

Insurance Act 1996

LAWS OF MALAYSIA

Act 553

Insurance Act 1996

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An Act to provide new laws for the licensing and regulation of insurance business, insurance broking business, adjusting business and financial advisory business and for other related purposes. Act A1247.
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ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

1. Short title and commencement.
2. Interpretation.
3. Function of Bank.

PART II

LICENSING OF INSURER, INSURANCE BROKER AND ADJUSTER

4. Classification of insurance business.
5. Business which is not insurance business.
6. Prohibition or restriction of insurance business.
7. Prohibition on annuity certain or investment-linked insurance business.
8. Activity constituting insurance business.
9. Prohibition to carry on business unless licensed.
10. Holding out as an insurer, insurance broker, adjuster or financial adviser.
11. Use of the words "insurance", "assurance", "underwriter" or "financial adviser".
12. Insurer to carry on life or general business.
13. Licensing authority.
14. Applicant for licence.

15. Application for licence.
16. Licence for insurer.
17. Licence for insurance broker, adjuster and financial adviser.
18. Minimum paid-up share capital or surplus of assets over liabilities.
19. Statement of capital.
20. Requirement as to prospectus.
21. Licence fee.
22. Membership of association.
23. Condition of licence.
24. Form of licence.
25. Display of licence.
26. Name to be affixed outside office.
27. Commencement of business.
28. Restriction of business.
29. Amendment of licensing particulars.
30. Licensed business to be carried on exclusively by licensee.
31. Revocation of licence.
32. Appeal against revocation of licence.
33. Effect of revocation of licence.
34. List of licensed insurers to be gazetted.

PART III

SUBSIDIARY AND OFFICE OF LICENSEE

35. Subsidiary of licensee.
36. Office of licensee.
37. Application under section 35 or 36.

PART IV

INSURANCE FUND AND SHAREHOLDERS' FUND

38. Establishment of insurance fund.
39. Determination of policy relating to insurance fund.
40. Credit into insurance fund.
41. Application of insurance fund.
42. Assets of insurance fund.
43. Withdrawal from insurance fund.
44. Valuation of assets and determination of liabilities.
45. Investment of assets.
46. Margin of solvency.
47. Register of policies and register of claims.
48. Document of title.
49. Restriction on grant of credit facility.
50. Security for credit facility.
51. Valuation of security.
52. Restriction or prohibition of security.
53. Restriction on assets.

54. Disclosure of interest in credit facility.
55. Disclosure of conflict of interest.
56. Secretary to record declaration.
57. Reinsurance.

PART V

DIRECTION AND CONTROL OF DEFAULTING INSURER

58. Notification of non-compliance with margin of solvency.
59. Action against insurer, employee or director.
60. Provisions relating to appointment under subsection 59(3) or (4).
61. Provisions relating to removal under paragraph 59(3) (a) or (c).
62. Provisions relating to assumption of control under subsection 59(4).
63. Effect of order under subsection 59 (4).
64. Power to cancel or issue additional capital.
65. Moratorium.

PART VI

MANAGEMENT OF LICENSEE

66. Disclosure of beneficial interest in voting shares.
67. Acquisition or disposal of aggregate of five per cent interest in shares.
68. Prohibition and restriction in the event of contravention.
69. Prohibited holding of interest in shares.
70. Appointment of director, chief executive officer, manager or financial adviser' s representative.
71. Disqualification of director or employee.
72. Effect of disqualification of director or employee.
73. Notice of cessation of office.

PART VII

AUDITOR, ACTUARY AND ACCOUNTS

74. Appointment of auditor.
75. Disqualification of auditor.
76. Restriction on audit firm.
77. Consent to act as auditor.
78. Appointment of audit firm.
79. Auditor not deemed to be employee of licensee.
80. Auditor' s report.
81. Additional requirement from auditor.
82. Auditor to report certain matters to the Bank.
83. Appointment of actuary by life insurer.
84. Cessation to be appointed actuary.
85. Actuarial investigation and report.
86. Information to auditor and appointed actuary.
87. Annual accounts.

88. Annual accounts and actuary' s report of licensed foreign insurer.
89. Quarterly returns.
90. Accounting standards.
91. Actuarial report on claims.
92. Annual accounts, quarterly returns and appointed actuary' s report to be rectified.
93. Restriction on payment of dividend.
94. Submission of annual accounts.
95. Action in relation to annual accounts.
96. Inspection.
97. Admissibility of document.
98. Liability where proper accounting records not kept.

PART VIII

EXAMINATION

99. Examination of licensee.
100. Duty to produce and provide access to document and information.
101. Examination of person other than licensee.
102. Appearance before examiner.

PART IX

INVESTIGATION, SEARCH AND SEIZURE

103. Appointment of investigating officer.
104. Power of investigating officer.
105. Obstruction to investigating officer.
106. Requirement to provide translation.
107. Power to examine person.
108. Assistance to public officer.
109. Investigating officer deemed so be public servant and public officer.

PART X

WINDING UP OF INSURER

110. Application of this Part.
111. Restriction on winding up of local insurer.
112. Bank to petition for winding up.
113. Notice relating to winding up proceeding.
114. Additional circumstances for winding up.
115. Appointment of liquidator.
116. Control of liquidator.
117. Remuneration of liquidator.
118. Statement of affairs.
119. Liquidator' s report and accounts.
120. Valuation of assets and liabilities.
121. Termination of policy.
122. Application of insurance fund in a winding up.

123. Waiver of strict proof of debt.
124. Offences by director, employee or agent of insurer.
125. Continuation of life business.
126. Winding up rules.

PART XI

TRANSFER OF BUSINESS

127. Interpretation of this Part.
128. Court to confirm scheme.
129. Submission of scheme.
130. Approval of scheme.
131. Notice of scheme.
132. Modification of scheme.
133. Petition to Court to confirm scheme.
134. Bank to be party to proceedings.
135. Effect of Court' s confirmation.
136. Reimbursement of Bank' s expenses.
137. Prohibition of payment out of insurance fund.
138. Lodgement of document.
139. Transfer of insurance broking, adjusting business or financial advisory business.

PART XII

PROVISIONS RELATING TO POLICIES

140. Insurance of property and liability.
141. Assumption of risk.
142. Premium rate under life policy.
143. Actuary' s report on policy terms.
144. Premium rate under general policy.
144. Review of premium rate.
146. Notice regarding proof of age.
147. Mis-statement of age and non-avoidance of policy.
148. Objection to life policy.
149. Control of proposal form, policy or brochure.
150. Duty of disclosure.
151. Knowledge of, and statement by, insurance agent.
152. Insurable interest.
153. Capacity of minor to insure.
154. Life policy moneys to be paid without deduction.
155. Surrender of life policy.
156. Non-payment of life policy premiums.
157. Particulars in policy.
158. Election for paid-up policy.
159. Additional rights conferred by sections 155, 156 and 158.

160. Collection of premiums at policy owner' s address.

161. Interest on claim amount.

PART XIII

PAYMENT OF POLICY MONEYS UNDER A LIFE POLICY OR PERSONAL ACCIDENT POLICY

162. Application of this Part.

163. Power to make nomination.

164. Revocation of nomination.

165. Payment of policy moneys where there is nomination.

166. Trustee of policy moneys.

167. Nominee other than a nominee under subsection 166(1).

168. Assigned or pledged policy moneys.

169. Payment of policy moneys where there is no nomination.

170. Payment to person incompetent to contract.

171. Distribution of policy moneys in due course of administration.

172. This Part to prevail over policy and any other written law.

PART XIV

INSURANCE GUARANTEE SCHEME FUND

173. Establishment and maintenance of insurance guarantee scheme fund.

174. Investment of moneys.

175. Bank may borrow moneys.

176. Levy.

177. Discontinuance of levy.

178. Utilisation of moneys.

179. Restriction on utilisation of moneys.

180. Determination of moneys payable.

181. Partial payment of claim.

182. Payment of claim.

183. Assistance in administration.

PART XV

MISCELLANEOUS

184. Agent, insurance broker and financial adviser.

185. Restriction on insurance broker and financial adviser.

186. Insurance intermediary.

PART XVI

GENERAL PROVISIONS

187. Enforcement of this Act.

188. Refund of moneys obtained in contravention of this Act.

189. Compensation.

190. Notification of certificate.

191. Indemnity.

192. Annual report.

193. Submission of information and statistics.
194. Service of notices.
195. Secrecy.
196. Permitted disclosure.
197. Decision of Minister to be final.
198. Exemptions.
199. Application of other laws.
200. Non-application of Act.
201. Power to issue guidelines.
202. Regulations.

PART XVII

OFFENCES

203. General penalty.
204. Continuing offence.
205. Offence in relation to entries in documents.
206. Offence by body corporate.
207. Offence by individual.
208. Joinder of offences.
209. Seizable offence.
210. Arrested person make over to police.
211. Power of Governor to compound offences.
212. Attempts, abetments and conspiracies.
213. Prosecution.

PART XVIII

REPEAL AND TRANSITIONAL PROVISIONS

214. Repeal and saving.
215. Saving in respect of insurers registered, insurance brokers and adjusters licensed, under the repealed Act.
216. Approval of licence to insurer deemed to be licensed under paragraph 215(1) (a).
217. Conversion into, transfer of insurance business to, public company.
218. Revocation of licence for non-compliance with section 217.
219. Approval of licence to insurance broker or adjuster deemed to be licensed under paragraph 215 (1) (b).
220. Foreign insurer to establish insurance fund.
221. Saving and disclosure in respect of interest in shares.
222. Deposits and bank covenants in lieu of deposits.
223. Moneys in the insurance guarantee scheme fund.
224. Saving in respect of life policy moneys.
225. Provisions for removing difficulties.

Schedule [Repeals & Amendments]

PART I PRELIMINARY

Short title and commencement. 1. This Act may be cited as the Insurance Act 1996 and shall come into force on such date as the Minister may, by notification in the Gazette, appoint.

Interpretation. 2. In this Act, unless the context otherwise requires—
“adjuster” means a person who carries on adjusting business either for the insurer or the policy owner or both;

“adjusting business” means the business of investigating the cause and circumstances of a loss and ascertaining the quantum of the loss;

“annuity” means right to a series of periodical payments at intervals of one year or less under a contract with a life insurer.

“appointed actuary” means an actuary appointed under subsection 83 (1);

“appointed person” means a person appointed under paragraph 59 (4) (a);

Act 125. “approved company auditor” has the meaning in the Companies Act 1965;

“associated” , in relation to a person, means—

- (a) a relative of that person;
- (b) a company of which that person is a director;
- (c) a person who is an employee or partner of that person; and
- (d) if that person is a company, a director or subsidiary of that company and a director or employee of that subsidiary;

Act 519. “Bank” means the Central Bank established by the Central Bank of Malaysia Act 1958;

“body corporate” means a person incorporated by or under any written law, and includes a statutory body, public authority, or other authority, incorporated by or under a written law, a corporation, and a corporation sole;

“chief executive officer” , in relation to an institution, means an individual, who either individually or jointly with one or more other persons, is responsible, subject to the authority of the directors, for the conduct of the business and the administration of the institution;

“child” includes an illegitimate child, a step-child and a child adopted under any written law of Malaysia or of any place outside Malaysia, or under a custom recognised by a class of persons in or outside Malaysia;

“commission” means an amount or a benefit in kind, whether expressed as a percentage of premium or not, agreed to be paid by a licensed insurer to an insurance agent or insurance broker, including introducer’ s fees;

Act 125. “company” has the meaning in the Companies Act 1965;

“constituent document” , in relation to an institution, means the statute,

charter, memorandum of association and articles of association, rules and by-laws, partnership agreement, or other instrument, under or by which the institution is established and its governing and administrative structure and the scope of its functions and business are set out, whether contained in one or more documents;

“controller” , in relation to an institution, means—

(a) chief executive officer of the institution or of a body corporate of which the institution is a subsidiary;

(b) a person who, either alone or with any associate—

(i) has interest in one-third or more of its voting shares;

(ii) has the power to appoint, or cause to be appointed, a majority of its directors; or

(iii) has the power to decide, or cause to be decided, in respect of its business or administration;

Act 502. “co-operative society” means a co-operative society registered under the Co-operative Societies Act 1993;

Act 125. “corporation” has the meaning in the Companies Act 1965;

“credit facility” means an advance, loan or any other facility by which the borrower has access, directly or indirectly, to the funds of the lender and includes the giving of a guarantee in relation to a credit facility;

“director” includes a person who occupies the position of a director and includes a person in accordance with whose directions or instructions the directors or officers are accustomed to act and an alternate or substitute director, and without prejudice to the foregoing, in the case of—

(a) a co-operative society, means a member of the board, or other governing body of the co-operative society;

(b) a statutory body, means a member of the board, committee, council or other governing body of the statutory body;

(c) a partnership, means a partner;

(d) a sole-proprietorship, means the sole-proprietor; and

(e) any other body, association or group of persons, whether corporate or unincorporate, means a person having the direction and control of the management of its business or affairs;

Act 56. “document” has the meaning in the Evidence Act 1950 and includes books and accounts;

“effective date” means the date of coming, into force of this Act;

“employee” , in relation to a licensee, includes the chief executive officer;

“financial adviser” means a person who carries on financial advisory business; Act A1247.

“financial adviser’ s representative” means an individual by whatever name described, in the direct employment of or acting for or by arrangement with a financial adviser, who performs for the financial adviser any of the functions of a financial adviser other than work ordinarily performed by accountants, clerks or cashiers, whether his remuneration, if any, is by way of payment of

salary, wages, commission or otherwise and includes an officer of the financial adviser who performs for the financial adviser any of those functions, whether or not his remuneration is as aforesaid;

“financial advisory business” means any or all of the following services:

- (a) analysing the financial planning needs of a person relating to insurance products;
- (b) recommending the appropriate insurance products;
- (c) sourcing insurance products from a licensed insurer;
- (d) arranging of contracts in respect of insurance products; or
- (e) other financial services as prescribed by the Bank;

“financial year” , in relation to a licensee, means the period for which the licensee makes up the accounts of its business which shall be a period of twelve calendar months, calculated from the commencement of the business or from the end of the immediately preceding financial year, as the case may be, or such longer or shorter period as the Bank, in relation to a particular licensee, may approve on a particular occasion;

“foreign insurer” means an insurer which is incorporated outside Malaysia;

“foreign policy” means a policy which is issued by a licensed insurer and is not a Malaysian policy;

“Governor” means the Governor of the Bank and includes a Deputy Governor of the Bank;

“insurance” includes reinsurance;

“insurance agent” means a person who does all or any of the following:

- (a) solicits or obtains a proposal for insurance on behalf of an insurer;
 - (b) offers or assumes to act on behalf of an insurer in negotiating a policy;
- or
- (c) does any other act on behalf of an insurer in relation to the issuance, renewal, or continuance, of a policy;

“insurance broker” means a person who, as an independent contractor, carries on insurance broking business and includes a reinsurance broker;

“insurance broking business” means the business of soliciting, negotiating or procuring a policy with an insurer, or the renewal or continuance of the policy, for a policy owner other than himself and includes reinsurance broking for an insurer;

“insurance claim” means a demand for payment of an amount due under a policy;

“insurance fund” means an insurance fund established and maintained under section 38;

“insurer” includes a professional reinsurer;

“interest in a share” means a legal or equitable interest in a share;

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

“licensed” means licensed under section 16 or 17;

Act 372. “licensed bank” has the meaning in the Banking and Financial

Institutions Act 1989;

“licensed business” means insurance business, insurance broking business, adjusting business or financial advisory business;

“licensee” means an insurer, insurance broker, adjuster or financial adviser, licensed under section 16 or 17;

“life business” means the business of undertaking liability under a life policy;

“life policy” means a policy by which payment of policy moneys is insured on death or survival, including extensions of cover for personal accident, disease or sickness and includes an annuity but does not include a personal accident policy;

“local insurer” means an insurer which is incorporated in Malaysia;

“Malaysian policy” means a policy which is issued in Malaysia by a licensed insurer and which is—

(a) a life policy where the policy owner’s address is or was an address in Malaysia;

Act 53. (b) a general policy which relates to risks arising in Malaysia, or where the policy owner is a resident of, or a permanent establishment in, Malaysia within the meaning of the Income Tax Act 1967; or

(c) a reinsurance contract with another licensed insurer;

“margin of solvency” means the margin of solvency required under section 46;

“member” , in relation to an institution which is—

(a) a corporation, means a shareholder;

(b) a co-operative society, means a member of the society;

(c) any other corporate body having a membership, means a member of that body;

(d) a partnership, mean a partner; and

Act 335. (e) a society registered under the Societies Act 1966, means a member of the society;

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

“non-participating life policy” means a life policy not conferring any right to share in the surplus of a life insurance fund;

“office” includes the principal place of business, an electronic terminal and any other place from where or at which business of the licensee is carried on;

“officer” , in relation to an institution, includes an employee and the chief executive officer;

“participating life policy” means a life policy conferring right to share in the surplus of a life insurance fund;

“personal accident policy” means a policy providing fixed pecuniary benefits or benefits in the nature of indemnity or both against risks of the person insured sustaining injury or dying as the result of an accident or becoming incapacitated in consequence of disease;

“policy” means an insurance policy and includes a cover note or a contract

of insurance, whether or not embodied in or evidenced by an instrument in the form of an insurance policy, and references to—

(a) issuing a policy shall be construed as entering into a contract of insurance, whether or not a formal contract has been issued; and

(b) a policy of an insurer includes a policy or a bond in respect of which the insurer is under any liability, whether the policy was issued by the insurer or the liability was transferred to the insurer from another insurer;

“policy moneys” includes any benefit, whether pecuniary or not, which is secured by a policy;

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

(a) where a policy has been assigned, the assignee;

(b) the personal representative of a deceased policy owner, where such personal representative is entitled as against the insurer to the benefit of a policy;

(c) in relation to a policy providing for the payment of annuity, an annuitant; and

(d) where under a policy, moneys are due or payable, whether periodically or otherwise, the person to whom the moneys are due or payable;

“policy owner’s address” means the address of the policy owner specified in the policy or any other address subsequently notified in writing by the policy owner to the insurer;

“premium” means the amount payable to an insurer under a policy as consideration for the obligations assumed by the insurer;

“prescribed” means prescribed by regulations published in the Gazette, and a power to prescribe includes the power to make different provisions in the regulations for different persons or classes of persons;

Act 125. “private company” has the meaning in the Companies Act 1965;

“professional reinsurer” means a reinsurer which is licensed to carry on solely reinsurance business;

“property” means movable or immovable property and includes—

(a) a right, interest, title, claim, chose-in-action, power or privilege, whether present or future, or whether vested or contingent, in relation to any property; and

(b) a conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of immovable property where the person executing the conveyance is the proprietor or possessor, or is entitled to a contingent right, either for the whole or part of the interest;

Act 125. “public company” means a company incorporated under the Companies Act 1965 and whose memorandum of association or articles of association do not impose the restrictions, limitations and prohibitions referred to in subsection 15(1) of that Act;

“reinsurance” means insurance cover effected by an insurer with a second insurer on the risks, wholly or partly, it has accepted and includes any similar arrangement by a branch of the insurer in Malaysia with its branch

outside Malaysia (the head office of the insurer being, for this purpose, treated as a branch);

Act 125. “related corporation” has the meaning in the Companies Act 1965;

“relative” , in relation to a person, means—

- (a) a spouse of the person;
- (b) a brother or sister of the person;
- (c) a brother or sister of a spouse of the person;
- (d) a lineal ascendant or descendant of the person;
- (e) a lineal ascendant or descendant of a spouse of the person;
- (f) a spouse of any person referred to in paragraph (b), (c), (d) or (e);
- (g) a lineal descendant of a person referred to in paragraph (b), (c) or (f);
- (h) an uncle, aunt or cousin of the person, or of a spouse of the person; or
- (i) a spouse, or a lineal ascendant or descendant, of the person referred to in paragraph (h);

Act 89. “repealed Act” means the Insurance Act 1963 repealed under subsection 214 (1);

“share” , in relation to a corporation, means an issued share of the corporation and includes stock except where a distinction between stock and share is expressed or implied;

“specify” means specify in writing, and a power to specify includes the power to specify differently for different persons or different classes of persons, and to amend any specification;

Act 125. “subsidiary” has the meaning in section 5 of the Companies Act 1965.

Function of Bank Act 519. 3. (1) In addition to the functions conferred on the Bank under the Central Bank of Malaysia Act 1958, the Bank shall have all the functions conferred on it by this Act and the Governor shall perform the functions of the Bank on its behalf.

(2) The Bank may authorise an officer of the Bank to perform any of the functions of the Bank under this Act.

(3) The Bank, either generally or in a particular case, may appoint a person who is not an officer of the Bank—

(a) to render such assistance in the performance of its functions under this Act; or

(b) to perform such functions on behalf of and in the name of the Bank, as it may specify.

PART II LICENSING OF INSURER, INSURANCE BROKER AND ADJUSTER

Classification of insurance business. 4. (1) For the purposes of this Act, insurance business shall be divided into two classes:

(a) life business, which in addition to all insurance business concerned with

life policies shall include any type of insurance business carried on as incidental only to the life insurer's business; and

(b) general business, which means all insurance business which is not life business.

(2) For the purposes of this Act, reinsurance of liabilities under a policy is treated as insurance business of the class and description to which the policy would have belonged if it had been issued by the reinsurer.

(3) Notwithstanding subsections (1) and 39 (2) if the Bank is satisfied that any part of a licensed insurer's business which belongs to a particular class or description of insurance business, in the licensed insurer's case ought to be treated as belonging to another class or description, the Bank may direct that it be so treated.

Business which is not insurance business. 5. For the purposes of this Act, the following is not insurance business:

(a) the operation by an employer, otherwise than for profit, of a scheme or arrangement making financial provision for his employees' retirement, or future termination of service through death or disability;

Act 335. (b) the business carried on in accordance with Part II of the Societies Act 1966 by a mutual benefit society as defined in section 2 of that Act; and

(c) export credit and other credit guarantee insurance business carried on by Malaysia Export Credit Insurance Berhad.

Prohibition or restriction of insurance business. 6. The Bank, in the interest of orderly operation of a licensed insurer's business or of the insurance industry, may prohibit or restrict a licensed insurer in writing from carrying on such description of insurance business as it may specify.

Penalty : Imprisonment for three years or three million ringgit or both.
Default penalty.

Prohibition on annuity certain or investment-linked insurance business. 7. (1) Except with the prior written approval of the Bank and subject to such conditions as it may specify, no licensed insurer shall carry on—

(a) annuity certain business; or

(b) investment-linked insurance business.

Penalty : Imprisonment for three years or three million ringgit or both.
Default penalty.

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

(a) "annuity certain" means an annuity contract where the duration of periodic payments is predetermined and does not depend on the death or survival of the policy owner;

(b) "investment-linked insurance business" means the effecting and carrying out of a contract of insurance on human life or annuity where the benefits are, wholly or partly, to be determined by reference to the value of, or the

income from, property of any description or by reference to fluctuations in, or in an index of, the value of property of any description.

Activity constituting insurance business. 8. (1) For the purposes of this Act, a reference to carrying on insurance business includes all or any of the following:

- (a) receiving proposals for insurance;
- (b) negotiating on proposals for insurance on behalf of an insurer;
- (c) issuing of policies;
- (d) collection or receipt of premiums on policies; or
- (e) settlement or recovery of claims on policies.

(2) For the purposes of this Act, a reference to carrying on insurance business includes carrying it on through an agent, or as agent; but "insurer" does not include an insurance agent as such nor in the case of a person who is both insurer and insurance agent, have reference to business done as insurance agent.

Prohibition to carry on business unless licensed. 9. (1) No person, unless he is licensed under this Act, shall carry on—

- (a) insurance business;
- (b) insurance broking business; Act A1247.
- (c) adjusting business; or
- (d) financial advisory business.

Penalty : Insurer – Imprisonment for ten years or ten million ringgit or both. Default penalty.

Insurance broker – Imprisonment for three years or three million ringgit or both. Default penalty.

Adjuster – Imprisonment for one year or one million ringgit or both. Default penalty.

Financial adviser – Imprisonment for two years or two million ringgit or both. Default penalty.

- (2) Paragraph (1) (c) shall not apply to—
- (a) an advocate, solicitor or a member of any other profession who acts or assists in adjusting insurance claims incidental to his practice and who does not hold himself out as an adjuster;
 - (b) an adjuster of aviation or maritime losses; or
 - (c) an employee of a licensed insurer who, in the course of his employment, acts or assists in adjusting insurance claims and who does not hold himself out as an adjuster.

- (3) Paragraph (1) (d) shall not apply to—
- (a) a licensed insurer or licensed insurance broker;
 - (b) a licensed institution as defined under the Banking and Financial Institutions Act 1989 [Act 372];
 - (c) an Islamic bank licensed under the Islamic Banking Act 1983 [Act 276];

- (d) a takaful operator or takaful broker as defined under the Takaful Act 1984 [Act 312];
- (e) an insurance agent or takaful operator's agent;
- (f) a company registered under the Trust Companies Act 1949 [Act 100];
- (g) an advocate and solicitor or accountant in practice whose carrying on of that business is solely incidental to the practice of his profession;
- (h) a person who is the proprietor of a newspaper and holder of a permit issued under the Printing Presses and Publications Act 1984 [Act 301] where—
 - (i) insofar as the newspaper is distributed generally to the public, it is distributed only to subscribers for and purchasers of the newspaper for value;
 - (ii) the advice is given, or the analyses or reports are issued or promulgated only through that newspaper;
 - (iii) that person receives no commission or other consideration for giving the advice, or for issuing or promulgating the analyses or reports; and
 - (iv) the advice is given, or the analyses or reports are issued or promulgated solely as incidental to the conduct of that person's business as a newspaper proprietor;
- (i) a person who owns, operates or provides an information service through an electronic, broadcasting or telecommunications medium, where—
 - (i) the service is generally available to the public in Malaysia;
 - (ii) the advice is given, or analyses or reports are issued or promulgated only through that service;
 - (iii) that person receives no commission or other consideration for giving the advice, or for issuing or promulgating the analyses or reports; and
 - (iv) the advice is given, or the analyses or reports are issued or promulgated solely as incidental to that person's ownership, operation or provision of that service; or
- (j) such other person as the Bank may specify.

Holding out as an insurer, insurance broker, adjuster or financial adviser.

10. No person shall hold himself out to be an insurer, insurance broker, adjuster or financial adviser unless he is licensed under this Act. Act A1247.

Penalty : Insurer - Imprisonment for ten years or ten million ringgit or both. Default penalty.

Insurance broker - Imprisonment for three years or three million ringgit or both. Default penalty.

Adjuster - Imprisonment for one year or one million ringgit or both. Default penalty.

Financial adviser - Imprisonment for two years or two million ringgit or both. Default penalty.

Use of the words "insurance", "assurance", "underwriter" or "financial adviser" 11. (1) Except with the prior written approval of the Bank— Act

A1247.

(a) no person other than a licensee shall use the words “insurance”, “assurance” or “underwriter”; and

(b) no person who is not licensed under this Act to carry on financial advisory business shall use the words “financial adviser”, or any of its derivatives in any language, or any other words in any language capable of being construed as indicating the carrying on of any of the licensed businesses in the name, description or title under which he carries on business or make any representation to such effect in any bill head, letter paper, notice or advertisement or in any other manner.

Penalty: Five hundred thousand ringgit. Default penalty.

(2) Subsection (1) shall not apply to—

(a) a person who appends to his name an insurance qualification conferred on him by a prescribed body, where the qualification so appended is followed with the initials of the name of that body;

(b) an association of licensees or association of employees of licensees;

(c) an insurance agent registered with Life Insurance Association of Malaysia or General Insurance Association of Malaysia in relation to the use of the words “insurance”, “assurance” or “underwriter” in paragraph (1) (a); and

(d) persons mentioned in paragraphs 9(3) (a) to (d) in relation to the use of the words “financial adviser” in paragraph (1) (b).

Insurer to carry on life or general business. 12. (1) A licensed insurer, other than a licensed professional reinsurer, shall not carry on both life business and general business.

(2) Notwithstanding subsection (1), a licensed life insurer may carry on the business of insuring solely against disease or sickness or solely against medical expenses subject to such requirement and condition as the Bank may prescribe.

(3) Subsection (1) shall not apply to an insurer lawfully carrying on both businesses on the effective date.

Licensing authority. 13. (1) The Minister shall be responsible for the issue of licence authorising the holder to carry on insurance business.

(2) The Bank shall be responsible for the issue of licence authorising the holder to carry on insurance broking business, adjusting business or financial advisory business. Act A1247.

Applicant for licence. 14. No person shall apply for a licence to carry on—

(a) insurance business, unless it is a public company;

(b) insurance broking business, adjusting business or financial advisory business, unless it is a company; or Act A1247.

(c) business as a professional reinsurers, unless it is a body corporate.

Application for licence. 15. An application for a licence shall be made in writing to the Bank in such form and manner, and set out such licensing particulars, as may be specified by the Bank.

Licence for insurer. 16. (1) The Bank, at any time after receiving an application for a licence to carry on insurance business, shall make a recommendation to the Minister whether the licence should be granted or not and the conditions, if any, to be imposed on the licence.

(2) The Minister, after considering—

(a) whether or not the issue of the licence would be conducive to a sound financial structure in Malaysia; and

(b) whether or not the interests of the general public will be served if the licence is issued,

may grant a licence, with or without conditions, or refuse to grant a licence.

(3) The Bank shall notify the applicant in writing of the Minister's decision.

License for insurance broker, adjuster and financial adviser. 17. (1) The Bank, on receipt of an application for a licence to carry on insurance broking business, adjusting business or financial advisory business, may grant a licence, with or without conditions, or refuse to grant a licence. Act A1247.

(2) A licence for an insurance broker, an adjuster or a financial adviser shall be for such period as the Bank may specify in the licence.

Minimum paid-up share capital or surplus of assets over liabilities. 18. (1) A licensed local insurer shall maintain a minimum paid-up share capital of such amount as may be prescribed.

Penalty: Three million ringgit. Default penalty.

(2) A licensed foreign insurer shall maintain in Malaysia at all times a minimum surplus of assets over liabilities of such amount as may be prescribed.

Penalty: Three million ringgit. Default penalty.

(3) A licensed insurance broker, licensed adjuster or licensed financial adviser shall maintain at all times a minimum paid-up share capital unimpaired by losses of such amount as may be prescribed. Act A1247.

Penalty: One hundred thousand ringgit. Default penalty.

Statement of capital. 19. No licensed insurer shall issue a notice, advertisement, or any other official publication, containing a statement of its authorised share capital unless it states the amount of share capital that has been subscribed and that has been paid-up.

Penalty: One hundred thousand ringgit.

Requirement as to prospectus. 20. A licensed insurer shall not issue, circulate or distribute its prospectus unless—

- (a) the Bank has approved the prospectus in writing; or
- (b) it has modified the prospectus in such manner as the Bank may specify.

Penalty : Five hundred thousand ringgit.

License fee. 21. (1) A licensee, upon being licensed, shall pay to the Bank a licence fee of such amount, or calculated at such rate or in such manner as may be prescribed.

(2) A licensed insurer shall pay to the Bank—

(a) a fee upon obtaining the approval of the Bank under section 36 for establishing an office in Malaysia, other than its principal place of business; and

(b) on or before 31 January every year, an annual fee for the licence and in respect of its principal place of business and each of its other offices, of such amount, or calculated at such rate or in such manner as the Minister may prescribe.

Penalty : Five hundred thousand ringgit. Default penalty.

Membership of association. 22. (1) No licensee shall carry on its licensed business unless it is a member of an association of—

- (a) life insurers for life insurance business;
- (b) general insurers for general insurance business;
- (c) insurance brokers; or
- (d) adjusters,

the constituent documents of which have been approved by the Bank.

(2) No amendment shall be made to the constituent documents of an association without the prior written approval of the Bank.

Penalty : Five hundred thousand ringgit. Default penalty.

(3) The Bank may direct an association to take, or refrain from taking, such action as it may specify.

Condition of licence. 23. The Minister, in the case of a licensed insurer, or the Bank, in the case of a licensed insurance broker, licensed adjuster or licensed financial adviser, at any time—

- (a) may impose any condition on a licence; or
- (b) may amend any condition imposed on a licence.

Form of licence. 24. (1) A licence shall be in such form as may be specified by the Bank.

(2) A licence shall be issued under the hand of—

- (a) the Minister, in the case of an insurer; or
- (b) the Governor, in the case of an insurance broker, adjuster or financial adviser. Act A1247.

Display of licence. 25. A licensee shall display a copy of the licence issued under subsection 24 (2) in a conspicuous position at its principal place of business and unless exempted by the Bank in writing, at each of its other offices, other than an electronic terminal.

Name to be affixed outside office. 26. Every licensee, unless exempted by the Bank in writing, shall affix or paint on the outside of each of its offices in a prominent position and easily legible in the national language, in such manner as may be specified by the Bank, its name and the words “insurer berlesen”, “broker insurans berlesen”, “ajuster berlesen” or “penasihat kewangan berlesen”, as the case may be, or such other words to clearly indicate the business for which it is licensed. Act A1247.

Penalty : Five hundred thousand ringgit.

Commencement of business. 27. (1) A licensed insurer shall commence to carry on its licensed business not more than twelve months after the date of the issue of its licence.

(2) A licensed insurer shall be deemed to carry on its licensed business if it establishes its principal place of business and has issued policies in respect of the business.

(3) A licensed insurer shall notify the Bank in writing within fourteen days of commencing to carry on its licensed business.

(4) Where a licensed insurer fails to commence to carry on its licensed business upon the expiry of the period specified in subsection (1), its licence shall be deemed to have been revoked.

Restriction of business. 28. (1) Except with the prior written approval of the Bank, a licensee shall not carry on any activity in or outside Malaysia, otherwise than in connection with or for the purposes of its licensed business. Act A1247.

Penalty : Imprisonment for three years or three million ringgit or both.

Default penalty.

(2) Subsection (1) shall not apply to a licensed financial adviser who is also a licensee under the Securities Industry Act 1983 [Act 280] or the Futures Industry Act 1993 [Act 499] in respect of activities licensed under those Acts.

Amendment of licensing particulars. 29. (1) A licensee shall not make any amendment to its licensing particulars, including its constituent documents, unless it has furnished to the Bank in writing particulars of the proposed amendment and obtained the prior written approval of the Bank.

Penalty : One million ringgit.

(2) A licensee, within thirty days after the making of any amendment to its constituent documents, shall furnish to the Bank—

(a) particulars in writing of the amendment duly verified by a statutory declaration made by one of its directors; and

(b) a copy of the amended constituent document.

Penalty : One hundred thousand ringgit. Default penalty.

Licensed business to be carried on exclusively by licensee. 30. (1) A licensee shall exclusively manage its licensed business and, except as may be approved by the Bank in writing to such extent and for such duration as it may specify, shall not allow any part of its licensed business to be managed by another person.

Penalty : Three million ringgit. Default penalty.

(2) Notwithstanding subsection (1), a licensed insurer—

(a) may arrange to carry on its licensed business jointly or through one or more licensed insurers whereby the licensed insurers share the business in such proportion as may be agreed; or

(b) may co-insure with another licensed insurer.

Revocation of licence. 31. (1) The Minister, on the recommendation of the Bank, may revoke the licence of a licensed insurer, and the Bank may revoke the licence of a licensed insurance broker, licensed adjuster or licensed financial adviser, as the case may be, if— Act A1247.

(a) the licensed insurer has ceased to issue any new policy in respect of its licensed business;

(b) the licensed insurance broker has ceased to carry on insurance broking business;

(c) the licensed adjuster has ceased to carry on adjusting business;

(ca) the licensed financial adviser has ceased to carry on financial advisory business;

(d) the licensee is carrying on its business in a manner which is likely to be detrimental to the interests of its customers;

(e) the licensee is contravening or has contravened any of the provisions of this Act or any conditions imposed on its licence or any directions given by the Bank under this Act regardless that there has been no prosecution for an offence in respect of such contravention;

(f) the licensee, or any of its officers responsible for its management, has furnished false misleading or inaccurate information or has concealed, or failed to disclose, material facts in its application for a licence or in any returns filed under this Act;

(g) the licensee, or any of its directors or officers responsible for its management, has been convicted of an offence under this Act or an offence relating to fraud or dishonesty under any other written law;

(h) the licensee is unable to meet its obligations under this Act, financial or otherwise;

(i) the licensee proposes to make or has made a composition or arrangement with its creditors or has gone into liquidation or has been ordered to be wound up

or otherwise dissolved;

(j) a receiver or manager of the property of the licensee has been appointed;

(k) possession of property of the licensee has been taken by or on behalf of a debenture holder pursuant to a charge on the property; or

(l) it is in the interest of the public to do so.

(2) The Minister, on the recommendation of the Bank, may revoke the licence of a licensed insurer if he is satisfied that it has failed to effect reinsurance arrangements appropriate to the business and has failed to comply with the Bank's written direction on reinsurance arrangements under subsection 57 (3).

(3) Where a licence is proposed to be revoked, a written notice specifying the proposed revocation and the grounds for the revocation shall be given to the licensee.

(4) The licensee shall be given an opportunity to make written representation to the Bank within fourteen days of service of the notice.

(5) Where no written representation is received by the Bank within the period specified under subsection (4), the Minister, or the Bank, as the case may be, shall revoke the licence by written notice.

(6) Where representation is received, the Minister, in the case of a licensed insurer, or the Bank, in the case of a licensed insurance broker, licensed adjuster or licensed financial adviser, upon considering the representation, shall give the licensee written notice of the decision.

(7) A revocation under subsection (5), or a decision under subsection (6), shall not take effect from a date earlier than fourteen days from the date of notice.

(8) Where the Minister, in the case of a licensed insurer, or the Bank, in the case of a licensed insurance broker, licensed adjuster or licensed financial adviser, decides not to revoke the licence, the Minister or the Bank, as the case may be, may impose such condition or restriction on the licence as may be specified in the notice.

(9) A revocation of a licence shall be published in the Gazette as soon as possible, but any delay in the publication or failure to make the publication shall not in any manner affect the validity of the revocation.

Appeal against revocation of licence. 32. (1) An insurer dissatisfied with the revocation of its licence, within fourteen days of the date of the written notice of the decision of the Minister under subsection 31(5) or (6), may appeal against the decision to the Court.

(2) An insurance broker, adjuster or financial adviser dissatisfied with the revocation of its licence, within fourteen days of the date of the written notice of the decision of the Bank under subsection 31 (5) or (6), may appeal against the decision to the Minister. Act A1247.

Effect of revocation of licence. 33. (1) Where the revocation of a licence has

taken effect, the insurer, insurance broker, adjuster or financial adviser, as the case may be, shall immediately cease to carry on its business. Act A1247.

Penalty : Insurer – Imprisonment for ten years or ten million ringgit or both. Default penalty.

Insurance broker – Imprisonment for three years or three million ringgit or both. Default penalty.

Adjuster – Imprisonment for one year or one million ringgit or both. Default penalty.

Financial adviser – Imprisonment for two years or two million ringgit or both. Default penalty.

(2) The revocation of a licence shall not prejudice the enforcement of any right or claim by, or against, an insurer, an insurance broker, an adjuster or a financial adviser.

(3) Notwithstanding the revocation of its licence, the insurer, insurance broker, adjuster or financial adviser, except where the Minister on the recommendation of the Bank otherwise decides, shall continue to be subject to this Act to the same extent as a licensee and shall continue to discharge its obligations so long as its liabilities remain unsatisfied or not otherwise provided for to the satisfaction of the Bank.

List of licensed insurers to be gazetted. 34. The Bank shall cause to be published in the Gazette a list of licensed insurers not later than 31 March each year and additions to or deletions from the list shall be published from time to time as they are made.

PART III SUBSIDIARY AND OFFICE OF LICENSEE

Subsidiary of licensee. 35. No licensee incorporated in Malaysia shall establish or acquire a subsidiary in or outside Malaysia without the prior written approval of the Bank.

Penalty : Three million ringgit. Default penalty.

Office of licensee. 36. (1) No licensee incorporated in Malaysia shall open an office in or outside Malaysia, and no licensed foreign insurer shall open an office in Malaysia, without the prior written approval of the Bank.

Penalty : One million ringgit. Default penalty.

(2) Subsection (1) applies to relocation of an office.

Application under section 35 or 36. 37. An application for the approval of the Bank under section 35 or 36 shall contain such information and documents as the Bank may specify.

PART IV INSURANCE FUND AND SHAREHOLDERS' FUND

Establishment of insurance fund. 38. (1) A licensed life insurer shall establish and maintain a separate insurance fund for its Malaysian policies and for its foreign policies.

(2) A licensed general insurer shall establish and maintain a separate insurance fund for its Malaysian policies and for its foreign policies.

(3) A licensed foreign professional reinsurer shall establish and maintain a separate insurance fund for its Malaysian life policies and for its Malaysian general policies.

(4) An insurer shall maintain an insurance fund so long as it is under liability in respect of any policy or insurance claim relating to that fund.

Penalty : Imprisonment for five years or five million ringgit or both.
Default penalty.

(5) Notwithstanding subsections (1), (2) and (3), the Bank—
(a) having regard to the small number of foreign policies issued by a licensed insurer, may allow the licensed insurer to maintain only one insurance fund for its Malaysian policies and foreign policies; or
(b) may direct a licensed insurer to establish and maintain a separate insurance fund for any category or description of its insurance business, to be called by such name as the Bank may specify.

Penalty : Imprisonment for one year or one million ringgit or both. Default penalty.

Determination of policy relating to insurance fund. 39. (1) Where a licensed insurer has established before the effective date, or establishes on or after that date, an insurance fund—

(a) the licensed insurer, on or as soon as practicable after the effective date or the date on which the insurance fund is established, whichever is the later date, shall determine which, if any, of the policies issued by it, or under which it has undertaken liability, before that later date are policies which relate to that insurance fund; and

(b) the licensed insurer, when issuing, or undertaking liability under, a policy on or after that later date, shall determine the insurance fund to which the policy relates.

(2) Where a licensed insurer determines that a policy relates to an insurance fund, the policy for the purposes of this Act, shall be deemed to be, and continue to be, included in that insurance fund until the determination is revoked.

Credit into insurance fund. 40. (1) A licensed insurer shall pay into an insurance fund all moneys received by it in respect of policies of a class to which the insurance fund relates and which are issued by it or under which it has undertaken liability.

(2) A licensed insurer shall carry to an insurance fund all income arising from the investment of the assets of that insurance fund.

Penalty : Imprisonment for five years or five million ringgit or both.

Default penalty.

Application of insurance fund. 41. (1) A licensed insurer shall maintain at all times assets in its insurance fund which is of a value equivalent to or higher than the liabilities of that insurance fund.

Penalty : Imprisonment for five years or five million ringgit or both.

Default penalty.

(2) Subject to section 122, a licensed insurer shall apply the assets of an insurance fund only to meet such of its liabilities and expenses as are properly attributable to that insurance fund.

Penalty : Imprisonment for five years or five million ringgit or both.

Default penalty.

Assets of insurance fund. 42. (1) A licensed insurer shall keep the assets of its insurance fund separate from its other assets.

Penalty : Imprisonment for five years or five million ringgit or both.

Default penalty.

(2) A licensed insurer shall not include any of the following as assets of an insurance fund:

(a) an amount on account of goodwill;

(b) a development expenditure or any amount capitalised in respect of such expenditure;

(c) any other item of expenditure similar to the item in paragraph (b) which is not realisable apart from the business, wholly or partly, to which that insurance fund relates; and

(d) such other asset as may be specified by the Bank.

Withdrawal from insurance fund. 43. (1) Where there is a surplus of assets over liabilities in a general insurance fund at the end of a financial year, the licensed general insurer may withdraw the surplus subject to—

(a) any instrument or contract binding the licensed general insurer; or

(b) its constituent documents.

(2) Where upon an actuarial valuation of a life insurance fund, there is a surplus of assets over liabilities in the life insurance fund at the end of a financial year, the licensed life insurer, on the recommendation of the appointed actuary, may allocate a part of the surplus attributable to participating and non-participating policies—

(a) by way of bonus to participating policies; and

(b) for transfer out of that life insurance fund to the shareholders' fund, subject to such limits and such proportions as may be prescribed.

(3) If the sum of moneys transferable from a life insurance fund in accordance with any instrument or contract binding the licensed life insurer,

or its constituent documents is less than the sum of moneys allowed under subsection (2), then the lesser sum of moneys shall be transferable.

(4) For the purpose of subsection (2), the following shall be deemed to be a participating life policy:

- (a) an extension of a participating life policy which does not confer a right to share in the surplus of a life insurance fund; or
- (b) a non-participating policy which has an extension conferring a right to share in the surplus of a life insurance fund.

Valuation of assets and determination of liabilities. 44. The Bank may prescribe the manner for—

- (a) valuing the insurance fund assets and other assets of a licensed insurer; and
- (b) determining the insurance fund liabilities and other liabilities of the licensed insurer.

Investment of assets. 45. (1) Subject to subsection (2), a licensed insurer shall invest its assets in such manner, and maintain the assets in such place, as may be prescribed.

Penalty : Imprisonment for three years or three million ringgit or both.
Default penalty.

(2) The Bank may direct a licensed insurer in writing—

- (a) not to make investment of a specified class or description; or
- (b) to realise, before the expiry of a specified period or such extended period as the Bank may approve, the whole or a specified proportion of its investment.

Penalty : Imprisonment for three years or three million ringgit or both.
Default penalty.

Margin of solvency. 46. (1) A licensed insurer shall maintain a margin of solvency in respect of each class of its insurance business of such amount, and in such manner, as may be prescribed.

Penalty : Imprisonment for five years or five million ringgit or both.
Default penalty.

(2) The Bank may specify—

- (a) the class or description of assets of a licensed insurer; or
- (b) the extent of a class or description of assets of a licensed insurer, which may be taken into account for the purpose of the licensed insurer's margin of solvency.

(3) A licensed insurer shall hold assets representing its margin of solvency within its respective insurance funds unless otherwise approved by the Bank.

(4) Subject to subsection (3), a licensed foreign insurer may hold assets representing its margin of solvency, wholly or partly, outside its insurance fund and the assets shall form part of the assets held in compliance with

subsection 18 (2).

(5) A licensed insurer shall identify the assets representing the margin of solvency in respect of its life business or general business held outside the insurance fund for that class and those assets shall be deemed to be assets of that insurance fund.

Register of policies and register of claims. 47. (1) A licensed insurer shall establish and maintain in such form as may be prescribed—

(a) a separate register for its Malaysian policies and for its foreign policies; and

(b) a separate register for claims under its Malaysian policies and for claims under its foreign policies.

(2) Except with the prior written approval of the Bank, a licensed insurer shall keep the registers at its principal place of business in Malaysia.

(3) There shall be entered in the respective registers—

(a) every policy, immediately after its issue by, or transfer to, the licensed insurer; and

(b) every insurance claim, immediately upon the licensed insurer becoming aware of it,

and no policy or insurance claim so entered shall be removed from it so long as the licensed insurer is under any liability in respect of that policy or insurance claim.

Penalty : One million ringgit. Default penalty.

(4) A licensed insurer, at the request of a person having an interest in a policy or insurance claim, shall inform that person whether or not the policy or insurance claim is entered in the register.

Document of title. 48. (1) An asset of a licensed insurer, including an asset of its insurance fund, shall be held in its corporate name and every document evidencing its title or right to an asset shall be in its corporate name.

Penalty : Imprisonment for three years or three million ringgit or both.

Default penalty.

(2) Notwithstanding subsection (1), the Bank, on the application of a licensed insurer, may approve its assets to be held in the name of its nominee subject to such condition as the Bank may specify.

(3) The documents mentioned in subsection (1)—

(a) shall be kept in Malaysia in the custody of the licensed insurer or a licensed bank and, where for any special reason a document is kept in the custody of any other person on its behalf, it shall notify the Bank in writing of that person and the reasons for his custody and of any change in that custody and the reason for it;

(b) may be kept outside Malaysia, with the written approval of the Bank, in the custody of a person at such place, and subject to such terms, as may be specified; or

(c) may be kept in the custody of the licensed local insurer, or a bank, in the

country where it is carrying on business to the extent the assets relate to its business in that country, and the licensed local insurer shall notify the Bank in writing of the custodian of its documents and the Bank may require the licensed local insurer to produce a certificate from the custodian or its auditor verifying the existence of the documents.

(4) A document referred to in paragraph (3) (a) or (b), shall be produced for inspection—

(a) to such officer of the Bank; and

(b) within such period,

as may be specified by the Bank in a written notice to the licensed insurer or to the custodian of the documents.

Penalty : Imprisonment for one year or one million ringgit or both. Default penalty.

Restriction on grant of credit facility. 49. (1) No licensed insurer or licensed insurance broker—

(a) shall grant a credit facility against the security of its own shares;

(b) except in such special circumstances and in such amounts as the Bank may approve, shall grant a credit facility—

(i) to any of its directors other than in the case of a licensed life insurer, a credit facility secured by its life policy held by the director not exceeding the surrender value of the policy;

(ii) to a company or firm in which it or any of its directors has any interest as director, partner, controller, manager or agent, or to an individual for whom or a company or firm for which any of its directors is a guarantor;

(iii) to a company in which it, or any one or more of its directors, has interest in shares of twenty per cent or more;

(iv) to a company which has interest in shares of twenty per cent or more in the licensed insurer or licensed insurance broker, as the case may be; and

(v) to a company in which the company in subparagraph (iv) has interest in shares of twenty per cent or more;

(c) except in such special circumstances and to such extent as the Bank may approve—

(i) shall grant to a person, other than its employee, an unsecured credit facility;

(ii) shall act as a guarantor for a credit facility granted to any person;

(iii) shall enter into any transaction where a material gain can accrue to any of its directors or a company in which any of its directors has an interest in shares of twenty per cent or more; or

(iv) shall arrange with any person to do any of the acts in subparagraph (i), (ii) or (iii).

Penalty : Imprisonment for five years or five million ringgit or both. Default penalty.

(2) For the purposes of subsection (1), “director” includes a relative of a

director.

Security for credit facility. 50. (1) No licensed insurer or licensed insurance broker, except in such special circumstances, and in such amounts, as the Bank may approve, shall give to a person any credit facility unless the credit facility is fully guaranteed or secured against property of a value which is not less than such proportion of the credit facility as the Bank may prescribe.

Penalty : Imprisonment for three years or three million ringgit or both.
Default penalty.

(2) Where at any time during the currency of a credit facility, the value of the security decreases to less than the proportion prescribed under subsection (1), the licensed insurer or licensed insurance broker shall require its borrower to provide additional security to comply with subsection (1) within ninety days or such other period as the Bank may approve.

Penalty : One million ringgit. Default penalty.

(3) Where the additional security required under subsection (2) is not provided within the specified period, the licensed insurer or licensed insurance broker shall take immediate steps to recover the outstanding credit facility.

(4) For the purpose of subsection (1), "guaranteed" means guaranteed by a prescribed person.

Valuation of security. 51. The value of a property which is provided as security to a licensed insurer or licensed insurance broker shall be—

(a) its market value; or

(b) where for any reason it is not possible to determine its market value, the value approved by the Bank on an application by the person taking the security which should set out the value arrived at by the applicant and the basis for it.

Restriction prohibition of security. 52. The Bank, in relation to a licensed insurer or licensed insurance broker, may prescribe—

(a) the restriction or condition subject to which a particular property, or a class of properties, may be provided as security; or

(b) for a particular property, or a class of properties, to be prohibited from being provided as security.

Restriction on assets. 53. No licensed insurer or licensed insurance broker, except with the prior written approval of the Bank, shall pledge or charge any of its assets or securities.

Penalty : Imprisonment for three years or three million ringgit or both.
Default penalty.

Disclosure of interest in credit facility. 54. (1) A director, or chief

executive officer, of a licensed insurer, or of a licensed insurance broker, or its manager responsible for processing a credit facility, who has an interest, direct or indirect, in a credit facility from the licensed insurer or licensed insurance broker, prior to a decision being made on the credit facility, shall make to the licensed insurer or licensed insurance broker, as the case may be, a declaration in writing as to the nature and extent of his interest in that borrower or the credit facility.

Penalty : Imprisonment for three years or three million ringgit or both.
Default penalty.

(2) For the purposes of subsection (1), a person's notice to the board of directors of the licensed insurer, or of the licensed insurance broker, as the case may be, to the effect that he has an interest in a credit facility which, after the date of the notice, may be granted to that borrower shall be deemed to be sufficient declaration of interest in relation to a credit facility so granted if—

(a) it specifies the nature and extent of his interest in that borrower; and
(b) at the time the credit facility is granted, his interest is not different in nature or greater in extent than is specified in the notice.

(3) A licensed insurer or a licensed insurance broker, within seven days of receipt of a declaration of interest in relation to a credit facility, shall furnish a copy of that declaration to its auditors, its directors and the Bank.

Disclosure of conflict of interest. 55. A director of a licensed insurer, or of a licensed insurance broker, who holds an office or possesses a property by which, whether directly or indirectly, a duty or an interest may arise in conflict with his duty or interest as director shall declare the fact, nature and extent of the conflict which may arise at the first meeting of the board of directors held—

(a) after the person becomes a director of the licensed insurer or licensed insurance broker; or

(b) if already a director, after the person commences to hold office or to possess the property by which the conflict may arise.

Penalty : Imprisonment for three years or three million ringgit or both.
Default penalty.

Secretary to record declaration. 56. The secretary of a licensed insurer, or of a licensed insurance broker, shall record any declaration made under section 54 or 55 in the minutes of the meeting at which it was made or at which it was brought up and read.

Reinsurance. 57. (1) A licensed insurer shall enter into reinsurance arrangements in respect of risks insured or to be insured in the course of its insurance business which are consistent with sound insurance principles.

(2) A licensed insurer shall produce for the Bank's inspection, or submit to the Bank, such particulars of its reinsurance arrangements, and such other information, as the Bank may require by notice in writing within such period as may be specified in the notice.

Penalty : Five hundred thousand ringgit. Default penalty.

(3) The Bank, if it is satisfied that—

(a) the terms of reinsurance arrangements are unfavorable to the licensed insurer;

(b) the reinsurance arrangements are not technically appropriate to the portfolio of the licensed insurer; or

(c) the reinsurer or reinsurance broker is not a fit and proper person to do business with,

may give such direction in writing as it considers fit, including termination or modification of reinsurance arrangements or requiring additional reinsurance cover or prohibiting the licensed insurer from entering into contract with any reinsurer or through any reinsurance broker.

Penalty : Imprisonment for three years or three million ringgit or both. Default penalty.

PART V DIRECTION AND CONTROL OF DEFAULTING INSURER

Notification of non-compliance with margin of solvency. 58. (1) Where the available assets of a licensed insurer are just adequate or less than adequate to meet its margin of solvency, its board of directors, within ninety days of becoming aware of the situation—

(a) shall notify the Bank of the fact;. and

(b) shall furnish a business plan to improve the financial condition.

Penalty : Imprisonment for three years or three million ringgit or both. Default penalty.

(2) The Bank, after considering the business plan, may direct the licensed insurer in writing to improve or restore its margin of solvency in such manner as the Bank may determine.

(3) Where a licensed insurer has no available assets to meet its margin of solvency, the Bank may give notice in writing of not less than thirty days to the licensed insurer to submit a plan to restore its margin of solvency.

(4) The Bank may petition for the winding up of a licensed insurer if it—

(a) fails to submit a plan to restore its margin of solvency; or

(b) submits a plan which is unacceptable to the Bank.

Action against insurer, employee or director. 59. (1) This section applies where the Bank is satisfied that—

(a) a licensed insurer—

(i) is carrying on business in a manner detrimental to the interests of its

policy owners, creditors, or the public generally;

(ii) is incurring expenditure in procuring, maintaining or administering its insurance business which is unduly high in relation to its premium income;

(iii) is in a situation where section 58 applies; or

(iv) has contravened any provision of this Act, or any condition of its licence, or any written law, regardless that there has been no criminal prosecution in respect of the contravention; or

(b) a director or officer of a licensed insurer—

(i) has pecuniary interest, direct or indirect, in a matter and that interest raises a conflict with the performance of his duties in relation to that matter; or

(ii) conducts the affairs of the licensed insurer with self-interest or in a manner prejudicial to the interests of the licensed insurer.

(2) The Bank, by order in writing, may do any act in relation to the licensed insurer, its business, director or employee or may require the licensed insurer to do or not to do any act in relation to itself, its business, director or employee.

Penalty : Imprisonment for three years or three million ringgit or both.
Default penalty.

(3) The Bank, whether or not any action has been taken under subsection (2), with the approval of the Minister, by order in writing may do all or any of the following:

(a) remove from employment or office, with effect from such date as may be set out in the order, an employee or a director of the licensed insurer, or appoint a person as—

(i) an employee of the licensed insurer in such capacity and with such job description and authority as may be described in the order; or

(ii) a director of the licensed insurer,

and provide in the order for the employee or director so appointed to be paid by the licensed insurer such remuneration as may be set out in the order notwithstanding anything in any written law, or any limitations contained in its constituent documents;

(b) appoint a person to advise the licensed insurer in relation to the proper conduct of its business, and provide in the order for the person so appointed to be paid by the licensed insurer such remuneration as may be set out in the order; or

(c) terminate any contract, agreement or arrangement entered into by the licensed insurer with any person in relation to its business or otherwise.

(4) The Minister, whether or not any action has been taken under subsection (2) or (3), on the recommendation of the Bank, by order published in the Gazette, may provide—

(a) for the Bank to assume control of, or to carry on, the whole or part of the licensed insurer's property, business and affairs, as the case may be, or for the Bank to appoint an appointed person to do so on behalf of the Bank which appointment shall be binding on the licensed insurer and for the costs and

expenses of the Bank, or the remuneration of the appointed person, to be payable as a first charge by the licensed insurer; or

(b) whether or not an order has been made under paragraph (a), for the Bank to present a petition to the Court for the winding up of the licensed insurer.

(5) No order under this section shall be made unless the licensed insurer, employee, director or person has been given a reasonable opportunity of making representation in writing to the Bank or the Minister, as the case may be.

(6) Notwithstanding subsection (5), an order under this section may be made first and the opportunity to make representation be given immediately after the order has been made if any delay would be detrimental to the interests of the licensed insurer, its policy owner, or the public generally.

(7) An order, in consequence of representation made under subsection (5) or (6), may be confirmed, amended or revoked.

Provisions relating to appointment under subsection 59 (3) or (4). 60. (1) The person appointed by the Bank under paragraph 59 (3) (a) or (b) or paragraph 59 (4) (a) shall be appointed for such period as may be determined by the Bank, and the appointment, upon expiry of the initial period, may be extended for such further period as the Bank may determine.

(2) Notwithstanding subsection (1), the Bank may revoke that person's appointment at any time without assigning any reason.

Provisions relating to removal under paragraph 59 (3) (a) or (c). 61. (1) An employee or director removed from employment or office in a licensed insurer under paragraph 59 (3) (a) or a person whose contract is terminated under paragraph 59 (3) (c) shall cease to hold the office from which he is removed or shall cease to perform his obligations under the contract with effect from the date set out in the order and shall cease to be concerned with the licensed insurer's business or affairs.

Penalty : Imprisonment for three years or three million ringgit or both.

Default penalty.

(2) The removal of an employee or director under paragraph 59 (3) (a) or termination of a contract under paragraph 59 (3) (c) shall be lawful and valid notwithstanding anything contained in a contract of service or any other contract and a person so removed from office, or whose contract is terminated, shall not be entitled to claim compensation for the loss of office or termination of contract.

Provision relating to assumption of control under subsection 59 (4). 62. (1) Where control of a licensed insurer has been assumed in pursuance of an order under subsection 59 (4), the licensed insurer, its employee and director shall provide the Bank or the appointed person with such facilities, documents and information as may be required to carry on its business.

Penalty : Imprisonment for five years or five million ringgit or both.

Default penalty.

(2) The Bank or the appointed person shall control, and carry on the property, business and affairs of the licensed insurer, as the case may be, in the name and on behalf of that licensed insurer until the order under subsection 59 (4) is revoked.

(3) During the period an order under subsection 59 (4) is in force—

(a) no director of the licensed insurer shall engage in any activity in relation to the licensed insurer, directly or indirectly, except as may be required or authorised by the Bank, or the appointed person,

(b) no remuneration shall accrue or be payable to a director of the licensed insurer unless approved in writing by the Bank, or the appointed person, in relation to the activity required or authorised by the Bank, or the appointed person; and

(c) the Bank or the appointed person shall be vested with all the powers of the licensed insurer, and its board of directors, under its constituent documents, or exercisable by the licensed insurer or its directors under any written law regardless whether the powers are exercisable by resolution.

Penalty : Imprisonment for five years or five million ringgit or both.

Default penalty.

Effect of under subsection 59 (4). 63. An order under subsection 59 (4) —

(a) shall not have the effect of conferring on, or vesting in, the Bank, or the appointed person, any title to, or any beneficial interest in, any property of the licensed insurer to which the order relates;

(b) shall not have the effect of rendering the Bank, or the appointed person, liable for any obligation or liability of the licensed insurer, whether incurred before or after the order comes into force; and

Act 125. (c) shall have the effect of rendering the provisions of the Companies Act 1965, or any other written law, which are inconsistent with anything contained in this Part, including provisions relating to annual, and extraordinary, general meeting of members inapplicable to the licensed insurer.

Power to cancel or issue additional capital.

Act 125. 64. (1) Notwithstanding paragraph 64 (1) (b) of the Companies Act 1965, the Bank may apply to the Court for an order to cancel any paid-up share capital of a licensed insurer which is lost or unrepresented by available assets.

(2) The Bank, in the application, may apply to the Court to restore the share capital of the licensed insurer to the original amount or to increase the share capital to such greater amount as the Bank may request, after taking into account the extent of insolvency of the licensed insurer, by requiring the licensed insurer to make a call on its members to subscribe to the additional share capital.

(3) Where a member does not subscribe to the additional share capital of the

licensed insurer within thirty days from the date on which the call is made, the Bank may allot to any person any share not taken up.

(4) Where the share capital of a licensed insurer is reduced under subsection (1) or is increased under subsection (2), its constituent documents, regardless that the alteration is exercisable by resolution, shall be altered without resolution.

Moratorium. 65. (1) The Minister, on the recommendation of the Bank, if he considers it to be in the interests of the policy owners of a licensed insurer to which section 58 applies, by order published in the Gazette, may provide for all or any of the following:

(a) prohibit the licensed insurer from carrying on all of its business or such part of it as may be set out in the order;

(b) prohibit the licensed insurer from doing or performing any act or function connected with all of its business or such part of it as may be set out in the order;

(c) suspend the licence of the licensed insurer to such extent and for such period as may be necessary to give effect to the prohibitions under paragraph (a) or (b);

(d) authorise the Bank to apply to the Court for an order staying for a period not exceeding six months, the commencement or continuance of a particular class of actions and proceedings of a civil nature by or against the licensed insurer with respect to any of its business and the Court, upon hearing an ex parte originating summons filed by the Bank, may make the order; or

(e) give effect to the matters under the foregoing paragraphs, including empowering the Bank to take into its custody or control, document, property or effects of the licensed insurer.

Penalty : Imprisonment for five years or five million ringgit or both.
Default penalty.

(2) An order under subsection (1) may be amended prospectively or, where it is not impracticable or unjust to do so, retrospectively by a further order under subsection (1).

(3) A licensed insurer shall be given a reasonable opportunity of making representation before an order under subsection (1) is made.

(4) Where any delay would be detrimental to the interests of policy owners, an order under subsection (1) may be made first and the opportunity to make representation shall be given immediately after the order has been made and in consequence of the representation, the Minister, on the recommendation of the Bank, may confirm or revoke the order.

PART VI MANAGEMENT OF LICENSEE

Disclosure of beneficial interest in voting shares. 66. (1) A licensee

incorporated in Malaysia by notice in writing may require any of its members to inform it within such reasonable time as may be specified in the notice—
(a) whether he holds voting shares in the licensee as beneficial owner or as trustee; and

(b) if he holds them as trustee, to indicate so far as he can the person for whom he holds them by name and by any other particulars sufficient to enable that person to be identified and to determine the nature of his interest.

(2) Where a licensee is informed by a person under subsection (1) or under this subsection that another person has an interest in any of its voting shares or any of the voting shares in a company which holds its voting shares, the licensee may require by notice in writing that other person to inform it within such reasonable time as may be specified in the notice—

(a) whether he holds that interest as beneficial owner or as trustee; and

(b) if he holds that interest as trustee, to indicate so far as he can the person for whom he holds that interest by name and by any other particulars sufficient to enable that person to be identified and to determine the nature of his interest.

(3) A licensee or a company, to which this section applies, may require by notice in writing any of its members to inform it within such reasonable time as may be specified in the notice, whether any of the voting rights carried by any voting shares in the licensee or company held by him are the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

(4) Subject to subsection (5), a person commits an offence if he—

(a) fails to comply with a notice under this section; or

(b) in purported compliance with a notice under this section, makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular.

Penalty : One million ringgit. Default penalty.

(5) A person shall not be guilty of an offence under paragraph (4) (a) if he proves that the information in question was already in the possession of the licensee or that the requirement to give it was for any other reason frivolous or vexatious.

Acquisition or disposal of aggregate of five per cent interest in shares. 67.

(1) No person shall enter into an agreement or arrangement to acquire or dispose of any interest in shares of a licensee incorporated in Malaysia or of its controller by which, if the agreement or arrangement is carried out, he would, either alone or with any associate, acquire or dispose of to a person, either alone or with any associate, together with any interest in shares of that licensee or of its controller already held by him or previously disposed of by him, as the case may be, an aggregate interest in shares exceeding five per cent of the shares of that licensee or of its controller without obtaining

the prior written approval of the Minister, in the case of a licensed insurer, and the Bank, in the case of a licensed insurance broker, licensed adjuster or licensed financial adviser. Act A1247.

(2) No person who has obtained an approval under subsection (1) or who holds more than five per cent of the shares of a licensee or of its controller, shall enter into a subsequent agreement or arrangement to acquire or dispose of any interest in shares of the licensee or of its controller without obtaining the prior written approval of the Minister or the Bank, as the case may be.

(3) A person intending to acquire or dispose of any interest in shares of a licensee or of its controller under subsection (1) or (2) shall submit his application to the Bank, after which the Bank shall—

(a) in the case of a licensed insurer or of its controller, submit the application, together with its recommendation to the Minister who shall approve or refuse the application; and

(b) in the case of all other licensees or their controllers, approve or refuse the application.

Penalty : Imprisonment for three years or three million ringgit or both.
Default penalty.

Prohibition and restriction in the event of contravention. 68. (1) Where the Bank is satisfied that a person has contravened section 67, it may make a preliminary order in writing imposing all or any of the following prohibition or restriction in respect of a share which is the subject of the contravention:

(a) prohibit the transfer of, or the carrying out of the agreement to transfer, the share, or, in the case of an unissued share, prohibit the transfer of, or the carrying out of the agreement to transfer, the right to be issued with the unissued share;

(b) prohibit the exercise of any voting rights in respect of the share;

(c) prohibit the issue of any share in right of the share or any under offer made to its holder; or

(d) except in a liquidation, prohibit the payment of any sum of moneys due from the licensee or its controller on the share, whether in respect of capital or otherwise.

(2) A preliminary order under subsection (1) shall be served on the defaulting person as soon as is practicable, and may be publicised in such manner as the Bank considers fit, if in the opinion of the Bank, it needs to be publicised.

(3) A preliminary order shall be binding on the defaulting persons, on a person for the time being holding a share to which the order applies, and on any other person specified in the order or to whom the order is directed.

(4) A person holding a share to which a preliminary order applies, within seven days after its service under defaulting person or such longer period as the Bank may approve, shall surrender the share to the Bank.

(5) A person shall be given an opportunity of being heard before the Bank makes a preliminary order under subsection (1) against him or which affects him in any manner.

(6) A defaulting person against whom a preliminary order has been made, or any other person prejudicially affected by the order, may make, within fourteen days of the service of the order on the defaulting person, representation in writing to the Bank.

(7) The Bank, after considering the representation made under subsection (6), may confirm the preliminary order, or revoke it, or vary it in such manner as it considers fit.

(8) Where the Bank confirms a preliminary order, it may dispose of the share surrendered to it under subsection (4) to such person and to such extent as the Bank may determine.

(9) The proceeds of the disposal of the share under subsection (8) shall be paid into the Court, and a person claiming to be beneficially entitled to the whole or any part of the proceeds may apply, within ninety days of the payment into the Court, to a judge of the Court in chambers for payment of the proceeds to him.

(10) The Bank may instruct or direct the board of directors, or officer, of the licensee, or of its controller in such manner as may be necessary to give effect to an order of the Bank under this section.

(11) A transaction, including an agreement or arrangement in relation to an interest in shares, which is in contravention of an order under this section shall be void and of no effect.

(12) The satisfaction of the Bank under subsection (1) may be arrived at regardless of whether or not there is any prosecution of any person for the contravention.

(13) In this section, "defaulting person" means a person who has contravened section 67.

Prohibited holding of interest in shares. 69. (1) Except where the Minister, on the recommendation of the Bank, otherwise approves and subject to such condition as he may impose, no person, subject to section 67, shall hold an interest in shares—

(a) where it is a licensee, of another licensee incorporated in Malaysia; or
(b) where it is a person other than a licensee, of two or more licensees incorporated in Malaysia unless they are licensed insurers carrying on different classes of insurance business.

(2) Notwithstanding paragraph (1) (a), a licensed insurer may hold interest in shares in another licensed insurer carrying on a different class of insurance business.

Appointment of director, chief executive officer, manager or financial adviser's representative. 70. (1) No licensee, and no controller of a

licensee, shall appoint a person as director or chief executive officer unless it has obtained the prior written approval of the Bank for the proposed appointment. Act A1247.

(1A) No licensed financial adviser shall appoint a financial adviser's representative unless it has obtained the prior written approval of the Bank for the proposed appointment.

(2) No licensee, and no controller of a licensee, shall appoint as its director, chief executive officer or manager, a person who—

(a) is disqualified under section 71;

(b) fails to fulfil such minimum criteria of a “fit and proper person” as may be prescribed; and

(c) other than a non-executive director representing a foreign shareholder of a licensee, does not reside in Malaysia throughout the period of his appointment.

Penalty : Imprisonment for three years or three million ringgit or both.

Default penalty.

(3) The Bank may specify the particulars and information to be submitted by the licensee, or the controller of a licensee, in relation to the person for whom the Bank's written approval is sought under subsection (1) or subsection (1A), as the case may be.

Disqualification of director or employee. 71. (1) No licensee, and no controller of a licensee, shall appoint a person and no person shall accept the appointment as director, chief executive officer, manager, secretary or other employee concerned in its management or the management of its offices—

(a) if that person has been adjudged a bankrupt, or has suspended payments, or has compounded with his creditors, whether in or outside Malaysia;

(b) without prejudice to paragraph (c), if a charge for a criminal offence under any written law involving fraud or dishonesty punishable with imprisonment for one year or more, whether by itself, or in lieu of, or in addition to, a fine, has been proved against that person in any court in or outside Malaysia;

(c) if a charge for an offence under this Act has been proved against that person;

(d) if there has been made against that person an order of detention, supervision, restricted residence, banishment or deportation, or if there has been imposed on him any form of restriction or supervision by bond or otherwise, under any law relating to prevention of crime, or to preventive detention for prevention of crime or drug trafficking, or to restricted residence, or to banishment or immigration; or

(e) if that person, other than the appointed person, has been a director, or directly concerned in the management, of—

(i) a corporation incorporated in or outside Malaysia which is being or has been wound up;

(ii) a licensee, the licence of which has been revoked under this Act, or in

respect of which an order has been made under section 59; or Act 372. (iii) a licensed institution, the licence of which has been revoked under, or in respect of which an order has been made under section 73 of, the Banking and Financial Institutions Act 1989.

Penalty : Three million ringgit. Default penalty.

(2) A person subject to paragraph (1) (e), with the written concurrence of the licensee in which he is holding office or is to be appointed—

(a) in the case of a licensed insurer, may apply to the Minister in writing to exempt him from that paragraph, and the Minister, on the recommendation of the Bank, may grant such exemption, subject to such condition, as he thinks fit to impose; or

(b) in the case of a licensed insurance broker, licensed adjuster or licensed financial adviser, may apply to the Bank in writing to exempt him from that paragraph and the Bank may grant such exemption, subject to such condition, as it considers fit to impose. Act A1247.

(3) During the pendency of any criminal proceedings in any court for an offence referred to in paragraph (1) (b) or (c) against a person holding office in a licensee, that person shall not act in that capacity, or hold any other office, or act in any other capacity, in any licensee or in any manner, directly or indirectly, be concerned with any business or affairs of any licensee unless authorised in writing by the Bank to such extent and subject to such condition as the Bank may impose.

Penalty : Three million ringgit. Default penalty.

(4) For the purpose of subsection (3), criminal proceedings shall be deemed to be pending from the date that the accused person is first charged in court for the offence until the date of the final conclusion of the proceedings, whether in a court of original jurisdiction or, in the event of an appeal by any party, in a court of final appellate jurisdiction.

Act 372. (5) In this section, “licensed institution” has the meaning in the Banking and Financial Institutions Act 1989.

Effect of disqualification of director or employee. 72. Where a person becomes disqualified after his appointment by a licensee for any of the reasons set out under subsection 70 (2) —

(a) he shall immediately cease to hold office; and

(b) the licensee shall immediately terminate his appointment, and that person, notwithstanding any contract of service, shall not be entitled to claim any compensation for his loss of office or termination of appointment.

Penalty : Imprisonment for three years or three million ringgit or both. Default penalty.

Notice of cessation of office. 73. (1) A licensee shall notify the Bank in writing of the fact that a person has ceased to be its director or chief

executive officer and the reasons for it within fourteen days from the date of the cessation. Act A1247.

Penalty – Five hundred thousand ringgit.

(2) A licensed financial adviser shall notify the Bank in writing that a person has ceased to be its financial adviser's representative and the reasons for it within fourteen days from the date of cessation.

Penalty : Fifty thousand ringgit.

PART VII AUDITOR, ACTUARY AND ACCOUNTS

Appointment of auditor. 74. (1) A licensee shall appoint, for each financial year before a date to be specified by the Bank, an auditor approved by the Bank.

Penalty : One million ringgit. Default penalty.

(2) Where a licensee fails to appoint an auditor before the date specified in subsection (1), the Bank may appoint an auditor for the licensee and the remuneration and expenses of the auditor as specified by the Bank shall be paid by the licensee.

(3) If the Bank considers it desirable that another auditor should act with the auditor appointed under subsection (1) or (2), it may appoint another auditor, the remuneration and expenses of which, as specified by the Bank, shall be paid by the licensee.

Disqualification of auditor. 75. (1) No licensee shall knowingly appoint as its auditor a person, and no person shall knowingly consent to be appointed as an auditor of a licensee by the licensee or by the Bank, if that person—

(a) is not an approved company auditor;

(b) has interest in shares of the licensee exceeding five per cent;

(c) is a director, controller or employee of that licensee;

(d) is indebted to that licensee or to any related corporation of that licensee;

(e) is a partner, employer or employee of a director, controller, or employee, of that licensee;

(f) is responsible, or is the partner, employer, or employee of a person responsible, for the keeping of the register of members or the register of debenture holders of that licensee; or

Act 125. (g) has been convicted of an offence under this Act or the Companies Act 1965, or of an offence involving fraud or dishonesty under any other written law.

Penalty : Imprisonment for one year or one million ringgit or both. Default penalty.

(2) Notwithstanding subsection (1), the Bank may approve in writing a person who is subject to any disqualification under that subsection to be appointed as an auditor if the Bank is satisfied that it would not be contrary to public

interest.

(3) For the purposes of subsection (1), a person shall be deemed to be an employee of a licensee—

- (a) if he is an employee of a related corporation of that licensee; or
- (b) except where the Bank, in the circumstances of the case, otherwise directs, if he has, within the preceding twelve months, been an employee or promoter of that licensee or its related corporation.

Act 125. (4) An auditor for a licensee who becomes subject to any of the disqualifications mentioned in this Part or in section 9 of the Companies Act 1965 shall immediately cease to be the auditor of the licensee.

Penalty : Imprisonment for one year or one million ringgit or both. Default penalty.

Restriction on audit firm. 76. A firm shall not knowingly consent to be appointed, and shall not knowingly act, as auditor for a licensee and shall not prepare, for or on behalf of the licensee, a report required by this Act to be prepared by an auditor unless none of its partners is disqualified under paragraphs 75 (1) (b) to (g) from acting as auditor of the licensee.

Penalty : One million ringgit.

Consent to act as auditor. 77. No licensee shall appoint a person as auditor under section 74 unless that person, prior to his appointment, has consented in writing to act as auditor, and consent in the case of a firm shall be under the hand of at least one of its partners.

Appointment of audit firm. 78. The appointment of a firm in the name of the firm as auditor shall take effect and operate as an appointment of the persons who are members of that firm at the time of the appointment.

Auditor not deemed to be employee of licensee. 79. For the purposes of this Part, a person shall not be deemed to be an employee of a licensee or its related corporation by reason only of his having been appointed an auditor of the licensee or its related corporation.

Auditor' s report. 80. An auditor of a licensee shall submit a report of the audit to the members of the licensee and the report—

Act 125. (a) in the case of a licensee which is a company, shall be made in accordance with section 174 of the Companies Act 1965; and

(b) in the case of a licensee, other than a company, shall certify whether or not in his opinion—

(i) all the information and explanation which are necessary for the purposes of the audit have been obtained;

(ii) according to the best of the information and explanation given to him, the profit and loss account and balance sheet give a true and fair view of the state of affairs of the licensee for the financial year concerned;

(iii) books of account have been kept properly by the licensee so far as it appears from the audit of the accounts; and
(iv) proper returns adequate for the purposes of the audit, have been received by him from offices of the licensee not visited.

Penalty : One million ringgit.

Additional requirement from auditor. 81. The Bank may require an auditor—
(a) to submit such additional information in relation from auditor to his audit as the Bank may specify; or
(b) to enlarge or extend the scope of his audit of the business and affairs of the licensee, in such manner, or to such extent, as the Bank may specify, and the Bank may specify the time within which the requirement shall be complied with by the auditor and specify the remuneration which the licensee shall pay to the auditor.

Penalty : Five hundred thousand ringgit. Default penalty.

Auditor to report certain matters to the Bank. 82. (1) An auditor shall immediately report to the Bank if, in the course of his duties as an auditor of a licensee, he is satisfied that—

(a) there has been a contravention of a provision of this Act or that an offence involving fraud or dishonesty under any other written law has been committed by the licensee or its employee;
(b) any irregularity which jeopardises the interests of policy owners or creditors of the licensee, or any other serious irregularity, has occurred; or
(c) the requirements of section 58 apply to the licensed insurer.

Penalty : One million ringgit.

(2) The auditor of a licensee shall not be liable for breach of a duty of confidentiality between the auditor and the licensee for reporting to the Bank in good faith in compliance with subsection (1).

Appointment of actuary by life insurer. 83. (1) A licensed life insurer shall appoint, for each financial year before a date to be specified by the Bank, an appointed actuary approved by the Bank.

Penalty : Three million ringgit.

(2) No licensed life insurer shall knowingly appoint a person as its appointed actuary and no person shall knowingly accept appointment as an appointed actuary of a licensed life insurer unless he is a resident in Malaysia and—

(a) he is a fellow of—
(i) the Institute of Actuaries in England;
(ii) the Faculty of Actuaries in Scotland;
(iii) the Society of Actuaries in the United States of America;
(iv) the Canadian Institute of Actuaries; or

(v) the Australian Institute of Actuaries; or

(b) he holds such other qualifications as the Bank may specify.

Penalty : Three million ringgit. Default penalty.

(3) A licensed life insurer proposing to appoint a person not a resident in Malaysia as its appointed actuary, may apply to the Bank in writing and the Bank may grant an exemption from subsection (2) for such duration and subject to such condition as it considers fit.

(4) The appointed actuary, in the discharge of his functions, shall act in a professional manner and comply with the Bank' s guidelines and code of practice.

Cessation to be appointed actuary. 84. (1) An appointed actuary shall cease to be the appointed actuary of a licensed life insurer if—

(a) he ceases to be eligible for appointment as an appointed actuary; or

(b) he resigns or the licensed life insurer terminates his appointment.

(2) Where a person ceases to be the appointed actuary of a licensed life insurer, the licensed life insurer—

(a) shall notify the Bank in writing of the cessation and the reasons for it within fourteen days from the date of cessation; and

(b) shall appoint another person as its appointed actuary under subsection 83

(1) not later than ninety days from the date of cessation or such further period as the Bank may approve.

Penalty : Five hundred thousand ringgit.

Actuarial investigation and report. 85. (1) A licensed life insurer shall have an investigation made by its appointed actuary into the financial condition of its business at the end of each financial year.

Penalty : One million ringgit. Default penalty.

(2) The appointed actuary shall value the liabilities of the licensed life insurer' s life business in such manner as may be prescribed.

Penalty : One million ringgit.

(3) The appointed actuary shall prepare a report, and certificate, in such form as the Bank may specify.

(4) A licensed life insurer shall lodge with the Bank three copies each of—

(a) the appointed actuary' s report and certificate; and;

(b) such statements certified by the appointed actuary as the Bank may require,

within ninety days from the end of its financial year or such further period as the Bank may approve.

Penalty : One million ringgit. Default penalty.

Information to auditor and appointed actuary. 86. A licensee, and a director, controller or employee of a licensee—

(a) shall furnish to its auditor, or its appointed actuary, information within its or his knowledge which the auditor or appointed actuary may require; and

(b) shall ensure that information furnished to the auditor or appointed actuary is not false or misleading in any material particular and is not incomplete.

Penalty : Imprisonment for three years or three million ringgit or both.
Default penalty.

Annual accounts. 87. (1) Within ninety days after the end of each financial year of a licensee, or such further period as the Bank may approve, the licensee shall submit to the Bank, in respect of its entire operations, three copies each of the following:

- (a) in the case of a licensed insurer, duly audited revenue account together with supporting statements;
- (b) duly audited profit and loss account and balance sheet together with supporting statements;
- (c) a certificate by the auditor;
- (d) a report by the board of directors on its operations in the financial year; and
- (e) a statutory declaration by one of its non-executive directors and its chief executive officer in respect of matters in paragraphs (a), (b) and (d), in such form as the Bank may specify.

Penalty : One million ringgit. Default penalty.

(2) The revenue account, profit and loss account and balance sheet laid before the general meeting of a licensed insurer or submitted to the Registrar of Companies or the Registrar-General of Co-operative Societies shall be in such form as the Bank may specify and the amounts appearing in the revenue account, profit and loss account and balance sheet shall be the same as those reported under this section and any qualification in respect of the returns under this section shall also be incorporated in those accounts.

(3) A licensee shall submit to the Bank within sixty days from the date of its auditor's report or such further period as the Bank may approve—

- (a) a copy of any report made by its auditor to its board of directors following the audit of its annual accounts; and
- (b) a report on the action taken by its board of directors on the auditor's report.

Penalty : One million ringgit. Default penalty.

Annual accounts and actuary's report of licensed foreign insurer. 88. (1) The documents required to be submitted under sections 85, 87 and 89, in the case of a licensed foreign insurer, shall relate to its Malaysian policies.

(2) A licensed foreign insurer shall submit to the Bank within thirty days, or such further period as the Bank may approve, from the date of submission to the authority having administration of that law or to its annual general meeting, as the case may be—

- (a) a certified true copy of its annual returns and actuary's report, if any, required by the law relating to insurance in the country in which it is

incorporated or established to be furnished to that authority;
(b) a statement showing the position of its assets and liabilities in respect of its total operations as at the end of its financial year; and
(c) a certified true copy of its accounts as approved by its members at an annual general meeting.

Penalty : One million ringgit. Default penalty.

(3) Where a report or statement referred to in subsection (2) is in a language other than the national language or English, the copy required by that subsection shall be in the national language or English and shall be certified to be a true translation of the original by the translator.

(4) The Bank may require a licensed foreign professional reinsurer to submit to it a report on the foreign policies of its office in Malaysia, in such form, and at such interval, as it may specify.

Quarterly returns. 89. A licensed insurer shall submit to the Bank in respect of its operations for each quarter of a calendar year two copies each of the following:

- (a) a revenue account together with supporting statements;
- (b) a profit and loss account and balance sheet together with supporting statements; and
- (c) a certificate signed by the chief executive officer and the employee responsible for the financial management of the licensed insurer, in such form, and within such time, as the Bank may specify.

Penalty : One million ringgit. Default penalty.

Accounting standards. 90. A licensee shall maintain its accounts in compliance with accounting standards approved by the Bank subject to such modifications as the Bank may specify.

Penalty : Three million ringgit. Default penalty.

Actuarial report on claims. 91. (1) The Bank may require a licensed general insurer to obtain an actuarial valuation of its liability in respect of incurred but not reported claims, including deficiency in reserving for known outstanding claims, by an actuary approved by the Bank.

(2) The actuary shall report directly to the Bank within sixty days from the date of requisition of the report by the Bank or within such further period as the Bank may approve.

(3) Section 86 applies in relation to the actuary appointed under this section.

Annual accounts, quarterly returns and appointed actuary' s report to be rectified. 92. (1) The Bank, by notice in writing, may require a licensee to submit additional information submitted under section 85, 87, 88 or 89 within such time as the Bank may specify.

Penalty : One million ringgit.

(2) The Bank may require the additional information or explanation to be certified by the licensee's auditor or appointed actuary.

(3) The Bank may, after considering the explanation referred to in subsection (1), or if such explanation has not been given by or on behalf of the licensee within the time specified—

- (a) reject the document submitted under section 85, 87, or 89; or
- (b) direct the licensee to vary the document or all other related documents within such time as is specified in the direction.

(4) Where a direction is given by the Bank under subsection (3), the document to which it relates shall be deemed not to have been lodged until it is re-submitted with the variation required by the direction.

(5) The Bank, on the basis of information available to it or on review of returns filed under section 89, may direct a licensed local insurer to obtain its confirmation of compliance with section 87 and in the case of a licensed life insurer, sections 85 and 87 before—

- (a) laying its accounts before its general meeting; and
- (b) publishing its accounts under section 95.

(6) Notwithstanding subsection (3), the Bank, in the case of a licensed life insurer, may require it to appoint another actuary, approved by the Bank, to investigate into the financial condition of its life business and subsections 85 (2), (3), and (4) and section 86 shall apply accordingly.

Penalty : One million ringgit. Default penalty.

Restriction on payment of dividend. 93. A licensed local insurer shall not pay any dividend on its shares—

- (a) until all its capitalized expenditure (including preliminary expenses, organization expenses, share selling commission, brokerage, amounts of losses incurred and any other item of expenditure not represented by tangible assets) has been written off; or
- (b) if the payment of dividend would impair its margin of solvency.

Penalty : Imprisonment for three years or three million ringgit or both.
Default penalty.

Submission of annual accounts. 94. A licensed local insurer, within fourteen days from the date of its annual general meeting, shall submit to the Bank three copies of its accounts as laid before the annual general meeting together with minutes of the meeting duly certified by its company secretary.

Penalty : One million ringgit. Default penalty.

Action in relation to annual accounts. 95. (1) A licensed local insurer, within fourteen days of the laying of its accounts at its annual general meeting, or within such further period as the Bank may approve—

- (a) shall publish in not less than two daily newspapers published in Malaysia and approved by the Bank, one in the national language and another in English;

and

(b) shall exhibit in a conspicuous position at each of its branches in Malaysia,

a copy each of the report of the board of directors, its revenue account, profit and loss account and balance sheet, as laid before its general meeting and such other document as the Bank may specify.

Penalty : One million ringgit. Default penalty.

(2) For the purpose of subsection (1), a reference to the laying of accounts at a general meeting, in the case of a licensed foreign insurer is a reference to the Bank's confirmation of its compliance with section 87.

Inspection. 96. (1) A licensed insurer, on an application by a member or policy owner and on payment of reasonable fees, shall send him a copy of any document lodged with the Bank under subsections 85 (4) and 87 (1) within fourteen days of receiving the application.

(2) A person, on payment of a prescribed fee, may inspect, or make a copy of, any document lodged by a licensed insurer with the Bank under subsections 85 (4) and 87 (1) during working hours of the Bank.

(3) Subsections (1) and (2) shall not apply to—

- (a) any document which has been lodged for more than five years; or
- (b) such other document as the Bank may specify.

Admissibility of documents. 97. In any proceedings, a certificate signed by an authorised officer of the Bank stating that a document is lodged by a licensee under section 85, 87 or 89 or is a document that accompanies a document so lodged, shall be admissible in court as evidence of the fact so certified.

Liability where proper accounting records not kept. 98. If accounting records necessary to exhibit and explain the transactions and true financial condition of the licensee are not kept, a past and present employee of the licensee responsible for keeping proper accounting records commits an offence unless he proves that the offence was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.

Penalty : Imprisonment for three years or three million ringgit or both.
Default penalty.

PART VIII EXAMINATION

Examination of licensee. 99. (1) An examiner authorised in writing by the Bank shall examine, without any prior notice, the documents of—

- (a) a licensee, or its agent, in or outside Malaysia; or
- (b) a licensee in liquidation or a licensee whose licence has been revoked or

has not been reissued.

(2) For the purpose of paragraph (1) (a), a reference to a licensee or its agent, in the case of a licensed foreign insurer, is a reference to its business, or business of its agents, in Malaysia.

Duty to produce and provide access to document and information. 100. (1) A person under examination and its director, employee and agent—

- (a) shall afford the examiner access to its documents;
- (b) shall provide the examiner facility to carry out the examination; and
- (c) shall give to the examiner, orally or in writing, such information as he may specify relating to the business of that person, or his agent, within such time as may be specified by the examiner.

Penalty : Imprisonment for three years or three million ringgit or both.

Default penalty.

(2) An examiner may take possession of a document or cash to which he has access under subsection (1) where in his opinion—

- (a) it is necessary for the purpose of inspection, including copying or making an extract;
- (b) it may be interfered with, destroyed, concealed or removed unless he takes possession of it; or

Act 519. (c) it may be needed as evidence in any legal proceedings, whether civil or criminal, which may be instituted under this Act, the Central Bank of Malaysia Act 1958 or any other written law.

Examination of person other than licensee. 101. (1) The examiner may examine—

- (a) a person who is, or was at any time, a director or employee of a licensee or of its agent;
 - (b) a person who is, or was at any time, a policy owner, or otherwise having dealings with the licensee; or
 - (c) a person whom he believes to be acquainted with the facts and circumstances of the case, including the auditor of a licensee or the appointed actuary of a licensed life insurer,
- and that person shall give such document or information as the examiner may require within such time as he may specify.

Penalty : Imprisonment for one year or one million ringgit or both. Default penalty.

(2) An auditor or an appointed actuary shall not be liable for breach of a contract relating to, or duty of, confidentiality for giving a document or information to the examiner.

Appearance before examiner. 102. A person examined under subsections 99 (1) or 101 (1) shall appear before the examiner at his office at such time as he may specify.

Penalty : Imprisonment for one year or one million ringgit or both. Default

penalty.

PART IX INVESTIGATION, SEARCH AND SEIZURE

Appointment of investigating officer. 103. (1) The Bank may appoint its employee or any other person appointed under subsection 3 (3) to be an investigating officer.

Act 519. (2) An investigating officer, not being an employee of the Bank, shall be subject to, and enjoy such rights, protection and indemnity as may be specified in this Act, the Central Bank of Malaysia Act 1958 or any other written law applicable to an employee of the Bank.

(3) An investigating officer shall be subject to the direction and control of the Bank.

Power of investigating officer. 104. (1) Where an investigating officer is satisfied, or has reason to believe, that a person has committed an offence under this Act, he—

(a) may enter any premises and search for, seize and detain any document or property necessary for investigation;

(b) may inspect, make copy of, or take extract from, any document seized and detained;

(c) may take possession of, and remove from the premises, any document or property seized and detain it for such period as may be necessary;

(d) may break open, examine and search any article, container or receptacle;

(e) may stop, detain or search any conveyance;

(f) may search a person who he suspects has on his person any document or property necessary for his investigation;

(g) may detain that person for such period as may be necessary to carry out the search under paragraph (f); and

(h) may seize, detain, or take possession of any document or property found upon that person.

(2) The investigating officer, if in his opinion it is necessary—

(a) may break open or forcibly enter any premises or any conveyance; or

(b) may detain a person found on any premises or in any conveyance until that person, premises or conveyance has been searched under subsection (1).

(3) No female person shall be searched under this section except by another female.

(4) An investigating officer may seize, take possession of, and retain for such duration as he thinks necessary, any document or property produced before him in the course of his investigation, or found on the person who is being searched by him.

Obstruction to investigating officer. 105. No person—

(a) shall refuse an investigating officer access to any premises or fail to

submit to the search of his person;

(b) shall assault, obstruct, hinder or delay an investigating officer in effecting an entrance which he is entitled to effect;

(c) shall fail to comply with any lawful demands of an investigating officer in the execution of his duty;

(d) shall refuse to give to an investigating officer document or information which may reasonably be required of him and which he has in his power to give;

(e) shall fail to produce to, or conceal or attempt to conceal from, an investigating officer or destroy, alter or remove, any document or property which the investigating officer may require;

(f) shall retrieve or endeavor to retrieve anything which has been duly seized;

(g) shall furnish to an investigating officer as true, information which he knows, or has reason to believe, to be false; or

(h) before or after any seizure, shall break or otherwise destroy an article to prevent its seizure, or the securing of the article.

Penalty : Imprisonment for three years or three million ringgit or both.

Default penalty.

Requirement to provide translation. 106. (1) Where an investigating officer finds, seizes, detains or takes possession of, a document which, wholly or partly, is in a language other than the national language or English, or in any sign or code, the investigating officer, orally or in writing, may require the person who had the possession, custody or control of the document, to furnish to the investigating officer a translation in the national language or English within such period as he may specify.

(2) No person shall knowingly furnish a translation under subsection (1) which is not an accurate and true translation of the document.

Penalty : Five hundred thousand ringgit. Default penalty.

(3) Where the person required to furnish a translation under subsection (1) is not the person under investigation, the Bank may pay him reasonable fees for the translation.

Power to examine person. 107. (1) An investigating officer shall have the power to administer an oath or affirmation to a person who is being examined.

(2) An investigating officer may order, orally or in writing, a person whom he believes to be acquainted with the facts and circumstances of the case—

(a) to attend before him for examination;

(b) to produce before him any document; or

(c) to furnish to him a statement in writing made on oath or affirmation setting out such information as he may require.

Penalty : Imprisonment for one year or one million ringgit or both. Default penalty.

(3) Subsection (1) shall apply notwithstanding any written law, or oath,

undertaking or requirement of secrecy, to the contrary, or an obligation under an agreement or arrangement, express or implied, to the contrary.

(4) Where a person or his employee or agent discloses any information or produces any document or property pursuant to subsection (1) or (2), that person shall not be liable to prosecution for an offence under any other written law, or to any proceedings or claim by any person under an agreement or arrangement solely for having made such disclosure or production.

(5) An examination shall be recorded by the investigating officer in writing and shall be read to and signed by the person examined, and where the person refuses to sign the record, the investigating officer shall endorse on the record under his hand the fact of the refusal and the reason for it, if any, stated by the person examined.

(6) The record of an examination, a written statement on oath or affirmation and a document or property produced by a person under this section, notwithstanding any written law or rule of law to the contrary, shall be admissible in evidence in any court proceedings for, or in relation to, an offence under this Act, or any other written law, or any other matter under this Act.

Assistance to public officer. 108. Notwithstanding any other written law, the Bank, on its own initiative, or at the request of a police officer or a public officer in the course of his investigation of an offence under any written law, may allow that officer access to—

- (a) a copy of a document seized, detained or taken possession of;
- (b) a record of examination; or
- (c) a written statement on oath or affirmation.

Investigating officer deemed to be public servant and public officer.
F.M.S. Cap. 45.

F.M.S. Cap. 6. 109. An investigating officer shall be deemed to be a public servant for the purposes of the Penal Code, and to be a public officer for the purposes of the Criminal Procedure Code or any other written law which the Minister, on the recommendation of the Bank, may prescribe.

PART X WINDING UP OF INSURER

Application of this Part.

Act 125. 110. This Part and the Companies Act 1965, other than sections 176, 237, 241, 242, 246 and 278 of that Act, shall apply to the winding up of a licensed insurer, including and insurer whose license has been revoked and an insurer whose winding up has commenced but has not been completed.

Restriction on winding up of local insurer.

Act 125. 111. (1) A local insurer, whether or not its licence has been

revoked, shall not be wound up voluntarily under Division 3 of Part X of the Companies Act 1965 or by the Court under paragraph 218 (1) (a) of that Act except after the transfer of the whole of its business to another insurer under section 128.

(2) Where a voluntary winding up of a company is commenced, it shall notify the Bank within fourteen days of the commencement.

Bank to petition for winding up. 112. (1) The Bank may present a petition to the Court for the winding up of a local insurer, and in the case of a foreign insurer for the winding up of its business in Malaysia, whether or not its licence has been revoked.

(2) Where a petition for the winding up of an insurer by the Court is presented by a person other than the Bank, that person, at the same time as it is presented, shall deliver to the Bank a copy of the petition.

(3) The Bank shall be entitled to appear and be heard in all proceedings relating to the petition and to call, examine and cross-examine any witness.

(4) The Bank, if it considers fit, may support or oppose the petition.

Notice relating to winding up proceedings. 113. A petitioner—

Act 125. (a) shall give to the Bank notice of proceedings relating to the petition, including proceedings under sections 243 and 249, and subsections 236 (3), 277 (2), (3) and (4), of the Companies Act 1965; and

(b) shall deliver to the Bank a copy of the document and record relating to the proceedings at the same time as they are lodged in the Court or served on any party to the proceedings.

Additional circumstances for winding up. 114. The Court may order the winding up of an insurer if—

(a) a petition is made in respect of it following an order of the Minister under paragraph 59 (4) (b);

(b) a petition is made in respect of it under subsection 58 (4); or

(c) its licence has been revoked under section 31.

Appointment of liquidator. 115. (1) The Court, where a winding up order is made—

(a) in respect of a local insurer, shall appoint as liquidator; or

(b) in respect of a foreign insurer, shall appoint as liquidator for Malaysia, such person as the Bank may specify in its petition or application.

(2) The Bank may apply to the Court for the removal of a person appointed under subsection (1) and apply for such other person as it may specify to be appointed by the Court under subsection (1).

Control of liquidator. 116. Subject to an order of the Court, a liquidator, other than the Official Receiver, appointed under subsection 115(1) shall

carry out his functions under the direction and supervision of the Bank.
Penalty : Five hundred thousand. Default penalty.

Remuneration of liquidator. 117. (1) The remuneration of a liquidator or provisional liquidator of an insurer shall be as determined by the Court, on the recommendation of the Bank.

(2) No person, other than the Bank, may apply to the Court to vary the remuneration of a liquidator or provisional liquidator.

Statement of affairs.

Act 125. 118. The statement of affairs of an insurer as at the date of the winding up order made under section 234 of the Companies Act 1965 shall be submitted to the Bank at the same time as it is submitted to the Official Receiver or liquidator.

Liquidator's report and accounts. 119. (1) The liquidator shall lodge with the Bank a copy of—

Act 125. (a) the preliminary report referred to in section 235 of the Companies Act 1965 at the same time as he submits it to the Court; and

Act 125. (b) the prescribed form referred to in subsection 281 (1) of the Companies Act 1965 at the same time as he submits it to the Official Receiver.

(2) The liquidator shall submit to the Bank such other documents as the Bank may specify.

Valuation of assets and liabilities. 120. In the winding up of an insurer, whether or not its licence is revoked 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 Bank may determine and the law relating to bankruptcy shall not apply to the valuation of its liabilities.

Termination of policy. 121. (1) A policy of an insurer shall cease to remain in force with effect from the date of its winding up order.

(2) Where a policy ceases to be in force under subsection (1), the policy owner shall only be eligible to claim as a debt due to him—

(a) a refund of his premium in proportion to the unexpired period of his general policy; or

(b) the actuarial valuation reserve in respect of his life policy.

(3) The liquidator shall notify each policy owner and, in the case of a group policy, the group policy owner, about the cessation of insurance by ordinary mail at his last known address and by advertisement in such newspapers as the Bank may specify.

Application of insurance fund in a winding up.

Act 125. 122. (1) In the winding up of an insurer, the assets of an insurance fund shall be applied to meet its liabilities to policy owners and claimants under policies of that class of insurance business and these liabilities shall have priority over unsecured liabilities other than preferential debts specified under subsection 292 (1) of the Companies Act 1965 to the extent that they are apportioned to the insurance fund.

(2) Subject to subsection (1) —

(a) the assets representing a Malaysian insurance fund or foreign insurance fund maintained by the insurer in respect of its life or general insurance business shall be applied only for meeting the liabilities of that fund;

(b) where the assets of an insurance fund exceed its liabilities, the surplus assets may be applied proportionately to meet the liabilities of its other insurance funds which are deficient; and

Act 125. (c) any deficiency subsisting after application of the assets of the insurance funds under paragraphs (a) and (b) shall be met out of the other assets of the insurer, 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.

Waiver of strict proof of debt. 123. Where it appears to the liquidator that by reason of the inadequacy of its documents, or any other circumstances, hardship would be caused if he requires strict proof of debt, he may act on such evidence as he thinks fit and payment of a debt made by the liquidator in good faith to any person as being the person entitled to it shall discharge the liquidator from all liabilities in respect of that debt.

Offences by director, employee or agent of insurer. 124. No director, employee, agent or contributory, past or present, of an insurer which is being wound up—

(a) after its cessation of insurance business, shall continue to issue a policy;

(b) within twelve months immediately preceding or after the commencement of the winding up—

(i) shall conceal any part of its property, or conceal any debt due to or from it;

(ii) shall remove fraudulently any part of its property;

(iii) by himself or through another person, shall alter, conceal, destroy, mutilate or falsify a document relating to its property or affairs;

(iv) shall make, or cause to be made, any false or fraudulent entry in a document affecting, or relating to its property or affairs;

(v) by himself or through another person, shall part fraudulently with, alter or make any omission in a document relating to its property or affairs;

(vi) by any false representation or other fraud, shall obtain any property, for

or on its behalf, on credit which it has not subsequently paid for;

(vii) shall obtain on credit, for or on its behalf, under the false pretence that it is carrying on its business, a property which it has not subsequently paid for;

(viii) shall pledge or dispose of its property which has been obtained on credit and has not been paid for, unless the pledging or disposal was in the ordinary course of its business;

(ix) shall attempt to account for any part of its property by fictitious losses or expenses; or

(x) shall make any false representation or other fraud for the purpose of obtaining the consent of its creditors to an agreement with reference to its affairs or to its winding up; or

(c) after the commencement of the winding up—

(i) shall make material omission in a statement relating to its affairs;

(ii) knowing or believing that a false debt has been proved by a person, shall fail to inform the liquidator; or

(iii) shall fail to produce or prevent the production of a document relating to its property or affairs.

Penalty : Imprisonment for five years or five million ringgit or both.
Default penalty.

Continuation of life business.

Act 125. 125. (1) Notwithstanding paragraph 236 (1) (a) of the Companies Act 1965, the liquidator of a life insurer—

(a) may carry on its life business with a view to it being transferred as a going concern to another insurer but shall not effect a new policy; and

(b) subject to subsection (2), may transfer its assets and liabilities to another insurer, including liabilities under life policies and Part XI with the exception of paragraph 129 (1) (d) shall apply to the transfer.

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

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

(b) the amount of its other liabilities,

and the Court may reduce the liabilities to the extent necessary taking into consideration the value of its available assets subject to such condition as it considers fit.

Winding up rules.

Act 125. 126. (1) If the Minister submits to the Rules Committee proposals for making special provisions under section 372 of the Companies Act 1965 in relation to the winding up of insurers, the Committee may make rules under that section to give effect to the proposals, either as submitted or subject to such modifications as the committee considers fit.

Act 125. (2) Rules made under subsection (1) may provide for the modification or exclusion of Part X of the Companies Act 1965.

PART XI TRANSFER OF BUSINESS

Interpretation of this Part. 127. In this Part—

“transferee” means a company, including a licensed insurer, to which the insurance business of a licensed insurer is transferred;

“transferor” means insurer which transfers its insurance business, wholly or partly, to a transferee;

“scheme” means a scheme of transfer for insurance business.

Court to confirm scheme. 128. (1) A transferor’s insurance business, wholly or partly, may be transferred to a transferee by a scheme approved by the Bank and confirmed by the Court.

(2) Subsection (1) and (4) in the case of a foreign insurer, shall apply in relation to its Malaysian policies.

(3) The confirmation of the Court under subsection (1) is not required for the transfer of a licensed local insurer’s business outside Malaysia.

(4) A scheme may provide for the business to be transferred to a public company not licensed as an insurer under this Act in respect of the relevant class of business, if the scheme is to operate only in the event of the public company becoming so licensed.

Submission of scheme. 129. (1) The transferor, before making an application to the Court, shall submit to the Bank, in such manner as the Bank may specify—

- (a) the draft scheme;
- (b) the consent of the transferee to the scheme;
- (c) a certified copy of its accounts, and in the case of transfer of life business, a valuation report on which the scheme is based; and
- (d) confirmation of the transferee that policy owners, claimants and other creditors shall not be affected adversely following the transfer.

(2) The Bank may require the transferor or transferee or both to furnish such document or information, as the Bank may specify, including—

- (a) a copy of the memorandum of association and articles of association of the transferee;
- (b) specific scheduled plans to ensure that the transferee complies with the capital requirement of section 18; and
- (c) a report by the transferor’s auditors, and in the case of a transfer of life business, a report by the transferor’s appointed actuary on the financial condition of its insurance fund.

(3) The Bank may require a valuation of the life fund to be made by an actuary, using valuation basis, approved by the Bank and the cost of the valuation shall be borne by the transferor.

(4) In the case of a transfer of general business, the scheme shall provide that the transferee shall assume liability for claims which have been incurred

but not yet reported, in addition to liabilities on reported claims and other liabilities shown in its balance sheet.

Approval of scheme. 130. The Bank may reject the scheme or approve it with such modification as it may specify.

Notice of scheme. 131. (1) The transferor, upon the Bank' s approval of the scheme, shall publish a notice stating—

(a) its intention to apply to the Court for confirmation of the scheme, in the Gazette and in not less than two daily newspapers published in Malaysia and approved by the Bank, one of which shall be in the national language;

(b) that a copy of the scheme shall be open for inspection for a period of thirty days at the principal place of business of the transferor and transferee;

(c) the locations of other offices where the scheme can be examined; and

(d) that a policy owner, claimant or other creditor may object to the scheme in writing to the Bank within thirty days from the date of publication of the notice.

(2) The transferor shall send a copy of the notice together with a summary of the scheme as approved by the Bank to each of its policy owners at his last known address.

(3) The Bank, on the transferor' s application in writing, may exempt it from subsection (2) subject to such condition as the Bank may impose.

Modification of scheme 132. Where a policy owner, claimant or other creditor files an objection to the scheme, the transferor, with the approval of the Bank, may modify the scheme.

Petition to Court to confirm scheme. 133. (1) The transferor shall present a petition to the Court for confirmation of the scheme as approved by the Bank.

(2) An application to the Court with respect to any matter connected with the scheme may be made by a person, who in the opinion of the Court, is likely to be affected by the scheme, at any time before confirmation of the scheme by the Court.

(3) The Court may refuse to confirm the scheme or may confirm it with or without modification.

(4) When confirming the scheme, the Court shall fix the effective date of transfer after hearing all parties concerned and the transfer shall be binding on all persons affected by it.

Bank to be party to proceedings. 134. (1) A person making an application to the Court in relation to a scheme—

(a) shall deliver a copy of the application to the Bank;

(b) shall give notice to the Bank of all proceedings relating to the application; and

(c) shall give to the Bank a copy of any document relating to the proceedings, at the same time as the proceedings are instituted or the document lodged in the Court or served on a party to the proceedings.

(2) The Bank shall be entitled to be heard in proceedings relating to an application in respect of a scheme and to call, examine and cross-examine a witness.

(3) Notwithstanding that the Bank has given its approval to a scheme, it may support an application made under subsection 133 (2) or propose modification to the scheme.

Effect of Court's confirmation. 135. (1) The Court's confirmation of the scheme shall have the effect of—

(a) vesting the transferor's rights and title to the assets transferred by the scheme in the transferee without the need to effect the transfer of rights and title to each asset individually; and

(b) making the transferee fully responsible for liabilities transferred by the scheme whether arising out of policies or otherwise as though the liabilities were originally assumed by the transferee without the need for the transferee to confirm each liability individually.

(2) Where an order of the Court vests an alienated land, or a share or interest in an alienated land, in the transferee—

Act 56. (a) the Court, where the alienated land is in West Malaysia, shall cause a copy of the order to be served on the Registrar of Titles or the Land Administrator, as the case may be, immediately after the making of the order to give effect to subsections 420 (2), (3) and (4) of the National Land Code;

Sabah Cap. 68. (b) where the alienated land is in Sabah, the transferee, as soon as practicable after the order has been made, shall present an authenticated copy of the order to the Registrar for registration of the vesting of the alienated land or of the share or interest in alienated land, in the transferee, as provided under the Land Ordinance of Sabah; or

Swk. Cap. 81. (c) where the alienated land is in Sarawak, the transferee, as soon as practicable after the order has been made, shall produce an authenticated copy of the order to the Registrar for registration of the vesting of the alienated land or of the share or interest in alienated land, in the transferee, as provided under section 171 of the Land Code of Sarawak.

Reimbursement of Bank's expenses. 136. The transferor and transferee shall be jointly and severally liable to reimburse the Bank any expenses it may incur under this Part.

Prohibition of payment out of insurance fund. 137. No insurer shall pay to any person any remuneration out of the assets of an insurance fund in relation to a scheme.

Penalty : One million ringgit.

Lodgment of document. 138. Within thirty days after the scheme has taken effect, the transferee shall lodge with the Bank—

- (a) a copy of the scheme as confirmed by the Court;
- (b) a statement of assets and liabilities of the transferred insurance business as at the effective date of the transfer;
- (c) a statement showing the assets and liabilities of the transferee as at the effective date of the transfer;
- (d) a copy of any actuarial report or other report on the financial condition of the life insurance business being transferred which was made subsequent to the report filed with the Bank under subsection 129 (1); and
- (e) a statutory declaration by the chairman of the board of directors of, the transferee, and the transferor or liquidator, as the case may be, setting out payment in cash or in kind made or to be made to a person on account of the transfer and stating that to the best of his belief no other payment has been or is to be made with his knowledge.

Transfer of insurance broking, adjusting business or financial advisory business. 139. No licensed insurance broker, licensed adjuster or licensed financial adviser shall transfer its business, wholly or partly, to a person except with the prior written approval of the Bank. Act A1247.

PART XII PROVISIONS RELATING TO POLICIES

Insurance of property and liability. 140. (1) Except with the prior written approval of the Bank, no person shall insure or cause to be insured property, or liability, with an insurer other than a licensed general insurer.

Penalty : Five hundred thousand ringgit.

(2) The Bank, if it is satisfied that insurance of the property, or liability, is not available from any licensed general insurer, and after consultation with the Minister, may approve under subsection (1) for the insurance to be effected outside Malaysia.

(3) An approval under subsection (2) shall be granted for such duration and subject to such condition as the Bank may specify.

(4) A person shall furnish to the Bank such information on the insurance of any property, or liability, as it may require by notice in writing within such period as may be specified in the notice.

Penalty : Five hundred thousand ringgit.

(5) In this section—

- (a) “property” means property, movable or immovable, located in Malaysia, including any ship or aircraft registered in Malaysia;
- (b) “liability” means liability of a person resident in Malaysia to a third party.

Assumption of risk. 141. (1) No licensed general insurer shall assume any risk in respect of such description of general policy as may be prescribed unless and until the premium payable is received by the licensed general insurer in such manner and within such time as may be prescribed.

Penalty : Five hundred thousand ringgit.

(2) Where the premium payable under subsection (1) is received by a person on behalf of a licensed general insurer, the receipt shall be deemed to be receipt by the licensed general insurer for the purpose of that subsection and the onus of proving that the premium was received by a person who was not authorised to receive the premium shall lie on the licensed general insurer.

(3) Where a person receives on behalf of a licensed general insurer premium on a policy of a description prescribed under subsection (1), that person shall remit the amount to the licensed general insurer within such period as the Bank may prescribe in relation to policies of that description.

Penalty : Five hundred thousand ringgit.

(4) A licensed general insurer shall pay directly to the policy owner a refund of premium in relation to a policy of such description as may be prescribed under subsection (1) which may become due to the policy owner for any reason.

Penalty : Five hundred thousand ringgit. Default penalty.

Premium rate under life policy. 142. (1) A licensed life insurer shall not issue a life policy unless the premium rate chargeable under that description of policy has been certified by its appointed actuary as suitable.

Penalty : One million ringgit.

(2) A licensed life insurer shall lodge with the Bank particulars of a new life policy product together with its certification by the appointed actuary, the prospectus or other sales literature and specimen policy relating to that product and any other supporting information as the Bank may specify, at least thirty days before offering the new life policy product to the public.

Penalty : One million ringgit.

(3) Where it appears to the Bank that a life policy product is not appropriate for any reason, the Bank, before expiry of the thirty days referred to in subsection (2) —

(a) may prohibit the licensed life insurer from offering the life policy to the public; or

(b) may require the licensed life insurer to make such changes to the life policy product as the Bank may specify before offering it to the public.

Penalty : One million ringgit. Default penalty.

(4) The certificate of the appointed actuary shall be in such form as the Bank may specify.

(5) The appointed actuary shall not certify premium rates for a life policy product unless he is satisfied that it is suitable and in accordance with sound insurance principles consistent with the experience of the licensed life insurer and complies with such code of good practice as the Bank may specify

with regard to the actuarial basis for determination of premium rates.

(6) The appointed actuary in certifying premium rates for a life policy product shall have regard to the maximum rate of commission or discount proposed to be paid or allowed to a person, for that description of policy.

(7) Where premium rates are certified by the appointed actuary for a life policy product, the licensed life insurer, except with the approval of the Bank, shall not pay or allow in respect of a policy of that description, commission at a rate greater than the maximum rate of commission.

Penalty : One million ringgit.

Actuary' s report on policy terms. 143. (1) The Bank may direct a licensed life insurer to appoint an actuary approved by the Bank to furnish within the time specified in the notice, a report on—

(a) the suitability of the policy terms and premium rates for the time being chargeable by the licensed life insurer for a life policy product; or

(b) on such other matter as the Bank may specify, and if he considers that the policy terms, premium rates or any other matters are not suitable or not in accordance with sound insurance principles or inconsistent with the licensed life insurer' s experience, to submit a report as to the policy terms, premium rates or any other matters which the actuary recommends for that life policy product.

(2) The Bank, after considering the report of the actuary—

(a) may prohibit the licensed life insurer from offering the life policy product to the public; or

(b) may require the licensed life insurer to make such changes to the life policy product as the Bank may specify.

Penalty : One million ringgit.

(3) Upon receipt of the report, the Bank shall notify the remuneration which the licensed life insurer shall pay to the actuary.

Premium rate under general policy. 144. No licensed general insurer or association of licensed general insurers shall adopt a tariff of premium rates, or a tariff of policy terms and conditions, for a description of general policy which is obligatorily applicable to licensed general insurers, except with the prior written approval of the Bank.

Penalty : One million ringgit.

Review of premium rate. 145. The Bank may require a licensed insurer or an association of licensed life or general insurers—

(a) to review the premium rates of a description of life or general policy on the basis of the insurance claims experience of the licensed insurer or all licensed insurers or other factors relevant to the determination of premium rates; or

(b) to justify its premium rates for a description of life or general policy

and the Bank, if it considers fit, may direct the licensed insurer to increase or reduce the premium rates.

Penalty : One million ringgit. Default penalty.

Notice regarding proof of age. 146. Where a licensed life insurer issues a life policy which provides that proof of age of the life insured is a condition precedent to the payment of benefits under the life policy and it has not admitted the age of the life insured, it shall issue on or with the life policy a printed notice stating that proof of age of the life insured may be required prior to the payment of benefits under the life policy.

Mis-statement of age and non-avoidance of policy. 147. (1) A licensed life insurer shall not dispute liability under a life policy by reason only of a mis-statement of the age of the life insured.

(2) Where the true age as shown by the proof is greater than that on which the life policy is based, the licensed life insurer may vary the sum insured by, and the bonuses allotted to, the life policy so that, as varied, they bear the same proportion to the sum insured by, and the bonuses allotted to, the life policy before variation as the amount of the premiums that have been paid under the life policy as issued bears to the amount of the premiums that would have become payable if the life policy had been based on the true age.

(3) Where the true age as shown by the proof is less than that on which the life policy was based, the licensed life insurer—

(a) may vary the sum insured by, and the bonuses allotted to, the life policy so that, as varied, it bears the same proportion to the sum insured by, and the bonuses allotted to, the life policy before variation as the amount of the premiums that have been paid under the life policy as issued bears to the amount of the premiums that would have become payable if the life policy had been based on the true age; or

(b) may reduce the premium as from the date of issue of the life policy, to the amount that would have been payable if the life policy had been based on the true age and repay the policy owner the amount of over-payments of premium less any amount that has been paid as the cash value of bonuses in excess of the cash value that would have been paid if the life policy had been based on the true age.

(4) A licensed life insurer shall not dispute the validity of a life policy after the expiry of two years from the date on which it was effected on the ground that a statement made or omitted to be made in the proposal for insurance or in a report of a doctor, referee, or any other person, or in a document leading to the issue of the life policy, was inaccurate or false or misleading unless the licensed life insurer shows that the statement was on a material matter or suppressed a material fact and that it was fraudulently made or omitted to be made by the policy owner.

(5) For the purpose of subsection (4), “material matter” or “material fact” means a matter or fact which, if known by the licensed life insurer,

would have led to its refusal to issue a life policy to the policy owner or would have led it to impose terms less favorable to the policy owner than those imposed in the life policy.

(6) Nothing in this section shall prevent the licensed life insurer from calling for proof of age at any time and no life policy shall be deemed to be disputed merely because the terms of the life policy are adjusted in accordance with subsections (2) or (3).

Objection to life policy. 148. (1) A policy owner, within fifteen days after the delivery of a life policy of any description to him or to a person who resides at his residence, may return the life policy to the licensed life insurer and it shall immediately refund any premium which has been paid in respect of the policy and the life policy shall be cancelled subject only to the deduction of expenses incurred for the medical examination of the life insured.

Penalty : Five hundred thousand ringgit

(2) subsection (1) shall not apply to a life policy insuring three or more persons.

(3) For the purpose of subsection (1), a life policy shall be deemed to be returned to a licensed life insurer on the date the life policy is received by it or posted to it by registered post.

Control of proposal form, policy or brochure. 149. (1) A licensed insurer, upon being required by the Bank by notice in writing, shall submit the proposal form, policy or brochure for the time being in use or to be used by it and where the whole or part of any proposal form, policy or brochure is not in the national language or English, it shall submit a translation of it in the national language or English.

Penalty : One million ringgit

(2) The Bank, after giving the licensed insurer an opportunity to be heard, by notice in writing may direct the licensed insurer to discontinue the use of the proposal form, policy or brochure from a date specified in the notice, or until it is modified in such manner as the Bank may specify.

Penalty : One million ringgit

(3) Unless directed by the Bank under subsection (2), a licensed insurer may continue to use the proposal form, policy or brochure lodged with the Bank in accordance with subsection (1).

(4) A proposal form and, where no formal proposal form is used, a request for particulars by the licensed insurer shall prominently display a warning that if a proposer does not fully and faithfully give the facts as he knows them or ought to know them, the policy may be invalidated.

(5) The Bank may specify a code of good practice in relation to any description of proposal form, policy or brochure.

Duty of disclosure. 150. (1) Before a contract of insurance is entered into, a proposer shall disclose to the licensed insurer a matter that—

(a) he knows to be relevant to the decision of the licensed insurer on whether to accept the risk or not and the rates and terms to be applied; or
(b) a reasonable person in the circumstances could be expected to know to be relevant.

(2) The duty of disclosure does not require the disclosure of a matter that—

(a) diminishes the risk to the licensed insurer;
(b) is of common knowledge;
(c) the licensed insurer knows or in the ordinary course of his business ought to know; or
(d) in respect of which the licensed insurer has waived any requirement for disclosure.

(3) Where a proposer fails to answer or gives an incomplete or irrelevant answer to a question contained in the proposal form or asked by the licensed insurer and the matter was not pursued further by the licensed insurer, compliance with the duty of disclosure in respect of the matter shall be deemed to have been waived by the licensed insurer.

(4) No licensed insurer, insurance agent, licensed financial adviser or financial adviser's representative, in order to induce a person to enter into or offer to enter into a contract of insurance with it or through him— Act A1247.

(a) shall make a statement which is misleading, false or deceptive, whether fraudulently or otherwise;
(b) shall fraudulently conceal a material fact; or
(c) in the case of an insurance agent, a licensed financial adviser or a financial adviser's representative, use sales brochure or sales illustration not authorised by the licensed insurer.

Penalty : One million ringgit.

(5) Where a person is induced to enter into a contract of insurance in a manner described in subsection (4), the contract of insurance shall be voidable and the person shall be entitled to rescind it.

Knowledge of, and statement by, insurance agent. 151. (1) A person who is authorised by a licensed insurer to be its insurance agent and who solicits or negotiates a contract of insurance in that capacity shall be deemed, for the purpose of the formation of the contract of insurance, to be the agent of the licensed insurer and the knowledge of that insurance agent shall be deemed to be the knowledge of the licensed insurer.

(2) A statement made, or an act done, by the insurance agent shall be deemed, for the purpose of the formation of the contract of insurance, to be a statement made, or act done, by the licensed insurer notwithstanding the insurance agent's contravention of subsection 150 (4) or any other provision of this Act.

(3) Subsection (1) shall not apply—

(a) where there is collusion or connivance between the insurance agent and the proposer in the formation of the contract of insurance; or

(b) where a person has ceased to be an insurance agent of a licensed insurer and it has taken all reasonable steps to inform, or bring to the knowledge of, potential policy owners and the public in general of the fact of such cessation.

Insurable interest. 152. (1) A life policy insuring the life of anyone other than the person effecting the insurance, or the life of a person mentioned in subsection (2), shall be void unless the person effecting the insurance has an insurable interest in that life at the time the insurance is effected and the policy moneys payable, or where the policy moneys are payable in instalments, the discounted value of all future instalments under the life policy, shall not exceed the amount of that insurable interest at the time the event resulting in payment of policy moneys occurs.

(2) A person shall be deemed to have insurable interest in relation to another person if that other person is—

(a) his spouse, child or ward being under the age of majority at the time the insurance is effected;

(b) his employee; or

(c) notwithstanding paragraph (a), a person on whom he is at the time the insurance is effected, wholly or partly, dependent.

(3) In this section, “insuring the life of a person” means insuring the payment of moneys on a person’s death or on the happening of any contingency dependent on the termination or continuance of his life and includes granting, an annuity to commence on his death or at a time referred to in the annuity.

(4) This section shall not affect a life policy issued before 21 January 1963.

Capacity of minor to insure. 153. (1) Notwithstanding any law to the contrary, a minor who has attained the age of ten years but has not attained the age of sixteen years, with the consent in writing of his parent or guardian—

(a) may effect a life policy upon his own life or upon another life in which he has an insurable interest; or

(b) may assign the life policy on his own life.

(2) A minor who has attained the age of sixteen years—

(a) may effect a life policy upon his own life or upon another life in which he has an insurable interest; or

(b) may assign the life policy on his own life,

and is as competent in all respects to have and exercise the powers and privileges of a policy owner in relation to a life policy of which he is the owner as he would be if he had attained the age of majority.

Life policy moneys to be paid without deduction. 154. (1) Policy moneys payable under a life policy, or moneys payable on the surrender of a life policy, shall be paid without any deduction for moneys not due under the life policy or under an assignment of the life policy, unless the deduction is made with the consent of the person entitled to the policy moneys.

(2) A provision contained in a life policy or an agreement relating to deduction of moneys not due under the life policy shall be void to the extent it entitles the licensed life insurer to deduct the moneys from policy moneys payable under, or moneys payable on the surrender of the life policy without the consent of the person entitled to the policy moneys.

(3) Subsections (1) and (2) apply to a Malaysian life policy but shall not apply to a life policy issued before 21 January 1963.

(4) In any proceedings for the recovery of policy moneys due under, or payable on the surrender of, a life policy no set-off or counter-claim shall be allowed except for moneys due under the life policy or under an agreement charging the moneys on the life policy.

Surrender of life policy. 155. (1) At any time after—

(a) inception of a single premium life policy; or

(b) a life policy other than a single premium life policy has been in force for three years or more,

the policy owner, by notice in writing to the licensed life insurer, may surrender the life policy and he shall be entitled to receive the surrender value of the life policy, determined in such manner as may be prescribed but subject to a deduction of moneys due under the life policy or under an agreement charging the moneys on the life policy.

(2) Notwithstanding paragraph (1) (b), a licensed life insurer may provide a surrender value for a life policy which has been in force for less than three years.

(3) A life policy shall remain in force until the licensed life insurer has effected payment of the surrender value of the life policy.

Non-Payment of life policy premiums. 156. (1) Where a life policy has been in force for three years or more, it shall not lapse or be forfeited by reason of non-payment of premiums but shall have effect subject to such modification as to the period for which it is to be in force, or of the benefits receivable under it, or both, as may be determined in accordance with the system of the licensed life insurer which is applicable to the life policy.

(2) No licensed life insurer shall adopt a system for the purpose of subsection (1) unless it has filed the particulars of the system with the Bank at least thirty days before the effective date for adoption of the system.

(3) Where the Bank considers the system of a licensed life insurer inappropriate for any reason, it may require the licensed life insurer by notice in writing to amend the system in such manner as the Bank may specify.

(4) A licensed life insurer shall inform the policy owner at the time of

issue of the life policy the system under subsection (1) applicable to that life policy and the system shall not be altered except in favour of the policy owner while that life policy is in force.

(5) A licensed life insurer, upon receipt of a notice under subsection (3), shall not use the system unless it is modified as specified.

Penalty : Five hundred thousand ringgit. Default penalty.

(6) Notwithstanding subsection (1), a licensed life insurer may provide the benefit under this section for a life policy which has been in force for less than three years.

Particulars in policy. 157. (1) A licensed insurer shall state in a policy the amount of premium charged for the insurance.

(2) A licensed life insurer shall incorporate a statement in distinctive type in a life policy—

(a) stating whether the life policy is or is not a participating policy; and

(b) that the policy owner, by notice in writing to the licensed life insurer, may surrender the life policy under section 155 and be entitled to receive the surrender value.

Penalty : Five hundred thousand ringgit.

Election for paid-up policy. 158. (1) Where a life policy has been in force for three years or more, or such lesser period as the licensed life insurer may allow, the policy owner, by notice in writing to the licensed life insurer, may elect to exchange the life policy for a paid-up life policy for a sum insured determined in such manner as may be prescribed.

(2) A life policy issued in place of an earlier life policy shall be treated as having come into force on the date the earlier life policy came into force.

Additional rights conferred by sections 155, 156 and 158. 159. The rights conferred by sections 155, 156 and 158 shall be in addition to, and not in derogation of, any other rights available to the policy owner under the terms of the life policy or otherwise.

Collection of premiums at policy owner's address. 160. (1) The Bank may prescribe the manner in which a licensed life insurer carries on life business in respect of life policies where premiums are ordinarily collected at the policy owner's address by a person whom the licensed life insurer employs for this purpose.

(2) In respect of a life policy to which subsection (1) applies, payment to the person whom the licensed life insurer employs for the collection of premiums shall be deemed to be payment to the licensed life insurer.

Interest on claim amount. 161. (1) Where a claim or a part of a claim made

under a life policy, or under a personal accident policy upon the death of the policy owner is not paid by the licensed insurer within sixty days of receipt of intimation of the claim, the licensed insurer shall pay a minimum compound interest of four per cent per annum or such other rate as may be prescribed on the amount of policy moneys upon expiry of the sixty days until the date of payment.

(2) This section applies to payment made under Part XIII.

PART XIII PAYMENT OF POLICY MONEYS UNDER A LIFE POLICY OR PERSONAL ACCIDENT POLICY

Application of this Part.

Act 67. 162. In this Part, a reference to a policy is a reference to a life policy, including a life policy under section 23 of the Civil Law Act 1956, and a personal accident policy, effected by a policy owner upon his own life providing for payment of policy moneys on his death.

Power to make nomination. 163. (1) A policy owner who has attained the age of eighteen years may nominate a natural person to receive policy moneys payable upon his death under the policy by notifying the licensed insurer in writing the name, date of birth, identity card number or birth certificate number and address of the nominee—

(a) when the policy is issued, or
(b) after the policy has been issued, together with the policy for the licensed insurer's endorsement of the nomination on the policy.

(2) A nomination made under subsection (1) shall be witnessed by a person of sound mind who has attained the age of eighteen years and who is not a nominee named under that subsection.

(3) The licensed insurer—

(a) shall prominently display in the nomination form that the policy owner has to assign the policy benefits to his nominee if his intention is for his nominee, other than his spouse, child or parent, to receive the policy benefits beneficially and not as an executor;

(b) shall record the nomination and the particulars of the nominee in its register of policies; and

(c) shall return the policy to the policy owner after endorsing the nomination on the policy or by issuing an endorsement to the original policy by registered mail to the policy owner and the nomination shall take effect from the date the nomination is registered by the licensed insurer.

(4) A failure to comply with subsection (3) shall not affect the validity of the nomination if it is otherwise proved that the nomination was made by the policy owner and given to the licensed insurer.

(5) A nomination made under subsection (1) may be in favour of one person or

several persons and where there is more than one person nominated, the policy owner may direct that specified shares be paid to the persons nominated and in the absence of direction by the policy owner, the licensed insurer shall pay the persons in equal shares.

Revocation of nomination. 164. (1) A nomination, including a nomination to which section 166 applies, shall be revoked—

- (a) upon the death of the nominee, or where there is more than one nominee, upon the death of all the nominees, during the life-time of the policy owner;
- (b) by a notice in writing given by the policy owner; or
- (c) by any subsequent nomination.

(2) Subject to subsection (1), a nomination shall not be revoked by a will or by any other act, event or means.

(3) Where there is more than one nominee and one of the nominees predeceases the policy owner, in the absence of any subsequent nomination by the policy owner disposing of the share of the deceased nominee, the licensed insurer shall pay the share to the remaining nominees in proportion to their respective shares.

Payment of policy moneys where there is nomination. 165. (1) Subject to subsection (2), where a policy owner dies having made a nomination, the licensed insurer shall pay the policy moneys of the deceased policy owner according to the direction of the nomination upon receipt of a claim by the nominee and the claim is accompanied by proof of death of the policy owner.

(2) Where a nominee fails to claim the policy moneys within sixty days of the licensed insurer becoming aware of the death of the policy owner, the licensed insurer shall notify the nominee in writing at his last known address of his entitlement to claim the policy moneys.

(3) Where a nominee fails to claim the policy moneys within twelve months of the licensed insurer becoming aware of the death of the policy owner despite notification under subsection (2), section 169 shall apply as though no nomination was made.

(4) Where a nominee, other than a nominee under section 166, dies after the death of the policy owner but before any policy moneys has been paid to him as nominee, section 164 or 169 shall apply to the policy, as the case may be.

Trustee of policy moneys. 166. (1) A nomination by a policy owner, other than a Muslim policy owner, shall create a trust in favour of the nominee of the policy moneys payable upon the death of the policy owner, if—

- (a) the nominee is his spouse or child; or
- (b) where there is no spouse or child living at the time of nomination, the nominee is his parent.

(2) Notwithstanding any written law to the contrary, a payment under subsection (1) shall not form part of the estate of the deceased policy owner

or be subject to his debts.

(3) The policy owner, by the policy, or by a notice, in writing to the licensed insurer, may appoint trustees of the policy moneys and where there is no trustee—

(a) the nominee who is competent to contract; or
(b) where the nominee is incompetent to contract, the parent of the incompetent nominee and where there is no surviving parent, the Public Trustee, shall be the trustee of the policy moneys and the receipt of a trustee shall be a discharge to the licensed insurer for all liability in respect of the policy moneys paid to the trustee.

(4) A policy owner shall not deal with a policy to which subsection (1) applies by revoking a nomination under the policy, by varying or surrendering the policy, or by assigning or pledging the policy as security, without the written consent of the trustee.

(5) Nothing in this section shall prejudice a creditor of a policy owner from applying to the court for a declaration that this section, wholly or partly, is inapplicable to any particular policy on the ground that the premiums under that policy were paid to defraud the creditor.

Nominee other than a nominee under subsection 166 (1). 167. (1) A nominee, other than a nominee under subsection 166 (1), shall receive the policy moneys payable nominee on the death of the policy owner as an executor and not under solely as a beneficiary and any payment to the nominee shall form part of the estate of the deceased policy owner and be subject to his debts and the licensed insurer shall be discharged from liability in respect of the policy moneys paid.

(2) Subsection (1) applies to a nominee of a Muslim policy owner who, on receipt of the policy moneys, shall distribute the policy moneys in accordance with Islamic law.

Assigned or pledged policy moneys. 168. (1) Notwithstanding a nomination under section 163 or the creation of a trust under subsection 166 (1), where the policy moneys, wholly or partly, have been pledged as security or assigned to a person, the claim of the person entitled under the security or the assignee shall have priority over the claim of the nominee and subject to the rights under the security or the assignment being preserved, the licensed insurer shall pay the balance of the policy moneys to the nominee.

(2) Where more than one person are entitled under the security or the assignment, the respective rights of the persons entitled under the security or the assignment shall be in the order of priority according to the priority of the date on which the security or the assignment was created, both security and assignment being treated as one class for this purpose.

Payment of policy moneys where there is no nomination. 169. (1) Where a policy owner of a policy dies without having made a nomination, subject to section

168, the licensed insurer shall pay the policy moneys of the deceased policy owner to the applicant who produces the Grant of Probate or Letters of Administration or Distribution Order.

(2) Subject to subsection (1), the licensed insurer may pay to the policy owner's spouse, child or parent in that order of priority and where there are more than one spouse, child or parent, in equal shares to each person of that class and where there is no spouse, child or parent and—

(a) where the policy moneys do not exceed a hundred thousand ringgit or such greater amount as may be prescribed, the licensed insurer may pay all that policy moneys without requiring the Grant of Probate or Letters of Administration or Distribution Order—

(i) to a person who satisfies the licensed insurer to be entitled and likely to be given the Grant of Probate or Letters of Administration or Distribution Order; or

(ii) to a person who satisfies the licensed insurer to be beneficially entitled to the estate of the deceased policy owner; or

(b) where the policy moneys are more than a hundred thousand ringgit, or such greater amount as may be prescribed, the licensed insurer may pay to the person referred to in subparagraph (a) (i) or (ii) the amount referred to in that paragraph and subject to subsection (6), pay to that person the balance of the policy moneys upon production of the Grant of Probate or Letters of Administration or Distribution Order.

(3) In this section, a reference to policy moneys is a reference to the aggregate amount of policy moneys in respect of all policies of the policy owner with that licensed insurer where there is no nomination.

(4) The Grant of Probate or Letters of Administration or Distribution Order granted or having effect as if granted, in respect of the personal estate comprising the policy moneys, by a Court in Malaysia or a competent authority outside Malaysia, or its certified copy shall be sufficient proof to the licensed insurer to pay the policy moneys to the person to whom the grant was made.

Act 97. (5) The licensed insurer may accept the Grant of Probate or Letters of Administration or Distribution Order or any other document having the same effect, granted by a Court in Malaysia or a competent authority outside Malaysia, as sufficient proof to pay the policy moneys of the deceased policy owner to the person to whom the grant was made, provided that the same have been duly registered with the Court in Malaysia and sealed in accordance with the Probate and Administration Act 1959.

(6) Where, upon the expiry of twelve months after a payment under paragraph (2) (b) has been made by a licensed insurer, and a balance of the policy moneys still remains payable and no claim has been made by a person who holds a Grant of Probate or Letters of Administration or Distribution Order, the licensed insurer shall pay the balance of the policy moneys to the person who received the initial payment of the policy moneys.

(7) Policy moneys paid under this section shall be deemed to have been duly paid and the licensed insurer shall be discharged from liability in respect of the policy moneys so paid notwithstanding the absence or invalidity of, or any defect in the Grant of Probate or Letters of Administration or Distribution Order or any other document having the same effect.

(8) A person to whom a payment may be made under this section shall give a receipt which shall be deemed to be a valid receipt.

Payment to person incompetent to contract. 170. Where a person has not attained the age of eighteen years, or who is certified by a medical practitioner in the public service to be of unsound mind and no committee of his estate has been appointed, or to be incapable, by reason of infirmity of mind or body, of managing himself and his property and affairs, the licensed insurer—

(a) in the case of a nominee under subsection 166 (1) —

(i) if the policy moneys are ten thousand ringgit or less or such other amount as may be prescribed, may pay to a person who satisfies the licensed insurer that he will apply the policy moneys for the maintenance and benefit of the nominee under subsection 166 (1), as the case may be, or a person to whom policy moneys are payable under subsection 169 (2) or (6), subject to the execution of an undertaking by that person that policy moneys will be applied solely for the maintenance and benefit of the nominee; and

(ii) if the policy moneys are more than the amount in paragraph (a) (i), pay to the Public Trustee or a trust company nominated by the Public Trustee; or

(b) in the case a person to whom policy moneys are payable under subsections 169 (2) or (6), pay to the Public Trustee or a trust company nominated by the Public Trustee.

Distribution of policy moneys in due course of administration. 171. A person to whom policy moneys may be paid under section 169 shall receive the policy moneys as an executor and not solely as a beneficiary and shall distribute the policy moneys in due course of administration of the estate of the deceased person in accordance with the terms of a will of the deceased person, and if there is no such will, in accordance with the law applicable to the administration, distribution and disposition of his estate upon his intestacy.

This part to prevail over policy and any other written law. 172. (1) This Part shall have effect in relation to a policy which is in force on or after the effective date, and in relation to a nomination made before, on or after the effective date, notwithstanding anything contained in the policy, and nothing contained in a policy shall derogate from, or be construed as derogating in any manner or to any extent from, this Part.

(2) This Part shall have full force and effect notwithstanding anything inconsistent with or contrary to any other written law relating to probate,

administration, distribution, or disposition, of the estates of deceased persons, or in any rule of law, practice or custom in relation to these matters.

PART XIV INSURANCE GUARANTEE SCHEME FUND

Establishment and maintenance of insurance guarantee scheme fund. 173. (1) The Bank may establish and maintain a separate insurance guarantee scheme fund for general business and for life business in so far as the business relates to Malaysian policies.

(2) The Bank shall remit into the insurance guarantee scheme fund for general business, and into the insurance guarantee scheme fund for life business—

- (a) levies collected from a licensed general insurer or licensed life insurer, as the case may be;
- (b) investment income and accretions of capital on investments of the assets of the insurance guarantee scheme fund;
- (c) proceeds from the realisation of investments of the assets of the insurance guarantee scheme fund;
- (d) moneys recovered from the liquidator of an insurer that is being wound up;
- (e) moneys borrowed under section 175;
- (f) donations or contributions from any person; and
- (g) fines under subsection 211 (2).

Investment of moneys. 174 The Bank may invest moneys in an insurance guarantee scheme fund, in so far as they are not for the time being required to be expended for the purposes of this Part, in such investments as the Minister may approve and all income accruing in respect of such investments shall be credited to the fund.

Bank may borrow moneys. 175. The Bank may borrow moneys for an insurance guarantee scheme fund to such extent, in such manner, from such person or source, and on such condition, as the Minister may approve.

Levy. 176. (1) A licensed insurer shall pay to the Bank a levy for an insurance guarantee scheme fund, before the end of June each year or such other date as the Bank may approve, at such rate and in such instalments as the Bank, with the approval of the Minister, may specify.

Penalty : One million ringgit. Default penalty.

(2) The rate to be specified by the Bank under subsection (1) shall be not more than one per cent of the direct premium income of the licensed insurer in respect of its Malaysian policies during the financial year immediately preceding that date.

(3) Where a licensed insurer has not submitted its accounts under subsection

87 (1), for the purpose of calculating the amount of levy payable by that licensed insurer, the Bank may collect a provisional amount of levy which shall be adjusted according to the direct premium income in the accounts.

(4) Notwithstanding the revocation of its licence, an insurer shall continue to pay levy to an insurance guarantee scheme fund if it continues to receive premium.

(5) An insurer shall not be entitled to a refund of levy where its direct premium income is negative.

(6) A levy which is payable under subsection (1) shall be a debt due to an insurance guarantee scheme fund.

(7) In subsections (2) and (3), "direct premium income", in relation to—

(a) general insurance business, means the premium charged to policy owners in respect of policies issued to them net of any premium refunded to them, but does not include premium receivable under reinsurance policies;

(b) life business, means the single, first year and renewal premium receivable from policy owners.

Discontinuance of levy. 177. The Minister, at his discretion, may direct the Bank to discontinue the collection of levy if he is satisfied that there is adequate moneys in an insurance guarantee scheme fund but if circumstances warrant, he may direct the Bank to resume the collection.

Utilisation of moneys. 178. (1) The Bank, subject to section 179, may utilise the moneys in an insurance guarantee scheme fund—

(a) to meet the administrative, legal and other costs of maintaining and administering the insurance guarantee scheme fund;

(b) to repay moneys borrowed under section 175 and to pay interest on moneys borrowed; and

(c) to meet the liabilities of an insolvent insurer to a policy owner or person entitled through him.

(2) Moneys paid to a policy owner, or a person entitled through him, from an insurance guarantee scheme fund together with any moneys receivable by him from any other source or from the liquidator, shall not exceed ninety per cent of the lawful amount of moneys due to him.

(3) For the purpose of this Part, an insurer shall be deemed to be insolvent if—

(a) at the end of the last accounting period for which statements have been lodged with the Bank under section 87, the insurer is insolvent;

(b) winding up proceedings have been commenced against the insurer; or

(c) a receiving order has been made against it by the Court.

Restriction on utilisation of moneys. 179. (1) The Minister, at his discretion, may restrict the utilisation of an insurance guarantee scheme fund to certain descriptions of insurance business within a class or he may direct that the utilisation of the insurance guarantee scheme fund may be made in

such manner as he may direct.

(2) Notwithstanding subsection (1), moneys in an insurance guarantee scheme fund shall not be utilised to pay—

(a) liabilities of an insolvent insurer to its manager, director, controller, associate or the associate of a body corporate of which that insolvent insurer is a subsidiary; and

(b) liabilities of an insolvent insurer that is being wound up unless the liquidator is notified of the liability within six months from the effective date of its winding up order or such other period as the Bank may approve in the case of a particular insurer or policy owner or person entitled through him.

Determination of moneys payable. 180. (1) Subject to subsection 178 (2), the Bank, having regard to the assets of an insolvent insurer, may determine—

(a) the percentage of a claim or description of claims that is payable by an insurance guarantee scheme fund; or

(b) that no payment shall be made from an insurance guarantee scheme fund where the moneys payable in respect of a claim is less than ten ringgit or such greater amount as the Bank may prescribe.

(2) The Bank may impose a maximum amount on a claim or description of claims of an insolvent insurer which is payable by an insurance guarantee scheme fund.

Partial payment of claim. 181. Where a claim is partially paid by another person, the claimant shall only be entitled to claim from the insurance guarantee scheme fund in relation to an amount that is reduced by that partial payment.

Payment of claim. 182. (1) Subject to this Part, the Bank may pay a claim under section 178 out of an insurance guarantee scheme fund at any time after the effective date of the insolvent insurer's winding up order.

(2) The Bank, in its discretion, may pay out of an insurance guarantee scheme fund to a claimant of an insolvent insurer, the amount of dividend that may be declared by that insolvent insurer's liquidator together with the amount due from the insurance guarantee scheme fund, subject to the claimant assigning all his rights in respect of the claim in favour of the insurance guarantee scheme fund and upon the claimant accepting the payment from the insurance guarantee scheme fund in full and final settlement of his claim.

(3) Notwithstanding subsections (1) and (2), where moneys in an insurance guarantee scheme fund is insufficient to meet its obligations, the Bank may pay a claim in instalments, or defer making payment, out of the insurance guarantee scheme fund.

Assistance in administration. 183. The Bank may appoint a suitable person to

assist it in the administration and distribution of moneys in an insurance guarantee scheme fund.

PART XV MISCELLANEOUS

Agent, insurance broker and financial adviser. 184. (1) No person shall act on behalf of a person not licensed under this Act in relation to the carrying, on of insurance business in Malaysia unless approved in writing by the Bank. Act A1247.

Penalty : Imprisonment for three years or three million ringgit or both.
Default penalty.

(2) An approval under subsection (1) shall be granted for such duration, and may be subject to such condition as the Bank may specify.

(3) No licensed insurance broker shall negotiate a contract of insurance with an insurer not licensed under this Act except—

- (a) a contract of reinsurance; and
- (b) insurance of property or liability approved by the Bank under subsection 140 (2).

Penalty : Imprisonment for three years or three million ringgit or both.

(4) No licensed financial adviser shall negotiate a contract of insurance with an insurer not licensed under this Act.

Penalty : Imprisonment for two years or two million ringgit or both.

Restriction on insurance broker and financial adviser. 185. (1) No licensed insurance broker acting on behalf of a policy owner in respect of a risk shall act as a reinsurance broker on behalf of the licensed insurer for that risk except— Act A1247.

- (a) at the written request of the licensed insurer; and
- (b) where it discloses to the policy owner the fact that it also acts as the reinsurance broker for that risk.

Penalty : Imprisonment for three years or three million ringgit or both.

(2) Except with the prior written approval of the Bank, no licensed insurance broker or licensed financial adviser shall pay any person who is not its employee a fee or commission, in cash or in kind, to solicit insurance broking business or financial advisory business, as the case may be for itself.

Penalty : Five hundred thousand ringgit.

Insurance intermediary. 186. (1) No person shall invite any person to make an offer or proposal to enter into a contract of insurance without disclosing—

- (a) the name of the licensed insurer;
- (b) his relationship with the licensed insurer; and
- (c) the premium charged by the licensed insurer.

Penalty : One million ringgit. Default penalty.

(2) No person shall arrange a group policy for persons in relation to whom he

has no insurable interest without disclosing to each person—

- (a) the name of the licensed insurer;
- (b) his relationship with the licensed insurer;
- (c) the conditions of the group policy, including the remuneration payable to him; and
- (d) the premium charged by the licensed insurer.

Penalty : One million ringgit. Default penalty.

(3) A licensed insurer shall be liable to the person insured under a group policy if the group policy owner has no insurable interest in the life of the person insured and if the person insured has paid the premium to the group policy owner regardless that the licensed insurer has not received the premium from the group policy owner.

(4) The licensed insurer of a group policy, where the group policy owner has no insurable interest in the lives of the persons insured, shall pay the moneys due under the policy to the person insured or any person entitled through him.

Penalty : One million ringgit.

PART XVI GENERAL PROVISIONS

Enforcement of this Act. 187. (1) If a person defaults in complying with a provision of this Act, the Bank, by notice in writing, may require the person to make good the default within such time as it may specify.

(2) Nothing done under this section shall affect a person' s liability for an offence under this Act.

(3) A policy issued by a licensed insurer in contravention of this Act shall not be invalidated solely by reason of the contravention.

Refund of moneys obtained in contravention of this Act. 188. (1) A person shall refund moneys obtained by him from any other person in the course of carrying on insurance business, insurance broking business or financial advisory business without being licensed under this Act. Act A1247.

Penalty : Imprisonment for three years or three million ringgit or both. Default penalty.

(2) A person entitled to a refund under subsection (1) may make an application to the Bank and the Bank, after considering the application, may make an order directing the offender to refund the amount within such time and in such manner as it may direct.

(3) Nothing done under this section shall affect a person' s liability for an offence under this Act.

Compensation. 189. (1) Where a person—

- (a) has been convicted of an offence under this Act or under any other written law; or

(b) has had an offence committed by him under this Act compounded under subsection 211 (1), and the offence results in, or causes, any loss or damage to a licensee, that person shall be liable to indemnify the licensee in full for the loss or damage.

(2) Where the Bank is satisfied that a person is liable under subsection (1) to indemnify a licensee for loss or damage, it shall notify that person in writing, with a copy to the licensee, of the amount of moneys he is liable to indemnify the licensee and that person may make representation in writing to the Bank within thirty days from the date of service of the notice.

(3) Where no written representation is received by the Bank within the period specified under subsection (2), or where representation is received, the Bank, upon considering the representation received under subsection (2), may issue a certificate specifying the amount of moneys that person is liable to indemnify the licensee and that amount of moneys shall be a civil debt due to the licensee.

(4) The licensee, within ninety days from the date of the certificate, may enforce the civil debt by civil execution proceedings in a court having jurisdiction in the area in which its principal place of business is located as if it were a judgement of that court.

(5) A certificate under subsection (3) shall be conclusive evidence of the debt.

Notification of certificate. 190. (1) A notification of a certificate under subsection 189 (3) or a revocation of it shall be published in the Gazette after it has been issued or revoked, as the case may be.

(2) With effect from the date of publication in the Gazette of the notification, the person against whom the certificate is issued shall not sell, charge, pledge, transfer or otherwise deal with, or remove from Malaysia, any of his property without the prior written approval of the Bank.

(3) Subsection (2) shall also apply to a person having custody, control or possession of a property belonging to the person against whom a certificate is issued.

(4) A licensee, before a certificate under subsection 189 (3) is issued, may institute proceedings in a court in respect of its loss or damage after giving written notice to the Bank.

(5) Where a licensee has instituted proceedings in a court under subsection (4), the enquiry under subsection 189 (2) shall be discontinued and section 189 shall cease to apply in relation to the loss or damage.

Indemnity. 191. The Minister, the Governor, the Bank, its director, employee or any person acting on its behalf, shall not be liable to an action or other proceedings for damages for, or on account of, or in respect of, an act done or statement made, or omitted to be done or made, in the performance of a function under this Act if the act was done or statement was made, or omitted

to be done or made, in good faith.

Annual Report. 192. (1) The Bank shall submit to the Minister an annual report on the working of this Act during the preceding calendar year before the end of April each year and the report shall include a summary of documents lodged with it.

(2) The Minister shall lay a copy of the report before each House of Parliament.

Submission of information and statistics. 193. (1) A licensee, or an agent of a licensee, shall submit to the Bank, or such person as the Bank may specify, such document or information as it may require by notice in writing within such time as it may specify.

Penalty : One million ringgit. Default penalty.

(2) The Bank may require the document or information submitted under subsection (1) to be duly certified by the auditor, or appointed actuary, of the licensee.

Service of notices. 194. A letter containing a notice or other document to be served by the Bank under this Act shall be deemed to be addressed to the proper place if it is addressed to the last known address of the addressee.

Secrecy.

Act 519. 195. (1) Subject to section 16A of the Central Bank of Malaysia Act 1958 and section 108, no person exercising any power under this Act shall disclose information relating to the affairs of a licensee or its customer obtained in the course of carrying out his functions under this Act.

(2) This section shall not apply to information which at the time of disclosure is, or has already been made, lawfully available to the public from any source or to information which is in the form of a summary or collection of information where information relating to a particular licensee or its customer is not explicitly stated.

(3) No person who has information which to his knowledge has been disclosed in contravention of subsection (1) shall disclose the information to another person.

Permitted disclosure. 196. Section 195 shall not apply to the disclosure of information—

(a) to the Bank, its director or employee, a person appointed under subsection 3 (3) or an appointed person, where the disclosure is in the course of performance of functions; or

(b) to a person rendering service to the Bank in relation to a matter requiring professional knowledge.

Decision of Minister to be final. 197. Except as otherwise provided in this Act, a decision made by the Minister under this Act shall be final.

Exemption. 198. The Minister, if he considers it consistent with the purposes of this Act or in the interest of the public, by order published in the Gazette, may exempt a person or class of persons from all or any of the provisions of this Act for such duration and subject to such condition as the Minister may specify.

Application of other laws.

Act 125.

Act 316.

Act 502. 199. (1) Where there is a conflict or inconsistency between a provision of this Act and that of the Companies Act 1965, the Contracts Act 1950, or the Co-operative Societies Act 1993, the provision of this Act shall prevail.

(2) Where a difficulty or doubt arises in the application of subsection (1) in relation to a particular licensee or matter, the Minister, on the reference of the difficulty or doubt may resolve the difficulty or doubt referred to him by the Bank by a direction in writing.

Non-application of Act. 200. This Act shall not apply to—

Act 312. (a) a person registered under section 8, or licensed under section 37 or 38, of the Takaful Act 1984; or

Act 444. (b) a person licensed under section 9 of the Off-shore Insurance Act 1990,

in relation to the business for which he is registered or licensed, as the case may be.

Power to issue guidelines. 201. The Bank may issue guidelines, circulars, or notices in respect of this Act relating to the conduct of the business and affairs of a licensee.

Regulations. 202. The Bank, with the approval of the Minister, or the Minister, as the case may be, may make regulations for carrying into effect the objects of this Act or any provisions of this Act and for prescribing anything which under this Act is to be prescribed.

PART XVII OFFENCES

General penalty. 203. (1) A person who—

(a) contravenes or fails to comply with a provision of this Act; or

(b) fails to comply with a requirement, notice, order or direction issued by the Minister or by the Bank under this Act or a regulation made under this

Act,

commits an offence and, where no penalty is expressly provided, is liable on conviction to a fine, of five hundred thousand ringgit or to imprisonment for a term of six months or to both.

(2) Notwithstanding subsection (1), where the person convicted of an offence is a body corporate, the penalty of imprisonment for the offence does not apply to it.

Continuing offence. 204. (1) The expression "Default penalty" at the foot of a section or a subsection indicates that a person convicted of an offence in relation to that section or subsection commits a further offence if the offence continues after he is convicted and is liable to a fine of ten thousand ringgit or to imprisonment for a term of two days or both for each day or part of a day during which the offence continues after he is convicted.

(2) For the purpose of subsection (1), an offence is deemed to continue so long as the thing required or directed to be done by him remains undone, notwithstanding that the period has elapsed.

Offence in relation to entries in documents. 205. No person, with intent to deceive—

(a) in respect of a document relating to a licensee—

(i) shall make or cause to be made a false entry;

(ii) shall omit to make, or cause to be omitted, any entry; or

(iii) shall alter, abstract, conceal or destroy, or cause to be altered, abstracted, concealed or destroyed, any entry;

(b) in respect of a group policy, shall receive a proposal for insurance, or collect premium, on the group policy if it has expired or has been cancelled by the licensed insurer;

(c) shall forge a document, or make use of or hold in his possession a false document, purporting to be a policy of a licensed insurer;

(d) shall alter an entry made in a policy of a licensed insurer; or

(e) shall issue or use a policy which is false or incorrect, wholly or partly, or misleading.

Penalty : Imprisonment for ten years or ten million ringgit or both. Default penalty.

Offence by body corporate. 206. (1) Where an offence is committed by a body corporate or an association of persons, a person—

(a) who is its director, controller, officer or partner; or

(b) who is concerned in the management of its affairs,

at the time of the commission of the offence, is deemed to have committed that offence unless that person proves that the offence was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the

nature of his function in that capacity and to the circumstances.

(2) An individual may be prosecuted for an offence under subsection (1) notwithstanding that the body corporate or association of persons has not been convicted of the offence.

(3) Subsection (1) shall not affect the criminal liability of the body corporate or association of persons for the offence referred to in that subsection.

(4) The penalty of imprisonment for an offence applies to an individual convicted of an offence by virtue of subsection (1), notwithstanding that the imprisonment does not apply to the body corporate or association of persons by virtue of subsection 203 (2).

Offence by individual. 207. Where a person is liable under this Act to a penalty for any act, omission, neglect or default, he shall be liable to the same penalty for the act, omission, neglect or default of his employee, director, controller, or agent if the act, omission, neglect or default was committed by—

- (a) his employee in the course of the employee's employment;
- (b) his director in carrying out the function of a director;
- (c) his controller in carrying out the function of a controller; or
- (d) his agent when acting on his behalf.

Joinder of offences. 208. Notwithstanding anything contained in any other written law, where a person is accused of more than one offence under this Act, he may be charged with and tried at one trial for any number of the offences committed within any length of time.

Seizable offence. 209. An offence punishable under section 203 or 205 is a seizable offence, and a police officer not below the rank of inspector, or an investigating officer appointed under section 103 may arrest without warrant a person whom he reasonably suspects to have committed or is committing, the offence.

Arrested person make over to police. 210. An investigating officer who makes an arrest under section 209 shall make over the arrested person to a police officer without unnecessary delay and the arrested person shall be dealt with according to the law relating to criminal procedure as if he had been arrested by a police officer.

Power of Governor to compound offences. 211. (1) The Governor may compound an offence under this Act or under regulations made under this Act by accepting from the person reasonably suspected of having committed the offence such amount of moneys not exceeding the fine for that offence, including the daily fine in a continuing offence, within such time, as may be specified in his

written offer.

(2) Fifty per cent of the amount of moneys received by the Governor under subsection (1) shall be paid into, and shall constitute the revenue of—

- (a) the insurance guarantee scheme fund for life business if the offence relates to an insurer's life business;
- (b) the insurance guarantee scheme fund for general business if the offence relates to its general business; or
- (c) such insurance guarantee scheme fund as the Governor may decide if the offence does not relate to its life or general business,

and the moneys shall not form part of the Federal Consolidated Fund and the balance of the amount of moneys shall be paid into and form part of the Federal Consolidated Fund.

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

(4) Upon receipt of the payment of fine under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made.

Attempts, abatements and conspiracies. 212. (1) Any person who—

- (a) attempts to commit an offence under this Act;
- (b) does an act preparatory to, or in furtherance of, the commission of an offence under this Act; or

F.M.S. Cap. 45. (c) abets or is engaged in a criminal conspiracy to commit (as those terms are defined in the Penal Code) an offence under this Act, whether or not the offence is committed in consequence of it, commits an offence and is liable to the penalty for that offence.

(2) A provision of this Act which refers to an offence under a specific provision of this Act shall be read as including a reference to an offence under subsection (1) in relation to the offence under that specific provision.

Prosecution. 213. (1) No prosecution for an offence under this Act shall be instituted except with the written consent of the Public Prosecutor.

(2) Subject to subsection (1), a prosecution may be conducted by a person authorised by the Governor.

PART XVIII REPEAL AND TRANSITIONAL PROVISIONS

Repeal and saving. 214. (1) The written laws mentioned in the Schedule to the

extent to which they are expressed to be repealed or amended are repealed or amended accordingly.

(2) Notwithstanding subsection (1) —

(a) a subsidiary legislation and an approval, direction, decision, notification, exemption and other executive act made or done under the repealed Act and in force or having effect immediately before the effective date, is deemed to have been made or done under the corresponding provisions of this Act, and continues to remain in full force and effect in relation to the person to whom it applied until amended or replaced;

(b) guideline, circular, or notice issued by the Director General of Insurance under the repealed Act to an insurer, insurance broker or adjuster before the effective date, is deemed to have been lawfully issued under section 201 in relation to the provision of this Act corresponding to the matter dealt with in the guideline, circular or notice, and shall remain in full force and effect until it is amended or replaced;

(c) an application for a licence or approval or for any other purpose or an appeal, made by a person to the Minister or to the Director General of Insurance under the repealed Act before the effective date, if there is a corresponding provision in this Act, shall be dealt with as if it was made under that provision and, if there is no corresponding provision in this Act, the application or appeal shall lapse on the effective date;

(d) a policy issued, a transaction or dealing lawfully executed or entered into, and business lawfully done, under the repealed Act by a person who was a registered insurer under the repealed Act, or who was a licensed insurance broker or licensed adjuster under the repealed Act, and who is licensed or deemed to be licensed as an insurer, insurance broker or adjuster under this Act, with a policy owner or customer, creditor, debtor, or other person, is deemed to have been lawfully and validly executed or done under this Act, and a right or liability under the transaction, dealing or business existing, immediately before the effective date, is deemed to continue to be lawful and valid under this Act;

(e) legal proceedings, criminal prosecution, or investigation under the repealed Act shall be construed as if the repealed Act is in force; and

(f) an act, decision, rule, order or direction lawfully done or made prior to the coming into force of this Act in respect of an insurer whose winding up has commenced but has not been completed shall remain valid and binding until it is amended and replaced.

Saving in respect of insurers registered, and insurance brokers and adjusters licensed, under the repealed Act. 215. (1) Subject to sections 216, 217, 218 and 219—

(a) an insurer registered under section 4 of the repealed Act shall be deemed to be licensed under section 16 on the effective date and may carry on insurance business which was being lawfully carried on by it immediately before the effective date and the licence shall be valid for a period of six

months from the effective date; or

(b) an insurance broker or adjuster licensed under section 20B or 20C respectively of the repealed Act, shall be deemed to be licensed under section 17 on the effective date and may carry on insurance broking business or adjusting business, as the case may be, which was being lawfully carried on by it immediately before the effective date and the licence shall be valid for its remaining period but not exceeding a period of six months from the effective date.

(2) A local insurer or a foreign insurer which is deemed to be licensed under paragraph (1) (a) shall comply with section 18 by increasing its paid-up share capital or surplus of assets over liabilities, as the case may be, to such extent and within such time as the Bank may specify.

Approval of licence to insurer deemed to be licensed under paragraph 215

(1) (a). 216. (1) An insurer which is deemed to be licensed under paragraph 215 (1) (a) to carry on general business or life business or both, as the case may be, shall apply for a licence to carry on that insurance business under section 15 within sixty days from the effective date.

(2) Where subsection (1) is complied with, the Minister may grant the licence under section 16, with or without conditions, or refuse to grant the licence under section 16.

(3) A licence deemed to be held under paragraph 215 (1) (a) shall be revoked if—

(a) subsection (1) is not complied with; or

(b) subsection (1) is complied with but a licence is refused under section 16.

Conversion into, transfer of insurance business to, public company. 217. Where an insurer which is deemed to be licensed under paragraph 215 (1) (a) or is licensed under section 16 to carry on, either general or life business or both, as the case may be—

Act 125. (a) is a private company, it shall convert itself into a public company in accordance with the Companies Act 1965 within twelve months from the effective date;

(b) is a foreign insurer, other than a professional reinsurer it shall transfer its property, business, and liabilities to a public company incorporated under the Companies Act 1965 in so far as they relate to its insurance business in Malaysia in accordance with Part XI of this Act on or before 30 June 1998; and

(c) is a co-operative society, it shall transfer its property, business, and liabilities to a public company incorporated under the Companies Act 1965 in so far as they relate to its insurance business in accordance with Part XI of this Act within twelve months from the effective date, or such further period as the Minister may specify by notice in writing to the insurer on its written application before the expiry of the period.

Revocation of licence for non-compliance with section 217. 218. Where section 217 is not complied with, the licence deemed to be held under section 215 or issued under section 16 is deemed to have been revoked under section 31 upon expiry of the period specified in section 217.

Approval of licence to insurance broker or adjuster deemed to be licensed under paragraph 215 (1) (b). 219. (1) An insurance broker or adjuster which is deemed to be licensed under paragraph 215 (1) (b) shall apply for a licence to carry on business as an insurance broker or adjuster, as the case may be, under section 15 before the expiry of the remaining period of its licence but not exceeding a period of sixty days from the effective date.

(2) Where subsection (1) is complied with, the Bank may grant the licence under section 17, with or without conditions, or refuse to grant the licence under section 17.

(3) The licence deemed to be held under paragraph 215 (1) (b) shall be deemed to have been revoked if—

- (a) subsection (1) is not complied with, upon expiry of the period specified in that subsection; or
- (b) subsection (1) is complied with, but a licence is refused under section 17, on the date of the refusal.

Foreign insurer to establish insurance fund. 220. A licensed foreign insurer shall establish and maintain a separate insurance fund for its Malaysian policies and for its foreign policies underwritten at its branch in Malaysia.

Penalty : One million ringgit. Default penalty.

Saving and disclosure in respect of interest in shares. 221. (1) Subject to subsection (2), nothing contained in section 67 or 69 shall render invalid an acquisition or disposal of interest in shares of a licensee or of its controller by a person where the acquisition or disposal of interest in shares of a licensee or of its controller had been completed or a holding of interest in shares of a licensee or of its controller which existed, before the effective date and was lawful and valid immediately before that date.

(2) An acquisition, holding or disposal of interest in shares to which subsection (1) applies shall be taken into account in determining the validity under section 67 or 69, as the case may be, of any acquisition or disposal of interest in shares of a licensee or of its controller effected after the effective date.

(3) Notwithstanding subsection (1), a person who is a controller of a licensee on the effective date shall notify the Bank in writing within thirty days from that date—

- (a) the names of its shareholders holding more than five per cent of its shares; and
- (b) if a shareholder holds the shares as a trustee, to indicate as far as he

can, the person for whom he holds it by name or by other particulars sufficient to enable that person to be identified and the nature of his interest,

and section 66 shall apply in relation to a controller of a licensee under this subsection.

Penalty : One million ringgit. Default penalty.

Deposits and bank covenants in lieu of deposits. 222. (1) Where a licensed insurer has deposited in cash or securities with the Accountant General the sum of moneys specified in subsection 7 (1) of the repealed Act, the Accountant General may refund that deposit together with any accretions to the licensed insurer.

Act 372.

Act 89. (2) Where a bank licensed under the Banking and Financial Institutions Act 1989 covenants with the Government under subsection 8(1) of the repealed Act to deposit with the Accountant General a specified sum in cash on account of a licensed insurer's deposit under subsection 7 (1) of the repealed Act, the covenant is deemed to be cancelled with effect from the effective date.

Moneys in the insurance guarantee scheme fund. 223. Moneys remaining in the insurance guarantee scheme fund for general insurance business established under section 12A of the repealed Act shall be transferred and paid into the insurance guarantee scheme fund for general business established and maintained under section 173.

Saving in respect of life policy moneys. 224. (1) Where a licensed life insurer has deposited with the Treasury a balance of life policy moneys under subsection 44(4) of the repealed Act and estate duty is due or is leviable on the policy moneys under—

(a) the Estate Duty Enactment of the Federated Malay States; or

(b) the Estate Duty Ordinance of Sabah,

the licensed life insurer, as soon as practicable, shall obtain a refund of the life policy moneys from the Treasury upon an application in writing and accompanied by the original receipt issued by the Treasury and a letter of consent from the person who received the initial payment and where there is no such person, from the person referred to in subsection 169(2) and the licensed life insurer shall pay the sum of policy moneys to that person without that sum of policy moneys being included in the schedule mentioned in paragraph 50(ii) of that Enactment or the certificate mentioned in section 35 of that Ordinance.

(2) Where the policy owner died before 1 November 1991, the licensed life insurer, before making a payment under subsection (1), shall give not less than fourteen days written notice by registered post to the Collector of Estate Duty with such particulars as he may require.

(3) Where the policy owner died on or after 1 November 1991 and payment has been made under subsection 44 (1) of the repealed Act, the licensed life insurer shall deal with the balance of the policy moneys in the manner provided under subsection (1), if—

(a) no claim has been made to the balance of policy moneys by a personal representative of the deceased policy owner; or

Act 370. (b) the licensed life insurer has paid the balance of the policy moneys into the Consolidated Trust Account under subsection 11(1) of the Unclaimed Moneys Act 1965, the licensed life insurer, notwithstanding anything contained in the Act, upon obtaining a letter of consent from the person referred to in subsection 169(2), shall be entitled to claim, and shall claim, under subsection 13(1) of that Act, for the balance of the policy moneys to be paid to it by the Registrar of Unclaimed Moneys as if it were the owner under that Act.

(4) Subsection (1) applies to policy moneys under a life policy of which the deceased was not the policy owner at his death.

(5) The Treasury, before refunding the balance of the policy moneys to the licensed life insurer on its application to pay the person referred to in subsection 169 (2), may apply the balance of the policy moneys to pay any unpaid estate duty.

(6) Before making an application under subsection (1) or a claim under subsection (3), the licensed life insurer shall notify, and obtain a letter of consent from, the person referred to in subsection 169 (2).

(7) Sections 170 and 171 apply to payment of the balance of policy moneys under this section.

Act 370. (8) Where a balance of policy moneys is not refunded under this section within seven years from the effective date, the amount shall be paid into the Consolidated Trust Account under subsection 11 (1) of the Unclaimed Moneys Act 1965.

Provisions for removing difficulties. 225. The Minister may by rules make such provisions as he considers necessary or expedient for the purpose of removing any difficulties occasioned by the coming into force of this Act and such rule may be made so as to have effect as from the effective date.

SCHEDULE

[Subsection 214(1)]

PART A Repeal

No. Title Extent of repeal

1 of 1962 The Life Assurance Companies (Compulsory Liquidation) Act 1962

89 of 1963 The Insurance Act 1963 The whole

L.N. 250/63 The Life Assurance Companies (Compulsory Winding-Up) Rules 1963

PART B

Consequential Amendments

Act 125. 1. The Companies Act 1965 is amended—

(a) by inserting after paragraph 217(1) (f) of that Act, the following:

“(g) in the case of a company which is licensed under the Insurance Act 1996, Bank Negara Malaysia,” ;

(b) by deleting the word “or” after paragraph 218(1) (j) of that Act;

(c) by substituting for the full stop at the end of paragraph 218(1) (k) the word “; or” ;

(d) by inserting after paragraph 218(1) (k) of that Act, the following:

“(1) the company has held a licence under the Insurance Act 1996 and—

(i) that licence has been revoked;

(ii) Bank Negara Malaysia has petitioned for its winding up under subsection 58(4) of the Insurance Act 1996; or

(iii) an order under paragraph 59(4) (b) of the Insurance Act 1996 has been made in respect of it.” ;

(e) in subsection 234(3) of that Act, by inserting after the words “lodged with the Registrar” the words “, and in the case of a company which is an insurer, whether or not its licence under the Insurance Act 1996 is revoked, Bank Negara Malaysia,” ;

(f) by inserting after subsection 235(2) of that Act, the following:

“(3) The liquidator of a company which is an insurer shall submit the preliminary report in subsection (1) and the further reports in subsection (2) to Bank Negara Malaysia at the same time as he submits them to the Court.” ;

(g) by inserting after subsection 254(3), the following:

“(4) A company which is an insurer, whether or not its licence under the Insurance Act 1996 is revoked, shall not be wound up voluntarily before the transfer of the whole of its insurance business to another insurer under section 128 of that Act.” ;

(h) by renumbering section 267 as subsection 267(1) and inserting after subsection 267(1) the following:

“(2) Notwithstanding section 232(3), in the case of a company which is an insurer, no person, other than Bank Negara Malaysia, may apply to the Court to review the remuneration of the liquidator and the Court shall determine the remuneration of the liquidator on the recommendation of Bank Negara Malaysia.” ;

(i) in subsection 281(1) of that Act, by inserting after the words “and the Official Receiver” the words “, and in the case of a company which is an insurer, whether or not its licence under the Insurance Act 1996 is revoked, Bank Negara Malaysia,” .