



LAWS OF MALAYSIA

Act 642

**MALAYSIA DEPOSIT INSURANCE CORPORATION
ACT 2005**

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LAWS OF MALAYSIA**Act 642****MALAYSIA DEPOSIT INSURANCE CORPORATION
ACT 2005**

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SCHEDULES

LAWS OF MALAYSIA**Act 642****MALAYSIA DEPOSIT INSURANCE CORPORATION
ACT 2005**

An Act to provide for the establishment of the Malaysia Deposit Insurance Corporation to administer a deposit insurance system under this Act and for matters incidental thereto or connected therewith.

[]

WHEREAS the stability of the financial system is a key determinant of the economic growth and prosperity of Malaysia:

AND WHEREAS the deposit insurance system is an important component of the financial safety net since it promotes and contributes to the stability of the financial system:

AND WHEREAS the purpose of the deposit insurance system is to protect depositors from the loss of part or all of their deposits in the event of the failure of a member institution and the Malaysia Deposit Insurance Corporation to be established under this Act is to carry out its mandated functions with speed and efficiency and promote sound risk management in the financial system:

AND WHEREAS special provisions are required in the public interest to empower the Corporation to implement promptly the resolution actions set out in this Act at minimum cost to the financial system:

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Malaysia Deposit Insurance Corporation Act 2005.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“asset” includes any Islamic financing facility, conventional credit facility, property, business and enterprise of any kind;

“Islamic asset” means an asset managed or owned through an Islamic banking business or Islamic financial business;

“conventional asset” means an asset other than an Islamic asset;

“Bank Negara Malaysia” means the Central Bank of Malaysia established under the Central Bank of Malaysia Act 1958 [Act 519];

“related”, in relation to a corporation, means related within the meaning of section 6 of the Companies Act 1965 [Act 125];

“associated” means a corporation where not less than twenty per centum and not more than fifty per centum of that corporation’s shares are held by another corporation, the first-mentioned corporation thereby being an associate corporation of the other corporation;

“security” includes a mortgage or charge, whether legal or equitable, debenture, bill of exchange, promissory note, guarantee, lien or pledge, whether actual or constructive, letter of hypothecation,

indemnity, undertaking and other means of securing payment or discharge of debt or liability, whether present or future, or whether vested or contingent;

“deposit” means—

- (a) a conventional deposit; or
- (b) an Islamic deposit;

“insured deposits” means those deposits separately insured as Islamic deposits or conventional deposits pursuant to section 49;

“Islamic deposit” means a sum of money or money’s worth received or paid on terms by any person, under which the receipt and repayment shall be in accordance with the terms of any agreement consistent with the Shariah on any basis including of custody or profit sharing;

“conventional deposit” means the deposit as defined under section 2 of the Banking and Financial Institutions Act 1989 [*Act 372*] and does not include an Islamic deposit;

“central depository” has the same meaning as defined under section 2 of the Securities Industry (Central Depositories) Act 1991 [*Act 453*];

“specified”, where no mode is mentioned, means specified from time to time in writing;

“prescribed”, where no mode is mentioned, means prescribed from time to time by order published in the *Gazette*;

“document” has the same meaning as defined under section 3 of the Evidence Act 1950 [*Act 56*];

“constituent documents”, in relation to a body, corporate or unincorporate, means the statute, charter, memorandum of association, articles of association, rules, by-laws, partnership agreement, or other instrument, under or by which the body is incorporated or established, or its governing and administrative structure, the scope of its functions, business, powers or duties are set out, whether contained in one or more documents;

“authorised depository agent” has the same meaning as defined under section 2 of the Securities Industry (Central Depositories) Act 1991;

“business group” means a group of companies where a member institution is related or associated with other companies of the same group;

“Governor” means the Governor of Bank Negara Malaysia;

“property” means any movable or immovable property and includes—

- (a) any right, interest, title, claim, chose in action, power or privilege, whether present or future, or whether vested or contingent, in relation to any property, or which is otherwise of value;
- (b) any conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of property where the person executing the conveyance is the proprietor or possessor, or wherein he is entitled to a contingent right, either for the whole or part of the interest;
- (c) any security, including any stock, share, debenture, bonds, loan stocks, transferable subscription rights or warrants;
- (d) any negotiable instrument, including any bank note, bearer note, Treasury bill, dividend warrant, bill of exchange, promissory note, cheque and negotiable certificate of deposit;
- (e) any mortgage or charge, whether legal or equitable, guarantee, lien or pledge, whether actual or constructive, letter of hypothecation or trust receipt, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present or future, or whether vested or contingent; and
- (f) any other tangible or intangible property;

“financial institution” means a licensed bank or a licensed finance company as defined under section 2 of the Banking and Financial Institutions Act 1989 or an Islamic bank as defined under section 2 of the Islamic Banking Act 1983 [*Act 276*];

“member institution” means any financial institution deemed to be a member institution under section 37 whose membership has not been cancelled under section 39 or terminated under section 40;

“Assessor Committee” means the committee established under section 73;

“conventional credit facility” means—

- (a) the giving of any advance, loan, trade credit or other facility in whatever form or by whatever name called whereby the person to whom the advance, loan, trade credit or other facility is given has access, directly or indirectly, to the funds or property of the person giving the same;
- (b) the giving of a guarantee or any security in relation to the obligations of any person; or
- (c) any other like dealing or transaction as may be prescribed by the Corporation;

“chief executive”, in relation to a corporation, means a natural person, by whatever name called, who, either individually or jointly with one or more persons, is responsible, subject to the authority of the directors, for the conduct of the business and the administration of that corporation;

“Chief Executive Officer” means the chief executive of the Corporation;

“Consolidated Fund” means the Federal Consolidated Fund established by the Federal Constitution;

“Board” means the board of directors of the Corporation;

“Minister” means the Minister charged with the responsibility for finance;

“facsimile seal” means the duplicate of the common seal of the Corporation;

“affected person” means—

- (a) any company owing a duty or liability under an Islamic financing facility or a conventional credit facility to the Corporation or any subsidiary of the Corporation, whether present or future, or whether vested or contingent;
- (b) any subsidiary of the company referred to in paragraph (a);
- (c) any company which has provided security for the performance of or discharge of a duty or liability owed by any person to the Corporation or any subsidiary of the Corporation, whether present or future, or whether vested or contingent; or
- (d) any company where at least five percent of its share capital has been charged, pledged or mortgaged by any person to secure the performance of or discharge of a duty or liability owed by any person to the Corporation or any subsidiary of the Corporation, whether present or future, or whether vested or contingent;

“primary affected person” means any company referred to in paragraph (a) of the definition of “affected person”;

“officer”, in relation to a member institution or an affected person, means the officer as defined under section 4 of the Companies Act 1965 and, in addition thereto, includes a person appointed under paragraph 71(1)(c) to assume control of a member institution or a receiver, manager, receiver and manager or court-appointed liquidator;

“office” includes the head office, principal place of business, a branch, an agency, a mobile place of business, a place of business set up and maintained for a limited period only and any other place of business;

“Islamic financing facility” means—

- (a) the giving of any advance, loan, trade credit or other facility in whatever form or by whatever name called whereby the person to whom the advance, loan, trade credit or other facility is given has access, directly or indirectly, to the funds or property of the person giving it and shall include, without limitation, any sale and buy

back arrangement, joint venture arrangement, deferred payment sale, return sharing arrangement and any other financing arrangements made in accordance with Shariah;

- (b) hire purchase, hire and purchase, leasing, factoring, debt trading and such similar dealings or transaction;
- (c) the giving of a guarantee or any security in relation to the obligations of any person; or
- (d) any other like dealing or transaction as may be prescribed by the Corporation;

“registrar of Malaysian ships” means the registrar of Malaysian ships appointed under subsection 14(1) of the Merchant Shipping Ordinance 1952 [*Ord.70/1952*] and includes the Registrar General of Ships as appointed under subsection 14(1) of the Ordinance;

“Registrar of Companies” means the Registrar of Companies as designated under subsection 7(1) of the Companies Act 1965;

“registrar of courts” means any Registrar, Deputy Registrar, Senior Assistant Registrar or Assistant Registrar of the High Court appointed under section 10 of the Courts of Judicature Act 1964 [*Act 91*];

“Registrar of land” means the Registrar as defined under section 5 of the National Land Code [*Act 56/1965*], the Registrar as defined under section 4 of the Land Ordinance of Sabah [*Sabah Cap. 68*] or the Registrar under the Land Code of Sarawak [*Sarawak Cap. 81*], as the case may be;

“depositor” means a person—

- (a) whose account has been or is to be credited in respect of monies constituting an Islamic deposit or conventional deposit or part of such deposit; or
- (b) to whom a member institution is liable in respect of an instrument issued for monies constituting an Islamic deposit or conventional deposit or part of such deposit;

“Chairman” means the chairman of the Board;

“Corporation” means the Malaysia Deposit Insurance Corporation established under section 3;

“corporation” has the same meaning as defined under section 4 of the Companies Act 1965;

“Islamic financial business” means any financial business, the aims and operations of which do not involve any element which is not approved by the religion of Islam;

“Islamic banking business” has the same meaning as defined under section 2 of the Islamic Banking Act 1983;

“return” includes any form of rental, profit and dividend or benefit, including any fee and gift, payable or to be given in relation to any Islamic deposit, or to any document, agreement, arrangement and instrument relating to an Islamic financing facility;

“securities” has the same meaning as defined under section 2 of the Securities Commission Act 1993 [*Act 498*];

“capital instruments” means preference shares, loan stocks, subordinated term debts or other instruments approved by Bank Negara Malaysia as being eligible to be capital funds for the purposes of the Banking and Financial Institutions Act 1989 and the Islamic Banking Act 1983;

“company” has the same meaning as defined under section 4 of the Companies Act 1965;

“share” has the same meaning as defined under section 4 of the Companies Act 1965;

“subsidiary” has the same meaning as defined under section 5 of the Companies Act 1965;

“assessment year”, in relation to the calculation and payment of premiums under this Act, means the period beginning on the first day of January and ending on the thirty-first day of December of each year or such other period as may be approved by the Minister;

“liabilities” includes debts, duties and obligations of every kind, whether present or future, or whether vested or contingent.

(2) Any reference in this Act to “this Act” shall, unless the context otherwise requires, be deemed to include a reference to any rules, regulations, by-laws, orders, notifications, guidelines, circulars, notes or any other subsidiary legislation made or issued under this Act.

PART II

MALAYSIA DEPOSIT INSURANCE CORPORATION

Chapter 1

Establishment

Establishment of Corporation

3. There is hereby established a body corporate by the name of “Malaysia Deposit Insurance Corporation” with perpetual succession and a common seal, and which may sue and be sued in its corporate name.

Objects of Corporation

4. (1) The objects of the Corporation are to—

- (a) administer a deposit insurance system under this Act;
- (b) provide insurance against the loss of part or all deposits of a member institution;
- (c) provide incentives for sound risk management in the financial system; and
- (d) promote or contribute to the stability of the financial system.

(2) In achieving its objects under paragraphs (1)(b) and (d), the Corporation shall act in such manner as to minimise costs to the financial system.

Common seal and facsimile seal

5. (1) The common seal and facsimile seal of the Corporation may from time to time be broken, changed, altered and made anew as the Corporation may think fit.

(2) The Board may provide for a facsimile seal and may authorise the signature of any director and secretary be produced by printing or other mechanical means.

(3) The common seal shall be used with the authority of the Board and every instrument to which the common seal is affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the Board, and all deeds, documents and other instruments purporting to be sealed with the common seal, authenticated as aforesaid, shall, until the contrary is proven, be deemed to have been validly executed.

(4) Every instrument to which the facsimile seal is affixed and signed by a director and secretary by printing or other mechanical means shall have the same force and validity as if the common seal had been affixed to such instrument and such instrument had been signed in accordance with subsection (3).

(5) All courts, judges and persons acting judicially shall take judicial notice of the common seal and facsimile seal.

(6) The common seal and the facsimile seal shall be kept in the custody of the secretary or such other person as may be authorised by the Board.

Execution of documents

6. Any document or instrument which, if executed by a person not being a body corporate, would not be required to be under seal may in like manner be executed by the Corporation, and any such document or instrument may be executed on behalf of the Corporation by any officer of the Corporation generally or specifically authorised by the Board in that behalf.

Establishment of committees

7. The Corporation may establish any committee as it considers necessary or expedient for the performance of its functions.

Office of Corporation

8. The Corporation may, in or outside Malaysia, establish any office as it considers necessary or expedient for the performance of its functions.

Power to appoint Attorney and agent

9. (1) The Corporation may, by instrument under its common seal, appoint a person whether in Malaysia or in a place outside Malaysia to be its Attorney, and the person so appointed may, subject to the instrument, do any act or execute any power or function which he is authorised by the instrument to do or execute.

(2) The Corporation may, in or outside Malaysia, appoint any agent as it considers necessary or expedient, to perform any act on behalf of the Corporation.

Establishment of subsidiaries

10. (1) For the purposes of carrying out its functions, powers and duties under this Act, the Corporation may establish such subsidiaries as it considers necessary or expedient.

(2) Any subsidiary of the Corporation prescribed by it shall have such powers and immunities of the Corporation, including powers and immunities provided in sections 25, 26, 27, 28, paragraph 71(1)(b), the Second, Third and Fourth Schedules as may be prescribed by the Corporation.

Chapter 2

Board of Directors

Duties and composition

11. (1) There shall be a board of directors who shall be responsible for the conduct of the business and affairs of the Corporation and shall exercise all powers and do all acts which may be exercised or done by the Corporation.

- (2) The Board shall consist of the following directors:
- (a) a Chairman appointed by the Minister who shall have relevant private sector experience;
 - (b) the Governor;
 - (c) the Secretary General of the Treasury;
 - (d) a director appointed by the Minister from the public sector; and
 - (e) not more than three other directors appointed by the Minister, who shall have relevant private sector experience and at least one of whom shall have relevant banking and financial sector experience.

(3) Without prejudice to subsection 18(2), none of the directors in paragraph (b), (c), (d) or (e) shall be eligible to be appointed Chairman by the Minister.

Board may make by-laws

12. (1) The Board may, from time to time, make such by-laws as are necessary or expedient in relation to the administration, management, control, business, assets and affairs of the Corporation including—

- (a) the functions, powers, duties, remuneration, benefits and terms and conditions of service, code of conduct or surcharge on officers, employees and agents of the Corporation;
- (b) the conflicts of interest in respect of serving directors, officers and employees of the Corporation and those directors, officers and employees who have left the service of the Corporation;
- (c) the appointment, terms of reference and activities of committees established by the Corporation;
- (d) the rules and procedures to be observed by the directors at Board meetings; or
- (e) such other matters as may be required to be provided for under by-laws in this Act.

(2) By-laws made under this section shall be binding on all persons to whom the by-laws apply.

(3) Any person who does not comply with the by-laws made under paragraph (1)(b) commits an offence under this Act.

Term of office of directors

13. (1) The directors appointed by the Minister under subsection 11(2) shall hold office for a term not exceeding three years and shall be eligible for reappointment.

(2) The Governor and the Secretary General of the Treasury shall be directors for the duration of their tenure as the Governor and the Secretary General of the Treasury, respectively.

Disqualifications and termination of directors of Board

14. (1) No person shall be appointed or shall remain, as a director of the Board who is—

- (a) a member of the Dewan Negara or Dewan Rakyat or any Legislative Assembly;
- (b) an officer of a member institution; or
- (c) a divisional head or any person who holds any similar office or position, in a political party.

(2) The Minister may terminate or suspend the appointment of any director if—

- (a) he becomes of unsound mind or otherwise becomes incapable of carrying out his duties;
- (b) there has been imposed on the director any form of restriction or supervision by bond or otherwise, under any law relating to prevention of crime, or to preventive detention for prevention of crime or drug trafficking, or to restricted residence, or to banishment or immigration;
- (c) he becomes a bankrupt, suspends payment or compounds with his creditors;

- (d) he has been charged for a criminal offence under any law punishable with imprisonment, whether by itself, or in lieu of, or in addition to, a fine, in any court in or outside Malaysia;
- (e) he is guilty of serious misconduct in relation to his duties under this Act; or
- (f) he is absent, except on leave granted, by the Minister in the case of the Chairman or by the Chairman in the case of all other directors, from two of the meetings of the Board in any period of twelve months.

(3) Notwithstanding subsection (2), any director appointed by the Minister under subsection 11(2) may at any time resign his office by giving a written notice not exceeding thirty days to the Minister.

Actions and proceedings of Board not affected by vacancy, etc.

15. The Board may act notwithstanding any vacancy and its proceedings shall not be invalidated by—

- (a) the absence of any director;
- (b) any defect afterwards discovered in the appointment or qualification of any director or the constitution of the Board;
- (c) any omission, defect or irregularity in the convening or conduct of a meeting; or
- (d) the presence or participation of a person who is not a director of the Board.

Remuneration and allowances for directors

16. Every director attending any meeting of the Board shall be paid by the Corporation such fees, other remuneration and allowances as may be determined by the Minister, on the recommendation of the Board.

Duties of directors

17. (1) A director of the Board shall, at all times, act honestly and in the best interest of the Corporation and use reasonable diligence in the discharge of the duties of his office.

(2) A director or any person who has been a director shall not—

(a) make improper use of any information acquired by virtue of his position as a director to gain, directly or indirectly, an advantage for himself or for any other person; or

(b) do, say or publish anything which may be detrimental to the interests of the Corporation.

Meetings

18. (1) The Board shall meet as often as may be required but not less than four times a year.

(2) The Chairman shall preside at all meetings of the Board and in his absence, the directors present shall elect a chairman among the directors in paragraph 11(2)(e) and the person so elected shall preside and have all the powers of the Chairman.

(3) The quorum for a meeting of the Board shall be not less than four directors, at least two of whom shall be directors referred to in paragraph 11(2)(b), (c) or (d).

(4) The decisions of the Board shall be adopted by a simple majority of the votes of the directors present and voting.

(5) In the case of an equality of votes, the Chairman shall have a casting vote.

(6) A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held and any such resolution may consist of several documents in like form, each signed by one or more directors.

(7) Nothing in this section shall prevent the Chairman from authorizing a director to use live video, television links or other appropriate communication or multimedia facilities to participate in any meeting of the Board where, prior to the meeting, the director, by notification to the Chairman, has requested for such authorisation.

Chapter 3

Chief Executive Officer

Appointment, functions and accountability

19. (1) The Chief Executive Officer shall be appointed by the Minister, on the recommendation of the Board.

(2) The Chief Executive Officer shall be responsible for the day-to-day administration of the business and affairs of the Corporation.

(3) The Chief Executive Officer shall be answerable and accountable to the Board for the exercise of his powers and the performance of his duties.

(4) In the absence or incapacity of the Chief Executive Officer, the Board may authorise an officer of the Corporation to perform the duties, functions and responsibilities of the Chief Executive Officer.

Terms and conditions of service

20. The Chief Executive Officer shall—

- (a) for the purposes of Chapter 4, be deemed to be an officer or employee of the Corporation and be subject to the terms and conditions of service; and
- (b) enjoy such compensation and such other amenities as approved by the Minister, upon recommendation of the Board.

Chapter 4

Officers and employees

Appointments, terms and conditions of service

21. (1) The Corporation may appoint such officers and employees as are necessary for carrying on the business and affairs of the Corporation and such officers and employees shall hold office for such periods, receive such salaries, allowances and benefits, and shall be subject to such terms and conditions of service as may be determined by the Board.

(2) An officer or employee of the Corporation shall, at all times, act in good faith and comply with such requirements, standards, duties and code of conduct including surcharge as may be provided in the by-laws made by the Board under paragraph 12(1)(a).

(3) The Corporation may, with the approval of the Board, establish and maintain a pension or provident fund for its officers and employees out of the monies of the Corporation.

Financial assistance to officers, employees and other persons

22. The Corporation may provide—

- (a) subsidies, grants, Islamic financing facility or conventional credit facility, with or without return or interest, for purposes of housing, vehicle, medical, and other compassionate financing or loans, to its officers and employees;
- (b) Islamic financing facility or conventional credit facility, with or without return or interest, for educational purposes or scholarships to its officers and employees or any other person; and
- (c) donations to any person,

on such terms and conditions as the Board may determine.

Chapter 5

*Duties and powers***Restriction on enquiring specifically into affairs of particular customer**

23. Without prejudice to the powers of inspection, examination, investigation, inquiry or resolution conferred on the Corporation, nothing in this Act shall—

- (a) authorise the Minister to direct the Corporation; or
- (b) authorise the Corporation,

to inquire specifically into the affairs of any customer of a member institution.

Secrecy

24. (1) No director, officer, employee or agent of the Corporation including a person appointed under subsection 25(3) or any person who for any reason, has by any means access to any record, book, register, correspondence or other document whatsoever, material or information relating to the business and affairs of the Corporation, Bank Negara Malaysia, a member institution or a customer of Bank Negara Malaysia which he has acquired in the performance of his duties or the exercise of his functions, shall give, divulge, reveal, publish, or otherwise disclose, to any person, such document, material or information unless the disclosure is required—

- (a) under any law;
- (b) for the performance of his duties or the exercise of his functions under this Act; or
- (c) when lawfully required to do so by any court.

(2) This section shall not apply to any document, material or information which at the time of the disclosure is, or has already been made, lawfully available to the public from any source.

(3) No person who has any document, material or information which to his knowledge has been disclosed in contravention of subsection (1) shall in any manner however disclose the same to any other person.

(4) Where the Corporation in the course of the exercise of any of its powers, or the discharge of any of its duties or functions, under this Act or under any law whatsoever, suspects any person to have committed any offence under this Act, or any other law whatsoever, it shall be lawful for the Corporation to give information of such commission to a police officer, or to convey any information in relation to such offence to any member institution or other person affected by such offence or to any other authority or person having power to investigate under or enforce the provision of the law under which the offence is suspected by the Corporation to have been committed.

(5) Subsection (4) shall have full force and effect, notwithstanding any inconsistency therewith or contrary thereto, in this Act or any other law.

(6) Any person who contravenes subsection (1) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding three years or to both.

Powers of Corporation

25. (1) The Corporation shall have all such powers as may be necessary for or in connection with, or reasonably incidental to, the furtherance of its objects, the performance of its functions or the discharge of its duties.

(2) Without prejudice to the generality of subsection (1), for the purposes of this Act, the Corporation may do all such things necessary or incidental to the objects of the Corporation and, in particular, the Corporation may—

- (a) for the purpose of reducing or averting a risk to the financial system or a threatened loss to the Corporation—
 - (i) acquire assets from a member institution;
 - (ii) make loans or advances with or without security, or guarantee with or without security any loan or advance provided, to a member institution;
 - (iii) acquire, by way of security or otherwise, shares or capital instruments of a member institution and hold and dispose of such shares or capital instruments; or

- (iv) make or guarantee a deposit with a member institution;
- (b) hold, dispose of or otherwise deal with the assets acquired from a member institution;
- (c) borrow or raise funds in such manner as the Corporation shall think fit;
- (d) acquire and hold any movable or immovable property for its own use and dispose of or otherwise deal with such property;
- (e) guarantee, indemnify, or become liable for the payment of monies or the performance of any obligations;
- (f) mortgage, charge or create a lien to secure or guarantee the performance of its obligations or the obligation of any other person;
- (g) enter into any agreement with any person in furtherance of its objects or in relation to the performance of its functions including a strategic alliance agreement with Bank Negara Malaysia;
- (h) settle or compromise any claim by or against the Corporation; or
- (i) do all such other things as may be necessary for the exercising of any power of the Corporation.

(3) The Corporation may, either generally or in any particular case, appoint any person who is not a director, officer or employee of the Corporation, to render such assistance as it may specify in the exercise of its powers, the performance of its functions, or the discharge of its duties, under this Act, or to exercise, perform or discharge such powers, functions or duties as may be specified by the Corporation and subject to the supervision of the Board on behalf of and in the name of the Corporation.

Acquisition and disposal involving Corporation

26. (1) For the purposes of this Act, the Corporation may acquire or dispose of any asset—

- (a) pursuant to the statutory vesting provisions set out in the Second Schedule; or

(b) in accordance with general law.

(2) A vesting certificate issued in accordance with the Second Schedule shall have the effect set out in the Second Schedule and shall be binding on any person thereby affected.

Power to appoint conservator and additional conservators, etc.

27. (1) For the purposes of this Act, the Corporation may appoint a conservator to administer an affected person if it is satisfied that—

(a) the primary affected person—

- (i) is unable or likely to be unable to pay its debts; or
- (ii) is unable or likely to be unable to fulfil its obligations to its creditors;

(b) the survival of the primary affected person and the whole or any part of its assets as a going concern may be achieved;

(c) a more advantageous realisation of the assets of the primary affected person may be achieved than a winding-up; or

(d) the appointment may achieve a more advantageous realisation or a more expeditious settlement of a duty or liability owed by any person to the Corporation or any subsidiary of the Corporation, whether present or future, or whether vested or contingent.

(2) The Corporation may appoint one or more conservators of the affected person.

(3) The Corporation may at any time after the appointment of any conservator under subsection (2) appoint additional conservators and may, at any time, terminate any existing conservator and appoint a new conservator to replace him.

(4) Nothing in subsection (3) shall be taken to terminate the administration of any affected person unless so terminated by the Corporation under the Third Schedule.

(5) Any decision of the Corporation relating to the appointment of a conservator, an additional conservator, termination of any existing conservator and the appointment of a new conservator in his stead, shall be final and binding.

(6) The appointment of a conservator shall have the effect set out in the Third Schedule.

(7) Any conservator including an additional conservator appointed under this section shall have the powers and duties set out in the Third Schedule.

(8) A conservator, in exercising its powers under the Third Schedule, shall not be required to notify or obtain the approval of shareholders or creditors of the affected person 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 affected person.

(9) Any person who contravenes—

(a) paragraph 9, 11 or 15; or

(b) subparagraph 8(1), 12(1), 13(2), 14(1), 17(1) or 20(1),

of the Third Schedule commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment not exceeding a term of three years or to both.

Entitlement to dispose of and preserve value of property

28. (1) Notwithstanding any law and in addition to any other power the Corporation may have under any contract or law—

(a) the Corporation; and

(b) any person who acquires an asset from the Corporation,

as holder of security over any property, whether as chargee, mortgagee, assignee, lienholder or otherwise, shall be entitled—

(i) to dispose of such property or any part of such property by way of private treaty in accordance with the Fourth Schedule; and

- (ii) where such property consists of land, to take all steps as it deems fit to preserve the value of the land or to facilitate the disposal of the land by way of private treaty in accordance with the Fourth Schedule, including entering the land, whether by itself or by any person authorised by it, to inspect, protect, secure, maintain or repair the land.

(2) The acquisition or disposal of property in accordance with the Fourth Schedule shall have the effect set out in that Schedule.

PART III

FINANCE

Funds and sources of funds

29. (1) For the purposes of this Act, the Corporation shall maintain and administer two separate funds—

(a) an Islamic fund which shall comprise—

- (i) all premiums received by the Corporation under this Act; and
- (ii) all other monies or assets which may in any manner become lawfully payable to, received by or vested in the Corporation relating to any matter incidental to its powers, duties and functions,

in respect of Islamic deposits; and

(b) a conventional fund which shall comprise—

- (i) all premiums received by the Corporation under this Act; and
- (ii) all other monies or assets which may in any manner become lawfully payable to, received by or vested in the Corporation relating to any matter incidental to its powers, duties and functions,

in respect of conventional deposits.

(2) The Corporation is empowered to credit all direct operating income to, or charge all expenses, costs and losses against, the Islamic fund or the conventional fund, as the case may be, or where such income, expenses, costs or losses cannot be specifically attributed to either the Islamic fund or the conventional fund, such credit or charge shall be proportional to the amount of Islamic and conventional premiums collected in the assessment year prior to the year in which such credit or charge is made.

(3) In relation to the first assessment year of the Corporation, such credit or charge shall be determined by the Corporation.

Lending of money to Corporation

30. (1) The Minister may, upon request of the Corporation, lend money to the Corporation on such terms and conditions as the Minister may determine.

(2) Any lending of money pursuant to subsection (1) shall be made out of the Consolidated Fund and where such lending is made, the Minister shall cause a statement on such lending to be laid before the Dewan Rakyat at the earliest possible opportunity.

Permitted investments

31. (1) The Corporation may invest in the following:

- (a) ringgit denominated securities issued or guaranteed by the Government or Bank Negara Malaysia or of high investment grade as rated by a reputable rating agency;
- (b) deposits with Bank Negara Malaysia or any financial institution; or
- (c) any other investment as approved by the Minister, upon the recommendation of the Board.

(2) The Corporation may, solely for the purpose of hedging any exposure arising from paragraph (1)(a), (b) or (c), enter into financial derivative transactions, whether exchange traded or over the counter including swaps, futures, options and forward contracts.

(3) Any investment made by the Corporation under subsection (1) from the Islamic fund shall be in accordance with Syariah principles.

Financial year

32. Unless otherwise directed by the Minister, the financial year of the Corporation shall begin on the first day of January and end on the thirty-first day of December of each year.

Requirement to keep books, records, accounts or other documents

33. The Corporation shall cause proper books, records, accounts or other documents to be kept and shall, as soon as practicable after the end of each financial year, cause to be prepared for that financial year appropriate financial statements in accordance with the Statutory Bodies (Accounts and Annual Reports) Act 1980 [Act 240].

Auditor

34. The accounts of the Corporation shall be audited by the Auditor General.

Financial statements and annual report

35. The Corporation shall within three months from the close of its financial year transmit a copy of the annual accounts certified by the Auditor General and an annual report on the working of the Corporation throughout the year to the Minister, who shall, as soon as possible, cause them to be laid before the Dewan Negara and the Dewan Rakyat.

PART IV

DEPOSIT INSURANCE

Chapter 1

*Membership, cancellation and termination***Definitions****36.** For the purposes of this Part—

(a) “deposit” means the unpaid balance of the aggregate of deposits as defined in subsection 2(1) received or held by a member institution from or on behalf of a person in the usual course of the business of deposit taking of the member institution and shall include—

- (i) a bank draft, certified cheque or other similar instrument or payment instruction, drawn or made against a deposit account for which the member institution shall be primarily liable;
- (ii) a cheque entered into a payment system designated under subsection 6(1) of the Payment Systems Act 2003 [Act 627] notwithstanding any delay or failure by the member institution in crediting the account; or
- (iii) any other liability or financial instrument as may be specified by the Corporation,

but excludes—

- (A) a deposit that is not payable in Malaysia;
 - (B) foreign currency deposits;
 - (C) money market deposits;
 - (D) negotiable instruments of deposit and other bearer deposits;
 - (E) repurchase agreements; and
 - (F) any other liability or financial instrument as may be specified by the Corporation; and
- (b) “trust accounts” includes monies held on account for the purpose of a trust.

Deemed membership

37. (1) Every financial institution is deemed to be a member institution from the commencement of this Act.

(2) Any financial institution licensed after the commencement of this Act shall be deemed to be a member institution from the date it was granted the licence under the Banking and Financial Institutions Act 1989 or the Islamic Banking Act 1983, as the case may be.

Terms and conditions of membership

38. (1) The terms and conditions of membership of a member institution shall be prescribed by regulations made under section 100.

(2) A member institution shall comply with the terms and conditions as may be prescribed pursuant to subsection (1).

(3) Any person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding 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.

Cancellation of membership

39. The Corporation shall cancel the membership of a member institution by informing the member institution in writing if the licence of the member institution has been surrendered or revoked under the Banking and Financial Institutions Act 1989 or, in the case of member institution which is an Islamic bank, revoked under the Islamic Banking Act 1983.

Termination of membership

40. (1) The Board may, at any time after the Corporation has received a notification under section 70 and whether or not the Corporation has exercised any of its powers under section 71,

convene a meeting to determine whether the membership of the member institution should be terminated.

(2) Where the Board proposes to terminate the membership of the member institution, the Corporation shall give written notice of its proposal to the member institution and shall afford the member institution an opportunity to make representations within five days from the date of the notice in respect of the proposal.

(3) Where representations are received by the Corporation from the member institution, the Board shall consider the representations and shall make a determination to confirm or not to confirm the proposal to terminate the membership of the member institution.

(4) Where the Board has confirmed its proposal to terminate the membership of the member institution, it shall inform the Minister of its determination in writing.

(5) Where the Minister disagrees with the determination of the Board, the Minister shall within fifteen days from the date of receipt of the notice inform the Board in writing of his decision relating to such determination, and such directive shall become binding on the Board.

(6) Where the Minister has not informed the Board of his decision within the period stipulated under subsection (5), the Minister shall be deemed to have approved the proposal of the Board to terminate the membership and the Corporation shall—

(a) immediately inform Bank Negara Malaysia accordingly;
and

(b) issue a written notice of termination of membership to the member institution and its membership shall terminate on the expiration of the period specified in the notice.

(7) Where, at any time after a notice of termination has been given to a member institution under subsection (6), the Corporation is satisfied that as the result of any action by the member institution, or any other person, the risks to depositors or to the Corporation has been averted or substantially reduced, the Corporation may revoke its notice of termination and inform the Minister accordingly.

(8) The termination of a membership by the Corporation shall be final.

Effects of cancellation or termination

41. (1) Where the membership of a member institution has been cancelled under section 39 or terminated under section 40—

- (a) the institution shall not assume or use the words “deposit insurance” or any derivative of these words in any language or any other words in any language capable of being construed that the institution is a member institution;
- (b) the institution shall inform its depositors in writing that the outstanding deposits with the institution shall continue to be insured for a period of two years from the effective date of cancellation or termination, unless the deposit is fully withdrawn or has reached its maturity, whichever is earlier;
- (c) in the case of a cancellation due to a member institution surrendering its licence, such institution shall be required to notify its depositors of the cancellation of its membership in a manner to be prescribed by the Corporation;
- (d) the institution shall not be considered to be a member institution by reason only that its deposits continue to be insured under paragraph (b), section 50 or 51; and
- (e) the institution shall not be relieved from its obligations or liabilities to the Corporation that have accrued before the cancellation or termination of its membership.

(2) For the purposes of paragraph (1)(b), the cancellation or termination of the membership shall not affect the obligation, right and the ability of the Corporation to make a payment under Chapter 4 of this Part.

(3) For the purposes of paragraph (1)(c), the member institution shall indemnify the Corporation in the event of any payment made by the Corporation to depositors, in respect of such of its deposits as have been transferred or acquired by another member institution or such other person as approved by the Minister.

(4) The Corporation may, in such manner and through such media as it deems expedient, give public notice of the cancellation or termination of any membership of a member institution if in the opinion of the Corporation, the public interest requires that such notice be given.

(5) Where a member institution is obligated to repay to a person any monies that are received or held by the member institution, such monies shall be deemed not to constitute part of a deposit for the purposes of deposit insurance with the Corporation if the date on which the person acquires his interest in the monies is a date subsequent to the date on which the membership of the member institution is cancelled or terminated by the Corporation.

(6) Any member institution which contravenes paragraph (1)(a), (b) or (c) commits an offence and shall, on conviction, be liable to a fine not exceeding five million ringgit and shall, in addition, be liable to a daily fine not exceeding fifty thousand ringgit for every day the offence continues after conviction.

Chapter 2

Premiums

First premium

42. (1) The Corporation shall assess and collect the premium payable by a member institution for the assessment year in which it becomes a member institution (hereinafter referred to as “the first premium”) as follows:

- (a) two hundred and fifty thousand ringgit; or
- (b) a rate to be prescribed by the Corporation with the prior written approval of the Minister,

whichever is higher.

(2) No first premium shall be required to be paid in relation to any deposit transferred from a member institution to another member institution within a business group upon which premium has been paid for the assessment year in which the member institution becomes a member.

(3) A member institution shall pay the first premium to the Corporation at the latter's head office within thirty days from the date it becomes a member.

Annual premium

43. (1) Every member institution shall, for each assessment year following the assessment year in which it becomes a member institution, pay annual premiums separately for Islamic and conventional deposits placed with it.

(2) The maximum annual premium rate under this Act shall be as follows:

(a) 0.5 per centum of the Islamic insured deposits; and

(b) 0.5 per centum of the conventional insured deposits,

or such lower rate or rates as may be prescribed by the Corporation, with the approval of the Minister.

(3) The quantum of such annual premiums paid under paragraphs (2)(a) and (b), in aggregate, shall not be lower than two hundred and fifty thousand ringgit.

(4) Any member institution which contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit and shall, in addition, be liable to a daily fine not exceeding thirty thousand ringgit for every day the offence continues after conviction.

Calculation of annual premium

44. (1) The annual premiums shall be calculated as follows:

(a) premium rates to be applied to a member institution shall be based on the total insured deposits held by the member institution as at 31 December of the preceding assessment year;

(b) the annual premiums of Islamic and conventional deposits shall be calculated separately; and

- (c) the applicable premium rates for each member institution shall be based on such criteria as may be prescribed in the regulations.

(2) The premium payable by a member institution shall be based on returns to be certified by the chief executive of the member institution to be submitted in such form and within such period as the Corporation may require.

No set-off on premium payment

45. Unless the Corporation otherwise agrees in any particular case, no premium payment shall be made to the Corporation by a member institution that has been reduced or otherwise adjusted on the basis of any claim by a member institution against the Corporation.

Premium surcharge

46. (1) Notwithstanding the payment of first premium in respect of the first assessment year or the annual premium in respect of any particular assessment year, the Corporation may assess and collect from the member institution a premium surcharge on the total insured deposits of a member institution in respect of that assessment year or any part thereof.

(2) The aggregate of the premium already paid and the premium surcharge under subsection (1) in any particular assessment year shall not exceed 0.5 per centum per annum of the total insured deposits of the member institution.

(3) Where in the opinion of the Corporation that a member institution has failed or fails to—

- (a) adhere to any regulations, rules, orders, by-laws, notifications, guidelines, circulars or notes relating to sound financial and business practices issued by Bank Negara Malaysia;
- (b) adhere to the terms and conditions of the membership, and any regulations, rules, orders, by-laws, notifications, guidelines, circulars or notes of the Corporation in respect of deposit insurance;

- (c) comply with the request for information or restricts the right of access of information by the Corporation, Bank Negara Malaysia or any person acting on behalf of the Corporation, under this Act; or
- (d) maintain proper deposit records or it misrepresents, whether with act or omission, any information, including information on insured deposits, used as a basis for premium assessments,

the Corporation shall—

- (i) consult Bank Negara Malaysia on the amount of premium surcharge and the reasons for imposing such premium surcharge; and
- (ii) give the member institution an opportunity to be heard on the proposed premium surcharge.

(4) The Corporation shall obtain written approval of the Minister before imposing the premium surcharge to the member institution which has failed or fails to comply or adhere to the requirements under subsection (3).

Overdue charges

47. Where any premium or premium surcharge due and payable under section 42, 43 or 46 has not been paid by the member institution on the due date, the unpaid premium shall, without further notice being served on the member institution, be increased by a sum as may be prescribed in the regulations of the premium so unpaid.

Premium regulations

48. The Corporation may make any regulations in respect of the determination of first premium and annual premiums including—

- (a) the establishment of a system of classifying member institutions in different categories;
- (b) the criteria or factors to be taken into account, the procedures to be followed by the Corporation in determining the category in which a member institution is classified; and

(c) any other matters related thereto.

Chapter 3

Scope of coverage

Scope of coverage

49. (1) The Corporation shall separately insure the following categories of deposits placed with a member institution:

- (a) Islamic deposits; and
- (b) conventional deposits.

(2) For the purpose of subsection (1), where a depositor owns more than one deposit with a member institution, the aggregate of those deposits shall be insured—

- (a) in respect of the principal and return on Islamic deposits, to a maximum amount of sixty thousand ringgit; and
- (b) in respect of the principal and interest on conventional deposits, to a maximum amount of sixty thousand ringgit.

(3) Subject to regulations made under section 100—

- (a) where a member institution is obligated to repay monies to a depositor who is acting as a trustee for another or as joint owner with another, and the trusteeship or joint ownership is disclosed on the records of the member institution—
 - (i) the deposit of the depositor as trustee or as a joint owner, shall be deemed to be a deposit separate from any deposit of that depositor acting on his own behalf or acting in another trust or joint capacity with the member institution;
 - (ii) where a trustee is acting for two or more beneficiaries, the deposit held in trust by him for each beneficiary, shall each be deemed to be a separate deposit; and
 - (iii) the deposit held in trust by a trustee for a beneficiary in a member institution shall be deemed to be a deposit separate from a deposit of that beneficiary

with the member institution on his own behalf and shall also be deemed to be separate from any deposit held in trust by another trustee for the beneficiary in the member institution;

(b) for the avoidance of doubt, where a depositor is a joint owner of a deposit in a member institution with another person, all the deposits of such depositor with such person shall be aggregated and be deemed to be one deposit and shall be insured to a maximum amount of sixty thousand ringgit; or

(c) for the purposes of paragraphs (3)(a) and (b)—

(i) the member institution shall indicate on its records—

(A) for a trust account, that the account is held by the trustee for the named beneficiaries; or

(B) for a joint account, the names of the individual joint owners;

(ii) the trustee shall—

(A) maintain detailed records as may be prescribed by the Corporation on the trust accounts;

(B) submit to the member institution such records as may be required by the member institution from time to time under this Act; and

(C) file a statutory declaration certifying the accuracy of the records submitted under subparagraph (B) when required by the member institution;

(iii) the trustee in maintaining and submitting any record on the trust accounts required under subparagraph (3)(c)(ii) shall ensure that the information given shall be true, correct and complete and shall not contain false or deceptive information and the member institution shall rely on such records for the purposes of subparagraph (3)(c)(i) and the trustee shall indemnify the member institution in the event of any legal proceedings relating to such records.

(4) Notwithstanding anything in paragraph (3)(a), the Corporation shall not separately insure the deposits held in trust for any beneficiary if, in the opinion of the Corporation, the trust exists primarily for the purpose of obtaining or increasing deposit insurance.

(5) For the purpose of subparagraph (3)(a)(iii), any deposit held in trust by the same trustee for the same beneficiary shall be aggregated and be deemed to be one deposit.

(6) Subject to regulations made under section 100 and the disclosure made by the trustee under subparagraph (3)(c)(ii), where a depositor—

(a) operates a business as a sole proprietor or a partner of a partnership; or

(b) carries on any professional practice,

that has been disclosed as such on the records of the member institution, a deposit of such business or professional practice shall be deemed to be separate from the deposits of the depositor on his own behalf or as trustee or joint owner.

Deposits with amalgamating institutions, etc.

50. (1) Where a person has deposits with two or more member institutions that amalgamate and continue in operation as one member institution (in this Chapter referred to as the “amalgamated institution”), a deposit of that person with an amalgamating institution on the day on which the amalgamated institution is formed, less any withdrawal from the deposit, shall be deemed to be and continue to be separately insured by the Corporation for a period of two years, or upon maturity or until withdrawal, whichever is earlier, after the amalgamating institution becomes part of the amalgamated institution.

(2) A deposit made by a person referred to in subsection (1) with an amalgamated institution after the day on which the amalgamated institution is formed shall be insured by the Corporation only to the extent that the aggregate of that person’s deposits with the amalgamated institution is less than sixty thousand ringgit.

(3) Where a member institution acquires the deposits of another member institution or amalgamating institution, those deposits, less any withdrawal from the deposits, shall continue to be insured separately from any deposit up to the coverage limit of sixty thousand ringgit for a period of two years, or upon maturity or until withdrawal, whichever is earlier, after the date of acquisition.

(4) A member institution shall maintain such records as necessary for the purposes of subsections (1) and (2).

Deposits of member institution acquired by non-member institution

51. (1) Where deposits with a member institution are to be acquired by a person who is not a member institution, such deposits shall be deemed to be and continue to be insured by the Corporation up to the limit of sixty thousand ringgit for the remainder of the assessment year, or upon maturity or until withdrawal, whichever is earlier, after the acquisition of the deposits by the acquiring non-member institution.

(2) For purposes of subsection (1), and in accordance with such rules as may be made by the Corporation—

(a) in relation to depositors, the member institution shall—

- (i) obtain written consent of at least seventy five per cent of all the depositors or their personal representatives to transfer deposits;
- (ii) obtain written acknowledgement of each depositor that the depositor is aware that deposits transferred to the non-member institution will be insured for the remainder of the assessment year, or upon maturity or until withdrawal, whichever is earlier, the deposits placed with the amalgamated non-member institution shall no longer be insured in whole or in part by the Corporation;
- (iii) upon a request in writing, pay to a depositor, the principal amount of the deposit and return or interest, calculated to the date of withdrawal and no charge or penalty shall be imposed in respect of the payment; and

(iv) provide a statement that the acquired member institution's obligation to repay deposits will be assumed by the non-member institution; and

(b) in relation to the acquiring non-member institution, enter into an agreement in writing to assume the acquired member institution's liability in relation to the deposits on the same terms and conditions.

(3) For the purpose of paragraph (2)(b), the member institution shall indemnify the Corporation in the event of any payment made by the Corporation to depositors, in respect of such of its deposits as have been transferred or acquired by the acquiring non-member institution.

Deemed deposits

52. Where a member institution assumes the deposits of another member institution under section 50, the deposits are for the purposes of sections 42 and 43, deemed to be placed with the member institution that assumes them as of the day on which they are assumed.

Not part of deposit

53. Where monies are or were received by a member institution for which the institution has issued or is obligated to issue an instrument evidencing a deposit, other than a bank draft, certified cheque, traveller's cheque, prepaid letter of credit or money order—

(a) the monies do not constitute a deposit unless the instrument and records of the institution specify the person entitled, at the date of issue of the instrument, to the repayment of the monies evidenced thereby;

(b) the person referred to in paragraph (a) shall be deemed to be the depositor in respect of the monies unless particulars of a transfer of the instrument are entered on the records of the institution, in which case the most recent transferee shown on the records shall be deemed to be the depositor; and

- (c) the entry of a transfer on the records of a member institution is ineffective for the purpose of paragraph (b), if the entry is made subsequent to the cancellation or termination of the membership of the member institution.

Chapter 4

Payments

Payments

- 54.** (1) All payments made by the Corporation in respect of—
- (a) Islamic deposits and all associated costs thereon shall be made from the Islamic fund; and
 - (b) conventional deposits and all associated costs thereon shall be made from the conventional fund.

(2) All payments made by the Corporation shall be based on the deposit records of the member institution as in the opinion of the Corporation appears to be entitled to it.

Obligatory payment

55. (1) The Corporation shall, in the manner described in subsection (2), make payment in respect of any deposit insured with the Corporation where a winding-up order has been made in respect of—

- (a) a member institution that holds the deposit; or
- (b) any person to whom that deposit has been transferred—
 - (i) under paragraph 41(1)(c) from a member institution which has surrendered its licence; or
 - (ii) under subsection 51(1) from a member institution amalgamating with such person.

(2) Where the Corporation is obliged to make payment under subsection (1) in respect of any deposit, the Corporation shall as soon as possible and in any case not later than three months from the date of the winding-up order make payment to such person based on the record of a member institution as in the opinion of the Corporation appears to be entitled to it in such manner deemed appropriate by the Corporation.

Discretionary payment

56. The Corporation may, with the prior written approval of the Minister, make payment in respect of any deposit insured by the Corporation where—

- (a) the member institution that holds the deposit or any person to whom that deposit has been transferred under paragraph 41(1)(c) from a member institution which has surrendered its licence or under subsection 51(1) from a member institution amalgamating with such person, is unable to make any payment in respect of the deposit, by reason of—
 - (i) an order of a court;
 - (ii) any action taken by a regulatory body or the Corporation; or
 - (iii) any action taken by the receiver, manager or receiver and manager during the period when a member institution is in receivership;
- (b) a petition for winding-up has been presented to the court against the member institution that holds the deposit or any person to whom that deposit has been transferred under paragraph 41(1)(c) from a member institution which has surrendered its licence or under subsection 51(1) from a member institution amalgamating with such person; and
- (c) the membership of the member institution that holds the deposit is cancelled or terminated.

Advance payment

57. The Corporation may exercise its discretion in respect of sections 55 and 56 to make advance payment to the depositor.

Date of computing liability

58. (1) The date for computing liability for obligatory payment by the Corporation shall be the date of the commencement of winding-up.

(2) The date for computing liability for the discretionary payment in respect of an event under section 56 shall be the date when the event first occurs.

How return or interest on deposit to be calculated for obligatory payment

59. For the purpose of calculating the obligatory payment of the Corporation in respect of any deposit insured by the Corporation where a winding-up order has been made in respect of a member institution that holds the deposit, the principal, including return or interest accrued, as the case may be, in relation to the deposit shall be included only to the date of the commencement of the winding-up.

Corporation may pay return or interest on obligatory payment

60. Where the Corporation makes an obligatory payment under section 55, the Corporation may at its sole discretion pay, in addition to the amount the Corporation is obliged to pay, return or interest, as the case may be, on that amount at a rate determined by the Corporation for the period commencing on the date of the commencement of the winding-up in respect of a member institution that holds the deposit and ending on the date of the making of the payment in respect of the deposit, but the aggregate of the payments made under this section and section 55 in relation to the deposit shall in no case exceed sixty thousand ringgit.

How return or interest on deposit to be calculated for discretionary payment

61. For the purpose of calculating the payment of the Corporation in respect of any deposit insured by the Corporation where the Corporation makes a discretionary payment—

- (a) subject to paragraph (b), the return or interest accrued, as the case may be, in relation to the deposit shall be included only to the date of the payment by the Corporation;
- or

- (b) if a proceeding for the winding-up of a member institution that holds the deposit has been commenced before the date of the payment by the Corporation but a winding-up order has not yet been made, the return or interest accrued, as the case may be, in relation to the deposit shall be included only to the date of the commencement of the winding-up.

Return or interest on index-linked deposits

62. Any return or interest, as the case may be, referred to in section 59 or 61 in relation to a deposit held by a member institution shall be determined in accordance with rules prescribed by the Corporation if a payment to be made by the member institution in respect of the deposit is to be determined, in whole or in part, by reference in any way to—

- (a) the market price of a security, commodity or financial instrument;
- (b) the exchange rate between any two currencies;
- (c) a reference rate determined by reference to any one or more of those prices or rates;
- (d) a reference rate determined by reference to any one or more non-financial events; or
- (e) any other kind of variable index or reference point as may be specified by the Corporation.

Discharge of liability

63. Payment under this Chapter by the Corporation in respect of any deposit insured by the Corporation discharges the Corporation from all liabilities to the extent of the amount of the payment made in respect of that deposit, and in no case is the Corporation under any obligation to see to the proper application in any way of the payment so made.

Subrogation

64. Where the Corporation makes a payment under this Chapter in respect of any deposit, the Corporation is subrogated, to the extent of the amount of the payment made, to all the rights and interests of the depositor and may maintain an action in respect of those rights and interests in the name of the depositor or in the name of the Corporation.

Assignment

65. Where the Corporation deems it advisable, the Corporation may withhold payment in respect of any deposit with a member institution until it has received an assignment in writing of all the rights and interests of the depositor in relation to the deposit.

Time limitation for claims

66. No action may be taken against the Corporation in respect of the obligation of the Corporation to make payment in relation to a deposit held by a member institution that is being wound up unless the action is commenced within ten years after the date of the commencement of the winding-up.

PART V

EXAMINATION OF MEMBER INSTITUTIONS

Bank Negara Malaysia to provide information

67. Bank Negara Malaysia may, within an appropriate time, provide to the Corporation—

- (a) written reports following the examinations conducted under section 69 of the Banking and Financial Institutions Act 1989 or section 31 of the Islamic Banking Act 1983 or any other relevant law to which a member institution is subject;
- (b) a rating or by any other means, an assessment of the safety and soundness of the member institution, including its financial condition;

- (c) any information that Bank Negara Malaysia considers relevant to any matter referred to in paragraph (a) or (b); or
- (d) any information that comes to the attention of Bank Negara Malaysia of any change in the circumstances of the member institution that may materially affect the position of the Corporation as an insurer.

Examinations

68. (1) For the purposes of this Act, Bank Negara Malaysia may examine the operations of a member institution upon request by the Corporation.

(2) The scope of examinations under subsection (1) may include the examination of—

- (a) whether proper and adequate deposit records are maintained by a member institution;
- (b) whether reports made by a member institution on its premiums are substantially correct;
- (c) compliance with terms and conditions or any other requirements of the membership; or
- (d) any other areas mutually agreed to with Bank Negara Malaysia.

(3) The Corporation may, with the prior written approval of Bank Negara Malaysia, commission an independent audit in respect of examination under subsection (1) or subsection 69(1).

(4) A copy of any report made under subsection (3) shall be provided by the Corporation to Bank Negara Malaysia within a period of three months after the completion of the report.

(5) The Corporation may recover any cost incurred under this section from a member institution as a debt due and payable to the Corporation.

Special examinations

69. (1) Where the Corporation has reason to believe that the making of a payment under Chapter 4 of Part IV is imminent the

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,

commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment not exceeding a term of three years or to both and shall, in addition, be liable to a daily fine not exceeding thirty thousand ringgit for every day the offence continues after conviction.

Failure to provide information, etc.

86. Every member institution that fails or neglects—

- (a) within the time specified for so doing, to provide the Corporation with any account, record, statement, return, report or other document respecting the business or affairs of a member institution that is required to be submitted to the Corporation under this Act; or
- (b) to respond, within the time specified in the notice, to a request for information or explanations respecting a member institution made by or on behalf of the Corporation under this Act,

commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment not exceeding a term of one year or to both and shall, in addition, be liable to a daily fine not exceeding ten thousand ringgit for every day the offence continues after conviction.

General offence

87. Unless otherwise provided in this Act, any person, other than the Corporation, who commits an offence under this Act, contravenes or does not comply with any provision of this Act or any specification or requirement made, or any order in writing, direction, instruction, or notice given, or any limit, term, condition or restriction imposed, or any other thing howsoever done, in the exercise of any power conferred under, pursuant to or by virtue of, any provision of this Act commits an offence and shall, on conviction—

- (a) in the case of a natural person, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment not exceeding a term of six months or to both and shall, in addition, be liable to a daily fine not exceeding five thousand ringgit for every day the offence continues after conviction; or

(b) in any other case, be liable to a fine not exceeding one million ringgit.

Offences by body corporate or unincorporate or by director, officer, controller, etc.

88. (1) Where an offence has been committed by any body corporate or unincorporate under this Act, any person who at the time of the commission of the offence was a director, officer or controller of the body corporate or unincorporate or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the carrying on of any business or for the management of any assets, liabilities or affairs of such body corporate or unincorporate, or was assisting in such management, commits that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Where any person (hereinafter in this subsection referred to as the “principal”) would be liable under this Act to any punishment or penalty for any act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any clerk, servant or agent of his, or of the clerk or servant of such agent.

(3) Subsection (2) shall be applicable where such act, omission, neglect or default was committed by the clerk or servant of the principal in the course of his employment, or by the agent when acting on behalf of the principal, or by the clerk or servant of such agent in the course of his employment by such agent or otherwise on behalf of the agent.

(4) For the purpose of this section, “controller” shall have the meaning assigned to it under subsection 2(1) of the Banking and Financial Institutions Act 1989.

Power of Corporation to compound offences

89. (1) The Corporation, with the concurrence of the Public Prosecutor, may in the case where it deems fit and proper to do so, compound any offence committed by any person which is punishable under this Act, by making a written offer to such

person to compound the offence by paying to the Corporation within such time as may be specified in the offer such sum of money as may be specified in the offer which shall not exceed fifty per centum of the amount of the maximum fine, including the daily fine, if any, in the case of a continuing offence, to which that person would have been liable if he had been convicted of the offence.

(2) Any money paid to the Corporation pursuant to the provisions of subsection (1) shall be paid into and form part of the Consolidated Fund.

(3) An offer under subsection (1) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer, or any extension of it which the Corporation may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (1), no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made.

Court may order compliance

90. Where a person has been convicted of an offence under this Act, the court may, in addition to any fine or term of imprisonment that may be imposed, order such person to rectify the contravention of this Act in respect of which the person was convicted.

Additional monetary punishment

91. Where a person has been convicted of an offence under this Act, the court may, where it is satisfied that as a result of the commission of the offence the convicted person acquired a monetary benefit or that monetary benefit accrued to the benefit of such person, order the convicted person to pay, notwithstanding the maximum amount of any fine that may otherwise be imposed under this Act, an additional fine in an amount equal to the court's estimation of the amount of the monetary benefit.

Compliance or restraining order

92. If a person does not comply with any provision of this Act that apply in respect of such person, the Corporation may apply to a High Court for an order directing such person to comply with or restraining such person from acting in breach of the provision and, on the application, the court may so order and make any further order it thinks fit.

Recovery of fines

93. All fines payable under this Act are recoverable and enforceable, with costs, at the suit of the Corporation, instituted by the Corporation and, when recovered, to be paid into and form part of the Consolidated Fund.

PART VIII

GENERAL PROVISIONS

Submission of information to Corporation

94. (1) Unless expressly provided for in this Act to the contrary, if, for the purpose of the exercise of any of its powers, the performance of any of its functions, or the discharge of any of its duties, under this Act, the Corporation requires any information from any member institution or from any related corporation of any of the member institution, on any matter relating to the business or affairs of such a member institution or related corporation, such member institution or related corporation shall, notwithstanding subsection 97(1) of the Banking and Financial Institutions Act 1989 or subsection 34(1) of the Islamic Banking Act 1983, submit such information to the Corporation.

(2) Any officer or agent of the member institution or related corporation or any other person having access or holding or in possession of the books, records, accounts or other documents of a member institution or related corporation shall, if at any time called upon in writing by the Corporation to do so, produce the same to the Corporation as it may require.

(3) Where the information obtained by the Corporation under subsection (1) or (2) relates to the account, business or affairs of any customer of any member institution or related corporation supplying the information, that information shall be confidential as between the Corporation and the member institution or related corporation supplying it.

(4) Any person who fails to comply with any requirement under this section commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit and shall, in addition, be liable to a daily fine not exceeding thirty thousand ringgit for every day the offence continues after conviction.

Submission of information to Bank Negara Malaysia

95. Bank Negara Malaysia is entitled to all information obtained by or produced to the Corporation, whether in the course of conducting an examination, inspection or otherwise, regarding the business and affairs of the member institution or any of its subsidiaries or affiliates or of any person dealing with the member institution or any of its subsidiaries or affiliates, that relates to the safety and soundness or the operations, of the member institution.

Judicial notice

96. The court shall take judicial notice of—

- (a) any fact or matter required to be published under this Act; and
- (b) any fact or matter set out in any certificate issued under this Act.

Winding-up of Corporation

97. No statute relating to the insolvency or winding-up of any body corporate applies to the Corporation and in no case shall the business and affairs of the Corporation be wound up.

Immunity

98. (1) No action, suit, prosecution or other proceeding whatsoever shall lie or be brought, instituted or maintained in any court or before any other authority against—

- (a) the Government of Malaysia or a State Government;

- (b) the Minister;
- (c) the Corporation;
- (d) Bank Negara Malaysia;
- (e) any director, officer, employee or agent of any such Government, Corporation or Bank Negara Malaysia, either personally or in their official capacity;
- (f) receiver, manager, receiver and manager, liquidator or conservator appointed pursuant to this Act; or
- (g) any person lawfully acting on behalf of any such Government, Corporation, Bank Negara Malaysia, any such director, officer, employee or agent, either personally or in his capacity as a person acting on such behalf,

for or on account of, or in respect of, any act done or statement made or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance or in execution of, or intended pursuance or execution of, this Act, or any order in writing, direction, instruction, notice or other thing whatsoever issued under this Act:

Provided that such act or such statement was done or made, or was omitted to be done or made, in good faith.

(2) For the purposes of this section, any member of the administration of the Government of Malaysia or State Government shall be deemed to be an officer of the respective Government.

(3) Nothing in subsection (1) shall be construed to relieve the Corporation from the obligation to make payment in respect of a deposit insured under this Act.

Application and non-application of other Acts

99. (1) The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Corporation or directors, officers, employees or agents of the Corporation in respect of any act, omission, neglect or default done or committed by him in such official capacity.

(2) The Moneylenders Act 1951 [Act 400] shall not apply to the Corporation.

Power to make regulations, rules, orders, by-laws, directives, guidelines, circulars or notes

100. (1) The Corporation may make, from time to time—

- (a) with the approval of the Minister, such regulations, rules or orders; or
- (b) by-laws, directives, guidelines, circulars or notes,

as may be necessary or expedient for giving full effect to the provisions of this Act, for carrying out or achieving the objects and purposes of this Act, or any provision thereof, or for the further, better or more convenient implementation of the provisions of this Act.

(2) Any regulations, rules, orders, by-laws, directives, guidelines, circulars or notes made under this section may relate to all, or any class, category or description of persons and different provisions may be made for different persons, classes, categories or description of persons.

(3) Without prejudice to the generality of subsection (1), such regulations, rules, orders, by-laws, directives, guidelines, circulars or notes may be made in respect of—

- (a) forms, including forms of notifications, notices and certificates, for the purposes of this Act;
- (b) the conduct, business and affairs of the Corporation;
- (c) deposits of a trustee, joint owner or a deposit of a business or professional practice under section 49;
- (d) the coverage of deposits and related matters to it on the following:
 - (i) where a person has deposits with two or more member institutions that amalgamate and continue in operation as one member institution under section 50; or
 - (ii) where such deposits are to be acquired by a person who is not a member institution under section 51;

- (e) the priority of payment for Islamic deposits in relation to Islamic deposits based on custody and other Islamic deposits;
- (f) the return or interest to be payable under subsubparagraph 1(12)(j) of the Second Schedule;
- (g) forms, method and procedures for compounding of offences;
or
- (h) anything under this Act required to be made as regulations, rules, orders, by-laws, directives, guidelines, circulars or notes.

(4) Any regulations or orders made under this section shall be published in the *Gazette* and shall be laid before the Dewan Rakyat as soon as practicable after its publication.

FIRST SCHEDULE

[Section 73]

ASSESSOR COMMITTEE

Interpretation

1. In section 73 and this Schedule—

“dissenting shareholders” means shareholders of a member institution, either singly or collectively holding in aggregate not less than five per cent of the issued and paid-up capital of the member institution, who dispute the transacted price;

“transacted price” means the price at which a sale or disposal of any substantial assets or business of a member institution which the Corporation or the appointed person, as the case may be, has assumed control of under paragraph 71(1)(c) was transacted under paragraph 2.

Notice

2. (1) Where the Corporation or the appointed person, as the case may be, has assumed control of any member institution under paragraph 71(1)(c) and the Corporation or the appointed person transacts any substantial assets or business of the member institution by way of a sale or disposal, the Corporation or the appointed person, as the case may be, shall give notice of such sale or disposal in at least two daily newspapers published in Malaysia, one of which shall be in the national language.

(2) The notice under subparagraph (1) shall—

- (a) set out the transacted price; and
- (b) specify that any dissenting shareholder may, not later than twenty one days from the date of the notice under subparagraph (1), apply in writing to the Corporation for a review of reasonableness of the transacted price by the Assessor Committee.

(3) An application under subsubparagraph (2)(b) shall be in such form as prescribed by the Corporation from time to time.

Review of sale price of substantial assets or business by Assessor Committee

3. (1) Where the Corporation receives any application from any dissenting shareholder under subsubparagraph 2(2)(b), it shall within a reasonable period of time constitute the Assessor Committee and refer the application to that Committee.

(2) The Assessor Committee shall consist of three persons, drawn from a panel of ten persons appointed by the Minister, on the recommendation of the Corporation.

(3) No act or proceeding of the Assessor Committee shall be invalid merely because of—

- (a) any defect in the constitution of the Assessor Committee; or
- (b) any omission, defect or irregularity in the proceedings of the Assessor Committee.

Power of Assessor Committee to review reasonableness of transacted price

4. (1) Upon an application of a dissenting shareholder being referred to the Assessor Committee under subparagraph 3(1), it shall review the reasonableness of the transacted price.

(2) In reviewing the reasonableness of the transacted price, the Assessor Committee shall have regard to the following:

- (a) such matters it considers relevant including the fact that a notice in paragraph 2 has been issued; and
- (b) prevailing market conditions for sale or disposal of similar assets or business under a receivership or liquidation,

and in all cases it shall deduct the benefit derived from any special financial assistance provided, directly or indirectly, to the member institution by the Corporation or Bank Negara Malaysia.

(3) Notwithstanding subparagraph (2), where a member institution is insolvent, a consideration of one ringgit is deemed reasonable.

- (4) Where the Assessor Committee decides that—
- (a) the transacted price is below the price which in its opinion is reasonable consideration for such substantial assets or business (in this subparagraph referred to as “reasonable price”), it shall advise the Corporation to pay to the member institution the difference between the transacted price and the reasonable price and the Corporation shall within such period as may be specified by the Assessor Committee pay such difference to the member institution; or
 - (b) the transacted price is the reasonable price, it shall advise the Corporation accordingly.

(5) A certificate signed by the members of the Assessor Committee confirming any decision of the Assessor Committee shall be conclusive evidence of that decision.

Dissenting shareholders to be informed of Assessor Committee’s decision

5. The Corporation shall as soon as practicable inform the dissenting shareholders of the decision of the Assessor Committee under subparagraph 4(5).

Honorarium and allowance

6. The assessors appointed under paragraph 3 shall be paid such honorarium and travelling and subsistence allowances as may be determined by the Board.

SECOND SCHEDULE

[Section 26]

STATUTORY VESTING

Vesting certificate

1. (1) In this Schedule, unless the context otherwise requires—

“registered interest” means any right or interest in—

- (a) a charge to which subsection 108(3) of the Companies Act 1965 applies and is duly registered in accordance with that subsection; and
- (b) land which is duly registered under the Strata Titles Act 1985 [Act 318], the National Land Code, the Land Ordinance of Sabah or the Land Code of Sarawak;

“interest in land” means—

- (a) any interest in land, whether registered or registrable, including one to which the Strata Titles Act 1985 applies and which is capable of being transferred under Part Fourteen of the National Land Code or Part V of the Land Ordinance of Sabah or Part VII of the Land Code of Sarawak;

- (b) any lienholder's caveat or other caveats; and
- (c) any other rights and entitlements relating to land;

“disclosed obligation” means an obligation or liability owed to the obligor by the seller under or with respect to the asset and which obligation or liability is disclosed by the seller to the purchaser in writing prior to the vesting date;

“purchaser” used in reference to—

- (a) an acquisition under subparagraph 25(2)(a)(i) or pursuant to paragraph 4 of the Fourth Schedule means the Corporation or its subsidiary where such subsidiary has been prescribed under subsection 10(2); and
- (b) a disposal under paragraph 25(2)(b) or 28(1)(b) means the person to whom the asset is disposed under that paragraph;

“obligor” means any person who owes a duty or obligation of any nature, whether present or future, or whether vested or contingent, to the seller under or with respect to an asset, including without limitation, an obligor under an Islamic financing facility, conventional credit facility, security or other chose in action;

“seller” used in reference to—

- (a) paragraph 25(2)(a) means a member institution referred to in that paragraph; and
- (b) paragraph 25(2)(b) or 28(1)(b) means the Corporation;

“vesting certificate” means a certificate issued under subparagraph 1(3) and includes a replacement vesting certificate issued under paragraph 3;

“vesting date” means the date stated on a vesting certificate as the date on which an asset vests in the purchaser;

“disclosed claim” means any specific claim disclosed to the purchaser by the seller in writing prior to the vesting date.

(2) A vesting certificate may be in such form as determined by the Corporation from time to time.

(3) Where the Corporation wishes to acquire or dispose of an asset pursuant to the statutory vesting provisions set out in this Schedule, the Corporation shall issue a vesting certificate in accordance with this Schedule.

(4) A vesting certificate shall be issued under the common seal or a facsimile seal of the Corporation.

(5) A vesting certificate may be issued by the Corporation before, upon or after the vesting date.

(6) Where the Corporation acquires or disposes of an asset by issuing a vesting certificate—

- (a) in the case where the asset is held by the seller alone, the asset shall on and from the vesting date vest in the purchaser; and
- (b) in the case where the asset is held jointly by the seller and another person, the asset shall on and from the vesting date vest in the purchaser jointly with that other person.

(7) A vesting certificate stating that an asset has been vested in the purchaser shall be conclusive evidence of such vesting as of the vesting date.

(8) No provision in any law including subsection 4(3) of the Civil Law Act 1956 [*Act 67*], rule of law or agreement limiting or prohibiting the right of the seller or requiring any consent to assign, sell, dispose of or transfer such asset shall have any application or effect in respect of any acquisition by the purchaser or disposal by the seller, except that a disposal of such asset by the seller shall be subject to the approval of the relevant regulatory body or relevant State Authority having jurisdiction over such disposal.

(9) Where the asset that a purchaser acquires in accordance with this Schedule is an Islamic financing facility or conventional credit facility, the purchaser is deemed to have given the financing, advance, loan or other facility or issued the guarantee, as the case may be, notwithstanding that the financing, advance, loan or other facility or guarantee had been drawn down or issued by the seller.

(10) Where the security for an Islamic financing facility or conventional credit facility that is vested under this Schedule in the purchaser includes a share—

- (a) for the purposes of paragraph 6A(9)(b) of the Companies Act 1965, the purchaser, shall be deemed to hold an interest in the share only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money; and
- (b) the interest of the purchaser in the share shall be disregarded for the purposes of section 6A of the Companies Act 1965.

(11) The purchaser shall, on and from the vesting date for an asset, acquire all of the seller's present and future rights, titles and interests in, and disclosed obligations with respect to, such asset, free of any encumbrance or claim save for any registered interest prevailing as at the vesting date and disclosed claims.

(12) Without prejudice to subparagraphs (6), (7), (8), (9), (10) and (11) in relation to an asset vested in the purchaser—

- (a) each obligor with respect to such asset shall be deemed to have released and discharged the seller from all the disclosed obligations with respect to such asset;

- (b) each obligor and each other person having any right, title or interest in such asset shall be deemed to have consented to and accepted the assumption by the purchaser of all the disclosed obligations with respect to such asset;
- (c) an existing instrument, whether in the form of a deed, will or otherwise, or order of any court, under or by virtue of which, the seller has title or ownership of or rights to such asset, shall be construed and shall have effect as if for any reference in it to the seller there were substituted a reference to the purchaser;
- (d) an existing instrument in relation to such asset to which the seller was a party shall have effect insofar as it is applicable to the disclosed obligations, disclosed claims and registered interests as if the purchaser had been a party to it instead of the seller;
- (e) an existing mandate, power of attorney, authority, undertaking or consent in relation to such asset which was given to the seller, either alone or jointly with another person, shall be deemed to have effect, as if given to the purchaser either alone or jointly with the other person, as the case may be;
- (f) if such asset is security held immediately before the vesting date by the seller, or by a nominee of or trustee for the seller, as security for the payment or discharge of any liability, including any liability arising from future advances, of any person, such security shall be held by the purchaser, that nominee or trustee as the nominee of, or trustee for, the purchaser, as the case may be, with the same priority as the seller, and to the extent of that liability, shall be available to the purchaser as security for the payment or discharge of that liability;
- (g) in addition to any other right, power or remedy granted to the purchaser in this Schedule, the purchaser shall have the rights, powers and remedies (and in particular the rights and powers as to taking or resisting legal or other proceedings or making or resisting applications to any authority) for ascertaining, protecting or enforcing the rights, titles, interests or disclosed obligations vested in the purchaser including those rights, titles, interests or obligations in respect of any legal or other proceedings or applications to any authority pending immediately before the vesting date by or against the seller, and resisting any disclosed claims or registered interests as if they had at all times been the rights, titles, interests or obligations of the purchaser;
- (h) a judgment or award obtained by the seller in relation to such asset and not fully satisfied before the vesting date shall be enforceable by the purchaser;
- (i) no acquisition by the purchaser or disposal by the seller, of such asset shall be void or voidable by reason of the application of any law; or
- (j) where any—
 - (i) form of return on Islamic financing facility; or
 - (ii) interest,

payable under any agreement in respect of the asset is no longer determinable as provided in the agreement, the return or interest payable shall be as prescribed under section 100 or in any particular case, as the purchaser may agree with the obligor.

(13) Without prejudice to subparagraphs (6), (7), (8), (9), (10), (11) and (12), a vesting of any asset in the purchaser shall not—

(a) be regarded as placing—

- (i) the purchaser;
- (ii) the seller;
- (iii) any person deriving title from the purchaser; or
- (iv) any other person,

in breach of or default under, any contract or in breach of confidence;

(b) be regarded as giving rise to a right or duty for any person to—

- (i) terminate, cancel or modify an agreement;
- (ii) enforce or accelerate the performance of an obligation; or
- (iii) require the performance of an obligation not otherwise arising for performance;

(c) be regarded as placing the seller, the purchaser or any other person in breach of any law, rule of law or agreement prohibiting, restricting or regulating the assignment, sale, disposal or transfer of any asset or disclosure of information;

(d) release a surety from an obligation;

(e) invalidate or discharge a contract or security; or

(f) be regarded as terminating, cancelling or varying any rights, privileges, exemptions (including any tax exemptions) or priorities to which the seller was entitled and which by virtue of this paragraph has vested in the purchaser.

(14) Without prejudice to the generality of subparagraphs (6), (7), (8), (9), (10), (11), (12) and (13) but subject to paragraph 2, in any proceedings brought by or against any purchaser in respect of any asset vested in the purchaser pursuant to this Schedule, no person shall, unless such claim is a disclosed claim, raise as a claim or defence to such proceedings any of the following matters:

(a) that person has had or would have had a set-off or counterclaim against the seller or any other person;

(b) any person had a prior interest, whether legal or equitable, in the asset;

(c) any person was a party to or privy to any fraud, duress, coercion, undue influence or misrepresentation;

- (d) there was a mistake of law or fact;
- (e) any agreement to which the asset relates was in furtherance of an illegal purpose or that any consideration given or received there under was unlawful, or that the object of the agreement which constitutes or is one of the constituents of the asset is unlawful;
- (f) there was a total failure of or no consideration or there was any partial failure of consideration;
- (g) the person who executed, is deemed to have executed or who is a party to, any document of title for the asset or written contract which evidences, gives rise to or secures the asset, did not understand the document;
- (h) the person who executed, is deemed to have executed or who is a party to, any document of title for the asset or written contract which evidences, gives rise to or secures the asset, did not have the capacity or the authority to do the same; and
- (i) there is an error in any statement of account issued by the seller or any other person in respect of any debt to which the asset relates.

Preservation of rights

2. (1) A person who is precluded from making a claim against any purchaser or is precluded from raising a defence against that purchaser under this Schedule, shall be entitled to seek compensation against the seller in respect of such claim.

(2) Where the Court is satisfied that the person referred to in subparagraph (1) has a claim against the seller including any prior equitable interest in the asset which that person could have raised or claimed but is precluded by subparagraph 1(14) that person shall be entitled to such compensation from the seller in respect of such claim as the Court considers fair and reasonable.

Replacement vesting certificate

3. (1) The Corporation may issue a new vesting certificate to replace any vesting certificate it has previously issued in order to rectify any omission or error in the vesting certificate.

(2) Any replacement vesting certificate issued under subparagraph (1) executed under the common seal or a facsimile seal of the Corporation stating that an asset has been vested in the purchaser shall be conclusive evidence of such vesting as of the vesting date stipulated in the replacement vesting certificate.

(3) If any law stipulates a time period within which a transfer of any of the assets stated to be the subject of a replacement vesting certificate issued under subparagraph (1) shall be registered or filed, that period shall commence from the date the replacement vesting certificate is issued.

(4) Any act done by a purchaser, seller, conservator or any other person, in reliance of a vesting certificate previously issued shall not be affected by any omission or error rectified in a replacement vesting certificate issued under subparagraph (1).

(5) For the purposes of this Act, any reference to a vesting certificate shall be deemed to include a reference to a replacement vesting certificate issued under subparagraph (1).

Additional provisions on land

4. (1) Notwithstanding the provisions of the National Land Code, the Land Ordinance of Sabah, the Land Code of Sarawak or any other law, any caveat or prohibitory order which was entered, registered or lodged, prior to, on or after, or presented for entry, registration or lodgement, on or after, the vesting date shall not prevent a transfer of any interest in land of the seller to the purchaser.

(2) Where a vesting certificate vests in the purchaser, any interest in land—

(a) in Peninsular Malaysia, on receipt of—

- (i) payment of the prescribed fee; and
- (ii) the vesting certificate,

the Registrar under the National Land Code shall, without the need for any further application or filing of any further document, make a memorial on the register document of title and make such other entries and generally do all things as may be necessary to give effect to the vesting;

(b) in Sabah, on receipt of—

- (i) payment of the prescribed fee; and
- (ii) the vesting certificate,

the Registrar under the Land Ordinance of Sabah shall, without the need for any further application or filing of any further document, make a memorial on the register document of title and make such other entries and generally do all things as may be necessary to give effect to the vesting; or

(c) in Sarawak, on receipt of—

- (i) payment of the prescribed fee; and
- (ii) the vesting certificate,

the Registrar under the Land Code of Sarawak shall, without the need for any further application or filing of any further document, make a memorial on the register document of title and make such other entries and generally do all things as may be necessary to give effect to the vesting.

(3) For the purposes of the National Land Code, the Land Ordinance of Sabah, the Land Code of Sarawak or any other law, a vesting certificate shall be conclusive evidence of a vesting of an interest in land in the purchaser.

Other Registrars to give effect to vesting certificate

5. (1) Notwithstanding the provisions of any other law, the Registrar of Companies, the registrar of Malaysian ships, a central depository, an authorised depository agent and any person maintaining a register or record of ownership, interest or security, as the case may be, (in this paragraph referred to as “Registrar”) shall, on receipt of—

- (a) payment of the prescribed fee; and
- (b) the vesting certificate,

without the need for any further application or filing of any further documents, do all things and make all entries or memorials in any register or record kept by the Registrar as may be necessary to give effect to the vesting of the asset to which the vesting certificate relates.

(2) For the purpose of this paragraph, subsection 112A(1) of the Companies Act 1965 shall be deemed to apply to the purchaser as if for the word “thirty” in that subsection the words “one hundred and eighty” had been substituted.

Immunity of Registrar

6. A Registrar under paragraph 4 or 5 shall not be liable to any person in respect of the making of any memorial on the register document of title or any other entry or memorial in the register or record in reliance on the vesting certificate.

Automatic substitution in any legal or other proceedings

7. Notwithstanding the provisions of any other law, every registrar of courts shall automatically upon receipt of a copy of the vesting certificate do all things and make all entries in any register or record kept by such registrar as may be necessary to give effect to the substitution of the purchaser in place of the seller as a party in any legal or other proceedings.

THIRD SCHEDULE

[Section 27]

POWERS AND DUTIES OF CONSERVATOR

Interpretation

1. (1) In this Schedule, unless the context otherwise requires—

“Bursa Malaysia” means the Bursa Malaysia Berhad, a public limited company incorporated under the Companies Act 1965 and approved as a stock exchange under the Securities Industry Act 1983;

“secured creditor” means a person who holds as security for a liability of an affected person—

- (a) a charge duly registered under the National Land Code, the Land Ordinance of Sabah or the Land Code of Sarawak over land belonging to the affected person;
- (b) a fixed or floating charge on the undertaking or asset of the affected person and which, if required by subsection 108(3) of the Companies Act 1965, is duly registered in accordance with subsection 108(1) of the Companies Act 1965;
- (c) an assignment by an affected person of its rights under an agreement to purchase land or a parcel of a building where the issue document of title to the land or the strata title to the parcel of a building has not been issued at the time of the assignment;
- (d) the issue document of title to any land or duplicate lease belonging to the affected person and in respect of which a lienholder’s caveat has been duly entered in accordance with the provisions of the National Land Code;
- (e) a charge, mortgage, pledge or lien over marketable securities (as defined in the Companies Act 1965) belonging to the affected person and which, if duly required by subsection 108(3) of the Companies Act 1965, is duly registered in accordance with subsection 108(1) of the Companies Act 1965; or
- (f) a charge, mortgage, pledge or lien over monies placed on fixed deposit by the affected person duly registered under subsection 108(1) of the Companies Act 1965.

(2) The Minister may, on the recommendation of the Corporation, amend the definition of “secured creditor” in subparagraph (1) by notice published in the *Gazette*.

Duration of administration

2. (1) The administration of the affected person by the conservator shall commence from the date of appointment of the conservator and shall continue until terminated by the Corporation.

(2) The Board may appoint a committee of itself chaired by one of its directors and consisting of one or two more directors and other persons of relevant expertise or with relevant experience to oversee, monitor and evaluate the performance of any or all conservators appointed by the Corporation.

(3) The committee appointed under subsection (2) shall, from time to time, make such proposals or recommendations including a proposal for the termination of the conservator for the consideration of the Corporation.

(4) A conservator shall be released from his appointment upon the approval of the termination of his appointment by the Corporation.

(5) Where a conservator is released from his appointment under this paragraph or subparagraph 26(2), he shall, with effect from such release, be discharged from all duties and liabilities in respect of his administration or otherwise in relation to his conduct as a conservator.

(6) Nothing in this paragraph shall prevent an action or other proceedings by any person for loss or damage due to the wilful misconduct or gross negligence of the conservator.

Notification of appointment of conservator

3. (1) Where a conservator has been appointed, the conservator shall—

- (a) within two days after such appointment give written notice to the affected person;
 - (b) within seven days after such appointment lodge a notice of the conservator's appointment with—
 - (i) the Companies Commission of Malaysia; and
 - (ii) in the case of a public listed company, Bursa Malaysia,
- in the form prescribed under this Act; and

(c) within seven days after such appointment cause a notice of the conservator's appointment to be published in at least two daily newspapers in Malaysia, one of which shall be in the national language.

(2) Every invoice, order for goods or services, business letter, cheque, credit note or negotiable instrument or other documents which, after the appointment of a conservator in relation to the affected person, is issued by or on behalf of the affected person or the conservator, being a document on or in which the affected person's name appears, shall contain the words "Conservator Appointed" or similar words.

(3) A contravention of this paragraph shall not affect the validity of the acts of the conservator in the administration of the affected person.

Effect of appointment of conservator

4. The appointment of a conservator under section 27 shall not—

- (a) be regarded as placing the conservator, the affected person or any other person in breach of or in default under any contract or in breach of confidence;
- (b) be regarded as giving rise to a right for any person to—
 - (i) terminate, cancel or modify an agreement;
 - (ii) enforce or accelerate the performance of an obligation; or
 - (iii) require the performance of an obligation not otherwise arising for performance;

- (c) be regarded as placing the conservator, the affected person or any other person in breach of any law or agreement prohibiting, restricting or regulating the assignment, sale, disposal or transfer of any asset or disclosure of information;
- (d) release a surety from an obligation;
- (e) invalidate or discharge a contract or security;
- (f) be regarded as terminating, cancelling or varying any right, privilege, exemption (including any tax exemption) or priorities in relation to an asset; or
- (g) be regarded as placing the Corporation or the conservator in breach of any law or any court order.

General powers of conservator

5. A conservator shall have the following powers:

- (a) power to change the location of the affected person's registered office;
- (b) power to use the common seal of the affected person;
- (c) power to do all acts and to execute in the name and on behalf of the affected person any deed, receipt or other document;
- (d) power to appoint any agent to do any business which the conservator is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss officers and employees in relation to the affected person;
- (e) power to establish subsidiaries of the affected person;
- (f) power to transfer to subsidiaries of the affected person the whole or any part of the assets of the affected person;
- (g) power to effect and maintain insurances in respect of the asset of the affected person;
- (h) power to take possession of, collect and get in the asset of the affected person and for that purpose, to take such proceedings as may seem expedient to the conservator;
- (i) power to sell or otherwise dispose of the asset of the affected person by public auction or private contract;
- (j) power to grant or accept a surrender of a lease or tenancy of the asset of the affected person, and to take a lease or tenancy of any asset required or convenient for the asset of the affected person;
- (k) power to do all things, including the carrying out of works, as may be necessary for the management and realization of the asset, business and affairs of the affected person;
- (l) power to raise funds, borrow money or grant security therefor over the asset of the affected person;

- (m) power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the affected person;
- (n) power to call up any uncalled capital of the affected person;
- (o) power to make any payment which is necessary or incidental to the performance of his functions;
- (p) power to carry on the business of the affected person;
- (q) power to perform any function and exercise any power, that the affected person, any of its directors or officers could perform or exercise if a conservator had not been appointed;
- (r) power to appoint any person as a director of the affected person, whether to fill a vacancy or as any additional director;
- (s) power to appoint a solicitor, accountant or other professionally qualified person to assist him in the performance of his functions in relation to the affected person;
- (t) power to remove or suspend from office any director of the affected person or appoint other persons to act as directors of the affected person notwithstanding any law or the constituent documents of the affected person;
- (u) power to bring or defend any action or other legal proceedings in the name and on behalf of the affected person;
- (v) power to refer to arbitration any question concerning the affected person;
- (w) power to make any arrangement or compromise on behalf of the affected person;
- (x) power to rank and claim in the bankruptcy, insolvency or liquidation of any person indebted to the affected person and to receive dividends or returns, and to accede to trust deeds for the creditors of the affected person;
- (y) power to present or defend a petition for the winding-up of the affected person; or
- (z) power to do all other things incidental to the exercise of the foregoing powers.

General duties of conservator

6. (1) Without prejudice to paragraphs 11, 13 and 14, the conservator shall, on his appointment, take into his custody or under his control all the assets to which the affected person is or appears to be entitled.

(2) The conservator shall manage the assets, business and affairs of the affected person—

- (a) at any time prior to the approval of the proposal by the secured creditors of the affected person under paragraph 22, in accordance with any direction given by the Corporation; and

- (b) at any time after the approval of the proposal by the secured creditors of the affected person under paragraph 22, in accordance with that proposal as it may be modified from time to time in accordance with paragraph 24.

Conservator as affected person's agent

7. The conservator shall, in the administration of the affected person, be deemed to be acting as the agent of the affected person.

Officers of affected person to perform or exercise function with written approval

8. (1) Where a conservator has been appointed, no person, including the board of directors of the affected person, other than the conservator shall perform or exercise or purport to perform or exercise a function as an officer of the affected person, except with the prior written approval of the conservator.

(2) Where the conservator approves the performance or exercise of a function by an officer of the affected person in accordance with subparagraph (1), the conservator shall pay to the officer such fee or other remuneration as the conservator reasonably determines.

(3) Except as provided in subparagraph (2) and notwithstanding any other law or contract, no remuneration of whatever nature shall accrue or be payable to any officer of the affected person except such as may be approved in writing by the conservator in relation to any activity required or authorised by the conservator for the duration of the administration of the affected person.

(4) For the purpose of subparagraph (1), the conservator shall be entitled to exercise all the functions of the board of directors of the affected person.

(5) In this paragraph, an employee of the affected person shall not be construed as an officer solely by virtue of him being an employee of the affected person.

Dealings with affected person's asset

9. If an affected person purports to enter into or any person purports to enter into on behalf of the affected person, a transaction or dealing with any asset of the affected person, that transaction or dealing shall be void unless—

- (a) it is a transaction or dealing entered into by the Corporation or the conservator; or
- (b) the prior written consent of the conservator was obtained for the transaction or dealing.

Compensation

10. (1) Where a Court finds a person guilty of an offence under subparagraph 9(2) and the Court is satisfied that the affected person or another person has suffered loss or damage thereby, the Court may order the person guilty of the offence to pay compensation to the person who has suffered such loss or damage.

(2) Notwithstanding subparagraph (1) the conservator may commence civil proceedings against any person to recover the asset of the affected person or compensation in lieu thereof.

Obligations of officer of affected person

11. (1) An officer or employee of the affected person shall within seven days after the appointment of the conservator—

- (a) deliver to the conservator all books, records, accounts or other documents of the affected person in the possession of the officer or employee; and
- (b) if the officer or employee knows the location of other books, records, accounts or documents relating to the affected person, inform the conservator of the location of those books, records, accounts or documents.

(2) An officer or employee of an affected person shall—

- (a) give the conservator such information concerning the affected person's asset, business, affairs and financial circumstances; and
- (b) attend to the conservator at such times,

as the conservator may reasonably require.

Investigation of business and affairs

12. (1) The conservator may require any of the persons mentioned in subparagraph (2), within twenty-one days thereof or such extended time as the conservator may permit, to verify and submit to the conservator a statement as to the business and affairs of the affected person in a form determined by the conservator containing—

- (a) the particulars of the affected person's assets and liabilities;
- (b) the name and addresses of the creditors of the affected person;
- (c) the securities held by the creditors of the affected person referred to in subsubparagraph (1)(b);
- (d) the dates when the securities referred to in subsubparagraph (1)(c) were given;

- (e) a statutory declaration made pursuant to the provisions of the Statutory Declarations Act 1960 [Act 13], declaring the information in the statement of affairs as being true and correct; and
- (f) such further or other information as may be required by the conservator.

(2) The conservator may require the following persons to verify and submit the statement of business and affairs referred to in subparagraph (1):

- (a) persons who are or have been officers of the affected person;
- (b) persons who have taken part in the formation of the affected person at any time within two years prior to the appointment of the conservator; or
- (c) persons who are in the affected person's employment or have been in the affected person's employment within two years before the appointment of the conservator who, in the opinion of the conservator, have knowledge of the information required.

(3) The conservator may at any time release a person from any obligation imposed on him under subparagraph (1) or (2).

(4) The conservator shall, on completion of his functions and duties under this Act, return to the affected person any book, statement, record, account or other documents or anything referred to under subparagraph 11(1), this paragraph and paragraph 13.

(5) In this paragraph, "employment" includes employment under a contract for services.

Conservator's rights to books, records, accounts or other documents of affected person

13. (1) Subject to subparagraph (3), no person is entitled as against the conservator—

- (a) to retain possession of the books, records, accounts or other documents of the affected person; or
- (b) to claim or enforce a lien on the books, records, accounts or other documents of the affected person.

(2) The conservator may give notice to a person in relation to the books, records, accounts or other documents of the affected person and such person shall deliver to the conservator the books, records, accounts or other documents so mentioned in the notice that are in his possession.

(3) Subparagraphs (1) and (2) shall not apply in relation to any book, record, account or other document—

- (a) to which a secured creditor of the affected person is entitled to possession otherwise than because of a lien; or
- (b) of the affected person impounded by any regulatory body,

but the conservator shall be entitled to inspect and make copies of such books, records, accounts or other documents.

Conservator's rights to assets of affected person

14. (1) The conservator may require any person who has in his possession or control asset, books, records, accounts or other documents to which the affected person appears to be entitled to deliver, convey, surrender or transfer the asset, books, records, accounts or other documents to the conservator immediately or within such period as the conservator may direct and such person shall immediately deliver, convey, surrender or transfer such asset, books, records, accounts or other documents to the conservator.

(2) Where the conservator seizes any asset which is not an asset of the affected person and at the time of the seizure, believes, and has reasonable grounds for believing, that he is entitled to seize that asset, then the conservator is not liable to any person in respect of any loss or damage resulting from the seizure unless that loss or damage is caused wilfully by the conservator or any person who acts on his behalf or by the conservator's own negligence.

Effect of obstructing or hindering conservator

15. No person shall obstruct or hinder the exercise of any duty, right or power by a conservator.

Disclaimer

16. (1) Subject to subparagraph (3), where any part of the asset of the affected person consists of—

- (a) any interest in land which is burdened with onerous covenants;
- (b) shares in corporations;
- (c) unprofitable contracts; or
- (d) any other asset that is not saleable or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money,

the conservator may within twelve months after he becomes aware of any of the abovementioned asset, disclaim any such asset.

(2) The rights of any person affected by the conservator pursuant to the exercise of his power to disclaim under subparagraph (1) shall be dealt with in the manner set out in the proposal and any compensation to such person shall rank as an unsecured debt.

(3) The conservator may not exercise his power under subparagraph (1) to disclaim any market contract.

(4) For the purpose of subparagraph (3), a “market contract” has the same meaning as defined under section 101 of the Securities Industry Act 1983 and shall include futures contracts traded on futures market that are cleared through an approved clearing house.

Moratorium

17. (1) Subject to subparagraph (6), on the appointment of the conservator, a moratorium shall take effect during which—

- (a) no prerogative orders may be made or any other action or civil proceeding commenced against the Corporation, the conservator or the affected person in respect of—
 - (i) the appointment of the conservator; or
 - (ii) any power exercised under this Act or any action taken or omitted to be taken consequent upon or arising out of the appointment of the conservator;
- (b) any petition for the winding-up of the affected person shall be dismissed by the Court;
- (c) no resolution may be passed or order made for the winding-up of the affected person;
- (d) no receiver, manager, receiver and manager or provisional liquidator may be appointed, or if appointed, his appointment shall immediately cease and he shall vacate his office;
- (e) no steps may be taken—
 - (i) to create, perfect or enforce any security over any asset of the affected person;
 - (ii) to enforce a judgment over any asset of the affected person;
 - (iii) to repossess any asset in the possession, custody or control of the affected person; or
 - (iv) to set off any debt owing to the affected person in respect of any claim against the affected person,
except with the prior written consent of the Corporation;
- (f) no proceedings, execution or other legal process may be commenced or continued with, and no distress may be levied, against the affected person or its asset except with the prior written consent of the Corporation;
- (g) any application made under section 176 of the Companies Act 1965 shall be adjourned *sine die* and any restraining order issued pursuant to subsection 176(10) of the Companies Act 1965 shall be immediately discharged and set aside; and
- (h) no proceedings, execution or other legal process may be commenced or continued with, against any person providing a guarantee or acting as a guarantor for the liability of the affected person except with the prior written consent of the Corporation.

(2) The duration of the moratorium provided for in subparagraph (1) shall be for a period of twelve months commencing from the date of the appointment of the conservator and may be terminated at any time by the Corporation.

(3) Notwithstanding subparagraph (2), the Corporation may extend the moratorium for such period as the Corporation deems appropriate to enable the conservator to prepare or implement a proposal under this Schedule.

(4) If the period of the moratorium is extended pursuant to subparagraph (3), a notice of the extension shall be published in at least two daily newspapers in Malaysia, one of which shall be in the national language.

(5) The Corporation shall not be liable to an action or damages in respect of a refusal to give its consent under subparagraph (1).

(6) Nothing in this paragraph shall prevent any civil or criminal proceedings from being instituted or continued by any regulatory body under any law against the affected person.

(7) Subject to subparagraph (5), subparagraph (1) shall not prevent any person who sustains losses from any action of the Corporation, the conservator or the affected person from instituting an action for damages for the losses suffered by such person.

(8) Notwithstanding any action instituted pursuant to subparagraph (7), the Corporation, the conservator or the affected person shall continue to exercise any or all of its powers under this Act.

(9) Any decision of the Corporation under this paragraph shall be final and binding.

Recovery of money consideration from assets acquired or sold before appointment of conservator

18. (1) For the purpose of this paragraph—

“money consideration”, in relation to an acquisition or sale by the affected person, means consideration for the acquisition or sale payable otherwise than by the issue of shares in the affected person;

“director” has the same meaning as defined under section 4 of the Companies Act 1965;

“value of the asset” includes the value of any goodwill or profits which might have been made from the asset or similar considerations.

(2) Where any asset has been acquired by the affected person for a money consideration within a period of two years before the appointment of a conservator under this Act—

(a) from a person who was at the time of the acquisition, a director of the affected person; or

- (b) from a company of which at the time of the acquisition, a person was a director who was also a director of the affected person,

the conservator may recover from the person or company from which the asset was acquired any amount by which the money consideration for the acquisition exceeded the value of the asset at the time of its acquisition.

(3) Where any asset has been sold by the affected person for a money consideration within a period of two years before the appointment of a conservator under this Act—

- (a) to a person who was at the time of the sale, a director of the affected person; or
- (b) to a company of which at the time of the sale, a person was a director who was also a director of the affected person,

the conservator may recover from the person or company to which the asset was sold any amount by which the value of the asset at the time of the sale exceeded the money consideration.

Undue preference

19. (1) On the appointment of the conservator, any transfer, mortgage, execution, attachment, obligation, settlement, charge, assignment, delivery of goods, payment or other act relating to any asset made, incurred or done by or against the affected person which, had it been done by or against an individual, would in his bankruptcy under the law of bankruptcy be void or voidable, may be avoided or recovered by the conservator.

(2) For the purpose of subparagraph (1), where reference is made in the law of bankruptcy to a date for the purpose of determining the effect of bankruptcy on transactions mentioned therein, that date shall be the date of the appointment of the conservator.

Vacation of office of receiver, etc.

20. (1) Any receiver, manager, receiver and manager or provisional liquidator who vacates his office pursuant to subsubparagraph 17(1)(c) shall immediately hand over all the assets, books, records, accounts or other documents of the affected person to the conservator.

(2) All sums properly incurred in respect of the costs, expenses and remuneration of such receiver, manager, receiver and manager or provisional liquidator, as the case may be, shall be charged on and paid out of the realised proceeds of the affected person in the manner set out in the proposal under paragraph 22.

Conservator to prepare proposal

21. (1) The conservator shall, subject to the terms and conditions of his appointment, prepare and submit to the Corporation a proposal setting forth the conservator's plan with respect to the affected person.

(2) The proposal of the conservator or any modification to the proposal under paragraph 24 may include any provision as the conservator thinks fit.

(3) Without prejudice to the generality of the foregoing provisions, the proposal may include provisions for—

- (a) a compromise or arrangement between the affected person and its creditors or any class of them or between the affected person and its shareholders or any class of them or between the affected person and its debtors or any class of them;
- (b) the alteration or reduction of all or part of the share capital of the affected person;
- (c) the sale of all or part of the undertaking or asset of the affected person;
- (d) the transfer to any company of the whole or any part of the undertaking, asset or liabilities of the affected person;
- (e) the continuation by or against the company referred to in subsubparagraph (d) of any legal proceedings pending by or against the affected person;
- (f) the winding-up or dissolution without winding-up of the affected person; or
- (g) any other provision necessary to ensure that the conservator's proposal or plan or any compromise, arrangement, reconstruction or amalgamation with respect to the affected person shall be fully and effectively carried out.

(4) The Corporation shall consider the proposal submitted by the conservator and, not later than thirty days after the submission of the proposal or such longer period as may be permitted by the Minister, approve or reject the proposal.

Secured creditors meeting

22. (1) The conservator shall, after the approval of the proposal by the Corporation, send by prepaid registered post or in such manner prescribed under this Act to the last known address of each of the secured creditors of the affected person known to the conservator—

- (a) a copy of the proposal;
- (b) where the Corporation deems appropriate, a memorandum from the Corporation setting out such matters which in the view of the Corporation should be taken into account by the secured creditors in considering the proposal; and

(c) a notice of meeting of secured creditors for the purpose set out in this paragraph.

(2) A meeting of secured creditors of the affected person shall be convened within fourteen days after the issuance of the notice of meeting of secured creditors under subparagraph (1).

(3) The meeting of secured creditors of the affected person convened under subparagraph (2) shall decide whether to approve or reject the proposal.

(4) If—

(a) a majority in value of the secured creditors, present and voting, either in person or by proxy, at the meeting approves the proposal; or

(b) there are no secured creditors of the affected person known to the conservator and the Corporation approves the proposal under subparagraph 21(4),

the proposal, including the proposal as it may subsequently be modified under paragraph 24, shall be binding on the affected person, all shareholders and creditors of the affected person or any other person affected by the proposal, whether or not the person had knowledge or notice of the proposal.

(5) For the purpose of subparagraph (4)(a), a resolution to approve the proposal with any modification shall be deemed to be a rejection of the proposal.

(6) Notwithstanding any law—

(a) the approval or the implementation of a proposal under subparagraph (4), including the proposal as it may subsequently be modified under paragraph 24, shall not discharge any security provided by any person to secure any duty or liability owed by the affected person to any creditor of the affected person except in such manner and to the extent provided for in the proposal; and

(b) except as provided for in the proposal each such security, duty or liability of the person providing the security shall remain valid and enforceable against that person notwithstanding the approval or implementation of the proposal, including the proposal as it may subsequently be modified under paragraph 24, or any compromise, arrangement, reconstruction or amalgamation in connection with the affected person.

(7) The failure to notify any secured creditor of the affected person of the meeting of the secured creditors shall not invalidate the meeting convened under subparagraph (2) or the resolution passed at that meeting.

(8) For the avoidance of doubt, if the Corporation is a secured creditor of the affected person, the Corporation shall be entitled to attend and vote at a meeting of secured creditors of the affected person convened by the conservator under subparagraph (2) or paragraph 24.

Implementation of proposal

23. (1) Subject to paragraphs 22, 24 and 25, the conservator shall implement the proposal in accordance with its terms.

(2) The conservator shall—

- (a) within fourteen days from the date of the approval of the proposal by the secured creditors of the affected person under paragraph 22;
- (b) where there are no secured creditors known to the conservator, within fourteen days from the date of the approval of the proposal by the Corporation under subparagraph 21(4); or
- (c) within fourteen days from the date of the approval of the proposal under subparagraph 21(4),

cause to be published in at least two daily newspapers in Malaysia, one of which shall be in the national language, the approval of the proposal and the time and place for any creditor of the affected person to examine the details of the proposal.

(3) Notwithstanding the provisions of any law or contract, a proposal approved or modified under this Act may be implemented, and the conservator shall have the power to implement and do all things necessary to fully and effectively carry out and give effect to the proposal or any part of the proposal without the need for any notice to or approval or consent of any shareholder, creditor of the affected person or any other person affected by the proposal or approval of or confirmation by a Court, and any such notice, approval, consent or confirmation, whether required under any law, contract or otherwise, shall be deemed to have been duly given or obtained, as the case may be.

(4) Where any part of the asset of the affected person is subject to the rights of the secured creditors or any other person and a proposal has been approved under this Act, the conservator shall be entitled to deal with such asset in the manner set out in the proposal.

(5) The conservator shall apply all proceeds realised in the implementation of the proposal in the manner set out in the proposal.

(6) Where a conservator transfers assets or liabilities pursuant to a proposal, then those assets shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee, free in the case of any particular asset if the proposal so directs, from any charge, caveat or other encumbrance.

(7) Notwithstanding anything to the contrary in any law, the Corporation or its subsidiary may acquire any asset of or marketable securities issued by, the affected person.

(8) Notwithstanding anything to the contrary in any law, the conservator shall have the power to do all things necessary to give effect to and to implement the proposal approved in accordance with paragraphs 21 and 22 or modified in accordance with paragraph 24.

(9) Where a proposal affects the share capital of the affected person, the conservator shall within fourteen days after the approval of the proposal in accordance with this Schedule, notify the Registrar of Companies of how the proposal affects the share capital of the affected person.

(10) A notice under subparagraph (9) shall be in such form as prescribed under the Companies Act 1965.

(11) Upon lodgement of a notice under subparagraph (9), all the requirements under the Companies Act 1965 or any other law with respect to changes in share capital of the affected person shall be deemed to have been complied with and, with effect from the date set out in the proposal, the share capital of the affected person shall be as stated in the notice.

(12) On the lodging of the notice under subparagraph (9), the particulars shown in the notice shall be deemed to be substituted for the corresponding particulars in the constituent documents of the affected person.

Modifications to the proposal

24. (1) The conservator may at any time after—

- (a) the approval of the proposal by the secured creditors of the affected person under paragraph 22; or
- (b) where there are no secured creditors known to the conservator, the approval of the proposal by the Corporation under subparagraph 21(4),

propose modifications to the proposal.

(2) Where the Corporation is of the view that the proposed modifications do not substantially differ from the proposal of the secured creditor under subparagraph (1), the Corporation shall determine the necessity to convene a meeting of secured creditors to consider the proposed modifications.

(3) The decision of the Corporation under subparagraph (2) shall be final, conclusive and binding on the conservator, the affected person, all shareholders and creditors of the affected person and any other person affected by the proposal whether or not the person had knowledge or notice of the modified proposal.

(4) Where the Corporation determines that it is necessary to convene a meeting of secured creditors to consider the proposed modifications, the Corporation shall by written notice inform the conservator of the need to convene such a meeting.

(5) The conservator shall, within sixty days from receipt of the notice from the Corporation or such longer period as may be set out by the Corporation in the notice, convene such a meeting.

(6) The conservator shall, prior to the meeting convened under subparagraph (5), send by prepaid registered post or in such other manner prescribed under

this Act to the last known address of each of the secured creditors of the affected person known to the conservator—

- (a) a copy of the proposed modifications;
- (b) where the Corporation deems appropriate, a memorandum from the Corporation setting out such matters which in the view of the Corporation should be taken into account by the secured creditors in considering the proposed modifications; and
- (c) a notice of the meeting of secured creditors for the proposed modifications set out in this paragraph.

(7) The meeting of the secured creditors of the affected person to consider the proposed modifications shall be convened and conducted in the manner set out in paragraph 22.

(8) Without prejudice to paragraph 25, compliance with any approval condition imposed by a regulatory body shall not be construed as a modification to the proposal for the purpose of this paragraph.

Regulatory approval conditions

25. (1) Where—

- (a) the approval of any regulatory body is required to implement the proposal; or
- (b) the approval of any regulatory body is required to implement any proposed modifications to the proposal,

and approval conditions are imposed by such regulatory body, the Corporation may, notwithstanding that the secured creditors of the affected person have agreed to the proposal under paragraph 22 or 24, direct the conservator to abandon the proposal or otherwise discontinue the implementation of the proposal if the Corporation thinks that such approval conditions are not in the interest of the affected person.

(2) The decision of the Corporation under subparagraph (1) shall be binding on the affected person, all shareholders and creditors of the affected person and any other person affected by the proposal, whether or not the person had knowledge or notice of the proposal.

Rejection or discontinuance of proposal

26. (1) Where the Corporation directs the conservator to abandon the proposal or otherwise discontinue the implementation of the proposal under paragraph 25 or the proposal is not approved under paragraph 22 or 24, the Corporation may consider other options to deal with the management and disposal of the assets of the affected person and may—

- (a) request the conservator to submit a new proposal;

- (b) remove the moratorium imposed under paragraph 17; or
- (c) appoint a replacement conservator.

(2) Notwithstanding subparagraph (1), the Corporation may at any time terminate the appointment of a conservator and his administration if it is of the opinion that the continuation of the administration can no longer achieve the objects set out in subsection 27(1).

(3) Any decision of the Corporation under subparagraph (1) or (2) shall be final and binding.

Qualifications of conservator

27. (1) No person shall be appointed as a conservator unless—

- (a) the person is a natural person; and
- (b) he has consented in writing to his appointment and has not withdrawn his consent as at the date of his appointment.

(2) The following persons shall be qualified to be appointed as a conservator:

- (a) an approved company auditor under the Companies Act 1965;
- (b) a person who has, in the opinion of the Corporation, the requisite experience; or
- (c) a person who is, in the opinion of the Corporation, capable of performing the duties of a conservator.

(3) The following persons shall not be qualified to be appointed as a conservator:

- (a) a corporation;
- (b) an undischarged bankrupt;
- (c) a mortgagee of any asset of the affected person;
- (d) an auditor of the affected person; or
- (e) an officer of the affected person.

Two or more conservators

28. Where two or more persons are appointed as the conservators of an affected person—

- (a) the functions or the powers of the conservator may be performed or exercised by any one of them or by both or all of them jointly; and
- (b) a reference to the conservator in this Act shall be a reference to whichever one of the persons appointed, as the case may be.

Report of misconduct

29. If an investigation into the business and affairs of an affected person by the conservator reveals any fraud, misfeasance or other misconduct in connection with the promotion or formation of the affected person or in the management of an affected person or its affairs, or where there has been any misappropriation or wrongful retention of any asset which belongs to an affected person, the conservator shall report such fraud, misfeasance or misconduct to the relevant regulatory or enforcement body.

Validity of transaction

30. Any payment made, transaction entered into or any other act or thing done in good faith by, or with the consent of the conservator, is valid and effective for the purposes of this Act and shall not be void, voidable or be considered as an undue preference in the winding-up of the affected person.

FOURTH SCHEDULE

[Section 28]

ENTITLEMENT TO PRESERVE, DISPOSE OF OR ACQUIRE PROPERTY

Interpretation

1. In this Schedule—

“acquiror” means a person mentioned in paragraph 28(1)(b);

“purchaser” means any person to whom the Corporation or the acquiror disposes of any property under section 28;

“relevant land laws” means—

- (a) in the case of Peninsular Malaysia, the respective State land rules;
- (b) in the case of Sabah, the Land Ordinance of Sabah; or
- (c) in the case of Sarawak, the Land Code of Sarawak.

Deemed authority to acquire

2. For the purposes of section 28—

- (a) the Corporation or the acquiror shall be deemed to be authorised by the grantor of the security to effect the transfer of ownership of the property to the purchaser; and
- (b) every registrar of courts, the Registrar of Companies, the Registrar of land, the registrar of Malaysian ships, a central depository, an

authorised depository agent and any person maintaining a register or record of ownership or interest, as the case may be, shall accept a vesting certificate executed by the Corporation or the acquiror and subject to the payment of the fees prescribed under relevant land laws, register the transfer of the property or any part of the property to the purchaser without the need for any further application or filing of any further documents.

Sale of property by private treaty

3. (1) A sale by way of a private treaty under section 28 may be effected by a private contract, auction, tender or any other mode of sale.

(2) The statutory vesting provisions set out in the Second Schedule shall apply for any sale, acquisition or dealing under this Schedule by the Corporation.

Corporation may acquire property

4. Where the Corporation, its subsidiary or an acquiror as holder of security over any property whether as chargee, mortgagee, assignee, lienholder or otherwise exercises its rights under section 28 to dispose of such property or any part of such property by way of private treaty then, notwithstanding anything to the contrary in any law, the Corporation, its subsidiary or any acquiror, as the case may be, may without having to pay any deposit, acquire such property or part of such property and set off the purchase price against any liability owed to the Corporation, its subsidiary or the acquiror.

Entitlements of acquisition of Corporation or acquiror to prevail

5. The entitlements of the Corporation or the acquiror under section 28 may be exercised—

- (a) notwithstanding any order for sale made whether under any rules of the court, the National Land Code, the Land Ordinance of Sabah, the Land Code of Sarawak or any other law or any step or proceeding taken or pending to sell the property;
- (b) without the need for any approval, confirmation or order of court; or
- (c) concurrently with any right or remedy provided by any law or contract.

Entitlements of Corporation or acquiror not to be limited

6. The entitlements of the Corporation or the acquiror exercised under section 28 are not exclusive of any other right or remedy provided by any law or contract.

