



LAWS OF MALAYSIA

REPRINT

Act 587

PENGURUSAN DANAHARTA NASIONAL BERHAD ACT 1998

Incorporating all amendments up to 1 January 2006

PUBLISHED BY
THE COMMISSIONER OF LAW REVISION, MALAYSIA
UNDER THE AUTHORITY OF THE REVISION OF LAWS ACT 1968
IN COLLABORATION WITH
PERCETAKAN NASIONAL MALAYSIA BHD
2006

**PENGURUSAN DANAHARTA NASIONAL
BERHAD ACT 1998**

Date of Royal Assent 29 August 1998

Date of publication in the *Gazette* ... 1 September 1998

PREVIOUS REPRINT

First Reprint 2002

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LAWS OF MALAYSIA

Act 587

PENGURUSAN DANAHARTA NASIONAL BERHAD ACT 1998

An Act to provide special laws for the acquisition, management, financing and disposition of assets and liabilities by the Corporation, the appointment of special administrators with powers to administer and manage persons whose assets or liabilities have been acquired by the Corporation and for matters connected therewith or incidental thereto.

[1 September 1998, P.U. (B) 333/1998]

WHEREAS special provisions are required in the public interest to assist financial institutions by removing impaired assets, to assist the business sector by dealing expeditiously with financially distressed enterprises and to promote the revitalization of the nation's economy by injecting liquidity into the financial system, such goals to be achieved through the acquisition, management, financing and disposition of assets and liabilities:

AND WHEREAS legislation is the only means by which the acquisition, management, financing and disposition of assets and liabilities can be implemented promptly, efficiently and economically for the public good:

AND WHEREAS legislation is the only means by which special administrators may be appointed expeditiously to administer and manage persons whose assets or liabilities have been so acquired:

AND WHEREAS Pengurusan Danaharta Nasional Berhad has been established as a corporation incorporated under the Companies Act 1965 for such purposes:

NOW, THEREFORE, **BE IT ENACTED** by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of

the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

Short title, application and commencement

1. (1) This Act may be cited as the Pengurusan Danaharta Nasional Berhad Act 1998.

(2) This Act shall apply throughout Malaysia.

(3) This Act comes into operation on such date as the Minister may, by notification in the *Gazette*, appoint; and the Minister may appoint different dates for the coming into force of different provisions of this Act in different parts of Malaysia.

Interpretation

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

“acquiree” means any person to whom the Corporation disposes an asset under section 19;

“asset” includes any credit facility, property and business or enterprise of any kind;

“authorized depository agent” has the meaning assigned to it in the Securities Industry (Central Depositories) Act 1991 [Act 453];

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

“books” includes a register, a document, an account or accounting records, however compiled, recorded or stored, and any other record of information;

“business” means any activity carried on for the purpose of gain and includes all property derived from, or used in or for the purpose of, carrying on such activity and all rights and liabilities arising from such activity;

“Central Bank” means the Central Bank of Malaysia established by the Central Bank of Malaysia Act 1958 [*Act 519*];

“central depository” has the meaning assigned to it in the Securities Industry (Central Depositories) Act 1991;

“claims” means any claim, defence, counterclaim, set-off, equity, action, legal proceeding or equitable interest of any kind relating to or arising out of an asset by the obligor or any third party against the seller or in respect of the asset, whether vested or contingent, present or future;

“company” means a company incorporated under the Companies Act 1965 and includes a corporation within the meaning assigned to the term “corporation” under the Companies Act 1965 [*Act 125*];

“Corporation” means the Pengurusan Danaharta Nasional Berhad;

“credit facility” means—

- (a) the giving of any advance, loan or other facility in whatever form or by whatever name called whereby the person to whom the advance, loan or facility is given has access, directly or indirectly, to the funds of the person giving it and shall include without limitation, any sale and buy back arrangement, hire purchase agreement, lease arrangement, joint venture arrangement, debt trading, guarantee, deferred payment sale, profit sharing arrangement and any other financing arrangements made in accordance with Islamic banking concepts in whatever form or by whatever name;
- (b) the giving of a guarantee in relation to the obligations of any person; or
- (c) any other dealing or transaction as may be prescribed by the Central Bank under section 2 of the Banking and Financial Institutions Act 1989 [*Act 372*];

“creditor” means any person who is owed a liability by the affected person;

“disclosed claim” in relation to—

- (a) sections 13 to 18 means any specific claim disclosed to the Corporation in writing prior to the vesting date;
- (b) section 19 means any specific claim disclosed by the Corporation to the acquiree in writing prior to the date specified in the transfer certificate;

“disclosed obligation” in respect of an asset acquired under Part V in relation to—

- (a) sections 13 to 18 means an obligation or liability owed to the obligor by the seller under or with respect to the asset and which obligation or liability is disclosed by the seller to the Corporation in writing prior to the vesting date;
- (b) section 19 means an obligation or liability owed to the obligor by the Corporation under or with respect to the asset and which obligation or liability is disclosed by the Corporation to the acquiree in writing prior to the date specified in the transfer certificate;

“Independent Advisor” means a person appointed under section 26;

“interest in land” means—

- (a) any interest in land, whether registered or registrable, including one to which the Strata Titles Act 1985 [Act 318] applies and which is capable of being transferred under Part Fourteen of the National Land Code [Act 56 of 1965] or Part V of the Land Ordinance of Sabah [Sabah Cap. 68] or Part VI of the Land Code of Sarawak [Sarawak Cap. 81];
- (b) any lienholder’s caveat or other caveats; and
- (c) any other rights and entitlements relating to land;

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

“licensed institution” has the meaning assigned to it in the Banking and Financial Institutions Act 1989;

“merchant bank” has the meaning assigned to it in the Banking and Financial Institutions Act 1989;

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

“Minister of Finance” means the Minister of Finance incorporated under the Minister of Finance (Incorporation) Act 1957 [Act 375];

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

“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;
- (b) any conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of movable property or immovable property;
- (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, 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;

“registered interest” means any right or interest in—

- (a) a charge to which subsection 108(3) of the Companies Act 1965 applies and is duly registered in accordance with subsection 108(1) of the Companies Act 1965; or
- (b) land which is duly registered under the Strata Titles Act 1985, the National Land Code, the Land Ordinance of Sabah or the Land Code of Sarawak;

“Registrar of land” means the Registrar under the National Land Code, the Registrar under the Land Ordinance of Sabah or the Registrar under the Land Code of Sarawak, as the case may be;

“security” includes a mortgage or charge, whether legal or equitable, debenture, bill of exchange, promissory note, guarantee, lien or pledge, whether actual or constructive, hypothecation, indemnity, undertaking or other means of securing payment or discharge of a debt or liability, whether present or future, or whether vested or contingent;

“seller” means a person from whom the Corporation acquires an asset;

“Special Administrator” means the person appointed under section 23 or 24;

“subsidiary”—

- (a) has the meaning assigned to it in the Companies Act 1965; and
- (b) includes a scheme involving an interest under section 84 of the Companies Act 1965 and a unit trust scheme in which the Corporation has more than fifty per cent of the voting power or more than fifty per cent of the issued interests;

“transfer certificate” means a certificate issued under section 19 and includes a replacement transfer certificate issued under section 19A;

“unit trust scheme” means any arrangement made for the purpose, or having the effect, of providing facilities for the participation of persons as beneficiaries under a trust in profits

or income arising from the acquisition, holding, management or disposal of debentures, stocks or shares of a company or any other property;

“vesting certificate” means a certificate issued under section 14 and includes a replacement vesting certificate issued under section 14A;

“vesting date” means the date stated on a vesting certificate as the date on which an asset vests in the Corporation or subsidiary, as the case may be.

PART II

THE CORPORATION

The Corporation and its objective

3. The Corporation incorporated under the Companies Act 1965 under the name “Pengurusan Danaharta Nasional Berhad” shall have the main objective of carrying on business as an asset management company and acquiring, managing, financing and disposing of assets and liabilities.

Powers of the Corporation

4. (1) Without prejudice to its powers as prescribed in its Memorandum and Articles of Association, the Corporation shall have the power to—

(a) carry on business as an asset management company and to acquire the whole or any part of any asset or liability of whatever form of any person, and to manage, finance and dispose of such asset or liability; and

(b) carry out, manage or enter into any activity in relation to such asset or liability.

(2) The powers conferred on the Corporation under subsection (1) shall be in addition to and not in derogation of any of the rights, powers, liberties, privileges and benefits conferred on the Corporation by this Act or any other law.

(3) In addition to the powers vested in the Corporation by its Memorandum and Articles of Association and this Act, the Corporation may exercise such other powers as may be expedient or reasonably necessary for or in connection with or incidental to its objectives and the provisions of this Act shall apply to the Corporation in respect of the exercise of such powers.

The Board

5. (1) The board of directors of the Corporation, which shall be responsible for the policy and general administration of the affairs and business of the Corporation, shall comprise the following members who, notwithstanding the provisions of section 128 of the Companies Act 1965, shall be appointed by the Minister:

- (a) a non-executive Chairman;
- (b) a Managing Director;
- (c) two Federal Government officials;
- (d) three members from the private sector; and
- (e) two members from the international community.

(2) For the purposes of subsection (1), the Minister may appoint such persons as he thinks fit and proper to act and assist the Corporation in achieving its objectives.

(3) The Managing Director shall be the chief executive officer of the Corporation and shall be entrusted with the day-to-day administration of the Corporation.

(4) The provisions of the First Schedule shall apply to the Board.

Application of the Corporation's Memorandum and Articles of Association

6. (1) Any matter not provided for in this Act shall be determined in accordance with and regulated by the Memorandum and Articles of Association of the Corporation.

(2) Where there is any conflict or inconsistency between the provisions of this Act and the provisions of the Memorandum

and Articles of Association of the Corporation, the provisions of this Act shall prevail.

Disclosure of interest

7. (1) A member of the Board or any committee formed by the Board having directly or indirectly any interest in relation to any matter under discussion by the Board or the committee shall disclose to the Board or the committee the existence of his interest and the nature of that interest.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Board or the committee.

(3) Upon the disclosure under subsection (1) the member—

(a) shall not take part nor be present in any deliberation or decision of the Board or the committee; and

(b) shall be disregarded for the purpose of constituting a quorum of the Board or the committee,

relating to the matter.

(4) A member of the Board or the committee who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(5) No act or proceedings of the Board or the committee shall be invalidated on the ground that any member of the Board or the committee has contravened the provisions of this section.

Accounts

8. (1) The Corporation shall cause to be kept accounts in accordance with the Companies Act 1965.

(2) The Corporation shall cause its statement of accounts to be audited by such auditors as it may appoint.

(3) The Corporation shall as soon as practicable send a copy of the audited statement of accounts together with a copy of the auditor's report thereon to the Minister.

(4) The provisions of the Statutory Bodies (Accounts and Annual Reports) Act 1980 [Act 240] shall not apply to the Corporation.

PART III

ACQUISITION OF SHARE CAPITAL OF THE CORPORATION BY THE MINISTER OF FINANCE

Acquisition of share capital of the Corporation by the Minister of Finance

9. (1) The share capital of the Corporation shall initially be acquired and held by the Minister of Finance on a date appointed by the Minister.

(2) The Minister of Finance may exercise all rights and powers as the holder of shares in the capital of the Corporation as prescribed under its Memorandum and Articles of Association.

(3) Notwithstanding subsection 147(6) of the Companies Act 1965, where the Minister of Finance is beneficially entitled to the whole of the issued shares of the Corporation, a minute signed by a duly authorized representative of the Minister of Finance stating that any act, matter or thing, or any ordinary or special resolution required by the Companies Act 1965 or by the Memorandum or Articles of Association of the Corporation to be made, performed or passed by or at an ordinary general meeting or an extraordinary general meeting of the Corporation has been made, performed, or passed that act, matter, thing, or resolution shall, for all purposes, be deemed to have been duly made, performed, or passed by or at an ordinary general meeting, or as the case requires, by or at an extraordinary general meeting of the Corporation.

(4) In the application of section 36, subparagraph 217(2)(a)(i) and paragraph 218(1)(d) of the Companies Act 1965 to the Corporation, the Minister of Finance shall be deemed the holding company of the Corporation.

PART IV

GUARANTEE BY THE GOVERNMENT

Guarantee

10. Section 14 of the Financial Procedure Act 1957 [*Act 61*] shall apply to the Corporation.

The Corporation to repay to Government sums paid under guarantee

11. If any sum is paid out of the funds of the Government under a guarantee issued under this Part, the Corporation shall repay that sum to the Government in such manner and at such time or by such instalments as the Minister may direct.

Terms and conditions which may be agreed to or approved

12. Without prejudice to section 11, the terms and conditions which may be agreed to by the Government may include, in respect of any guarantee given or agreement concluded under this Part or under any bond, debenture, promissory note or other instrument issued pursuant to any such guarantee or agreement, provision for submission by the Corporation or the Government or both of them to the jurisdiction of the courts of the country in which the above-mentioned facility is provided.

PART V

ACQUISITION AND DISPOSITION BY THE CORPORATION

Acquisition

13. (1) The Corporation may with the consent of the seller—

(a) elect to acquire any asset pursuant to the statutory vesting provisions set forth in this Part, in which case all of the rights and obligations of the Corporation set forth in this Part shall apply and such election shall be conclusively made and evidenced by the Corporation's issuance of a vesting certificate pursuant to subsection 14(7);

(b) acquire an asset without the benefit of the provisions of this Part, in which case no vesting certificate shall be issued by the Corporation and the Corporation shall acquire and hold such asset pursuant to all provisions of applicable law other than those set forth in this Part.

(2) The seller shall disclose to the Corporation in writing prior to the vesting date all specific claims within his knowledge relating to the asset.

(3) Where a subsidiary of the Corporation prescribed under subsection 60(2) acquires an asset, the provisions of this Part shall apply to that subsidiary as if it were the Corporation itself.

(4) The Corporation shall not acquire any asset of the following persons without the prior written approval of the Securities Commission:

- (a) dealers, fund managers, and investment advisers as defined in the Securities Industry Act 1983 [*Act 280*];
- (b) futures broker, futures fund manager, and futures trading adviser as defined in the Futures Industry Act 1993 [*Act 499*];
- (c) stock exchange as defined in the Securities Industry Act 1983;
- (d) recognized clearing house and participants of a recognized clearing house as defined in the Securities Industry Act 1983;
- (e) exchange company as defined in the Futures Industry Act 1993;
- (f) approved clearing house and a futures broker that is an affiliate of a clearing house of an exchange company as defined in the Futures Industry Act 1993;
- (g) central depository and its authorized depository agents.

Vesting

14. (1) The Corporation may acquire any asset, whether such asset is held by the seller alone or jointly with any other person and upon such acquisition such asset shall, on and from the

vesting date, vest in the Corporation either alone or jointly with that other person, as the case may be.

(2) A vesting under subsection (1) shall have effect according to the provisions of this Part and, notwithstanding the provisions of the Civil Law Act 1956 [*Act 67*] or any other law, shall be binding on any person thereby affected in the manner provided in this Part.

(3) The Corporation shall, on and from the vesting date for an asset, acquire 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.

(4) Without prejudice to subsection (1), (2) or (3) 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 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 of the disclosed obligations with respect to such asset;
- (c) an existing instrument, whether in the form of a deed, will or otherwise, or order of any court, under or by virtue of which the seller has title or ownership of or rights to such asset, shall be construed and shall have effect as if for any reference therein to the seller there were substituted a reference to the Corporation;
- (d) an existing agreement in relation to such asset to which the seller was a party shall have effect in so far as it is applicable to the disclosed obligations, disclosed claims and registered interest as if the Corporation had been party thereto instead of the seller;
- (e) an existing mandate, power of attorney, authority, undertaking or consent in relation to such asset which was given to the seller, either alone or jointly with another person, shall be deemed to have effect, as if given to the Corporation either alone or jointly with the other person, as the case may be;

- (f) a negotiable instrument or order for payment of money in relation to such asset which was given to the seller before the vesting date, shall have the same effect on and from the vesting date, as if it had been given to the Corporation;
- (g) where the custody of any goods, things or documents in relation to such asset 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 any such asset shall be transferred to the Corporation free of any claim save for disclosed claims;
- (h) if such asset is security held immediately before the vesting date by the seller, or by a nominee of or trustee for the seller, as security for the payment or discharge of any liability of any person, such security shall be held by the Corporation or, as the case may be, shall be held by that nominee or trustee as the nominee of, or trustee for, the Corporation with the same priority as the seller, and to the extent of that liability, shall be available to the Corporation as security for the payment or discharge of that liability; and where any such security extends to future advances or future liabilities, shall be held by, and be available as provided for in this paragraph to the Corporation as security for future advances by, and 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;
- (i) in addition to any other right, power or remedy granted to the Corporation in this Part, 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 interest as if they had at all times been the rights, titles, interests and obligations of the Corporation;

- (j) a judgment or award obtained by the seller in relation to such asset and not fully satisfied before the vesting date shall be enforceable by the Corporation;
- (k) no provision in any law or agreement limiting or prohibiting the right of the seller or requiring any consent to assign, sell, dispose or transfer such asset shall have any application or effect in respect of any acquisition or disposition by the Corporation, except that a disposition of such asset by the Corporation shall be subject to the approval of the relevant regulatory body or relevant State Authority having jurisdiction over such disposition;
- (l) no acquisition or disposition of such asset by the Corporation shall be void or voidable by reason of the application of any law;
- (m) where the interest rate under any agreement in respect of an asset acquired by the Corporation is to be determined by reference to the cost of funds or base lending rate of the seller or is an interest rate that is otherwise no longer determinable as provided in the agreement, the interest rate payable under such agreement shall be—
 - (i) such interest rate as the Corporation may agree with the obligor of the agreement; or
 - (ii) determined in the same manner provided in the agreement by reference to the base lending rate of a licensed institution determined by the Central Bank.

(5) Without prejudice to subsection (1), (2), (3) or (4), a vesting of any asset in the Corporation shall not—

- (a) be regarded as placing the Corporation, the seller, or any person deriving title from the Corporation or 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 for any person to—
 - (i) terminate or 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 or agreement prohibiting, restricting or regulating the assignment, sale, disposition 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 rights, privileges, exemptions (including any tax exemptions) or priorities to which the seller was entitled and which by virtue of this section has vested in the Corporation.

(6) Without prejudice to the generality of subsection (1), (2), (3), (4) or (5), in any proceeding brought by or against the Corporation in respect of any asset vested in the Corporation pursuant to this section, no person shall raise as a claim or defence to such proceedings any of the following matters, unless such claim is a disclosed claim:

- (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 or 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 or 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.

(7) A vesting certificate executed under the 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.

(8) A vesting certificate as specified in subsection (7) may be issued by the Corporation after the vesting date.

Replacement vesting certificate

14A. (1) The Corporation may issue a new vesting certificate to replace any vesting certificate it has previously issued in order to rectify any omission or error in the vesting certificate.

(2) Any replacement vesting certificate issued under subsection (1) executed under the 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 specified in the replacement vesting certificate.

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

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

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

Preservation of rights

15. (1) A person who is precluded from making a claim against the Corporation or is precluded from raising a defence against the Corporation under section 14, shall be entitled to seek compensation against the seller in respect of such claim.

(2) Where the Court is satisfied that the person referred to in subsection (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 section 14, that person shall be entitled to such compensation from the seller in respect of such claim as the Court considers fair and reasonable.

Additional provisions on land

16. (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 registered, endorsed or entered 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 applicable form—

(A) with the vesting certificate attached to it; and

(B) showing the identity of the person and particulars of the land affected by the vesting,

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 applicable form—

(A) with the vesting certificate attached to it; and

(B) showing the identity of the person and particulars of the land affected by the vesting,

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;

(c) in Sarawak, on receipt of—

(i) payment of the prescribed fee; and

(ii) the applicable form—

(A) with the vesting certificate attached to it; and

(B) showing the identity of the person and particulars of the land affected by the vesting,

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 vesting certificate shall be conclusive evidence of a vesting of an interest in land in the Corporation.

Other Registrars to give effect to vesting certificate

17. (1) Notwithstanding the provisions of any other law, every Registrar of the High Courts, the Registrar of Companies, the Registrar General of Ships, a central depository, an authorized depository agent, and any person maintaining a register or record of ownership, interest or security, as the case may be, shall, on receipt of—

- (a) payment of the prescribed fee; and
- (b) the applicable form—
 - (i) with the vesting certificate attached to it; and
 - (ii) showing the identity of the person or asset affected by the vesting,

without the need for any further application or filing of any further documents, do all things and make all entries in any register or record kept by that person 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 section, 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 word “ninety” had been substituted.

(3) A Registrar or person who maintains a register or record mentioned in section 16 and this section shall not be liable to any person in respect of the making of any memorial on the register document of title or any other entry in the register or record in reliance on the vesting certificate.

Vesting of asset outside Malaysia

18. A vesting certificate issued under section 14 may relate to any asset of the seller outside Malaysia and, if it so relates, effect may be given to it either in accordance with any reciprocal arrangements relating to enforcement of judgments that may exist between Malaysia and the country, territory or place outside Malaysia where such asset is located, or where there are no such arrangements, in accordance with the law applicable in such country, territory or place.

Disposition by the Corporation

19. (1) The Corporation may, in accordance with the provisions of this section, dispose of any of the Corporation's assets whether vested or not in the Corporation and any property over which the Corporation has a security whether as a chargee, mortgagee, assignee, lienholder or otherwise.

(2) Subject to the approval of the relevant regulatory body and State Authority having jurisdiction over the disposition of an asset by the Corporation, such disposition to any acquiree shall have the effect of an acquisition of an asset by the Corporation as if that acquiree were the Corporation under section 14 and the provisions of sections 15 to 18 shall apply to that acquiree 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 acquiree;
- (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 an acquiree shall have the effect of transferring the Corporation'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 registered interests prevailing as at the date specified in the transfer certificate as the date of disposition and disclosed claims.

(4) Subject to any requirement for the written approval of the relevant regulatory body or the relevant State Authority to transfer, a transfer certificate executed under the seal of the Corporation stating that an asset has been vested in the acquiree shall be conclusive evidence of such transfer as of the date specified in such transfer certificate as the date of disposition.

(5) A transfer certificate as specified in subsection (4) may be issued by the Corporation after the date of disposition.

Replacement transfer certificate

19A. (1) The Corporation may issue a new 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 subsection (1) executed under the seal of the Corporation stating that an asset has been transferred to the acquiree shall be conclusive evidence of such transfer as of the date of disposition specified 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 subsection (1) shall be registered or filed, that period shall commence from the date the replacement transfer certificate is issued.

(4) Any act done by the Corporation, seller, Special Administrator 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 transfer certificate issued under subsection (1).

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

Permitted disclosure

20. (1) Any disclosure by a seller for any purpose and any disclosure by the Corporation for any purpose shall not place the seller, the Corporation or any other person in breach of the provisions of section 97 of the Banking and Financial Institutions Act 1989 or any other law or agreement prohibiting, restricting or regulating the disclosure of information.

(2) Where a seller is a person licensed under the Banking and Financial Institutions Act 1989, such seller shall be deemed to be permitted to disclose information relating to its affairs or the affairs or the account of its customer to the Corporation.

(3) Any information disclosed by a seller or the Corporation under subsection (1) shall not be treated as information made lawfully available to the public for the purposes of subsection 97(2) of the Banking and Financial Institutions Act 1989.

PART VI

MANAGEMENT OF ASSETS AND LIABILITIES

Interpretation in relation to Part VI

21. In this Part, unless the context otherwise requires—

“affected person” means—

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

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

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

(2) The Minister may, on the recommendation of the Corporation, amend the definition of "secured creditor" in subsection (1) by notification in the *Gazette*.

Establishment and functions of the Oversight Committee

22. (1) There is hereby established a committee by the name of the "Oversight Committee" whose functions shall be—

- (a) to approve the appointment of a Special Administrator under this Act;
- (b) to approve the appointment of an Independent Advisor in the manner set out under section 26;
- (c) to approve the recommendations made by the Corporation for the extension or termination of any moratorium in effect pursuant to section 41; and

- (d) to approve the recommendation of the Corporation for the termination of the appointment of a Special Administrator appointed under this Act or for the termination of the administration of an affected person.

(2) The Oversight Committee shall consist of the following members who shall be appointed by the Minister:

- (a) a representative of the Ministry of Finance;
- (b) a representative of the Central Bank; and
- (c) a representative of the Securities Commission.

(3) The persons appointed under subsection (2) may be paid such honorarium and travelling and subsistence allowances by the Corporation as the Minister may determine.

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

- (a) any vacancy in the membership, or any defect in the constitution, of the Oversight Committee;
- (b) any contravention by any member of the Oversight Committee of section 65 of this Act; or
- (c) any omission, defect or irregularity in the proceedings of the Oversight Committee.

(3B) A certificate signed by a secretary of the Oversight Committee confirming any decision of the Oversight Committee shall be conclusive evidence of that decision.

(4) The decision of the Oversight Committee shall be final and binding and shall not be reviewed, quashed, appealed against, or set aside by any court.

Application by affected person for appointment of Special Administrator

23. Subject to section 25, the board of directors or the majority of the members of an affected person may apply to the Corporation and the Corporation may recommend to the Oversight Committee for the appointment of a Special Administrator of the affected person.

Recommendation by Corporation for appointment of Special Administrator

24. Subject to section 25, the Corporation may, on its own motion, recommend to the Oversight Committee for the appointment of a Special Administrator of any affected person.

Criteria for appointment of Special Administrator

25. The Corporation may recommend the appointment of a Special Administrator under section 23 or 24 if the Corporation is satisfied that it would serve public interest to do so or if the Corporation 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 realization of the primary affected person's assets may be achieved than on a winding up;
or
- (d) the appointment may achieve a more advantageous realization or a more expeditious settlement of a duty or liability owed by any person to the Corporation or any subsidiary of the Corporation, whether future, present, vested or contingent.

Appointment of Special Administrator

25A. (1) For the purposes of sections 23 and 24, the Corporation may, with the approval of the Oversight Committee, appoint the Special Administrator of the affected person.

(2) The Corporation may at any time after the appointment of the Special Administrator under subsection (1), with the approval of the

Oversight Committee, appoint an additional Special Administrator and may, at any time, appoint a new Special Administrator to replace any existing Special Administrator.

(3) Any decision of the Corporation under this section and sections 23, 24 and 25 shall be final and binding and shall not be reviewed, quashed, appealed against or set aside by any court.

Appointment of Independent Advisor

26. (1) Where a Special Administrator is or is to be appointed under section 23 or 24, the Oversight Committee on the recommendation of the Corporation may approve the appointment of an Independent Advisor.

(2) The Corporation may, with the approval of the Oversight Committee, appoint the Independent Advisor.

Circumstances where Special Administrator cannot be appointed

27. A Special Administrator shall not be appointed—

- (a) in respect of an affected person if the affected person has been wound up by the court and the winding up order is still subsisting;
- (b) unless the written approval of the relevant regulatory body has first been obtained, in respect of an affected person that is—
 - (i) licensed under the Insurance Act 1996 [*Act 553*];
 - (ii) licensed under the Banking and Financial Institutions Act 1989;
 - (iii) a dealer, fund manager or investment adviser as defined in the Securities Industry Act 1983;
 - (iv) a futures broker, futures fund manager or futures trading adviser as defined in the Futures Industry Act 1993;
 - (v) a stock exchange as defined in the Securities Industry Act 1983;

- (vi) a recognized clearing house and participant of a recognized clearing house as defined in the Securities Industry Act 1983;
- (vii) an exchange company as defined in the Futures Industry Act 1993;
- (viii) an approved clearing house or a futures broker that is an affiliate of a clearing house of an exchange company as defined in the Futures Industry Act 1993;
- (ix) central depository or its authorized depository agents as defined in the Securities Industry (Central Depositories) Act 1991;
- (x) licensed under the Offshore Banking Act 1990 [Act 443]; or
- (xi) licensed under the Islamic Banking Act 1983 [Act 276].

Duration of administration

28. (1) Subject to subsection (2), the administration of the affected person by the Special Administrator appointed under section 23 or 24 shall commence from the date of appointment of the Special Administrator and shall continue until it is terminated by the Corporation with the approval of the Oversight Committee.

(2) The Special Administrator shall be released from his appointment upon the approval of the termination of his appointment by the Oversight Committee on the recommendation of the Corporation.

(3) Where the Special Administrator is released from his appointment under this section, 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 Special Administrator.

(4) Nothing in this section shall prevent an action or other proceedings by any party for loss or damage due to the wilful misconduct or gross negligence of the Special Administrator.

Notification of appointment of Special Administrator

29. (1) Where a Special Administrator has been appointed under section 23 or 24, the Special Administrator shall—

- (a) within two days after such appointment give written notice thereof to the affected person;
- (b) within seven days after such appointment lodge a notice of the Special Administrator's appointment with the Registrar of Companies in the form prescribed under this Act; and
- (c) within seven days after such appointment cause a notice of the Special Administrator's appointment to be published in at least two national daily newspapers, 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 bill of lading which, after the appointment of a Special Administrator in relation to the affected person, is issued by or on behalf of the affected person or the Special Administrator, being a document on or in which the affected person's name appears, shall contain the words "Special Administrator Appointed" or similar words.

(3) A contravention of this section shall not affect the validity of the acts of the Special Administrator in the administration of the affected person.

(4) Any person who contravenes this section commits an offence and shall on conviction be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Effect of appointment of Special Administrator

29A. The appointment of a Special Administrator under section 23 or 24 shall not—

- (a) be regarded as placing the Special Administrator, 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 Special Administrator, the affected person or any other person in breach of any law or agreement prohibiting, restricting or regulating the assignment, sale, disposition 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.
- (g) be regarded as placing the Corporation, the Oversight Committee or the Special Administrator in breach of any law or any order of any court.

General powers of Special Administrator

30. The Special Administrator shall have the powers specified in the Second Schedule.

General duties of Special Administrator

31. (1) Without prejudice to sections 36, 38 and 39, the Special Administrator shall, on his appointment, take into his custody or under his control all the asset to which the affected person is or appears to be entitled.

(2) The Special Administrator shall manage the asset 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 46, in accordance with any directions 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 46, in accordance with that proposal as it may be modified from time to time in accordance with section 48.

(3) Any Special Administrator who contravenes this section commits an offence and shall on conviction be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Special Administrator as affected person's agent

32. The Special Administrator 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

33. (1) No person, including the board of directors of the affected person, other than the Special Administrator 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 Special Administrator.

(2) For the purpose of subsection (1) the Special Administrator shall be entitled to exercise all the functions of the board of directors of the affected person.

(3) In this section—

- (a) an “officer” in relation to the affected person includes a receiver, receiver and manager, provisional liquidator and director; and
- (b) 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.

(4) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Dealings with affected person's assets

34. (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 Special Administrator; or
- (b) the prior written consent of the Special Administrator 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 and shall on conviction be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Compensation

35. (1) Where a Court finds a person guilty of an offence under section 34 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 loss or damage.

(2) Notwithstanding subsection (1) the Special Administrator 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

36. (1) An officer or employee of the affected person shall within seven days after the appointment of the Special Administrator—

- (a) deliver to the Special Administrator all books 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 relating to the affected person, inform the Special Administrator of the location of those books.

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

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

as the Special Administrator may reasonably require.

(3) In this section, “officer” in relation to the affected person includes a receiver, receiver and manager, provisional liquidator and director (as defined in the Companies Act 1965).

(4) Any person who contravenes this section or submits or causes to be submitted any information that is materially false or misleading or from which there is a material omission, commits an offence and shall on conviction be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Investigation of affairs

37. (1) The Special Administrator may require any of the persons specified in subsection (2), within twenty-one days thereof or such extended time as the Special Administrator may grant, to verify and submit to the Special Administrator a statement as to the affairs of the affected person in a form determined by the Special Administrator 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;
- (da) 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

(e) such further or other information as may be required by the Special Administrator.

(2) The Special Administrator may require the following persons to verify and submit the statement of 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 Special Administrator; 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 Special Administrator who, in the opinion of the Special Administrator, have knowledge of the information required.

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

(4) The Special Administrator shall, on completion of his functions and duties under this Act, return to the affected person any books, statements, documents or anything referred to under subsection 36(1) and sections 37 and 38.

(5) In this section "employment" includes employment under a contract for services and "officer" includes a receiver, a receiver and manager, a provisional liquidator and a director (as defined in the Companies Act 1965).

(6) Any person who contravenes this section commits an offence and shall on conviction be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Special Administrator's rights to the books of the affected person

38. (1) No person is entitled, as against the Special Administrator—

- (a) to retain possession of the books of the affected person; or

(b) to claim or enforce a lien on the books of the affected person.

(2) The Special Administrator may give notice to a person and such person shall deliver to the Special Administrator the books so specified in the notice that are in his possession.

(3) Subsections (1) and (2) shall not apply in relation to any books—

(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 Special Administrator shall be entitled to inspect and make copies of such books.

(4) Any person who contravenes subsection (1) or (2) commits an offence and shall on conviction be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Special Administrator's rights to assets of the affected person

39. (1) The Special Administrator may require any person who has in his possession or control assets or books to which the affected person appears to be entitled to deliver, convey, surrender or transfer the assets or books to the Special Administrator forthwith or within such period as the Special Administrator may direct.

(2) Where the Special Administrator seizes any property which is not property 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 property, then, the Special Administrator 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 Special Administrator or any person who acts on his behalf or by the Special Administrator's own negligence.

(3) Any person who fails to comply with the requirement of the Special Administrator under subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Effect of obstructing or hindering the Special Administrator

39A. (1) No person shall obstruct or hinder the exercise of any duty, right or power by a Special Administrator.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Disclaimer

40. (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 Special Administrator may within twelve months after he becomes aware of any of the above-mentioned asset, disclaim any such asset.

(2) The rights of any person affected by the Special Administrator 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 Special Administrator may not exercise his power under subsection (1) to disclaim any market contract.

(4) For the purpose of subsection (3), a “market contract” shall have the meaning assigned to it under section 126B of the Securities Industry Act 1983 and shall include futures contracts traded on futures market that are cleared through an approved clearing house.

Effect of appointment of Special Administrator

41. (1) Subject to subsection (6), on the appointment of the Special Administrator, a moratorium shall take effect during which—

- (a) any petition for the winding up of the affected person shall be dismissed by the court;
- (b) no resolution may be passed or order made for the winding up of the affected person;
- (c) no receiver, receiver and manager or provisional liquidator, except any receiver, receiver and manager or provisional liquidator appointed by the relevant regulatory body in respect of any of the persons referred to in paragraph 27(c), may be appointed, or if appointed, his appointment shall immediately cease and he shall vacate his office;
- (d) no steps may be taken—
 - (i) to create, perfect or enforce any security over any asset of the affected person;
 - (ii) to enforce a judgment over any asset of the affected person;
 - (iii) to re-possess 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;

- (e) no proceedings and no execution or other legal process may be commenced or continued with, and no distress may be levied, against the affected person or its assets except with the prior written consent of the Corporation;

- (f) any application made under section 176 of the Companies Act 1965 shall be adjourned *sine die* and any restraining order issued pursuant to subsection 176(10) of the Companies Act 1965 shall be immediately discharged and set aside; and
- (g) no proceedings and no execution or other legal process may be commenced, or continued with, against any person providing a guarantee or acting as a guarantor for the liability of the affected person in respect of that liability 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 Special Administrator and may be terminated at any time by the Corporation with the approval of the Oversight Committee.

(3) If—

- (a) the Corporation receives the Independent Advisor's report before the expiry of the period specified in subsection (2), the Corporation may if it deems fit, extend the moratorium for a further period of twelve months or the duration required to complete the implementation of the proposal approved under section 46 or 48, as the case may be; or
- (b) in the opinion of the Corporation it is unlikely to receive the Independent Advisor's report before the expiry of the period specified in subsection (2), or in any other case, upon the recommendation of the Corporation for an extension of the moratorium, the Oversight Committee may extend the moratorium for such period or periods as the Corporation may recommend or such other period or periods as the Oversight Committee may deem appropriate.

(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 national daily newspapers one of which shall be in the national language.

(5) The Corporation shall not be liable to an action or other 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 written law against the affected person.

(7) Any decision of the Corporation under this section shall be final and binding and shall not be reviewed, quashed, appealed against or set aside by any court.

(8) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Undue preference

42. (1) On the appointment of the Special Administrator, 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, voidable or recoverable, may be avoided or recovered by the Special Administrator.

(2) For the purposes of this section, where reference is made in the law of bankruptcy to a date for the purpose of determining the effect of bankruptcy on transactions specified therein, that date shall be the date of the appointment of the Special Administrator.

Recovery of cash considerations from assets acquired or sold before the appointment of Special Administrator

42A. (1) Where any asset has been acquired by the affected person for a cash consideration within a period of two years before the appointment of a Special Administrator under this Act—

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

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

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

(2) Where any asset has been sold by the affected person for a cash consideration within a period of two years before the appointment of a Special Administrator under this Act—

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

the Special Administrator 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 sale exceeded the cash consideration.

(3) For the purposes of this section—

“cash 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;

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

“director” has the meaning as assigned to it in the Companies Act 1965.

Vacation of office of receiver, etc.

43. (1) Any receiver, receiver and manager, or provisional liquidator who vacates his office pursuant to paragraph 41(1)(c) shall immediately hand over all the assets and books of the affected person to the Special Administrator.

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

Special Administrator to prepare proposal

44. (1) The Special Administrator shall as soon as reasonably practicable from the date of his appointment prepare and submit to the Corporation a proposal setting forth the Special Administrator's plan with respect to the affected person.

(1A) The proposal of the Special Administrator or any modification to the proposal under section 48 may include any provision as the Special Administrator thinks fit.

(1B) Without prejudice to the generality of the foregoing, the proposal may include provision 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 members 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 property of the affected person;
- (d) the transfer to a company of the whole or any part of the undertaking, property or liabilities of the affected person;
- (e) the transfer to any company of all or part of the shares, or all the shares of a particular class, in the affected person;
- (f) the continuation by or against the company referred to in paragraph (d) of any legal proceedings pending by or against the affected person;
- (g) the dissolution without winding up of the affected person;

(h) any other provision necessary to ensure that the Special Administrator's proposal or plan or any compromise, arrangement, reconstruction or amalgamation with respect to the affected person shall be fully and effectively carried out.

(2) Upon receiving the proposal from the Special Administrator the Corporation shall submit the proposal to the Independent Advisor appointed under section 26.

(3) The Independent Advisor shall review the reasonableness of the proposal taking into consideration the interests of the unsecured creditors, secured creditors and members of the affected person and as soon as reasonably practicable provide his report to the Corporation.

The Corporation to consider proposal

45. (1) The Corporation shall consider the proposal submitted by the Special Administrator.

(2) The Corporation may approve the proposal for implementation once the Corporation has received the proposal together with the Independent Advisor's report.

Secured creditors meeting

46. (1) The Special Administrator 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 the affected person and each of the secured creditors of the affected person known to the Special Administrator—

- (a) a copy of the proposal;
- (b) a copy of the report of the Independent Advisor;
- (c) 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
- (d) 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 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 Special Administrator and the Corporation approves the proposal under subsection 45(2),

the proposal, including the proposal as it may subsequently be modified under section 48, shall be binding on the affected person, all members 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.

(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.

(5A) 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 48, shall not release or 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; and

(b) each such security and any such 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 48, or any compromise, arrangement, reconstruction or amalgamation in connection with the affected person.

(6) 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) nor the validity of the resolution passed at that meeting.

(7) 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 Special Administrator under subsection (2) or section 48.

(8) A Special Administrator who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Implementation of proposal

47. (1) Subject to sections 46, 48 and 49, the Special Administrator shall implement the proposal in accordance with its terms.

(2) The Special Administrator shall—

- (a) within fourteen days from the date of the approval of the proposal by the secured creditors of the affected person under section 46;
- (b) where there are no secured creditors known to the Special Administrator, within fourteen days from the date of the approval of the proposal by the Corporation under subsection 45(2); or
- (c) within fourteen days from the date of the approval of the proposal under subsection 48(6),

cause to be published in at least two national daily newspapers, 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 Special Administrator 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