (a) Practices and procedures for liquidation;
- (b) Duties and responsibilities of liquidator;

- (c) Systems for making final payments, settlements and negotiations;
- (d) Procedures for making set-off and nettings;
- (e) Practices for distributions;
- (f) Practices for liquidation in respect of foreign branch bank; and
- (g) Termination of liquidation.

127.

- (a) If provisions in respect of insolvency under the Myanmar Companies Act, Special Companies Act or other relevant laws are not prescribed in this Chapter, they shall not be applicable to any bank; and
- (b) Any appeal letter in respect of final order for a bank or appointment of the conservator shall be applied and submitted to the relevant Region or State High Court through the liquidator.

CHAPTER (18)

E-MONEY, E-BANKING AND MOBILE BANKING

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; and
- (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 –
 - (i) a bank licensed institution; or

(ii) 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.

Authority to Regulate 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 regulations applicable to the 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 regulations designed to facilitate inspection by the Central Bank of their e- money business.

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 any such section 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 phone banking and other forms of electronic banking (e- banking services) in Myanmar.

(b) The Central Bank may issue necessary regulations and guidelines for the following activities:

-

- (i) to limit systemic and other risks that could threaten the stability of financial markets or undermine confidence in the payment system;
- (ii) to encourage institutions to educate customers about their rights and responsibilities and how to protect their own privacy;
- (iii) to encourage the development of effective, low risk, low cost and convenient payment and financial services to customers and businesses through E-services;
- (iv) to ensure institutions to observe regarding electronic banking services; and
- (v) on conditions and processes for obtaining the Central Bank approval for establishing of e-banking services.

CHAPTER (19)

OVERSIGHT OF PAYMENT AND SETTLEMENT SYSTEM

Payment System Policy

133.

- (a) 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 co-operate with 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 to-

- (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 ; and
- (d) to facilitate the electronic presentment of cheques.

Power to establish and operate systems and designate 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 ; and
- (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.

136.

- (a) In order to facilitate the clearing of cheques and other 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 acts, in relation to a clearing and settlement system and its clearing house:
 - (i) be a participant, participate and act as a central counter-party, including in a loss-sharing mechanism;
 - (ii) act as a custodian of financial assets, or settlement agent, or both;

- (iii) accept and pay interest on deposits from clearing house, a participant or the central counter-party; and
- (iv) provide intra-day liquidity to the participants.

Validity of Netting Agreements

137. Where an institution or the Central Bank is a party to a netting agreement, then notwithstanding anything in any other law relating to insolvency, the institution or the Central Bank may enforce the agreement.
138. For the purposes of this Chapter, “payment service provider” includes money service providers, payment instrument issuers and payment system operators.

Legality of Settlement Rules

- 139.
- (a) The participants, the central counter-party and the Central Bank shall conform to regulations of a clearing and settlement system;
 - (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 (truncated cheque) for payment to the bank on whom it is drawn, by transmitting an image and or electronic payment information of the cheque as stipulated by Central Bank.

- (b) In making the electronic presentment of a cheque under subsection (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.
141. The Central Bank shall prescribe practices in respect of maintaining of rejected cheques and cheque images, systems for electronic presentment of cheques as well as implementation of provisions under this Chapter.

CHAPTER (20)

CREDIT INFORMATION

Powers of the 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 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) Bank licensed institutions, NBFIs and other institutions shall ensure the veracity of the credit information submitted to a credit bureau.

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 bank licensed institutions, NBFIs and scheduled institutions.
- (b) No person shall operate a private credit bureau without a valid license issued by the Central Bank.

Use of credit bureau information

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

CHAPTER (21)

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-
- (i) the amount of any fees payable under section 14 (a);
 - (ii) any remuneration and expenses payable by the bank to —
- (aa) an auditor appointed;
- (bb) an administrator appointed under section 96(a)(18); and

(iii) 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 subsection (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 -

(i) the Central Bank exceeded its legal authority;

(ii) the procedures followed by the Central Bank in making its decision were materially inconsistent with the procedures prescribed by this Law;

(iii) the notification, or publication of the rules and regulation of the Central Bank fails to meet a material requirement of this Law and

(iv) 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 in the sub-section (a) shall be the concerned State/Regional High Court.

Exemption of certain transactions from stamp duties

148. No stamp duty imposed by the prevailing Law on stamp duties or tax shall be payable in respect of the transfer of shares and assets of a bank or any of its subsidiary companies, sold or disposed by the bank licensed institution if such sale or disposal has been approved by the Central Bank under section 107.

CHAPTER (22)

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 best evidence rule for electronic documents

150.

- (a) The best evidence rule in respect of an electronic document is satisfied-
- (i) on proof of the integrity of the electronic documents system by or in which the electronic document was recorded or stored; or
 - (ii) if establish an evidentiary presumption.
- (b) Despite subsection (a), in the absence of evidence to the contrary, an electronic document in the form of a printout satisfies the best evidence rule if the printout has been manifestly or consistently acted on, relied on or used as a record of the information recorded or stored in the printout.

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; or
- (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) For the purpose of determining by a Court 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 contains any information in digital form, where "information" may include data, text, sounds, codes, computer programs, software, or databases.

CHAPTER (23)**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 7 years, within the first month of every fiscal year; and

- (b) The Central bank may issue guidelines on unclaimed moneys and dormant accounts as it deems necessary.

CHAPTER (24)

ADMINISTRATIVE PENALTIES

154. The Central Bank may impose any of the following administrative penalties on financial institutions, board of directors of financial institutions, chief executive officers, shareholder, managers and staff upon breaching any regulations, orders, directives or procedures enacted under this law:-

- (a) Warning,
- (b) Fines,
- (c) orders including those restricting the operations of financial institutions,
- (d) Temporary suspension or termination from duties in financial institutions.

155.

- (a) 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 (c) shall be final.

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

157. Those imposed by administration penalties under section 154 shall pay compensation immediately to aggrieved financial institutions or persons.

CHAPTER (25)

PROHIBITIONS

158. No person is allowed to establish a bank without a license.
159. No person is allowed to establish a non-bank financial institution without the registration certificate issued by the Central Bank.
160. No person is allowed to provide any fraudulent fact and information at the time of making an application to the Central Bank.
161. Other than following institutions, no person is allowed to use expressions such as bank, trading bank, development bank, banker or banking business without the license or letter of prior approval by the Central Bank:-
- (a) any association of the bank,
 - (b) association for which such expression is usual under the law or international agreement,
 - (c) office or representative of foreign bank,
 - (d) institution operated by a government representative who is conducting banking business, and
 - (e) any individual exempted by notification by the Central Bank for public information.
162. No foreign financial institution is allowed to establish a representative office without the registration certificate issued by the Central Bank.
163. No person is allowed to carry out the business of accepting deposits without the license.
164. No person is allowed to use terms or expressions implying the meaning of finance company, leasing, factoring, credit token and money services without the license or the letter of prior approval of the Central Bank.
165. No financial institution or person is allowed to meet with any individual at home or abroad in order to acquire deposits for a matter of personal concern, make enticement, execute or make an order to execute an agreement.
166. No financial institution is allowed to describe or advertise its business operations fraudulently.
167. No licensee is allowed to transfer its license to operate to another person to carry out its business operation.

168. Licensees shall not be allowed to carry out any of the following activities without the letter of prior approval issued by the Central Bank:-
- (a) Selling of its banking business entirely or partially;
 - (b) Purchasing entire or partial business of another bank;
 - (c) Merger with another bank;
 - (d) Purchasing of entire or partial banking business established in Myanmar by a foreign bank;
and
 - (e) Selling of entire or partial banking business established in Myanmar by its own foreign bank.
169. Issuers of electronic money and credit tokens shall not breach provisions of this Law or Regulations issued by any provision under this Law.
170. No public credit bureaus is allowed to be in non-compliance with Regulations in respect of customers of money service or to fail to provide true and correct loan information required under the system of reporting loan information.

CHAPTER (26)

OFFENCES AND PUNISHMENTS

171. A person who contravenes any provision contained in sections 158, 159, 160, 162, 163, 167 and 168, shall upon conviction, be punished with an imprisonment of minimum 2 years to maximum 5 years in addition to a fine of Kyats 500 million.
172. A person who contravenes any provision contained in sections 161, 164, 165, 166, 169 and 170, shall upon conviction, be punished with an imprisonment of not exceeding 2 years in addition to a fine of Kyats 100 million.
- 173.
- (a) The Chairman of the Central Bank 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 percent of the amount of 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 subsection (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 Chairman 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 subsection (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 Chairman pursuant to the provisions of subsection (a) shall be paid into and form part of the Consolidated Fund.

174. Any person who makes attempts or aids or abets or conspiracy of any offense under this Law shall be guilty of such offense and shall be liable to the penalty provided for such offense.

CHAPTER (27)

MISCELLANEOUS

- 175. If any provision of this Law is inconsistent with those in the Myanmar Companies Act and Special Companies Act, it shall only be in compliance with provisions in this Law.
- 176. Every bank that holds a bank license shall surrender its license to the Central Bank within six months of the effective date. The Central Bank shall issue new license to thereto under section 11, of this Law subject to such terms and conditions as the Central Bank deems fit.
- 177. Every bank that holds a license 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 significant ownership, including the ultimate beneficial owner of such significant ownership and such other information on their owners, in particular owners of a significant ownership, as requested by the Central Bank, within one year of the law's entry into force.

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.
179. All rules, regulations, orders, direction, notifications and procedures issued under this Law, shall continue to remain in full force as long as they are not contrary to this Law.
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 effective date.
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 effective date, shall be deemed to continue to be lawful and valid under this Law.
182. Offences prosecuted under this Law are prescribed as cognizable offences.
- 183.
- (a) A person who carries out the assigned duties in good faith shall not be taken criminal action or civil action in implementing the provisions of this Law.
- (b) If any person being instituted a lawsuit while performing duties as per the assignment of the Central Bank, expenses incurred at the law court shall be borne by the Central Bank.
184. For the purpose of implementing the provisions of this Law, the Central Bank may issue rules, regulations, bye-laws, notifications, orders, directives and procedures as may be necessary.
185. The Financial Institutions of Myanmar Law (The SLORC Law No.16/90) is hereby repealed.

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I hereby sign this Law under the Constitution of the Republic of the Union of Myanmar

(Sd.) Thein Sein

President

The Republic of the Union of Myanmar

DRAFT TRANSLATION