

Corporation may conduct special examinations pursuant to any strategic alliance agreement entered into with Bank Negara Malaysia under paragraph 25(2)(g).

(2) The scope of special examinations under subsection (1) may include the examination of records, books, accounts or other documents and transactions of a member institution.

(3) For purpose of this section, the officers or employees of the Corporation or any other person appointed by the Corporation are entitled to require the officer, auditor, receiver, manager, receiver and manager, liquidator, agent or any other person of the member institution to furnish such document, material, information or explanations as the Corporation may require.

(4) The Corporation may recover any cost of special examinations from a member institution as a debt due and payable to the Corporation.

(5) The Corporation shall make a report to Bank Negara Malaysia upon completion of the special examination.

PART VI

ACTIONS BY CORPORATION

Notification of non-viability

70. Bank Negara Malaysia may notify the Corporation in writing where a member institution has ceased, or, is likely to cease, to be viable.

Powers of Corporation in case of non-viability of member institution

71. (1) Where the Corporation has received a notification under section 70, it may exercise one or more of the following powers:

(a) require the member institution—

(i) to take any step, or any action, or to do or not to do any act or thing, in relation to itself, its businesses or its officers within such time as the Corporation may consider necessary or expedient;

- (ii) to stop receiving, taking, accepting or paying of deposits or from carrying on all its businesses or such part of it; or
 - (iii) to restructure the whole or part of its business,

as may be specified by the Corporation;
- (b) notwithstanding paragraph 25(2)(a), acquire the shares of the member institution from its existing shareholders or subscribe to shares issued by the member institution in accordance with the constituent documents of the member institution;
- (c) assume control of the whole of the assets, liabilities, businesses and affairs of the member institution, and carry on the whole of its businesses and to manage the assets, liabilities and affairs, or assume control of such part of its assets, liabilities, businesses and affairs including disposal of assets, and carry on such part of its businesses and affairs or appoint any person to do so on its behalf (hereinafter in this Part referred to as “the appointed person”) and the terms and conditions of the appointed person shall, subject to the direction under which the appointment is made, be determined by the Corporation and shall be binding on the member institution concerned; and to pay the costs and expenses of the Corporation or the remuneration of the person so appointed, as the case may be, out of the funds and assets of the member institution as a first charge on it;
- (d) apply to the High Court to appoint a receiver, manager or receiver and manager to manage the whole or part of the assets, liabilities, businesses and affairs of the member institution; or
- (e) subject to the approval by the Minister, present a petition to the High Court for the winding-up of the member institution or any financial institution the membership of which has been cancelled under section 39 or terminated under section 40.

(2) The Corporation or the appointed person, in effecting any transaction under this Part—

- (a) shall not be required to notify or obtain the approval of shareholders or creditors of the member institution in a general meeting or otherwise notwithstanding any rule of law, contract or anything in any law including sections 132C, 132D, 132E and 132G of the Companies Act 1965 or anything in the constituent documents of the member institution; and
- (b) shall not be required to make a take-over offer or be required to acquire the shares of the other shareholders of any member institution or its borrowers notwithstanding any rule of law, contract or anything in any law.

(3) Any person who fails to comply with any requirement of this section commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment not exceeding a term of five years or to both, and shall, in addition, be liable to a daily fine not exceeding fifty thousand ringgit for every day the offence continues after conviction.

Completion of resolution

72. (1) Where the Corporation has assumed control or appointed a person to do so on its behalf under paragraph 71(1)(c), the Corporation and the appointed person may, in addition to any of its rights and powers, carry out any resolution comprising—

- (a) a transaction or series of transactions that involves the sale or other disposal by the member institution of all or part of its assets or the assumption by another person of all or part of its liabilities or both; or
- (b) any other transaction or series of transactions the purpose of which is to restructure the whole or part of the business of the member institution.

(2) Where the Corporation considers that any resolution referred to in subsection (1) has been substantially completed, it shall cause a notice to that effect specifying the date on which such resolution was, in the opinion of the Corporation, substantially completed to be published in the *Gazette*.

(3) The Corporation shall petition for a winding-up of the member institution if, in the opinion of the Corporation, any resolution referred to in subsection (1) is not substantially completed on or before the date that is—

(a) two years after the date on which the Corporation or the appointed person assumed control of the member institution; or

(b) the expiration of any extension of that period set out in subsection (4).

(4) The Minister may, on the recommendation of the Corporation, approve one or more extensions of the period set out in paragraph (3)(b) for a further period of not exceeding three years and each extension shall not exceed one year.

(5) The period set out under subsections (3) and (4) shall not exceed five years from the date on which the Corporation or the appointed person assumed control of the member institution.

Establishment of Assessor Committee

73. (1) There is hereby established a committee by the name of the “Assessor Committee” whose functions shall be as set out in the First Schedule.

(2) Any decision of the Assessor Committee made on an application of a dissenting shareholder under the First Schedule shall be final and binding.

(3) Until the Corporation prescribes the rules under subsection (4), the Assessor Committee may determine its own procedure and conduct for its proceedings.

(4) The Corporation may prescribe rules relating to the procedure and conduct of the proceedings of or before the Assessor Committee and such rules shall prevail over any procedure or conduct earlier determined by the Assessor Committee under subsection (3).

Provisions in relation to assumption of control under paragraph 71(1)(c)

74. (1) Where control of a member institution has been assumed under paragraph 71(1)(c), the member institution and its officers shall immediately submit its assets, liabilities, businesses and affairs to such control, and shall provide the Corporation and, if the control is assumed by the appointed person, also to such appointed person, all such facilities as may be required to carry on the businesses and to manage the assets, liabilities and affairs, including disposal of assets, of the member institution.

(2) Where control of a member institution has been assumed under paragraph 71(1)(c), the Corporation or the appointed person, as the case may be, shall remain in control of the assets, liabilities, businesses and affairs of the member institution concerned, and carry on the businesses and to manage the assets, liabilities and affairs of that institution in the name and on behalf of that institution including disposal of assets until such appointment is revoked by the Corporation.

(3) Throughout the period of control of a member institution under paragraph 71(1)(c), there shall be vested in the Corporation or in the appointed person, as the case may be, all the powers of the member institution, and of its directors, under the constituent documents of that institution, or exercisable by the member institution or its directors under any law, or otherwise howsoever, regardless whether such powers are exercisable by resolution, special resolution or in any other manner whatsoever.

(4) During the period of control of a member institution under paragraph 71(1)(c) is in force, no director of the member institution shall, either directly or indirectly, engage in any activity in relation to the member institution, except as may be required or authorised by the Corporation or the appointed person, as the case may be, and no remuneration of whatever nature shall accrue or be payable to any director of the member institution, except such as may be approved in writing by the Corporation or the appointed person, as the case may be, in relation to any activity required or authorised as aforesaid by the Corporation or the appointed person, as the case may be.

(5) For the avoidance of doubt, it is hereby declared that an exercise of the power under paragraph 71(1)(c) shall not have the effect of conferring on, or vesting in, the Corporation or the

appointed person, as the case may be, any title to, or any beneficial interest in, any asset of the member institution.

(6) Where the Corporation or the appointed person has assumed control of a member institution under paragraph 71(1)(c), the Corporation or the appointed person—

- (a) in carrying on the businesses and managing the assets, liabilities and affairs of the member institution or in carrying out any transaction relating to the member institution or its assets, businesses and affairs, including disposal of assets, shall be deemed to be acting as the agent of the member institution; and
- (b) shall not, by reason of having assumed control of the member institution or any action taken by it, be held to have assumed or incurred any obligation or liability of the member institution for its own account.

(7) Any person who fails to comply with subsection (1) or (4) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment not exceeding a term of five years or to both, and shall, in addition, be liable to a daily fine not exceeding fifty thousand ringgit for every day the offence continues after conviction.

Power to reduce share capital and to cancel shares of member institution under paragraph 71(1)(c)

75. (1) Where the Corporation or an appointed person, has assumed control of the member institution under paragraph 71(1)(c) and the Corporation or appointed person, is of the opinion that the paid-up capital of such institution is lost or unrepresented by available assets, the Corporation or the appointed person, as the case may be, may apply to the High Court for an order to reduce the share capital of such institution by cancelling any portion of its paid-up capital which is lost or unrepresented by available assets.

(2) Where the High Court makes an order under subsection (1) to reduce the share capital of a member institution, the Court may—

- (a) on an application by the Corporation or the appointed person, as the case may be; and

- (b) if, on the expiry of thirty days from the date of any call made by the member institution on its shareholders to pay on their respective shares, payment on any such shares has not been made,

also order that such shares for which payment has not been made be cancelled accordingly.

(3) Where the share capital of a member institution is reduced under subsection (1), or any of its shares is cancelled under subsection (2), the Corporation or the appointed person, as the case may be, may cause the constituent documents of the institution to be altered accordingly.

(4) The powers conferred on the Corporation or the appointed person under the foregoing provisions of this section shall be in addition to any power exercisable under subsection 64(1) of the Companies Act 1965, and where an application is made to the High Court under subsection (1)—

- (a) the High Court may exercise any of the powers conferred on it under section 64 of the Companies Act 1965 in relation to an application for confirmation referred to in the application; and
- (b) subsections 64(9) and (10) of the Companies Act 1965 shall apply in relation to the application.

Stay of proceedings

76. (1) Where the Corporation or the appointed person, as the case may be, has assumed control of a member institution under paragraph 71(1)(c)—

- (a) no injunction may be brought or any other action or civil proceeding commenced against the Corporation or the appointed person in respect of the assumption of control;
- (b) no injunction may be brought or any other action or civil proceeding may be commenced or continued against the member institution or in respect of its assets;
- (c) no attachment, garnishment, execution or other method of enforcement of a judgement or order against the member institution or its assets may take place or continue;

- (d) no creditor of the member institution has any remedy against the member institution or its assets;
- (e) no creditor has any right of set off against the member institution, which for greater certainty, does not include the consolidation of accounts maintained in the normal course for the purpose of providing clearing and settlement services or the services referred to in section 79; and
- (f) no person may terminate or amend any agreement with the member institution or claim an accelerated payment under any such agreement with the member institution by reason only of—
 - (i) the insolvency of the member institution;
 - (ii) a default, before the assumption of control under paragraph 71(1)(c) by the Corporation or the appointed person, as the case may be, takes effect, by the member institution in the performance of its obligations under the agreement; or
 - (iii) assumption of control under paragraph 71(1)(c) by the Corporation or the appointed person, as the case may be,

as from the date of the assumption of control of the member institution by the Corporation or the appointed person, as the case may be.

(2) Subsection (1) shall not prevent any person who sustains losses from any action of the Corporation or the appointed person from instituting an action for damages for the losses suffered by such person.

(3) Notwithstanding any action instituted pursuant to subsection (2), the Corporation or the appointed person shall continue to exercise any or all of its powers under this Act.

Extension of time

77. Where—

- (a) for any purpose an act is required to be done within a particular period or before a particular time under the provision of any law or any agreement; and

- (b) this Act prevents the act from being done within that period or before that time,

the period is deemed to be extended or the time is deemed to be deferred for the duration of the period that such act is prevented by this Act from being done.

Agreements overridden for purposes of paragraph 71(1)(c)

78. Where the Corporation or the appointed person, as the case may be, has assumed control of a member institution under paragraph 71(1)(c), any stipulation in any agreement entered into by the member institution prior to the assumption of control shall be of no force or effect if it—

- (a) has the effect of providing for, or permitting, anything that, in substance, is contrary to section 76; or
- (b) provides, in substance, that on—
- (i) the insolvency of the member institution;
 - (ii) the default by the member institution in the performance of an obligation; or
 - (iii) the assumption of control,

the member institution ceases to have the rights to use or deal with the assets that the member institution would otherwise have.

Further supplies and advances

79. Nothing in sections 76 and 78 shall be construed as—

- (a) prohibiting a person from requiring payments to be made in cash for goods, services, use of leased or licensed property or other valuable consideration provided after the assumption of control under paragraph 71(1)(c) or the appointment of a receiver, manager or receiver and manager under paragraph 71(1)(d), as the case may be;
- (b) requiring the advance of money or credit to a member institution after the assumption of control under paragraph

71(1)(c) or the appointment of a receiver, manager or receiver and manager under paragraph 71(1)(d), as the case may be; or

- (c) requiring the provision to a member institution, after the assumption of control under paragraph 71(1)(c) or the appointment of a receiver, manager or receiver and manager under paragraph 71(1)(d) of any of the following services where to do so would be likely, as the case may be, in the reasonable opinion of the person providing the service, to result in that person advancing money or credit to a member institution after such assumption of control or appointment or to give rise, after such assumption of control or appointment, to a claim of that person against a member institution, namely:
- (i) cash management services;
 - (ii) services related to the redemption of debt instruments;
 - (iii) services related to the issuance of letters of credit or guarantees;
 - (iv) cheque certification services;
 - (v) currency supply services;
 - (vi) funds transfer services and remittance order services;
 - (vii) securities delivery and settlement services;
 - (viii) charge card, credit card, debit card and payment card services;
 - (ix) automated banking and teller machine services;
 - (x) electronic funds transfer at point of sale services;
 - (xi) consignment cheque services;
 - (xii) other services similar to those referred to in subparagraphs (i) to (xi);
 - (xiii) any service of a kind prescribed in the regulations; and
 - (xiv) a guarantee of liabilities in respect of any of the services referred to in subparagraphs (i) to (xiii).

Financial agreements or transactions

80. Nothing in section 76 shall prevent the termination of any of the following agreements or transactions in accordance with their terms or the setting off of an amount payable of such agreements or transactions including:

- (a) a currency or interest rate swap agreement;
- (b) a spot, future, forward or other foreign exchange agreement;
- (c) a commodity swap;
- (d) a repurchase agreement;
- (e) any derivative, combination or option in respect of, or agreement similar to, an agreement or transaction referred to in paragraphs (a) to (d);
- (f) any master agreement in respect of any agreement or transaction referred to in paragraphs (a) to (d);
- (g) a guarantee of the liabilities under an agreement or transaction referred to in paragraphs (a) to (d); or
- (h) any agreement or transaction of a kind prescribed in the regulations.

Provisions in relation to appointment under paragraphs 71(1)(c) and (d)

81. (1) In respect of a member institution which the Corporation or any appointed person, as the case may be, has assumed control of under paragraph 71(1)(c) or a receiver, manager or receiver and manager has been appointed under paragraph 71(1)(d), the Corporation, the appointed person or the receiver, manager or receiver and manager, as the case may be, shall have the power—

- (a) (i) to enter into any premises of a member institution and take possession and control of the assets and require any person in the premises to account for and deliver up to the Corporation, the appointed person, the receiver, manager or receiver and manager, as the case may be, possession and control of the assets;

- (ii) subject to subparagraph (iii), to sell or otherwise dispose of the assets and business undertaking of the member institution by private treaty or public sale or in such other manner and on such terms and conditions as the Corporation, the appointed person, the receiver, manager or receiver and manager, as the case may be, deems it appropriate;
 - (iii) to sell or otherwise dispose of any asset that is subject to an agreement creating a security interest to any person who agrees to assume the obligation secured by the security interest;
 - (iv) to arrange for the assumption of all or any part of the liabilities of a member institution by a person;
 - (v) to carry on the business of a member institution to the extent that the Corporation, the appointed person, the receiver, manager or receiver and manager, as the case may be, deems it necessary or beneficial;
 - (vi) to sue for, defend, compromise and settle, in the name of a member institution, any claim made by or against it;
 - (vii) in the name of a member institution, to do all acts and execute all receipts and other documents and for that purpose, when necessary, use its common seal; or
 - (viii) to do all such other things as may be necessary or incidental to the exercise of the rights, powers, privileges and immunities of the Corporation, appointed person, receiver, manager or receiver and manager; or
- (b) to recover out of the assets of a member institution all the costs, charges and expenses, including the remuneration, properly incurred by the Corporation, appointed person, receiver, manager or receiver and manager in the exercise of powers under paragraph (a), in priority to all other claims.

(2) Without limiting subsection 74(6), where the Corporation, appointed person, receiver, manager or receiver and manager exercises one or more powers under subsection (1), the Corporation, appointed person, receiver, manager or receiver and manager shall not, by

reason of the exercise of such powers, be held to have assumed or incurred any obligation or liability of the member institution for its own account.

Priority of payments in event of winding-up of member institution

82. (1) (a) Where a member institution is wound-up under paragraph 71(1)(e), the proceeds of the liquidation of the member institution shall, subject to section 10 of the Government Proceedings Act 1956 [Act 359] and paragraph (b), be paid to the depositors in priority over all other unsecured liabilities:

Provided that the proceeds from the liquidation of—

- (i) Islamic assets shall be utilised to pay the Islamic deposits; and
- (ii) conventional assets shall be utilised to pay the conventional deposits:

Provided further that any surplus after paying—

- (A) the Islamic deposits under subparagraph (i) shall be utilised to pay the conventional deposits; and
- (B) conventional deposits under subparagraph (ii) shall be utilised to pay the Islamic deposits; and

(b) where a receiver, manager or receiver and manager has been appointed under paragraph 71(1)(d) or a member institution is wound-up under paragraph 71(1)(e), all proper costs, charges and expenses, including the remuneration, of such receiver, manager, receiver and manager or liquidator so appointed shall be payable out of the assets of the member institution in priority to all other claims.

(2) Subject to regulations made under section 100 and in relation to paragraph 71(1)(e), the priority of payment for Islamic deposits shall be in the following manner:

- (a) Islamic deposits based on custody; and
- (b) other Islamic deposits.

**Application of the Banking and Financial Institutions Act 1989
or the Islamic Banking Act 1983**

83. (1) The Corporation in invoking any of its powers under this Part against a member institution licensed under the Banking and Financial Institutions Act 1989 or under the Islamic Banking Act 1983, as the case may be, shall be subject to the provisions of those Acts in addition to the provisions of this Act and shall not be in derogation of those Acts.

(2) Where there is any conflict or inconsistency between the provisions of the Banking and Financial Institutions Act 1989 or under the Islamic Banking Act 1983 and this Act, those Acts shall prevail.

PART VII**OFFENCES****Holding out as member institution**

84. (1) No person shall hold itself out to be a member institution, or represent that it or any other person is insured under the deposit insurance system unless such other person is a member institution.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment not exceeding a term of five years or to both and shall, in addition, be liable to a daily fine not exceeding fifty thousand ringgit for every day the offence continues after conviction.

False statements

85. Any person who prepares, signs, approves or concurs in any—

- (a) account, statement, return, report or other document required to be submitted to the Corporation under this Act that he knows or has reason to believe is false, or contains false or misleading information; or
- (b) return that does not present fairly information required to be submitted to the Corporation under this Act,