



LAWS OF MALAYSIA

Act A1087

**PENGURUSAN DANAHARTA NASIONAL BERHAD
(AMENDMENT) ACT 2000**

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**PENGURUSAN DANAHARTA NASIONAL BERHAD
(AMENDMENT) ACT 2000**

An Act to amend the Pengurusan Danaharta Nasional Berhad Act 1998.

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ENACTED by the Parliament of Malaysia as follows:

Short title

1. This Act may be cited as the Pengurusan Danaharta Nasional Berhad (Amendment) Act 2000.

Commencement

2. (1) Subject to subsection (2), this Act shall be deemed to have come into operation on 1 September 1998 and the provisions inserted by this Act shall be deemed to have been an integral part of the Pengurusan Danaharta Nasional Berhad Act 1998 [Act 587], which is referred to as the “principal Act” in this Act, from that date.

(2) Paragraph 4(d), sections 11, 15, 21, 22, 23, 24, paragraph 25(c), section 27, paragraphs 29(b) and (c), sections 35, 37, 38 and 39 of this Act shall come into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Validity of acts done before commencement of this Act

3. (1) All acts and things done or purported to be done by the Corporation, Oversight Committee, Special Administrator, Independent Advisor and their officers, employees and agents pursuant to or under the powers of the principal Act prior to the commencement of this Act shall be deemed to have been validly and lawfully done notwithstanding that the principal Act did not, at the time the acts or things were done, contain the provisions inserted by this Act.

(2) Nothing in this Act shall affect any right conferred or relief obtained by any person by virtue of any decision of the court pronounced prior to the date of publication of this Act.

Amendment of section 2

4. Section 2 of the principal Act is amended—

(a) by substituting for the definition of “registered interest” the following definition:

“registered interest” means any right or interest in—

- Act 125.* (a) a charge to which subsection 108(3) of the Companies Act 1965 applies and is duly registered in accordance with subsection 108(1) of the Companies Act 1965; or
- Act 318.
Act 56/65.
Cap. 68.
Cap. 81.* (b) land which is duly registered under the Strata Titles Act 1985, the National Land Code, the Land Ordinance of Sabah or the Land Code of Sarawak;’;

(b) in the definition of “interest in land”—

- (i) in paragraph (a) by inserting after the words “National Land Code” the words “or Part V of the Land Ordinance of Sabah or Part VI of the Land Code of Sarawak”; and
- (ii) in the English language text, by inserting the marginal references “*Cap. 68.*” and “*Cap. 81.*” against the words “Land Ordinance of Sabah” and “Land Code of Sarawak” respectively;

(c) by inserting after the definition of “credit facility agreement” the following definition:

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

(d) by deleting the definition of “secured creditor”;

(e) in the definition of “obligor”—

- (i) in the national language text, by substituting for the words “berhutang tugas” the words “mempunyai tanggungjawab”; and
- (ii) by deleting the word “agreement” after the words “credit facility”;

(f) by inserting after the definition of “disclosed obligation” the following definition:

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

(g) in the definition of “Registrar of land”—

- (i) in the English language text, by substituting for the words “Sabah Land Ordinance” the words “Land Ordinance of Sabah”;
- (ii) in the English language text, by substituting for the words “Sarawak Land Code” the words “Land Code of Sarawak,”; and
- (iii) by deleting the marginal references “Cap. 68.” and “Cap. 81.”;

(h) by substituting for the definition of “vesting certificate” the following definition:

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

(i) by substituting for the definition of “transfer certificate” the following definition:

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

- (j) by deleting the definition of “credit facility agreement”;
and
- (k) in the definition of “disclosed claim” by deleting the words “, 46 and 48” in paragraph (a).

Amendment of section 14

5. Section 14 of the principal Act is amended—

(a) in subsection (4)—

- (i) by substituting for paragraph (i) the following paragraph:

“(i) in addition to any other right, power or remedy granted to the Corporation in this Part, the Corporation shall have the rights, powers and remedies (and in particular the rights and powers as to taking or resisting legal or other proceedings or making or resisting applications to any authority) for ascertaining, protecting or enforcing the rights, titles, interests and disclosed obligations vested in the Corporation including those rights, titles, interests or obligations in respect of any legal or other proceedings or applications to any authority pending immediately before the vesting date by or against the seller, and resisting any disclosed claims or registered interest as if they had at all times been the rights, titles, interests and obligations of the Corporation;”;

- (ii) in paragraph (l) by deleting the words “relating to the bankruptcy of individuals or the winding up of companies”; and
- (iii) in paragraph (m)—
 - (A) by deleting the words “credit facility” wherever they appear;

- (B) by inserting after the word “agreement” appearing in the second line the words “in respect of an asset”; and
- (C) in subparagraph (ii) by deleting the words “cost of funds or”; and

(b) by inserting after subsection (7) the following subsection:

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

New section 14A

6. The principal Act is amended by inserting after section 14 the following section:

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

(2) Any replacement vesting certificate issued under subsection (1) executed under the seal of the Corporation stating that an asset has been vested in the Corporation shall be conclusive evidence of such vesting as of the vesting date specified in the replacement vesting certificate.

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

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

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

Amendment of section 16

7. Section 16 of the principal Act is amended—

(a) in subsection (1)—

- (i) by inserting after the words “National Land Code” the words “, the Land Ordinance of Sabah, the Land Code of Sarawak”; and
- (ii) by inserting after the words “prior to” the words “, on or after”;

(b) in subsection (2)—

- (i) by deleting the words “issued under section 14”;
and
- (ii) in the national language text, by substituting for the words “terletak hak” the words “meletakakkan”;
and

(c) in subsection (3) by inserting after the words “National Land Code,” the words “the Land Ordinance of Sabah, the Land Code of Sarawak or any other law,”.

Amendment of section 19

8. Section 19 of the principal Act is amended—

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

“(1) The Corporation may, in accordance with the provisions of this section, dispose of any of the Corporation’s assets whether vested or not in the Corporation and any property over which the Corporation has a security whether as a chargee, mortgagee, assignee, lien-holder or otherwise.”;

(b) in paragraph (2)(c) by deleting the words “referred to in subsection (4)”;

- (c) in subsection (3) by deleting the word “lien,”;
- (d) by substituting for subsection (4) the following subsection:

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

- (e) by inserting after subsection (4) the following subsection:

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

New section 19A

9. The principal Act is amended by inserting after section 19 the following section:

“**Replace-
ment
transfer
certificate.** 19A. (1) The Corporation may issue a new transfer certificate to replace any transfer certificate it has previously issued in order to rectify any omission or error in the transfer certificate.

(2) Any replacement transfer certificate issued under subsection (1) executed under the seal of the Corporation stating that an asset has been transferred to the acquiree shall be conclusive evidence of such transfer as of the date of disposition specified in the replacement transfer certificate.

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

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

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

Amendment of section 20

10. Section 20 of the principal Act is amended—

(a) in subsection (1)—

- (i) by substituting for the words “for purposes of an evaluation of, or relating to, a proposed disposition by the Corporation” the words “for any purpose”; and
- (ii) by deleting the words “notwithstanding that the proposed acquisition or proposed disposition was not subsequently completed”; and

(b) by inserting after subsection (2) the following subsection:

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

Substitution of section 21

11. The principal Act is amended by substituting for section 21 the following section:

“^{Interpre-} 21. (1) In this Part, unless the context otherwise
^{tation in} requires—
^{relation to} “affected person” means—
^{Part VI.}

- (a) any company owing a duty or liability under a credit facility to the Corporation or any subsidiary of the Corporation, whether present, future, vested or contingent;

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

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

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

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

- (e) a charge, mortgage, pledge or lien over marketable securities (as defined in the Companies Act 1965) belonging to the affected person and which, if duly required by subsection 108(3) of the Companies Act 1965, is duly registered in accordance with subsection 108(1) of the Companies Act 1965; or
- (f) a charge, mortgage, pledge or lien over moneys placed on fixed deposit by the affected person duly registered under subsection 108(1) of the Companies Act 1965.

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

Amendment of section 22

12. Section 22 of the principal Act is amended—

(a) in subsection (1)—

- (i) in paragraph (a) by substituting for the words "section 23 or 24" the words "this Act";
- (ii) in paragraph (c) by inserting after the word "extension" the words "or termination"; and
- (iii) in paragraph (d) by inserting after the words "appointed under this Act" the words "or for the termination of the administration of an affected person"; and

(b) by inserting after subsection (3) the following subsections:

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

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

(c) any omission, defect or irregularity in the proceedings of the Oversight Committee.

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

Substitution of section 23

13. The principal Act is amended by substituting for section 23 the following section:

“Applica-
tion by
affected
person
for
appoint-
ment of
Special
Adminis-
trator.
23. Subject to section 25, the board of directors or the majority of the members of an affected person may apply to the Corporation and the Corporation may recommend to the Oversight Committee for the appointment of a Special Administrator of the affected person.”.

Substitution of section 24

14. The principal Act is amended by substituting for section 24 the following section:

“Recom-
menda-
tion by
Corpora-
tion for
appoint-
ment of
Special
Adminis-
trator.
24. Subject to section 25, the Corporation may, on its own motion, recommend to the Oversight Committee for the appointment of a Special Administrator of any affected person.”.

Substitution of section 25

15. The principal Act is amended by substituting for section 25 the following section:

“Criteria
for
appoint-
ment of
Special
Adminis-
trator.
25. The Corporation may recommend the appointment of a Special Administrator under section 23 or 24 if the Corporation is satisfied that it would serve public interest to do so or if the Corporation is satisfied that—
(a) the primary affected person—
(i) is unable or likely to be unable to pay its debts;
or

- (ii) is unable or likely to be unable to fulfil its obligations to its creditors;
- (b) the survival of the primary affected person and the whole or any part of its assets as a going concern may be achieved;
- (c) a more advantageous realisation of the primary affected person's assets may be achieved than on a winding up; or
- (d) the appointment may achieve a more advantageous realisation or a more expeditious settlement of a duty or liability owed by any person to the Corporation or any subsidiary of the Corporation, whether future, present, vested or contingent.”.

New section 25A

16. The principal Act is amended by inserting after section 25 the following section:

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

(2) The Corporation may at any time after the appointment of the Special Administrator under subsection (1), with the approval of the Oversight Committee, appoint an additional Special Administrator and may, at any time, appoint a new Special Administrator to replace any existing Special Administrator.

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

Amendment of section 26

17. Section 26 of the principal Act is amended—

- (a) by renumbering the section as subsection (1) of that section; and

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

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

Substitution of section 27

18. The principal Act is amended by substituting for section 27 the following section:

- “Circumstances where Special Administrator cannot be appointed.
27. A Special Administrator shall not be appointed—
- (a) in respect of an affected person if the affected person has been wound up by the court and the winding up order is still subsisting;
 - (b) unless the written approval of the relevant regulatory body has first been obtained, in respect of an affected person that is—
 - (i) licensed under the Insurance Act 1996;
 - (ii) licensed under the Banking and Financial Institutions Act 1989;
 - (iii) a dealer, fund manager or investment adviser as defined in the Securities Industry Act 1983;
 - (iv) a futures broker, futures fund manager or futures trading adviser as defined in the Futures Industry Act 1993;
 - (v) a stock exchange as defined in the Securities Industry Act 1983;
 - (vi) a recognised clearing house or participant of a recognised clearing house as defined in the Securities Industry Act 1983;
 - (vii) an exchange company as defined in the Futures Industry Act 1993;
 - (viii) an approved clearing house or a futures broker that is an affiliate of a clearing house of an exchange company as defined in the Futures Industry Act 1993;
- Act 553.

- (ix) a central depository or its authorised depository agent as defined in the Securities Industry (Central Depositories) Act 1991;
- Act 443.* (x) licensed under the Offshore Banking Act 1990; or
- Act 276.* (xi) licensed under the Islamic Banking Act 1983.”.

Amendment of section 28

19. Subsection 28(1) of the principal Act is amended by substituting for the words “he is released from his appointment” the words “it is terminated by the Corporation with the approval of the Oversight Committee”.

New section 29A

20. The principal Act is amended by inserting after section 29 the following section:

- “Effect of appointment of Special Administrator.
- 29A. The appointment of a Special Administrator under section 23 or 24 shall not—
- (a) be regarded as placing the Special Administrator, the affected person or any other person in breach of or in default under any contract, or in breach of confidence;
- (b) be regarded as giving rise to a right for any person to—
- (i) terminate, cancel or modify an agreement;
- (ii) enforce or accelerate the performance of an obligation; or
- (iii) require the performance of an obligation not otherwise arising for performance;
- (c) be regarded as placing the Special Administrator, the affected person or any other person in breach of any law or agreement prohibiting, restricting or regulating the assignment, sale, disposition or transfer of any asset or disclosure of information;
- (d) release a surety from an obligation;

- (e) invalidate or discharge a contract or security;
- (f) be regarded as terminating, cancelling or varying any right, privilege, exemption (including any tax exemption) or priorities in relation to an asset;
- (g) be regarded as placing the Corporation, the Oversight Committee or the Special Administrator in breach of any law or any order of any court.”.

Amendment of section 33

21. Section 33 of the principal Act is amended by inserting after subsection (3) the following subsection:

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

Amendment of section 36

22. Section 36 of the principal Act is amended—

- (a) in subsections (1) and (2) by inserting after the word “officer” the words “or employee” wherever the word appears; and
- (b) in subsection (3) by inserting after the word “director” the words “(as defined in the Companies Act 1965)”.

Amendment of section 37

23. Section 37 of the principal Act is amended—

- (a) in subsection (1)—
 - (i) by deleting the words “in the prescribed form”;
 - (ii) by inserting after the words “affected person” the words “in a form determined by the Special Administrator”;
 - (iii) by deleting the word “and” appearing at the end of paragraph (d); and

(iv) by inserting after paragraph (d) the following paragraph:

Act 13. “(da) a statutory declaration made pursuant to the provisions of the Statutory Declarations Act 1960, declaring the information in the statement of affairs as being true and correct; and”;

(b) in subsection (5) by inserting after the word “director” the words “(as defined in the Companies Act 1965)”.

New section 39A

24. The principal Act is amended by inserting after section 39 the following section:

“Effect of obstructing or hindering the Special Administrator.”

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

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

Amendment of section 41

25. Section 41 of the principal Act is amended—

(a) in subsection (1)—

- (i) in paragraph (e) by inserting a comma after the word “levied”; and
- (ii) in paragraph (g) by inserting after the words “affected person” the words “in respect of that liability”;

(b) in subsection (2) by inserting after the words “Special Administrator” the words “and may be terminated at any time by the Corporation with the approval of the Oversight Committee”; and

(c) by inserting after subsection (6) the following subsections:

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

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

Amendment of section 42

26. Section 42 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting after the word “mortgage,” the words “execution, attachment, obligation, settlement, charge, assignment,”;

(ii) by inserting after the words “asset made” the words “, incurred”; and

(iii) by substituting for the words “void or voidable, may be avoided” the words “void, voidable or recoverable, may be avoided or recovered”; and

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

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

New section 42A

27. The principal Act is amended by inserting after section 42 the following section:

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

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

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

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

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

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

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

(3) For the purposes of this section—

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

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

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

Amendment of section 44

28. Section 44 of the principal Act is amended by inserting after subsection (1) the following subsections:

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

(1B) Without prejudice to the generality of the foregoing, the proposal may include provision for—

- (a) a compromise or arrangement between the affected person and its creditors or any class of them or between the affected person and its members or any class of them or between the affected person and its debtors or any class of them;
- (b) the alteration or reduction of all or part of the share capital of the affected person;
- (c) the sale of all or part of the undertaking or property of the affected person;
- (d) the transfer to a company of the whole or any part of the undertaking, property or liabilities of the affected person;
- (e) the transfer to any company of all or part of the shares, or all the shares of a particular class, in the affected person;
- (f) the continuation by or against the company referred to in paragraph (d) of any legal proceedings pending by or against the affected person;
- (g) the dissolution without winding up of the affected person;

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

Amendment of section 46

29. Section 46 of the principal Act is amended—

- (a) in subsection (1) by substituting for the words "in respect of a disclosed claim" the words "known to the Special Administrator";
- (b) by substituting for subsection (4) the following subsection:

"(4) If—

- (a) a majority in value of the secured creditors, present and voting, either in person or by proxy, at the meeting approves the proposal; or
- (b) there are no secured creditors of the affected person known to the Special Administrator and the Corporation approves the proposal under subsection 45(2),

the proposal, including the proposal as it may subsequently be modified under section 48, shall be binding on the affected person, all members and creditors of the affected person and any other person affected by the proposal, whether or not the person had knowledge or notice of the proposal.";

- (c) in subsection (5) by substituting for the words "subsection (4)" the words "paragraph (4)(a)"; and
- (d) by inserting after subsection (5) the following subsection:

"(5A) Notwithstanding any law—

- (a) the approval or the implementation of a proposal under subsection (4), including the proposal as it may subsequently be modified under section 48, shall not release or discharge any security provided by any person to secure any duty or liability owed by the affected person to any creditor of the affected person; and

- (b) each such security and any such duty or liability of the person providing the security shall remain valid and enforceable against that person notwithstanding the approval or implementation of the proposal, including the proposal as it may subsequently be modified under section 48, or any compromise, arrangement, reconstruction or amalgamation in connection with the affected person.”.

Amendment of section 47

30. Section 47 of the principal Act is amended—

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

“(2) The Special Administrator shall—

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

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

- (b) by substituting for subsection (3) the following subsection:

“(3) Notwithstanding the provisions of any law or contract, a proposal approved or modified under this Act may be implemented, and the Special Administrator shall have the power to implement and do all things necessary to fully and effectively carry out and give

effect to the proposal or any part of the proposal without the need for any notice to or approval or consent of any member or creditor of the affected person or any other person affected by the proposal, or approval of or confirmation by a court and any such notice, approval, consent or confirmation (whether required under any law or contract or otherwise) shall be deemed to have been duly given or obtained, as the case may be.”;

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

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

(d) by inserting after subsection (5) the following subsections:

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

(7) Notwithstanding anything to the contrary in any law, the Corporation or any related company (as defined in the Companies Act 1965) or subsidiary of the Corporation may acquire any property of, or marketable securities issued by, the affected person.

(8) Notwithstanding anything to the contrary in any law, the Special Administrator shall have the power to do all things necessary to give effect to and to implement the proposal approved in accordance with sections 44 to 46 or modified in accordance with section 48.”.

Amendment of section 48

31. Section 48 of the principal Act is amended—

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

“(1) The Special Administrator may at any time after—

(a) the approval of the proposal by the secured creditors of the affected person under section 46; or

(b) where there are no secured creditors known to the Special Administrator, the approval of the proposal by the Corporation under subsection 45(2),

propose modifications to the proposal.”;

(b) in subsection (3) by substituting for the words “its members and its creditors and shall be final and conclusive” the words “all members and creditors of the affected person and any other person affected by the proposal, whether or not the person had knowledge or notice of the modified proposal”;

(c) in subsection (5) by substituting for the words “in respect of a disclosed claim” the words “known to the Special Administrator”; and

(d) in subsection (7) by inserting after the word “modifications” the words “which shall be binding on the affected person, all members and creditors of the affected person and any other person affected by the proposal, whether or not the person had knowledge or notice of the modifications”.

Amendment of section 49

32. Section 49 of the principal Act is amended by substituting for subsection (2) the following subsection:

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

Substitution of Part VII

33. The principal Act is amended by substituting for Part VII the following Part:

“PART VII**ADDITIONAL RIGHTS**

Entitlement
to dispose
assets by
private
treaty.

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

(a) to dispose of such property or any part of such property by way of private treaty; and

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

(2) A sale by private treaty under subsection (1) may be effected by private contract, auction, tender or any other mode of sale.

(3) For the purposes of subsection (1), the Corporation or the acquiree shall be deemed to be authorised by the grantor of the security to effect the transfer of ownership of the property to the purchaser.

(4) Every Registrar of the High Court, the Registrar of Companies, the Registrar of land, the Registrar General of Ships, a central depository, an authorised depository agent, and any person maintaining a register or record of ownership or interest, as the case may be, shall accept a transfer certificate or an instrument of transfer or other

registration document executed by the Corporation or the acquiree and effect the transfer of the property or any part of the property to the purchaser without the need for any further application or filing of any further documents.

(5) Notwithstanding anything to the contrary in any law, the Corporation or any related company or subsidiary of the Corporation may, without having to pay any deposit, acquire any property disposed of under subsection (1) and be entitled to set off the purchase price against the liability owed to any one or more of the following:

- (a) the Corporation;
- (b) any related company of the Corporation;
- (c) any subsidiary of the Corporation.

(6) The Corporation's rights under subsection (1)—

- (a) may be exercised notwithstanding any order for sale made whether pursuant to any rules of the court, the National Land Code, the Land Ordinance of Sabah or the Land Code of Sarawak or any other law and notwithstanding any step or proceedings taken or pending to sell the property;
- (b) may be exercised without the need for any approval, confirmation or order of court;
- (c) are cumulative and not exclusive of any other right or remedy provided by law or contract;
- (d) may be exercised concurrently with any right or remedy provided by law or contract.

(7) For the purpose of this section, "related company" has the meaning assigned to it by the Companies Act 1965."

Amendment of section 59

34. Section 59 of the principal Act is amended by inserting after the word "transfer" in paragraphs (a), (b) and (c) the words "of an asset".

Amendment of section 65

35. Section 65 of the principal Act is amended—

(a) by renumbering the section as subsection (1) of that section;

(b) in subsection (1) by substituting for the words “or any officer, employee or agent of the Corporation or any” the words “or the Oversight Committee or officer, employee or agent of the Corporation or”; and

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

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

Amendment of section 66

36. Section 66 of the principal Act is amended in the marginal note by substituting for the word “Indemnity” the word “Immunity”.

New sections 66A and 66B

37. The principal Act is amended by inserting after section 66 the following sections:

“Indemnity. 66A. (1) The Special Administrator, the Corporation and any other person are entitled to be indemnified out of the affected person’s property for—

(a) in the case of the Special Administrator, his costs, expenses and remuneration as approved by the Corporation;

(b) in the case of the Corporation, the repayment of any credit facility provided by the Corporation to the Special Administrator or the affected person during the administration of the affected person;

(c) in the case of any other person, the repayment of any credit facility provided by that person to the Special Administrator or the affected person during the administration of the affected person with the approval of the Corporation.

(2) Notwithstanding any other law, a right of indemnity under subsection (1) shall have priority over the assets of the affected person and shall be paid in priority to all other secured and unsecured debts.

Offences
committed
by company.

66B. (1) Where a person charged with an offence under this Act is a company, every person who at the time of the commission of the offence is a director or officer of the company may be charged jointly in the same proceedings with the company, and where the company is convicted of the offence charged, every such director or officer shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge and that he has exercised all such diligence as he ought to have exercised, having regard to all the circumstances.

(2) Any person who would be liable under this Act to any penalty for anything done or omitted if the thing had been done or omitted by him personally shall be liable to the same penalty if the thing had been done or omitted by his agent, unless he proves that he took all reasonable precautions to prevent the doing or omission of the thing.

(3) In this section, “director” and “officer” shall have the meanings assigned to them in the Companies Act 1965.”.

New sections 71 and 72

38. The principal Act is amended by inserting after section 70 the following sections:

“Acts done
in good
faith.

71. Without prejudice to the application of any provision of this Act, a breach of this Act or any other law by the Corporation, Special Administrator, Independent Advisor or the Oversight Committee does not invalidate any act done by them in good faith.

Limits on the grant of orders of court. 72. Notwithstanding any law, an order of a court cannot be granted—

- (a) which stays, restrains or affects the powers of the Corporation, Oversight Committee, Special Administrator or Independent Advisor under this Act;
- (b) which stays, restrains or affects any action taken, or proposed to be taken, by the Corporation, Oversight Committee, Special Administrator or Independent Advisor under this Act;
- (c) which compels the Corporation, Oversight Committee, Special Administrator or Independent Advisor to do or perform any act,

and any such order, if granted, shall be void and unenforceable and shall not be the subject of any process of execution whether for the purpose of compelling obedience of the order or otherwise.”.

Amendment of First Schedule

39. The First Schedule to the principal Act is amended in paragraph 5—

- (a) in subparagraph (b) by inserting after the words “section 7” the words “or section 65”; and
- (b) in subparagraph (c) by substituting for the words “not affecting the merits of the case” the words “in the proceedings of the Board”.

