



# **LAWS OF MALAYSIA**

**Act 720**

**MALAYSIA DEPOSIT INSURANCE CORPORATION  
ACT 2011**

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# LAWS OF MALAYSIA

## Act 720

### MALAYSIA DEPOSIT INSURANCE CORPORATION ACT 2011

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**LAWS OF MALAYSIA****Act 720****MALAYSIA DEPOSIT INSURANCE CORPORATION  
ACT 2011**

An Act to provide for the continuing existence of the Malaysia Deposit Insurance Corporation, the administration of a deposit insurance system and a takaful and insurance benefits protection 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 and the takaful and insurance benefits protection system are important components of the financial safety net since they promote and contribute to the stability of the financial system:

AND WHEREAS the purpose of the deposit insurance system and the takaful and insurance benefits protection system is to protect depositors from the loss of part or all of their deposits and takaful beneficiaries and insured persons from the loss of part or all of their takaful or insurance benefits in the event of the failure of a member institution and the Malaysia Deposit Insurance Corporation is to carry out its mandated functions with speed and efficiency and promote sound risk management in the financial system and promote and enhance financial consumer protection:

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:

**NOW, THEREFORE, IT IS 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 2011.

(2) This Act comes into operation on 31 December 2010.

#### **Interpretation**

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

“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 the primary affected 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 the primary affected person to the Corporation or any subsidiary of the Corporation, whether present or future, or whether vested or contingent,

and does not include a member institution;

“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;

“Assessor Committee” means a committee provided for in section 104;

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

“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;

“authorized depository agent” has the same meaning as “authorised depository agent” under the Securities Industry (Central Depositories) Act 1991 [*Act 453*];

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

“bridge institution” means a subsidiary of the Corporation designated as a bridge institution under paragraph 99(1)(f);

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

“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 [*Act 372*], the Islamic Banking Act 1983 [*Act 276*], the Insurance Act 1996 [*Act 553*] or the Takaful Act 1984 [*Act 312*];

“central depository” has the same meaning as defined under the Securities Industry (Central Depositories) Act 1991;

“certificate owner” means the person who has the legal title to a takaful certificate and includes—

- (a) where the certificate has been assigned, the assignee;
- (b) where entitled as against the takaful operator to exercise the rights of a legal owner of the certificate, the personal representative of a deceased certificate owner; and
- (c) in relation to a certificate providing for the payment of an annuity, the annuitant;

“Chairman” means the chairman of the Board;

“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;

“company” has the same meaning as defined under the Companies Act 1965 [*Act 125*];

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

“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;

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

“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;

“conventional deposit” means a sum of money received or paid on terms—

- (a) under which it will be repaid or is repayable, with or without interest or a premium, or with any consideration in money, either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
- (b) which is not referable to the provision of property or services or to the giving of security,

and does not include an Islamic deposit;

“Corporation” means the Malaysia Deposit Insurance Corporation;

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

“deposit” means—

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

“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;

“deposit-taking member” means a member institution that is an Islamic bank as defined under section 2 of the Islamic Banking Act 1983 or a licensed bank or licensed finance company as defined under section 2 of the Banking and Financial Institutions Act 1989;

“development financial institution” has the same meaning as defined under the Development Financial Institutions Act 2002 [Act 618];

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

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

“family solidarity takaful” has the same meaning as defined under section 2 of the Takaful Act 1984;

“family solidarity takaful certificate” means a takaful certificate issued by a takaful operator carrying on the business of family solidarity takaful under which an obligation arises on the death or survival of a person, including extensions of cover for personal accident, disease or sickness, and including an annuity, and a certificate solely providing coverage against disease or sickness or solely against medical expenses but excluding a solely personal accident certificate;

“financial institution” means a licensed bank or a licensed finance company as defined under section 2 of the Banking and Financial Institutions Act 1989, an Islamic bank as defined under section 2 of the Islamic Banking Act 1983, and includes an insurance company or a takaful operator;

“general policy” means a policy issued by an insurance company other than a life policy;

“general takaful” means takaful other than family solidarity takaful;

“general takaful certificate” means a takaful certificate issued by a takaful operator other than a family solidarity takaful certificate;

“Governor” means the Governor of Bank Negara Malaysia;

“insurance benefit” means an obligation under an insurance policy to pay an amount to or for the benefit of an insured person or to fulfil a non-pecuniary obligation upon the occurrence of one or more events provided for in the insurance policy and an amount that is payable under an insurance policy on account of such an obligation;

“insurance company” means a locally incorporated company that is licensed to carry on insurance business under section 16 of the Insurance Act 1996, other than a company carrying on the business of a reinsurer and Danajamin Nasional Berhad;

“insurance policy” means a life policy or a general policy;

“insured deposits” means those deposits separately insured as Islamic deposits or conventional deposits under section 42;

“insured person” means a person entitled to an insurance benefit, whether or not the person is the policy owner;

“insurer member” means a member institution that is an insurance company or a takaful operator;

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

“Islamic banking business” means any banking business, the aims and operations of which do not involve any element which is not consistent with Shariah;

“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 custody or profit sharing;

“Islamic financial business” means any financial business, the aims and operations of which do not involve any element which is not consistent with Shariah, including takaful 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 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;

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

“life insured” means—

- (a) the person in respect of whom an insurance policy provides coverage on the occurrence of his death or survival; or
- (b) the person in respect of whom an insurance policy provides coverage on occurrence of an accident, a disease or sickness,

whether or not the person is the policy owner;

“life policy” means a policy issued by an insurance company carrying on the business of life insurance under which an obligation arises on the death or survival of a person, including extensions of cover for personal accident, disease or sickness, and including an annuity and a policy solely insuring against disease or sickness or solely against medical expenses but excluding a policy that is solely a personal accident policy;

“member institution” means a financial institution or a corporation that is deemed to be or prescribed as a member institution under this Act and the membership of which has not been cancelled under section 38 or terminated under section 39;

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

“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;

“officer”, in relation to a member institution or an affected person, means—

- (a) any director, secretary or employee of the member institution or the affected person;
- (b) any receiver, manager or receiver and manager whether appointed by a court or otherwise; and
- (c) any liquidator appointed by a court or otherwise;

“participating life” means—

- (a) the person in respect of whom a takaful certificate provides coverage on occurrence of his death or survival; or
- (b) the person in respect of whom a takaful certificate provides coverage on occurrence of an accident, a disease or sickness,

whether or not the person is the certificate owner;

“policy owner” means the person who has legal title to an insurance policy and includes—

- (a) where the policy has been assigned, the assignee;
- (b) where entitled as against the insurance company to exercise the rights of a legal owner of the policy, the personal representative of a deceased policy owner; and
- (c) in relation to a policy providing for the payment of an annuity, the annuitant;

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

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

“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;

“protected benefits” means those takaful and insurance benefits that are separately protected by the takaful and insurance benefits protection system under Part V;

“protected insurance benefit” means an insurance benefit of a type or description that is prescribed by regulations made under subsection 69(2) as being protected under the takaful and insurance benefits protection system provided for in this Act;

“protected takaful benefit” means a takaful benefit of a type or description that is prescribed by regulations made under subsection 69(2) as being protected under the takaful and insurance benefits protection system provided for in this Act;

“qualified financial agreement” means an agreement referred to in subsection 115(1) or section 180;

“qualified third party” means a corporation that meets such criteria as may be prescribed by the Corporation;

“Registrar of Companies” means the Registrar of Companies as designated under 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*];

“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 appointed under subsection 14(1) of the Ordinance;

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

“repealed Act” means the Malaysia Deposit Insurance Corporation Act 2005 [*Act 642*];

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

“securities” has the same meaning as defined under the Capital Markets and Services Act 2007 [*Act 671*];

“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 and whether vested or contingent;

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

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

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

“takaful” has the same meaning as defined under the Takaful Act 1984;

“takaful beneficiary” means a person entitled to a takaful benefit, whether or not the person is the certificate owner;

“takaful benefit” means an obligation under a takaful certificate to pay an amount to or for the benefit of a takaful beneficiary or to fulfil a non-pecuniary obligation upon the occurrence of one or more events provided for in the takaful certificate and an amount that is payable under a takaful certificate on account of such an obligation;

“takaful certificate” means a contract in respect of family solidarity takaful or general takaful;

“takaful operator” means a company that carries on takaful business and is registered under section 8 of the Takaful Act 1984, other than an operator carrying on the business of retakaful and an international takaful operator.

(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*

#### *Objects and operations*

### **The Corporation established under the Malaysia Deposit Insurance Corporation Act 2005**

**3.** (1) Notwithstanding the repeal of the Malaysia Deposit Insurance Corporation Act 2005 by section 210, the body corporate established under the repealed Act under the name of “Malaysia Deposit Insurance Corporation” shall continue to be in existence under and subject to the provisions of this Act.

(2) The Corporation is the same body corporate established under the repealed Act.

(3) The Corporation shall continue to have perpetual succession and a common seal, and 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 and a takaful and insurance benefits protection system under this Act;
- (b) provide insurance against the loss of part or all of deposits for which a deposit-taking member is liable and provide protection against the loss of part or all of takaful or insurance benefits for which an insurer member is liable;
- (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 minimize costs to the financial system.

### **Common seal and facsimile seal**

**5.** (1) The common seal and facsimile seal of the Corporation may be broken, changed, altered and made anew as the Corporation thinks fit.

(2) The Board may provide for a facsimile seal and may authorize 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 authorized 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 authorized 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 authorized 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) Without prejudice to any other provision of this Act, a subsidiary of the Corporation shall have such powers and immunities of the Corporation as may be prescribed by the Corporation with the approval of the Minister, including powers and immunities provided in sections 25, 158, 159 and 161, paragraph 99(1)(b) and the Second, Third and Fourth Schedules.

## *Chapter 2*

### *Board of Directors*

### **Duties and composition**

**11.** (1) There shall be a board of directors which 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) two directors appointed by the Minister, one of whom shall be from the public sector and the other may be either from the public sector or one who has public sector experience; and
- (e) not more than four 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 referred to in paragraph (2)(b), (c) or (d) shall be eligible to be appointed Chairman by the Minister.

### **Board may make by-laws**

**12.** (1) The Board may 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; and
- (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.

### **Term of office of directors**

**13.** (1) The directors appointed by the Minister under subsection 11(2) shall hold office for terms 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 tenures 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 of, 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 any other director, 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 of not less than 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 shall be paid by the Corporation such fees, allowances and any other remuneration 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 from among the directors referred to 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 effective 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 authorization.

*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 authorize 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 terms and conditions of service; and
- (b) enjoy such compensation, benefits and any other remuneration as approved by the Minister, upon the 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 to carry on the business and affairs of the Corporation and such officers and employees shall hold office for such periods, receive such compensation and any other remuneration, 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 facilities or conventional credit facilities, with or without return or interest, for the acquisition of housing or vehicle or for medical purposes or for 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) authorize the Minister to direct the Corporation; or
- (b) authorize the Corporation,

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

**Secrecy**

**24.** (1) A 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—

- (a) the Corporation;
- (b) Bank Negara Malaysia;
- (c) a member institution;
- (d) a customer of Bank Negara Malaysia; or
- (e) a customer of a member institution,

which he has acquired in the performance of his duties or the exercise of his functions, shall not—

- (A) give, divulge, reveal, publish, or otherwise disclose, to any person, such record, book, register, correspondence or other document whatsoever, material or information; or
- (B) make any use of such record, book, register, correspondence or other document whatsoever, material or information,

unless the disclosure or use, as the case may be, is required—

- (C) under any law;
- (D) for the performance of his duties or the exercise of his functions under this Act; or
- (E) lawfully by any court.

(2) No person who has received or obtained any record, book, register, correspondence or other document whatsoever, material or information disclosed in accordance with subsection (1) shall disclose or make use of the same except for the specific purpose for which the record, book, register, correspondence or other document whatsoever, material or information was so disclosed to such person.

(3) This section shall not apply to any record, book, register, correspondence or other document whatsoever, material or information which at the time of the disclosure is, or has already been made, lawfully available to the public from any source.

(4) No person who has any record, book, register, correspondence or other document whatsoever, material or information which to his knowledge has been disclosed in contravention of subsection (1) shall in any manner howsoever disclose the same to any other person.

(5) 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.

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

(7) Any person who contravenes subsection (1), (2) or (4) 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 for 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, dispose of or otherwise deal with such shares or capital instruments;
  - (iv) make a deposit with a deposit-taking member;
  - (v) guarantee all or part of the liability of a deposit-taking member in respect of a deposit; or
  - (vi) guarantee or assume all or part of the liability of an insurer member in respect of a takaful or insurance benefit;
- (b) hold, dispose of or otherwise deal with assets acquired from a member institution;
- (c) borrow or otherwise raise funds in such manner as the Corporation thinks 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 on or transfer or otherwise deal with any of its assets to secure the performance of any of its obligations or any of the obligations 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; and
- (i) do all such other things as may be necessary for or incidental to the exercise of any power or the performance of any obligation 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 on behalf of and in the name of the Corporation as may be specified by the Corporation.

### **Loans for specified purposes**

**26.** The Corporation may make a loan, whether with or without security, to a corporation other than a member institution—

- (a) for the purpose of, or in connection with, the implementation of one or more resolution actions under this Act; and
- (b) for the purpose of reducing or averting a risk to the financial system or a threatened loss to the Corporation.

### **Prescription of additional member institutions**

**27.** (1) For the purpose of promoting or maintaining the stability of the financial system or public confidence in that stability and on the recommendation of the Corporation and Bank Negara Malaysia, the Minister may by order published in the *Gazette*, prescribe any development financial institution or other corporation regulated and supervised by Bank Negara Malaysia, other than a financial institution defined in section 2, to be a member institution for the purposes of this Act.

(2) The order referred to in subsection (1) may provide that any provision of this Act shall not apply in respect of such prescribed corporation, or shall apply in respect of such prescribed corporation with modifications.

*Chapter 6*

*Finance*

**Funds and sources of funds**

**28.** (1) For the purposes of this Act, the Corporation shall maintain and administer the following six separate funds:

(a) an Islamic deposit insurance 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;

(b) a conventional deposit insurance 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;

(c) a family solidarity takaful protection 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 family solidarity takaful certificates;

(d) a general takaful protection 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 general takaful certificates;

(e) a life insurance protection 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 life policies; and

(f) a general insurance protection 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 general policies.

(2) The Corporation is empowered to credit all direct operating income to, and charge all expenses, costs and losses against the relevant particular fund or funds, and where such expenses, costs or losses cannot be specifically attributed to a particular fund or funds, such charge—

- (a) shall be allocated among the funds in accordance with a formula prescribed by the Corporation; or
- (b) if the Corporation has not prescribed a formula, shall be allocated among the funds in proportion 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.

### **Lending of money or provision of funds to Corporation**

**29.** (1) Without prejudice to section 156, the Minister may, upon request of the Corporation, lend money or provide funds to the Corporation on such terms and conditions as the Minister may determine.

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

### **Permitted investments**

**30.** (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 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 deposit insurance fund, the family solidarity takaful protection fund or the general takaful protection fund shall be in accordance with Shariah.

### **Financial year**

**31.** 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**

**32.** 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**

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

### **Financial statements and annual report**

**34.** 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.

**Non-consolidation of financial statements**

**35.** Notwithstanding section 32 and any other law, the Corporation shall not be required to prepare, present or publish consolidated financial statements and the Corporation, a bridge institution and any other subsidiary of the Corporation as it specifies may prepare, present and publish separate financial statements.

**PART III****MEMBERSHIP, CANCELLATION AND TERMINATION****Deemed membership**

**36.** (1) A financial institution—

- (a) which is deemed to be a member institution under section 37 of the repealed Act, shall continue to remain as a member institution under this Act; or
- (b) licensed under the Banking and Financial Institutions Act 1989 or the Islamic Banking Act 1983 after the commencement of this Act, shall be deemed to be a member institution from the date it is granted the licence.

(2) A takaful operator or insurance company is deemed to be a member institution—

- (a) from the commencement of this Act; or
- (b) if it comes into existence after the commencement of this Act, from the date it is registered under the Takaful Act 1984 or granted a licence under the Insurance Act 1996.

(3) Any corporation that is prescribed to be a member institution by an order referred to in subsection 27(1) is deemed to be a member institution from the effective date of the order.

(4) Notwithstanding subsection 120(1), this section does not apply to a bridge institution.

### **Terms and conditions of membership**

**37.** (1) The terms and conditions of membership of a member institution shall be prescribed by regulations made under section 209.

(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**

**38.** The Corporation shall cancel the membership of a member institution that is a financial institution by informing the member institution in writing if the licence or registration of the member institution has been surrendered or revoked under the Banking and Financial Institutions Act 1989, the Islamic Banking Act 1983, the Takaful Act 1984 or the Insurance Act 1996.

### **Termination of membership**

**39.** (1) The Board may, at any time after the Corporation has received a notification under section 98 and whether or not the Corporation has exercised any of its powers under section 99, 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 takaful beneficiaries or insured persons or to the Corporation have been averted or substantially reduced, the Corporation may revoke its notice of termination and inform the Minister accordingly.

(8) Any decision by the Corporation to terminate a membership or to revoke such termination shall be final and binding.

**Effects of cancellation or termination**

**40.** (1) Where the membership of a member institution has been cancelled under section 38 or terminated under section 39—

- (a) the former member institution shall not assume or use the words “deposit insurance” or “takaful benefit protection” or “takaful benefit compensation” or “insurance benefit protection” or “insurance benefit compensation”, or any derivative or variation of those words in any language or any other words in any language that are capable of being construed to mean or imply that the institution is a member institution;
- (b) in the case of a former deposit-taking member, deposits outstanding on the day the cancellation or termination of membership takes effect, less any withdrawals from those deposits, continue to be insured for a period of two years from the effective date of cancellation or termination or until fully withdrawn, whichever is earlier;
- (c) in the case of a former insurer member, protected benefits outstanding on the day the cancellation or termination of membership takes effect, less any payments made on account of the benefits, continue to be protected after the effective date of cancellation or termination;
- (d) the former member institution shall not be considered to be a member institution by reason only that its liabilities in respect of deposits or takaful or insurance benefits continue to be insured or protected under this Act despite the cancellation or termination of its membership; and
- (e) the former member 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) Where the membership of a former deposit-taking member has been terminated under section 39, the institution shall not, as from the effective date of the termination, solicit or take any further deposits.

(3) Where the membership of a former insurer member has been terminated under section 39, the institution shall not, as from the effective date of termination, offer or issue any further takaful certificates or insurance policies or renew any takaful certificates or insurance policies.

(4) For the purposes of paragraph (1)(b) or (c), a cancellation or termination of membership shall not affect the obligation, right and ability of the Corporation to make a payment under Chapter 3 of Part IV or Chapter 3 of Part V.

(5) Where the membership of a member institution has been cancelled or terminated—

- (a) in the case of a former deposit-taking member, such institution shall give notice of the continued insurance provided for in paragraph (1)(b);
- (b) in the case of a former insurer member, such institution shall give notice of the continued protection provided for in paragraph (1)(c); and
- (c) the Corporation may give notice of the cancellation or termination of membership of a former member institution if in the opinion of the Corporation, the public interest requires that such notice be given,

by publication in at least two daily newspapers published in Malaysia, one of which shall be in the national language.

(6) Where a former deposit-taking member is obligated to repay to a person any monies that were received or held by it while it was a member institution, such monies shall not constitute a deposit or part of a deposit for the purposes of deposit insurance with the Corporation if the date on which the person acquired his interest in the monies is a date subsequent to the date on which the cancellation or termination of the membership of the former member institution took effect as specified by the Corporation.

(7) Where a former insurer member is liable to any person for a takaful or insurance benefit and that liability was incurred while it was a member institution, such takaful or insurance benefit shall not constitute a protected benefit if the date on which the person acquired his interest in the benefit is a date subsequent to the date on which the cancellation or termination of the membership of the former member institution took effect as specified by the Corporation.

(8) Any former member institution that contravenes paragraph (1)(a) or paragraph (5)(a) or (b) 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.

## PART IV

### DEPOSIT INSURANCE

#### *Chapter 1*

##### *Scope of coverage*

### **Definitions**

**41.** 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 deposit-taking member from or on behalf of a person in the usual course of the business of deposit taking of the deposit-taking member and includes—

(i) a bank draft, cheque or other similar instrument or instruction 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 deposit-taking member in crediting the account;

(ii) a foreign currency deposit; or

(iii) any liability or financial instrument as may be specified by the Corporation,

but excludes, unless it is otherwise specified by the Corporation under subparagraph (iii)—

(A) a deposit that is not payable in Malaysia;

(B) a money market deposit;

(C) a negotiable instrument of deposit and any other bearer deposit;

- (D) a repurchase agreement; and
- (E) any other liability or financial instrument as may be specified by the Corporation; and
- (b) “trust account” includes monies held on account for the purpose of a trust.

### **Scope of coverage for deposits**

**42.** (1) The Corporation shall separately insure the following categories of deposits placed with a deposit-taking member:

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

(2) For the purpose of subsection (1)—

- (a) where a depositor owns only one deposit with a deposit-taking member, that deposit shall be insured—
  - (i) in respect of the principal and return on an Islamic deposit, up to such amount as prescribed by the Minister on the recommendation of the Corporation; and
  - (ii) in respect of the principal and interest on a conventional deposit, up to such amount as prescribed by the Minister on the recommendation of the Corporation; and
- (b) where a depositor owns more than one deposit with a deposit-taking member, the aggregate of those deposits shall be insured—
  - (i) in respect of the principal and return on Islamic deposits, up to such amount as prescribed by the Minister on the recommendation of the Corporation; and
  - (ii) in respect of the principal and interest on conventional deposits, up to such amount as prescribed by the Minister on the recommendation of the Corporation.

(3) For the avoidance of doubt, an amount prescribed under subsection (2) may relate to any type or description of deposits and different limits may apply to different types or descriptions of deposits.

(4) Subject to regulations made under section 209—

(a) where a deposit-taking member 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 deposit-taking member—

(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 deposit-taking member;

(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 deposit-taking member shall be deemed to be a deposit separate from a deposit of that beneficiary with the deposit-taking member 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 deposit-taking member;

(b) for the avoidance of doubt, where a depositor is a joint owner of a deposit in a deposit-taking member 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 up to such amount as prescribed under subsection (2); and

(c) for the purposes of paragraphs (4)(a) and (b)—

(i) the deposit-taking member 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 deposit-taking member such records as may be required by the Corporation under this Act; and
- (C) file a statutory declaration certifying the accuracy of the records submitted under subsubparagraph (B) when required by the Corporation; and

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

(5) Notwithstanding anything in paragraph (4)(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.

(6) For the purpose of subparagraph (4)(a)(i), any deposit held in trust by the same trustee for the same beneficiary shall be aggregated and be deemed to be one deposit.

(7) Subject to regulations made under section 209 and the disclosure made by the trustee under subparagraph (4)(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 deposit-taking member, 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.

(8) The Corporation may require depositors to submit to the Corporation such information as it may consider expedient or necessary for the purposes of making any payment under this Act.

### **Transfers of deposits among deposit-taking members**

**43.** (1) Where deposit liabilities of a deposit-taking member (referred to in this section as the “transferring member”) are transferred to and assumed by another deposit-taking member, those deposits, less any withdrawals from the deposits, shall be deemed to be and continue to be separately insured by the Corporation up to such amount as prescribed under subsection 42(2) for a period of two years, or until maturity or full withdrawal, whichever is earlier, after the date of transfer and assumption.

(2) Where there is a transfer of deposit liabilities under subsection (1)—

- (a) the transferring member shall give notice of the transfer of deposit liabilities and the continued separate insurance referred to in subsection (1); and
- (b) the Corporation may give notice of the matters referred to in paragraph (a) if in the opinion of the Corporation, the public interest requires that such notice be given,

by publication in at least two daily newspapers published in Malaysia, one of which shall be in the national language.

(3) The transferring member shall indemnify the Corporation in the event that any payment is made by the Corporation to depositors on account of the separate insurance referred to in subsection (1).

(4) If the membership of the transferring member is cancelled or terminated after the date on which a deposit liability is transferred to and assumed by a transferee deposit-taking member, the separate insurance referred to in subsection (1) shall apply in lieu of the continuing insurance referred to in paragraph 40(1)(b).

(5) A deposit-taking member shall maintain such records as are required by the Corporation for the purposes of subsection (1).

(6) A deposit-taking member that contravenes paragraph (2)(a) 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.

#### **Deposits of deposit-taking member acquired by non-deposit taking member**

**44.** (1) Where deposit liabilities of a deposit-taking member (referred to in this section as the “transferring member”) are transferred to and assumed by a person who is not a deposit-taking member, such deposits shall be deemed to be and continue to be insured by the Corporation up to the limit of such amount as prescribed under subsection 42(2), for the remainder of the assessment year, or until maturity or full withdrawal, whichever is earlier, after the date of transfer and assumption.

(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 transferring member shall—

- (i) obtain written consent of at least seventy five per cent of all the depositors to the transfer of deposit liabilities;
- (ii) obtain written acknowledgement by each depositor that the depositor is aware that deposit liabilities transferred to and assumed by the transferee will be insured for the remainder of the assessment year, or until maturity or full withdrawal, whichever is earlier, and that subsequently, the deposit liabilities will 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 transferring member’s obligation to repay the deposits will be assumed by the transferee; and

- (b) the transferee shall enter into an agreement in writing to assume the transferring member's deposit liabilities on the same terms and conditions.

(3) For the purpose of paragraph (2)(b), the transferring member shall indemnify the Corporation in the event that any payment is made by the Corporation to depositors on account of the continuing insurance referred to in subsection (1).

(4) The transferee shall maintain such records as are required by the Corporation for the purposes of subsection (1).

### **Deemed deposits**

**45.** Where a deposit-taking member assumes the deposit liabilities of another deposit-taking member under section 43, the deposits are for the purposes of sections 47 and 48, deemed to be placed with the transferee deposit-taking member as of the day on which they are assumed.

### **Not part of deposit**

**46.** Where monies are or were received by a deposit-taking member for which the deposit-taking member 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 deposit-taking member 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 deposit-taking member, 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 deposit-taking member is ineffective for the purpose of paragraph (b), if the entry is made subsequent to the cancellation or termination of the membership of the deposit-taking member.

*Chapter 2**Premiums***First premium in respect of deposit-taking members**

**47.** (1) The Corporation shall assess and collect the premium payable by a deposit-taking member for the assessment year in which it becomes a member institution (referred to in this section as “the first premium”) as follows:

- (a) two hundred and fifty thousand ringgit; or
- (b) a rate to be prescribed by the Minister on the recommendation of the Corporation,

whichever is higher.

(2) For the avoidance of doubt, different rates may be prescribed under subsection (1) for different categories of deposit-taking members.

(3) No first premium shall be required to be paid in relation to the liability for a deposit transferred from a deposit-taking member to another deposit-taking member within a business group in respect of which premium has been paid for the assessment year in which the latter deposit-taking member becomes a member.

(4) A deposit-taking member shall pay the first premium to the Corporation within thirty days from the date it becomes a member or such other period as may be specified by the Corporation.

**Annual premium in respect of deposit-taking members**

**48.** (1) Every deposit-taking member shall, for each assessment year following the assessment year in which it becomes a member institution, pay annual premiums on or before the annual due date prescribed by the Corporation.

(2) Subject to subsection (3), the annual premium rate or rates shall be as prescribed by the Minister on the recommendation of the Corporation.

(3) The annual premium payable by a deposit-taking member for an assessment year shall not be lower than such minimum amount or amounts as may be prescribed by the Minister on the recommendation of the Corporation.

(4) For the avoidance of doubt, the rates prescribed under subsection (2) and the minimum amounts prescribed under subsection (3) may relate to categories in which deposit-taking members are classified under premium regulations and different rates and minimum amounts may apply to different categories.

(5) Any deposit-taking member 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 in respect of deposit-taking members**

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

- (a) the annual premium to be paid by a deposit-taking member shall be based on the total insured deposits held by the deposit-taking member 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 deposit-taking member shall be based on such criteria as may be prescribed in the regulations.

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

#### **No set-off in respect of deposit-taking members**

**50.** Unless the Corporation otherwise agrees in any particular case, no premium payment or premium surcharge payment owing to the Corporation by a deposit-taking member shall be discharged, reduced or otherwise adjusted by reason of any claim that the deposit-taking member may have against the Corporation.

**Premium surcharge in respect of deposit-taking members**

**51.** (1) Notwithstanding the payment of the first premium in respect of the first assessment year or the annual premiums in respect of any particular assessment year, the Corporation may assess and collect from a deposit-taking member a premium surcharge in respect of that assessment year or any part thereof in accordance with this section.

(2) The premium surcharge payable by a deposit-taking member under subsection (1) in any particular assessment year shall not exceed 0.5 per centum per annum of the annual premiums payable by the deposit-taking member in respect of that assessment year or one million ringgit, whichever is higher.

(3) Where, in the opinion of the Corporation a deposit-taking member—

- (a) has failed or fails to comply with any regulations, rules, orders, by-laws, notifications, guidelines, circulars or notes relating to sound financial and business practices issued by Bank Negara Malaysia or any undertaking given to or agreement made with Bank Negara Malaysia;
- (b) has failed or fails to comply with the terms and conditions of the membership, any undertaking given to or agreement made with the Corporation, or any regulations, rules, orders, by-laws, notifications, guidelines, circulars or notes of the Corporation in respect of deposit insurance;
- (c) has failed or fails to comply with a request for information or has restricted access to information by the Corporation, Bank Negara Malaysia or any person acting on behalf of the Corporation, under this Act; or
- (d) has failed or fails to maintain proper deposit records or misrepresented, whether by act or omission, any information, including information on insured deposit liabilities used as a basis for any premium assessments under this Part,

the Corporation shall—

- (A) if it proposes to impose a premium surcharge on the deposit-taking member, consult Bank Negara Malaysia on the reasons for imposing a premium surcharge and the amount of the premium surcharge; and

- (B) give the deposit-taking member an opportunity to make representations to the Corporation on any proposed premium surcharge within seven days from the date of a written notice issued by the Corporation to the deposit-taking member.

(4) Where the Corporation receives representations from a deposit-taking member within the time period stipulated in paragraph (3)(B), the Corporation shall consider the representations in deciding whether to impose a premium surcharge and if so, deciding on the amount of the premium surcharge.

(5) Where the Corporation decides to impose a premium surcharge, the Corporation shall obtain the written approval of the Minister before imposing the premium surcharge on the deposit-taking member.

(6) A premium surcharge shall be imposed by the Corporation by notice in writing to the deposit-taking member and shall be payable to the Corporation within thirty days from the date of such notice or such other period as may be specified by the Corporation.

(7) Any opinion formed or decision made by the Corporation relating to the imposition or the amount of any premium surcharge in respect of any deposit-taking member shall be final and binding.

(8) A surcharge paid to the Corporation under this section shall be paid into and form part of the Consolidated Fund.

### **Overdue charges in respect of deposit-taking members**

**52.** Where any premium or premium surcharge due and payable under section 47, 48 or 51 has not been paid by the deposit-taking member on the due date, the unpaid premium shall, without further notice being served on the deposit-taking member, be increased by a sum as may be prescribed in the regulations of the premium so unpaid.

**Premium regulations in respect of deposit-taking members**

**53.** The Corporation may make regulations in respect of the determination of first premiums and annual premiums including—

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

**Premiums and surcharges on deposit-taking members deemed earned**

**54.** Any premium or premium surcharge payable under this Part shall be deemed to be fully earned when payable and shall not be refundable.

*Chapter 3**Payments***Payment in respect of insured deposit**

**55.** (1) All payments made by the Corporation in respect of—

- (a) Islamic deposits and all costs associated therewith shall be made from the Islamic deposit insurance fund; and
- (b) conventional deposits and all costs associated therewith shall be made from the conventional deposit insurance fund.

(2) All references in this Chapter to deposit-taking members include, where applicable, a former deposit-taking member the membership of which has been cancelled under section 38 or terminated under section 39.

**Obligatory payment in respect of insured deposit**

**56.** (1) The Corporation shall make payment in respect of any deposit insured by the Corporation where a winding-up order has been made in respect of—

- (a) a deposit-taking member that holds the deposit;
- (b) a former deposit-taking member as referred to in paragraph 40(1)(b), if the winding-up order is made within two years from the effective date of the cancellation or termination of the membership; or
- (c) any person to whom the deposit liability has been transferred under subsection 44(1).

(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 (referred to in this section as the “statutory period”) make payment to such person based on the records of the deposit-taking member, former deposit-taking member or person to whom the deposit liability has been transferred as referred to in paragraph (1)(c), as in the opinion of the Corporation appears to be entitled to it.

(3) The statutory period shall not apply if the Corporation is unable to determine the person entitled to a payment or the amount to be paid in respect of a deposit, by reason of—

- (a) the operation of law;
- (b) a court action over the entitlement to or amount of a deposit;
- (c) an order of a court; or
- (d) a bankruptcy or winding-up petition presented to a court against a depositor.

(4) Any decision made by the Corporation relating to the person entitled to a payment or the amount to be paid in respect of a deposit shall be final and binding.

**Discretionary payment in respect of insured deposit**

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

- (a) a deposit-taking member that holds the deposit, a former deposit-taking member as referred to in paragraph 40(1)(b) or a person to whom the deposit liability has been transferred under subsection 44(1), 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 a receiver, manager or receiver and manager during the period in which the deposit-taking member or the person to whom the deposit liability has been transferred is in receivership;
- (b) a petition for winding up has been presented to the court against the deposit-taking member that holds the deposit or a person to whom the deposit liability has been transferred under subsection 44(1); or
- (c) the membership of the deposit-taking member that holds the deposit is cancelled or terminated.

**Advance payment in respect of insured deposit**

**58.** For the avoidance of doubt, the Corporation may exercise its discretion in respect of section 56 or 57 to make any payment or part payment to any depositor in respect of any deposit insured by the Corporation, in advance of payments to any other depositors.

**Date of computing liability**

**59.** (1) The date for computing the amount of an obligatory payment by the Corporation shall be the date of the filing of the petition for winding up.

(2) The date for computing the amount of a discretionary payment under section 57 shall be the date when any of the events referred to in section 57 first occurs.

**Calculation of return or interest on deposit for obligatory payment**

**60.** 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 deposit-taking member that holds the deposit, the principal, including return or interest accrued in relation to the deposit shall be included only to the date of the filing of the petition for the winding up.

**Corporation may pay return or interest on obligatory payment**

**61.** Where the Corporation makes an obligatory payment under section 56, the Corporation may at its sole discretion pay, in addition to the amount the Corporation is obliged to pay, return or interest on that amount at a rate determined by the Corporation for the period commencing on the date of the filing of the petition for the winding up in respect of a deposit-taking member 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 56 in relation to the deposit shall in no case exceed such amount as prescribed under subsection 42(2).

**Calculation of return or interest on deposit for discretionary payment**

**62.** 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 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 deposit-taking member 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 in relation to the deposit shall be included only to the date of the filing of the petition for the winding up.

### **Return or interest on index-linked deposit**

**63.** Any return or interest referred to in section 60 or 62 in relation to a deposit held by a deposit-taking member shall be determined in accordance with rules prescribed by the Corporation if a payment to be made by the deposit-taking member 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, etc., in respect of insured deposit**

**64.** (1) 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.

(2) The Corporation may make a payment under section 56, 57, 58 or 61 in such manner as the Corporation deems to be appropriate.

(3) Without prejudice to subsection (2), the Corporation may make payment by arranging for the person it considers to be entitled to the payment to receive a deposit at a deposit-taking member in the amount of the payment that is repayable on demand, provided that such deposit shall be an Islamic deposit or a conventional deposit according to whether the insured deposit in respect of which the payment is made is an Islamic deposit or a conventional deposit.

### **Subrogation in respect of insured deposit**

**65.** 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 in relation to the deposit 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 in respect of insured deposit**

**66.** Where the Corporation deems it advisable, the Corporation may withhold payment in respect of any deposit with a deposit-taking member 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 claim in respect of insured deposit**

**67.** The time limit for the commencement of an action against the Corporation in respect of the obligation of the Corporation under subsection 56(2) to make payment in relation to a deposit shall be ten years after the date of the filing of the petition for the winding up.

## PART V

## TAKAFUL AND INSURANCE BENEFITS PROTECTION

*Chapter 1**Scope of coverage***Definitions**

**68.** For the purposes of this Part—

- (a) “takaful benefit” means the aggregate of takaful benefits for which an insurer member is liable to any person in the usual course of the takaful business of the insurer member; and
- (b) “insurance benefit” means the aggregate of insurance benefits for which an insurer member is liable to any person in the usual course of the insurance business of the insurer member.

**Scope of coverage for takaful certificates and insurance policies**

**69.** (1) The Corporation shall separately provide protection in respect of the loss of protected benefits under the following categories of takaful certificates or insurance policies:

- (a) family solidarity takaful;
- (b) general takaful;
- (c) life insurance; and
- (d) general insurance.

(2) For the purposes of subsection (1), the Corporation may prescribe the following by regulations made under section 209:

- (a) the types or descriptions of takaful benefits within the categories referred to in subsection (1) that are protected takaful benefits, the types or descriptions of takaful beneficiaries and the types or descriptions of properties that are protected under, or excluded from, the takaful and insurance benefits protection system; and

- (b) the types or descriptions of insurance benefits within the categories referred to in subsection (1) that are protected insurance benefits, the types or descriptions of insured persons and the types or descriptions of properties that are protected under, or excluded from, the takaful and insurance benefits protection system.

(3) For the purposes of this Part—

(a) “risk” means—

- (i) in relation to a family solidarity takaful certificate, the death or survival of the participating life;
- (ii) in relation to a life policy, the death or survival of the life insured;
- (iii) in relation to a general takaful certificate, the loss on occurrence of one or more events provided for under the certificate; and
- (iv) in relation to a general policy, the loss on occurrence of one or more events provided for under the policy;

(b) “group certificate” or “group policy” means a takaful certificate or an insurance policy under which there are three or more participating lives or lives insured at the time of issuance of the certificate or policy;

(c) “third party” means a person, not being a takaful beneficiary or an insured person, against whose claim a takaful beneficiary or an insured person is indemnified under a general takaful certificate or general policy;

(d) “risk event” means any event in relation to which a takaful certificate or insurance policy provides for a takaful or insurance benefit.

(4) For the purposes of subsection (1)—

- (a) where a certificate owner is entitled to protected benefits under two or more family solidarity takaful certificates with the same insurer member relating to the same risk event in respect of the same participating life, the aggregate of those benefits shall be protected up to such amount as prescribed by the Minister on the recommendation of the Corporation;

- (b) where a policy owner is entitled to protected benefits under two or more life policies with the same insurer member relating to the same risk event in respect of the same life insured, the aggregate of those benefits shall be protected up to such amount as prescribed by the Minister on the recommendation of the Corporation;
- (c) where a certificate or policy owner is entitled to protected benefits under two or more general takaful certificates or general policies with the same insurer member, the aggregate of the takaful or insurance benefits under those takaful general certificates or general policies shall be protected—
  - (i) in respect of protected benefits under general takaful relating to the same risk event in respect of the same participating life or the same property covered, up to such amount as prescribed by the Minister on the recommendation of the Corporation; and
  - (ii) in respect of protected benefits under general policies relating to the same risk event in respect of the same life insured or the same insured property, up to such amount as prescribed by the Minister on the recommendation of the Corporation;
- (d) where a certificate or policy owner is indemnified by the same insurer member under a general takaful certificate or general policy against the claims of two or more third parties in respect of the same risk event, the takaful or insurance benefits in respect of the claim of each third party shall be separately protected up to such amount as prescribed by the Minister on the recommendation of the Corporation;
- (e) where—
  - (i) a certificate owner is entitled to protected benefits under a group family solidarity takaful certificate; or
  - (ii) a policy owner is entitled to protected benefits under a group life policy,

the takaful or insurance benefits in respect of each participating life or life insured to which the group family solidarity certificate or group life policy relates shall be separately protected up to such amount as prescribed by the Minister on the recommendation of the Corporation;

(f) where—

- (i) a certificate owner is entitled to protected benefits under a group general takaful certificate; or
- (ii) a policy owner is entitled to protected benefits under a group general policy,

the takaful or insurance benefits in respect of each participating life or life insured to which the group general certificate or group general policy relates shall be separately protected up to such amount as prescribed by the Minister on the recommendation of the Corporation;

(g) where—

- (i) a certificate owner is entitled to protected benefits under two or more group family solidarity takaful certificates issued by the same insurer member relating to the same risk event in respect of the same participating life; or
- (ii) a policy owner is entitled to protected benefits under two or more group life policies issued by the same insurer member relating to the same risk event in respect of the same life insured,

the aggregate of those takaful or insurance benefits in respect of each participating life or life insured to which the group family solidarity takaful certificates or group life policies relate shall be protected up to such amount as prescribed by the Minister on the recommendation of the Corporation;

(h) where—

- (i) a certificate owner is entitled to protected benefits under two or more group general certificates issued by the same insurer member relating to the same risk event in respect of the same participating life; or

- (ii) a policy owner is entitled to protected benefits under two or more group general policies issued by the same insurer member relating to the same risk event in respect of the same life insured,

the aggregate of those takaful or insurance benefits in respect of each participating life or life insured to which the group general certificates or group general policies relate shall be protected up to such amount as prescribed by the Minister on the recommendation of the Corporation;

(i) where—

- (i) a certificate owner is entitled to protected benefits under a family solidarity takaful certificate and a group family solidarity takaful certificate issued by the same insurer member relating to the same risk event in respect of the same participating life; or
- (ii) a policy owner is entitled to protected benefits under a life policy and a group life policy issued by the same insurer member relating to the same risk event in respect of the same life insured,

the aggregate of those takaful or insurance benefits in respect of each participating life or life insured to which the family solidarity takaful certificate and the group family solidarity takaful certificate or the life policy and the group life policy relate shall be protected up to such amount as prescribed by the Minister on the recommendation of the Corporation; and

(j) where—

- (i) a certificate owner is entitled to protected benefits under a general certificate and one or more group general certificates issued by the same insurer member relating to the same risk event in respect of the same participating life; or
- (ii) a policy owner is entitled to protected benefits under a general policy and one or more group general policies issued by the same insurer member relating to the same risk event in respect of the same life insured,

the aggregate of those takaful or insurance benefits in respect of each participating life or life insured to which the general certificate and the group general certificate or the general policy and the group general policy relate shall be protected up to such amount as prescribed by the Minister on the recommendation of the Corporation.

(5) In the case of a certificate or policy owner who is entitled to protected benefits under only one takaful certificate or insurance policy with an insurer member, the takaful or insurance benefits shall be protected up to the relevant amount prescribed under paragraph (4)(a), (b) or (c).

(6) In the case of a certificate or policy owner who is entitled to protected benefits under paragraph (4)(a), (b) or (h) and surrenders his family solidarity takaful certificates or life policies, or group family solidarity takaful certificate or group life policy, the aggregate of the surrender values in respect of each participating life or life insured shall be protected up to such amounts as prescribed by the Minister on the recommendation of the Corporation.

(7) For the avoidance of doubt, an amount prescribed under subsection (4) may relate to any type, description or category of protected benefit and different amounts may be prescribed for different types, descriptions or categories of protected takaful and insurance benefits.

### **Transfers of certificates or policies among insurer members**

**70.** (1) Where takaful certificate or insurance policy liabilities of an insurer member (referred to in this section as the “transferring member”) are transferred to and assumed by another insurer member, the protected benefits shall be deemed to be and continue to be separately protected by the Corporation until fulfilment of all of the obligations of the transferring member in respect of the takaful or insurance benefits.

(2) Where there is a transfer of takaful certificate or insurance policy liabilities under subsection (1)—

- (a) the transferring member shall give notice of the transfer of takaful certificate or insurance policy liabilities and the continued separate protection referred to in subsection (1); and

- (b) the Corporation may give notice of the matters referred to in paragraph (a) if in the opinion of the Corporation, public interest requires that such notice be given,

by publication in at least two daily newspapers published in Malaysia, one of which shall be in the national language.

(3) An insurer member shall maintain such records as are required by the Corporation for the purposes of subsection (1).

(4) An insurer member that contravenes paragraph (2)(a) 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 in respect of insurer members**

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

- (a) two hundred and fifty thousand ringgit; or
- (b) a rate to be prescribed by the Minister on the recommendation of the Corporation,

whichever is higher.

(2) For the avoidance of doubt, different rates may be prescribed under subsection (1) for different categories of insurer members.

(3) No first premium shall be required to be paid in relation to the liability for a takaful certificate or insurance policy transferred from an insurer member to another insurer member within a business group in respect of which premium has been paid for the assessment year in which the latter insurer member becomes a member.

(4) An insurer member shall pay the first premium to the Corporation within thirty days from the date it becomes a member or such other period as may be specified by the Corporation.

### **Annual premium in respect of insurer members**

**72.** (1) Every insurer member shall, for each assessment year following the assessment year in which it becomes a member institution, pay annual premiums on or before the annual due date prescribed by the Corporation.

(2) Subject to subsection (3), the annual premium rate or rates shall be as prescribed by the Minister on the recommendation of the Corporation.

(3) The annual premium payable by an insurer member for an assessment year shall not be lower than such minimum amount or amounts as may be prescribed by the Minister on the recommendation of the Corporation.

(4) For the avoidance of doubt, the rates prescribed under subsection (2) and the minimum amounts prescribed under subsection (3) may relate to categories in which insurer members are classified under premium regulations and different rates and minimum amounts may apply to different categories.

(5) Any insurer member 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 in respect of insurer members**

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

- (a) the applicable premium rates for each insurer member shall be based on such criteria as may be prescribed in the regulations;

- (b) in respect of an insurer member carrying on the business of family solidarity takaful or life insurance, the annual premiums to be paid by the insurer member shall be calculated on the basis of the actuarial valuation of family solidarity takaful liabilities or life insurance liabilities in respect of the relevant protected benefits as at 31 December of the preceding assessment year, calculated in such manner as the Corporation may specify;
- (c) in respect of an insurer member carrying on the business of general takaful or general insurance, the annual premiums to be paid by the insurer member shall be calculated on the total net premiums received by it in respect of the relevant protected benefits during the preceding assessment year, calculated in such manner as the Corporation may specify; and
- (d) the annual premiums in respect of family solidarity takaful, general takaful, life policy and general policy protected benefits shall be calculated separately.

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

### **No set-off in respect of insurer members**

**74.** Unless the Corporation otherwise agrees in any particular case, no premium payment or premium surcharge payment owing to the Corporation by an insurer member shall be discharged, reduced or otherwise adjusted by reason of any claim that the insurer member may have against the Corporation.

### **Premium surcharge in respect of insurer members**

**75.** (1) Notwithstanding the payment of the first premium in respect of the first assessment year or the annual premiums in respect of any particular assessment year, the Corporation may assess and collect from an insurer member a premium surcharge in respect of that assessment year or any part thereof in accordance with this section.

(2) The premium surcharge payable by an insurer member under subsection (1) in any particular assessment year shall not exceed 0.5 per centum per annum of the annual premiums payable by the insurer member in respect of that assessment year or one million ringgit, whichever is higher.

(3) Where, in the opinion of the Corporation an insurer member—

- (a) has failed or fails to comply with any regulations, rules, orders, by-laws, notifications, guidelines, circulars or notes relating to sound financial and business practices issued by Bank Negara Malaysia or any undertaking given to or agreement made with Bank Negara Malaysia;
- (b) has failed or fails to comply with the terms and conditions of the membership, any undertaking given to or agreement made with the Corporation, or any regulations, rules, orders, by-laws, notifications, guidelines, circulars or notes of the Corporation in respect of takaful and insurance benefits protection;
- (c) has failed or fails to comply with a request for information or has restricted access to information by the Corporation, Bank Negara Malaysia or any person acting on behalf of the Corporation, under this Act; or
- (d) has failed or fails to maintain proper takaful or insurance benefit records or has misrepresented, whether by act or omission, any information, including information on takaful or insurance liabilities or net premiums used as a basis for any premium assessments under this Part,

the Corporation shall—

- (A) if it proposes to impose a premium surcharge on the insurer member, consult Bank Negara Malaysia on the reasons for imposing a premium surcharge and the amount of the premium surcharge; and
- (B) give the insurer member an opportunity to make representations to the Corporation on any proposed premium surcharge within seven days from the date of a written notice issued by the Corporation to the insurer member.

(4) Where the Corporation receives representations from an insurer member within the time period stipulated in paragraph (3)(B), the Corporation shall consider the representations in deciding whether to impose a premium surcharge and if so, deciding on the amount of the premium surcharge.

(5) Where the Corporation decides to impose a premium surcharge, the Corporation shall obtain the written approval of the Minister before imposing the premium surcharge on the insurer member.

(6) A premium surcharge shall be imposed by the Corporation by notice in writing to the insurer member and shall be payable to the Corporation within thirty days from the date of such notice or such other period as may be specified by the Corporation.

(7) Any opinion formed or decision made by the Corporation relating to the imposition or the amount of any premium surcharge in respect of any insurer member shall be final and binding.

(8) A surcharge paid to the Corporation under this section shall be paid into and form part of the Consolidated Fund.

### **Overdue charges in respect of insurer members**

**76.** Where any premium or premium surcharge due and payable under section 71, 72 or 75 has not been paid by the insurer member on the due date, the unpaid premium shall, without further notice being served on the insurer member, be increased by a sum as may be prescribed in the regulations of the premium so unpaid.

### **Premium regulations in respect of insurer members**

**77.** The Corporation may make regulations in respect of the determination of first premiums and annual premiums including—

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

**Premiums and surcharges on insurer members deemed earned**

**78.** Any premium or premium surcharge payable under this Part shall be deemed to be fully earned when payable and shall not be refundable.

*Chapter 3*

*Payments*

**Payment in respect of protected benefit**

**79.** (1) All payments made by the Corporation in respect of—

- (a) protected benefits under family solidarity takaful and all costs associated therewith shall be made from the family solidarity takaful protection fund;
- (b) protected benefits under life policies and all costs associated therewith shall be made from the life insurance protection fund;
- (c) protected benefits under general takaful and all costs associated therewith shall be made from the general takaful protection fund; and
- (d) protected benefits under general policies and all costs associated therewith shall be made from the general insurance protection fund.

(2) All references in this Chapter to insurer members include, where applicable, a former insurer member the membership of which has been cancelled under section 38 or terminated under section 39.

**Obligatory payment in respect of protected benefit**

**80.** (1) Subject to subsection (4), the Corporation shall make payment in respect of a protected benefit where a winding-up order has been made in respect of—

- (a) the insurer member that issued the takaful certificate or insurance policy; or

- (b) an insurer member to which the takaful certificate or insurance policy liability has been transferred under subsection 70(1).

(2) Where the Corporation is obliged to make payment under subsection (1), the Corporation shall, based on the takaful certificate or insurance policy and any supporting documentation included in the records of the insurer member, make payment to such person as in the opinion of the Corporation appears to be entitled to it.

(3) Any decision made by the Corporation relating to the person entitled to a payment or the amount to be paid in respect of a protected benefit shall be final and binding.

(4) The Corporation shall not be obliged to make payment in respect of a protected benefit where a petition for the winding up of an insurer member was presented by Bank Negara Malaysia or the Director General as defined in the Takaful Act 1984.

(5) For the avoidance of doubt, in respect of a family solidarity takaful certificate or life policy—

- (a) the actuarial valuation reserve referred to in paragraph 83(2)(b), 83(3)(b) or subsection 84(3) is a protected benefit; and
- (b) notwithstanding subsections 83(2), 83(3) and 84(3), the Corporation is obliged to make payment in respect of each participating life or life insured as follows:
  - (i) where there is one certificate or policy, the actuarial valuation reserve only up to such amount as prescribed by the Minister on the recommendation of the Corporation; and
  - (ii) where there are two or more certificates or policies, the aggregate of the actuarial valuation reserve only up to such amount as prescribed by the Minister on the recommendation of the Corporation.

**Discretionary payment in respect of protected benefit**

**81.** The Corporation may, with the prior written approval of the Minister, make payment in respect of a protected benefit where—

- (a) the insurer member that issued the takaful certificate or insurance policy, or an insurer member to which the takaful certificate or insurance policy liability has been transferred under subsection 70(1), is unable to make any payment in respect of the protected benefit 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 a receiver, manager or receiver and manager during the period in which the insurer member is in receivership;
- (b) a petition for winding up against the insurer member has been presented to the court; or
- (c) the membership of the insurer member is cancelled or terminated.

**Advance payment in respect of protected benefit**

**82.** For the avoidance of doubt, the Corporation may exercise its discretion in respect of section 80 or 81 to make any payment or part payment to any takaful beneficiary or insured person in respect of any protected benefit in advance of payments to any other takaful beneficiaries or insured persons.

**Cessation of insurance policies and takaful certificates on winding up**

**83.** (1) A general or family solidarity takaful certificate or a general or life policy shall cease to be in force as of the date of the winding-up order.

(2) Where a certificate ceases to be in force under subsection (1), the certificate owner shall be eligible to claim as a debt due to him by the insurer member on account of the certificate—

- (a) in respect of his general takaful certificate, a sum equal to the pro-rated portion of his contribution attributable to the period beginning with the date of the winding-up order and ending on the date that his certificate would have expired by its own terms; or
- (b) in respect of his family solidarity takaful certificate, a sum equal to the actuarial valuation reserve as of the date of the winding-up order.

(3) Where a policy ceases to be in force under subsection (1), the policy owner shall be eligible to claim as a debt due to him by the insurer member on account of the policy—

- (a) in respect of his general policy, a sum equal to the pro-rated portion of his premium attributable to the period beginning with the date of the winding-up order and ending on the date that his policy would have expired by its own terms; or
- (b) in respect of his life policy, a sum equal to the actuarial valuation reserve as of the date of the winding-up order.

(4) For the avoidance of doubt—

- (a) subsections (1) and (2) shall not operate to extinguish any right of a certificate owner or any other takaful beneficiary against the insurer member in respect of any risk event that has occurred prior to the date of the winding-up order, in which case the certificate owner or other takaful beneficiary shall be eligible to claim as a debt due to him by the insurer member the amount due to him by reason of the occurrence of such risk event; and
- (b) subsections (1) and (3) shall not operate to extinguish any right of a policy owner or any other insured person against the insurer member in respect of any risk event that has occurred prior to the date of the winding-up order, in which case the policy owner or other insured person shall be eligible to claim as a debt due to him by the insurer member the amount due to him by reason of the occurrence of such risk event.

**Determining the obligatory payment for family solidarity takaful certificates and life policies**

**84.** (1) Subject to subsection (2), if, within three months from the date of the winding-up order, the Corporation receives a claim from a takaful beneficiary or insured person stating that a family solidarity takaful or life policy risk event occurred prior to the date of the winding-up order in respect of which payment has not been made by or on behalf of the insurer member, the amount of the obligatory payment in respect of a protected benefit shall be calculated based on the obligation of the insurer member that arose upon the occurrence of that risk event.

(2) Such obligatory payment shall be subject to—

(a) receipt by the Corporation of the claim within three months as stipulated in subsection (1) in such manner and with such supporting documentation as specified by the Corporation;

(b) proof, to the reasonable satisfaction of the Corporation, that the risk event occurred prior to the date of the winding-up order, if in the opinion of the Corporation the supporting documentation referred to in paragraph (a) is not adequate; and

(c) the validity of the claim.

(3) If any of the conditions stipulated in subsections (1) and (2) is not fulfilled, the amount of the obligatory payment shall be based on the actuarial valuation reserve in respect of the family solidarity takaful or life policy as of the date of the winding-up order.

(4) Where a certificate owner or policy owner surrenders his family solidarity takaful certificate or life policy prior to the date of the winding-up order, the amount of the obligatory payment shall be based on the surrender value of the family solidarity takaful or life policy at the time of surrender.

(5) Any decision made by the Corporation relating to the person entitled to a payment or the amount to be paid in respect of a protected benefit shall be final and binding.

**Determining the obligatory payment for general takaful certificates and general policies**

**85.** (1) Notwithstanding any other provision in the law or the terms of any takaful certificate or policy or other agreement, if a petition for the winding up of an insurer member is presented to the court, the Corporation may, by not less than thirty days prior notice in accordance with section 86, terminate general takaful certificates or general policies that provide for takaful benefits or insurance benefits of a type that is protected under the takaful and insurance benefits protection system.

(2) Subject to subsection (3), if the Corporation receives a claim from a takaful beneficiary or an insured person stating that a general takaful or a general policy risk event occurred prior to the date on which the takaful certificate or policy ceased to be in force in respect of which payment has not been made by or on behalf of the insurer member, the amount of the obligatory payment in respect of a protected benefit shall be calculated based on the obligation of the insurer member that arose upon the occurrence of that risk event.

(3) Such obligatory payment shall be subject to—

- (a) receipt by the Corporation of the claim within such period, in such manner and with such supporting documentation as specified by the Corporation;
- (b) proof, to the reasonable satisfaction of the Corporation, that the risk event occurred before the takaful certificate or policy ceased to be in force, if in the opinion of the Corporation the supporting documentation referred to in paragraph (a) is not adequate; and
- (c) the validity of the claim.

(4) If any of the conditions stipulated in subsections (2) and (3) is not fulfilled, the amount of the obligatory payment shall be based on the amount that would have been payable as a debt due to the certificate owner or policy owner on the date the takaful certificate or policy ceased to be in force as a refund of the pro-rated portion of the contributions or premiums attributable to the period beginning with the date on which the takaful certificate or policy ceased to be in force and ending on the date that the takaful certificate or policy would have expired by its own terms.

(5) Notwithstanding section 80 or 81, the Corporation may make the payments referred to in this section at any time after a petition for winding up the insurer member is presented to the court.

(6) Notwithstanding any contrary provision in the takaful certificate or policy or other agreement, a takaful beneficiary or an insured person shall be deemed to be entitled under the takaful certificate or policy to make a claim against the insurer member based on the obligation of the insurer member in respect of a risk event that occurred prior to the date of cessation of the takaful certificate or policy within such period as may be specified by the Corporation.

(7) Any decision made by the Corporation relating to the person entitled to a payment or the amount to be paid in respect of a protected benefit shall be final and binding.

### **Notification by the Corporation**

**86.** (1) The Corporation shall, as soon as practicable, after the filing of a petition for the winding up of an insurer member, notify the certificate owners or policy owners of the following matters:

- (a) the date fixed for the hearing of the petition;
- (b) the time period for filing with the Corporation claims in respect of protected family solidarity takaful or life policy benefits based on risk events that have occurred or occur before the date of the winding-up order;
- (c) the time period for filing with the Corporation claims in respect of protected general takaful or general policy benefits based on risk events that have occurred or occur before the date of cessation of the certificates or policies; and
- (d) any other relevant information as the Corporation may determine.

(2) The notification referred to in subsection (1) shall be effected by ordinary mail sent to the addresses of the certificate owners or policy owners last shown in the records of the insurer member and by advertisement in at least two daily newspapers published in Malaysia, one of which shall be in the national language.

**Calculation of return or interest on protected benefit for obligatory payment**

**87.** For the purpose of calculating the obligatory payment of the Corporation in respect of any protected benefit where a winding-up order has been made in respect of an insurer member, the protected benefit, including return or interest accrued in relation to the obligation under the takaful certificate or insurance policy shall, notwithstanding any other provision in the law, be included only to the date of the filing of the petition for the winding up.

**Corporation may pay return or interest on obligatory payment in respect of protected benefit**

**88.** Where the Corporation makes an obligatory payment under section 80, the Corporation may at its sole discretion pay, in addition to the amount the Corporation is obliged to pay, return or interest on that amount at a rate determined by the Corporation for the period commencing on the date of the filing of the petition for the winding up of the insurer member and ending on the date of the making of the payment by the Corporation, but the aggregate of the payments made under this section and section 80 in relation to a protected benefit shall in no case exceed such amount as prescribed under subsection 69(4).

**Calculation of return or interest on protected benefit for discretionary payment**

**89.** For the purpose of calculating the payment of the Corporation in respect of any protected benefit where the Corporation makes a discretionary payment—

- (a) subject to paragraph (b), the return or interest accrued in relation to the takaful or insurance benefit shall be included only to the date of the payment by the Corporation; or
- (b) if a proceeding for the winding up of the insurer member 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 shall be included only to the date of the filing of the petition for the winding up.

**Discharge of liability, etc., in respect of protected benefit**

**90.** (1) Payment under this Chapter by the Corporation in respect of any protected benefit discharges the Corporation from all liabilities to the extent of the amount of the payment made in respect of that protected benefit, and in no case is the Corporation under any obligation to see to the proper application in any way of the payment so made.

(2) The Corporation may make a payment under section 80, 81, 82 or 88 in such manner as the Corporation deems to be appropriate.

(3) Without prejudice to subsection (2), the Corporation may make a payment by—

- (a) arranging to have the liability for the protected benefit transferred to and assumed by an insurer member, provided that the obligation shall be assumed by a takaful operator or an insurance company according to whether the protected benefit is under a takaful certificate or an insurance policy; or
- (b) paying to the person it considers entitled to the payment an amount equal to the actuarial valuation reserve of life policies but shall not in any case exceed the maximum amount of the protection provided by the Corporation in respect of that benefit.

**Subrogation in respect of protected benefit**

**91.** Where the Corporation makes a payment under this Chapter in respect of any protected benefit, the Corporation is subrogated, to the extent of the amount of the payment made, to all the rights and interests of the takaful beneficiary or the insured person in relation to the protected benefit and may maintain an action in respect of those rights and interests in the name of the takaful beneficiary or the insured person or in the name of the Corporation.

**Assignment in respect of protected benefit**

**92.** Where the Corporation deems it advisable, the Corporation may withhold payment in respect of any protected benefit until it has received an assignment in writing of all the rights and interests of the takaful beneficiary or insured person in relation to the protected benefit.

**Time limitation for claim in respect of protected benefit**

**93.** The time limit for the commencement of an action against the Corporation in respect of the obligation of the Corporation under subsection 80(2) to make payment in relation to a takaful certificate or an insurance policy shall be ten years after the date of the filing of the petition for winding up.

**Independent actuary**

**94.** (1) Where, for the purposes of any provision of this Chapter, the Corporation deems it advisable to have the actuarial valuation reserve for a takaful or insurance benefit determined, the Corporation may appoint an independent actuary (referred to in this section as an “independent actuary”) to determine it.

(2) An individual shall not be appointed as an independent actuary unless he possesses such qualifications as stated in paragraphs 83(2)(a) and (b) of the Insurance Act 1996 or such qualifications as may be specified by Bank Negara Malaysia.

(3) Any present or former officer, auditor, receiver, manager, receiver and manager, liquidator or agent of the takaful operator or insurance company concerned or any other person shall furnish to an independent actuary such documents, materials, information or explanations as in the opinion of the independent actuary ought to be considered in the course of determining the actuarial valuation reserve for a takaful or insurance benefit.

(4) The actuarial valuation reserve for a takaful or insurance benefit as determined by an independent actuary shall be final and binding.

(5) The costs of the independent actuary, including his remuneration as approved by the Corporation, shall be borne by the insurer member and in the event of any default in payment by the insurer member, shall be payable with the same priority and from the same sources as the costs, charges and expenses referred to in paragraphs 140(1)(a) and (3)(a).

## PART VI

### EXAMINATION OF MEMBER INSTITUTIONS

#### **Bank Negara Malaysia to provide information**

**95.** Bank Negara Malaysia shall, 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, section 31 of the Islamic Banking Act 1983, section 99 of the Insurance Act 1996 or section 33 of the Takaful Act 1984 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.

#### **Examinations**

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

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

- (a) whether proper and adequate records of its deposit or takaful or insurance benefit liabilities are maintained by a member institution;
- (b) whether reports made by a member institution on its premiums or takaful or insurance liabilities are substantially correct;
- (c) compliance with terms and conditions or any other requirements of the membership; or
- (d) any other areas that the Corporation thinks appropriate, after consultation with Bank Negara Malaysia.

(3) The Corporation may commission another person to conduct any examinations under subsection (2) or subsection 97(1).

(4) A copy of a report of any examination under subsection (1) or commissioned under subsection (3) shall be provided by the Corporation to Bank Negara Malaysia within a period of three months after the completion of the examination.

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

### **Special examinations**

**97.** (1) Where the Corporation has reason to believe that a due diligence or other examination should be made for the purposes of the exercise of any powers of the Corporation under section 25 or subsection 99(1) or the making of a payment under Chapter 3 of Part IV or Chapter 3 of Part V, the Corporation may conduct one or more special examinations of a member institution.

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

(3) For the purpose of this section, an officer, auditor, receiver, manager, receiver and manager, liquidator or agent of the member institution or any other person shall furnish to the officers or

employees of the Corporation or any other person appointed by the Corporation such documents, materials, information or explanations as the Corporation may require.

(4) The Corporation may recover the costs and expenses of a special examination from the 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 VII

### ACTIONS BY THE CORPORATION

#### *Chapter 1*

#### *Actions in respect of non-viable member institutions*

#### **Notification of non-viability**

**98.** (1) Bank Negara Malaysia may notify the Corporation in writing where Bank Negara Malaysia is of the opinion that a member institution has ceased to be viable or is likely to cease to be viable.

(2) A notification under subsection (1) shall be final and binding.

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

**99.** (1) Where the Corporation has received a notification under section 98, 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 cease soliciting, taking or repaying deposits or cease issuing or renewing, or making payments under, takaful certificates or insurance policies or carrying on its businesses or such part of it as the Corporation may direct; or

(iii) to restructure the whole or part of its business,

as may be specified by the Corporation;

(b) 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 or part of the assets, liabilities, businesses and affairs of the member institution, carry on the whole or part of its businesses and manage the whole or part of its assets, liabilities and affairs including disposal of its assets or businesses or any part thereof, or appoint any person to do so on behalf of the Corporation (in this Part referred to as “the appointed person”) and the terms and conditions of the appointed person including the Corporation’s directions to the appointed person, shall be determined by the Corporation and shall be binding on the member institution concerned; and to pay the costs, charges and expenses of the Corporation or the appointed person, including remuneration of the appointed person, out of the assets of the member institution in priority to all other claims;

(d) apply to the High Court to appoint a receiver, manager or receiver and manager (any one of such persons being referred to in this Part as “the receiver”) to manage the whole or part of the assets, liabilities, businesses and affairs of the member institution;

(e) subject to the approval by the Minister, present a petition to the High Court for the winding up of the member institution;

(f) with the approval of the Minister, designate a subsidiary of the Corporation as a bridge institution;

(g) transfer—

(i) such assets, business and affairs of the member institution as the Corporation determines; and

- (ii) such deposit liabilities or takaful or insurance liabilities and other liabilities of the member institution as the Corporation determines,

to a bridge institution, or cause one or more of such transfers, on such terms and conditions as the Corporation determines; or

- (h) do any combination of the foregoing,

provided that Islamic deposit liabilities shall only be transferred to a member institution that is an Islamic bank or a bridge institution the operations of which are conducted consistently with Shariah and takaful liabilities shall only be transferred to a member institution that is a takaful operator or a bridge institution the operations of which are conducted consistently with Shariah.

(2) The Corporation may exercise or continue to exercise any powers under subsection (1), except paragraph (1)(a), in respect of a former member institution the membership of which has been cancelled under section 38 or terminated under section 39 and a reference to a member institution in this Part includes, where applicable, a former member institution the membership of which has been cancelled under section 38 or terminated under section 39.

(3) 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, or any governmental, regulatory or other authority whatsoever except, where applicable, the State authority having jurisdiction over dealings in respect of land, or any other person affected by the transaction notwithstanding any rule of law, contract or anything in any law including 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,

and for the avoidance of doubt, a person, other than the Corporation or the appointed person or any subsidiary of the Corporation, shall be subject to the requirements, if any, of the relevant governmental, regulatory or other authority having jurisdiction over the acquisition by such person or the disposition to such person of any assets, liabilities or business of the member institution or part thereof.

(4) Any member institution that fails to comply with any requirement of the Corporation pursuant to this section 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.

(5) The Corporation may transfer any asset or liability of a member institution to a bridge institution under this Part or cause a transfer back to the member institution of any asset or liability as the Corporation may determine—

- (a) by means of one or more transfer instruments; or
- (b) in accordance with general law.

(6) A transfer instrument 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.

### **Notice of assumption of control**

**100.** The Corporation shall give notice of the commencement of the assumption of control under paragraph 99(1)(c) at such time as deemed appropriate by the Corporation by publishing such notice in at least two daily newspapers in Malaysia, one of which shall be in the national language, and the Corporation may give notice of the termination of control in the same manner.

### **Provisions in relation to assumption of control**

**101.** (1) Where control of a member institution has been assumed under paragraph 99(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 and transfer of liabilities, of the member institution.

(2) Where control of a member institution has been assumed under paragraph 99(1)(c), the Corporation or the appointed person shall remain in control of the assets, liabilities, businesses and affairs of the member institution, 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 and transfer of liabilities, until the taking of control is terminated by the Corporation.

(3) Throughout the period of control of a member institution under paragraph 99(1)(c), there shall be vested in the Corporation or in the appointed person 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 99(1)(c), 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 authorized by the Corporation or the appointed person 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 in relation to any activity required or authorized as aforesaid by the Corporation or the appointed person.

(5) For the avoidance of doubt, it is hereby declared that an exercise of the power under paragraph 99(1)(c) shall not have the effect of conferring on, or vesting in, the Corporation or the appointed person 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 99(1)(c), the Corporation or the appointed person—

- (a) in carrying on the businesses and managing the assets, liabilities, businesses or affairs of the member institution or in carrying out any transaction relating to the member institution or its assets, liabilities, businesses or affairs, including disposal of assets and transfer of liabilities, 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 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.

**Power to reduce share capital and to cancel shares of member institution under paragraph 99(1)(c)**

**102.** (1) Where the Corporation or an appointed person has assumed control of the member institution under paragraph 99(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 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; 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 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.

### **Completion of resolution**

**103.** (1) Where the Corporation has assumed control or appointed a person to do so on its behalf under paragraph 99(1)(c), the Corporation and the appointed person may, in addition to any of its other 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 any person of all or part of its liabilities or both;
- (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;
- (c) one or more transfers referred to in paragraph 99(1)(g);  
or
- (d) one or more transfers referred to in subsection 115(3), (4) or (5).

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

(3) The Corporation shall petition for the winding up of the member institution if, in the opinion of the Corporation, no resolution referred to in subsection (1) has been or will be 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 the last extension approved under subsection (4),

whichever is later.

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

### **Establishment of Assessor Committee**

**104.** (1) There shall be a committee to be known as the “Assessor Committee” and the First Schedule shall apply to the Assessor Committee.

(2) Where one or more transactions referred to in subsection 103(1) are effected, a request for a review in accordance with the First Schedule is the sole means by which the amount of the consideration received or receivable in such transaction or series of transactions or the allocation and application of that consideration may be questioned, and no court may entertain any action, suit or proceeding seeking to question the amount or the allocation and application of the consideration.

(3) Any decision of the Assessor Committee made under the First Schedule shall be final and binding.

(4) Until the Corporation prescribes rules under subsection (5), the Assessor Committee may determine its own procedure and conduct for its proceedings.

(5) The Corporation may prescribe rules relating to the procedure and conduct of the proceedings of or before the Assessor Committee.

### **Transition services**

**105.** (1) Where one or more transactions referred to in paragraph 99(1)(g) are effected, the Corporation or the appointed person may cause the member institution to agree to provide services to the transferee in return for the transferee paying or reimbursing the member institution's reasonable costs of doing so as approved by the Corporation.

(2) An agreement referred to in subsection (1) is binding on any receiver, manager, receiver and manager or liquidator appointed in respect of the member institution, and in such a case the member institution's costs of providing the services shall be deemed to include the fees of such receiver, manager, receiver and manager or liquidator for time spent in connection with the provision of the services as approved by the Corporation.

### **Appointment of a receiver, *etc.***

**106.** (1) The High Court shall make an order pursuant to the Corporation's application under paragraph 99(1)(d) to appoint a receiver in respect of a member institution.

(2) On an application by the Corporation, the Court shall appoint as receiver such person as the Corporation may specify in its application to fill a vacancy or to remove and replace a receiver appointed under subsection (1).

(3) A receiver shall have regard to the objective of managing the business and affairs of the member institution in a manner designed to achieve the best result for the member institution's creditors as a whole.

(4) In the case of any conflict between the interests of depositors or takaful beneficiaries or insured persons and any other unsecured creditors of the member institution, a receiver shall give preference to the interest of the depositors or takaful beneficiaries or insured persons.

(5) All costs, charges and expenses of a receiver, including its remuneration and any costs incurred in the exercise of its powers and duties, shall be paid out of the assets of the member institution in priority to all other claims.

(6) A receiver may apply to the High Court for directions in relation to any particular matter arising under the receivership.

(7) Order 30 of the Rules of the High Court 1980 shall not apply to an application for the appointment of a receiver under paragraph 99(1)(d).

(8) An application for the appointment of a receiver under paragraph 99(1)(d) may be made by way of an *ex-parte* originating summons.

**Provisions in relation to appointments under paragraph 99(1)(c) and section 106**

**107.** (1) In respect of a member institution of which the Corporation or any appointed person has assumed control or a receiver has been appointed pursuant to this Act, the Corporation, the appointed person or the receiver—

(a) shall have the power—

- (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 or the receiver 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 or the receiver 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 any person;
  - (v) to carry on the business of a member institution to the extent that the Corporation, the appointed person or the receiver 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; and
  - (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, the appointed person or the receiver; and
- (b) shall have the power to pay out of the assets of a member institution all the costs, charges and expenses of the Corporation, the appointed person or the receiver in the exercise of their powers and duties, including the remuneration of the appointed person or the receiver, in priority to all other claims.

(2) Without prejudice to subsection 101(6), where the Corporation, the appointed person or the receiver exercises one or more powers under subsection (1), the Corporation, the appointed person or the receiver 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.

(3) Without prejudice to subsections 101(3) and 101(4), if any person has, or is vested with control, administration or management of the member institution, such control, administration or management shall immediately cease upon the assumption of control by the Corporation or the appointed person or the appointment of the receiver.

**Validity of transaction**

**108.** Any payment made, transaction entered into or any other act or thing done by the Corporation, the appointed person or a receiver appointed pursuant to this Act or at the direction of the Corporation, is valid and effective and shall not be void, voidable or be considered as an undue preference in the winding up of a member institution.

**Stay of proceedings**

**109.** (1) Subject to subsection (2) and notwithstanding any other law, where the Corporation or the appointed person has assumed control of a member institution under paragraph 99(1)(c) or a receiver has been appointed pursuant to this Act—

- (a) no action, suit or proceeding in any court or tribunal may be commenced against the Corporation or the appointed person in respect of the assumption of control or the receiver in respect of the appointment;
- (b) no action, suit or proceeding in any court or tribunal 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, award 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 114; and
- (f) no person may terminate or amend any agreement with the member institution or claim an accelerated payment under any such agreement by reason only of—
  - (i) the insolvency of the member institution;

- (ii) a default, before the assumption of control under paragraph 99(1)(c) by the Corporation or the appointed person or the appointment of the receiver takes effect, by the member institution in the performance of its obligations under the agreement; or
- (iii) the assumption of control under paragraph 99(1)(c) by the Corporation or the appointed person or the appointment of the receiver,

during the assumption of control of the member institution by the Corporation or the appointed person or the appointment of the receiver, as applicable.

(2) Nothing in this section shall prevent any step from being taken, or any action, suit or proceeding from being commenced or continued, by the Corporation in respect of a member institution or its business, affairs, assets or liabilities.

### **Extension of time**

**110.** 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 until the fifth business day following the end of the period during which that act is prevented by this Act from being done.

### **Validity of security**

**111.** The Corporation may create, perfect or enforce or cause the creation or perfection of any security over any asset of a member institution for any consideration granted in relation to the exercise of any powers under this Act—

- (a) notwithstanding section 109 or any other provision of this Act; and

- (b) notwithstanding that the member institution agreed that it could not or would not create any security over any of its assets or that it could or would create such security only with the consent of another person or persons.

**Assignment not a default, etc.**

**112.** (1) No person may terminate or amend any agreement with a member institution or claim an accelerated payment under any such agreement by reason of the agreement being transferred or assigned to or assumed by another member institution, a bridge institution or a qualified third party.

(2) A transfer or assignment of any agreement with a member institution to another member institution, a bridge institution or a qualified third party pursuant to this Act is valid and binding on all other parties to the agreement notwithstanding that the member institution agreed that it could not or would not assign the agreement or that it could or would assign the agreement only with the consent of another person or persons.

**Agreements overridden for purposes of paragraph 99(1)(c) and section 106**

**113.** Where the Corporation or the appointed person has assumed control of a member institution or a receiver has been appointed pursuant to this Act, any stipulation in any agreement 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 107, 109 or 125; or
- (b) provides, in substance, that the member institution ceases to have the rights or the bridge institution or another transferee or assignee does not have the rights to use or deal with assets that the member institution or the bridge institution or other transferee or assignee would otherwise have, because of—
  - (i) the insolvency of the member institution;
  - (ii) the default by the member institution in the performance of an obligation;

- (iii) the assumption of control or the appointment of the receiver; or
- (iv) the agreement being transferred or assigned to or assumed by another member institution, a bridge institution or a qualified third party.

### **Further supplies and advances**

**114.** Nothing in sections 109 and 113 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 commencement of the assumption of control under paragraph 99(1)(c) or the appointment of the receiver;
- (b) requiring the advance of money or credit to a member institution after the commencement of the assumption of control under paragraph 99(1)(c) or the appointment of the receiver; or
- (c) requiring the provision to a member institution, after the commencement of the assumption of control or the appointment of the receiver of any of the following services where to do so would be likely, in the reasonable opinion of the person providing the service, to result in that person advancing money or credit to a member institution after the assumption of control or appointment or to give rise, after the assumption of control or appointment, to a claim of that person against the 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).

### **Qualified financial agreements**

**115.** (1) Subject to subsection (3), nothing in section 109 shall prevent the termination of any of the following agreements in accordance with their terms or the setting off or the application of amounts payable under such agreements in accordance with their terms, namely—

- (a) a derivative, whether to be settled by payment or delivery, that—
  - (i) trades on a derivative, futures or options exchange or board or other regulated market; or
  - (ii) is the subject of recurrent dealings in the over-the-counter derivatives, securities or commodities markets;
- (b) an agreement to—
  - (i) borrow or lend securities or commodities, including an agreement to transfer securities or commodities under which the borrower may repay the loan with other securities or commodities, cash or cash equivalents;

- (ii) clear or settle securities, futures, options or derivatives transactions; or
- (iii) act as a depository for securities;
- (c) a repurchase, reverse repurchase or buy-sell back agreement with respect to securities or commodities;
- (d) a margin loan in so far as it is in respect of a securities account or futures account maintained by a financial intermediary;
- (e) any combination of agreements referred to in any of paragraphs (a) to (d);
- (f) a master agreement in so far as it is in respect of an agreement referred to in any of paragraphs (a) to (e);
- (g) a master agreement in so far as it is in respect of a master agreement referred to in paragraph (f);
- (h) a guarantee of, or an indemnity or reimbursement obligation with respect to, the liabilities under an agreement referred to in any of paragraphs (a) to (g); and
- (i) an agreement relating to financial collateral, including any form of security or security interest in collateral and a title transfer credit support agreement, with respect to an agreement referred to in any of paragraphs (a) to (h).

(2) For the purposes of subsection (1)—

“derivative” means a financial agreement whose obligations are derived from, referenced to, or based on one or more underlying reference items that are interest rates, currencies, commodities, securities or other ownership interests, credit or guarantee obligations, debt securities, indices related to those items, or such other reference items or indices as may be prescribed in the regulations and includes:

- (a) a contract for differences or a swap, including a total return swap, price return swap, default swap or basis swap;
- (b) a futures agreement;
- (c) a cap, collar, floor or spread;

- (d) an option; and
- (e) a spot or forward;

“financial collateral” means any of the following that is subject to an interest or a right that secures payment or performance of an obligation in respect of a qualified financial agreement or that is subject to a title transfer credit support agreement:

- (a) cash or cash equivalents, including negotiable instruments and demand deposits;
- (b) security, a securities account, or a right to acquire securities; or
- (c) a futures agreement or a futures account;

“financial intermediary” means—

- (a) a clearing agency; or
- (b) a person, including a broker, bank or trust company, that in the ordinary course of business maintains securities accounts or futures accounts for others;

“title transfer credit support agreement” means an agreement under which title to property has been provided for the purpose of securing the payment or performance of an obligation in respect of a qualified financial agreement.

(3) Where the Corporation or the appointed person assumes control of a member institution or a receiver is appointed pursuant to this Act, section 109 shall prevent the termination of any agreement referred to in subsection (1) for such period following the commencement of the assumption of control or the appointment of the receiver as may be prescribed in regulations by the Corporation and if, during such period, the Corporation transfers, or declares by notice in writing that it will transfer, such an agreement to a bridge institution pursuant to paragraph 99(1)(g) or a qualified third party pursuant to this subsection or subsection (4) or (5), the agreement thereafter may only be terminated as against the bridge institution or the qualified third party in accordance with its terms, as if the agreement had always been with the bridge institution or the qualified third party and not the member institution.

(4) If a person is a counterparty to two or more agreements referred to in subsection (1) with the same member institution, the Corporation may only transfer to a bridge institution or qualified third party all or none of the agreements between the member institution and that person.

(5) If the Corporation transfers an agreement referred to in paragraph (1)(i) that applies to any property of the member institution, it shall also transfer that property to the bridge institution or qualified third party.

(6) The Corporation may transfer any agreement referred to in subsection (3) or any property referred to in subsection (5) to a bridge institution or a qualified third party by a transfer instrument issued in accordance with the Second Schedule and it shall have the effect set out in the Second Schedule and shall be binding on any person thereby affected.

(7) Where the Corporation does not transfer, and does not declare that it will transfer, an agreement referred to in subsection (1) and the person who is the counterparty is able to terminate the agreement in accordance with its terms but has not done so, the Corporation may declare by notice in writing that the agreement is terminated, in which case, and despite any term of the agreement to the contrary, the agreement shall be deemed to have been terminated by the counterparty.

### **Corporation, etc., not a successor employer**

**116.** Where the Corporation or the appointed person under paragraph 99(1)(c) assumes control of a member institution, or a receiver or liquidator is appointed pursuant to this Act, the Corporation, the appointed person, the receiver or liquidator shall not—

- (a) be regarded as a successor employer to the member institution;
- (b) be liable for any obligation in respect of the employees or former employees of the member institution or any predecessor of the member institution that exists prior to the assumption of control or appointment in respect of any pension plan or other post-employment benefit plan for the employees or former employees of the member institution or their survivors; or

- (c) be liable for any sum calculated by reference to a period of time prior to the bridge institution becoming the employer of the person in question.

### **Certain claims, proceedings prohibited**

**117.** Notwithstanding sections 109 and 125, a bridge institution, the Corporation, the appointed person under paragraph 99(1)(c), a receiver or a liquidator appointed pursuant to this Act shall not be named as a party in any claim or application made or joined as a party in any proceeding commenced or continued by or on behalf of any employees or former employees of a member institution pursuant to the Industrial Relations Act 1967 [Act 177] or the Employment Act 1955 [Act 265].

## *Chapter 2*

### *Provisions relating to bridge institution*

### **Designation of bridge institution**

**118.** (1) Where a subsidiary of the Corporation is designated as a bridge institution—

- (a) the designation shall expire two years after it is made, unless the designation is—
  - (i) extended under paragraph (b); or
  - (ii) terminated under paragraph (c);
- (b) the Minister may, on the recommendation of the Corporation, extend the designation for one or more periods each of which may not exceed one year; and
- (c) the designation shall terminate on the earlier of the date of occurrence of any of the following events:
  - (i) the bridge institution is no longer a subsidiary of the Corporation;
  - (ii) all or a substantial amount of the assets of the bridge institution are acquired, or all or a substantial amount of the liabilities of the bridge

institution are assumed, or both, by a person that is not a bridge institution; or

- (iii) the Corporation decides that the designation shall be terminated.

(2) Notwithstanding any other law, if a subsidiary of the Corporation that is designated as a bridge institution changes its company name within twelve months before or after such designation, the subsidiary or the bridge institution shall be exempt from stating or otherwise showing the former name on any seal, document or instrument whatsoever.

### **Publication of notice**

**119.** Where a subsidiary of the Corporation is designated as a bridge institution or such a designation is extended under paragraph 118(1)(b) or terminated under paragraph 118(1)(c), the Corporation shall publish a notice specifying the date on which that event occurred in at least two daily newspapers in Malaysia, one of which shall be in the national language.

### **Bridge institution authorized to carry on business**

**120.** (1) Upon its designation as such, and for so long as that designation continues, a bridge institution shall be deemed to have been issued a licence or registration, as applicable, to carry on business as—

- (a) a licensed bank or a licensed finance company as defined under section 2 of the Banking and Financial Institutions Act 1989;
- (b) an Islamic bank as defined under section 2 of the Islamic Banking Act 1983;
- (c) an insurance company; or
- (d) a takaful operator.

(2) The bridge institution shall not be required to pay any fee in relation to such licence or registration.

**Non-application of requirements**

**121.** A bridge institution shall be exempt from such requirements of or made pursuant to the Banking and Financial Institutions Act 1989, the Islamic Banking Act 1983, the Insurance Act 1996 or the Takaful Act 1984 and shall be granted such approvals or provided with such recommendations, as may be agreed in a strategic alliance agreement between the Corporation and Bank Negara Malaysia.

**Bridge institution not a successor employer**

**122.** Where a bridge institution becomes the employer of any person who is an employee or a former employee of a member institution, the bridge institution shall not—

- (a) be regarded as a successor employer to the member institution;
- (b) be liable for any obligation in respect of the employees or former employees of the member institution or any predecessor of the member institution that exists prior to the bridge institution becoming the employer of the person in question or in respect of any pension plan or other post-employment benefit plan for the employees or former employees of the member institution or their survivors; or
- (c) be liable for any sum calculated by reference to a period of time prior to the bridge institution becoming the employer of the person in question.

**Power to give directions**

**123.** The Corporation may give directions to the board of directors of a bridge institution and the board of directors shall implement any such direction.

**Assumption of portion of uninsured deposit or unprotected benefit liability**

**124.** (1) Notwithstanding any law or contract, if the Corporation causes a portion of a deposit liability that is not insured by the Corporation or a portion of a takaful or insurance benefit liability

that is not protected by the Corporation to be transferred to a bridge institution, the bridge institution shall be subrogated to all of the rights and interests of the creditor in relation to the entire liability and may maintain an action therefor in its own name or in the name of the creditor.

(2) As soon as the bridge institution has received an amount equal to the portion of the liability that it assumed, the rights and interests of the creditor in relation to the balance of the liability shall revert to the creditor, without any act of transfer or other formality.

### **Stay in respect of bridge institution**

**125.** Where a subsidiary of the Corporation is designated as a bridge institution—

- (a) no action, suit or proceeding in any court or tribunal may be commenced or continued against the bridge institution or in respect of its assets;
- (b) no attachment, garnishment, execution or other method of enforcement of a judgement, award or order against the bridge institution or its assets may take place or continue; and
- (c) no creditor of the bridge institution has any remedy against the bridge institution or its assets,

during the period of ninety days following the making of the designation.

### **Notice of intention to continue proceedings**

**126.** Where, by virtue of a transfer instrument, another member institution or a bridge institution succeeds to any action, suit or proceeding by or against a member institution (whether judicial, administrative or regulatory), the proceeding may not be continued by any party other than that institution as successor unless it has been given ninety days' notice of the proposed continuance of such proceeding, and if the time allowed for taking any step in the proceeding would expire prior to the end of that notice period then, notwithstanding any other law to the contrary, that time shall be deemed to be extended until the fifth business day following the end of the notice period.

**Assistance to bridge institution**

**127.** (1) The Corporation may, in such manner as it thinks fit, provide a bridge institution with such financial assistance as the Corporation thinks appropriate.

(2) A bridge institution shall, on demand or at such other time as the Corporation specifies, repay or reimburse to the Corporation—

- (a) any loan or other borrowing provided by the Corporation to or for the account of the bridge institution;
- (b) the amount of any other financial assistance provided by the Corporation to or for the account of the bridge institution;
- (c) the cost to the Corporation of any loan or other borrowing incurred by it in order to provide financial assistance to or for the account of the bridge institution;
- (d) the amount of any loss of the investment value of any funds of the Corporation used to provide financial assistance to or for the account of the bridge institution;
- (e) the out of pocket or overhead costs to the Corporation of providing any services or seconding any of its employees to the bridge institution; and
- (f) any other costs, including income tax or other taxes, that the Corporation would not have incurred but for the actions taken by it under section 99 or otherwise in relation to the bridge institution.

**Corporation may hold shares of member institution**

**128.** Notwithstanding subparagraph 25(2)(a)(iii), the Corporation may hold—

- (a) shares of a former bridge institution; or
- (b) shares of any other person that are received by the Corporation, directly or from a bridge institution as a result of a sale or other disposition by the Corporation of shares of a bridge institution or a sale or other disposition of assets of a bridge institution.

*Chapter 3*

*General provisions relating to winding up*

**Winding up of member institution on application by the Corporation**

**129.** Notwithstanding sections 217 and 218 and subsection 221(1) of the Companies Act 1965, and section 114 of the Insurance Act 1996, the High Court shall make a winding-up order in respect of a member institution pursuant to a petition presented by the Corporation under paragraph 99(1)(e).

**Deemed creditor**

**130.** Where a petition for the winding up of a member institution is presented by a person other than Bank Negara Malaysia, the Corporation shall for all purposes be deemed to be a creditor.

**Liquidator's objectives on a winding up of a member institution**

**131.** (1) Notwithstanding any other law, a liquidator appointed in respect of the winding up of a member institution shall have regard to the following objectives:

(a) to work with the Corporation for the purpose of ensuring that—

- (i) each depositor with an insured deposit, as determined by the Corporation; or
- (ii) each takaful beneficiary or insured person with a protected benefit, as determined by the Corporation,

as soon as practicable—

- (a) has the relevant deposit liability or takaful or insurance benefit liability transferred to and assumed by another person; or
- (b) receives payment from, or made on behalf of, the Corporation; and

- (b) to wind up the affairs of the member institution in a manner designed to achieve the best result for the creditors of the member institution as a whole.

(2) The objective in paragraph (1)(a) takes precedence over the objective in paragraph (1)(b) and a liquidator shall begin working towards both objectives immediately upon appointment.

### **Appointment and remuneration of liquidators appointed in respect of member institutions**

**132.** (1) On a petition for the winding up of a member institution, except where the petition is presented by Bank Negara Malaysia, and subject to section 228 of the Companies Act 1965, the Court shall appoint as liquidator such person as the Corporation may specify in its petition or, where the Corporation is not the petitioner, its application.

(2) On an application by the Corporation, the Court shall appoint as liquidator such person as the Corporation may specify in its application—

- (a) to fill a vacancy; or
- (b) to remove and replace a liquidator appointed under subsection (1) or on a winding-up petition other than that presented by Bank Negara Malaysia.

(3) Notwithstanding subsection 232(3) of the Companies Act 1965, and except where the petition for winding up is presented by Bank Negara Malaysia, in the winding up of a member institution, the Court shall determine the remuneration of the liquidator on the recommendation of the Corporation, and no person other than the Corporation may apply to the Court to review the remuneration of the liquidator.

### **Supervision of the Corporation**

**133.** Subject to an order of the Court and notwithstanding subsection 237(4) of the Companies Act 1965, a liquidator, other than the Official Receiver, appointed in respect of the winding up of a member institution on a petition presented by a person other than Bank Negara Malaysia, shall carry out his functions under the direction and supervision of the Corporation.

Chapter 4

*Specific provision on winding up of deposit-taking member*

**Order of payments in the winding up of a deposit-taking member**

**134.** (1) Where a deposit-taking member is wound up—

(a) the proceeds from the liquidation of—

- (i) Islamic assets shall be used to pay any Islamic deposits; and
- (ii) conventional assets shall be used to pay any conventional deposits; and

(b) any surplus after paying—

- (i) Islamic deposits under subparagraph (a)(i) shall be used to pay any conventional deposits; and
- (ii) conventional deposits under subparagraph (a)(ii) shall be used to pay any Islamic deposits.

(2) In the winding up of a deposit-taking member—

(a) subject to paragraph (b), the deposit liabilities of the deposit-taking member shall be paid in priority to all other unsecured liabilities; and

(b) there shall be paid in priority to the deposit liabilities—

- (i) firstly, all costs, charges and expenses of the liquidator including its remuneration and any costs incurred in the exercise of its powers and performance of its duties as liquidator; and
- (ii) secondly, the preferential debts set out in paragraphs 292(1)(b) to (f) of the Companies Act 1965 and debts due to the Government under section 10 of the Government Proceedings Act 1956 [Act 359].

(3) In the winding up of a deposit-taking member, the order of payments for Islamic deposits shall be as follows:

(a) firstly, Islamic deposits based on custody; and

- (b) secondly, other Islamic deposits, which may be divided into different categories and ranked in order of priority as between those categories by regulations made under section 209.

## *Chapter 5*

### *Specific provisions on winding up of insurer member*

#### **Interpretation**

**135.** (1) For the purposes of this Chapter—

- (a) a reference to the assets of a takaful operator shall not include any asset of a takaful fund; and
- (b) a reference to the assets of an insurance company shall not include any asset of an insurance fund.

(2) In the winding up of a takaful operator, the assets of a takaful fund shall include any amount provided by the takaful operator to meet any deficiency in the takaful fund prior to the winding up.

#### **Winding up of insurer member on application by persons other than the Corporation**

**136.** Where a petition for the winding up of an insurer member is presented by a person other than the Corporation, the Corporation shall be a party to the winding up proceedings and—

- (a) that person shall deliver a copy of the petition to the Corporation at the same time as it is presented;
- (b) the Corporation shall be entitled to appear and be heard in all proceedings relating to the petition and to call, examine and cross-examine any witness; and
- (c) the Corporation, if it considers fit, may support or oppose the petition.

### **Notice of winding-up proceedings by persons other than Corporation**

**137.** Where a petition for the winding up of an insurer member is presented by a person other than the Corporation, that person—

- (a) shall give to the Corporation notice of all proceedings relating to the petition, including proceedings under sections 243 and 249 and subsections 236(3), 277(2), 277(3) and 277(4) of the Companies Act 1965; and
- (b) shall deliver to the Corporation copies of the documents and records relating to the proceedings at the same time as they are lodged with the High Court or served on any party to the proceedings.

### **Liquidator's reports and accounts**

**138.** In the winding up of an insurer member, the liquidator shall submit to the Corporation—

- (a) a copy of the reports referred to in subsection 235(3) of the Companies Act 1965 at the same time as he submits them to the Court;
- (b) a copy of the prescribed form referred to in subsection 281(1) of the Companies Act 1965 at the same time as he submits it to the Official Receiver; and
- (c) such other documents as the Corporation may specify.

### **Statement of affairs**

**139.** The statement of affairs of an insurer member as at the date of the winding-up order made under section 234 of the Companies Act 1965 shall be submitted to the Corporation at the same time as it is submitted to the Official Receiver or liquidator.

**Order of certain payments in the winding up of an insurer member**

**140.** (1) In the winding up of a takaful operator, there shall be paid out of the assets of the takaful operator, in priority to the takaful benefit liabilities and all other unsecured liabilities—

- (a) firstly, all costs, charges and expenses of the liquidator including its remuneration and any costs incurred in the exercise of its powers and performance of its duties as liquidator; and
- (b) secondly, the preferential debts set out in paragraphs 292(1)(b) to (f) of the Companies Act 1965 and debts due to the Government under section 10 of the Government Proceedings Act 1956.

(2) Notwithstanding subsection 247(3) of the Companies Act 1965, if the assets of the takaful operator are insufficient to meet all of those costs, charges, expenses and debts, then the balance of such costs, charges, expenses and debts shall be paid out of the assets of one or more of the takaful funds, in priority to the relevant takaful benefit liabilities, in such proportions as the Court may order.

(3) In the winding up of an insurance company, there shall be paid out of the assets of the insurance company, in priority to the insurance benefit liabilities and all other unsecured liabilities—

- (a) firstly, all costs, charges and expenses of the liquidator including its remuneration and any costs incurred in the exercise of its powers and performance of its duties as liquidator; and
- (b) secondly, the preferential debts set out in paragraphs 292(1)(b) to (f) of the Companies Act 1965 and debts due to the Government under section 10 of the Government Proceedings Act 1956.

(4) Notwithstanding subsection 247(3) of the Companies Act 1965, if the assets of the insurance company are insufficient to meet all of those costs, charges, expenses and debts, then the balance of such costs, charges, expenses and debts shall be paid out of the assets of one or more of the insurance funds, in priority to the relevant insurance benefit liabilities, in such proportions as the Court may order.

**Application of takaful funds or insurance funds in the winding up of a takaful operator or insurance company**

**141.** (1) In the winding up of a takaful operator, subject to subsections 140(1) and (2), the assets of a takaful fund shall be applied to meet the takaful benefit liabilities of that fund in priority to all other unsecured liabilities.

(2) Subject to subsection (1)—

- (a) the assets of a takaful fund maintained by the takaful operator in respect of its family solidarity or general takaful business shall be applied to meet the liabilities of that fund;
- (b) where the assets of a takaful fund exceed its liabilities, the surplus assets shall be distributed to the certificate owners of that fund in proportion to their entitlements under their respective takaful certificates;
- (c) any deficiency subsisting in a takaful fund or funds after application of the assets of the takaful funds in accordance with paragraph (a) and, where applicable, subsection (3), shall be paid out of the assets of the takaful operator in accordance with subsection 142(1); and
- (d) the assets of a takaful fund shall not be applied to meet a liability of that fund for an amount referred to in subsection 135(2) unless all other liabilities of the fund, and all other amounts payable out of the assets of the fund, have first been met or paid in full.

(3) Notwithstanding paragraph (2)(b), any surplus assets of a takaful fund or funds shall be applied to meet the liabilities of any takaful fund or funds the assets of which are deficient if that is expressly provided for by the terms of the takaful certificates of the first-mentioned takaful fund or funds.

(4) In the winding up of a takaful operator, takaful benefits may be divided into different categories and ranked in order of priority as between those categories by regulations made under section 209.

(5) In the winding up of an insurance company, subject to subsections 140(3) and (4), the assets of an insurance fund shall be applied to meet the insurance benefit liabilities of that fund in priority to all other unsecured liabilities.

(6) Subject to subsection (5)—

- (a) the assets of an insurance fund maintained by the insurance company in respect of its life or general insurance business shall be applied to meet the liabilities of that fund;
- (b) where the assets of an insurance fund or funds exceed the liabilities of the fund or funds, the surplus assets shall be applied to meet the liabilities of any insurance fund or funds the assets of which are deficient; and
- (c) any deficiency subsisting in an insurance fund or funds after application of the assets of the insurance funds under paragraphs (a) and (b), shall be paid out of the assets of the insurance company in accordance with subsection 142(2).

(7) For the purposes of subsection (3), if the surplus assets of two or more takaful funds are applied, they shall be applied proportionately to the amounts of the surpluses and if the surplus assets are applied to meet the liabilities of two or more takaful funds the assets of which are deficient, they shall be applied proportionately to the amounts of the deficiencies, unless the terms of the first mentioned takaful funds expressly provide for the surplus assets to be applied in a different manner, in which case they shall be applied in accordance with those terms.

(8) For the purposes of paragraph (6)(b), if the surplus assets of two or more insurance funds are applied, they shall be applied proportionately to the amounts of the surpluses and if the surplus assets are applied to meet the liabilities of two or more insurance funds the assets of which are deficient, they shall be applied proportionately to the amounts of the deficiencies.

### **Order of payments in relation to assets of a takaful operator or insurance company**

**142.** (1) In the winding up of a takaful operator, any deficiency subsisting in a takaful fund after the application of the assets of the takaful funds in accordance with paragraph 141(2)(a) and, where applicable, subsection 141(3), shall be met out of the assets of the takaful operator, and unsatisfied liabilities to a certificate owner or other takaful beneficiaries under a certificate shall have priority to all other unsecured liabilities except the costs, charges, expenses and debts referred to in subsection 140(1).

(2) In the winding up of an insurance company, any deficiency subsisting in an insurance fund after the application of the assets of the insurance funds in accordance with paragraphs 141(6)(a) and (b) shall be met out of the assets of the insurance company, and unsatisfied liabilities to a policy owner or other insured persons under a policy shall have priority to all other unsecured liabilities except the costs, charges, expenses and debts referred to in subsection 140(3).

### **Waiver of strict proof of debt**

**143.** In the winding up of an insurer member, where it appears to the liquidator that by reason of the inadequacy of documents, or any other circumstances, hardship would be caused if he requires strict proof of debt, he may act on such evidence as he thinks fit and payment made by the liquidator in good faith to any person on account of a debt as being the person entitled to the payment shall discharge the liquidator from all liabilities in respect of that debt.

### **Non-application of certain provisions in the Companies Act 1965, Insurance Act 1996 and Takaful Act 1984**

**144.** (1) On a petition for the winding up of an insurer member, except where the petition is presented by Bank Negara Malaysia, the following provisions shall not apply:

- (a) sections 176, 237, 241, 242, 246, 267 and 278 of the Companies Act 1965;
- (b) sections 110, 112 to 119 and 122 of the Insurance Act 1996; and
- (c) sections 48 and 49 of the Takaful Act 1984.

(2) Notwithstanding section 67 of the Takaful Act 1984 and section 199 of the Insurance Act 1996, where there is any conflict or inconsistency between the provisions of this Act and the provisions of those Acts, the provisions of this Act, and the Companies Act 1965 insofar as applicable, shall prevail.

## PART VIII

## STABILISATION COVERAGE

**Interpretation**

**145.** In this Part—

- (a) “period of the stabilisation coverage” means the duration of the stabilisation coverage order including any variation of such duration as may be prescribed by the Minister under subsection 146(5);
- (b) “prescribed corporation” means a corporation, which is not deemed to be a member institution under section 36, prescribed in the stabilisation coverage order;
- (c) “special provisions” means the provisions of sections 148 to 156; and
- (d) “stabilisation coverage” means any insurance or protection that is provided for in accordance with section 146.

**Stabilisation coverage order**

**146.** (1) For the purpose of protecting and promoting or maintaining the stability of the financial system and promoting or maintaining public confidence, the Corporation is authorized to provide a stabilisation coverage.

(2) A stabilisation coverage shall be subject to an order prescribed by the Minister upon consultation with the Corporation and Bank Negara Malaysia (referred to in this Part as “stabilisation coverage order”).

(3) Notwithstanding anything to the contrary contained in this Act, the stabilisation coverage order may provide for one or more of the following:

- (a) the insurance of a deposit to a greater maximum amount than otherwise applies in section 42;
- (b) the protection of a protected takaful or insurance benefit to a greater maximum amount than otherwise applies under section 69;

- (c) the insurance, in whole or in part, of any liability or financial instrument of a deposit-taking member that is otherwise not insured in consequence of the application of subsubparagraphs 41(a)(A) to (E) or the provisions of paragraph 46(a);
- (d) the protection, in whole or in part, of a takaful or insurance benefit under a certificate or policy by an insurer member that otherwise is not a protected takaful or insurance benefit within the meaning of this Act;
- (e) the insurance, in whole or in part, of any liability or financial instrument of a prescribed corporation that is of the same or similar nature as a type of liability or financial instrument of a deposit-taking member whether included in or excluded from the definition of “deposit” in section 41 or the provisions of paragraph 46(a); and
- (f) the protection, in whole or in part, of any obligation of a prescribed corporation that is of the same nature as or is similar in nature to a type of benefit offered by insurer members, whether or not it otherwise is a takaful or an insurance benefit within the meaning of this Act.

(4) A stabilisation coverage order shall be temporary in nature and shall have effect for the duration of the period as may be prescribed in such order.

(5) For the purpose set out in subsection (1), the Minister may, upon consultation with the Corporation and Bank Negara Malaysia, by order published in the *Gazette*, amend a stabilisation coverage order including to vary the duration of the stabilisation coverage order.

### **Application of special provisions**

**147.** (1) The special provisions shall apply when a stabilisation coverage order is in force.

(2) Subject to section 157, the special provisions shall cease to apply when the period of the stabilisation coverage expires.

**Stabilisation coverage**

**148.** (1) The Corporation shall provide stabilisation coverage in the same manner as it provides deposit insurance in Chapter 1 of Part IV or takaful or insurance benefit protection in Chapter 1 of Part V.

(2) Any liability or financial instrument or takaful or insurance benefit that is the subject of a stabilisation coverage order and is not otherwise a deposit or a takaful or an insurance benefit within the meaning of this Act, is deemed to be a deposit or a takaful or an insurance benefit and a person to whom such obligations are owed is deemed to be a depositor or a takaful beneficiary or an insured person for all purposes of this Act.

**Fee or premium for stabilisation coverage**

**149.** (1) Where a stabilisation coverage is provided, a member institution or a prescribed corporation shall pay to the Corporation such fee or premium as may be determined by the Minister.

(2) Notwithstanding any other provision of this Act, the member institution or the prescribed corporation shall pay the fee or premium under subsection (1) within such period and in such manner as the Corporation considers appropriate.

**Application of provisions in respect of member institution**

**150.** (1) Where a stabilisation coverage is provided in respect of a prescribed corporation, all of the provisions of this Act that are applicable to a member institution shall apply to a prescribed corporation.

(2) Notwithstanding subsection (1)—

- (a) paragraph 14(1)(b) shall not apply to an officer of a prescribed corporation;
- (b) Chapter 2 of Part IV shall not apply to a prescribed corporation; and
- (c) a prescribed corporation shall not hold itself out to be a member institution and section 192 shall apply to such corporation.

**Fee or premium deemed earned**

**151.** Any fee or premium in respect of stabilisation coverage shall be deemed to be fully earned when payable and shall not be refundable.

**Extended application of section 51 or 75**

**152.** Where a stabilisation coverage is provided to a member institution, section 51 or 75 may be applied by the Corporation if in the opinion of the Corporation, the member institution has failed or fails to maintain proper deposit or takaful or insurance benefit records or has misrepresented, whether by act or omission, any information used as a basis for the assessment of any fee or premium.

**Surcharge**

**153.** (1) Notwithstanding the payment of any fee or premium in respect of stabilisation coverage, the Corporation may assess and collect a surcharge under this Part from a prescribed corporation for any act or omission as specified under subsection (3).

(2) The surcharge under subsection (1) in any particular year shall not exceed—

- (a) 0.5 per centum per annum of the total liabilities or financial instruments of the prescribed corporation insured by the Corporation under the stabilisation coverage; or
- (b) an amount of one million ringgit,

whichever is higher.

(3) Where in the opinion of the Corporation, the prescribed corporation—

- (a) has failed or fails to comply with any regulations, rules, orders, by-laws, notifications, guidelines, circulars or notes relating to sound financial and business practices issued by Bank Negara Malaysia or any undertaking given to or agreement made with Bank Negara Malaysia;

- (b) has failed or fails to comply with the terms and conditions of the membership, any undertaking given to or agreement made with the Corporation, or any regulations, rules, orders, by-laws, notifications, guidelines, circulars or notes of the Corporation in respect of stabilisation coverage;
- (c) has failed or fails to comply with a request for information or has restricted access to information by the Corporation, Bank Negara Malaysia or any person acting on behalf of the Corporation, under this Act; or
- (d) has failed or fails to maintain proper deposit or takaful or insurance benefit records or has misrepresented, whether by act or omission, any information, including information on insured deposits, protected benefit liabilities or net premiums used as a basis for the assessment of any fee or premium in respect of the stabilisation coverage,

the Corporation shall—

- (A) if it proposes to impose a surcharge on the prescribed corporation, consult Bank Negara Malaysia on the reasons for imposing a surcharge and the amount of the surcharge; and
  - (B) give the prescribed corporation an opportunity to make representations to the Corporation on any proposed surcharge within seven days from the date of a written notice issued by the Corporation to the prescribed corporation.
- (4) Where the Corporation receives representations from a prescribed corporation within the time period stipulated in paragraph (3)(B), the Corporation shall consider those representations in deciding whether to impose a surcharge and, if so, deciding on the amount of the surcharge.
- (5) Where the Corporation decides to impose a surcharge, the Corporation shall obtain the written approval of the Minister before imposing the surcharge on the prescribed corporation.
- (6) A surcharge shall be imposed by the Corporation by notice in writing to the prescribed corporation and shall be payable to the Corporation within thirty days from the date of such notice or such other period as may be specified by the Corporation.

(7) Any opinion formed or decision made by the Corporation relating to the imposition or the amount of any surcharge in respect of any prescribed corporation shall be final and binding.

(8) A surcharge paid to the Corporation under this section shall be paid into and form part of the Consolidated Fund.

### **Overdue charges**

**154.** Where any fee, premium or surcharge due and payable under this Part has not been paid by a member institution or a prescribed corporation, on the due date, the unpaid amount shall, without further notice being served on the member institution or the prescribed corporation be increased by a sum as may be determined by the Minister.

### **No set-off**

**155.** Unless the Corporation otherwise agrees in any particular case, no payment owing to the Corporation by a member institution or a prescribed corporation shall be discharged, reduced or otherwise adjusted by reason of any claim that the member institution or the prescribed corporation may have against the Corporation.

### **Funding and losses**

**156.** (1) The Minister shall—

- (a) provide to the Corporation such funds as the Corporation may require in order to administer and implement a stabilisation coverage; or
- (b) reimburse the Corporation for any loss incurred by the Corporation as a result of providing stabilisation coverage.

(2) Any provision of funds made pursuant to paragraph (1)(a) or reimbursement made pursuant to paragraph (1)(b) shall be charged on the Consolidated Fund and where such provision or reimbursement is made, the Minister shall cause a statement on such provision of funds or reimbursement to be laid before the Dewan Rakyat at the earliest possible opportunity.

(3) The Corporation shall pay such fee or premium or other amount in respect of the stabilisation coverage or such portions thereof as may be agreed by the Minister and the Corporation into the Consolidated Fund.

(4) For the purposes of paragraph (1)(b), the factors to be taken into account in determining whether the Corporation has incurred a loss in consequence of providing stabilisation coverage shall be as follows:

- (a) fees or premiums received by the Corporation as a result of providing the stabilisation coverage;
- (b) cost to the Corporation of any loans or other borrowings incurred by it in order to make any payments on account of the stabilisation coverage;
- (c) fees or premiums or other amount or such portions thereof liable to be paid in respect of the stabilisation coverage to the Consolidated Fund;
- (d) net recoveries obtained by the Corporation on account of any stabilisation coverage payments;
- (e) loss of the investment value of any funds of the Corporation used to make any stabilisation coverage payments;
- (f) any other costs, including income tax or other taxes, that the Corporation has reasonably incurred as a result of the stabilisation coverage and as agreed to by the Minister; and
- (g) any other factor that the Minister and the Corporation agree is appropriate.

### **Continuing application of special provisions**

**157.** (1) Where a stabilisation coverage is provided by the Corporation to a member institution under section 146 and the period of the stabilisation coverage has expired—

- (a) if, before the period of the stabilisation coverage expired, the Corporation exercised any of its powers under section 25, section 161 or Part VII in respect of the member institution, the special provisions shall continue to apply to and in respect of the member institution as if the period of the stabilisation coverage has not expired; and

- (b) if, before the period of the stabilisation coverage expired, the Corporation is obligated or authorized to make a stabilisation coverage payment in respect of the member institution, the special provisions shall continue to apply to and in respect of the member institution as if the period of the stabilisation coverage has not expired.

(2) Where a stabilisation coverage is provided by the Corporation to a prescribed corporation and the period of the stabilisation coverage has expired—

- (a) the prescribed corporation shall remain liable for all liabilities to the Corporation incurred during the period when the prescribed corporation was subject to the provisions applicable to a member institution by virtue of section 150;
- (b) sections 193 to 201 shall apply in respect of any act done by the prescribed corporation during the period when the prescribed corporation was subject to the provisions applicable to a member institution by virtue of section 150;
- (c) sections 202 and 203 shall apply as if the prescribed corporation was still subject to the provisions applicable to a member institution by virtue of section 150;
- (d) if, before the period of the stabilisation coverage expired, the Corporation exercised any of its powers under section 25, section 161 or Part VII in respect of the prescribed corporation, the special provisions shall continue to apply to and in respect of the prescribed corporation as if the period of the stabilisation coverage has not expired; and
- (e) if, before the period of the stabilisation coverage expired, the Corporation is obligated or authorized to make a stabilisation coverage payment in respect of the prescribed corporation, the special provisions shall continue to apply to and in respect of the prescribed corporation as if the period of the stabilisation coverage has not expired.

## PART IX

## POWERS IN RELATION TO ASSETS ACQUIRED BY THE CORPORATION

*Chapter 1**Acquisition and disposal by the Corporation***Acquisition and disposal of assets by the Corporation**

**158.** (1) Without prejudice to subsections 99(5), 115(6) and 180(5), the Corporation may acquire or dispose of any asset—

- (a) pursuant to the statutory vesting provisions set out in the Third Schedule; or
- (b) in accordance with general law.

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

**Entitlement to dispose of and preserve value of property**

**159.** (1) Notwithstanding any law and in addition to any other power the Corporation may have under any contract or law, the Corporation as holder of security over any property, whether as chargee, mortgagee, assignee, lienholder or otherwise, shall be entitled—

- (a) to dispose of such property or any part of such property by way of private treaty in accordance with the Fourth Schedule; and
- (b) 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 authorized 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.

Chapter 2

*Provisions relating to a conservator*

**Interpretation**

**160.** (1) In this Part, unless the context otherwise requires—

“Bursa Malaysia” means the Bursa Malaysia Berhad, an approved exchange holding company under the Capital Markets and Services Act 2007;

“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 any provision of the Companies Act 1965, is duly registered in accordance with the applicable provisions of that Act;
- (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 any provision of the Companies Act 1965, is duly registered in accordance with the applicable provisions of that Act; or
- (f) a charge, mortgage, pledge or lien over monies placed on fixed deposit by the affected person and which, if required by any provision of the Companies Act 1965, is duly registered in accordance with the applicable provisions of that Act.

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

**Power to appoint conservator and additional conservators, etc.**

**161.** (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.

(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) A conservator, in exercising its powers under this Part, 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 the Companies Act 1965 or anything in the constituent documents of the affected person.

(7) Any person who contravenes—

(a) section 173 or 177; or

(b) subsection 170(1), 174(1), 175(2), 176(1), 179(1) or 183(1),

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.

### **Qualifications of conservator**

**162.** (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**

**163.** 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.

### **Duration of administration**

**164.** (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 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 section or subsection 189(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 section 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**

**165.** (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 section shall not affect the validity of the acts of the conservator in the administration of the affected person.

**Effect of appointment of conservator**

**166.** The appointment of a conservator 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**

**167.** 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 realisation 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, and to commence the voluntary winding up of the affected person; and
- (z) power to do all other things necessary for or incidental to the exercise of the foregoing powers.

### **General duties of conservator**

**168.** (1) Without prejudice to sections 173, 175 and 176, 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 section 185, 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 section 185, in accordance with that proposal as it may be modified in accordance with section 187.

### **Conservator as affected person's agent**

**169.** 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**

**170.** (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 subsection (1), the conservator shall pay to the officer such fee or other remuneration as the conservator reasonably determines.

(3) Except as provided in subsection (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 authorized by the conservator for the duration of the administration of the affected person.

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

(5) In this section, 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**

**171.** (1) 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.

(2) Any person who purports to enter into a transaction or dealing in contravention of subsection (1) commits an offence.

### **Compensation**

**172.** (1) Where a court finds a person guilty of an offence under subsection 171(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 subsection (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**

**173.** (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**

**174.** (1) The conservator may require any of the persons mentioned in subsection (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 paragraph (1)(b);
- (d) the dates when the securities referred to in paragraph (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 subsection (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 subsection (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 subsection 173(1), this section and section 175.

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

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

**175.** (1) Subject to subsection (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) Subsections (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**

**176.** (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.

### **Obstructing or hindering conservator**

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

### **Disclaimer**

**178.** (1) Subject to subsection (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 subsection (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 subsection (1) to disclaim any market contract.

(4) For the purpose of subsection (3), a “market contract” has the same meaning as defined in the Capital Markets and Services Act 2007 and shall include futures contracts traded on futures market that are cleared through an approved clearing house.

## **Moratorium**

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

- (a) no action, suit or proceeding in any court or tribunal may be commenced or continued against the Corporation, the conservator or the affected person;
- (b) any petition for the winding up of the affected person shall be dismissed by the High Court;
- (c) no resolution may be passed or order made for the winding up of the affected person, except where a conservator takes any step to implement a proposal under this Part;
- (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 any judgement or award or order over the affected person or 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 action, suit, proceeding, execution or 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 the Companies Act 1965 in respect of any compromise or arrangement involving the affected person and its creditors or shareholders or any class thereof shall be adjourned *sine die* and any restraining order issued pursuant to any provision of the Companies Act 1965 shall be immediately discharged and set aside; and
- (h) no action, suit, proceeding, execution or 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 subsection (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 subsection (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 Part.

(4) If the period of the moratorium is extended pursuant to subsection (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 subsection (1).

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

(7) Any decision of the Corporation under this section shall be final and binding.

### **Qualified financial agreement with affected person**

**180.** (1) Notwithstanding section 166, where a conservator has been appointed to administer an affected person, no person who is a counterparty to a qualified financial agreement with the affected person may terminate such agreement, exercise any right of set off under such agreement or exercise any remedy or right against the affected person or its assets and no stipulation in any such agreement providing for any of the foregoing shall be of any force or effect unless the Corporation otherwise specifies in writing within such period following the appointment of the conservator as may be prescribed in regulations by the Corporation.

(2) Where the Corporation consents to the transfer of a qualified financial agreement with the affected person to a qualified third party, no person that is a party to such agreement may terminate such agreement, exercise any right of set-off under such agreement or exercise any remedy or right against the affected person or its assets and no stipulations in any such agreement providing for any of the foregoing shall be of any force or effect by reason solely of such transfer or the appointment of the conservator.

(3) If a qualified financial agreement is an agreement referred to in paragraph 115(1)(i) and applies to a property of the affected person, that property shall also be transferred to the qualified third party.

(4) Where a qualified financial agreement is not transferred in accordance with this section and the person who is the counterparty is able to terminate such agreement in accordance with its terms but has not done so, the Corporation may declare by notice in writing that such agreement is terminated, in which case, and despite any term of such agreement to the contrary, such agreement shall be deemed to have been terminated by the counterparty.

(5) The Corporation may transfer a qualified financial agreement to a qualified third party by a transfer instrument issued in accordance with the Second Schedule and it shall have the effect set out in the Second Schedule and shall be binding on any person thereby affected.

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

**181.** (1) For the purpose of this section—

“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 at that time 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 at that time 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**

**182.** (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 subsection (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.**

**183.** (1) Any receiver, manager, receiver and manager or provisional liquidator who vacates his office pursuant to paragraph 179(1)(d) 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 shall be charged on and paid out of the realized proceeds of the affected person in the manner set out in the proposal under section 185.

### **Conservator to prepare proposal**

**184.** (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 section 187 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 paragraph (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**

**185.** (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 section.

(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 subsection (1).

(3) The meeting of secured creditors of the affected person convened under subsection (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 subsection 184(4),

the proposal, including the proposal as it may subsequently be modified under section 187, 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 paragraph (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 subsection (4), including the proposal as it may subsequently

be modified under section 187, 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 section 187, 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 subsection (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 subsection (2) or section 187.

### **Implementation of proposal**

**186.** (1) Subject to sections 185, 187 and 188, 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 section 185;
- (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 subsection 184(4); or
- (c) within fourteen days from the date of the approval of the proposal under subsection 184(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.

(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 realized 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 sections 184 and 185 or modified in accordance with section 187.

(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 Part, notify the Registrar of Companies of how the proposal affects the share capital of the affected person.

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

(11) Upon lodgement of a notice under subsection (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 subsection (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**

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

- (a) the approval of the proposal by the secured creditors of the affected person under section 185; or
- (b) where there are no secured creditors known to the conservator, the approval of the proposal by the Corporation under subsection 184(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 subsection (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 subsection (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 subsection (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 section.

(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 section 185.

(8) Without prejudice to section 188, 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 section.

### **Regulatory approval conditions**

**188.** (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 section 185 or 187, 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 subsection (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**

**189.** (1) Where the Corporation directs the conservator to abandon the proposal or otherwise discontinue the implementation of the proposal under section 188 or the proposal is not approved under section 185 or 187, 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 section 179; or
- (c) appoint a replacement conservator.

(2) Notwithstanding subsection (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 161(1).

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

### **Report of misconduct**

**190.** 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**

**191.** 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.

## **PART X**

### **OFFENCES**

#### **Holding out as member institution**

**192.** (1) No person shall hold itself out to be a member institution, or represent that any of its liabilities or those of any other person are insured under the deposit insurance system or protected under the takaful and insurance benefits protection system, unless it or 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 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.

#### **False statements**

**193.** 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 for a term not exceeding 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.**

**194.** 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 for a term not exceeding 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**

**195.** Unless otherwise provided in this Act, any person, other than the Corporation and its directors, officers and employees, who commits an offence under this Act, or who 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 for a term not exceeding 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.**

**196.** (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 (referred to in this section 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**

**197.** (1) The Corporation, with the consent of the Public Prosecutor in writing, 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**

**198.** 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**

**199.** 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**

**200.** If a person does not comply with any provision of this Act that applies 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**

**201.** 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 XI**

### **GENERAL PROVISIONS**

### **Submission of information to Corporation**

**202.** (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 a member institution or from any related corporation of a member institution, on any matter relating to the business or affairs of such member institution or related corporation, such member institution or related corporation shall, notwithstanding any of the provisions of the Banking and Financial Institutions Act 1989, the Islamic Banking Act 1983, the Insurance Act 1996 or the Takaful Act 1984, 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**

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

### **Intention to wind up a member institution**

**204.** (1) No resolution by shareholders of a member institution or any other person to wind up the member institution shall be effective without the prior approval of the High Court.

(2) No application may be made to the High Court for approval of a resolution to wind up a member institution and no winding-up proceedings in respect of a member institution may be commenced by any person, other than Bank Negara Malaysia or the Corporation, without giving prior written notice

of thirty days to Bank Negara Malaysia and the Corporation of the intention to apply for approval of a resolution to wind up the member institution or to present a petition for the winding up of the member institution.

(3) For the avoidance of doubt, this section applies to a former member institution the membership of which has been cancelled or terminated under this Act.

### **Judicial notice**

**205.** 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 or instrument issued under this Act.

### **Winding up of Corporation**

**206.** No written law 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**

**207.** (1) No action, suit, prosecution or proceeding whatsoever shall lie or be brought, instituted or maintained in any court, tribunal 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 or employee of any such Government, Corporation or Bank Negara Malaysia, either personally or in their official capacity;

- (f) any appointed person under paragraph 99(1)(c), any receiver, manager, receiver and manager, liquidator or conservator appointed pursuant to this Act, the Assessor Committee or any member of the Assessor Committee;
- (g) any director, officer, employee of a bridge institution or any wholly owned subsidiary of the Corporation; or
- (h) any person lawfully acting on behalf of any such Government, Corporation, Bank Negara Malaysia or any such director, officer or employee, either personally or in his capacity as a person acting as such,

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 statement was done or made, or was omitted to be done or made, in good faith.

(2) The act or statement referred to in the proviso of subsection (1) shall be deemed, unless proven otherwise, to be done or made, or omitted to be done or made, in good faith.

(3) In any event but subject to subsection (4), any action, suit or proceeding by any person under this Act shall be limited only to a claim for damages for any loss suffered by such person.

(4) For the avoidance of doubt—

- (a) notwithstanding any action, suit or proceeding referred to in subsection (3), any person referred to in paragraphs (1)(a) to (h) shall continue to exercise any or all of its powers under this Act or otherwise; and
- (b) a person who claims to have suffered any loss in relation to any matter that may be determined by the Assessor Committee under the First Schedule shall first exhaust all remedies under the First Schedule prior to instituting any other action, suit or proceeding in respect of such claim.

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

(6) Nothing in subsection (1) shall be construed to relieve the Corporation from the obligation to make payment in respect of a deposit insured or a takaful or an insurance benefit protected under this Act.

### **Application and non-application of other Acts**

**208.** (1) Subject to section 207, the Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceeding against the Corporation or any director, officer or employee of the Corporation in respect of any act or omission, made or done 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**

**209.** (1) The Corporation may make—

- (a) with the approval of the Minister, 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 trustees, joint owners or businesses or professional practices;
- (d) the coverage of deposits, payments in respect of insured deposits and related matters on the following:
  - (i) where a person has deposits with two or more deposit-taking members that merge and continue in operation as one deposit-taking member;
  - (ii) where deposits with a deposit-taking member are to be acquired by a person who is not a deposit-taking member; or
  - (iii) where bank drafts, cheques or other similar payment instruments or payment or settlement instructions have been entered into a payment system;
- (e) the order of priority of payment as between Islamic deposits based on custody and other Islamic deposits;
- (f) dividing different types of Islamic deposits not based on custody into different categories and prescribing an order of priority of payment as between those different categories of Islamic deposits;
- (g) the return or interest to be payable under subsubparagraph 3(10)(j) of the Third Schedule;
- (h) the coverage of takaful or insurance benefits, payments in respect of protected benefits and related matters, where a person is entitled to takaful or insurance benefits from two or more insurer members that merge and continue in operation as one insurer member;
- (i) dividing different types of family solidarity or general takaful benefits into different categories and prescribing an order of priority of payment as between those different categories of takaful benefits;

- (j) determining the date and rate of conversion into Ringgit for the purpose of making a payment under Part IV in respect of an insured foreign currency deposit;
- (k) forms, method and procedures for compounding of offences; or
- (l) anything under this Act required or authorized 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.

## PART XII

### REPEAL, SAVINGS AND TRANSITIONAL

#### Repeal

**210.** The Malaysia Deposit Insurance Corporation Act 2005 is repealed.

#### Savings and transitional

**211.** Notwithstanding the repeal of the Malaysia Deposit Insurance Corporation Act 2005 under section 210—

- (a) all directors of the Corporation and the Chief Executive Officer holding office under the repealed Act immediately before the coming into operation of this Act shall be deemed to have been appointed under this Act and shall continue to hold such office for the unexpired period of the respective terms of office of such persons under the repealed Act at the time of the repeal of that Act under section 210;
- (b) the Islamic deposit insurance fund and the conventional deposit insurance fund maintained and administered by the Corporation under the repealed Act shall be deemed to have been and continue to be maintained and administered by the Corporation under this Act;

- (c) subsidiary legislation and any approval, direction, decision, exemption, recommendation, specification, notice and other act or thing issued, made or done under the repealed Act and in force or having effect immediately before the coming into operation of this Act, shall be deemed to have been made or done under the corresponding provisions of this Act, and shall continue to remain in full force and effect in relation to the person to whom it applied until amended or substituted;
- (d) all transactions, dealings, contracts, powers of attorney or arrangements lawfully executed or entered into and all business lawfully done, under or in accordance with the repealed Act with any other person shall be deemed to have been lawfully and validly executed, entered into or done, under or in accordance with this Act, and accordingly, any right or liability under such transaction, dealing or business existing immediately before the coming into operation of this Act, shall be deemed to continue to be lawful and valid under this Act;
- (e) nothing shall affect any person's liability to be fined, prosecuted or punished for any contravention or offence committed under the repealed Act immediately before the coming into operation of this Act;
- (f) any deed lawfully issued or executed under the repealed Act shall be deemed to have been lawfully and validly issued or executed under or in accordance with this Act;
- (g) any movable, immovable property and asset purchased, acquired, leased or held by the Corporation under the repealed Act shall be deemed to have been purchased, acquired, leased or held under or in accordance with this Act;
- (h) any reference to the repealed Act in any written law shall be construed as a reference to this Act and any reference to any specific provision of the repealed Act in any written law shall be construed as a reference to a provision of this Act which corresponds as nearly as may be to such specific provision;
- (i) any act required to be done under the repealed Act shall be deemed to be required to be done under or in accordance with this Act;

- (j) any right, benefit, privilege, obligation or liability acquired, accrued or incurred under the repealed Act, including any obligation to preserve secrecy, shall not be affected by this Act and shall continue to remain in full force and effect; and
- (k) all acts or things done in accordance with the repealed Act shall be deemed to have been done in accordance with this Act and accordingly, shall continue to be valid and lawful under this Act.

### **Transfer of certain funds from Bank Negara Malaysia**

**212.** On a date appointed by the Minister on the recommendation of the Corporation and Bank Negara Malaysia, the moneys and any other assets standing to the credit of the general and life insurance guarantee scheme funds established under section 173 of the Insurance Act 1996 shall be transferred by Bank Negara Malaysia to the Corporation and credited correspondingly by the Corporation to the general insurance protection fund and the life insurance protection fund.

#### FIRST SCHEDULE

[Section 104]

#### ASSESSOR COMMITTEE

### **Interpretation**

1. In this Schedule—

“dissenting creditors” means creditors of a member institution, either individually or collectively holding in the aggregate not less than ten per cent of the outstanding liquidated unsecured indebtedness of the member institution based on the records of the member institution, as at the time specified by the Corporation in the notice issued under subparagraph 2(1);

“dissenting shareholders” means shareholders of a member institution, either individually or collectively holding in the aggregate not less than ten per cent of the issued and paid-up capital of the member institution, as at the time specified by the Corporation in the notice issued under subparagraph 2(1);

“member institution” means a member institution of which the Corporation or the appointed person assumed control under paragraph 99(1)(c);

“transacted price” means the net consideration received or receivable by a member institution for any assets considered by the Corporation to be substantial or any business of the member institution that was sold or otherwise disposed of, whether by way of one or more transfer instruments or any other means, while the Corporation or the appointed person was in control under paragraph 99(1)(c), and where the assets or business of the member institution was sold or otherwise disposed of in two or more transactions, means the aggregate net consideration.

### **Notice of transaction**

2. (1) Where any assets considered by the Corporation to be substantial or any business of a member institution, has been sold or otherwise disposed of, whether by way of one or more transfer instruments or any other means and whether in one or more transactions (referred to collectively in this Schedule as “the transaction”), while the Corporation or the appointed person was in control of the member institution under paragraph 99(1)(c), the Corporation or the appointed person shall give notice of such sale or other disposal on a date as determined by the Corporation, after the transaction is considered by the Corporation to have been substantially completed, in at least two daily newspapers published in Malaysia, one of which shall be in the national language.

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

(a) set out the transacted price or describe how the transacted price is to be calculated; and

(b) specify that—

(i) if the member institution is in winding up, the liquidator may, not later than ninety days from the date of the notice referred to in subparagraph (1), apply in writing to the Corporation requesting a review by the Assessor Committee of the reasonableness of the transacted price or the allocation and application of the transacted price, or both; or

(ii) if the member institution is not in winding up,

(A) dissenting creditors may, not later than twenty-one days from the date of the notice referred to in subparagraph (1), apply in writing to the Corporation requesting a review by the Assessor Committee of the reasonableness of the transacted price or the allocation and application of the transacted price, or both; and

(B) if no application is made by dissenting creditors within the time period stipulated in subsubsubsubparagraph (A), dissenting shareholders may, not later than twenty-one days thereafter, apply in writing to the Corporation for a review by the Assessor Committee of the reasonableness of the transacted price.

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

### **Review by Assessor Committee**

3. (1) Where the Corporation receives an application referred to in subsubparagraph 2(2)(b), it shall within a reasonable period of time constitute an Assessor Committee and refer the application to that Committee.

(2) An Assessor Committee shall consist of three members, drawn from a panel of ten persons appointed by the Minister.

(3) The persons appointed to the panel shall be qualified and capable of performing the functions of the Assessor Committee, each having at least fifteen years experience in the areas of audit, valuation, accounting or finance and the panel shall include at least the following:

- (a) an approved company auditor or liquidator under the Companies Act 1965;
- (b) a professionally qualified accountant; and
- (c) a professionally qualified valuer.

(4) The following persons shall not be qualified to be appointed to the panel:

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

(5) 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**

4. (1) Upon an application being referred to the Assessor Committee under subparagraph 3(1), it shall review the reasonableness of the transacted price or the allocation and application of the transacted price, or both, according to the request contained in the application.

(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 described in paragraph 2 has been issued; and

- (b) prevailing market conditions for the sale or disposal of assets or businesses in a receivership or liquidation,

and in all cases it shall deduct the value of 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 the application is made by dissenting shareholders and the Assessor Committee decides that in its opinion the member institution was insolvent, the fact that the net consideration received is insufficient to result in any payment to shareholders and that none of the net consideration is allocated and applied to the shares of the member institution shall be deemed conclusively to be reasonable.

(4) Where the Assessor Committee decides that—

- (a) the transacted price is less than the price that in its opinion is the reasonable consideration for the assets or business (referred to in this subparagraph as the “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 in its opinion the reasonable price, it shall advise the Corporation accordingly.

(5) In reviewing the allocation of the transacted price, the Assessor Committee shall determine whether the transacted price has been or will be allocated amongst the creditors of the member institution in the same order of priority and to the same extent as if the substantial assets or business of the member institution had not been sold or otherwise disposed of by the Corporation or the appointed person and instead the member institution had been wound up in its entirety and all of its assets sold or otherwise disposed of for cash.

(6) Where the Assessor Committee decides that—

- (a) the transacted price has not been or will not be allocated and applied in the manner described in subparagraph (5), it shall advise the Corporation to pay such amount to the member institution or take such other steps as the Assessor Committee specifies to produce the same result as if the transacted price was or will be allocated and applied in the manner described in subparagraph (5) and the Corporation shall do so within such period as may be specified by the Assessor Committee; or
- (b) the transacted price has been or will be allocated and applied in the manner described in subparagraph (5), it shall advise the Corporation accordingly.

(7) If the Assessor Committee decides that it is just and reasonable that interest or other return be paid on an amount payable under subparagraph (4)(a) or subparagraph (6)(a), such interest or return shall be paid by the Corporation at the rate or in the amount determined by the Assessor Committee to be just and reasonable within such period as may be specified by the Assessor Committee.

(8) If the Assessor Committee decides that it is just and reasonable that costs of the proceeding before the Assessor Committee be awarded to one party against another party, the amount that the Assessor Committee determines to be just and reasonable to award to a party in respect of its costs shall be paid by the other party within such period as may be specified by the Assessor Committee.

(9) The Assessor Committee shall dispose of an application referred to it under subparagraph 3(1) within three months from the date of such reference to the Assessor Committee or such other period as may be approved by the Minister.

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

(11) Where the transacted price was paid or is payable by a bridge institution, the Corporation may specify that any obligation of the Corporation under subparagraph (4), (6), (7) or (8) shall be performed by the bridge institution, in whole or part, in the place and stead of the Corporation.

#### **Applicant to be informed of Assessor Committee's decision**

5. The Corporation shall as soon as practicable inform the applicant of a decision of the Assessor Committee under subparagraph 4(9).

#### **Honoraria and allowances**

6. A member of the Assessor Committee appointed under subparagraph 3(1) shall be paid such honoraria and allowances as may be determined by the Board.

### **SECOND SCHEDULE**

[Subsections 99(5), 115(6) and 180(5)]

#### **TRANSFER OF ASSETS AND LIABILITIES**

#### **Interpretation**

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

“interest in land” means—

- (a) any interest in land, whether registered or registrable, including one to which the Strata Titles Act 1985 applies and that 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; or
- (c) any other rights or entitlements relating to land;

“obligor” means any person who owes a duty or obligation of any nature, whether present or future, and whether vested or contingent, to a transferor, including an obligor under an Islamic financing facility, conventional credit facility, security or other chose in action;

“registered interest” means any right or interest in—

- (a) a charge created by a company and registrable under the Companies Act 1965 and is duly registered in accordance with the applicable provisions of that Act; or
- (b) land that 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;

“transfer date” means the date stated in a transfer instrument as the date on which the transfer of an asset or a liability shall take effect;

“transfer instrument” means a certificate issued by the Corporation under paragraph 2 and includes a replacement transfer instrument issued under paragraph 4;

“transferor” and “transferee” mean the respective parties identified as such in a transfer instrument.

(2) A reference in this Schedule to “liability” means the whole or such part of a liability as is transferred by way of a transfer instrument.

(3) For the avoidance of doubt, where only a part of a liability is transferred, the provisions in this Schedule and the effect of such transfer, including the transfer instrument, shall relate only to the part of the liability transferred.

### **Transfer instrument**

2. (1) Where the Corporation wishes to transfer any asset or liability pursuant to the provisions of this Schedule, the Corporation shall issue a transfer instrument in accordance with this Schedule.

(2) For the avoidance of doubt, the Corporation may issue a transfer instrument in respect of any qualified financial agreement.

(3) Notwithstanding any other law, rule of law or agreement, a transfer instrument shall have effect according to the provisions of this Schedule and shall be binding on any person thereby affected.

(4) A transfer instrument may be in such form as determined by the Corporation.

(5) A transfer instrument shall be issued under the common seal or a facsimile seal of the Corporation.

(6) A transfer instrument may be issued by the Corporation before, upon or after the transfer date.

**Effect of transfer instrument**

## 3. (1) Where an asset is transferred under a transfer instrument—

- (a) in the case where the asset is held by the transferor alone immediately before the transfer date, the asset shall on and from the transfer date vest in the transferee; and
- (b) in the case where the asset is held jointly by the transferor with any other person immediately before the transfer date, the asset shall on and from the transfer date vest in the transferee jointly with that other person.

(2) The transferee shall, on and from the transfer date for an asset, acquire and be vested with all of the transferor's present and future rights, title and interest in, and obligations with respect to, such asset, free of any encumbrance save for any registered interest prevailing as at the transfer date.

(3) A transfer instrument stating that an asset or a liability has been transferred to the transferee shall be conclusive evidence of such transfer as of the date specified in the transfer instrument as the transfer date.

(4) No provision in any law including the Civil Law Act 1956 [*Act 67*], rule of law or agreement limiting or prohibiting the right of the transferor or requiring any consent to assign, sell, dispose of or transfer an asset shall have any application or effect in respect of the transfer to or acquisition by the transferee.

(5) Where the asset transferred under a transfer instrument is an Islamic financing facility or a conventional credit facility, the transferee is deemed to have given the financing, advance, loan or other facility or transaction or issued the guarantee notwithstanding that the financing, advance, loan or other facility or transaction or guarantee had been granted, drawn down or issued by the transferor.

(6) Where the security for an Islamic financing facility or a conventional credit facility that is transferred under a transfer instrument includes a share—

- (a) for the purposes of paragraph 6A(9)(b) of the Companies Act 1965, the transferee, 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 transferee in the share shall be disregarded for the purposes of section 6A of the Companies Act 1965.

(7) Subject to subparagraph (8), in relation to a liability transferred under a transfer instrument—

- (a) the transferee shall be deemed to assume the liability; and
- (b) the transferor shall be released and discharged from the liability and the transferee shall be liable, instead of the transferor, to discharge the liability.

(8) Subparagraph (7) shall not apply to an assumption by the transferee of a part only of a liability that is not insured or protected by the Corporation under this Act.

(9) For the avoidance of doubt, where a part only of a liability is transferred under a transfer instrument—

- (a) the remaining part of the liability is not assumed by the transferee; and
- (b) the transferor is not released or discharged from the liability.

(10) In relation to an asset or a liability transferred under a transfer instrument—

- (a) an existing agreement or instrument, whether in the form of a deed, will or otherwise, or an order of any court, under or by virtue of which, the transferor has title or ownership of or interest in or rights to such asset, shall be construed and shall have effect as if for any reference in it to the transferor there were substituted a reference to the transferee;
- (b) an existing agreement to which the transferor is a party shall have effect as if the transferee had been a party to it instead of the transferor;
- (c) an existing instruction, direction, mandate, power of attorney, authority, undertaking or consent, whether or not in relation to an account, that was given to the transferor, either alone or jointly with another person, shall have effect, as if given to the transferee either alone or jointly with the other person;
- (d) any security held immediately before the transfer date by the transferor, or by a nominee of or trustee for the transferor, as security for the payment or discharge of any liability of any person, shall be held by the transferee or that nominee or trustee as the nominee of or trustee for the transferee, with the same priority as the transferor had, and to the extent of that liability shall be available to the transferee as security for the payment or discharge of that liability, and if any such security extends to future advances or future liabilities, it shall be held by and be available to the transferee as security for future advances by or future liabilities to the transferee in the same manner in all respects as future advances by or future liabilities to the transferor were secured thereby immediately before the transfer date;
- (e) in addition to any other right, power or remedy granted to the transferee in this Schedule, the transferee shall have the rights, powers and remedies of the transferor (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 any right, title or interest vested in the transferee or resisting any liability or any claim or registered interest as if it had at all times been a right, title or interest or a liability of the transferee, including those rights, title or interests or liabilities in respect of any legal or other proceedings or applications to any authority pending immediately before the transfer date by or against the transferor;

- (f) a judgement, award or order obtained by the transferor and not fully satisfied before the transfer date shall be enforceable by the transferee;
- (g) no transfer to or acquisition by the transferee shall be void or voidable by reason of the application of any law;
- (h) where any—
  - (i) profit or other return (referred to in this subparagraph as “return”); or
  - (ii) interest,

payable under an agreement is to be determined by reference to the cost of funds or base lending rate of or other reference point used by the transferor, or is no longer determinable as provided in the agreement, the return or interest payable under such agreement shall be as prescribed under section 209 or as the transferee may agree with the obligor of the agreement;

- (i) where the custody of any goods, things or documents is held by the transferor as bailee immediately before the transfer date, such goods, things or documents shall be deemed to have passed to the transferee and the rights and obligations of the transferor under any contract of bailment relating to such goods, things or documents shall be transferred to the transferee;
- (j) a negotiable instrument or order for payment of money given to or drawn on or accepted by the transferor, or payable at the place of business of the transferor, whether so given, drawn or accepted before, on or after the transfer date, shall have the same effect on and from the transfer date, as if it had been given to or drawn on or accepted by the transferee or were payable at the place of business of the transferee; and
- (k) any account between the transferor and its customer shall become an account between the transferee and the customer, subject to the conditions and incidents that relate to such account up to the transfer date, and such account shall be deemed for all purposes to be a single continuing account.

(11) A transfer of an asset or a liability under a transfer instrument shall not—

- (a) be regarded as placing—
  - (i) the transferee;
  - (ii) the transferor;
  - (iii) any person deriving title from the transferee; 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 transferor, the transferee 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 liability 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 transferor was entitled and which by virtue of this Schedule have vested in the transferee or existed in favour of the transferor in relation to any asset or liability transferred to the transferee pursuant to this Schedule.

#### **Replacement transfer instrument**

4. (1) The Corporation may issue a new transfer instrument (referred to in this paragraph as a “replacement transfer instrument”) to replace any transfer instrument it has previously issued in order to rectify any omission or error in the transfer instrument.

(2) Any replacement transfer instrument issued under subparagraph (1), under the common seal or a facsimile seal of the Corporation, stating that an asset or liability has been transferred to the transferee shall be conclusive evidence of such transfer as of the transfer date stipulated in the replacement transfer instrument.

(3) If any law stipulates a time period within which a transfer of any asset or liability stated to be the subject of a replacement transfer instrument shall be registered or filed, that period shall commence from the transfer date stipulated in the replacement transfer instrument or the date the replacement transfer instrument is issued, whichever is later.

(4) Any act done by a transferee or any other person, in reliance on a transfer instrument previously issued shall not be affected by any omission or error rectified in a replacement transfer instrument.

(5) For the purposes of this Act, any reference to a transfer instrument shall be deemed to include a reference to a replacement transfer instrument.

**Additional provisions on land**

5. (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, endorsed, registered or lodged prior to, on or after the transfer date shall not prevent a transfer of any interest in land of the transferor to the transferee.

(2) Where a transfer instrument vests in the transferee any interest in land—

(a) in Peninsular Malaysia, on receipt of—

- (i) payment of the prescribed fee; and
- (ii) the transfer instrument,

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 transfer instrument,

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 transfer instrument,

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) Notwithstanding any provision in the National Land Code, the Land Ordinance of Sabah, the Land Code of Sarawak or any other law, a transfer instrument shall be effective to vest an interest in land in the transferee as of the transfer date and shall be conclusive evidence of such vesting.

**Other Registrars to give effect to transfer instrument**

6. (1) Notwithstanding the provisions of any other law, every registrar of courts, Registrar of Companies, registrar of Malaysian ships, central depository,

authorized depository agent and any person maintaining a register or record of ownership, interest or security (referred to in this paragraph as “Registrar”) shall, on receipt of—

- (a) payment of the prescribed fee; and
- (b) the transfer instrument,

without the need for any further application or filing of any further document, 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 transfer instrument relates.

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

(3) Notwithstanding any provision in the Companies Act 1965 or any other law, a transfer instrument shall be effective to vest in a transferee, any title, interest or security in an asset or to transfer a liability to the transferee, as of the transfer date and shall be conclusive evidence of such vesting or transfer.

### **Immunity of Registrar**

7. A Registrar or person who maintains a register or record referred to under paragraph 5 or 6 shall not be liable to any person in respect of the making of any memorial on or entry in the register document of title or any other register or record in reliance on the transfer instrument.

### **Automatic substitution in any legal or other proceedings**

8. Notwithstanding the provisions of any other law, every registrar of courts shall upon receipt of a transfer instrument 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 automatic substitution of the transferee in place of the transferor as a party in any legal or other proceedings.

### **Transfer of asset outside Malaysia**

9. (1) A transfer instrument issued under this Schedule may relate to any asset of the transferor outside Malaysia and effect may be given to it either in accordance with any reciprocal agreement relating to enforcement of judgements that may exist between Malaysia and the country or territory outside Malaysia where such asset is located, or where there is no such agreement, in accordance with the law applicable in such country or territory, and until such time the transfer is given full effect in the country or territory outside Malaysia where such asset is located, the transferor shall hold such asset, together with any

additional asset or right accruing by virtue of such asset or any right therein, as a trustee for the benefit of the transferee and promptly remit or transfer to the transferee any money or other thing of value received by the transferor on account of the asset or any such additional asset or right.

(2) At the transferee's request, the transferor, at its own costs, shall take all necessary steps to ensure that the transfer of any asset of the transferor outside Malaysia is made fully effective under the law applicable in the country or territory where such asset is located.

### THIRD SCHEDULE

#### [Section 158]

### STATUTORY VESTING

#### **Interpretation**

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

“claim” means any claim, defence, counterclaim, set-off, legal or other proceeding, action, equity or equitable interest of any kind by an obligor or any third party against a seller, or in respect of an asset, whether present or future, and whether vested or contingent;

“disclosed claim”, in relation to a vesting certificate, means any specific claim disclosed by the seller to the Corporation in writing prior to the vesting date;

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

“interest in land” means—

- (a) any interest in land, whether registered or registrable, including one to which the Strata Titles Act 1985 applies and that 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; or
- (c) any other rights or entitlements relating to land;

“obligor” means any person who owes a duty or obligation of any nature, whether present or future, and whether vested or contingent, to the seller under or with respect to an asset, including an obligor under an Islamic financing facility, conventional credit facility, security or other chose in action;

“purchaser” means a person to whom the Corporation disposes an asset;

“registered interest” means any right or interest in—

- (a) a charge created by a company and registrable under the Companies Act 1965 and is duly registered in accordance with the applicable provisions of that Act; or
- (b) land that 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;

“seller” means a person from whom the Corporation acquires an asset;

“transfer certificate” means a certificate issued by the Corporation under paragraph 10 and includes a replacement transfer certificate issued under paragraph 11;

“vesting certificate” means a certificate issued by the Corporation under paragraph 3 and includes a replacement vesting certificate issued under paragraph 5;

“vesting date” means the date stated on a vesting certificate as the date on which an asset vests in the Corporation or a subsidiary of the Corporation.

### **Vesting**

2. 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 respect of the acquisition or a transfer certificate in respect of the disposition in accordance with this Schedule.

### **Acquisition**

3. (1) A vesting certificate may be in such form as determined by the Corporation.

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

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

(4) Where the Corporation acquires an asset by issuing a vesting certificate—

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

(5) The Corporation shall, on and from the vesting date for an asset, acquire and be vested with all of the seller's present and future rights, title and interest 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.

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

(7) No provision in any law including the Civil Law Act 1956, rule of law or agreement limiting or prohibiting the right of the seller or requiring any consent to assign, sell, dispose of or transfer an asset shall have any application or effect in respect of any acquisition or disposition by the Corporation, except that a transfer of such asset by the Corporation shall be subject to any requirement for the approval of the relevant State Authority having jurisdiction over such transfer.

(8) Where the asset that the Corporation acquires in accordance with this Schedule is an Islamic financing facility or a conventional credit facility, the Corporation is deemed to have given the financing, advance, loan or other facility or transaction or issued the guarantee notwithstanding that the financing, advance, loan or other facility or transaction or guarantee had been granted, drawn down or issued by the seller.

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

- (a) for the purposes of paragraph 6A(9)(b) of the Companies Act 1965, the Corporation 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 Corporation in the share shall be disregarded for the purposes of section 6A of the Companies Act 1965.

(10) In relation to an asset vested in the Corporation—

- (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 Corporation of all the disclosed obligations with respect to such asset;
- (c) an existing agreement or 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 interest in 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 Corporation;

- (d) an existing agreement to which the seller was a party shall have effect insofar as it is applicable to the seller's title, interest and rights to such asset and the disclosed obligations, disclosed claims and registered interests over such asset as if the Corporation had been a party to it instead of the seller;
- (e) an existing instruction, direction, mandate, power of attorney, authority, undertaking or consent which was given to the seller, either alone or jointly with another person, shall have effect, as if given to the Corporation either alone or jointly with the other person;
- (f) any 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 of any person, shall be held by the Corporation or that nominee or trustee as the nominee of or trustee for the Corporation with the same priority as the seller had, and to the extent of that liability shall be available to the Corporation as security for the payment or discharge of that liability, and if any such security extends to future advances or future liabilities, it shall be held by and be available to the Corporation as security for future advances by or future liabilities to the Corporation in the same manner in all respects as future advances by or future liabilities to the seller were secured thereby immediately before the vesting date;
- (g) in addition to any other right, power or remedy granted to the Corporation in this Schedule, the Corporation 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 and disclosed obligations vested in the Corporation 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 Corporation;
- (h) a judgement, award or order obtained by the seller and not fully satisfied before the vesting date shall be enforceable by the Corporation;
- (i) no acquisition or disposition by the Corporation shall be void or voidable by reason of the application of any law;
- (j) where any —
  - (i) profit or other return (referred to in this subparagraph as "return"); or
  - (ii) interest,

payable under an agreement is to be determined by reference to the cost of funds or base lending rate of or other reference point used by the seller, or is no longer determinable as provided in the agreement, the return or interest payable under such agreement shall be as prescribed under section 209 or as the Corporation may agree with the obligor of the agreement;

- (k) where the custody of any goods, things or documents is held by the seller as bailee immediately before the vesting date, such goods, things or documents shall be deemed to have passed to the Corporation and the rights and disclosed obligations of the seller under any contract of bailment relating to such goods, things or documents shall be transferred free of any claim save for disclosed claims; and
- (l) a negotiable instrument or order for payment of money given to or drawn on or accepted by the seller, whether so given, drawn or accepted before, on or after the vesting date, shall have the same effect on and from the vesting date, as if it had been given to or drawn on or accepted by the Corporation.

(11) A vesting of any asset in the Corporation shall not—

(a) be regarded as placing—

- (i) the Corporation;
- (ii) the seller;
- (iii) any person deriving title from the Corporation; 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 Corporation 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 Schedule has vested in the Corporation.

(12) In any proceedings brought by or against the Corporation in respect of any asset vested in the Corporation 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 thereunder 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**

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

(2) Where a 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 3(12), 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**

5. (1) The Corporation may issue a new vesting certificate (referred to in this paragraph as a “replacement 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), under the common seal or a facsimile seal of the Corporation, stating that an asset has been vested in the Corporation 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 shall be registered or filed, that period shall commence from the vesting date stipulated in the replacement vesting certificate or the date the replacement vesting certificate is issued, whichever is later.

(4) Any act done by the Corporation 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.

(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.

### **Additional provisions on land**

6. (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, endorsed, registered or lodged prior to, on or after the vesting date shall not prevent a transfer of any interest in land of the seller to the Corporation.

(2) Where a vesting certificate vests in the Corporation, 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 effective to vest an interest in land in the Corporation as of the vesting date and shall be conclusive evidence of such vesting.

#### **Other Registrars to give effect to vesting certificate**

7. (1) Notwithstanding the provisions of any other law, every registrar of courts, Registrar of Companies, registrar of Malaysian ships, central depository, authorized depository agent and any person maintaining a register or record of ownership, interest or security (referred to in this paragraph 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 document, 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 Corporation as if for the word “thirty” in that subsection the words “one hundred and eighty” had been substituted.

(3) For the purposes of the Companies Act 1965 or any other law, a vesting certificate shall be effective to vest in the Corporation, any title, interest or security in an asset, as of the vesting date and shall be conclusive evidence of such vesting.

#### **Immunity of Registrar**

8. A Registrar or person who maintains a register or record referred to under paragraph 6 or 7 shall not be liable to any person in respect of the making of any memorial on or entry in the register document of title or any other register or record in reliance on the vesting certificate.

#### **Automatic substitution in any legal or other proceedings**

9. Notwithstanding the provisions of any other law, every registrar of courts shall upon receipt 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 automatic substitution of the Corporation in place of the seller as a party in any legal or other proceedings.

**Disposition**

10. (1) The Corporation may issue a transfer certificate for the purpose of selling or otherwise disposing of any asset by the Corporation and any property over which the Corporation has a security, whether as chargee, mortgagee, assignee, lienholder or otherwise.

(2) Subject to the approval, if required, of the relevant regulatory body or State Authority having jurisdiction over the disposition of an asset by the Corporation, such disposition to any purchaser shall have the effect of an acquisition by the Corporation as if that purchaser were the Corporation under paragraph 3 and the provisions of paragraph 3 (except subparagraph 3(12)) and paragraphs 6 to 9 shall apply to that purchaser as they apply to the Corporation, except that—

- (a) a reference to the “seller” shall be construed as a reference to the Corporation;
- (b) a reference to the “Corporation” shall be construed as a reference to that purchaser;
- (c) a reference to the “vesting certificate” shall be construed as a reference to the transfer certificate; and
- (d) a reference to the “vesting date” shall be construed as a reference to the date specified in the transfer certificate as the date of disposition.

(3) A disposition of an asset by the Corporation to a purchaser shall have the effect of transferring to the purchaser all rights, title, interest and obligations of the Corporation in respect of the asset.

(4) Subject to any requirement for the approval of the relevant regulatory body or State Authority to the transfer, a transfer certificate stating that an asset has been transferred to the purchaser shall be conclusive evidence of such transfer as of the date specified in the transfer certificate as the date of disposition.

**Replacement transfer certificate**

11. (1) The Corporation may issue a new transfer certificate (referred to in this paragraph as a “replacement transfer certificate”) to replace any transfer certificate it has previously issued in order to rectify any omission or error in the transfer certificate.

(2) Any replacement transfer certificate issued under subparagraph (1), under the common seal or a facsimile seal of the Corporation, stating that an asset has been transferred to the purchaser shall be conclusive evidence of such transfer as of the date of disposition stipulated in the replacement transfer 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 transfer certificate issued under subparagraph (1) shall be registered or filed, that period shall commence from the date of disposition stipulated in the replacement transfer certificate or the date the replacement transfer certificate is issued, whichever is later.

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

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

### **Transfers to and between subsidiaries**

12. Notwithstanding any other provisions in this Act, the Corporation may effect—

- (a) any transfer of an asset by the Corporation to any subsidiary of the Corporation;
- (b) any transfer of an asset between any subsidiary of the Corporation; and
- (c) any transfer of an asset to the Corporation from any subsidiary of the Corporation,

by issuing a vesting certificate, which shall have the effect of vesting all title, interest, rights and liabilities of the transferor in respect of the asset in the transferee.

### **Vesting of asset outside Malaysia**

13. (1) A vesting certificate issued under this Schedule may relate to any asset of the seller outside Malaysia and effect may be given to it either in accordance with any reciprocal agreement relating to enforcement of judgements that may exist between Malaysia and the country or territory outside Malaysia where such asset is located, or where there is no such agreement, in accordance with the law applicable in such country or territory, and until such time the vesting is given full effect in the country or territory outside Malaysia where such asset is located, the seller shall hold such asset, together with any additional asset or right accruing by virtue of such asset or any right therein, as a trustee for the benefit of the Corporation and promptly remit or transfer to the Corporation any money or other thing of value received by the seller on account of the asset or any such additional asset or right.

(2) At the Corporation's request, the seller, at its own costs, shall take all necessary steps to ensure that the vesting of any asset of the seller outside Malaysia is made fully effective under the law applicable in the country or territory where such asset is located.

## FOURTH SCHEDULE

[Section 159]

ENTITLEMENT TO PRESERVE, DISPOSE OF OR ACQUIRE  
PROPERTY**Interpretation**

1. In this Schedule—

“purchaser” means any person to whom the Corporation disposes of any property under section 158;

“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 159—

- (a) the Corporation shall be deemed to be authorized by the grantor of the security or the registered owner of the property to dispose of the property and to effect the transfer of title to or 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 authorized depository agent and any person maintaining a register or record of ownership or interest shall accept a vesting or transfer certificate or an instrument of transfer or any other registration document or instrument executed by the Corporation and subject to the payment of the fees prescribed under relevant land laws, register or otherwise effect 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. A sale by way of a private treaty under section 159 may be effected by a private contract, auction, tender or any other mode of sale.

**Corporation may acquire property**

4. Where the Corporation or a subsidiary of the Corporation disposes of any property or any part of such property by way of private treaty then, notwithstanding anything to the contrary in any law, the Corporation or the

subsidiary 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 or the subsidiary.

**Entitlements of acquisition of Corporation to prevail**

5. The entitlements of the Corporation under section 159 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; and
- (c) concurrently with any right or remedy provided by any other law or any contract.