

A BILL

*i n t i t u l e d*

An Act to amend the Money Services Business Act 2011.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

**1.** (1) This Act may be cited as the Money Services Business (Amendment) Act 2024.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

**General amendment**

**2.** The Money Services Business Act 2011 [*Act 731*], which is referred to as the “principal Act” in this Act, is amended in the English language text, by substituting for the words “money-changing business” wherever appearing the words “currency exchange business”.

**Amendment of section 1**

3. Subsection 1(3) of the principal Act is amended by substituting for the words “any authorized dealer” the words “a licensed bank”.

**Amendment of section 2**

4. Section 2 of the principal Act is amended—

(a) by substituting for the definition of “licensed bank” the following definition:

‘ “licensed bank” means—

(a) a licensed bank under the Financial Services Act 2013 [*Act 758*]; or

(b) a licensed Islamic bank under the Islamic Financial Services Act 2013 [*Act 759*];’;

(b) by inserting after the definition of “foreign currency” the following definition:

‘ “facilitating the transfer of funds” includes any one or more of the following acts:

(a) offering services to transfer funds;

(b) accepting or receiving funds;

(c) transporting funds;

(d) arranging for transfer of funds;

(e) issuing receipt for transfer of funds;

(f) utilising a system to transfer funds;

(g) allowing an account to be used for transfer or receipt of funds; or

- (h) engaging in any form of settlement activity, including net settlement, set-off and debt assignment, arising from transfer of funds;’;
- (c) in the definition of “substantial shareholdings” and “substantial shareholders” by substituting for the words “section 69D of the Companies Act 1965 [*Act 125*]” the words “section 136 of the Companies Act 2016 [*Act 777*]”;
- (d) in the definition of “director”, in paragraph (a), by substituting for the words “section 4 of the Companies Act 1965” the words “section 3 of the Companies Act 2016”;
- (e) by deleting the definition of “authorized dealer”;
- (f) in the definition of “wholesale currency business”, in paragraph (a), by substituting for the words “an authorized dealer” the words “a licensed bank”;
- (g) by substituting for the definition of “remittance business” the following definition:
  - ‘ “remittance business” means—
    - (a) the business of transferring funds; or
    - (b) the business of facilitating transfer of funds, whether in any form or by any means or whether there is any movement of funds or not, on behalf of an originator person in or outside Malaysia to a beneficiary person in or outside Malaysia, and the originator person and the beneficiary person may be the same person, but excludes such other business, activity, system or arrangement as the Bank may prescribe;’; and
- (h) in the definition of “company”, by substituting for the words “section 4 of the Companies Act 1965” the words “subsection 2(1) of the Companies Act 2016”.

**Amendment of section 4**

**5.** Subsection 4(4) of the principal Act is amended by substituting for the words “shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding ten years or to both” the words “on conviction, shall be punished with imprisonment for a term not exceeding ten years and a fine of not less than fifty thousand ringgit but not exceeding five million ringgit.”.

**Amendment of section 12**

**6.** Subsection 12(1) of the principal Act is amended by substituting for paragraph (a) the following paragraph:

“(a) the licensee, its chief executive officer, or any of its shareholders, controllers, directors, or managers, has been convicted of—

- (i) an offence under the Central Bank of Malaysia Act 2009, the Banking and Financial Institutions Act 1989 [*Act 372*], the Islamic Banking Act 1983 [*Act 276*], the Insurance Act 1996 [*Act 553*], the Takaful Act 1984 [*Act 312*], the Exchange Control Act 1953 [*Act 17*], the Payment Systems Act 2003 [*Act 627*], the Development Financial Institutions Act 2002 [*Act 618*], the Financial Services Act 2013, the Islamic Financial Services Act 2013, the Currency Act 2020 [*Act 827*] or any other written law administered by the Bank;
- (ii) an offence under the Companies Act 1965 or the Companies Act 2016; or
- (iii) any offence involving fraud, dishonesty, corruption or other offences of the same kind;”.

**Amendment of section 23**

7. Subsection 23(2) of the principal Act is amended by substituting for the words “, an association of employees of licensees for money services business and an authorized dealer” the words “and an association of employees of licensees for money services business”.

**Amendment of section 66**

8. Subsection 66(6) of the principal Act is amended in the national language text by substituting for the word “oleh” the word “kepada”.

**New section 66A**

9. The principal Act is amended by inserting after section 66 the following section:

**“Forfeiture of property upon prosecution for an offence**

**66A.** (1) All property seized under this Act are liable to forfeiture.

(2) An order for forfeiture or release of any property seized under this Act may be made by the court before which the prosecution for an offence has been held and an order for forfeiture of the property may be made if—

(a) the offence is proved against the accused; and

(b) it is proved to the satisfaction of the court that the property was the subject matter of the offence or was used in the commission of the offence.

(3) The court making an order under subsection (2) may—

(a) direct whether the order is to take effect immediately or at any future date;

(b) direct whether the forfeiture of the property shall be in full or in part;

(c) direct the manner through which the forfeited property shall be disposed of or dealt with; and

(d) include in that order all other necessary directions and conditions as the court thinks fit.

(4) All property forfeited under this section shall be vested in the Government of Malaysia.”.

### **Amendment of section 86**

**10.** Section 86 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) For the purposes of paragraph (1)(c)—

(a) “criminal conspiracy” has the same meaning assigned to it in section 120A of the Penal Code; and

(b) “abet” has the same meaning assigned to it in section 107 of the Penal Code.

### *ILLUSTRATIONS*

(a) *A*, an employer, who knows *B* is not a licensee under this Act invites *B* to provide remittance business services for *A*’s employees. *A* abets the commission of an offence committed by *B* to carry out remittance business without a licence under this Act.

(b) *A*, a remittance system provider, who knows *B* is not a licensee under this Act, continues to provide *B* with a system or application that supports *B*’s remittance business activity. *A* abets the commission of an offence committed by *B* to carry out remittance business without a licence under this Act.

(c) *A*, a landlord, who knows *B* is not a licensee under this Act, continues to rent out the premises to *B* although the Bank has informed *A* that *B* is carrying on currency exchange business without a licence. *A* abets the commission of an offence committed by *B* to carry out currency exchange business without a licence under this Act.”.

**New section 89A**

**11.** The principal Act is amended by inserting after section 89 the following section:

**“Admissibility of evidence**

**89A.** Notwithstanding anything to the contrary in any written law, any document, computer or other evidence obtained by the Bank, an examiner or an investigating officer by virtue of this Act which is relevant in any proceedings under this Act shall be admissible in such proceedings.”.

**Substitution of section 92**

**12.** The principal Act is amended by substituting for section 92 the following section:

**“Act to be read together with Division 2 of Part XIV of the Financial Services Act 2013 and Division 2 of Part XV of the Islamic Financial Services Act 2013**

**92.** (1) This Act shall be read together with Division 2 of Part XIV of the Financial Services Act 2013 and Division 2 of Part XV of the Islamic Financial Services Act 2013, and the provisions of this Act shall be in addition to, and not in derogation of, the provisions of such Divisions.

(2) In the event of any inconsistency between the provisions of this Act and Division 2 of Part XIV of the Financial Services Act 2013 or Division 2 of Part XV of the Islamic Financial Services Act 2013, Division 2 of Part XIV of the Financial Services Act 2013 and Division 2 of Part XV of the Islamic Financial Services Act 2013 shall prevail.”.

**Amendment of Schedule**

**13.** The Schedule to the principal Act is amended—

(a) by deleting paragraphs 2, 3, 4, 11, 12, 20, 22, 34 and 35; and

(b) by substituting for paragraph 18 the following paragraph:

“18. paragraph 30(10)(b);”.

**Saving**

**14.** (1) Any action, investigation or proceedings for any breach or offence under the principal Act committed before the date of coming into operation of this Act shall, after the date of coming into operation of this Act, be conducted as if the principal Act had not been amended by this Act.

(2) Any reference to “money-changing business” in any written law, or in any licence granted or other document or instrument issued by the Bank under the principal Act before the date of coming into operation of this Act, shall after the date of coming into operation of this Act be construed as a reference to “currency exchange business”.

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**EXPLANATORY STATEMENT**

This Bill seeks to amend the Money Services Business Act 2011 (“Act 731”). The proposed amendments seek to provide, among others, for the admissibility of evidence in the trial proceedings for offences relating to unlicensed money services business. The proposed amendments also seek to empower the court before which the prosecution has been conducted to make a forfeiture order for any property seized under Act 731.

2. *Clause 1* contains the short title of the proposed Act and the power of the Minister to appoint the commencement date of the proposed Act.

3. *Clause 2* seeks to provide for general amendment to Act 731 in the English language text, by substituting for the words “money-changing business” wherever appearing the words “currency exchange business”. This amendment seeks to avoid confusion among the public regarding the terms “money-changing business” and “money-lending business”.

4. *Clause 3* seeks to amend subsection 1(3) of Act 731 to provide for the non-application of Act 731 to a licensed bank. This amendment is in accordance with the repeal of the Exchange Control Act 1953 and the enactment of the Financial Services Act 2013 and the Islamic Financial Services Act 2013 which no longer use the term “authorized dealers”.

5. *Clause 4* seeks to amend section 2 of Act 731.

*Subclause 4(a)* seeks to substitute the definition of “licensed bank” to be consistent with the definition of a licensed bank under the Financial Services Act 2013 and a licensed Islamic bank under the Islamic Financial Services Act 2013.



*Subclause 4(b)* seeks to insert a new definition of “facilitating the transfer of funds”.

*Subclause 4(c)* seeks to amend the definitions of “substantial shareholdings” and “substantial shareholders” to update the reference to the Companies Act 2016.

*Subclause 4(d)* seeks to amend the definition of “director”, in paragraph (a) to update the reference to the Companies Act 2016.

*Subclause 4(e)* seeks to delete the definition of “authorized dealer” to be consistent with the repeal of the Exchange Control Act 1953 and the enactment of the Financial Services Act 2013 and the Islamic Financial Services Act 2013 which no longer use the term “authorized dealer”.

*Subclause 4(f)* seeks to substitute the words “authorized dealer” in the definition of “wholesale currency business”, in paragraph (a) with the words “licensed bank” to be consistent with the repeal of the Exchange Control Act 1953 and the enactment of the Financial Services Act 2013 and the Islamic Financial Services Act 2013 which no longer use the term “authorized dealer”.

*Subclause 4(g)* seeks to substitute the definition of “remittance business” to facilitate the prosecution for the offence of conducting money remittance business without a license by restructuring the existing definition and deleting the words “with a view to making the funds available to a beneficiary person in or outside Malaysia” to show direct involvement of the accused in making the funds available to the beneficiary.

*Subclause 4(h)* seeks to amend the definition of “company” to update the reference to the Companies Act 2016.

6. *Clause 5* seeks to amend subsection 4(4) of Act 731 to impose mandatory punishment of imprisonment and a minimum fine of fifty thousand ringgit for the offence of carrying out money services business without a licence.

7. *Clause 6* seeks to substitute paragraph 12(1)(a) of Act 731 as a consequence of references to several new Acts and Acts that have been re-enacted.

8. *Clause 7* seeks to amend subsection 23(2) of Act 731 by deleting the reference to “authorized dealer” to be consistent with the amendment to subsection 1(3) of Act 731.

9. *Clause 8* seeks to substitute the word “oleh” in subsection 66(6) of the national language text of Act 731 with the word “kepada” to make the provision consistent with the English language text.

10. *Clause 9* seeks to introduce a new section 66A into Act 731 to empower the court before which the prosecution has been conducted to order the forfeiture of any property seized under Act 731.

11. *Clause 10* seeks to introduce subsection (3) into section 86 of Act 731 to clarify the meaning of paragraph 1(c) and to provide for the illustrations for offences relating to criminal conspiracy and abetting the carrying out money services business without a licence.
12. *Clause 11* seeks to introduce a new section 89A into Act 731 to provide for the admissibility of evidence obtained by the Bank, an examiner or investigating officer under Act 731 in any court proceedings.
13. *Clause 12* seeks to amend section 92 of Act 731 to substitute the reference to the repealed Exchange Control Act 1953 with the reenacted provisions on exchange control in the Financial Services Act 2013 and the Islamic Financial Services Act 2013.
14. *Clause 13* seeks to amend the Schedule to Act 731 to enable the Bank to take administrative action on the violation of some provisions in Act 731.
15. *Clause 14* seeks to provide for saving provision.
16. Other amendments not specifically dealt with in this Explanatory Statement are minor or consequential in nature.

*FINANCIAL IMPLICATIONS*

This Bill will not involve the Government in any extra financial expenditure.

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