



LAWS OF MALAYSIA

Act A1505

**MALAYSIA DEPOSIT INSURANCE CORPORATION
(AMENDMENT) ACT 2016**

Date of Royal Assent 2 March 2016

Date of publication in the
Gazette 7 March 2016

Publisher's Copyright ©

PERCETAKAN NASIONAL MALAYSIA BERHAD

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means electronic, mechanical, photocopying, recording and/or otherwise without the prior permission of **Percetakan Nasional Malaysia Berhad** (Appointed Printer to the Government of Malaysia).

LAWS OF MALAYSIA

Act A1505

MALAYSIA DEPOSIT INSURANCE CORPORATION (AMENDMENT) ACT 2016

An Act to amend the Malaysia Deposit Insurance Corporation Act 2011.

[]

ENACTED by the Parliament of Malaysia as follows:

Short title

1. This Act may be cited as the Malaysia Deposit Insurance Corporation (Amendment) Act 2016.

General amendment

2. The Malaysia Deposit Insurance Corporation Act 2011 [*Act 720*], which is referred to as the “principal Act” in this Act, is amended by deleting the word “solidarity” wherever appearing including in the shoulder note of the principal Act.

Amendment of section 2

3. Section 2 of the principal Act is amended—

(a) in subsection (1)—

(i) by substituting for the definition of “deposit-taking member” the following definition:

“deposit-taking member” means a member institution that is an Islamic bank or a licensed bank;’;

- (ii) by inserting after the definition of “liabilities” the following definition:

‘ “licensed bank” has the same meaning as defined under subsection 2(1) of the Financial Services Act 2013;’;

- (iii) by inserting after the definition of “insurer member” the following definition:

‘ “Islamic bank” means a bank licensed under the Islamic Financial Services Act 2013, other than a licensed international Islamic bank;’;

- (iv) by deleting the definition of “Islamic asset”;

- (v) by deleting the definition of “conventional asset”;

- (vi) in the definition of “Islamic deposit”, by deleting the words “on any basis including custody or profit sharing”;

- (vii) in the definition of “conventional deposit”, in paragraph (b), by inserting after the words “giving of security” the words “unless the sum of money is provided or given as collateral or security for the repayment of any loan made by or debt owing to the deposit-taking member”;

- (viii) in the definition of “member institution”, by substituting for the word “corporation” the word “person”;

- (ix) by substituting for the definition of “financial institution” the following definition:

‘ “financial institution” means a licensed bank, an Islamic bank, an insurance company or a takaful operator;’;

- (x) by substituting for the definition of “Islamic financing facility” the following definition:

‘ “Islamic financing facility” has the same meaning assigned to the definition of “financing facility” under subsection 2(1) of the Islamic Financial Services Act 2013;’;

- (xi) by inserting after the definition of “life policy” the following definition:

‘ “liquidator” includes a provisional liquidator, where applicable;’;

- (xii) in the national language text, by deleting the existing definition of “pengendali takaful”;

- (xiii) by substituting for the definition of “takaful operator” the following definition:

‘ “takaful operator” means a takaful operator licensed to carry on takaful business under the Islamic Financial Services Act 2013, other than a takaful operator licensed to carry on solely retakaful business and an international takaful operator.’;

- (xiv) by deleting the definition of “qualified financial agreement”;

- (xv) by deleting the definition of “Islamic financial business”;

- (xvi) by substituting for the definition of “Islamic banking business” the following definition:

‘ “Islamic banking business” has the same meaning as defined under subsection 2(1) of the Islamic Financial Services Act 2013;’;

- (xvii) by substituting for the definition of “general policy” the following definition:

‘ “general policy” means a policy issued by an insurance company licensed under the Financial Services Act 2013 to carry on the business of general insurance;’;

- (xviii) by inserting after the definition of “participating life” the following definition:

‘ “participating life policy” means a life policy conferring a right to the policy owner to participate in allocations, of which the amount or timing is at the discretion of the insurance company, from the assets of an insurance fund under the Financial Services Act 2013;’;

- (xix) by inserting after the definition of “Islamic financing facility” the following definition:

‘ “Islamic securities” means securities which are in accordance with Shariah;’;

- (xx) by substituting for the definition of “general takaful certificate” the following definition:

‘ “general takaful certificate” means a takaful certificate issued by a takaful operator licensed under the Islamic Financial Services Act 2013 to carry on the business of general takaful;’;

- (xxi) by substituting for the definition of “capital instruments” the following definition:

‘ “capital instruments” means preference shares, loan stocks, subordinated term debts or other instruments approved by Bank Negara Malaysia as being eligible to be capital for the purposes of the Financial Services Act 2013 [Act 758] or the Islamic Financial Services Act 2013 [Act 759];’;

- (xxii) by substituting for the definition of “insurance company” the following definition:

‘ “insurance company” means an insurer licensed to carry on insurance business under the Financial Services Act 2013, other than an insurer licensed to carry on solely reinsurance business and Danajamin Nasional Berhad;’;

(xxiii) in the definition of “assessment year”, by inserting after the word “premiums” the words “and levies”;

(xxiv) in the definition of “takaful”, by substituting for the words “Takaful Act 1984” the words “Islamic Financial Services Act 2013”; and

(xxv) by substituting for the definition of “family solidarity takaful” the following definition:

‘ “family takaful” means takaful under a family takaful certificate;’;

(b) by inserting after subsection (1) the following subsection:

“Qualified financial agreements

(1A) For the purposes of this Act—

(a) “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:

(i) cash or cash equivalents, including negotiable instruments and demand deposits;

(ii) security, Islamic security, a securities account, an Islamic securities account, or a right to acquire securities or Islamic securities; or

(iii) a futures agreement or a futures account;

(b) “derivative” means any agreement, including an option, a swap, futures contract or forward contract, whose market price, value, delivery or payment obligations is derived from, referenced to or based on,

but not limited to, securities, commodities, assets, rates (including interest rates or exchange rates) or indices;

(c) “Islamic derivative” means any agreement, including an option, a swap, futures contract or forward contract, made in accordance with Shariah, whose market price, value, delivery or payment obligations is derived from, referenced to or based on, but not limited to, Islamic securities, commodities, assets, rates (including profit rates or exchange rates) or indices;

(d) “financial intermediary” means—

(i) a clearing agency; or

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

(e) “qualified financial agreement” means—

(i) a master agreement in respect of one or more qualified financial transactions under which if certain events specified by the parties to the agreement occur—

(A) the transactions referred to in the agreement terminate or may be terminated;

(B) the termination values of the transactions under subparagraph (i) are calculated or may be calculated; and

(C) the termination values of the transactions under subparagraph (i) are netted or may be netted, so that a net amount is payable,

and where an agreement is also in respect of one or more transactions that are not qualified financial transactions, the agreement shall be deemed to be a qualified financial agreement only with respect to the transactions that are qualified financial transactions and any permitted enforcement by the parties of their rights under such agreement;

- (ii) an agreement relating to financial collateral, including a title transfer credit support agreement, with respect to one or more qualified financial transactions under a master agreement referred to in subparagraph (i);
 - (iii) an agreement to 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; or
 - (iv) any other agreement as prescribed by Bank Negara Malaysia under the Financial Services Act 2013 or the Islamic Financial Services Act 2013;
- (f) “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; and
- (g) “qualified financial transaction” means —
- (i) a derivative or an Islamic derivative, whether to be settled by payment or delivery; or

- (ii) a repurchase, a reverse repurchase or a buy-sell back agreement with respect to securities or Islamic securities.”; and

- (c) in subsection (2), by inserting after the words “notifications,” the words “directives,”.

Amendment of section 10

- 4.** Section 10 of the principal Act is amended by substituting for subsection (2) the following subsection:

“(2) Without prejudice to any other provision of this Act, the Corporation may prescribe, with the approval of the Minister, for any provision of this Act to be applicable to a subsidiary of the Corporation as if the subsidiary of the Corporation is the Corporation itself.”.

Amendment of section 14

- 5.** Section 14 of the principal Act is amended—

- (a) in paragraph (1)(c), by substituting for the words “a divisional head” the words “an office bearer”; and
- (b) by inserting after subsection (1) the following subsection:

“(1A) For the purposes of paragraph (1)(c), “office bearer” means any person who is the president or vice-president, or secretary or treasurer of a political party or any branch of such political party, or who is a member of the committee or a member of the governing body of a political party or any branch of such political party or who holds in a political party or any branch of such political party any office or position, by whatever name called, which is analogous to any of those mentioned above or in respect of which the person exercises management or control of the affairs of the political party or any branch of such political party.”.

Amendment of Chapter 4

6. The heading of Chapter 4 of Part II of the principal Act is amended by inserting after the words “*Officers and employees*” the words “, *etc.*”.

Amendment of section 25

7. Subsection 25(2) of the principal Act is amended—

(a) in paragraph (a)—

(i) by substituting for subparagraph (ii) the following subparagraph:

“(ii) except for purposes of the provision of liquidity assistance, make loans or advances or provide financing with or without security, or guarantee with or without security any loan, advance or financing provided, to a member institution;” and

(ii) in subparagraph (iii), by inserting after the words “by way of security or otherwise,” the words “or subscribe to”;

(b) in paragraph (h), by deleting the word “and” at the end of the paragraph; and

(c) by inserting after paragraph (h) the following paragraph:

“(ha) provide such subsidies, grants, Islamic financing facility or conventional credit facility, with or without return or interest, to any person for the purpose of training, research, education or development of human resource in relation to banking and financial services; and”.

Amendment of section 26

8. Section 26 of the principal Act is amended—

(a) in the shoulder note, by substituting for the word “**Loans**” the words “**Lending of money or provision of financing**”; and

- (b) by inserting after the word “loan” the words “or provide financing”.

Amendment of section 27

9. Section 27 of the principal Act is amended—

- (a) in subsection (1), by substituting for the words “other corporation” the words “any other person”; and
- (b) in subsection (2), by substituting for the words “prescribed corporation” wherever appearing the word “person”.

Amendment of section 28

10. Section 28 of the principal Act is amended—

- (a) in subparagraphs (1)(c)(i), (d)(i), (e)(i) and (f)(i), by substituting for the word “premiums” the word “levies”; and
- (b) in paragraph (2)(b), by inserting after the word “premiums” the words “and levies”.

Amendment of section 29

11. Section 29 of the principal Act is amended by substituting for the word “funds” wherever appearing including in the shoulder note the word “financing”.

Amendment of section 34

12. Section 34 of the principal Act is amended—

- (a) by renumbering the section as subsection (1); and
- (b) by inserting after subsection (1) as renumbered the following subsection:

“(2) The Corporation may publish the annual accounts and annual report referred to in subsection (1) in the event that the annual accounts and annual report are not able to be laid before the Dewan Negara and the Dewan Rakyat within six months from 31 December of the preceding assessment year.”.

Amendment of section 36

13. The principal Act is amended by substituting for section 36 the following section:

“Deemed membership

36. (1) A licensed bank or an Islamic bank—

(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 [*Act 372*], the Islamic Banking Act 1983 [*Act 276*], the Financial Services Act 2013 or the Islamic Financial Services Act 2013 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 [*Act 312*], or licensed under the Insurance Act 1996 [*Act 553*], the Islamic Financial Services Act 2013 or the Financial Services Act 2013.

(3) Any person 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.”.

Amendment of section 38

14. The principal Act is amended by substituting for section 38 the following section:

“Cancellation of membership

38. The membership of a member institution that is a financial institution shall be cancelled if the licence of the member institution has been surrendered or revoked under the Financial Services Act 2013 or the Islamic Financial Services Act 2013.”.

Amendment of section 39

15. Section 39 of the principal Act is amended—

(a) by substituting for subsection (4) the following subsection:

“(4) Where the Board has confirmed its proposal to terminate the membership of the member institution, the Corporation shall—

(a) immediately inform the Minister and Bank Negara Malaysia in writing; and

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

(b) by deleting subsections (5) and (6); and

(c) in subsection (7), by substituting for the words “subsection (6)” the words “subsection (4)”.

Amendment of section 40

16. Subsection 40(1) of the principal Act is amended by substituting for paragraph (c) the following paragraph:

“(c) in the case of a former insurer member, protected benefits on the day the cancellation or termination of membership takes effect, less any payments made on

account of the benefits, shall continue to be protected after the effective date of cancellation or termination until fulfilment of all the obligations of the former insurer member in respect of the takaful or insurance benefits;”.

Amendment of section 41

17. The principal Act is amended by substituting for section 41 the following section:

“Deposits

41. (1) For the purposes of this Part—

(a) “deposit” means the unpaid balance of the aggregate of deposits as defined under subsection 2(1) received or held by a deposit-taking member from or on behalf of a person and includes—

- (i) a bank draft, traveller’s cheque, prepaid letter of credit, money order or other similar instrument in respect of which the deposit-taking member is primarily liable;
- (ii) cheque or other similar instrument or instruction entered into a payment system designated under subsection 30(1) of the Financial Services Act 2013 or subsection 39(1) of the Islamic Financial Services Act 2013 notwithstanding any delay or failure by the deposit-taking member in crediting the account;
- (iii) a foreign currency deposit; or
- (iv) any liability or financial instrument as may be specified by the Corporation,

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

- (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;
- (E) a deposit that is payable by a deposit-taking member in the course of its Labuan banking business conducted under the Labuan Financial Services and Securities Act 2010 [Act 704] or its Labuan Islamic banking business conducted under the Labuan Islamic Financial Services and Securities Act 2010 [Act 705]; and
- (F) any other liability or financial instrument as may be specified by the Corporation;

(b) “trust account” includes monies held on account for the purpose of a trust.

(2) For the avoidance of doubt, the liability or financial instrument referred to in subparagraph (1)(a)(iv) and paragraph (1)(a)(F) includes any liability or instrument under which a sum of money or money’s worth is received or paid on terms by any person, under which the receipt and repayment is in accordance with the terms of any agreement consistent with the Shariah on any basis, whether or not there is an obligation to repay the money in full.”.

Amendment of section 42

18. Section 42 of the principal Act is amended—

- (a) by substituting for the word “amount” wherever appearing the word “limit”;
- (b) in subsection (3) in the English language text, by substituting for the word “an” the word “a”; and
- (c) in paragraph (4)(a), by substituting for the words “trustee for another” the words “trustee for any beneficiary”.

Amendment of section 43

19. Subsection 43(1) of the principal Act is amended by substituting for the word “amount” the word “limit”.

Amendment of section 44

20. Section 44 of the principal Act is amended by substituting for subsection (1) the following subsection:

“(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, less any withdrawals from the deposits, shall be deemed to be and continue to be insured by the Corporation up to such limit 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.”.

Amendment of section 46

21. Section 46 of the principal Act is amended—

- (a) by deleting the words “certified cheque,”; and
- (b) in the national language text, by deleting the word “perintah”.

Amendment of section 48

22. Subsection 48(1) of the principal Act is amended by substituting for the word “prescribed” the word “specified”.

Amendment of section 51

23. Section 51 of the principal Act is amended—

- (a) by substituting for subsection (2) the following subsection:

“(2) The premium surcharge payable by a deposit-taking member under subsection (1) in any particular assessment year shall not exceed the premium

payable by the deposit-taking member in respect of the preceding assessment year or one million ringgit, whichever is higher.”;

(b) by deleting paragraph (3)(a); and

(c) in paragraph (3)(b), by inserting after the words “notifications,” the words “directives,”.

Amendment of section 52

24. Section 52 of the principal Act is amended by substituting for the words “unpaid premium” the words “unpaid premium or premium surcharge”.

Amendment of section 55

25. Section 55 of the principal Act is amended in the shoulder note by deleting the words “**in respect of insured deposit**”.

Amendment of section 56

26. Section 56 of the principal Act is amended—

(a) in the shoulder note, by deleting the words “**in respect of insured deposit**”; and

(b) in paragraph (1)(c), by inserting after the words “subsection 44(1)” the words “if the winding up order is made within the remainder of the assessment year after the date of transfer and assumption”.

Amendment of section 57

27. Section 57 of the principal Act is amended in the shoulder note by deleting the words “**in respect of insured deposit**”.

Amendment of section 58

28. Section 58 of the principal Act is amended in the shoulder note by deleting the words “**in respect of insured deposit**”.

Amendment of section 60

29. Section 60 of the principal Act is amended by inserting after the words “a deposit-taking member that holds the deposit,” the words “a former deposit-taking member as referred to in paragraph 40(1)(b) or any person to whom the deposit liability has been transferred under subsection 44(1),”.

Amendment of section 61

30. Section 61 of the principal Act is amended by substituting for the words “exceed such amount” the words “exceed such limit”.

Amendment of section 65

31. Section 65 of the principal Act is amended in the shoulder note by deleting the words “**in respect of insured deposit**”.

Amendment of section 66

32. Section 66 of the principal Act is amended in the shoulder note by deleting the words “**in respect of insured deposit**”.

Amendment of section 69

33. Subsection 69(4) of the principal Act is amended—

(a) in the English language text—

- (i) in paragraph (c), by substituting for the words “takaful general certificates” the words “general takaful certificates”;

- (ii) in paragraph (f), by substituting for the words “group general certificate” the words “group general takaful certificate”;
 - (iii) in paragraph (h), by substituting for the words “group general certificates” wherever appearing the words “group general takaful certificates”; and
 - (iv) in paragraph (j), by substituting for the words “general certificate”, “group general certificates” and “group general certificate”, wherever appearing, the words “general takaful certificate”, “group general takaful certificates” and “group general takaful certificate” respectively; and
- (b) in the national language text in paragraph (h), by substituting for the words “sijil takaful am atau polisi am kumpulan” the words “sijil takaful am kumpulan atau polisi am kumpulan”.

Amendment of section 70

34. Subsection 70(4) of the principal Act is amended in the national language text by substituting for the word “penginsurans” the words “penanggung insurans”.

Amendment of Chapter 2 of Part V

35. The heading of Chapter 2 of Part V of the principal Act is amended by substituting for the word “*Premiums*” the word “*Levies*”.

Amendment of section 71

36. Section 71 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the word “**premium**” the word “**levy**”; and
- (b) by substituting for the word “premium” wherever appearing the word “levy”.

Amendment of section 72

37. Section 72 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the word “**premium**” the word “**levy**”;
- (b) by substituting for the word “premium” wherever appearing the word “levy”;
- (c) in subsection (1), by substituting for the word “prescribed” the word “specified”;
- (d) in subsection (1) in the national language text, by substituting for the word “penginsurans” the words “penanggung insurans”; and
- (e) in subsection (1) in the English language text, by substituting for the word “premiums” the word “levies”.

Amendment of section 73

38. The principal Act is amended by substituting for section 73 the following section:

“Calculation of annual levy in respect of insurer members

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

- (a) the applicable levy 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 takaful or life insurance, the annual levies to be paid by the insurer member shall be calculated on the basis set out in paragraph (c) and in such manner as the Corporation may specify;

- (c) for the purposes of paragraph (b), the annual levies shall be based on the actuarial valuation of family takaful liabilities or life insurance liabilities as at 31 December of the preceding assessment year in respect of all or any type or description of takaful or insurance benefits or such family takaful certificates or life insurance policies as the Corporation may specify;
- (d) in respect of an insurer member carrying on the business of general takaful or general insurance, the annual levies to be paid by the insurer member shall be calculated on the basis set out in paragraph (e) and in such manner as the Corporation may specify;
- (e) for the purposes of paragraph (d), the annual levies shall be based on the total net contributions or total net premiums received during the preceding assessment year in respect of all or any type or description of takaful or insurance benefits or such general takaful certificates or general insurance policies as the Corporation may specify; and
- (f) the annual levies in respect of family takaful, general takaful, life policy and general policy protected benefits shall be calculated separately.

(2) For the avoidance of doubt, where the liability for takaful certificates or insurance policies of an insurer member is transferred to and assumed by another insurer member, the total net contributions or total net premiums received by the transferor insurer member in respect of that liability during the preceding assessment year shall be deemed to be received by the transferee insurer member during the preceding assessment year and the annual levies shall be paid by the transferee insurer member accordingly.

(3) The levies 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.”.

Amendment of section 74

39. Section 74 of the principal Act is amended by substituting for the word “premium” wherever appearing the word “levy”.

Amendment of section 75

40. Section 75 of the principal Act is amended—

(a) in the shoulder note, by substituting for the word “**Premium**” the word “**Levy**”;

(b) by substituting for subsection (1) the following subsection:

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

(c) by substituting for subsection (2) the following subsection:

“(2) The levy surcharge payable by an insurer member under subsection (1) in any particular assessment year shall not exceed the levy payable by the insurer member in respect of the preceding assessment year or one million ringgit, whichever is higher.”;

(d) in subsection (3)—

(i) by deleting paragraph (a);

(ii) in paragraph (b)—

(A) by inserting after the words “notifications,” the words “directives,”; and

(B) by inserting after the word “protection” the word “system”; and

(iii) in paragraph (d)—

(A) by inserting after the words “takaful or insurance liabilities” the words “, or net contributions”; and

(B) by substituting for the words “any premium assessments” the words “any levy assessments”; and

(e) in paragraphs (3)(A) and (B) and subsections (4), (5), (6) and (7), by substituting for the word “premium” wherever appearing the word “levy”.

Amendment of section 76

41. The principal Act is amended by substituting for section 76 the following section:

“Overdue charges in respect of insurer members

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

Amendment of section 77

42. Section 77 of the principal Act is amended—

(a) in the shoulder note, by substituting for the word “**Premium**” the word “**Levy**”; and

(b) by substituting for the word “premiums” wherever appearing the word “levies”.

Amendment of section 78

43. Section 78 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the word “**Premiums**” the word “**Levies**”; and
- (b) by substituting for the word “premium” wherever appearing the word “levy”.

New section 78A

44. The principal Act is amended by inserting after section 78 under Chapter 3 of Part V the following section:

“Definitions

78A. For the purposes of this Chapter—

- (a) “value of that life policy” means the value as may be prescribed under subsection 83(3);
- (b) “value of that family takaful certificate” means the value as may be prescribed under subsection 83(2); and
- (c) “takaful contribution” means the amount payable by a certificate owner to a takaful operator under a takaful certificate and includes any remuneration for the functions and duties assumed by the takaful operator.”.

Amendment of section 80

45. Section 80 of the principal Act is amended—

- (a) in subsection (1)—
 - (i) by deleting the words “Subject to subsection (4), the”; and
 - (ii) in the English language text, by substituting for the word “Corporation” the words “The Corporation”;

(b) by deleting subsection (4); and

(c) in subsection (5)—

- (i) by substituting for the words “actuarial valuation reserve” wherever appearing the words “value of that family takaful certificate or value of that life policy”; and
- (ii) in subparagraph (b)(ii) in the English language text, by substituting for the words “actuarial valuation reserve” the words “value of those family takaful certificates or value of those life policies”.

Amendment of section 83

46. Section 83 of the principal Act is amended by substituting for subsections (2) and (3) the following subsections:

“(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 refund of a portion of the takaful contribution that is commensurate with the remaining period of the takaful certificate;
- (b) in respect of his family takaful certificate, the value of that family takaful certificate;
- (c) the value of the investments or savings held separately in respect of the takaful certificate; or
- (d) any other refund or amount,

which shall be ascertained on such basis as may be prescribed by the Corporation.

(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 refund of a portion of the premium that is commensurate with the remaining period of the policy;

- (b) in respect of his life policy, the value of that life policy;
- (c) the value of the investments or savings held separately in respect of the policy; or
- (d) any other refund or amount,

which shall be ascertained on such basis as may be prescribed by the Corporation.”.

Amendment of section 84

47. Section 84 of the principal Act is amended by substituting for subsections (3) and (4) the following subsections:

“(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 value of that family takaful certificate or value of that life policy in respect of the family takaful certificate or life policy.

(4) Where a certificate owner or policy owner surrenders his family 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 takaful certificate or life policy at the time of surrender.”.

Amendment of section 85

48. Section 85 of the principal Act is amended by substituting for subsection (4) the following subsection:

“(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 a portion of the takaful contribution or premium that is commensurate with the remaining period of the takaful certificate or policy.”.

Amendment of section 90

49. Paragraph 90(3)(b) of the principal Act is amended by substituting for the words “an amount equal to the actuarial valuation reserve of life policies” the words “the value of that family takaful certificate or value of that life policy”.

Deletion of section 94

50. The principal Act is amended by deleting section 94.

Amendment of section 95

51. Paragraph 95(a) of the principal Act is amended by substituting for the words “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” the words “section 146 of the Financial Services Act 2013 or section 158 of the Islamic Financial Services Act 2013”.

Amendment of section 96

52. Paragraph 96(2)(b) of the principal Act is amended by substituting for the words “premiums or takaful or insurance liabilities” the words “premiums, levies, deposit liabilities, takaful liabilities or insurance liabilities”.

Amendment of section 99

53. Section 99 of the principal Act is amended—

(a) in subsection (1)—

- (i) in paragraph(c), by deleting the words “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;”;
- (ii) in paragraph (g), by deleting the word “or” at the end of the paragraph; and

- (iii) by inserting after paragraph (g) the following paragraph:

“(ga) with the approval of the Minister, by an order in writing, transfer all or any of the following:

- (i) shares and capital instruments issued by the member institution; or
- (ii) warrants or rights under any other instruments issued by the member institution that entitle the holders thereof to acquire shares in the member institution,

to any person, other than the Corporation and any of the subsidiaries of the Corporation, pursuant to the provisions relating to compulsory transfer of shares in Chapter 2A; or”;

- (b) by inserting after subsection (1) the following subsection:

“(1A) Where the Corporation exercises any of the powers under subsection (1), the member institution shall 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.”;

- (c) in paragraph (3)(b), by substituting for the words “its borrowers” the words “the shares of borrowers under any borrowing and lending arrangements for shares,”; and

- (d) by inserting after subsection (6) the following subsection:

“(7) Any exercise of the Corporation’s powers under this Part affecting any director, officer or employee of a member institution, including the removal of a director, officer or employee of the member institution or the variation or termination of the contract of service of any director, officer or employee of the member institution, shall be lawful and valid notwithstanding anything contained in any contract of service or other contract or agreement, whether express or implied, whether individual or collective, and whether or not

made or provided for under any written law, and a person so removed from office or his contract of service so varied or terminated, shall not be entitled to claim any compensation for the loss or termination of office.”.

Amendment of section 104

54. Section 104 of the principal Act is amended by inserting after subsection (2) the following subsections:

“(2A) Where the Corporation makes a transfer referred to in paragraph 99(1)(ga) or extinguishes the rights referred to in paragraph 128B(7)(b), 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 transfer or the amount of the compensation received or receivable in respect of the rights so extinguished may be questioned, and no court may entertain any action, suit or proceeding seeking to question the amount of the consideration or compensation.

(2B) A transaction or series of transactions referred to in subsection 103(1) or a transfer referred to in paragraph 99(1)(ga) or an extinguishment of the rights referred to in paragraph 128B(7)(b) shall take effect despite any request for or any decision made in respect of the review under subsections (2) and (2A).”.

Amendment of section 106

55. Subsection 106(7) of the principal Act is amended by substituting for the words “Rules of the High Court 1980” the words “Rules of Court 2012 [*P.U. (A) 205/2012*]”.

Amendment of section 109

56. Subsection 109(1) of the principal Act is amended by inserting after the words “as applicable” the words “, except with the prior written consent of the Corporation”.

Amendment of section 115

57. Section 115 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(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 qualified financial agreement;

(b) a derivative that trades on—

(i) a derivatives exchange, derivatives board or other regulated market for derivatives;

(ii) a futures exchange, futures board or other regulated market for futures; or

(iii) an options exchange, options board or other regulated market for options;

(c) an agreement to—

(i) clear or settle securities, futures, options or derivatives transactions; or

(ii) act as a depository for securities; or

(d) a margin loan in so far as it is in respect of a securities account or futures account maintained by a financial intermediary.”;

(b) by deleting subsection (2);

(c) in subsection (3), by substituting for the words “any agreement referred to in subsection (1)” the words “a qualified financial agreement”;

(d) in subsection (4)—

(i) by substituting for the words “two or more agreements” the words “two or more qualified financial transactions under a qualified financial agreement”; and

(ii) by substituting for the words “none of the agreements” the words “none of the qualified financial transactions”;

(e) in subsection (5), by substituting for the words “an agreement referred to in paragraph (1)(i)” the words “a qualified financial agreement relating to financial collateral”; and

(f) in subsection (7), by substituting for the words “an agreement referred to in subsection (1)” the words “a qualified financial agreement”.

Amendment of section 120

58. Section 120 of the principal Act is amended—

(a) in subsection (1), by deleting the words “or registration, as applicable,”;

(b) in paragraph (1)(a), by deleting the words “or a licensed finance company as defined under section 2 of the Banking and Financial Institutions Act 1989”;

(c) in paragraph (1)(b), by deleting the words “as defined under section 2 of the Islamic Banking Act 1983”; and

(d) in subsection (2), by deleting the words “or registration”.

Amendment of section 121

59. Section 121 of the principal Act is amended by substituting for the words “Banking and Financial Institutions Act 1989, the Islamic Banking Act 1983, the Insurance Act 1996 or the Takaful Act 1984” the words “Financial Services Act 2013 or the Islamic Financial Services Act 2013”.

Amendment of section 127

60. Paragraph 127(2)(a) of the principal Act is amended by substituting for the word “borrowing” the word “financing”.

New Chapter 2A of Part VII

61. Part VII of the principal Act is amended by inserting after Chapter 2 the following chapter:

“Chapter 2A

Provisions relating to compulsory transfer of shares

Definitions

128A. For the purposes of this Chapter—

- (a) “transferor” means a holder of the shares, whose shares are transferred or are to be transferred under paragraph 99(1)(ga);
- (b) “transferee” means a person to whom a transferor’s shares are transferred or are to be transferred under paragraph 99(1)(ga);
- (c) “transfer order” means an order in respect of a transfer of shares referred to in paragraph 99(1)(ga) and includes a replacement transfer order referred to in section 128D;
- (d) “shares” includes capital instruments, warrants and rights under any other instruments issued by a member institution that entitle the holders thereof to acquire shares in the member institution;
- (e) “transfer date” means the date stated on a transfer order as the date on which any shares are transferred or are deemed to be transferred to the transferee.

Compulsory transfer of shares

128B. (1) Any transfer of the shares issued by a member institution under paragraph 99(1)(ga) shall be effected by a transfer order issued by the Corporation in accordance with this Chapter.

(2) Where based on the records of the member institution available to the Corporation in the course of exercise of the compulsory shares transfer power there is a bankrupt transferor, the Corporation shall notify the Director General of Insolvency in writing of the transfer before the transfer is effected and any money or other considerations receivable in relation to the shares of the bankrupt transferor shall vest with the Director General of Insolvency.

(3) Where the Corporation issues a transfer order under this Chapter, the Corporation shall—

(a) notify that fact in the *Gazette*; and

(b) give a notice of such transfer order as soon as is practicable by publication in at least two daily newspapers published in Malaysia, one of which shall be in the national language.

(4) The notice under paragraph (3)(b) shall include the matters set out in subparagraph 2A(1) of the First Schedule.

(5) A transfer order may be in such form as determined by the Corporation from time to time and shall take effect in accordance with this Chapter.

(6) A transfer order stating that any shares issued by a member institution to be transferred shall be conclusive evidence of such transfer as of the transfer date.

(7) The transfer order may provide for all or any of the following matters:

(a) the transfer to the transferee of all or any of the shares issued by the member institution;

- (b) the extinguishment of rights of holders of warrants or other instruments issued by the member institution that entitle the holder to acquire shares in the member institution;
 - (c) the removal from the official list of any stock exchange the shares issued by the member institution or a particular class of securities issued by the member institution;
 - (d) such incidental, consequential and supplementary matters as are, in the Corporation's opinion, necessary to secure that the transfer is fully effective, including conditions relating to the transfer.
- (8) The transfer order shall provide for the transfer of any shares issued by the member institution to take effect free from any trust, liability, adverse claim or other encumbrance.

Effect of the transfer order

128c. (1) Where a transfer order is made—

- (a) the transferor shall not be required to notify or obtain the approval of their shareholders or creditor in a general meeting or otherwise, or any governmental, regulatory or other authority whatsoever, or any other person thereby affected notwithstanding any contract, anything in the constituent documents of the transferor or anything in any law including without limitation the Companies Act 1965, the Financial Services Act 2013 and the Islamic Financial Services Act 2013;
- (b) the transferee shall not be required to make a take-over offer or be required to acquire the shares of other shareholders of the member institution or the shares of borrowers under any borrowing and lending arrangements for shares, notwithstanding any contract or anything in any law; and

(c) subject to subsection (2)—

- (i) no person may terminate or amend any agreement with the member institution or claim an accelerated payment under any such agreement with the member institution by reason only of the making of the transfer order or change in the holders of the shares issued by the member institution;
- (ii) any stipulation in an agreement is of no force or effect if it has the effect of providing for, or permitting, anything that, in substance, is contrary to subparagraph (i); and
- (iii) any stipulation in an agreement is of no force or effect if it provides, in substance, that the member institution ceases to have the rights to use or deal with the assets that the member institution would otherwise have on the making of the transfer order or change in the holders of the shares issued by the member institution.

(2) The enforcement by the parties of their rights under a qualified financial agreement shall not be affected by the making of a transfer order for the transfer of all or any of the shares issued by the member institutions.

(3) The Corporation may, with the approval of Bank Negara Malaysia, in exercising its powers under paragraph 99(1)(ga), by notice in writing—

- (a) remove from office, with effect from such date as may be specified in the notice, any director, officer or employee of the member institution;
- (b) vary or terminate the contract of service of any director, officer or employee of the member institution, as may be specified in the notice; or
- (c) appoint any person as a director, officer or employee of the member institution subject to such terms and conditions as the Corporation may specify.

(4) Before exercising its powers under subsection (3), the Corporation shall give the director, officer or employee of such member institution an opportunity to make representation.

(5) For the avoidance of doubt, where the Corporation exercises its powers under subsection (3), the Corporation, the member institution or the transferee 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 such director, officer or employee of the member institution pursuant to the Industrial Relations Act 1967 or the Employment Act 1955.

(6) A transfer order may require or permit—

- (a) a transferor to provide a transferee or the Corporation with information and assistance; or
- (b) a transferee to provide a transferor or the Corporation with information and assistance.

(7) Any person in complying with the transfer order for the purposes of subsection (6) shall not be treated as being in breach of any law, contract, agreement or arrangement.

(8) The transfer order issued in accordance with this Chapter shall be final and binding on all persons to whom the transfer order is made or who are affected by the transfer order regardless that such persons had no notice of any circumstances which led to the making of the transfer order, or had no opportunity to be heard by, or make any representation to, the Corporation regarding the transfer order.

(9) This Chapter shall have full force and effect notwithstanding—

- (a) anything contained in any law relating to shares and directors, officers and employees of the member institution including the law by or under which the member institution is constituted, established, incorporated or registered; or

- (b) anything contained in the constituent document of the member institution or in any contract entered into by or on behalf of the member institution or in any contract affecting the shares issued by or otherwise relating to the member institution.

Replacement transfer order

128D. (1) The Corporation may issue a replacement transfer order to replace any transfer order it has previously issued for the purpose of rectifying any omission or error in the transfer order.

(2) Any replacement transfer order issued by the Corporation under subsection (1) stating that any shares issued by the member institution have been transferred to the transferee shall be conclusive evidence of such transfer as of the transfer date stipulated in the replacement transfer order.

(3) Any act done by a transferee, transferor or any other person, in reliance of a transfer order previously issued shall not be affected by any omission or error rectified in a replacement transfer order issued under subsection (1).”.

New section 128E

62. Chapter 3 of Part VII of the principal Act is amended by inserting before section 129 the following section:

“Definitions

128E. For the purposes of this Chapter—

- (a) “life business” means the business of undertaking liabilities under life policies; and
- (b) “family takaful business” means the business relating to the administration, management and operation of a takaful arrangement under a family takaful certificate.”.

Amendment of section 129

63. Section 129 of the principal Act is amended by deleting the words “and section 114 of the Insurance Act 1996,”.

Amendment of section 130

64. Section 130 of the principal Act is amended by substituting for the words “a person other than Bank Negara Malaysia” the words “any person”.

New sections 131A and 131B

65. The principal Act is amended by inserting after section 131 the following sections:

“Continuation of family takaful business

131A. (1) Notwithstanding section 83 of this Act and paragraph 236(1)(a) of the Companies Act 1965, the liquidator of a takaful operator carrying on family takaful business—

- (a) may carry on the takaful operator’s family takaful business with a view to such business being transferred as a going concern to another takaful operator but shall not effect a new takaful certificate; and
- (b) subject to subsection (3), may transfer the takaful operator’s assets and liabilities to another takaful operator or a bridge institution, including liabilities under family takaful certificates attributable to the first-mentioned takaful operator and the takaful funds managed by the first-mentioned takaful operator and Division 4 of Part VII of the Islamic Financial Services Act 2013 shall apply to the transfer.

(2) The takaful operator’s assets and liabilities referred to in subsection (1) are the assets and liabilities of the takaful fund and of the shareholders’ fund.

(3) The liquidator may, for the purpose of a transfer under paragraph (1)(b), apply to the High Court for an order to reduce—

(a) the amount of liabilities under family takaful certificates of the takaful operator; or

(b) the amount of other liabilities of the takaful fund,

and the High Court may reduce the liabilities to the extent necessary taking into consideration the value of available assets in the takaful funds and shareholders' fund subject to such conditions as the High Court considers fit.

Continuation of life business

131B. (1) Notwithstanding section 83 of this Act and paragraph 236(1)(a) of the Companies Act 1965, the liquidator of an insurance company carrying on life business—

(a) may carry on the insurance company's life business with a view to such business being transferred as a going concern to another insurance company but shall not effect a new policy; and

(b) subject to subsection (3), may transfer the insurance company's assets and liabilities to another insurance company or a bridge institution, including liabilities under life policies and Division 4 of Part VI of the Financial Services Act 2013 shall apply to the transfer.

(2) The insurance company's assets and liabilities referred to in subsection (1) are the assets and liabilities of the insurance fund and of the shareholders' fund.

(3) The liquidator may, for the purpose of a transfer under paragraph (1)(b), apply to the High Court for an order to reduce—

(a) the amount of liabilities under life policies of the insurance company; or

(b) the amount of its other liabilities,

and the High Court may reduce the liabilities to the extent necessary taking into consideration the value of the insurance company's available assets subject to such conditions as the High Court considers fit.”.

Amendment of section 132

66. Section 132 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “, except where the petition is presented by Bank Negara Malaysia,”;
- (b) in paragraph (2)(b), by deleting the words “other than that presented by Bank Negara Malaysia”; and
- (c) in subsection (3), by deleting the words “and except where the petition for winding up is presented by Bank Negara Malaysia,”.

Amendment of section 133

67. Section 133 of the principal Act is amended by deleting the words “on a petition presented by a person other than Bank Negara Malaysia,”.

Amendment of section 134

68. The principal Act is amended by substituting for section 134 the following section:

“Priority of payments in the winding up of a deposit-taking member

134. In the winding up of a deposit-taking member, the assets of the deposit-taking member shall be available to meet all liabilities of that deposit-taking member in respect of all deposits in Malaysia in priority to all other unsecured liabilities of that deposit-taking member in Malaysia other

than the preferential debts set out in subsection 292(1) of the Companies Act 1965 in the order set out in that subsection and debts due and claims owing to the Government under section 10 of the Government Proceedings Act 1956 [*Act 359*].”.

New sections 134A and 134B

69. The principal Act is amended by inserting after section 134 the following sections:

“Priority of payments in the winding up of a deposit-taking member carrying on Islamic banking business

134A. (1) Without prejudice to section 134, in the winding up of a deposit-taking member which has been approved under paragraph 15(1)(a) of the Financial Services Act 2013 to carry on Islamic banking business—

- (a) the assets of the deposit-taking member acquired in the course of its business other than its Islamic banking business, shall be applied to meet the liabilities incurred in the course of its business other than the Islamic banking business, in the order set out in section 134; and
- (b) where the assets of the deposit-taking member referred to in paragraph (a) is in surplus after payment has been made to meet its liabilities under paragraph (a), such surplus assets of the deposit-taking member shall be applied to meet the liabilities of the deposit-taking member under subsection (2).

(2) Without prejudice to section 134, in the winding up of a deposit-taking member which has been approved under paragraph 15(1)(a) of the Financial Services Act 2013 to carry on Islamic banking business—

- (a) the assets acquired by the deposit-taking member in the course of its Islamic banking business—
 - (i) shall not be subject to the debts of the deposit-taking member except in respect of its Islamic banking business or as provided in paragraph (b); and

(ii) shall be available to meet all liabilities of the deposit-taking member in respect of its Islamic deposits in Malaysia in priority to all other unsecured liabilities incurred in the course of its Islamic banking business, other than the preferential debts set out in subsection 292(1) of the Companies Act 1965 in the order set out in that subsection and the debts due and claims owing to the Government under section 10 of the Government Proceedings Act 1956, which is attributable to its Islamic banking business as may be specified by the Corporation and the order of priority for payments of different categories of Islamic deposits may be prescribed by regulations made under section 209; and

(b) where the assets of the deposit-taking member referred to in paragraph (a) is in surplus after payment has been made to meet its liabilities under subparagraph (a)(ii), such surplus assets of the deposit-taking member shall be applied to meet the liabilities of the deposit-taking member including the liabilities of the deposit-taking member under section 134 in the order of priority stated therein.

(3) Notwithstanding subparagraph (2)(a)(ii), regulations may be prescribed under section 209 to determine and classify the assets available and the application of the disposal proceeds thereof in order to meet any or any part of the liabilities of the deposit-taking member.

Priority of payments in the winding up of a deposit-taking member that is an Islamic bank

134B. (1) In the winding up of a deposit-taking member that is an Islamic bank in or outside Malaysia, the assets of the deposit-taking member shall be available to meet all liabilities of that deposit-taking member in respect of its Islamic deposits in Malaysia in priority to all other unsecured liabilities of that deposit-taking member other than the preferential debts set out in subsection 292(1) of the Companies Act 1965 in the order set out in that subsection and the debts due and

claims owing to the Government under section 10 of the Government Proceedings Act 1956 and the order of priority for payments of different categories of Islamic deposits may be prescribed by regulations made under section 209.

(2) Notwithstanding subsection (1), regulations may be prescribed under section 209 to determine and classify the assets available and the application of the disposal proceeds thereof in order to meet any or any part of the liabilities of the deposit-taking member.”.

Amendment of section 135

70. Section 135 of the principal Act is amended by deleting subsection (2).

Deletion of sections 140, 141 and 142

71. The principal Act is amended by deleting sections 140, 141 and 142.

New sections 142A, 142B and 142C

72. The principal Act is amended by inserting after section 142 as deleted the following sections:

“Priority of payments in winding up of takaful operator

142A. (1) In the winding up of a takaful operator, the assets of a takaful fund for any class or description of takaful business established under the Islamic Financial Services Act 2013 shall be applied to meet the liabilities to certificate owners or proper claimants in respect of that takaful fund and such liabilities shall have priority over all unsecured liabilities of that takaful fund including any *qard* or other forms of financial support referred to in the Islamic Financial Services Act 2013, other than any tax set out in paragraph 292(1)(f) of the Companies Act 1965 which is attributable to the takaful fund.

(2) In the winding up of a takaful operator—

(a) where the assets of a takaful fund managed by a takaful operator are in surplus, after payment has been made to meet its liabilities under subsection (1), such surplus assets of the takaful fund shall be applied in the following order:

(i) first, to meet the liabilities of other takaful funds managed by the takaful operator which are deficient and if for this purpose there are two or more takaful funds—

(A) which are in surplus, such surpluses shall be applied in proportion to the surplus in each takaful fund to meet the liabilities of the takaful fund which is deficient; or

(B) which are in deficit, the surplus shall be applied in proportion to the amounts of the deficiencies to meet the liabilities of the takaful funds which are deficient; and

(ii) second, any other purposes as may be prescribed by the Corporation;

(b) any deficiency in the assets of a takaful fund to meet its liabilities under subsection (1) will be met—

(i) first, as provided in paragraph (a), by the surplus assets of other takaful funds; and

(ii) if such surplus assets are insufficient to meet those liabilities then the balance of such liabilities shall be met by the surplus assets of the shareholders' fund after payment has been made to meet the shareholders' fund's liabilities under subsection (3); or

(c) pursuant to subparagraph (b)(ii), where the assets of the shareholders' fund are in surplus, the surplus assets shall be applied to meet the liabilities of any takaful fund which is in deficit, and if the surplus assets are applied to meet the liabilities of two or

more takaful funds the assets of which are in deficit, such surplus assets shall be applied proportionately to the amounts of the deficiencies.

(3) In the winding up of a takaful operator, the assets of its shareholders' fund shall be applied to meet the liabilities to certificate owners to the extent that it is attributable to the shareholders' fund and such liabilities shall have priority over all unsecured liabilities of that takaful operator, other than preferential debts set out in subsection 292(1) of the Companies Act 1965 and the debts due and claims owing to the Government under section 10 of the Government Proceedings Act 1956.

Priority of payments in winding up of insurance company

142B. (1) In the winding up of an insurance company, the assets of an insurance fund shall be applied to meet its liabilities to policy owners and claimants under policies of that fund and these liabilities shall have priority over unsecured liabilities of that fund, other than preferential debts set out in subsection 292(1) of the Companies Act 1965 and debts due and claims owing to the Government under section 10 of the Government Proceedings Act 1956, to the extent that they are apportioned to the insurance fund.

(2) Subject to subsection (1)—

- (a) the assets of an insurance fund as established under the Financial Services Act 2013 shall first be applied to meet the liabilities of that fund;
- (b) where the assets of an insurance fund, other than a life fund relating to participating life policies, exceed its liabilities, the surplus assets may be applied to meet the liabilities of its other insurance funds which are deficient and if the surplus assets of two or more insurance funds are applied, the surplus assets 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 which are in deficit, the surplus assets shall be applied proportionately to the amounts of the deficiencies;

- (c) any deficiency subsisting after application of the assets of the insurance funds under paragraphs (a) and (b) shall be met out of the assets of the shareholders' funds, and unsatisfied liabilities to a policy owner and claimant under a policy shall have priority over other unsecured liabilities other than preferential debts specified under subsection 292(1) of the Companies Act 1965 and debts due and claims owing to the Government under section 10 of the Government Proceedings Act 1956; and
- (d) any other assets held by the insurance company, including surplus assets in a life fund relating to participating life policies, shall be used in a manner as may be prescribed by the Corporation.

Valuation of assets and liabilities of a takaful operator or insurance company

142c. (1) In the winding up of a takaful operator, including a former insurer member the membership of which has been cancelled under section 38 or terminated under section 39 and whether its shareholders' fund or any takaful fund managed by it is insolvent or not, the value of the assets and liabilities of the shareholders' fund and takaful fund, including liabilities in respect of takaful certificates, shall be ascertained on such basis as the Corporation may determine and the law relating to bankruptcy or insolvency shall not apply to the valuation of the liabilities.

(2) In the winding up of an insurance company, including a former insurer member the membership of which has been cancelled under section 38 or terminated under section 39 and whether it is insolvent or not, the value of its assets and liabilities, including liabilities in respect of policies, shall be ascertained on such basis as the Corporation may determine and the law relating to bankruptcy or insolvency shall not apply to the valuation of the liabilities.”.

Amendment of section 144

73. Section 144 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the words “**Insurance Act 1996 and Takaful Act 1984**” the words “**Financial Services Act 2013 and Islamic Financial Services Act 2013**”;
- (b) in subsection (1)—
 - (i) by deleting the words “except where the petition is presented by Bank Negara Malaysia,”;
 - (ii) by deleting paragraphs (b) and (c); and
- (c) in subsection (2), by substituting for the words “section 67 of the Takaful Act 1984 and section 199 of the Insurance Act 1996” the words “section 268 of the Financial Services Act 2013 and section 279 of the Islamic Financial Services Act 2013”.

Amendment of section 145

74. Paragraph 145(b) of the principal Act is amended by substituting for the word “corporation” wherever appearing the word “person”.

Amendment of section 146

75. Subsection 146(3) of the principal Act is amended—

- (a) in paragraph (a), by substituting for the word “amount” the word “limit”;
- (b) in paragraph (c) in the English language text, by substituting for the words “is otherwise” the words “otherwise is”;
- (c) in paragraph (e), by substituting for the word “corporation” the word “person”; and
- (d) in paragraph (f), by substituting for the word “corporation” the word “person”.

Amendment of section 149

76. Section 149 of the principal Act is amended—

- (a) in the shoulder note, by inserting after the word “**premium**” the words “**or levy**”;
- (b) by inserting after the word “premium” wherever appearing the words “or levy”; and
- (c) by substituting for the words “prescribed corporation” wherever appearing the words “prescribed person”.

Amendment of section 150

77. Section 150 of the principal Act is amended by substituting for the word “corporation” wherever appearing the word “person”.

Amendment of section 151

78. Section 151 of the principal Act is amended—

- (a) in the shoulder note, by inserting after the word “**premium**” the words “**or levy**”; and
- (b) by inserting after the word “premium” the words “or levy”.

Amendment of section 152

79. Section 152 of the principal Act is amended by inserting after the word “premium” the words “or levy”.

Amendment of section 153

80. Section 153 of the principal Act is amended—

- (a) by substituting for the words “any fee or premium” wherever appearing the words “any fee, premium or levy”;

- (b) by substituting for the words “prescribed corporation” wherever appearing the words “prescribed person”;
- (c) by substituting for paragraph (2)(a) the following paragraph:
 - “(a) the fee, premium or levy payable by the prescribed person in respect of the stabilisation coverage for the preceding year; or”;
- (d) by deleting paragraph (3)(a);
- (e) in paragraph (3)(b), by inserting after the word “notifications,” the words “directives,”; and
- (f) in paragraph (3)(d), by inserting after the words “protected benefit liabilities” the words “, net contributions”.

Amendment of section 154

81. Section 154 of the principal Act is amended—

- (a) by inserting after the word “premium” the words “, levy”;
and
- (b) by substituting for the words “prescribed corporation” wherever appearing the words “prescribed person”.

Amendment of section 155

82. Section 155 of the principal Act is amended by substituting for the words “prescribed corporation” wherever appearing the words “prescribed person”.

Amendment of section 156

83. Section 156 of the principal Act is amended—

- (a) in subsection (3), by inserting after the word “premium” the words “or levy”; and

- (b) in paragraphs (4)(a) and (c), by inserting after the word “premiums” the words “or levies”.

Amendment of section 157

84. Subsection 157(2) of the principal Act is amended by substituting for the words “prescribed corporation” wherever appearing the words “prescribed person”.

Amendment of section 161

85. Subsection 161(2) of the principal Act is amended in the English language text by substituting for the word “of” the word “over”.

Amendment of section 165

86. Paragraph 165(1)(b) of the principal Act is amended by substituting for the words “in the form prescribed under this Act” the words “in such form as determined by the Corporation”.

Amendment of section 178

87. Subsection 178(4) of the principal Act is amended by substituting for the words “futures market” the words “derivatives market”.

Amendment of section 180

88. Section 180 of the principal Act is amended—

- (a) by inserting after subsection (2) the following subsection:

“(2A) If a person is a counterparty to two or more qualified financial transactions under a qualified financial agreement with the same affected person, the conservator may only transfer to a bridge institution or qualified third party all or none of the qualified financial transactions between the affected person and that person.”; and

- (b) in subsection (3), by substituting for the words “referred to in paragraph 115(1)(i) and applies to a property” the words “relating to financial collateral that applies to any property”.

Amendment of section 196

89. Section 196 of the principal Act is amended by substituting for subsection (4) the following subsection:

“(4) For the purposes of this section, “controller” means a person who has obtained an approval of the Minister under section 88 of the Financial Services Act 2013 or section 100 of the Islamic Financial Services Act 2013.”.

Amendment of section 202

90. Subsection 202(1) of the principal Act is amended by substituting for the words “Banking and Financial Institutions Act 1989, the Islamic Banking Act 1983, the Insurance Act 1996 or the Takaful Act 1984” the words “Financial Services Act 2013 or the Islamic Financial Services Act 2013”.

New section 203A

91. The principal Act is amended by inserting after section 203 the following section:

“Independent actuary

203A. (1) Where, for the purposes of the exercise of any powers of the Corporation under Part VII in respect of an insurer member or the making of a payment under Chapter 3 of Part V, the Corporation deems it advisable to have the value of the liabilities in respect of takaful certificates or insurance policies of the insurer member determined, the Corporation may appoint an independent actuary to determine such value.

(2) An individual shall not be appointed as an independent actuary unless he meets such requirements or has such qualifications as set out in any standards 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 value of the liabilities in respect of takaful certificates or insurance policies, of the insurer member.

(4) The value of the liabilities in respect of takaful certificates or insurance policies of the insurer member 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 preferential debts referred to in subsection 142A(3) and paragraph 142B(2)(c).”.

Amendment of section 204

92. The principal Act is amended by substituting for section 204 the following section:

“Intention to wind up a member institution

204. (1) A member institution shall not be wound up voluntarily without the prior written approval of Bank Negara Malaysia.

(2) No application for the winding up of a member institution may be presented to the High Court by any person, other than by the Corporation, without the prior written approval of Bank Negara Malaysia.

(3) This section applies to a former member institution the membership of which has been cancelled or terminated under this Act.”.

New section 207A

93. The principal Act is amended by inserting after section 207 the following section:

“Exemption from liability

207A. No director of a member institution shall be liable to be sued in any court or before any other authority for not being able to carry out his duty under subsection 132(1) of the Companies Act 1965 in relation to any act necessary to effect—

- (a) the transfer of business, assets and liabilities of the member institution;
- (b) the transfer of shares and capital instruments of the member institution; and
- (c) the transfer of warrants or any other instruments, issued by the member institution, that entitle the holders to acquire shares in the member institution,

pursuant to the exercise of any powers under this Act.”.

Amendment of section 209

94. Section 209 of the principal Act is amended—

- (a) in the shoulder note, by inserting after the words “**by-laws,**” the words “**notifications,**”;
- (b) by inserting after the words “by-laws,” wherever appearing the words “notifications,”;
- (c) by substituting for subparagraphs (3)(d)(i), (ii) and (iii) the following subparagraphs:
 - “(i) where the deposit liabilities of a deposit-taking member are transferred to and assumed by another deposit-taking member;

- (ii) where the deposit liabilities with a deposit-taking member are to be acquired by a person who is not a deposit-taking member; or
 - (iii) in relation to bank drafts, cheques or other similar payment instruments or payment instructions or settlement instructions;”;
- (d) in paragraph (3)(e), by substituting for the words “as between Islamic deposits based on custody and other Islamic deposits” the words “of different categories of Islamic deposits”;
- (e) by inserting after paragraph (3)(e) the following paragraph:
- “(ea) determination and classification of the assets available and the application of the disposal proceeds thereof in relation to different categories of Islamic deposits;”;
- (f) by deleting paragraph (3)(f); and
- (g) in paragraph (3)(h), by substituting for the words “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” the words “where the takaful certificate or insurance policy liabilities of an insurer member are transferred to and assumed by another insurer member”.

Amendment of First Schedule

95. The First Schedule to the principal Act is amended—

- (a) in paragraph 1—
- (i) by inserting before the definition of “dissenting creditors” the following definition:

‘ “consideration”, in relation to a transfer of shares referred to in paragraph 99(1)(ga), means a net amount paid or payable to the transferor in respect of the shares issued by a member institution that are transferred pursuant to a transfer order issued under section 128B;’;

(ii) in the definition of “member institution”, by inserting after the words “paragraph 99(1)(c)” the words “or a member institution of which its shares are subject to a transfer under paragraph 99(1)(ga)”;

(iii) by inserting before the definition of “consideration” the following definition:

‘ “compensation” means a net amount paid or payable to the person whose rights are extinguished under paragraph 128B(7)(b);’;

(iv) by inserting after the definition of “transferee” the following definition:

‘ “transferor” has the same meaning as defined under section 128A;’;

(v) in the definition of “transacted price”, by substituting for the full stop at the end of the definition a semicolon;

(vi) by inserting after the definition of “transacted price” the following definition:

‘ “transferee” has the same meaning as defined under section 128A;’;

(vii) by inserting after the definition of “transferor” the following definition:

‘ “transfer order” has the same meaning as defined under section 128A.’; and

(viii) by inserting after the definition of “member institution” the following definition:

‘ “shares” shall, except for subparagraph 4(3), include capital instruments, warrants and rights under any other instruments issued by a member institution that entitle the holders thereof to acquire shares in the member institution;’;

(b) in subparagraph 2(3), by substituting for the word “prescribed” the word “determined”;

(c) by inserting after paragraph 2 the following paragraph:

“Notice of transfer order

2A. (1) A notice of the transfer order referred to in paragraph 128B(3)(b) shall—

(a) set out the consideration, if any;

(b) set out the compensation, if any; and

(c) specify that a transferor or a person whose rights are extinguished under paragraph 128B(7)(b), as the case may be, may within twenty-one days from the date of publication of the notice, apply in writing to the Corporation requesting a review by the Assessor Committee of the reasonableness of the consideration or the compensation.

(2) An application under subsubparagraph (1)(c) shall be in such form as determined by the Corporation.”;

(d) in subparagraph 3(1), by inserting after the words “subsubparagraph 2(2)(b)” the words “or subsubparagraph 2A(1)(c)”;

(e) in paragraph 4—

(i) in the shoulder note, by inserting after the words “**Assessor Committee**” the words “**in respect of the review of the transacted price**”;

(ii) in subparagraph (1), by inserting after the words “subparagraph 3(1)” the words “in respect of a review of the reasonableness of the transacted price”; and

(iii) in subparagraphs (7) and (8) in the national language text, by substituting for the words “Jawatankuasa itu” the words “Jawatankuasa Pentaksir itu”; and

(f) by inserting after paragraph 4 the following paragraph:

“Power of Assessor Committee in respect of the review of the consideration or compensation

4A. (1) Upon an application being referred to the Assessor Committee under subparagraph 3(1) in respect of a review of the reasonableness of the consideration or the compensation, the Assessor Committee it shall review the reasonableness of the consideration or the compensation according to the request contained in the application.

(2) In reviewing the reasonableness of the consideration or the compensation, the Assessor Committee shall have regard to—

- (a) such matters that the Assessor Committee considers relevant including the fact that the transfer order has been issued; and
- (b) prevailing market conditions for the sale or disposal of similar shares issued by the member institution,

and in all cases the Assessor Committee 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) Where the Assessor Committee decides that—

- (a) the consideration is less than the amount that in its opinion is the reasonable amount for the shares transferred (referred to in this subparagraph as the “reasonable amount”), the Assessor Committee shall advise the Corporation to pay to the transferor the difference between the consideration and the reasonable amount and the Corporation shall within such period as may be specified by the Assessor Committee pay such difference to the transferor; or
- (b) the consideration is in its opinion the reasonable amount, the Assessor Committee shall advise the Corporation accordingly.

(4) Where the Assessor Committee decides that—

- (a) the compensation is less than the amount that in its opinion is the reasonable amount for the rights extinguished under paragraph 128B(7)(b) (referred to in this subparagraph as the “reasonable amount”), the Assessor Committee shall advise the Corporation to pay to the person whose rights are extinguished

under paragraph 128B(7)(b) the difference between the compensation and the reasonable amount and the Corporation shall within such period as may be specified by the Assessor Committee pay such difference to such person; or

(b) the compensation is in its opinion the reasonable amount, the Assessor Committee shall advise the Corporation accordingly.

(5) For the avoidance of doubt, the Assessor Committee may decide it is reasonable that no consideration was offered or payable to the transferor or no compensation was offered or payable to the person whose rights are extinguished under paragraph 128B(7)(b).

(6) If the Assessor Committee decides that it is just and reasonable that interest or other return be paid on an amount payable under subsubparagraph (3)(a) or (4)(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.

(7) 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.

(8) The Assessor Committee shall dispose of the 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.

(9) 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.”.

Savings provision

96. (1) All references to premium paid or payable by insurer members to the Corporation in any written law shall, on the coming into operation of this Act, be construed as references to levy.

(2) All references to “family solidarity takaful” in any written law shall, on the coming into operation of this Act, be construed as references to “family takaful”.

(3) Notwithstanding the change of name in this Act, from family solidarity takaful to family takaful and from family solidarity takaful certificate to family takaful cetificate, the protection to the extent accorded to such takaful benefits under the principal Act shall continue to remain in full force and effect.

(4) The amendments in sections 2, 3, 13, 14, 17, 44, 45, 46, 47, 48, 49, 50, 51, 57, 58, 59, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 88, 89, 90, 91, 92, 93 and 94 of this Act which are consequential to the enforcement of the Financial Services Act 2013 and the Islamic Financial Services Act 2013 shall be read together with the savings and transitional provision, as the case may be, as provided in the Financial Services Act 2013 and the Islamic Financial Services Act 2013.

(5) Any act, thing or proceedings, whether civil or criminal, or appeal, pending or existing, under the amended sections immediately before the coming into operation of this Act, may be continued under the principal Act as if the principal Act had not been amended.